

**COUNCIL OF LEGAL EDUCATION.**



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

**ATP 100: CIVIL LITIGATION**

**THURSDAY 17<sup>TH</sup> JUNE 2021.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains **Five (5)** printed pages including the cover page, with a total of **Six questions**.
- (b) Candidates **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

- (a) As an associate in the firm of Emali & Co, Advocates having been retained by Trumbal Kerry the plaintiff has asked you to seek the court's intervention against Malaika Mwema for failure of delivery of Motor Vehicles KTZ 132 Z and KZB 146 B. The High Court in Milimani, Nairobi had delivered a ruling against Malaika Mwema for delivery of the vehicles on 1<sup>st</sup> April 2019. Trumbal Kerry is afraid that Malaika Mwema is in the process of disposing off the motor vehicles. Trumbal Kerry wants Malaika Mwema to be committed to jail.

Draft the application together with an affidavit in support of the same (10 marks)

- (b) 1. An application by way of Notice of Motion dated 10<sup>th</sup> July 2018 has been filed in the Land Court by the plaintiff Billy Estate Limited.  
2. The order sought under Prayer 2 is restraining the defendant from closing an access road passing through Timber/Timber/70 under Section 140 of the Land Act.  
3. The grounds upon which the application is based on are:-
- a) Billy Estate limited is a management company for the estate called Billy Estate erected on Timber/Timber/70;
  - b) The respondent is the owner of Timber/Timber/70;
  - c) The owners have been accessing the road through the respondent's property since 2013;
  - d) The respondent has threatened to close the access road.
4. The respondent opposed the application by a Replying Affidavit sworn on 15<sup>th</sup> August 2018  
5. The respondent contends that the estate is not landlocked as it seems there was an access road which was blocked by a private developer.  
6. Negotiations between the parties have failed.

Draft a ruling on the legal issues raised and the merits or demerits of the case. (10 marks)

## QUESTION TWO

Willy Willis sued Ken Kambo in the High Court seeking payment of Ksh. 35,280,000. In a judgement delivered on 14<sup>th</sup> December 2018, the Court dismissed his claim with costs. Being dissatisfied with the said decision, he instructed his advocates on 10<sup>th</sup> January 2019 to file an appeal against the judgement. The advocate filed the Notice of Appeal on 30<sup>th</sup> January 2019 and applied for typed proceedings on 11<sup>th</sup> February 2019. He served both the Notice of Appeal and the letter requesting for proceedings on the defendant's advocates on 14<sup>th</sup> February 2019.

His advocate filed the Record of Appeal on 12<sup>th</sup> March 2019 and served it on the respondent's advocate on 15<sup>th</sup> March 2019. On 18<sup>th</sup> April 2019, the respondent's advocate filed an application seeking to strike the Notice of Appeal and the Record of Appeal and served it on the appellant's advocate on 30<sup>th</sup> April 2019. The application has not yet been fixed for hearing and Willy has not filed his response.

Willy has approached you and instructed you to immediately take over the conduct of the appeal from his advocates and to prepare a Replying Affidavit opposing the application. He has also requested you to study the record and identify if it contains any anomalies and the steps he needs to take to rectify them.

- a) Advise Willy on how he can successfully oppose the application (2 marks)
- b) (i) Examine the facts and identify if there are any anomalies in relation to the execution of the instructions to file the appeal. (4 marks)

- (ii) Advise Willy on the nature of the application he needs to file in order to rectify the anomalies you have identified and the conditions which he must satisfy before the court can grant the application. (4 marks)

### QUESTION THREE

Paul Jones filed Machakos ELC No. 23 of 2013 against Thomas Williams seeking a declaration that he was the absolute proprietor of all that parcel of land known as Machakos Block 1/220 and an Order of eviction of the defendant. The suit was fixed for hearing on 29<sup>th</sup> June 2015 but was dismissed for non-attendance of the plaintiff.

On 11<sup>th</sup> July 2015, Paul filed an application seeking to set aside the Order of dismissal. The application was heard and was dismissed on 29<sup>th</sup> May 2016. Paul filed a Notice of Appeal dated 10<sup>th</sup> June 2016 intending to appeal against the whole of the said ruling but took no further steps.

On the advice of his advocates, Paul filed another suit being Machakos ELC No. 42 of 2016 seeking the same remedies he had sought in the previous suit. Thomas opposed the suit by way of a Defence filed in court on 13<sup>th</sup> January 2017. Paul is uncertain whether his advocate gave him the right advice and requires a detailed legal opinion on the issues raised so that he can make an informed decision.

Analyse the legal issues raised by the facts and write a concise opinion on the merits, if any, of the pending suit. (10 marks)

### QUESTION FOUR

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

FAST TRACK CIVIL SUIT NO. 10 OF 2020

ALL GRAINS LIMITED ..... PLAINTIFF

VERSUS

JACKSON BELLS ..... DEFENDANT

#### PLAINT

1. The Plaintiff is a limited liability company registered under the Laws of Kenya and having its registered offices at Nairobi and its address of service for the purpose of this suit is care of Wakili Mwema & Co. Advocates, Moganda House, 2<sup>nd</sup> Floor, Kuja Road, P O Box 78910 - 00200 Nairobi, Tel: 2547010002222 email: [wakilimwema@gmail.com](mailto:wakilimwema@gmail.com).
2. The Defendant is an adult of sound mind, residing at Nairobi and his address of service for the purpose of this suit is P O Box 12345 -00100 Nairobi (Service of Summons to be effected through the Plaintiff's advocates office).
3. The Plaintiff is the registered proprietor of the leasehold interest contained in all those parcels of land known as L.R. No. 22750 and L.R. No. 22751 each measuring 0.20 of a hectare.
4. On or about the 13<sup>th</sup> day of February 2007, the Defendant without any right trespassed onto all those parcels of land known as L.R. No. 22750 and L.R. No. 22751 and erected two semi-permanent structures thereon.

5. On or about the 1<sup>st</sup> day of March 2020, the Plaintiff's agent attempted to enter the two parcels of land with an intention of erecting a perimeter wall but the defendant hired youths who were around with crude weapons who chased away the agents.
6. The Plaintiff avers that as a result of the said trespass, it has suffered loss and damage.
7. The Plaintiff's claim against the Defendant is for a permanent injunction restraining the Defendant either by himself, his servants, agents, or otherwise howsoever from entering, continuing to trespass, wasting, remaining on or in any way dealing with all those parcels of land known as L.R. 22750 and L.R. 22751, and a declaration that the Plaintiff is the registered proprietor of all those parcels of land known as L.R. No. 22750 and L.R No. 22751, mesne profits, damages for trespass, vacant possession and costs of the suit.
8. The Plaintiff avers that there is no suit pending between itself and the Defendant and that there are no previous proceedings pending in any court between the Plaintiff and the Defendant and that the cause of action herein relates to the Plaintiff.
9. Despite Demand and Notice of Intention to sue having been given, the Defendant has refused to give vacant possession.
10. The cause of action arose at Nairobi and the suit properties are valued at Kshs. 25,000,000 hence this court has jurisdiction to hear this suit.

REASONS WHEREFORE the Plaintiff prays for judgement against the Defendant and orders for:-

- a) A declaration that the Plaintiff is the registered proprietor of all those parcels of land known as L.R. 22750 and L.R. 22751.
- b) A permanent injunction restraining the Defendant either by himself, his servants, agents or otherwise howsoever from entering, continuing to trespass, wasting, remaining on or dealing with all those parcels of land known as L.R. 22750 and L.R. 22751 in any manner prejudicial to the Plaintiff.
- c) Vacant possession, in default eviction.
- d) Mesne profits.
- e) General damages for trespass.
- f) Costs of the suit.

DATED at Nairobi this 10<sup>th</sup> day of March 2020.

WAKILI MWEMA & CO  
ADVOCATES FOR THE PLAINTIFF

DRAWN & FILED BY:  
WAKILI MWEMA & CO. ADVOCATES  
MAGONDA HOUSE, 2<sup>ND</sup> FLOOR, KUJA-OAD  
P.O Box 78910 - 00200  
NAIROBI  
TEL: 2547010002222  
EMAIL: [wakilimwema@gmail.com](mailto:wakilimwema@gmail.com)

TO BE SERVED UPON

JACKSON BELLS  
P. O BOX 12345 - 00100  
NAIROBI

You are an associate in the firm of Happy & Happy Advocates, Glory House 1<sup>st</sup> Floor, P O Box 4567 - 00100 Nairobi Tel: 254023345633 email: [happy@gmail.com](mailto:happy@gmail.com) which has been instructed to respond to the claim. Jackson has given you the following information:

- The Plaintiff is the registered proprietor of L.R. No 22750.
- Gloria Grain of P.O Box 3789 - 00200 Nairobi is the registered proprietor of L.R. 22751.
- Jackson has been residing on the two parcels of land since the year 2007 with the knowledge of the Plaintiff and Gloria Grain but without their consent.
- He was not served with any Demand Notice.
- The Plaintiff and Gloria Grain have never occupied their suit parcels of land but attempted to forcefully enter on 1<sup>st</sup> March 2020.
- The Plaintiff and Gloria Grain destroyed his property valued at Kshs. 300,000.
- He wrote a demand letter asking the Plaintiff and Gloria Grain to stop interfering with his peaceful occupation of the suit land.

Based on the above facts and having read the plaint, draft the appropriate pleadings in response to the Plaintiff's claim. (10 marks)

#### QUESTION FIVE

B auctioneers has attached and sold a truck belonging to Patel. Mrs. Omari claims that the truck belonged to her. She says that the proceeds should be surrendered to her. B auctioneers does not know the person to give the proceeds.

You are an intern in the law firm of Kazimoto and have been asked to handle B auctioneer's matter.

Advise B Auctioneers on the action to take, the type of application, applicable law and conditions that must be fulfilled for one to successfully prosecute the application. (10 marks)

#### QUESTION SIX

A judgement has been rendered in favour of Pamela who had been involved in an accident. General damages for pain and suffering were Ksh. 100,000 and special damages were assessed at Ksh. 3000. Pamela has just discovered that Patrick, her office assistant has been holding treatment receipts in the amount of Kshs. 40,000. Such amount was not awarded in the judgement. Patrick did not know that the treatment receipts were required. Pamela is convinced that justice will not be served if she is not paid the full amount spent on treatment.

Using applicable law, advise Pamela on the avenue she can take to recover the amount, while providing grounds upon which Pamela can rely on to prosecute the application. (10 marks)



**BEST PERFORMED**



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Officer	Initials
Checker	JK
Data Entry	PM
1 <sup>st</sup> Verification	JK



**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **[A T P 100]** SUBJECT/UNIT ...CIVIL..... LITIGATION.....

REGISTRATION NUMBER: **[REDACTED]** DATE: **17<sup>th</sup> JUNE 2021**

**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
6	7	/				
4	3	/				
1 (a)	10	/				
1 (b)	10	/				
2 (a)	—					
5 (2b)	8	/				
5	10	/				
<b>TOTAL MARKS</b>	<b>53</b>	<b>/</b>				



REGISTRATION NUMBER:

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Questions ..... 6 .....

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either margin

QUESTION 6:

OSEKO KWAMBOKA & COMPANY ADVOCATES

OUR REF: PAMELA/2021

YOUR REF: TBA

17<sup>th</sup> June 2021

Pamela,

P.O BOX 111-000

NAIROBI.

Dear Madam,

RE: LEGAL OPINION ON MEANS TO RECOVER

DISCOVERED AMOUNT CKSHs 40,000

Reference is made to the above subject matter and your instructions to us. We hereby tender our legal opinion as follows;

FACTS

A judgment was rendered in your favour and the court granted you damages, both special and general. However, you have now discovered that there are other treatment receipts that were not submitted to the court. The treatment receipts are in the amount of KShs 40,000 and you wish to recover this amount.

ISSUE

The issue revealed from the facts stated is whether you will be able to recover the amount by having it added to the damages earlier awarded to you.

RULE

Your situation involves discovery of a fact or evidence after judgment, which evidence is material and capable of altering the judgment. The avenue to be pursued is application for review, with you being an aggrieved party under Section 80, CPA. The rules on applying for a review are provided in Section 80.



of the Civil Procedure Act and Order 45 of the Civil Procedure Rules.

### ANALYSIS

Section 80 of the Civil Procedure Act and Order 45 of the said Rules are aimed at allowing a party to request a court that has rendered a judgment to examine it again and alter it. This can be done on the basis of three grounds; 1) Discovery of new evidence  
2) Mistake or error apparent on the face of the record  
3) Any other justifiable reason.

In your case, you have come across material receipts. These amount to new evidence. You will therefore rely on this ground to apply for a review.

To succeed, you will need to demonstrate the following, being the grounds upon which you will rely in your application.

#### Grounds:

You will demonstrate to the court that you have come across material evidence (the receipts).

2. That you were not able to discover the existence of these receipts earlier, despite due diligence. The fact that Patrick was not aware that they were needed can help support this ground.
3. That the new evidence is capable of altering the initial judgment materially or substantially. Here you will consider the amount of Kshs. 40,000, evidenced by the receipts and which is indeed substantial.
4. You will also inform the court that you have approached it promptly upon discovering the existence of the receipts.
5. Finally, you can demonstrate the loss you will suffer if your application is denied, and the fact that the defendant will suffer no prejudice, your application being in the interest of justice.



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either margin

### Conclusion

In conclusion, you will pursue a review to address your situation. Upon demonstrating the grounds outlined, the Court shall consider the case again in light of the evidence and give a fresh judgment taking into account the amount of KShs. 40,000.

We look forward to your feedback and instructions to proceed and pursue the remedy disclosed.

Yours sincerely,



Kwamboka D.

for OSEKO KWAMBOKA & COMPANY

ADVOCATES.

### QUESTION 4:

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

FAST TRACK CIVIL SUIT NO: 10 OF 2020

ALL GRAINS LIMITED . . . . . PLAINTIFF

VERSUS

JACKSON BELLS . . . . . DEFENDANT

DEFENCE AND COUNTERCLAIM

1. Save as is herein admitted, the plaintiff defendant denies each and every allegation contained in the Plaintiff as if the same were set out herein verbatim and traversed seriatim.

2. The defendant admits the contents of Paragraphs 1 and 2 of the Plaintiff, save for his address of service for purposes of this suit which shall be care of HAPPY & HAPPY

ADVOCATES, Glory House 1st Floor, P.O BOX 4567 - 00100  
NAIROBI.

3. The defendant admits the contents of Paragraph 3 of the



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Plaint but denies that the Plaintiff is also the registered proprietor of L.R. NO 22751.

4. The defendant avers that L.R. 22751 belongs to Gloria Grain.

5. The defendant avers that he has been residing on the two parcels of land since 2007 with the knowledge of the Plaintiff. The Plaintiff is therefore put to strict proof regarding Paragraph 4 of the Plaintiff which the Defendant denies.

6. In response to Paragraph 5 of the Plaintiff, the Defendant contends that the Plaintiff attempted to enter the suit parcels of land forcefully, on 1st March 2020.

7. The defendant denies the Plaintiff's allegation in Paragraph 5 of the Plaintiff that the Defendant hired youth with crude weapon to chase away the Plaintiff's agents. The plaintiff is put to strict proof thereof.

8. The contents of Paragraph 6 of the Plaintiff are denied and the Plaintiff is put to strict proof thereof.

9. The Defendant contends that the Plaintiff did not serve him with any Demand Notice as alleged in Paragraph 9 of the Plaintiff.

REASONS WHEREOF the defendant pray, that the plaintiff's suit be dismissed with costs.

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

FAST TRACK CIVIL SUIT NO. 10 OF 2020

JACKSON BELLS . . . . .

PLAINTIFF

VERSUS

ALL GRAINS LIMITED - - - - - 1<sup>st</sup> DEFENDANT

GLORIA GRAIN LIMITED - - - - - 2<sup>nd</sup> DEFENDANT

COUNTERCLAIM

1. The Plaintiff is an adult of sound mind, residing at Nairobi and his address for service shall be care of HAPPY & HAPPY ADVOCATES, P.O BOX 4567-00100 NAIROBI.



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2. The 1<sup>st</sup> Defendant is a limited liability company registered under the Laws of Kenya having its registered office in Nairobi. Its address of service is care of WAKILI MWEMBA & CO. ADVOCATES, P.O BOX 78910-00200 NAIROBI.
3. The 2<sup>nd</sup> Defendant is a female adult of sound mind who resides and works for gain in NAIROBI. (Service of summons to be effected through the plaintiff's advocate's address).
4. The first defendants are the registered proprietors of LR 22750 and 22751 respectively.
5. The plaintiff has been residing on the two parcels of land since 2007 with the knowledge of the defendants.
6. The defendants, on or about 1<sup>st</sup> March 2020, attempted to enter the suit parcels of land.
7. The defendants destroyed the Plaintiff's property valued at Kshs. 300,000.

REASONS WHEREFORE the Plaintiff prays for the following reliefs;

- (1) That the defendant be ordered to pay him Kshs. 300,000 for the damage on his property and interest thereon.
- (2) Costs of this suit
- (3) Interest on (2) above
- (4) Any other order as the court shall deem fit to grant.

Dated at NAIROBI this 17<sup>th</sup> day of June 2021

Pattak

HAPPY & HAPPY ADVOCATES

ADVOCATES FOR THE PLAINTIFF

Drawn and Filed by

HAPPY & HAPPY ADVOCATES

ADVOCE GLORY HOUSE

P.O BOX 4567-00100

NAIROBI

TO Be served upon:

1. GLORIA GRAIN
2. ALL GRAINS LIMITED.



(Caption as per counterclaim)

VERIFYING AFFIDAVIT

I, JACKSON BELLS of P.O Box 12845 NAIROBI, a resident of NAIROBI, Kenya do hereby state and swear as follows:

1. THAT I am the plaintiff hence competent to swear this affidavit.

2. THAT I have read the contents of the Plaintiff and verify the same to be true to the best of my knowledge and information.

3. THAT what is deponed to herein is true to the best of my knowledge.

Sworn by the said

JACKSON BELLS )

This 17<sup>th</sup> day of June 2021 )

(Deponent)

Before me )

)

)

COMMISSIONER FOR OATHS.

Drawn and filed by

HAPPY & HAPPY ADVOCATES

P.O BOX 4567-00100

NAIROBI.

Email: happy@gmail.com

Tel : 254023345693

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REGISTRATION NUMBER:

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Questions ..... 1 (a) .....

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QUESTION 1 (a):

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

MISC CIVIL APPLICATION NO. OF 2021

TRUMBALL KERRY . . . . . APPLICANT  
MALAIKA MWEMA . . . . . RESPONDENT

CERTIFICATE OF URGENCY

I, Emali, an advocate of the High Court of Kenya practising in the name and style of Emali & Co. Advocates certify that this application is urgent on the grounds that the applicant obtained a ruling for delivery of Motor Vehicles KTZ 132 Z and KZB 146 B, which delivery has not been effected and the respondent is in the process of disposing off the motor vehicles, which actions are in contempt of this court.

Dated at NAIROBI this 17th day of June 2021

(Emali)

Advocate for the Applicant

(Emali & Co. Advocates)

Drawn and filed by:

Emali & Co. Advocates

P.O BOX 1111 - NAIROBI

To be Served upon:

Malaika Mwema.

(Caption as per Certificate of Urgency)

NOTICE OF MOTION

(Order 22, Civil Procedure rules, Order 51 Rule 1, Civil Procedure rules)  
(Section 1A, 1B and 3A, Civil Procedure Rules.)

TAKE NOTICE that this Honourable Court shall be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2021, at 9 O'Clock in the forenoon or soon thereafter by counsel for the applicant who may be heard for orders;

1. That this application be certified as urgent and service be dispensed with

2. That the respondent be restrained from disposing off



motor vehicles KTZ 132 Z and KZB 146 A, and

the same be delivered to the applicant if the same have not been disposed.

3. THAT the respondent be committed to civil jail.

(To) Seal up this application.

4. THAT the respondent be held in contempt of court.

Which orders are based on the affidavit of Trumball Kerry and further on the following GROUNDS:

a) THAT this Honourable Court directed a ruling against the respondent for delivery of the vehicles on 1st April, 2019.

b) THAT the respondent has failed to deliver the vehicles and is in the process of disposing them off.

c) THAT if the respondent is not restrained from disposing off the motor vehicles, the applicant will suffer loss as the ruling will not be fulfilled, if the vehicles have not been disposed of yet.

d) THAT the actions of the respondent are in contempt of this court.

Dated at NAIROBI this 17<sup>th</sup> day of June 2021

(Signature)

Advocate for the Applicant

(Email & Co-Advocates)

(Jurat as per Certificate of Urgency).

PENAL NOTICE: If any party fails to attend the court, such order shall be made and proceedings taken as the court shall deem fit and just.

(Caption as per Certificate of Urgency)

SUPPORTING AFFIDAVIT

I, TRUMBALL KERRY of P.O BOX 111-NAIROBI, a resident of Nairobi in the Republic of Kenya hereby make oath and state as follows;

1. THAT I am the applicant hence competent to swear this affidavit.

2. THAT the court, on 1<sup>st</sup> April 2019, delivered a ruling directing the respondent to deliver Motor Vehicles KTZ 132 Z and KZB 146 B to me.

3. THAT the respondent has failed to deliver the motor vehicles and is



REGISTRATION NUMBER:

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either margin.

In the process of disposing them off.

4. THAT these actions are calculated towards defeating justice
5. THAT the respondent should be restrained from disposing off the motor vehicles and the same be delivered to me, or the sale revoked.
6. THAT the actions by the respondent are further in contempt of this court as the respondent is deliberately acting against the directions of the court.
7. THAT based on the foregoing, the respondent ought to be held in contempt and committed to jail.
8. THAT what is deposed to herein is true to the best of my knowledge and information.

Swear by the said TRUMBALL KERRY

At NAIROBI this 17<sup>th</sup> day of June 2021.)

) Defendor.

Before me.

)

COMMISSIONER FOR OATHS

)

Drawn and filed by:

Emilia O Adovocates.

P.O BOX 1111 - NAIROBI

To be served upon:

Malaika Mwema

P O BOX 2222 - NAIROBI



## QUESTION 1(b)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 33 of 2018

BILLY ESTATE LTD. - - - APPLICANT.

TIMBER VERSUS - - - RESPONDENT

### RULING

#### Background:

The applicant filed a Notice of Motion dated 10<sup>th</sup> July 2018, seeking an order restraining the defendant from closing an access road passing through Timber (Timber LTD), which is the property of the respondent.

The access road has been open since 2013 and now threatens to be closed.

The respondent contends that the estate is not landlocked. Negotiations between the parties have failed.

#### Issues:

Based on the facts of the case, the following are the legal issues raised:

1. Whether the estate is landlocked
2. Whether the owners of Billy Estate are entitled to continue using the access road
3. Whether the respondent can lawfully close the access road.

#### Determination:

1. Whether the estate is landlocked.

This being an allegation raised by the respondent in the negative, ought to be examined, as the applicants are entitled to have a right of way. The access road blocked by the said private developer should be examined and this can only be done upon receipt of maps and report by a surveyor. To this extent, the case requires further



## REGISTRATION NUMBER:

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Questions ..... 1 (b) .....

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either margin~~information to be furnished.~~

3. Whether the owners of Billy Estate are entitled to continue using the access road.

The owners began using it in 2013, and the question would be whether they have a crystallised right to keep using it in light of the time that has lapsed since.

3. Whether the respondent can lawfully close the access road.

The question would be whether a proprietor's right to close an access road is limited.

Based on the foregoing, it is the opinion that the case raises certain issues which ought to be examined before a final decision can be made.

It is hereby ruled that the case has ~~merits~~ and parties are hereby directed to file and serve their submissions.

Dated at NAIROBI this day of 2021

Issued at NAIROBI this day of 2021

Delivered by c ABC on 17<sup>th</sup> June, 2021.

20/20



## QUESTION 2:

(a)

(a) How to successfully oppose the application.

The application in this case is an application seeking to strike out the Notice of Appeal.

First, being new advocates, we will file and serve a notice of change of advocates in order to properly be put on record as Willy's new advocates.

Then we will oppose the application by way of a Replying Affidavit.

We shall be guided by the Civil Procedure Act, Civil Procedure Rules, Appellate Jurisdiction Act and Court of Appeal Rules.

We shall demonstrate to the court the following:

1. That our appeal is meritorious
2. That you shall suffer injustice if it is struck out
3. That you are ready to or have furnished security for execution of the decree.

Since the law allows for striking out of appeals pursuant to the Court of Appeal Rules, Appellate Jurisdiction Rules and Civil Procedure Act, we will have to show the court that our appeal has merit and should not be struck out, and that if it is struck out it will not be in the interest of justice as guided by Section 3A and 3B of the Appellate Jurisdiction Act on justice and fairness.

(b)

(b) (i) Anomalies in relation to the execution of the instructions to file the appeal

As earlier indicated, the Civil Procedure Act (Section 75), Appellate Jurisdiction Act, Court of Appeal Rules and the Civil Procedure Rules (Order 42 and 43) govern the process of appeals.

For an appeal from the High Court to the Court of Appeal, certain steps ought to be followed. These were not adhered to in this case. They are as follows:

1. Filing Notice of Appeal - the notice of appeal ought to have been filed 14 days after the judgment which was delivered on 14th December 2018 - this was not done within the timelines.



2. Filing memorandum of appeal - This ought to be done within sixty days after filing a notice of appeal. Again, this was not done.

3. Certificate of delay - Knowing the appeal could not be filed in time because of lack of typed proceedings, the advocate ought to have obtained a certificate to justify the delay. Again, this was not done.

Conclusion:

An appeal is considered as having been filed once a memorandum of appeal has been filed and within the set timelines. In this case, the appeal was not properly filed.

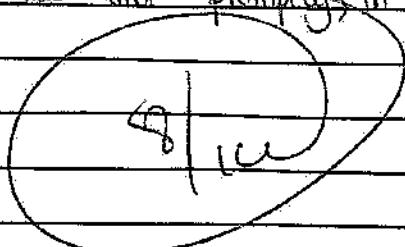
#### (b)(ii) Application to certify the anomalies (identified and conditions)

Because the appeal was filed without adherence to the set timelines, an application ought to be made, asking the court to allow the appellant to appeal outside the time. In other words, an application extending the time required to file the appeal in order to accommodate late filing.

This shall be done in form of a notice of motion.

It will satisfy the following conditions:

- 1) Demonstrate that the delay was not deliberate
- 2) Demonstrate that he has a meritorious appeal
- 3) Deposit security for satisfaction of the decree
- 4) Demonstrate that there will be no prejudice occasioned to the respondent.
- 5) Demonstrate that he has approached the court with clean hands and promptly in light of the circumstances.





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Questions ..... 5 .....

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### QUESTION 5:

OUR REF : BA/2024

YOUR REF : TBA

B-Auctioneers.

P.O BOX 1111

NAIROBI

Dear Sir/Madam,

From: Kwamboka Oseko

To : Partners, Kazimoto Associates Advocates.

Date: 17th June, 2021

Subject: Draft Legal Opinion to B-Auctioneers.

#### FACTS

B Auctioneers has attached and sold a motor truck belonging to Patel, but Mrs. Omari now claims that the truck belonged to her and the proceeds should be surrendered to her.

B-Auctioneers does not know the person to give the proceeds.

#### ISSUE

The question revealed is what B Auctioneers needs to do with the money in its possession, the same being claimed by different parties.

This brings to light the concept of inter-pleader proceedings.  
~~Inter-pleader proceedings~~

Provided for under Order 34 of the Civil Procedure Rules, these are proceedings initiated by a party in possession of certain property which is claimed by two or more people. The purpose is to present the matter to court so that the court is able to determine the person entitled to the



Property in contention.

If brought in an ongoing suit, the application is by way of chambers summons. If there is no suit in place, then it is brought by way of originating summons.

In this case, B Auctioneers will be an interpleader, guided by Order 34 of the Civil Procedure Rules.

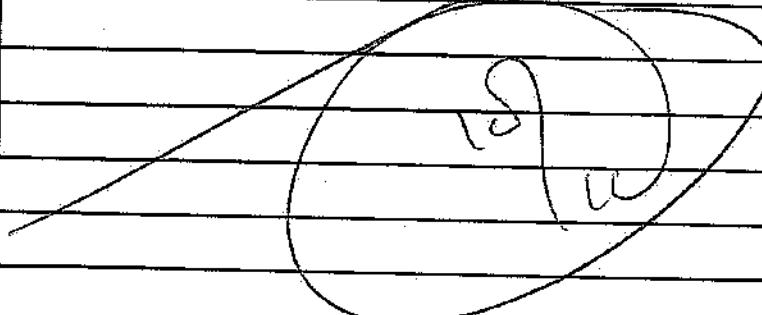
To successfully prosecute the application, B Auctioneer will have to fulfil certain conditions.

Conditions:

B Auctioneers will be required to establish;

1. That it is a neutral party with no interest in the property, save for its costs and charges.
2. That it is not in collusion with any of the parties claiming the money.
3. That it is ready to deal with the money as the court shall direct, including depositing it with the court.

Upon demonstrating this, the court shall admit B Auctioneers' application and discharge it from any liability from any of the parties claiming the money.





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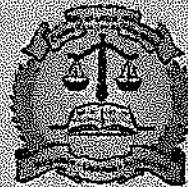


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**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P I P D** SUBJECT/UNIT .....

REGISTRATION NUMBER: ..... DATE: **17/06/2021** .....

**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
6	0	/				
3	0	/				
4	0	/				
5	0	/				
<b>TOTAL MARKS</b>	0	/	0	0		



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Tom &amp; Tom Advocates

6. P.O.Box 1123 Brashara building, Nairobi.

Our Ref 345

Your Ref

16/6/2021

Pamela

P.O.Box 567

Nairobi

Dear Madam

RE: LEGAL ADVICE

Subject to your visit to our chambers the facts are as follows:-

FACTS

Pamela was involved in an accident and after judgement suffered damages and was awarded general and special damages after judgment. Patrick her assistant has been holding treatment receipts in the amount of 40,000 Kenya shillings, not awarded in the judgement.

ISSUES

(1) Which way can Pamela take to recover the amount?

(2) What grounds can Pamela use to prosecute Patrick for ~~fraud~~ apply for prosecution

ROLES & RULING

Civil Order 92 Civil Procedure Rules

Civil Procedure Order 20 to Civil Procedure ~~Rules~~ Rules

APPLICATION

(1) Pamela can file a Motion to execute the decree

(2) Pamela should apply for an attachment & injunction to refrain not allow the treatment receipts to be moved.

(3) Injunctions are established through the case Giella v Carmen Brown



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CONCLUSION





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Questions ..... 3.

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John & John Advocates

3

Babu Bishara Road, P.O. BOX 123, Nairobi/Machakos

Our Ref

Your Ref

16/01/2027

Paul

P.O.BOX 345

Machakos

Dear Sir

### RE: LEGAL OPINION

Subject to ~~the~~ your visit to our chambers the issues are as follows:

### ISSUES

Whether Paul's advocate gave him the right advice?

### RULING

D Civil Procedure Act

### APPLICATION

D ~~Review~~ Review means to ~~to~~ have another look at it again. Review comes under Section 80, Order 74 of the Civil Procedure Act.

(a)

10



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## Questions .....

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4.

~~C~~ FAST TRACK CIVIL SUIT NO. 10 OF 2020

GLORIA GRAIN

~~ALL GRAINS LIMITED~~ ..... PLAINTIFFPLAINT  
(FASTTRACK)

1.) The Plaintiff is a limited liability company registered under the Laws of Kenya and having its registered offices at Nairobi and its address of service for this suit is suite Watchi Alvernia 8/ G, Alvernia, Mombasa House 2nd Floor, Kya Road, P.O Box 38916, 00200 Nairobi Tel: 234 704 100 2227 Email: watchiimpema@gmail.com

adult of sound mind,

2.) That At all material times, the Plaintiff

3.) On or about the 13th day of February 2007, the Defendant without any right trespassed onto all those plots of land known as L.R. No. 22750 and L.R. No. 22751 and erected two semi-permanent structures thereon.

REASONS WHEREFORE the Plaintiff prays for judgement against the Defendant and orders for :-

- Vacant possession, in default eviction
- a) Mere profits
- e) General



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Questions ..... 5 .....

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John and John Advocates P.O.Box 123 Nairobi

Our Ref

Your Ref

16/06/2021

B Auctioneers  
P.O BOX 345  
Nairobi

Dear Sir/Madam

R.E: LEGAL ADVISE

Subject to your visit to our chamber & we state the issues  
as follows:

ISSUES

The actions to take?

What type of application

RULING

Civil Procedure Rules

APPLICATION

①



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## Questions .....

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