Respondent Submissions Balancing Costs Recovery and Access to an Appeal

Educational sample 130 | 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. Security is intended to protect an opposing party against a demonstrated risk of unrecoverable costs. It should not punish a litigant for bringing an arguable appeal.

2. The Respondent must identify the evidence of risk, the calculation of likely recoverable costs and the reason for the selected form of security. Conclusory references to a foreign company are insufficient.

3. Any existing deposit or asset held by the Respondent should be disclosed, with its disputed legal status. The Court must not decide the underlying repayment dispute incidentally through a security hearing.

4. The order should use proportionate terms and consider whether its consequence effectively blocks a merits hearing. Alternatives can be addressed only with evidence and within the applicable procedural power.

5. The Respondent asks for an appropriately reasoned disposition confined to the certified issue. The historical KES 20,000,000 condition was held unreasonable and was set aside.

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

Answer the actual pleaded grounds and the Appellant’s authorities. Identify the record pages relied upon and any genuine limits of jurisdiction. An argument that failed in the source case remains marked historical. New affirmative relief may require a cross-appeal; do not obtain it by adding a prayer to submissions. Follow current filing, bundle and service directions.

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

Source and procedural limits

A failed hotel transaction generated a claim concerning a KES 185,000,000 deposit held by the bank. After the suit was dismissed, the Court of Appeal ordered KES 20,000,000 additional security as a condition for the appeal. The Supreme Court considered the certified security question, not the merits of deposit recovery.

The Supreme Court allowed the appeal on the specific security issue, set aside the conditional order and remitted the substantive appeal to the Court of Appeal. Each party bore its own costs. Security for costs is not unconstitutional in every case, and deposit refund was not finally adjudicated.

Constitution Articles 48, 50 and 159; Article 163(4)(b) certification; proportionate exercise of security discretion. The source discusses the historical Court of Appeal rules and nominal security. Current amounts and rule numbering must be verified before a new application.

[2023] KESC 11 (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=529

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.