

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.

ATP 101: CRIMINAL LITIGATION

MONDAY 24TH OCTOBER, 2022.

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) 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

Mzito is a wealthy business man and the Managing Director of Usiku Sako Limited. On Friday morning, he learnt through the Director of Criminal Investigations and Office of Director Public Prosecution (ODPP) official twitter handles that the infamous *Kamata* shortlist was out. His name and that of Usiku Sako Limited, were included in the list of persons to be charged with the *Mzinga* water scandal that had dominated the news for the last few months. It was widely reported in the media that about Kshs 5Billion had been swindled in ‘money heist’ style. It was alleged that his company Usiku Sako Ltd received Kshs 1.5 Billion which had been distributed to several accounts in a record 2 days. The ODPP indicated that Mzito and Usiku Sacco was to be charged with Fraudulent Acquisition Contrary to Section 45 (1) (a) as read with Section 48 of Anti-Corruption and Economic Crimes Act No 3 of 2003.

At the time of receiving the news, Mzito was on his way to Wilson Airport for a planned weekend getaway on a privately chartered jet with his girlfriend, Clande. Upon receiving this news, he contacted you his lawyer seeking advice. He has agreed to pass by your office for advice.

Mzito informs you that he was expecting investors from Venezuela on Monday into the country for a mining investment deal in Kwale County. He informs you that, it is very important for this deal to be completed before the new government is sworn into office. It has been the practice at the Anti-Corruption Court that the Magistrates grants cash bail up to a third of the amount in issue; in this case, Kshs 5 Billion. Mzito is apprehensive that he would not be able to raise such an amount as he did not have it in his bank account. He has instructed you to represent him.

- a) With aid of statutory provisions and decided cases evaluate and advise Mzito on:
 - i) The entire process of Bail and Bond at the Magistrate Court. (4 Marks)
 - ii) The events that will unfold during arraignment should he be arrested. (4 Marks)
- b) During the arraignment, the Chief Magistrate granted your client bond of Kshs 50 Million with an alternative surety of Kshs 150 million and indicated that the Court was *functus officio*. Mzito informs you that he is unable to raise the amount. Draft the main application. (12 Marks)

QUESTION TWO

Villagers in Mtaa Safi were awoken by news that the body of Mashaka, who had been missing for 2 years and feared dead had been found at the nearby forest. A young boy aged 12 had found a note crafted indicating the location of the body.

Police retrieved the body and an autopsy and DNA tests confirmed it was Mashaka's. They commenced investigations leading to the arrest of Dudu aged 17 years, Baya aged 16 years and Joka aged 20 years, Mashaka's friends. They were charged with the murder as they were last seen with him. The murder weapon was not recovered.

On arraignment in court, and before plea was taken, Dudu and Baya approached the prosecutor. In return for a lesser charge, they were ready to provide vital information including the location of the murder weapon and testify against Joka. They claim Joka planned and executed Mashaka. Their role was to facilitate the concealment of the body. They were prepared to share the motive for Joka's actions.

- a) Citing relevant provisions of law, evaluate the options available to the prosecutor. (5 marks)
- b) Evaluate the law and procedure the Court follows in the process of plea agreements. (5 marks)

QUESTION THREE

Matovi, an Advocate of the High Court of Kenya was employed as a Registrar of Titles and stationed in Kilifi county. During his normal duties, he received documents from Survey of Kenya department in Kilifi for the registration of land LR MN/VNJJ/201. The land that was being sold belonged to a Kizito Mnazi a Company duly incorporated in 2010. The title documents for LR MN/VNJJ/201 were signed and executed in 2008 by the said Kizito Mnazi Company Limited. In June 2019 Kizito Mnazi Company limited was seeking to sell the land to Jisaidie a self-help group in Kilifi county and needed to have the transfer registered in their name before they could transfer the balance of the purchase price. The officials had signed the transfer documents. Matovi registered the title in the name of Jisaidie self Help Group after satisfying himself that Kizito Mnazi Company was a duly registered company and that all the paper work was in order.

Few months after effecting the transfer, Maji Mingi, a businessman and a resident of Kilifi County, was alarmed on seeing that there was an attempt to put up a fence over his property LR MN/VNJJ/201. He confronted the persons putting up the fence who informed him that they were the rightful owners of the land. He reported the issue to the DCI offices in Malindi. Investigations were conducted and it turned out that Maji Mingi was duly registered proprietor of the LR MN/VNJJ/201 and have a genuine title issued to him in 2003. Investigations further established that the Registrar could not have detected that the land belonged to two persons with the later title issued to Kizito Mnazi Company being equally genuine. Matovi recorded his statement and the Directorate of Criminal Investigations (DCI) officers were satisfied with the response given. They assured him that he would not be charged. The file was forwarded to the

office of the Director of Public Prosecutions (ODPP) by the DCI. Upon receipt of the file by ODPP, it turns out that the Prosecutor who was handling the file and Matovi were school mates. There was a grudge between Matovi and the Prosecutor over a girl during their Campus days. The Prosecutor recommended that the Registrar be charged. The evidence indicated that Matovi ought to have been aware that it was not possible for Kizito Mnazi to own LR MN/VNJJ/201 as the company was incorporated in 2010 yet the title was registered in the name of the company in 2008. Matovi was charged before the Malindi Chief Magistrate who happens to have been the cause of the grudge between him the Prosecutor. Matovi is aggrieved that he is not likely to get a fair trial and that the decision of the Director of Public Prosecution was driven by the grudge and not an evaluation of the facts and the law. He approaches you to represent him. You wrote a letter to the ODPP for review of the file and no response has been forthcoming for the last six months despite follow ups.

Prepare the substantive Application to secure the interest and rights of Matovi.
(10 Marks)

QUESTION FOUR

Marcus Brutus was a civil servant working in a State Corporation since 2001. He rose through the ranks and became the head of procurement in 2008. In 2014, he approached Cleopatra a potential supplier of executive office safes which were needed for the MD's office at a cost of Kshs. 70 million. Brutus privately received Kshs. 10 million to ensure that the tender was awarded to Cleopatra's company. The money was deposited in cash to his bank account in Karen in October 2014.

The tender committee comprising of six members was advised by Brutus to award the tender to Cleopatra. The tender committee flouted the Public Procurement and Asset Disposal Act 2015 by failing to consider that the company by Cleopatra had not met the mandatory requirements for a direct procurement. The State Corporation paid Kshs. 70 million to Cleopatra's account. Following an audit query, the matter was reported to Directorate of Criminal Investigations who commenced investigations in 2017. Investigations revealed that Brutus, Cleopatra and the tender committee were culpable.

Section 39 of the Anti-Corruption and Economic Crimes Act, 2003 provided that a person is guilty of an offence if the person corruptly receives or solicits or corruptly agrees to receive or solicit a benefit or corruptly gives or offers to give or corruptly agrees to give or offer a benefit. On 23rd December 2016, the president assented to the Bribery Act 2016 which had a commencement date of 13th January 2017.

Under Section 23 of the Bribery Act, 2016, the Anti-Corruption and Economic Crimes Act, 2003 was amended by deleting Section 39. Section 27 of the Bribery Act provides

that any investigations or prosecutions or court proceedings instituted before commencement of the Act should be instituted and continued under the Bribery Act 2016.

Section 5 of the Bribery Act 2016 provides: A person commits the offence of giving a bribe if the person offers, promises or gives a financial or other advantage to another person who knows or believes the acceptance of the financial or other advantage would itself constitute the improper performance of a relevant function or activity.

Section 6 of the Bribery Act 2016 provides

- 1) *A person commits the offence by receiving a bribe if:-*
 - a) *The person requests, agrees to receive or receives a financial advantage intending that in consequence a relevant function or activity should be performed improperly whether by that person receiving the bribe or another person.*

Brutus and Cleopatra learnt through social media that Directorate of Criminal Investigations had forwarded the file to the Director of Public Prosecutions with recommendation that they be charged. They are greatly apprehensive that they might be arrested and charged. They disclose to you that indeed they had a transaction of Kshs. 10 million. However, that money was for supply of building materials for an apartment that Brutus was constructing. They approach you to represent them and instruct you to give them an opinion.

- a) With aid of statutory provisions and decided cases, evaluate all the possible charges and counts against those found culpable. (5 marks)
- b) Assuming that the DPP consents to the charges proposed by DCI and directs the arrest and prosecution of Brutus, Cleopatra and the tender committee members, evaluate the possible argument that might ensue during the first arraignment. (5 marks)

QUESTION FIVE

'It is prudent for the same court that heard this matter to consider and evaluate mitigating submissions and evaluate the appropriate sentence befitting the offence committed by the petitioners.....' Supreme Court of Kenya Maraga CJ, Mwilu DCJ, Ojwang, Wanjala, Njoki and Lenaola in *Francis Kariuki Muruatetu & Another vs Republic 2017 eKLR.*

In light of the above observation, evaluate the main principles guiding appeals from the Magistrate Court all through to the Supreme Court. (10 marks)

QUESTION SIX

The Attorney General (AG) of the Barbados, a Commonwealth country made a request to Kenya through the Attorney General of Kenya indicating that Sipangwizi is her citizen and is wanted for committing the crime of murder. The AG of Barbados in his request forwarded information contained in a file with all identification documents to aid in processing the request.

The brief facts were that while in Barbadoz in January 2022, Sipangwizi was caught on CCTV footage beating up a minor for allegedly peeping through the window of their apartment. The footage showed that the minor was apologetic as he is seen kneeling with his arms out. It was observed that in the morning, Sipangwizi had quarreled with Panganga, the father of the minor over parking space at the apartment. Sipangwizi beat up the minor who sustained head wounds and was left bleeding. Sipangwizi is seen in the footage driving off the compound in haste. The security officer at the apartment is seen administering first aid to the minor. The minor was rushed to the hospital and declared dead on arrival.

Sipangwizi is said to have fled to Kenya via Gatar Airways and was for a long time hiding at Mukuru slums in Nairobi County for fear of arrest. The Crown Court in Barbados has issued a warrant of arrest against Sipangwizi. Kenya enjoys a reciprocal relationship with Barbados through both diplomatic and informal channels of communication. In addition, Barbados is a party to the London scheme of extradition. The International Police were able to locate him and are apprehensive that he might relocate without a trace. The Director Public Prosecutions has given authority for the commencement of proceedings with a view to have Sipangwizi taken back to the Barbados.

Draft the appropriate pleadings.

(10 Marks)

HIGHEST SCORED

Officer	Initials
Checker	LM
Data Entry	CM
1 st Verification	MAO

200366



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: 24th OCT 2022

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	15 ✓	FK	15			
2.	07 ✓	PM	07			
3	09 ✓	FK	09			
4	05 ✓	FK	05			
5.	10 ✓	PM	10			
TOTAL MARKS	46	PM	46			

Write on both sides of the paper

Questions ... ONE

A-i)

Bail and Bond at the Magistrate court is guided by the Bail and Bond policy guidelines.

Bail or bond is issued to an accused person who has been presented in court, had the charges against them read and they plead not guilty. It is a mode of enforcing attendance in court by depositing a sum of money or a property title it in court.

Above from Bail pending hearing, which is the one stated above, there are other types forms of bail and they include:

Police bail - This is bail paid at the police station for an accused to be released but to ensure they appear in court to take plea. Its amount is defined by the Officer Commanding a Station.

Anticipatory bail - This is bail paid by a person who expects or anticipates to be arrested on criminal charges. It is granted when an accused applies to court stating the grounds and ensuring attendance.

Bail or bond is then set to a fixed amount and after payment or deposit, one is issued with a receipt.

In the event that one fails to appear, the court is at the discretion of forfeiting the bail or cancelling the bond terms.

When an accused is acquitted, the court also has power to order that the cash bail money is returned to the depositor.

After sentencing, bond reverts back to the depositor as well.

ii)

In the event犯人 is arrested, the following events will take place during his arraignment.

a) the name will be called out in court and the charge sheet is read out to him, which should be in a language that he understands.

b) if he does not understand official language, a translator should be provided.

3

01

- (c) Each count that is the statement of offence and particulars of offence should be read separately and the plea to each charge is recorded separately.
- (d) Mbito will then plead his answer to the charges and the Registrar will record his answer in the clear quotation.
- (e) The court after recording his answer will give orders depending on his answer. If he pleads guilty, the court will go ahead and sentence and if he pleads not guilty, the court will set bail and bond terms and give a date for hearing.

B).

REPUBLIC OF KENYA
IN THE ^{CHIEF} MAGISTRATES COURT AT MAIROBI.
CRIMINAL CASE NO 717 OF 2002

REPUBLIC

MZITO

WIRKU SASSO LIMITED

1st ACCUSED

2nd ACCUSED

Certificate of Urgency

I, Nancy Kimbo, an advocate of the High Court of Kenya, working in the name of the firm of Kimbo Katela and Company Advocates, whose name in this matter is recorded, hereby certify this matter as urgent and I pray that this court may address it in the earliest convenience. If this matter is not regarded as urgent, the accused, Mbito and Wirku Sasso will be subjected to detrimental law.

Nancy Kimbo
Kimbo Katela & Co. Advocates

Proposed by
Kimbo Katela & Co. Advocates.

Write on both sides of the paper

Questions ONEDo not write in
either margin

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI,

CRIMINAL CASE NO 717 OF 2022.

REPUBLIC

v

M21TO

1st ACCUSED

LISIKU SACCO LIMITED

2nd ACCUSEDCHAMBER SUMMONS

Let all parties be present in Chambers of the Honorable Judge on the 17th Day of November 2022 when the accused persons have applied to be heard ex parte.

Therby praying for the following:

1. That the Honorable court may reduce the bail granted to the accused persons.
2. That this Honorable court consider giving the accused persons alternative bond terms.
3. That this Honorable court consider increasing the number of sureties.

Therefore sought on the grounds:

1. That the accused persons is not in a financial position to afford the amount set for bail and bond.
2. That the accused persons are considered innocent until proven guilty, hence their right to freedom is still guaranteed.
3. That it will be in the interest of fairness and justice to review the bail and bond terms.

Mary Kimbo

Kimbo Katedla & Co. Advocates

To be Served Upon,

Office of Director of Public Prosecution

Harambee House, Nairobi

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NAIROBI
CRIMINAL CASE NO 717 OF 2022

DEPUBLIC

MZITO

WIKI JAKD LIMITED

1st ACCUSED.

2nd ACCUSED

Supporting Affidavit

1. Mzito a resident of Nairobi, Kenya do hereby swear;
1. That I am the 1st Accused person in this case, being the Managing Director of entity 2nd Accused.
2. That I am unable to raise the money that was issued by this honorable Court as my terms of bail and bond.
3. That I have tried all means possible to raise the money but it has proven hard due to its value.
4. That I will undertake to look for bail or bond in the event this Honorable Court grants my plea to reduce the amount.

Swear By:

Mzito

P.O Box 374 - Nairobi.

This day of 25th OCT 2022

Prepared by

Kimbo Ratahia & Co. Advocates

To be Served Upon:

Office of Director of Public Prosecution.

Hardinboos House - Nairobi.

(15/20)

Write on both sides of the paper

Questions ... TWO

Do not write in
either margin

A.

The Prosecutor in this case has the following options:

1. The prosecution can suggest a plea agreement. This agreement requires the accused person bargaining to plead guilty for a lesser sentence. In this case, prosecution can propose a plea agreement with the condition that the accused persons plead guilty and they assist in investigation.
2. The prosecution also has the option of turning Baya and Dudu into prosecution witnesses. The two have approached the prosecution with the intention of providing vital information or well as testify. State can take advantage of this position and call them as prosecution witnesses.
3. The prosecution has the option of declining to plea bargain. The law provides that an accused person has this right. It is however not unconditioned. Prosecution can provide grounds for objection as to a plea agreement.
4. The prosecution has the option of charging Jaka for the offence of murder and varying the charge when it comes to Baya and Dudu and charge them with a lesser offence of being accomplices. This is in line with the fact that the two minors are willing to assist in the investigation.

(3/5)

4

B.

The Criminal Procedure Rules provide for Plea agreements in Criminal matters.

If a plea agreement is proposed by the Prosecution and signed in addition to the accused person's signature.

It should state clearly the bond terms and give special instruction as to the conduct of the accused during trial.

In most cases, Plea agreements usually suggest a sentence to be imposed on the accused person. It is however the court discretion when it comes to sentencing.

An accused person is usually put under oath. After being sworn in, the charges are read to him and the intentions of the charge. Court then inquires if the accused still wants to plea bargain. If they confirm the components of the agreement are read out in open court with the accused being asked if they understand its provisions.

The court will then record its remarks (and allow or refuse to admit a plea agreement).

Once a plea agreement fails in a matter, another agreement cannot be initiated. In some cases, the agreement is conditional. For example, if court's practice that in a case of stealing, for an accused to be able to plea bargain, they have to ensure all the property they stole is given back or compensated.

After court admits the plea bargain, it is signed and stamped.

(4/5)

07/10

2/10

Write on both sides of the paper

Questions THREE

Do not write in
either margin

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

JUDICIAL REVIEW DIVISION.

MISCELLANEOUS CASE NO

OF 2022.

In the Matter of Contention of Article 23(3)(f) of the Constitution of Kenya 2010

In the Matter of Contention of Section 8 and 9 of the Law Reform Act.

In the Matter of application for Judicial Review Orders for Cessation and Prohibition.

Motavi

APPLICANT

Director of Public Prosecution

1st RESPONDENT.

Inspector General of Police

3rd RESPONDENT.

Directorate of Criminal Investigation.

Petition for Judicial Review
Orders.

OS

I, Motavi, a resident of Nairobi Kenya, and a practicing advocate of the High Court of Kenya, hereby do petition for the orders herein That;

1. This Honorable court may order / give orders of Cessation (quashing) the First Respondent from instituting criminal charges against the applicant.

2. This Honorable court may issue orders of Prohibition to the 1st and 3rd Respondents prohibiting them from filing any criminal charges or undertaking any prosecution of the applicant.

S

This Petition is sought herein based on the following grounds, as stated in the annexed affidavit that;

Do not write in
either margin

Questions THREE

Write on both sides of the paper

1. The respondents acted ultra vires to their powers or law enforcement bodies.
2. The respondents acted without any proportionality as compared to any other matter of this nature.
3. The respondents actions resulted in Abuse of office by charging the applicant.

It is my humble prayer that this Honorable Court may consider this Petition.

Dated: 25th OCT 2020

Matorvi
Petitioner.

To be Served Upon:
Director of Public Prosecution.
Ntimanini.

Directorate of Criminal Investigation
Kiambu.

REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA AT MOMBASA.
JUDICIAL REVIEW DIVISION.
MISCELLANEOUS CASE NO. OF 2022

In the Matter of Constitutionality of Article 23(3)(f) of the Constitution
of Kenya, 2010.

In the Matter of Constitutionality of Section 8 and 9 of the Law Reform Act
In the Matter of Application for Judicial Review Orders of Cancellation
and Prohibition.

Write on both sides of the paper

Questions THREE

Do not write in
either margin

Mafavi

Applicant

Director of Public Prosecution
Directorate of Criminal Investigation1st Respondent.
2nd Respondent.

Vetting Supporting Applicant

1. Mafavi, a resident of Nakuru, Kenya do hereby swear;
2. That I am the applicant in this case working as an admitted Advocate of the High Court of Kenya.
3. That the Defendants in this case have acted beyond their power by instituting criminal proceedings.
4. That the criminal proceedings are baseless and emanate from pure malice and bad faith.
5. That my rights are being infringed with the initiation of criminal proceedings.

Sworn By: Mafavi

This day of 25th Oct 2022.

Prepared by:

Mafavi and Co. Advocates

To be served Upon:

Director of Public Prosecution
Nairobi.Directorate of Criminal Investigation
Kambo.09
10

(09/10)

A.

The following are the possible charges:

1. Brutus and Cleopatra can be charged with Corruption of Public Officials under the Anti-Corruption and Economic Crimes Act. They both got into an illegal transaction so as to ~~win~~ a tender.
2. Cleopatra can be charged with offering a bribe to a public officer and on the other hand Brutus can be charged with accepting a bribe.
3. The Tender Committee under the advice of Brutus overlooked the mandatory requirements for direct procurement. A charge of ~~Bad bidding~~ can be brought up under Public Procurement and Disposal Act.
4. Brutus is a public officer / civil servant whose functions and powers are regulated. Him taking a bribe to ~~win~~ a tender is accused in abuse of power. This can be another charge.
5. Some money was deposited in Brutus's account. He can also be charged with keeping the proceeds of corruption activities or illegal trade.

B.

Possible arguments that might ensue during the first arraignment include:

1. Lack of merit.

The accused persons may argue that the criminal charges facing them have no merit. This is because Cleopatra alleges that the 10 million shillings was from a different business transaction.

2. Dubious charges.

The accused persons may argue that the charges are complex, duplicated and not well drafted. This is in the case where one accused person is facing several counts.

3. Abuse of process.

In most corruption proceedings, the web of the accused persons are usually interlinked with. This interlinkage may be prior to

Write on both sides of the paper

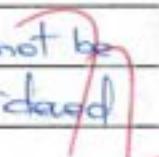
Questions **FOUR**Do not write in
either margin

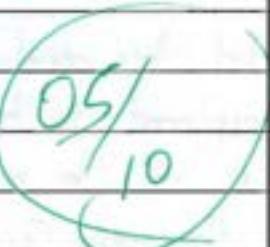
assignment or after. One of the issues likely to come up is the breach of privacy when it comes to scrutiny of the committee members on whether they received money, what they keep  and if they used it.

4. Jurisdiction.

Another issue likely to arise is whether the court has powers to listen to this matter.

5. Limitation of time.

The accused persons may allege that those charges cannot be of merit if they are based on actions that are considered  to be outside the statute of limitation.

( 05/10)

05
10

Do not write in either margin

Questions CSIX

Write on both sides of the paper

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CAUSE NO. OF 2022.

Republic Director of Public Prosecution.

Sipanguizi

Applicant

Respondent

Pursuant to Order 53 of CPC, The Extradition (Commonwealth and Foreign Countries) Act and all other enabling provisions of the Law).

Motion.

Let this court be made on the 30th of October 2022 for the applicant to be issued with the following orders:

1. That the respondent be arrested and presented before this Honorable Court.
2. That the respondent be extradited to Barbados to answer on the charge of Murder as annexed.
3. That the respondent relocation be carried out as soon as possible.

Thereby on the grounds that:

1. The respondent is a citizen of Barbados, a Commonwealth member.
2. The respondent was charged with Murder in January 2020 of a boy in Barbados.
3. The respondent fled the country for a long time with attempts to avoid arrest.

Dated this 25th OCT 2022.

Write on both sides of the paper

Questions **SIX**Do not write in
either margin

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CASE NO OF 2022.

Director of Public Prosecution

v

Sipangori si

Applicant

Respondent.

Supporting Affidavit.

1. The Director of Public Prosecution hereby states that:
1. I am the officer in charge of extradition proceedings as per the ODPP Act.
 2. The respondent is a citizen of Barbados currently living in Nairobi.
 3. The respondent fled her country after being charged with murder.
 4. The identification documents necessary to know the charge of murder are annexed in this application.

3

Sworn By

Director of Public Prosecution

This 25th Day of October 2022.

(10/10)

(10/10)

LEAST SCORED

Officer	Initials
Checker	MG
Data Entry	DT
1 st Verification	MTHO

200342



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: 24th OCTOBER, 2022

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
2	02	PM	02			
3	00	FK	00			
4	01	FK	01			
5	00	PM	00			
1	01	FK	01			
TOTAL MARKS	04	PM	04			

Write on both sides of the paper

Questions 2

Do not write in
either margin

(a)

During a plea bargain agreement, the prosecutor in charge of the case has lots of options regarding the apprehension of the perpetrator responsible for the heinous crime. In most cases, the prosecution has the sole mandate of waiving the options of the accused party. In such cases, the accused is left with the option of choosing the plea bargain agreement or not. By this, it means that he or she has the option of pleading guilty or, not guilty regarding the charges brought against him or her.

The accused also has the sole mandate to be heard expeditiously regarding his or her case. The constitution of Kenya 2010 outlines the relevant provisions and options available to the accused party in such instances.

Further, the prosecutor has options relevant enough to acquit or convict the accused party. This is only available if the evidence is credible enough to indicate the threshold of the case in question.

In this instance, the investigative report clearly portrays that the three accused parties were involved in the murder as above mentioned. The accused parties state categorically that there was a murder weapon that was discovered and two of the parties have corroborative evidence to accompany their sworn statements.

The prosecutor also has the option of arraigning different witnesses to produce their sworn written statements regarding what transpired during the events that led to the death of the victim.

The prosecutor also has the mandate to question the police or the investigative officer after the seven(7) days option of period of investigation has lapsed and a detailed report has been produced and brought before the court of law to affirm of really what might have transpired. During this period,

2

the investigating officer can be questioned of what might have happened and if he or she has any information that could help the prosecutor to discharge his or her role. mandate and conclude the case bringing the perpetrator to book.

Another option that the prosecutor has is questioning the doctor after the production of the doctor's or autopsy report which might lead to know what kind of murder weapon might have been used to murder the victim and if the weapon can be adduced before the court of law, the doctor report should also be able to show if there were any fingerprint tracer that could point to the murderer or the killer.

This will give the prosecutor quite a limited time to conclude his or her investigation and bring the convict the killer according to the criminal procedure provisions.

215

(b)

Before the commencement of the plea taking process and immediately after the arrest of an individual, one is taken to the police station for a period not less than twenty four hours (24 hr) before he or she is arraigned in court. Here, the individual's name is recorded in the DB book and an DB number issued to him or her.

Afterwards, the charges are read to him or her directly and he or she is told the reason as to why he or she has been arrested.

Afterwards, he or she is given an option of taking a bail pending his arrangement to court to answer to the charges brought against him or her. If he or she fails to produce enough or sufficient cash to cater for the bail or bond, he or she is detained with arrangement of being arraigned in

Write on both sides of the paper

Questions

Do not write in
either margin

court the following day.

After that, his or her fingerprints are taken at the police station for identification purposes and also for him or her to be booked for court the day after.

The next day, the individual is brought before a judge or a magistrate where he/she is read for his or her charges and allowed to take the plea of guilty or not guilty according to the charged offence.

0

0/5

02/10

2/10

Matoro has the right to a fair hearing which is enshrined under article 50(2) of the Constitution of Kenya 2010 which talks about the same. This may include the right to be heard expeditiously and a conclusive or detailed evidence adduced.

This can be read together with Fair Administrative and Action Act which may be used to outline the rights of an accused party. In this instance, we can categorically state that Matoro acted erroneously without the thought that the parcel of land might have been sold to two different buyers.

Since the first title documents were executed in 2005 and a genuine title was also issued in the year 2003, the five year deficit clearly portrays that the first title holder is the real and ideal owner of the parcel of land.

Applying the Solomon's wisdom of first come first serve, and also including the relevant provisions, we could easily conclude that Maji Mingi was the first proprietor of the aforementioned parcel of land.

Matoro on the other hand could be said to have been caught in a limbo or a tussle between the two individuals and the Directorate of Criminal Investigations. After giving his recorded statement, we can be guided by Article 159 of the 2010 Constitution in settling the aforementioned matter arbitrarily after the investigations have been conducted to the latter, and a conclusive or detailed report issued regarding the same.

We can also categorically state that Matoro was not at a position to dispense with two titles of the same property keeping in mind that a parcel of land can only be having one title and in this instance, it ought to be dispensed to the first individual with whom the same was issued.

Write on both sides of the paper

Questions

Do not write in
either margin

He also has sufficient grounds indicating that he will not receive a fair hearing given that him being charged at the Malindi Court Magistrate court which happened to have brewed the grudge between him and the prosecutor, is sufficient grounds to indicate that he is not going to get a fair hearing in the same court and a transfer of the case to a different court under a different magistrate will enable ~~the~~ the fair hearing to come.

00/10

The various charges that could be brought before Brutus, Cleopatra and the committee include:

A charge of obtaining money illegally or through false preference; This can be seen through the illegal means of awarding the tender through to Cleopatra company. This is regarding that the Company had not met the threshold of being awarded the tender hence they were not eligible for the procurement of the products due to the failure to meet the requirements.

The charge of gross misconduct is also eminent since Brutus had no mandate as a civil servant to make a proposal on the ideal company to part with the tender and the same gross violation might have been witnessed with the tender committee which flaunted the public procurement and asset disposal Act 2015 by issuing the procurement to Cleopatra even having after having noted that they were not qualified for the tender.

Another charge is that of attempted fraud;

This can be seen after the audit query report unveiled that Cleopatra was not supposed to be awarded the tender. This was a fraudulent offence since the company had corruptly received or extracted a benefit corruptly by being given the tender to supply the products. The offence herein is that of a promise to give an advantage to Cleopatra as a first priority leaving behind other potential bidders of the tender.

There is also the charge of attempted laundering.

This can be seen in the instance where Brutus and the tender committee insisted that Cleopatra be given the tender. This clearly indicates that there might be a syndicate to launder the money which had been directly

Write on both sides of the paper

Questions

Do not write in
either margin

deposited to Cleopatra's account before the direct procurement
was made.

- b) The argument that might ensue is why the direct procurement tender was not given to any other company other than Cleopatra. This is keeping in mind that even after the committee floated the tender requirements, the same company was still awarded the tender documents in the long run.

01/10

0

00

01
10

An appeal can only be made from a subordinate court to the higher court through a document known as the Memorandum of appeal.

This can be done after the case has been heard to the later and a determination of the issue reached or a conclusive ruling has been made.

If the aggrieved party feels like they were not well heard then they have a leveled ground to appeal against the court's decision at a higher court.

If the same party feels like the sentence made by the court where the matter is being heard is not satisfactory enough, then he or she is allowed by the law to appeal the matter at a higher court for a conclusive and satisfactory ruling.

10

0/10

00/10

Write on both sides of the paper

Questions 4

Do not write in
either margin

(a)

There exists four forms of bail at the court, this include;

Bail awaiting Trial

Bail awaiting Arrest

Anticipatory Bail

X

The process is only accelerated once the individual or accused has been arrested and presented before the court of law for taking of the plea.

The magistrate may be at a position of awarding bail or a bond with a surety of the same later on.

The magistrate will bail or the anticipatory bail which Malta might request from the court in this instance especially after allegations were brought before him for allegedly obtaining money through fraudulent and dubious means contrary to the fraudulent acquisition Act.

and the Anti-Corruption and Economic Crimes Act of 2003.

After the taking of plea, the accused has the mandate to decide if he or she is in need of a bail or a bond, the same can be communicated through his advocate or legal representative in this instance.

O

00

(i)

During the arraignment in court, he will be given the option of being heard and if he is found to be culpable of the offence brought against him, he will have the option of having to be given a bail pending the trial and hearing of his case or a bond having been deemed that he is not at flight risk and will be able to avail himself having being summoned by the courts at any instance to answer to the relevant charges brought forth before him.

01

1

Write on both sides of the paper

Questions

Do not write in
either margin

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT
CIVIL DIVISION AT MILIMANI
CIVIL CASE NO. DF 2022

BETWEEN
USIKU SAKO LIMITED
AND
THE OFFICE OF

?

Q

01
TO

01/20