Law Only Appeal Against Small Claims Default Without a Fair Third Party Hearing

Educational sample 489 | Kakamega

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 KAKAMEGA

CIVIL APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

MEMORANDUM OF APPEAL

1. The Appellant appeals under section 38 of the Small Claims Court Act from [exact certified ruling and operative default decree] in [Kakamega Small Claims case]. The appeal identifies errors of law and is filed within [applicable time or valid extension].

2. The adjudicator erred in law by allowing default consequences without establishing service of the original claim and third-party material in accordance with the statutory safeguards.

3. The adjudicator erred in law by entering judgment without a reasonable opportunity for the joined party to respond or obtain representation after counsel withdrawal, contrary to natural justice and section 27 protections.

4. The adjudicator erred in treating documentary determination under section 30 as permitting disposition without the service and hearing protections in sections 17, 25 and 27.

5. The adjudicator failed to address the legal effect of the actual counsel instructions and procedural record when rejecting the default challenge. This ground raises the applicable fair-hearing standard, not a request to reweigh accident evidence.

6. The Appellant seeks setting aside of the impugned default decree and remittal for proper service and merits determination, with costs as appropriate. No final accident liability, damages quantum or indemnity result is sought on this law-only appeal.

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.

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

In a passenger-injury Small Claims case, a financier brought in the alleged beneficial vehicle owner as third party. Counsel appeared and then withdrew. Judgment followed without adequate opportunity for the third party to obtain representation and respond. The record contained no affidavit proving the original claim was served on that party. Setting-aside and review attempts had failed below.

On the law-only appeal the High Court set aside the entire default decree and remitted the dispute for merits determination, with each party bearing own appeal costs. The Court did not determine accident liability or award a new damages figure.

Small Claims sections 17, 25 and 27 protect natural justice, service and a proper opportunity to respond; section 30 documentary determination does not remove those safeguards. Section 38 appeals are confined to law. The report contains inconsistent judgment years, affidavit dates and monetary figures; use the certified file.

[2026] KEHC 4854 (KLR) - 15 April 2026. Source decision: https://new.kenyalaw.org/akn/ke/judgment/kehc/2026/4854/eng@2026-04-15

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/luchivya-v-mwenesi-another-2026-kehc-4854-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.