

COUNCIL OF LEGAL EDUCATION.



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

ATP 101: CRIMINAL LITIGATION

FRIDAY 25TH JUNE 2021.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4)** printed pages including the cover page, with a total of **Six (6)** 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

Mdosi is a senior manager with Malf Mjini Bank in Nairobi. His wife, Mrembo, is a florist within Kilimani Estate. They have two children aged two and seven years old respectively who they leave under the care of Atoti, Mrembo's distant relative. Atoti is an orphan with two siblings who are cared for by her aunt Jane. Jane secured Atoti's employment at Mrembo's house and receives all Atoti's wages. Atoti believes her aunt Jane is using the money to ensure her siblings go to school.

On 4th February 2020, around 3.00 p.m. Atoti was arrested for shoplifting at Kaama Supermarket. She was found having stashed foodstuff and assorted toiletries inside her undergarments. Kaama, the supermarket owner called the police and upon interrogation, Atoti stated that she stole the items because she was hungry and had no money to pay for food stuff and toiletries. The police observed a bulge in her tummy. Atoti confirmed that she was pregnant. She also claimed to be sixteen years old, and further that Mdosi would come back home during the day when his wife was away and forcibly engage her in coitus. Atoti was certain that the gate records by Juma, the Estate gatekeeper would confirm this. Atoti learnt that her aunt Jane abandoned her siblings to enter Munyoto market as street urchins. Kaama feels sorry for Atoti.

- a) Citing relevant provisions of Law, elucidate the steps the investigator will take, the people to be charged and the specific charges to be preferred. (7 marks)
- b) Citing relevant law or policy, explain the options available to the investigator when dealing with Kaama's complaint. (5 marks)
- c) Mkali is the prosecutor handling the case. Given the steps in (a) above, advise him on the pre-trial issues likely to arise. (8 marks)

QUESTION TWO

Simba Lao was charged with the offence of stealing by servant contrary to Section 281 of the Penal Code. He was charged, convicted of the offence and sentenced to 5 years' imprisonment. The charge and conviction were based on the testimony of his workmate, Collins Mate, who reported to the police that Simba Lao had stolen a laptop. After serving a year in jail, Collins Mate went to the police station and reported that he had provided false information which led to the conviction of Simba Lao and that Simba Lao did not steal the laptop. He produced evidence of audio recordings he had with another colleague with whom they hatched a plan to incriminate Simba Lao knowing very well that Simba Lao did not steal the laptop. The police had in turn advised Collins Mate to present that evidence to Simba Lao and apologise. Simba Lao accepted the apology. Simba Lao has however instructed you to proceed and have his sentence set aside and conviction quashed in view of the new evidence from Collins Mate that he did not commit that offence of stealing by servant where he reported that he had provided false information which led to the conviction of Simba Lao.

- a) Draft the necessary application. (6 marks)
- b) Outline the guidelines with regard to mitigating factors applicable in a re-hearing sentence for the conviction of a murder charge as set out by the Supreme Court's decision in the case of *Francis Karoki Muruatetu vs. Rep. [2017]*. (4 marks)

QUESTION THREE

Panda was asleep when at around 2.00 a.m., he was awoken by shouts emanating from inside the house. His family was under attack. Panda reached for the bedside switch. As the lights shone, he was immediately hit on the head and lost consciousness. Upon recovery, he found himself at Kijabe Mission Hospital, having lost track of time. It was 3.00 a.m., two weeks later. The nurse, Mzuri spoke to him. Panda recalled he was attacked by thugs and that one, Moshi, a tout was well known to him.

They are village mates. He had severe injuries and lapsed into a coma. Mzuri relayed this information to Corporal Ali, the investigating officer when he visited in the morning. The police quickly arrested Moshi. On interrogation, Moshi named Motomoto and Mzinga as accomplices. A manhunt ensued and the two were arrested in a slum in Nairobi.

On the way to the station, Mzinga decided to confess that he was a college student and that he was lured by his uncle, Motomoto, into the act. He led the police to Motomoto's ex-wife's home within the slums. Police recovered electronics and a myriad of household items which Panda's wife and other villagers identified. The other villagers declined to file complaints fearing Motomoto's gang. The three were charged with robbery with violence. The case did not proceed because Panda was still in a coma. He succumbed after seven months.

- a) As a legal intern in the Office of Director of Public Prosecutions, advise the prosecutor on how to proceed with the case. (6 marks)
- b) Corporal Ali obtained from Mzinga a self-recorded statement in his own handwriting detailing his involvement and regretting his action. Motomoto's lawyer has indicated that he will challenge the production of that statement. Advise the Prosecutor on the legality of producing self-recorded statement as evidence in the prosecution's case. (4 marks)

QUESTION FOUR

Chapa Kazi, a Resident Magistrate at Kiriba Law Courts is handling a fraud matter where Jicho Pevu is the complainant and Mifilisi is the accused person. The trial has commenced with three witnesses having testified. The case was adjourned at mid-day and Chapa Kazi proceeded on to another matter where Mashuhuri, Mifilisi's lawyer, is representing another client. That case is adjourned at around 5.00 p.m. On the way out, Chapa Kazi sees a stranded Kamani, Mashuhuri's pupil. He offers her a lift to the bus stage three kilometres ahead. She alights and they both find Jicho Pevu at the bus stage. He looks at them suspiciously. Two weeks later, Jicho Pevu's lawyer writes to the Chief Magistrate, Kiriba Law Courts asking Chapa Kazi to disqualify himself.

With the aid of decided cases, detail the circumstances for recusal by a presiding judicial officer, outlining options available for Chapa Kazi. (10 marks)

QUESTION FIVE

Kavita Musili has been charged with the offence of trespassing on a burial place contrary to Section 136 of the Penal Code. Following the World Health Organization and Ministry of Health, Kenya COVID-19 Protocols on avoiding gatherings and social distancing, Kavita Musili trespassed at the burial of Wayua Maweu with a view of stopping it. He was arrested and charged at Wote Law Courts. The Charge Sheet did not have the date and place of offence. Further, the Charge Sheet did not contain the particulars of the offence.

- a) Explain the statutory provisions the court may use to allow a charge to be prosecuted despite the omissions in the Charge Sheet. (5 marks)
- b) Based on the scenario above, prepare the necessary application to quash the charge before the trial commences. (5 marks)

QUESTION SIX

Medeline is a Multi-National Company run by a Colombian family with Escobar, Padrino and Alberto as the directors. The company has many business concerns including print and media. In 2019, Kenya School of International Law (KSIL) advertised a five-year tender for supply of quick response code readers and stickers to be used by students as they access the school. Medeline through its Kenyan subsidiary successfully bid for the tender. It was awarded the tender partly because it had supplied similar services to other government institutions. In April 2020, students raised complaints that they were unable to access the school since the machines installed by Medeline were faulty. After internal investigations by Kenya School of International Law, it was discovered that some employees of the school had colluded with Medeline's local directors and diverted the authentic machines for a Kshs. 50 million kickback by another company in South Sudan.

The matter was referred to the Directorate of Criminal Investigations (DCI). After investigations were carried out, the DCI detectives arrested some of Kenya School of International Law's employees and some of the students who had raised concern on social media.

Charges were preferred against some of the employees of KSIL as well as the directors of Medeline, Escobar, Padrino and Alberto. The charges were filed at Milimani Law Courts and the Chief Magistrate issued a warrant of arrest against the three directors who are said to be in Colombia yet they have never been questioned by the DCI.

The directors of Medeline's local subsidiary were nowhere to be found and charges were not preferred against them and no reason was given for this.

You have been approached by the directors of Medeline who inform you that Alberto is 78 years and cannot travel to Kenya, Padrino also resigned from the company 3 years ago. Escobar takes care of Alberto on a daily basis. They also explain that they consider the decision to charge them irrational and an abuse of power by the DCI. They insist that they did not have anything to do with the disappearance of the machines at KSIL. They have instructed you to represent them indicating that they do not want to come to Kenya for trial.

Draft the appropriate pleadings.

(10 marks)

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

UNIT CODE: **A T P I O I** SUBJECT/UNIT **CRIMINAL LITIGATION**

REGISTRATION NUMBER: _____ DATE: **25th 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
1	14					
2	21					
3	62					
4	66	LC				
5	51					
6	51					
TOTAL MARKS	147					



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Questions 3(a) 1(a).....

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either margin

Advice on how to proceed

Steps to be taken by prosecution.

The investigator will need to prepare the police file which will outline the steps to be taken as follows

A - Initial report

The investigator will need to note down look at the initial report made by the complainant and the witnesses

B. Documentary evidence

The investigation will look at the exhibits from the crime for instance the items stolen

C. Export report

The investigator will consider any export reports that may be applicable

D. Prosecution witnesses and statements

The investigator will consider the people that will testify in support of the prosecution's case and their testimonies

E. Accused statement/response upon inquiry

The investigator will consider the accused person (statement or response made on inquiry to consider the nature of the crime)

F. Investigation diary

The investigator is required to have an investigation diary that sets out the details of the crime

G. Charges

The investigator will consider the charges to be preferred depending from the particulars of the offence.

H. What Arrested persons previous records

The investigator will check from the system whether the accused has previously been convicted / acquitted using the fingerprints.



I - Cover file

The investigator will look at the cover file for the summary of the matter.

J - Correspondence file

The investigator will look at any correspondence between the police and the arrested person.

People to be charged.

Atoti for theft contrary to section 268 of the penal code.

Mdari for defilement of Atoti contrary to the sexual offenders Act.

Kaama's complaint is against for theft against a minor.

Article 53 of the Constitution of Kenya provides that the best interest of the child should be considered in the welfare of a child.

Rule 4 of the Children Offender Rules provide that a child who commits an offence should not be detained, it should be the last resort.

Further that the guardians of the child and children officers should be informed.

In case a child is detained, they should be separated from adults.

If a child is to be detained, the rules provide that they should be taken to a remand home as they await trial.

In light of the above the investigator is first required to ascertain the age of Atoti by requiring the production of the birth certificate. If Atoti is indeed a minor, the investigator is required to inform the prosecutor and the children officers.

The Section 43 of the legal Aid provides that vulnerable people such as minors ought to be represented either through an advocate or an intermediary.

The intermediary is one who should have the best interest of the child preferably the parents however since Atoti is an orphan, she could be represented by a children officer. (2)

Article 50 (7) provides that an accused person is entitled to an intermediary.

Pretrial issues likely to arise: (Atoti)

- a) Identification of the intermediary ✓
- b) Appointment of an intermediary ✓
- c) Whether the minor will appear in person or be represented. ✓
- d) Whether the minor will give sworn or unsworn evidence testimony in which case the unsworn testimony be not be subject to cross-examination ✓
- e) Whether the court will admit viva voce evidence. ✓
- f) Whether the matter can be settled out of court Pre-trial issues - Mdoi defilement of Atoti ✓
- g) How the trial will be conducted (in private) since the victim is a minor. ✓
- h) Whether the victim (Atoti) will appear in person or be represented by an Advocate in writing brief. ✓
- i) Whether The victim impact statement by Atoti Manner in which evidence will be adduced (whether in camera)
- j) The type of evidence that will be admitted by the minor (sworn / unsworn) ✓
- Expert report on the gate records by Juma ✓

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Questions 2..... 9)

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either margin25th JUNE 2021

DEPUTY REGISTRAR
 HIGH COURT OF KENYA
 CRIMINAL DIVISION
 NAIROBI

Dear Sir,

RE : MISCELLANEOUS CRIMINAL APPLICATION xx OF xx
REPUBLIC v SIMBA LAO

We act for Simba Lao^{court client} who has instructed us to apply for the revision of the conviction and sentence given in Criminal Case Number xx Republic v Simba Lao where our client was convicted for the offence of stealing by servant contrary to section 281 of the Penal Code and sentenced to 5 years imprisonment. We make this application pursuant to section 362 and 362 of the Criminal Procedure Code.

The brief facts of the matter are that our client was charged with offence of stealing by servant contrary to section 281 of the penal code following a report by Collins Mate, his workmate who that our client had stolen a laptop.

The court made the conviction and sentence on the basis of the ^{audio recordings} information provided by Collins Mate. Collins has now reported that he falsified the information. In our view, the court unlawfully convicted our client owing to the fact that and we seek the court to exercise its revisionary jurisdiction on the grounds that:

There is new evidence showing that Collins Mate, the complainant falsified the evidence of the



audio recording together with another colleague with whom they hatched a plan to intimidate our client knowing very well that our client did not steal the laptop.

We should be grateful if the court in exercise of its revisionary jurisdiction and powers calls for the file in the subordinate court in Criminal case no xx of xx and examine the record to certify the legality, correctness and sentence.

We pray that the court certifies this matter urgent as our client has for the past year been in jail and that the court sets aside the sentence and quashes the conviction.

Yours faithfully

xxx

ADVOCATES



Write on both sides of the paper

Guidelines with regard to mitigating factors applicable in re-hearing sentence for conviction of murder charge

The age of the accused ✓

The person the accused is responsible for
The criminal history of the accused.

The effect the sentence will have on the society.

The character and antecedents of the accused
The safety and protection of the victim.

(03)

(2)



Advice on how to proceed.

Due to the ~~fear~~^{decline} by the complainants to file complaints fear of the gang, I would advise the prosecutor to enrol the villagers who will be witnesses under the Witness Protection Program that is established under the Witness Protection Act.

Further during trial (a) to pre hide the identity of the witness when testifying

(b) to record the testimonies of the witnesses in camera

(c) to hide the identity of the witnesses in

(d) the documents such as witness statements and not to reveal their identity to anyone

(e) the witness can testify at the witness box.

I would also advise the prosecutor to oppose an application for bail and if already granted to seek review of the bail pursuant to section 364 of the ~~pen~~ Criminal Procedure Code of the grounds that the accused would be likely to interfere with the witnesses.

Since the person, Panda, who was the thug is now dead for the purpose of identification of the accused, I would advise the prosecutor to ask the police to conduct an Identification Parade. The exception to this would be where the villagers know the suspect, or where the suspect does not consent or where the village (complainants) cannot identify the suspect.

In choosing to conduct an identification parade using police from P 156 I will advise that the suspect be pre compared with eight

other people in the ratio of 1:8 with similar height, body type and weight. It should be done by one suspect at a time. The suspect should consent and the investigating officer should not conduct the ID parade but may be present. The witness should be informed that the suspect may not be in the parade. Since the complainants fear the gang, the ID parade can be done in a room where the suspects are not able to see the complainants so as to protect their identity.



The self-record statement is a confession in which an inference of guilt may be made. Confessions are not admissible as evidence in Kenya as provided for in section 25 of the Evidence Act.

Article 49 of the constitution equally provides that an arrested person should not be compelled to make a confession.

For a confession to be admitted it has to be made according to the law as laid out in the Evidence (Confessions Out of Court) Rule under Rule 4.

It should be made before a court by a judge or before a police officer (apart from the investigating officer) with a higher rank than Inspector. If made before a police, the following guidelines have to be adhered to:

- I I I) The person should choose the preferred language of communication
- I I I) The person should be provided with an interpreter
- I I I) There should be no form of coercive pressure or undue influence when recording the confession
- I I I) The person can be represented by an advocate
↳ The person may have a third person of their choice present.

After the recording, the person should certify that the confession was made out of their free will. These guidelines were also illustrated in the case of Kaluma v Republic. If Mazinga's self-recorded statement doesn't comply with the guidelines (which it doesn't) it is not admissible as evidence in court.

Circumstances for recusal by a presiding judicial officer.

- a) Where the presiding judicial officer has an interest in the outcome of the case.
- b) Where the judicial officer is related to the accused person for example mother, brother.
- c) Where the judicial officer has previously represented the accused person as their advocate.
- d) Where the complaint is made relates to the judicial officer in any way.
- e) Where the judicial officer has an adverse personal relationship such as a grudge with the accused person.
- f) Where the judicial officer is a victim of the complaint made.
- g) Where the judicial officer has a personal relationship such as a romantic relationship with the accused person.

In the case of Republic v John the magistrate sought to recuse herself on the basis that she was related to the accused.

The essence of recuse is to ensure that the trial is conducted transparently and that it is fair since there will be no element of bias that may affect the judicial officer's independence in judgment.

- h) Also, a judicial officer may need to recuse themselves where there is a conflict of interest or where the conflict of interest is likely to arise.

Options available for chapa kazi.

As the magistrate, Chapa Kazi can either decide to recuse herself or not recuse herself if



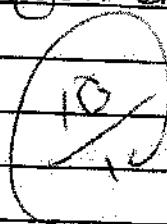
depending on whether there is apparent bias or not.

From the facts of the case, we are only informed that while leaving the court, Chapa Kazi offered a lift to Mashuhuri's pupil who was stranded.

Base on this information, we cannot ascertain whether Chapa Kazi personally knew Mashuhuri's pupil or was offering lift to a stranger in need or help.

It is not possible to establish without certainty that Chapa Kazi has any interest in the matter that may affect her independence on the basis of a lift offered. Chapa Kazi left work at the end of the court hours at 5:00pm, it is expected that one would leave work at that time. Had Chapa Kazi left earlier, perhaps and offered Mashuhuri's pupil a lift, perhaps to some extent, an + there would be suspicious of familiarity that could with sufficient corroboration establish an element of bias.

In my view, chapa Kazi should not disqualify herself based on the argument I have made above.





REGISTRATION NUMBER:

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Questions 6.....

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO xx OF xx

IN THE MATTER OF THE CONSTITUTION OF KENYA
ARTICLES 21, 22, 49, 23

IN THE MATTER OF THE LAW REFORM ACT SECTION
8 AND 9

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES 2010

IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION
BETWEEN

MEDELINE - - - - - APPLICANT
AND

DIRECTOR OF CRIMINAL INVESTIGATIONS - - - 1ST RESPONDENT
AND

CHIEF MAGISTRATE - - - - - 2ND RESPONDENT

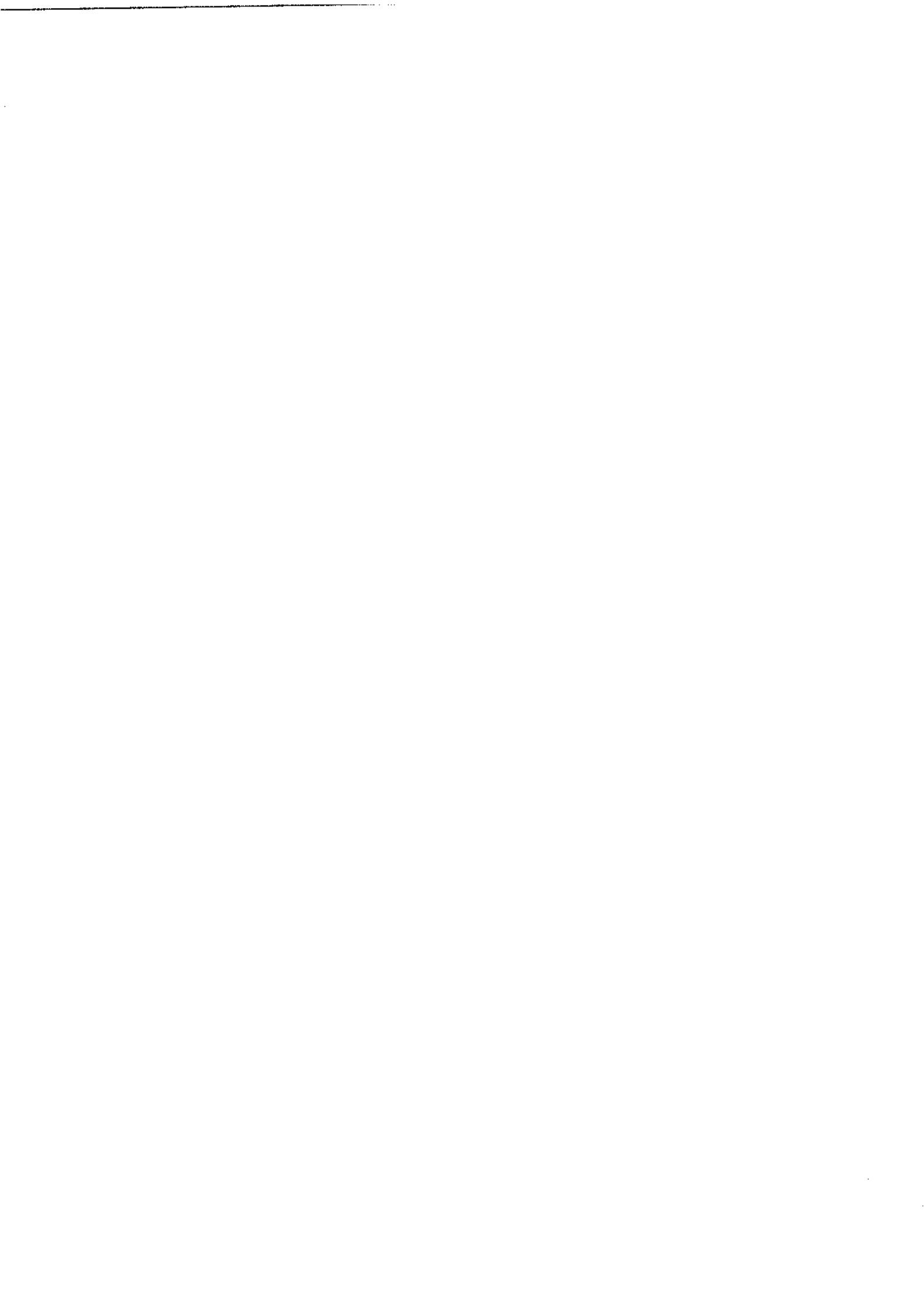
MILIMANI LAW COURTS

KENYA SCHOOL OF INTERNATIONAL LAW CHAMBER (UNION) 3RD RESPONDENT

(Pursuant to Order 53 of the Civil Procedure Rule (Section 8 & 9 Law Reform Act))

LET ALL PARTIES CONCERNED attend the honourable
judge in chamber this xx day of xx at 9:00 O'clock
in the forenoon or noon thereafter for hearing
of an application by the council for the applicant
for ORDERS THAT:

- 1) The applicant be granted leave to apply for
an ORDER OF CERTIORARI to quash the decision
of the 2nd respondent in issuing the warrant
of arrest for the directors of the applicant



- i) The applicant be granted leave to apply for an order of PROHIBITION to prohibit the 1st Respondent from arresting the directors of the applicant
- ii) That the orders sought herein do operate as stay pending the hearing and determination of this application
- iii) Cost of the application be provided for.
- ON GROUNDS that:
- The 3rd Respondent advertised the a five year tender for supply of quick response code reader and sticker to be used by students as they access school.
 - The applicant was awarded the tender as it supplied similar services to other government institutions.
 - The employees on the 3rd Respondent were arrest on the allegation that they colluded with the directors of the applicant to divert authentic machines for a ksh 50 million kickback by another company in South Sudan.
 - That the 2nd respondent issued arrest warrants on the basis of the investigation by the 1st Respondent
 - The directors of the applicant have never been questioned by the 1st Respondent
 - That unless the court grants the orders sought, the directors of the applicant will be unlawfully arrested and detained.

WHICH APPLICATION is supported by the Statutory Statement and Verifying Affidavit of ESCOBAR (sworn on xx and other grounds to be adduced during hearing).



REGISTRATION NUMBER:

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Questions 6

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DATED at Nairobi this xx day of xx

-XXX-

Advocates for the Applicant

DRAWN & FILED BY:

xx Advocates

NAIROBI

TO BE SERVED UPON:

DPP DIRECTOR OF PUBLIC PROSECUTION



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
MISCELLANEOUS CRIMINAL APPLICATION NO xx OF xx

IN THE MATTER OF ARTICLES THE CONSTITUTION
OF KENYA ARTICLES 21, 22, 29, 23

IN THE MATTER OF THE LAW REFORM ACT
SECTION 8 and 9

IN THE MATTER OF ORDER 53 CIVIL PROCEDURE
RULES

IN THE MATTER OF AN APPLICATION FOR LEAVE
TO APPLY FOR ORDERS OF CERTIORARI AND
PROHIBITION

BETWEEN

MEDELINE - - - - - APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS. 1st RESPONDENT
AND

CHIEF MAGISTRATE . - - - - 2nd RESPONDENT

MILIMANI LAW COURSE

KENYA SCHOOL OF - - - - 3rd RESPONDENT

INTERNATIONAL LAW

STATUTORY STATEMENT

A. DESCRIPTION OF PARTIES

1. The Applicant is a Multi-National Company with a Kenya Subsidiary which carry on business of print and media.
2. The 2nd respondent is the body mandate to conduct criminal investigations in Kenya.

REGISTRATION NUMBER:

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Questions 6

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either mark

3. The 2nd Respondent is a judicial office of the Chief Magistrate Court established under the Constitution of Kenya

4. The 3rd Respondent is a school operated and runned in Kenya.

B. RELIEFS SOUGHT

a) AN ORDER OF CERTIORARI to quash the decision of the 2nd Respondent in issuing a warrant of arrest for the directors of the applicant

b) AN ORDER OF PROHIBITION to prohibit the 1st Respondent from arresting the directors of the applicant

c) That the orders sought operate as stay.

C. GROUNDS upon which the reliefs are sought

i) Abuse of office power

The 2nd respondent in issuing a warrant of arrest abuse the office by failing to ascertain the facts of the charges.

The 1st respondent in deciding to arrest the applicant's director abuse the power vested in him by failing to conduct proper investigation.

ii) Irrationality.

The 1st respondent's decision to arrest the applicant's directors was irrational and unreasonable as it was not based on any evidence.

DATED at NAIROBI this xx day of xx

xx

Advocates for the Applicant

DRAWN & FILED BY:

xx ADVOCATES

TO BE SERVED UPON:

DIRECTOR OF PUBLIC PROSECUTION.



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DEPARTMENT
MISCELLANEOUS CRIMINAL APPLICATION NO XX OF XX

IN THE MATTER OF THE CONSTITUTION OF KENYA
ARTICLES 21, 22, 23, 49

IN THE MATTER OF THE LAW REFORM ACT
SECTION 8 AND 9

IN THE MATTER OF ORDER 53 CIVIL PROCEDURE
RULES

IN THE MATTER OF AN APPLICATION TO APPLY FOR
LEAVE TO APPLY FOR ORDERS OF CERTIORARI
AND PROHIBITION

BETWEEN
MEDELINE - - - - - APPLICANT
AND
DIRECTOR OF CRIMINAL INVESTIGATIONS - - - 1st RESPONDENT
AND
CHIEF MAGISTRATE - - - - 2nd RESPONDENT
MILIMANI LAW COURTS
AND
KENYA INTERNATIONAL SCHOOL OF LAW - - - - 3rd RESPONDENT

VERIFYING AFFIDAVIT
I, ESCOBAR of P. O. Box xx, a resident of xx
within the Republic of Kenya do make oath
and state as follows: that:
1. I am a director of the Applicant, duly



Write on both sides of the paper.

Questions 6

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authorized and competent to swear this affidavit.

- a. That the 3rd Respondent advertised a five year tender for supply of quick response code readers and stickers to be used by its students as they access the school.
- b. That the applicant submitted its bid and was awarded the tender partly because it had supplied similar services to other government institutions.
- c. That on April 2020, the 3rd Respondent's students raised complaints that they were unable to access the school since the applicant's machines were faulty.
- d. That the applicant was not given an opportunity to remedy the faulty machines.
- e. That the matter was referred to the 1st Respondent to conduct investigations after which some employees and students of the 3rd Respondent were arrested.
- f. That the 2nd Respondent issued a warrant of arrest for the directors of the applicant on the basis that on the investigation report by the 1st Respondent alleging that they colluded with the employees of the 3rd Respondent to divert the authentic machines for Ksh. 50 million kickback by another company in South Sudan.
- g. That the directors of the applicant have never been questioned.
- h. That I am informed by Alberto that due to his age of 78 years he cannot travel to Kenya.
- i. That I am informed that Padrino resigned from the company three years ago and I take care of him on a daily basis.



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Questions 6

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11. That I make this affidavit in support of the application for Order of cessation and prohibition.

12. What is deponed to herein is true to the best of my knowledge, information and belief.

ISWORN BY THE SAID ESCOBAR

THIS day of XX

BEFORE ME

COMMISSIONER OF OFFICE

DRAWN & FILED BY:

XX ADVOCATES

TO BE SERVED ON

DIRECTOR OF PUBLIC PROSECUTION

A/HK



WORST PERFORMED



Officer	Initials
Checker	T
Data Entry	C.L.
1 st Verification	E.M.L

81881



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

UNIT CODE: **A T P I O I** SUBJECT/UNIT **CRIMINAL LITIGATION**

REGISTRATION NUMBER:

DATE: **25/06/2021**

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.
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Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	00	S K	00			
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TOTAL MARKS	02		02			

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ISSUES

- 1) Who are the people to be charged?
- 2) What are the specific charges to be preferred.

APPLICATION RULES

Criminal Procedure Code

APPLICATION

A charge is an offence committed under section 85 of the Criminal Procedure Code.

- 1) The investigating officer will charge Atoti with "General punishment for theft under section 275 of the Criminal Procedure Code.
- 2) The investigating officer will take her back to the station to prepare a charge sheet and ~~as~~ of the offence above.

CONCLUSION

Atoti will remain in jail and her date will be set in court for pre-trial.

1b ISSUES

- i) What is the law or How will the investigating officer deal with, Kaama's complaint?

RULES

- i) Criminal Procedure Code

ii) Victim Impact Assessment

APPLICATION

- i) When the investigating officer was attending to Mr Kaama's Complaint he had to try to explain to him that Atoti has been dealt with and the situation was under control. He does not necessarily have to mention what Atoti was charged with.
- ii) Also the investigator should be going through a Victim Impact Assessment which is under section 86 of the Criminal Procedure Code as well. This will see how he has been affected by what has just happened.

CONCLUSION

The investigator has ~~dealt~~ and should deal with the situation when dealing with the complaint of Mr Kaama as it may be ~~over~~ have a bad impact on Mr Kaama traumatically and also in trusting the police.

Tom and Tom advocates

Rose Avenue P.O. Box 123 Nairobi

Our Ref

Your Ref

5/02/2020

M Kalai

Department of Public Prosecutions

P.O. BOX 123

Nairobi Dear Sir

Write on both sides of the paper

Questions 1cDo not write in
either margin

Dear Sir

1c

LEGAL ADVISEISSUES

- 1) What are the pre-trial issues? ~~What are the~~

RULES

Criminal Procedure Code

APPLICATION

- 1) MKali would talk to the police officers at hand and receive the charge sheet documents.
- 2) He would then examine the documents from the police ~~including~~ e.g. charge sheet, witness statements.
- 3) Furthermore he would then prepare the witnesses for trial.
- 4) He would then provide his files to the clerk to the court so as to trial to begin.

CONCLUSION

Those were the pretrial issues and steps which were likely to arise for MKali.

Yours faithfully

John John

1a) ISSUES

- ① Who are the people to be charged?
- ② What are the specific charges to be preferred

RULES

- ① Criminal Procedure Code
- ② Sexual Harassment Code
- ③ Rape Act

APPLICATION

- ① The investigator will charge Atohi with "General punishment for theft under section 375 of the Penal Code"
- ② The investigator will take her back and prepare a charge sheet of the offence above
- ③ He will then go and charge Mdosi with Sexual Harassment and Rape

CONCLUSION

Atohi and Mdosi will remain in jail until their date is set in court. However can leave if bail is granted.

Vivek Patel

09/20

S
2

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REPUBLIC OF KENYA
AT THE HIGH COURT IN NAIROBI
CRIMINAL SUIT NO. 123

SIMBA LTD

APPLICANT

COLLINS MATE

RESPONDENT

COLLINS MATE

CERTIFICATE

3a

Tom and Tom Advocates

Rose Avenue P.O. Box 123 Nairobi

Our Ref:

Your Ref:

23/06/2021

Department of Public Prosecutions
Rose Road P.O.Box 123 Nairobi

INTERNAL MEMO

ISSUES

1) How the prosecutor can proceed with the case?

RULES

2) Criminal Procedure Code

APPLICATION

1) The prosecution can go ahead and start trying and put forth discrediting argument the charge and making it a duplicity of charge as they attempted to all the evidence is there including a confession.

2) The villagers being intimidated by the Motomoto gang

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Questions 3a, 3b

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will cause the initial charges to be dropped as there are no witnesses.

- 3) These rules show you should try and avoid this by also trying to convince the nurse to testify or write a witness statement.

CONCLUSION

The prosecutor can be successful if they are quick to act on this issue as once the three gang members are released it will be very bad for the community and not a negative impact on the Department of Public Prosecution.

Yours faithfully,

John John

3b

Date

Department of Public Prosecution, Malawi

INTERNAL MEMO

ISSUES

- 1) Legality of producing self recorded statement as evidence in a prosecutions case

RULES

Criminal Procedure Code

APPLICATION

- 1) Mzimba Motomoto's lawyer challenging the legality of the that particular statement would have consequences for the prosecution. It could lead to a retrial as a result in case of a mistrial which would be a release of the criminals.

- 2) This could also lead to Mzimba being jailed for her actions, and the prosecution with also the prosecution being affected as their reputation for not being able to convict criminals.

CONCLUSION

Marijuana would be ~~a legally serious matter~~
It is illegal and the prosecution should be very careful when
putting forth evidence to the court.

Yours faithfully

John John

5a They may use
A charge comes under Section 85(1) of the
Criminal Procedure Code.

They may allow it if:

- 1) ~~the~~ The level of severity of the charge
- 2) If the person being charged is one who is ~~a~~ of a high risk
to society.
- 3)

(02/10)

2/
10

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Questions *Re*

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REPUBLIC OF KENYA
AT THE HIGH COURT NAIROBI
CRIMINAL COURT CASE NO. 123

SIMBA LAD

APPLICANT

COLLINS MATE

RESPONDENT

CERTIFICATE OF URGENCY

I Ali Swalih an Advocate of the High Court do hereby certify
this matter to be more urgent and would

REGISTRATION NUMBER:

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Questions

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~~REPUBLIC~~
REPUBLIC OF KENYA
AT THE HIGH COURT
CRIMINAL CASE NO. 123

SIMBA LTD

APPLICANT

COLLINS MATE

DEFENDANT ^{RESPONDENT} ~~NOT RESPONDENT~~

NOTICE OF MOTION

O/P

C

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Questions

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[3.]

Suitability, Examining

Boil I Bond guidelines

151 CPC Consignment certificate

123 CPC Interim order

128 Discharge

Anhe

4(2) COK

Right to read

Boil writing

[10]

5 Police standing rented

Reforms

167 evidence act

Ajedza v republic

50 Constitution of Kenya

Procedure

Pleas

208 CPC guilty

Adam v Republic

Plea guilty

Procedure

Legal principles

Muthua

not guilty

suit

innocent

wants grant

acquit

body

agreement

4 years

35 1/4 CPC Mag → H.C.

Charge

85 CPC

Review

Count 1

Particulars of offence

Statement of offence

OCS investigating officer

