

**COUNCIL OF LEGAL EDUCATION.**



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

**ATP 100: CIVIL LITIGATION**

**THURSDAY OCTOBER 13, 2022.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains SIX (6) 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**

You are an associate at Magonda and Company Advocates of P.O. Box 6738-00800 Nairobi. Email;magonda@gmail.com, Tel; 020462999. One of the associates in the firm has instructed you to take instructions from Joseph Ngolu of P.O. Box 39-90100 Machakos. On 16<sup>th</sup> August 2018, Joseph gave you the following instructions:

"In July 1987, Joseph purchased all that parcel of land known as Nairobi Block 17/68 from Samuel Joe of P.O. Box 389-00100 Thika at a purchase price of Kshs. 20,950,000/=. By then, Samuel did not have title to the land but was in possession of a letter of allotment. The total purchase price was deposited with Ndimo & Company Advocates in terms of an agreement dated 26<sup>th</sup> July 1987. The advocates paid Samuel a sum of Kshs. 15,445,000/= on the same day. The balance of the purchase price was to be released to Samuel upon him procuring the title and consent to transfer the land from the Commissioner of Lands within a period of six months from the date of the agreement.

Joseph took possession immediately upon execution of the agreement, fenced the property and deposited building materials worth Kshs. 5,000,000/= and has since been in occupation. Joseph never got title to the land. Ndimo & Co. Advocates paid the balance of the purchase price to Samuel despite the fact that no consent had been obtained. Joseph followed up the matter and found that a sum of Kshs. 29,000/= being arrears of land rent, had not been paid. Joseph paid the said amount and the Title was prepared and forwarded to Ndimo & Co. Advocates. The advocate prepared a Transfer of the land but Samuel refused to sign it.

On 2<sup>nd</sup> May 1995, Joseph placed a caution on the property to safeguard his interest. Samuel passed away in May 2000. His wife Lucy Joe obtained a Grant of Letters of Administration in January 2004. She has now threatened to forcefully evict Joseph from the parcel of land."

- (a) Write a legal opinion on the steps Joseph needs to take to have the property transferred to him and the issues you will consider before drafting any pleadings. (5 marks)
- (b) Draft pleadings seeking appropriate reliefs. (15 marks)

### **QUESTION TWO**

Peter Bowen filed a suit against David Brown in the Environment and Land Court in Nairobi claiming a beneficial interest in all that parcel of land known as L.R. no 87745. Before filing the suit, he had conducted a search which revealed that David Brown was the registered proprietor. David filed a defence denying that he was the registered proprietor of the said parcel of land. Peter conducted another search at the Lands Registry which revealed that the earlier search he obtained had a typographical error in that the property was described as L.R no 87745 instead of L.R no 87754. Upon inquiring from the Land Registrar why there was a discrepancy in the two searches, the Registrar confirmed that the earlier search had a mistake because of misfiling of the green cards. The new search also revealed that all that parcel of land known as L.R no 87754 is registered in the name of David Brown and Jane Brown.

Peter has filed an application seeking to amend his plaint to reflect the correct position. His application is based on the ground that the search he had obtained earlier made him believe that the correct property was L.R no 87745 which was registered in the name of David Brown, but after being served with the defence, he did another search which revealed that the correct number was L.R no 87754 and the land was registered in the name of David Brown and Jane Brown.

David has opposed the application on the ground that the application is an abuse of the process of the court and that Peter has never occupied the suit land. He stated that Peter is a land grabber who has filed many cases claiming adverse possession, hence his application should be disallowed.

You are a research assistant attached to a Judge sitting at the Environment and Land Court and the judge has asked you to come up with a draft judgement. Draft the ruling and give reasons for your decision. (10marks)

### **QUESTION THREE**

Cleaver and Company Advocates has two partners, John Cleaver and Peter Williams. The firm acted for Liz Jones of P.O. Box 1103 - 00200 Nairobi in Nairobi HCCC 801 of 2007. In January 2009, John Cleaver was employed by Zidco Company Limited as an in-house lawyer and stopped taking out practicing certificates but never resigned from the partnership. In 2010, Peter Williams established another firm in which he practices in the name and style of Williams and Company Advocates

The suit was concluded and the firm of Cleaver and Company Advocates filed an advocate-client bill of costs after a disagreement on fees payable. The applicant in that bill described himself as Peter Williams T/A Cleaver and Company Advocates. Upon

being served with the bill, Liz filed a preliminary objection challenging the competence of the firm of Cleaver and Company Advocates to maintain the taxation.

On 26<sup>th</sup> June 2022, the taxing master heard the objection, dismissed it and proceeded to tax the bill in the sum of Kshs. 350,000/=. On 10<sup>th</sup> July 2022, Liz approached you and informed you that she was dissatisfied with the decision of the taxing master.

- (a) Advise Liz on the steps she must take to challenge that decision. (5 marks)
- (b) Draw appropriate pleadings challenging the decision. (5 marks)

#### QUESTION FOUR

Maurice Williamson of P.O. Box 95657-00200 Nairobi and 17 others were employed by Carole Limited of P.O Box 28877-00100, a government parastatal, in various capacities. The initial employment was on casual terms for diverse periods, of two or three months. In 2008, upon lapsing of the term the 18 workers continued in the employment of the company without any interruption. The workers were members of the National Social Security Fund as permanent staff and the company made deductions from their pay and remitted the contributions to the Fund on their behalf.

The Company required the workers, who had acquired permanent status, to convert their status to casual status by demanding that they sign letters of employment on casual terms of service. In September, 2022 after long periods of non-payment, the Company offered to pay the workers part of their unpaid salaries as full and final payment up to the date of the payment. Upon acknowledging the payment, the Company would offer the workers contracts converting their employment status from permanent to casual. The conversion would be subject to the following conditions: that the conversion would be for an unspecified period not exceeding three months from the date of commencement; the wages would be determined at a daily rate; the workers would perform the assigned duties to the satisfaction of the company, failing which their services would be terminated; the workers would not have any other claims against the company apart from wages and that the employment on casual basis did not guarantee confirmation to employment on permanent basis. The workers, who considered themselves permanent employees, rejected the conversion of their employment contracts.

The Company involved Police Officers to force the workers to sign and accept the conversion contracts or get evicted from the houses provided by the company. Subsequently, the Company locked out the workers from 1.10.2022.

The workers contend that their rights protected by Articles 10, 41, and 232 of the Constitution have been violated and are keen in seeking legal redress against the said violation.

You have recently registered a firm trading as Pebo and Pepo Associates, Uajiri House, 5<sup>th</sup> Floor P.O Box 759767-00200 Nairobi Tel: +254 0204654777 Email: peboassociates@gmail.com.

The workers have given you the above facts and requested you to advise them if they have a valid claim and its chances of success. Proceed. (10 marks)

#### **QUESTION FIVE**

On 17<sup>th</sup> June 2022, the Employment and Labour Relations Court awarded Jane Marsi a sum of Kshs. 1,974,531/= against Tapso PLC. On 30<sup>th</sup> June 2022, her advocates presented a decree to court without notice to the respondent's advocates. The Deputy Registrar of the Court signed the decree as drawn since it was in agreement with the judgement. On 20<sup>th</sup> July 2022, her advocates having received the signed and sealed decree applied for execution without ascertaining the costs payable to her. The warrants of attachment and sale were issued to Chota Auctioneers who attached the respondent's properties on 30<sup>th</sup> July 2022.

On 5<sup>th</sup> August 2022, the respondent's advocates filed an application under certificate of urgency seeking stay of execution of the decree and review of the judgement and decree. The respondents relied on the grounds that they were not given any notice before the decree was extracted and that they have discovered that the claimant had been advanced a loan while she was an employee of the respondent and an amount of Kshs. 356,200/= was still outstanding among other grounds. The application was placed before the judge who declined to grant any interim orders but certified it as urgent and directed that it be served forthwith for hearing *Inter Partes* on 20<sup>th</sup> August 2022.

The respondent is dissatisfied with the services of its advocates and has approached your law firm to take over the conduct of the matter and to prosecute the application. However, before the respondent formally instructs you, it requires a legal opinion on the issues raised in the application.

Write a legal opinion on the legal issues raised and the merits or otherwise of the application. (10 marks)

#### **QUESTION SIX**

In 1980, Peter Happiness was registered as the absolute proprietor of all that parcel of land known as Kajiado Block 4/30120. John Hopkin instituted LDT Case No. 20 of 2008 at the Kajiado Land Disputes Tribunal claiming ownership of the said parcel of land. On 27<sup>th</sup> November 2009, the decision of the Kajiado Land Dispute Tribunal in LDT Case No. 20 of 2008 which was read on 18<sup>th</sup> March 2009 was adopted as a judgment of the court in Kajiado Chief Magistrate Court Misc Civil Application No. 45 of 2009 and a decree was issued. In May 2010, John wrote to Peter and enclosed transfer forms which he requested Peter to sign in default of which he would make an application seeking to have an officer of the court to sign on his behalf.

Peter did not sign the forms, instead, having been granted leave on 15<sup>th</sup> July 2010, he filed an application in the High Court at Kajiado on 19<sup>th</sup> July 2010 seeking an order of *certiorari* to remove into this court for purposes of quashing the proceedings and decision of the Kajiado Land Dispute Tribunal in LDT Case No. 20 of 2008 read on 18<sup>th</sup> March 2009 and adopted as a judgement of the Court on 27<sup>th</sup> November 2009 in Kajiado Chief Magistrate Court Misc Civil Application No. 45 of 2009.

The grounds in support of the application are that the Tribunal exceeded its jurisdiction in ordering Peter to transfer the suit property to John and that there was no decision capable of being adopted by the Court.

The application is opposed on the grounds that the *ex-parte* applicant submitted himself to the jurisdiction of the Tribunal and never raised any objection; that leave to commence these proceedings was obtained outside the statutory period; and that the claim before the Tribunal was that of working and occupying land.

You have been instructed by the *ex-parte* applicant to act for him. With the aid of decided cases and statutory provisions, prepare submissions on the orders sought and the legal issues raised that will be used to argue the application. (10 marks)

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

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

REGISTRATION NUMBER

DATE: **13<sup>TH</sup> 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
1(a)	3	18	WK			
1(b)						
2	08	WK				
3(a)	5	DH				
3(b)	5	DH				
4	8	VA				
6	8	VA				
<b>TOTAL MARKS</b>	<b>47</b>	<b>VA</b>				

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MAGONDA & CO. ADVOCATES  
 P.O BOX 6738-00800  
 Email: magonda@gmail.com  
 Tel: 020462999

Our ref:

Your ref:

Date: 16<sup>th</sup> August,  
2018

To: JOSEPH NGOLI  
 P.O BOX 39-90100  
 MACITAKOS

Dear sir:

RE: LEGAL OPINION ON STEPS TAKEN TO HAVE THE  
 PROPERTY KNOWN AS NAIROBI BLOCK 17/68

TRANSFERRED TO YOU.

The above matter refers.

Kindly find attached, our legal opinion on necessary steps to be taken to recover the above mentioned property. This is subject to our advocate-client meeting on 16<sup>th</sup> August, 2018.

## BRIEF FACTS:

In July 1987 you purchased the parcel of land known as Nairobi Block 17/68 from one Samuel Joe for a purchase price of kshs. 20,950,000/- The purchase price was deposited with the firm of Ndimo & Co. Advocates. Samuel Joe, the vendor was to procure title to the property as he only had a letter of allotment and also get the consent to transfer the land from the Commissioner of Lands within a period of 6 months from the date of the agreement. You took immediate possession of the said land where you have so far incurred a

number of expenses.

### ISSUES

We find the following issues to be critical and need legal solutions to enable you recover your land by getting the title documents.

- (i) Whether the intended suit is within the requisite 12 years limitation of time for land matters?
- (ii) Whether the firm of Ndimo & Co. Advocates acted in breach of the aforesaid agreement and should thus pay the damages by releasing the balance of the purchase price contrary to the agreement?
- (iii) Whether you are to recover further expenses incurred on the land which ought to have been incurred by the vendor?
- (iv) Whether the wife ~~of~~ <sup>to Joseph,</sup> Lucy Joe has any legal standing or chances of success in case she proceeds with her eviction threat?
- (v) Whether you have a ~~cause~~ <sup>cause</sup> of action against the estate of Samuel Joe?
- (vi) Which court has jurisdiction in this matter?
- (vii) Whether you can sue Lucy on behalf of the estate.

### RULE OF LAW

- (a) The Civil Procedure Act
- (b) The Statutes of Limitation of Actions Act
- (c) The Land Act
- (d) The Land Registration Act

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- (e) The Environment & Land Court Act  
(f) The Constitution of Kenya 2010

### ANALYSIS OF THE FACTS AND ISSUES

Issue 1: The limitation of Actions Act gives a 12 years period before which any action for recovery of land can be instituted. You entered into the sale agreement contract with Samuel Joe in July 1987. To determine when the time for the cause of action started to run we will look at the date of the contract and when exactly the breach of the said contract took place. It is until the vendor passed on and the wife Lucy Joe refused. Before Samuel died he refused to sign the transfer to you and on 2nd May 1995 you placed a caution. That in our calculations from around 1995 when the breach was clear to date 16th August 2018 when we take this instuctions from you approximately 23 yrs have lapsed.

Conclusion: The time for filing the suit to recover the land has lapsed as per the statute of limitations of Actions Act. We will have to file an application seeking extension of time within which to file the suit and leave of the court thereafter. The application will be by originating summons under Order 36 of the Civil Procedure Act.

Issue 2: The firm of Ndimo & Co. Advocates acted in breach of their fiduciary duty as an advocate by releasing the full purchase price you can later file a complaint with the Law Society of Kenya for the malpractice.

Issue 3: For the extra expenses you incurred on the hand like the kshs. 29,000/- for land rent get the relevant receipts to enable you recover as special damage

Issue 4

(iv) Joe's wife has no chances of succeeding with the action because you are a purchaser of value consideration hence have a valid right

Issue 5

(v) You have a legal standing and a valid cause of action as stated above in Issue 4.

Issue 6: This suit will be filed in the Environment and Land Court which has the <sup>special</sup> jurisdiction over land matters.

Issue 7: Lucy will be sued as the Defendant

Conclusion:

You have a valid cause of action. After filing the application to extend time within which to file the suit then you can proceed and file a recovery claim against the estate of Samuel / Joe by suing Lucy, the wife as a legal representative. For now your suit is not abated and needs to be revived first.

Yours faithfully

~~For Magonda & Co. Advocates~~

REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT  
AT NAIROBI  
CASE NO — OF 2018

Joseph Ngulu

Plaintiff

Lucy Joe being sued as the legal  
representative of the estate of Samuel Joe J - Defendant

PLAINT

"FAST TRACK"

1. The Plaintiff is an adult male of sound mind whose address of service for purposes of this suit shall be M/S MAGONDA & CO-ADVOCATES, P.O BOX 6738-00800 NAIROBI. Email: Magonda@gmail.com -
2. The Defendant is a female adult of sound mind being the legal representative of the estate of Samuel Joe (service of summons to be effected through the Plaintiff's advocates)
3. At all material times to this suit, the Plaintiff is the bona fide purchaser of the parcel of land known as Nauebi Block 17/68 for valuable consideration
4. That around July 1987 the Plaintiff purchased the suit property from Samuel Joe, the vendor at a consideration of Kshs. 20,950,000/-
5. That Samuel Joe, the vendor did not have a title but had a letter of alienation

6. The Plaintiff deposited the purchase price with the firm of Ndino & Co. Advocates in terms of the agreement entered between the Plaintiff as the purchaser and Samuel Joe as the vendor.
7. A sum of kshs. 15,445,000/- of the purchase price was paid on the contract date to the vendor with an agreement that the balance would be released to the vendor upon him procuring the title and consent to transfer the land from the Commissioner of Lands within a period of 6 months from the date of the agreement.
8. That the Plaintiff took immediate possession where he fenced the property and deposited building materials.
9. The Plaintiff came to later learn that the firm of Ndino & Co. Advocates paid the balance of the purchase price to the vendor before he released the transferred the title to the Plaintiff.
10. The Plaintiff had further paid a sum of kshs. 29,000/- being areas of land rent.
11. That on 2nd May 1995 the Plaintiff placed a caution on the suit property after realizing that the vendor was had refused to transfer the title.

12. Around May 2000 the vendor passed on upon which his legal representative, the Defendant refused to transfer the title and instead threatened to end the Plaintiff -
13. That the Defendant has acted in breach of the contract herein
- PARTICULARS OF BREACH OF CONTRACT.
- (i) Refusing to transfer title of the suit property to the Plaintiff.
  - (ii) Receiving the entire purchase price without giving title to the Plaintiff.
  - (iii) Denying the Plaintiff his right to occupy property.
14. The Plaintiff has incurred further charges for instance in the property
- PARTICULARS OF SPECIAL DAMAGE.
- (a) Kshs. 29,000/- being payment of land rent arrears.
15. That there is no other pending suit between the parties concerning the same subject matter nor has there been any other previous suit
16. That demand and notice to sue has been served but the Defendant has refused to transfer the land to the Plaintiff
17. That this honourable court has the jurisdiction

REASONS WHEREFORE:

The Plaintiff prays for judgement against the Defendant as follows

- (a) An order of specific performance to transfer the land to the Plaintiff  
(b) Special damages as pleaded.

Dated this — day of — in Nairobi.

DRAWN & FILED BY

CNL  
ADVOCATES FOR  
THE PLAINTIFF.

DRAWN & FILED BY  
Magonda & CO-Advocates  
P.O Box 6738-00800  
Nairobi  
Email: magond@gmail.com  
Tel: 020462999

To BE SERVED UPON  
Lucy Joe  
P.O Box 389-00100 Thika

"Caption as for the plaint")

VERIFYING AFFIDAVIT:

I, Joseph Ngulu of P.O Box 39-90100  
Machakos do state and swear as follows:

1. That I am the Plaintiff in this case hence competent to swear this affidavit.
2. That I have read the contents of the plaint and verify the same to be correct.
3. That there is no pending or previous suit between me and the Defendant herein.
4. What is deponed herein is true to the best of my knowledge, information and belief.

Sworn by the said  
Joseph Ngulu  
(Deponent).

(Witnessed by  
To be signed by  
Commissioner for oaths)

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"As captured in the plaint")

To BE SERVED UPON  
"As captured in the plaint")

(18)

## RULING:

### A. INTRODUCTION | PARTIES:

1. The Plaintiff Peter Brown has filed a suit against the Defendant claiming to have a beneficial interest in the land known as L.R. 8778 & 8774S. The Defendant has filed a defence. That later the Plaintiff filed ~~an application seeking to amend his claim.~~

### B. SUBMISSION OF PARTIES

#### (a) The Plaintiff / Applicant-

2. The Plaintiff ~~court~~ states that he had conducted a search which revealed the Defendant to be the registered proprietor, however on conducting another search at the Land Registry it was revealed that the initial search had a typographical error in that the property was described as L.R. 8774S instead of L.R. 87754. The results of the new search reveal that the property is owned ~~by~~ jointly by David Brown and Jane Brown. This has necessitated the application to amend the Plaintiff. The amendment will ~~name~~ a second defendant and rectify the name of the suit land.

#### (b) The Defendant / Respondent

3. The Defendant contends that the application to amend the plaint in absence of the process of court and that the Plaintiff and that the Plaintiff has never occupied the suit land.

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## ISSUES FOR DETERMINATION

- (i) Whether the application for amendment is prejudicial to the defendant?
- (ii) Whether the application is an abuse of the court process

## ANALYSIS:

5. The Plaintiff's application has been brought under Order 8 of the Civil Procedure Rules. The rules state that an amendment can be allowed as of right at any time of the suit before pleadings are closed but when pleadings are closed the same can only be subject to seeking the leave of court.
6. From looking at the reasons for the amendment the Plaintiff later came to learn that the land is jointly owned which will cause a second Defendant, Jane Brown to be enjoined. It will also rectify the name of the suit property to reflect the one on the register of lands.
7. That according to Order 8 rules of amendment under the Civil Procedure Rules such an amendment will be allowed if it is not prejudicial to the other party. It is may be considered new that enjoining a second Defendant and correcting the error of the sub name of the subject property will not prejudice the Defendant in any way.

## CONCLUSION

The app Plaintiff's application seeking to amend the Placit is allowed. leave is granted herein that the same be amended and filed within 14 days from date and a further 7 days issued upon which the same is to be served upon the Plaintiff & Second Defendant, Jane Brown. No order as to costs.

(8)

him (should act on the following )

1. Extract an order of the fixing master's decision on 26th June 2022 to enable an appeal.
2. File a Reference to the High court as a pleading, seeking to appeal against the said decision.
3. Get typed proceedings and a certified copy of the Rollings delivered on 26th June 2022.
4. Write to the executive officer to get the typed proceedings and copy of ruling.
5. Seek the leave of the court to appeal, that is the high court by filing an application seeking leave to appeal the decision of the fixing master.

IN THE HIGH COURT OF KENYA  
No. - - - Appellant

REFERENCE

The Appellant being dissatisfied with the orders issued by the taxing master on 26th June 2022, herein seeks to appeal against the whole decision with the following grounds:

1. That the taxing master erred in fact and law in disallowing the Appellant's preliminary objection which challenged the competence of the firm of Cleaver and Co. Advocates.
2. That the taxing master took into consideration wrong principles of law in allowing the bill of costs as to be properly on record.
3. That the taxing master erred in law and fact by allowing the taxation of the bill of costs by the firm of Cleaver and Co. Advocates which has never been on record in the matter.

REASONS WHEREFORE:

I pray that the decision of the taxing master dated on 26th June, 2022 be set aside.

Dated this 13th day of October 2022

REGISTRATION NUMBER:

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Advocates for the Appellant

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The workers have a valid claim. They have a cause of action against Carole limited company for contravening and infringing various of their labour rights and other consequential rights as envisaged in the Constitution of Kenya 2010.

The workers can file a constitutional petition in the Employment and Labour Relations court which is a special court for Employment matters stating that their rights have been contravened.

Article 23 of the Constitution of Kenya 2010 provides that the High Court has the mandate to hear cases based on infringement of fundamental rights and freedom, take note that the Employment and Labour Relations Court is a special court in the same rank as the High Court for determination of Employment cases according to Article 462 of the Constitution of Kenya.

The High Court can give the following reliefs to the aggrieved workers according to article 23:

- (i) A declaration that their constitutional rights were contravened
- (ii) Compensation order

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That they have a right to ~~free lab~~ fair labour practices according to Article 47 of the Constitution. That the Employment Act also gives the rights of Employees under part II of the Act rights which have been contravened by the company. That their right to pay <sup>and remuneration</sup> was infringed when the company stayed without paying them.

That their right to agree will, freedom of association was contravened when the company forced them to sign letters of employment by casual terms. That the Constitution of Kenya guarantees unlimited right from slavery but the same was infringed by forceful signing of the employment contract.

Article 22 provides that anyone can file a suit to claim that their fundamental right and freedom were contravened. One can do it on his own or for themselves or for a class of other people. Article 258 of the Constitution also states that anyone can file a suit to claim that the Constitution and its principle have been contravened. The workers have a locus standi for their case.

That the rights of the Employers to association and their right to dignity were contravened by the condition given based on the conversion which further contravened their right to fair remuneration.

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where their wages were to be determined  
on a daily basis and not based on the  
Remuneration and Wages Act that  
gives guidelines for payment of casual  
Labourers in different classes

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Questions ..... 8-

Do not write in  
either marginAPPENDANT'S WRITTEN SUBMISSIONS.Facts of the case

Peter was the registered owner of land known as Kajiado Block 4/30120. John Hepken instituted proceedings in Kajiado Land Tribunal claiming ownership of the same land which finally led to tribunal holding John as the legal owner. This order was adopted by the Chief Magistrate court in Mombasa, C.C. Appl. No. 45 of 2009. John has filed an appeal against the adopted judgement. Judicial review application

Issues for determination

- (i) Whether Kajiado Land Disputes Tribunal has jurisdiction over a case where the subject matter land is property duly registered under the land laws?
- (ii) Whether the Tribunal has ~~acted~~ ultra vires its mandate in giving the said decision?
- (iii) Whether the orders of certiorari can be issued in the circumstance?
- (iv) Whether the High Court has jurisdiction to grant the orders of certiorari?
- (v) Whether the Land Tribunal acted by the rules of natural justice in their decision process?

### Analysis

(b) On whether the Rayiado Land Dispute issue Tribunal has jurisdiction to make a decision on regard to registered land. It is felt that any registered land is outside the jurisdiction of any Rayiado Tribunal. The Environment and Land Court as ~~constituted~~ established under Article 162 of the Constitution, and Section 13 of the Environment and Land Court Act has the special jurisdiction to handle land within any registered system. The tribunal's decision was therefore ultra vires and in excess of its jurisdiction.

### Issue Two

The Tribunal acted ultra vires by first rendering a decision on registered land which is outside its jurisdiction. It further acted ultra vires by giving orders to compel a registered land owner, Peter Happened to transfer the registered land to John.

### Issue Three

The orders of certiorari are in the nature of Judicial Review Orders as per Section 8 and Section 9 of the Law Reforms Act which are directed at challenging a decision of an Administrative body which have failed to exercise correct and fair administrative actions as per Article 47 of the Constitution.

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of Konya. Order 53 of the Court Procedure Rules further provides, that such an application can be made through chamber summons to the High Court. The orders of certiorari are meant to bring forward and quash a decision of an Administrative body for being a piece unfair, unprocedural, irrational, incorrect as per the relevant legal principles, ultra vires. The orders to quash the decision of Kajado Land Tribunal is therefore well sought and the Applicant has met the threshold for the orders to be granted because the tribunal acted in excess of their jurisdiction. It is settled law that without jurisdiction no proceedings should proceed and the court of tribunal thereof should down their tools. The requirements for granting the orders have thus been met.

#### Issue #

The High Court has jurisdiction to handle any judicial review application as per Article 23 of the Constitution and Article 165 of the Constitution. Article 23 sets out the order of judicial review as one of the orders to be granted by the High Court when a right has been contravened. In the present case, Peter's right to property and to own property and acquire the same as the registered proprietor have been contravened by the Tribunal's decision to force a bona fide registered owner to transfer

their rights to land

Issue 5:

Peter as the registered proprietor ~~never~~ was never given a hearing before the tribunal. The principles of natural justice which involve a right to be heard before a decision is made against someone was contravened making the entire process unprocedural and in contravention of Article 50 of the Constitution which gives a right to fair trial that includes a right to be heard before any open court to tender evidence.

Conclusion.

The decision of Kasihado Land Disputes Tribunal was in excess of their mandate. It was unprocedural and the tribunal did not have the ~~local~~ <sup>constitutional</sup> ~~standards~~ to hear and determine land matters. They acted on a matter outside their jurisdiction. The orders of restraint to bring forth and quash that decision should be granted as prayed.

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

UNIT CODE: **A T P 1 00** SUBJECT/UNIT **CIVIL LITIGATION**

REGISTRATION NUMBER:

DATE: **13-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	00	NK				
4	2	VR				
3	0	DH				
6	1	VR				
TOTAL MARKS	3	VR				

Write on both sides of the paper

Questions .....

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either margin

The Primary Issue to Consider before going ahead to buy land from an individual is to request for official Search to know the Status of the Said Parcel of Land.

- The true ownership of the Particular Parcel of Land.  
Whether it has Incumbrances.

The Law Firm Nclimo & Company associates did not do Proper due diligence before drafting the agreement.

It is Clearly evident that no due diligence was undertaken because the firm did were not aware of the Land Rent Arrears and the fact that it was the buyer who followed up on the matter and paid shows negligence on the side of The law firm.

The firm Nclimo & Company advocates did not follow up on the title as many years lapsed and no concrete action taken.

In order to have the property transferred to Joseph, he should write a demand letter to the administrator of the estate of Samuel Joe.

Demanding that the transfer be completed as per the agreement.

Failure to execute the transfer of the title then he should take them to Court.

On the issue of the advocates Nalima & Company advocates, he should report them to the advocates Complaint Committee for not giving him proper advice with regard to the status of the title.

They also did not do proper search to find out if there was any claim of lien or rent.

They also released the remaining balance without the consent of Joseph. This is breach of advocate-client privilege.



Write on both sides of the paper

Questions ..... 4 .....

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either margin

REF:

- The workers were employed on 2 to 3 month Contract but upon lapsing no communication from the Company nor was there new terms being offered.
- The workers still drawing salary from the Company despite their previous terms lapsing means they are still employed by the Company and are duly contractual.

Converting permanent workers to casual without due process is illegal and an infringement of the rights of the worker.

The use of Police officers to force eviction from their houses is also an infringement of the bill of right.

The advocates Cleaver and Willing both left the firm and no longer conducting their business under the firm.

One of the advocates John Cleaver doesn't have a practice lawyer hence can't report to represent his.

the firm that filed an advocate-client bill is not the same firm that represented his on the case hence not on record.

The court was not notified on the changes of the law firm.

there was breach of trust by the advocates because they did not notify their client on the changes in the firm.

(8)

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Questions ..... 6

Do not write in  
either margin

The land dispute tribunal is a quasi-Judicial body that has restricted cases and can be challenged in the Superior Courts if one of the parties feels aggrieved by the outcome.

- It can be challenged in the Highcourt if the outcome isn't the final judgement.