Submissions on Small Claims Service Counsel Withdrawal and Natural Justice

Educational sample 490 | 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]

WRITTEN SUBMISSIONS

1. Section 38 confines this appeal to law. The Appellant challenges the legal adequacy of service and opportunity to respond, using the certified procedural record at [pages], rather than inviting fresh assessment of accident liability.

2. Joinder alone does not establish service of the original claim or every document necessary to answer the indemnity demand. The actual return of service and hearing record must satisfy the statutory safeguards.

3. Counsel appearance and withdrawal must be assessed against the actual instructions. An insurer advocate acting for the financier cannot automatically be treated as authorised to waive the joined party opportunity to defend.

4. Sections 17, 25 and 27 require natural justice, lawful service and appropriate opportunity before default consequences. Section 30 facilitates documentary determination but does not dispense with those protections.

5. The Appellant discloses the earlier unsuccessful applications and confines relief to the legal defect identified. Inconsistent dates and amounts in the report are resolved from the certified file, not used as new factual proof.

6. The Court is asked to set aside the affected default decree and remit for a lawful merits process. The source Court took that course with own costs; it did not exonerate the third party or reassess the passenger damages.

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 pleaded issues, admitted evidence and genuine record pages. Follow directions on length, authorities, filing and service. Submissions do not introduce exhibits or cure missing substantive prayers. Distinguish what a party sought from what the Court ordered, and an unsuccessful historical position from the actual holding.

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.