



**REPUBLIC OF KENYA**  
**IN THE SMALL CLAIMS COURT AT VOI**  
**SC CCOM NO. E054 OF 2025.**

**SIMON CHEGE NGURE.....**

**CLAIMANT**

**-VERSUS-**

**TWO NK HOLDING INVESTMENT GROUP LIMITED.....**

**RESPONDENT/APPLICANT**

**RULING.**

***(On the application dated 16<sup>th</sup> December 2025)***

**A. BACKGROUND.**

- 1)** The application dated 16/12/2025 seeks two main prayers. One that there be a stay of execution pending payment of instalments and lastly that the decretal sum be paid in instalments of Kshs.100,000/= monthly until payment in full.
- 2)** The main ground in support of the application is that the applicant has been facing financial difficulties rendering it unable to settle the decretal sum.
- 3)** The application is opposed by the affidavit of Godfrey Njenga sworn on 7/1/2025. The opposition is premised on several grounds among others that the applicant never took any steps towards part or whole compliance of the judgment and doing so within reasonable time and that the applicant is deliberately misleading the court when it asserts that the application has been brought without delay and in good faith yet no explanation has been given for the period of inaction to wit

between the delivery of the judgment and commencement of the execution.

- 4) It is further argued that the applicant has failed to make full and frank disclosure of its financial position having annexed no bank statements or financial records to speak of the financial constraints it is allegedly facing.
- 5) Parties at the hearing proposed to file brief submissions which I have duly considered and appreciated.

#### **B. ISSUES FOR DETERMINATION.**

- 6) The following issues commend themselves for determination by this court.
  - a) **Whether the order for payment in instalments can be granted.**
  - b) **Whether costs should be awarded and to who.**

#### **C. ANALYSIS AND DETERMINATION.**

- a) **Whether the order for payment in instalments can be granted.**
- 7) The desire to pay decretal sum once a judgment has been rendered should not be used as a tool to forestall pending execution and/or delay the claimant from enjoying the fruits of his judgment.
- 8) The idea by parties to run to this prayer as soon as they are proclaimed should be frowned upon and this court will not countenance such mischievous applications.
- 9) The idea behind this provision in the Act was to aid a judgment debtor to pay the decretal sum in portions that he or she will manage without necessarily denying the decree holder the fruits of his judgement and in my view it should be pleaded as soon as the judgement is delivered and not when execution is imminent as it is the case herein. In essence the application should be made within reasonable time.
- 10) In order to determine whether the application is meritorious one has to look at the time between the date of the judgment and when

the application has been made and whether the decree holder has taken any precipitate steps towards realizing his/her decretal sum.

- 11)** In this matter, judgment was delivered on 8/10/2025 and as it is more often now a stay of 30 days granted. This instant application was filed on 16/12/2025 and according to the claimant this was only after the judgement debtor was proclaimed.
- 12)** The applicant is urging the court to believe that he only became aware that he could pay the amount in instalments 2 months after judgment and when threatened with execution that is when the proposal to defray the decretal sum in instalments of Kshs.100,000/= in essence taking a whole 9 months to clear the debt.
- 13)** To my mind the proposal in itself is grossly unreasonable in the circumstances.
- 14)** Payments in instalments are generally governed by Rule 27 of the SCC Rules specifically rule 27(2); the applicant has not moved the court on any of those sections of the law where the court is called upon to consider the debtor's income, aggregate value of the debtor's assets and liabilities, aggregate value of the debtor's assets if any, disposed of by the debtor immediately before or subsequent to the filing of the claim against the debtor with intent to defeat the creditor. The applicant has not complied with **rule 27(2) (a-c) of the SCC Rules**.
- 15)** Given the observations made herein I do find that the application has been brought late in the day and only when goods have been proclaimed and it is meant to delay the claimant from enjoying the fruits of the judgment and most importantly it is non-complaint with Rule 27(2)(a-c) of the SCC Rules.
- 16)** That notwithstanding I will reluctantly allow the application.

**b) Whether costs should be awarded and to who.**

- 17)** The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case(application).

**18)** The application though strenuously defended, I have allowed the same reluctantly and, in the circumstances, I do order that each party bears its own costs of the application.

**D. CONCLUSION AND DISPOSITION.**

**19)** The application dated 16/12/25 is allowed in the following terms;

- a) Let the decretal sum be paid in 2 equal instalments with the 1<sup>st</sup> instalment payable on or before 31/1/2026 and the second instalment payable 30 days thereafter.**
- b) That in default of payment of any instalment, the claimant shall be at liberty to execute for any balance thereof.**
- c) Each party to bear its own costs of the application.**

**20)** Orders accordingly.

**DATED, DELIVERED AND SIGNED AT VOI LAW COURTS THIS..16<sup>th</sup> .DAY OF ..January..2026.**

**F.M. MULAMA  
ADJUDICATOR/RM**

**In the presence of:**

Court Assistant:- Daniel Joshua.

N/A for the Respondent/Applicant.

Mr. Ahenda for the Claimant.