Rule 9 FORM No SCC 2

**REPUBLIC OF KENYA**

**IN THE SMALL CLAIMS COURT AT NAIROBI**

**CLAIM NO. ………………… OF 20..……**

**ABC ……………………………………................................................ CLAIMANT**

**-VERSUS-**

**DEF ................................................................................... RESPONDENT**

**THIRD PARTY NOTICE**

(Issued pursuant to the Order of the Court given on………………………..)

**TO:**

Name: ……………………………………………………………………

Postal Address: …………………………………………..………………

Physical Address: ……………………………………….……………

Telephone Contact: …………………………………………..………

Email Address: ………………………………………………………………………..…

Nature of Business: ……………………………………..………………

Location/Sub/Village: ……………………………………….……………

**TAKE NOTICE** that a Claim has been brought by the Claimant against the Respondent. In it the Claimant claims against the Respondent in accordance with the attached Statement of Claim.

The Respondent claims against you ……………………….. *(state the nature of the claim against the third party)* on the grounds that:

1. ………………………
2. ……………………..

**AND TAKE FURTHER NOTICE THAT** if you wish to dispute the Claimant’s claim against the Respondent or the Respondent’s claim against you, you must file and serve the Claimant and the Respondent with a response within 14 days after service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment given in the suit.

Your response shall be in Form No. SCC 2 with necessary modifications.

Name of Respondent: **……………………………………..**

Signature of Respondent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acknowledge of Service**

I acknowledge service of this Third Party Notice delivered to me, with evidential documents attached, on ……………………………………………………

Name of Third Party: **…………………………………**

Signature of Third Party: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated this day of 20…………

**For Official Use Only**

This Third Party Notice was filed on the day of 20……

Signed: ……………………………………….

 (Registrar)

***Enclosures:***

1. A copy of the statement of claim with evidential documents attached;
2. A copy of the response to the Statement of Claim with evidential documents attached;
3. A copy of the notice of settlement conference or hearing of the claim, if any has been issued.

**EXPLANATORY NOTE:**

**What is a Third Party Notice**

This is a pleading to be used at the Small Claims Court where the Respondent would wish to seek indemnification from a third party in the event they are found liable for the subject claim, for example, where the Respondent was insured in respect of the subject claim, the Respondent may issue a Third party notice to the insurer.

**Legal Basis**

The legal basis for filing of a Third Party Claim is provided for under Rule 16 (1) of the Small Claims Courts Rules which provides that where a respondent who has filed a response reasonably believes that another person (hereinafter referred to as "the third party") is liable to pay all or any part of the claimant's claim, the respondent may make a claim against the third party by filing a Third Party Notice in **Form SCC 4** and join the third party in the proceedings, before the date fixed for hearing of the respective claims.

Rule 16 (2) of the Small Claims Courts Rules further provides that where the respondent joins a third party in the proceeding under this rule, the respondent shall serve on the third party, and on all persons named in the Statement of Claim, the following documents:

1. a copy of the Third Party Notice;
2. a copy of the Statement of Claim;
3. a copy of the response to the Statement of Claim and counterclaim (if any);
4. where a date has been fixed for the hearing of the claim, a copy of the Hearing Notice; and
5. all documents filed in support of the claim, response or counterclaim, as the case may be.

It is also important to take note that under Rule 16 (3) of Small Claims Courts Rules, the Respondent is required to file a Certificate of Service in **Form SCC 5** within fourteen days of service on the third party of the Notice and all documents specified in sub-rule (2) as proof of service. However, where the third party has filed a response to the Third Party Notice, and to the relevant claim made against him or her, the Respondent shall not be required to file a Certificate of Service under sub-rule (3).

**Legal Grounds/Threshold**

The grounds to be raised in a Third Party Notice are not clear cut or specifically set out in law and the same will depend on the particular circumstance of the case. In that regard, ordinarily the grounds to be raised in a Third Party Notice will be based on the facts and grounds upon which the Respondent seeks indemnification from the Third Party in respect of the subject Claim.

**Remedies/Relief Sought**

Form SCC 5 does not the limit the remedies/reliefs that can be sought by the Respondent in the Third Party Notice. In that regard the Respondent is only required to state the nature of the Claim against the Third Party Notice and the grounds upon which the said claim is founded which relief and grounds will depend on each particular circumstance.

**The Processes/Procedure involved**

As a preliminary it is important to take note that the Respondent is at liberty to lodge a Third Party Notice at the Small Claims Court at any time before the date fixed for hearing of the respective claims as provided by Rule 16 (1) of the Small Claims Courts Rules.

The procedure in filing of a Third Party Notice is by uploading a scanned copy of the Third Party Notice onto the Judiciary E-filing Platform and thereafter making the relevant payment of Court filing fees, after which the Third Party Notice will be deemed duly filed.