

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E654 OF 2024**

**BACKLITE LIMITED.....**  
**APPELLANT**

**VERSUS**

**PLENSER LIMITED.....**  
**RESPONDENT**

**RULING**

1. This is a notice of motion dated the 3<sup>rd</sup> day of July 2025 seeking orders that the decretal amount be refunded in installments of a period of one year. The history of this matter is that the Appellant lost his case in the lower court which required him to make Payments of Ksh 343,254 and upon appeal, the lower court Judgement was reversed. It is upon this decision that the Respondent made an application above to be allowed to pay this decretal amount in installments of one year. The Applicant cites financial constrains as a reason of this application. I have considered the submissions and relevant documents. This is what I have to say;

- 2.** An active litigation forms the basis for parties to expect either positive or negative results. When the Appellant lost at the lower Court, it went ahead and paid Respondent all the decretal amount and the moment the Appellant filed an appeal, the Respondent ought not to have been comfortable with the impugned lower Court judgement since it was subject to the decision of the High Court. The same way that the Appellant complied with the lower Court judgement is what is expected of the Respondent in the High Court. This court must treat all parties as equal.
- 3.** The issue of financial distress has been raised by the Applicant. The court has discretion to consider this issue but it must be careful lest it appears to be favoring one party. The circumstances of this case are unique because the decretal amount in question was paid by the Appellant who now wants refund. It is not as a results of a commercial transaction and the refund of this amount was imminent when appeal was filed. The Applicant cannot say that it did not expect to be called upon to refund monies paid to it yet it was subject to the outcome of appeal. The court is likely to occasion an injustice to the Appellant if it applies double standards on a decretal amount and especially in an adversarial litigation.
- 4.** The High Court Judgement was delivered in the 5th June 2025, almost 7 months ago. During this period as per the

records, the Applicant has paid around Ksh 100,000 out of Ksh 400,000. The proposal by the Applicant to pay Ksh 33,000 per month would have amounted to Ksh 210,000 within the same period of time. This clearly shows the Applicant's lack of commitment to fulfill the high Court Judgement and in fact the Applicant at least ought to have paid a lump sum deposit of around Ksh 200,000 in order to show its commitment to abide by the decision of the Court.

5. Litigation must always come to the end and the Appellant who lost at the lower Court had its money held by the Applicant for around two years when the matter was pending need to enjoy the fruits of the judgement. The Appellant was not responsible for the financial constraints of the Applicant who was its opponent for a long time while the lower court and high court cases were pending.
6. The conclusion above is that the application dated the 3<sup>rd</sup> day of July 2025 is dismissed with costs. The onset of this is that the application dated the 10<sup>th</sup> day of July 2025 is allowed with costs to the Appellant

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 17<sup>TH</sup>  
DAY OF FEBRUARY 2026.**

**HON L P KASSAN**  
**JUDGE**

**In the presence of;**

Muya for Applicant

Abichille for Respondent

Carol – Court Assistant