Respondent Submissions Distinguishing Excess of Vetting Mandate from Suitability Review

Educational sample 105 | 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. These submissions address the Respondents' asserted distinction between prohibited suitability review and examination of action beyond statutory authority. They are an educational reconstruction of arguments which did not defeat the source appeal.

2. The Court should identify the exact act challenged, its date, the applicable transitional provision and the relief sought below. A general appeal to fairness is insufficient to establish a separate jurisdictional category.

3. The Respondents contend that the express wording of subsection (2) requires careful attention. They must also answer subsection (1), the purpose of the transitional scheme and the Supreme Court decisions relied on by the commission.

4. No declaration should be sought for the first time concerning the defunct board. The record must show that the issue and requested relief formed part of the earlier adjudication.

5. If the Court rejects the Respondents' interpretation, they ask that costs be considered separately. Historical public law uncertainty and legitimate resort to court do not automatically justify a punitive costs order.

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

Four magistrates were found unsuitable by the transitional vetting board. Their internal review attempts failed. The commission implemented removal. The High Court dismissed the subsequent challenges, but the Court of Appeal allowed them. The Supreme Court appeal addressed whether the Sixth Schedule jurisdictional bar extended to magistrates.

The Supreme Court allowed the commission’s appeal, set aside the Court of Appeal judgment and restored the High Court result. Each party bore its own costs. This concerns the special transitional vetting regime, not an automatic immunity for ordinary modern employment decisions.

Read Sixth Schedule section 23(1) and (2) together, and distinguish review of suitability from any legally recognised complaint that the board exceeded its temporal mandate. Constitution Article 163(4)(a) supplies the appellate gateway. The board is now defunct; this is a historical reconstruction.

[2023] KESC 32 (KLR) — 21 April 2023. Original judgment: https://supremecourt.judiciary.go.ke/wp-content/uploads/2025/01/Supreme-Court-Law-Reports-2023-Vol-1.pdf#page=186

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.