Container Replacement Liability Memorandum of Appeal on Third Party Default

Educational sample 274 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL APPEAL NO [reference]

[CLEARING AGENT APPELLANT] v [IMPORTER FIRST RESPONDENT] and [SHIPPING AGENCY SECOND RESPONDENT]

MEMORANDUM OF APPEAL

1. The Appellant appeals from the Small Claims Court judgment dated [verified date] in [reference]. The appeal concerns the legal treatment of the admitted third-party record and the consequential decree, within the questions-of-law jurisdiction under section 38.

2. The adjudicator erred in law by failing to determine the third-party claim despite the notice, proved service and absence of a response shown at record pages [pages]. The ground depends on the admitted record; it does not manufacture evidence of service.

3. The adjudicator failed to apply the legal consequences of an undefended indemnity claim to the transaction and amount placed before the Court. The Appellant identifies the precise third-party obligation and asks for a determination consistent with that claim.

4. The decree did not resolve the linked liability for the Kshs 297,000 replacement payment. The Appellant challenges that omission as a legal defect, rather than asking the appellate Court to admit a new agreement or re-open disputed facts without lawful permission.

5. The Appellant seeks an order allowing the appeal, setting aside or varying the relevant decree and entering the properly supported relief against the third party, alternatively remitting that issue if legally necessary. Costs of the appeal and trial are sought on the proper basis.

6. The Appellant will file and serve the required record and comply with directions. No automatic stay is claimed. A contention that lapse of sixty days alone voids the trial judgment is not relied upon in this specimen, because it failed in the source decision.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Identify the exact lower-court judgment or ruling, operative decree, parties, concise grounds and requested disposition. Use the procedure for this particular appellate court: an ELRC appeal and a High Court or ELC first appeal are not Court of Appeal proceedings. Check limitation, any necessary leave or extension, record, fees, service and directions. Filing an appeal is not an automatic stay. The source appeal succeeded on third-party liability, not the sixty-day nullity argument. Insert the genuine decree and check appeal limitation, directions, law-only scope and any stay application.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A chemical importer engaged a clearing agent. After leakage and return of a container, Kshs 297,000 was paid for its replacement but the replacement was not supplied. The agent joined the shipping agency, which did not defend the third-party notice. The Small Claims Court entered judgment against the agent.

The High Court rejected the argument that the Small Claims Court judgment was automatically invalid after sixty days. It allowed the appeal on the undefended third-party claim, substituted relief against the shipping agency and ordered it to pay the agent and importer their appeal and trial costs.

Read paragraphs 27–29 with the actual decree. A Small Claims Court appeal is confined to questions of law under section 38. Use its own rule 16 third-party process at trial; the judgment also discusses Civil Procedure Order 1 rules 17 and 19. Default requires lawful service and does not authorise an invented service return. Paragraph 10 has an inconsistent judgment year; the heading and operative order identify 28 October 2025. Do not reproduce the erroneous 2026 date.

[2026] KEHC 8528 (KLR) - 15 June 2026. Source decision: https://sheriahub.com/cases/ke/caselaw/turning-point-freight-services-ltd-v-ak-chemicals-ltd-another-2026-kehc-8528-klr

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/turning-point-freight-services-ltd-v-ak-chemicals-ltd-another-2026-kehc-8528-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.