



**COUNCIL OF LEGAL EDUCATION**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES**

**ATP 105: PROFESSIONAL ETHICS & PRACTICE**

**FRIDAY 12<sup>TH</sup> APRIL, 2024.**

**DURATION: 3 HOURS**

**Instructions to Candidates:**

- (a) This paper contains SIX (6) printed pages including the cover page, with a total of SIX (6) questions.
- (b) A candidate **MUST** answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

**PLEASE TURN OVER**

## QUESTION ONE

Fidelis Wamatu, the Proprietor of the Firm of XYZ & Partners Advocates, is engaged as the Advocate for the Administrators of the Estate of Welo Kenza (deceased), namely, Elizabeth Kenza and Moturi Kenza, in a succession cause. The matter has been the subject of a protracted and lengthy legal dispute due to objections by some of the beneficiaries, and third parties who have claims on the Estate. In the course of representing the Administrators of the Estate, Wamatu advises them that one of the Objector's to the proposed mode of distribution on allegation of a purchaser's interest, namely, African Child Foundation (ACF), should not to be served Summons for the Confirmation of Grant. ACF, a charitable organization engaged in education of orphans, is seeking specific performance orders relating to completion of a transfer of a plot in Machakos to its ownership, having made requisite payments of the purchase price to the deceased before his demise. The objective of failure to serve Summons is that the ACF fails to substantiate the grounds of objection during the Confirmation of Grant hearing.

Further, one of the beneficiaries, Linda Kenza, alleges in her objection that the Administrators have failed to include one of the developed prime properties in Karen in the Schedule of the Assets of the Estate filed in Court. The Administrators propose that they should oppose the averment by Linda by alleging the non-existence of such a property, and in particular, intend not to file the title document in Court so that they may continue to receive some rental income from the subject property even after distribution of the Estate, a proposal that Wamatu endorses. Wamatu also proposes that the designated beneficiary of a plot situated at Muthaiga, Nairobi County, be Moturi, which suggestion the Administrators oblige to. Wamatu is motivated by the fact that he can easily compel Moturi to sell the prime property to him at below prevailing market price upon the eventual confirmation of grant.

The Administrators were previously represented by the Firm of June Keso & Associates Advocates. Wamatu proceeded to take over the representation of the Administrators and file a Notice of Change of Advocates without informing the Firm of June Keso & Associates, and indeed informed the Administrators that such information was not necessary. Consequently, the Firm of June Keso & Associates declined to hand over documents alleging the right of lien over unpaid legal fees. Wamatu further advised the Clients not to make any legal fees and disbursements payments to the Firm of June Keso & Associates as they had only filed the Petition for the Grant of Letters of Administration and attended only a few Court mentions relating to the objections, but had not filed Summons for Confirmation of the Grant or attended any substantive hearing. Consequently, the Clients adhered to his advice which necessitated the Firm of June Keso & Associates to file a Client Bill of Costs for taxation in Court.

The Firm of Wakili Merevu Law LLP, acting for some of the objecting beneficiaries wrote to Wamatu requesting that they seek reference of the matter to a Court appointed mediator, citing the protracted nature of the matter which had rendered it expensive and an inconvenience to his Clients. They were of the view that being largely a family

dispute, mediation offered the elusive solution to disagreements. Wamatu responded by declining the offer and categorically stated that he would be opposed to any mediation efforts as the matter should strictly be decided in accordance with the law. Privately, he informed his Clients that he should put every effort to prolong the succession dispute until the objecting beneficiaries got worn out financially and emotionally, to the advantage of the Administrator's proposed mode of sharing the Estate's assets. He was also delighted that a protracted legal battle meant more legal fees.

Kuto Karisa, a Tenant in one of the properties that comprise the Estate had been instructed by the Administrators to be making monthly rent payments to the XYZ & Partners Client Bank Account. The rent payments have accumulated to Kshs 1,250,000.00. Upon pleading by the Administrators, Wamatu was granted an overdraft facility by the Bank to transfer Kshs, 1, 500,000.00 from the Firm's Client Account to the Administrators for their emergency use in Estate matters, which variance would be repaid from the rent payments within a period of four months.

- a) Evaluate the five (5) breaches of Advocate's duties and/or acts of professional misconduct by Advocate Wamatu. (15 marks)
  
- b) African Child Foundation is represented by the Firm of Leslie Matano Advocates. The Firm has agreed not to charge any legal fees for the representation.
  - (i) Explain circumstances in which it is acceptable for an Advocate not to charge legal fees. (3 marks)
  - (ii) Evaluate whether the conduct of the Firm of Leslie Matano Advocates is professionally acceptable. (2 marks)

## QUESTION TWO

You are a newly admitted advocate. You are very proud to be a learned friend. After all the grueling legal studies and sleepless nights, you feel that you deserve it. You vow that you will give your best to the profession and hopefully earn some big money while you are at it. However, you have some trepidation about the profession. As an avid newspaper reader, you cannot help but feel apprehensive when you read of the advocates killed in the line of duty. You observe with some relief that the Law Society always speaks out to condemn the murders. The general public seems unbothered though. You have heard some talk in town that 'these quacks and masqueraders' deserve their untimely demise. You feel some ire stirring in you because those who have died in the line of duty have been legitimate practitioners. However, you constantly wonder if the Society is acting to the best of its ability.

- (a) What duties do you owe to the profession? (6 marks)
- (b) How can the LSK aid the legal profession to ensure that advocates conduct themselves in the requisite manner? (4 marks)

### QUESTION THREE

- a) It has been the objective of Advocate Mpenda Haki to be independent in judgment and objective in the course of offering legal services. Recently, a Client, Fidelity Bank, instructed him to file a court case against Krupt International seeking damages for alleged breach of contract. Five years ago, he represented Krupt International in a tax dispute case. Citing the applicable issues that require consideration evaluate:
- i. Circumstances in which there is likelihood of conflict of interest that Advocate Mpenda Haki should be aware of. (4 marks)
  - ii. Whether Mpenda Haki can represent Fidelity Bank in the matter. (3 marks)
- b) Advocate Mpenda Haki has been endorsing his Firm's name and address on the documents that he draws or prepares in relation to conveyancing documents. Evaluate whether the practice of Advocate Mpenda Haki is premised on any legal duty, or is essentially a matter of personal preference and branding. (3 marks)

### QUESTION FOUR

Wakili Gorgeous practices in Millgen-Z law firm. Millgen-Z specializes solely on Family Law. It is a top-tier firm having risen to the fame due to its robust advertising. In its advertisements, it routinely provides the names of its client and promises to win with the tantalizing condition that if it does not, it will waive its fees. It seldom fails to deliver and because of this, business is booming. It is also contemplating on advertising on local radio to expand its reach. Millgen-Z rarely purchases a policy of insurance because as advertised, it often wins its cases and because of this it deems itself exempt from purchasing a policy of insurance. Wakili Gorgeous persistently makes her clients sign an agreement that relieves her from the responsibility of professional negligence. She is a junior associate who is extremely adept at her work and has never lost a case to date. Because of this, her clients sign the agreement without question. Her client, Boy, aging, ailing and illiterate, has approached her with a complex brief that relates to Land Law. Boy was referred to her by one of his village elders who has been a beneficiary of Millgen-Z's work. Boy figures that he has nothing to lose since Millgen-Z will waive fees if it does not win his case. Wakili Gorgeous takes up Boy's brief despite the fact that the last time she dealt with any Land Law case was in her CLE bar exams twelve years ago. She is overwhelmed by the complexity of the case. She feels like a deer caught in headlights. She takes to constantly seeking adjournments so much so that the court has issued an order that at the next hearing, the matter will proceed with or without her. Boy in the village is unaware of all this. The partners in Millgen-Z are concerned that Wakili Gorgeous will lose Boy's case. They have a word with her and issue a stern warning for her to step up and pull up her socks.

- (a) Elucidate the ethical issues arising from Millgen-Z law firm's advertising. (3 marks)
- (b) Comment on the ethics of the non-purchase of a policy of insurance. (2 marks)

- (c) Making reference to the Constitution, Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct and other legal instruments, evaluate Wakili Gorgeous's duty to Boy. (5marks)

### QUESTION FIVE

- A. Leonard Mkwapi, the Managing Partner of Mkwapi & Memusi Law LLP, whilst acting for the Vendor in a sale of land transaction invited the Purchaser into his Firm and proceeded to inform the Purchaser that his Client would obtain the Land Control Board (LCB) consent for purposes of the transfer and as such, should not have reservations paying the purchase price. Consequently, the Purchaser paid 60% of the purchase price. Nonetheless, the Vendor refused to obtain the LCB consent and discontinued communication with both Mkwapi and the Purchaser. The Purchaser subsequently sought to enforce the undertaking against Mkwapi, who argues that he is not liable as he was not in control of the activities of his Client and the Land Control Board, and that the purchaser misinterpreted the alleged undertaking. Evaluate whether Mkwapi is liable for the alleged undertaking given on behalf of his Client, and explain the reasons for your answer. (5 marks)
- B. Sharpee has been in practice for ten years. She graduated top of her class despite being the biggest scatter-brain in existence. She has a habit of chewing and popping gum loudly especially while making submissions in court. Her submissions are always brilliant, intellectual and well researched so Judges tend to ignore her loud gum popping ways. She is supervising a pupil who is yet to do his admission to the bar exams. Once, in a virtual court appearance, in her absent minded ways, she allowed her pupil to address the Court. Things went awry because her pupil botched the submissions and her client did not get the Orders they were seeking. Despite Sharpee's absent mindedness, her saving grace is that she takes her duties to the public very seriously. Discuss the ethical issues arising in this scenario. (5 marks)

### QUESTION SIX

- a) Stephanie Zawadi is a student at the Kenya School of Law undertaking the Advocates Training Programme (ATP) for purposes of admission to the Roll of Advocates. Whilst studying the Professional Ethics and Practice course, she comes across the following statement in one of the reference books:

A law firm ought [to] be solvent and be able to post profits in order to operate optimally and to that extent, it is a business which must answer to the business characteristics and needs (Ambrose Otieno Weda, *The Ideal Lawyer* (LawAfrica, Nairobi 2014) 282).

Zawadi is perturbed that the above assertion is, potentially, inconsistent with the affirmations articulated during the course lectures, that legal practice is a regulated

professional undertaking. She is concerned that an absolute perception and practice of law as a business may result in unethical conduct by advocates.

Discuss the characteristics of the practice of law as a '*regulated performance*' that advocates should adhere to as a mechanism of preventing the degeneration of legal practice to unethical business practices that Zawadi is concerned about. (5 marks)

- b) Zawadi is also required to make a class presentation as part of the continuous assessment for the course, under the theme of remuneration of advocates. Her special focus is the scale postulated under the Advocates Remuneration Order. Her core argument is that adherence to the Advocates Remuneration Order is economically justifiable as the Chief Justice takes into account practical realities in the practice of law while prescribing the scale.

Discuss the factors that the Chief Justice is obligated to consider, which Zawadi should make reference to in her presentation. (5 marks)