Appellant Submissions on Arbitration Third Parties and Disobedience of Route Orders

Educational sample 124 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION OR APPLICATION NO [reference]

[APPELLANT OR APPLICANT] v [RESPONDENT]

WRITTEN SUBMISSIONS

1. The constitutional issues were determined below and are identifiable in the pleadings and reasons. An interlocutory origin does not alone answer the constitutional jurisdiction question.

2. Referral to arbitration must account for the parties bound by the clause and the relief sought against others. The Court should not presume that a private arbitrator can dispose of every constitutional issue in this record.

3. Conservatory protection must be analysed according to its public law character. It should not be substituted mechanically with the private injunction test without addressing the adjudicatory process and public interest.

4. Acts taken contrary to an operative order require judicial consideration. The Appellant identifies the order and alleged acts but recognises that punishment and the procedural rights of those accused remain for the competent hearing.

5. The proposed appellate result restores the protective orders and remits the amended petition. Payment of goodwill does not itself justify a final refund or damages award at this interlocutory stage.

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

Use and evidence notes

Put evidence in the admitted record and identify page references for every material factual proposition. Submissions do not introduce evidence. Check the Court’s directions on filing, length, authorities and service. Address jurisdiction before merits, answer the opponent’s actual objection and state the requested disposition. If the source argument failed, explain why rather than describing it as a successful precedent.

Authorities and record references: [authority and proposition]; [relevant admitted document and page]; [court direction governing this filing].

Source and procedural limits

A distributor paid KES 27,300,000 goodwill for allocated territories and disputed repossession and reallocation of routes. The High Court granted conservatory protection; the Court of Appeal set it aside and directed arbitration. The Supreme Court addressed constitutional jurisdiction, third parties and disobedience of the court order.

The Supreme Court allowed the appeal, restored the High Court orders and remitted the amended petition for hearing. The High Court was to consider the consequences of disobedience. Costs in the appellate courts were awarded against the first two respondents. The Court did not award a final goodwill refund or fix contempt punishment.

Constitution Articles 27, 36, 40 and 163(4)(a); distinction between public law conservatory relief and private interlocutory injunctions; limits of an arbitration clause affecting third parties. Final liability and quantum remained for the High Court.

[2023] KESC 14 (KLR) — 17 February 2023. Original judgment: https://supremecourt.judiciary.go.ke/wp-content/uploads/2025/01/Supreme-Court-Law-Reports-2023-Vol-1.pdf#page=480

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.