# Third Party Application to Set Aside Small Claims Default After Counsel Withdrawal

Educational sample 486 | 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 SMALL CLAIMS COURT AT KAKAMEGA

SMALL CLAIMS CASE NO [reference]

[CLAIMANT] v [RESPONDENT]

NOTICE OF MOTION

1. The Applicant third party seeks setting aside of the default judgment and decree in [Kakamega Small Claims case] dated [certified date], and directions allowing a properly served response and merits hearing.

2. The Applicant was joined on [verified order date] on the Respondent claim for [identified contribution or indemnity]. The exact third-party notice, original claim, joinder terms and service record are [identified].

3. Counsel appeared on [actual date] and withdrew on [actual date]. The Applicant states the true instructions and notice of withdrawal, including any distinction between counsel engaged by an insurer for another party and representation of this third party.

4. The asserted procedural defect is [lack of proved service or inadequate opportunity after withdrawal], supported by the genuine file and affidavit. No disputed service assertion is treated as proved merely because a report omitted a document.

5. The proposed response identifies [genuine triable answer] without asking for final exoneration at this stage. Earlier setting-aside or review applications, rulings and delay are fully disclosed, with the legal basis for any further request.

6. The Applicant seeks lawful service, response and hearing directions with appropriate costs. Adapt this substantive wording to the prescribed Small Claims process and current registry requirements. The historical applications failed below before the High Court allowed the legal 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

Use the actual existing cause, applicable power and precise interim or substantive prayers with genuine supporting evidence. Disclose adverse facts, earlier applications, current orders and delay. Complete affidavit, exhibits, urgency certificate only where justified, fee and service under current directions. A proposed corrected motion does not establish that the missing facts or procedural permission exist. Use the applicable Small Claims Act and Rules process, not ordinary civil motion provisions by assumption. Disclose prior unsuccessful applications; do not relitigate without a lawful basis.

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.