



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 671 OF 1999**

**CAPITAL INSURANCE BROKERS LTD.....PLAINTIFF**

**V E R S U S**

**NZOIA SUGAR COMPANY LTD.....DEFENDANT**

**R U L I N G**

1. The judgment delivered herein on 31<sup>st</sup> May 2006 (GBM Kariuki, J) was in favour of the Plaintiff. The Plaintiff was awarded various substantial sums of money, some interest and costs.

2. By a **ruling dated 20<sup>th</sup> and delivered on 23<sup>rd</sup> May 2008** execution of the decree was stayed pending disposal of an intended appeal to the ***Court of Appeal*** upon the condition that the Defendant/JD do deposit into court the sum of KShs 20,421,441/45 as security within thirty (30) days of delivery of the ruling. The deposit was made. A subsequent consent varied the condition to enable the deposit to be placed in a joint interest-earning account pending disposal of the appeal before the ***Court of Appeal***.

3. The appeal before the ***Court of Appeal*** (**Nairobi Civil Appeal No. 86 of 2009**) was finally disposed of by a **judgment of that Court dated and delivered on 31<sup>st</sup> January 2014**. The appeal was allowed and the entire judgment of the ***High Court*** set aside.

4. The Defendant has now applied by **notice of motion dated 14<sup>th</sup> February 2014** for an order for release to it (through its advocates on record) the deposit and accrued interest. The Plaintiff has opposed the application by **replying affidavit filed on 20<sup>th</sup> March 2014**.

5. I have considered the submissions of the learned counsels appearing. The deposit made by the Defendant was to secure the Plaintiff's decree pending disposal of the Defendant's appeal to the ***Court of Appeal***. That appellate court has pronounced itself in its judgment dated and delivered on 31<sup>st</sup> January 2014. It set aside the judgment of the High court in its entirety. The Plaintiff no longer has any decree to be secured, and the purpose of the deposit is now spent! Why should the Defendant's money be held any longer?

6. The Plaintiff's intention to appeal to the ***Supreme Court of Kenya*** cannot act as a bar to the Defendant retrieving its money, the purpose of the deposit having been spent. If the Defendant's money

was to be detained any longer, the Plaintiff ought to have secured an order to that effect from the *Court of Appeal* or the *Supreme Court*. There is no such order.

7. I have no hesitation at all in allowing prayer 2 of the notice of motion dated 14<sup>th</sup> February 2014 with costs to the Defendant. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 9<sup>TH</sup> DAY OF JULY 2014**