

COUNCIL OF LEGAL EDUCATION.



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

ATP 100: CIVIL LITIGATION

THURSDAY 16th MARCH, 2023.

DURATION: 3 HOURS.

Instructions to Candidates:

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

PLEASE TURN OVER

QUESTION ONE

As a student in the Advocates Training Programme at the Kenya School of Law, you double up as an intern at the law firm of Onyala Biosi and Company Advocates. The law firm is based at Shule ya Sheria Plaza, Ground Floor along the Lang'ata South Road in Nairobi County. The law firm's email address is onyalabiosi@onyalabiosi.co.ke.

Fumo Liyongo, a client, has come into the office and you were assigned to take instructions from him. He gives you the following information:

On 9/8/2022 he was going to vote in the general election at Westlands Primary School. Having alighted from a matatu that he had boarded from Kangemi to Westlands, he had to cross Waiyaki Way to get to the polling centre at Westlands Primary School. While crossing at a duly designated and marked pedestrian crossing point, motor vehicle registration number UBA 007M that is registered in the neighbouring Republic of Uganda drove so fast "as if from nowhere" and knocked him down causing him multiple injuries.

The police abstract in his possession shows that the owner and driver of the motor vehicle was one Kyadundu Ssempebwa, a Ugandan national who was visiting Kenya for a conference. Ssempebwa's statement with the police at the nearby Parklands Police Station indicates that at the time of the incident, he was rushing to Kula Shiba Hotel along Mombasa Road for a conference. The address on the said statement is P.O Box 35 Jinja. His email address is also provided as kssempebwa@gmail.com.

Medical reports from Pona Karaka Hospital in Parklands area where Fumo Liyongo was treated for 4 months show that he suffered a broken leg, a broken arm as well as multiple bruises on the head and the stomach. Receipts in the possession of Fumo Liyongo show that he had already spent Ksh. 2,500,000 on medical treatment. The doctor projects that post-discharge medical reviews and procedures will cost Fumo another Ksh. 500,000.

Your research on relevant case law for similar injuries shows that the expected compensation for pain and suffering and loss of amenities is in the range of Ksh. 3,000,000 to Ksh. 3,500,000. This is by virtue of recent awards by the courts in similar cases.

Fumo's greatest concern is that the criminal proceedings in the traffic case that Mr Ssempebwa has been facing from this incident, comes for judgment in two weeks' time.

By law, the exhibit Motor vehicle that has been at the Parklands Police Station will be released to the accused after 14 days from the date of judgment in the criminal traffic case. Mr Ssempebwa will certainly drive the said vehicle back to Uganda. Mr Ssempebwa has no other proprietary interests in Kenya and he ordinarily lives in Uganda. His presence in Kenya on 9/8/22 was purely for conference attendance and his subsequent

presence has been to attend to his traffic case. Fumo is therefore concerned that whatever compensation that he may be awarded by the courts against Mr Ssempebwa, will not be realizable in execution unless the Motor Vehicle UBA 007M remains within the boundaries of the Republic of Kenya.

You have just briefed the managing partner at the firm, Mr Onyala Biosi, who in turn has instructed you to prepare a draft letter of demand together with draft pleadings and a draft of the necessary application that addresses Mr Fumo's concerns on execution of any favourable judgment that may arise from this case as expressed above.

You have a reputation for generating impeccable drafts at the office.

- (a) Prepare the draft demand letter. (5 marks)
- (b) Prepare the appropriate draft pleading for this case. (8 marks)
- (c) Prepare a draft of the necessary application that will address Mr Fumo's concerns on execution as expressed in the instructions. (7 marks)

QUESTION TWO

David Mungala filed a suit against John Doe claiming adverse possession over all that parcel of land known as Ngong/Ngong Block 1/47577. In March 2019, he obtained judgement and the court ordered John Doe to transfer the parcel of land to him. David never followed up the matter to have the land transferred to him. John Doe passed away in June 2020.

Peter Doe, John's eldest son who was away for studies in the United States of America returned home and found David Mungala on the parcel of land. He obtained letters of Administration and filed a suit against David seeking to have him evicted from the suit land.

David has raised a preliminary objection on the propriety of the suit filed by Peter on the ground that it is an abuse of the court process. The matter has been placed before you and the parties have made their rival submissions on the preliminary objection.

With the aid of decided cases, write a ruling on the preliminary objection. (10 Marks)

QUESTION THREE

The Kenya School of Law has introduced a tutorial programme in its Advocates Training Programme. Under this programme, students are allowed to lead discussions in class on various themes in the curriculum. The students who lead discussions in the tutorial programme are called lead discussants. Admission into the tutorial programme as a lead discussant is highly competitive. Over time, it has emerged that students who graduate

from the school having been certified as lead discussants are highly sought after by employers in the legal sector. Students must prepare very persuasive presentations under specified themes to be permitted to lead class discussions under those themes.

You desire to lead the class discussion on *constitutional litigation*. The course instructor has directed that the first class in *constitutional litigation* will focus on the sub-theme “*Entry Points in Constitutional Litigation in Kenya*.” The lead discussant is expected to thoroughly examine the constitution of Kenya, 2010 and specify avenues in the constitution through which causes may be taken before specified courts seeking application or interpretation of the Constitution.

For purposes of this discussion, an *entry point* is a provision of the constitution that vests jurisdiction in a specified court or courts to litigate a specific subject matter under the Constitution. 20 students have expressed interest in leading this discussion but the course instructor can only allow one student to lead the discussion. He has therefore, set high standards that a presentation must pass for the author to be considered as a lead discussant. You are among the 20 students that are interested in this opportunity to be a lead discussant.

Discuss five (5) avenues in the Constitution of Kenya 2010 that provide a basis for litigating constitutional questions specifying the subject matter that can be litigated under each avenue and the court(s) to which that avenue will lead the litigation lawyer filling the cause. (10 marks)

QUESTION FOUR

James filed a suit against Mla Leo a teacher employed by the Teachers Service Commission for the recovery of a sum of Ksh. 2 million at the Chief Magistrate Court. The judgement was issued in his favor. James extracted a decree from the judgement. Mla Leo was in court when the judgement was delivered. He sought a stay of execution for thirty (30) days, which the court granted. It is now three (3) months since the date of the judgement. Mla leo is yet to pay the decretal sum.

James has tried to accommodate Mla Leo by asking him how he intends to pay the decretal sum but Mla Leo is non-committal. James has even paid Mla Leo several visits at his farm in Ngong, which he owns, but nothing is forthcoming. Zacharia, a colleague of Mla Leo has informed James that Mla Leo’s salary is usually paid through an account at KCB Bank Ngong Branch and he is certain that Mla Leo has at least half a million shillings in that account. Mla Leo even bought a motor vehicle in the recent past for personal use.

-Advise James on the five (5) possible ways through which he can recover the decretal sum from Mla Leo. (10 Marks)

QUESTION FIVE

In Muiru General Store v. Attorney General and another (High Court of Kenya at Nairobi Civil case number 1603 of 1971; (1972) KHCD NO. 104 OF 1972). The plaintiff claimed special damages for the loss of their vehicle which was wrecked after colliding with a GSU lorry. The defendant, despite requests by the plaintiff, withheld photographs and sketch-map of the scene of the accident until at a later stage in the hearing. The court decided on the weight of the evidence that the driver of the plaintiff's vehicle was wholly to blame for the accident and dismissed the suit. After reserving judgement on the issue of costs, the court remarked that although the defendant had no legal obligation to supply to the plaintiff the photographs and sketch-map, their conduct led the plaintiff to think that they had a good cause of action hence the suit. The court therefore invited the defendant to show cause why they should not be deprived of costs.

As a counsel working for the defendant, draft a legal opinion explaining circumstances under which a successful defendant will be deprived of his costs. (10 marks)

QUESTION SIX

The Republic of Kiza has a constitution and standing orders like those of the Republic of Kenya. Musa is a sitting elected Member of Parliament for Umbea Constituency within the said Republic.

On 31st November 2022, Musa was in attendance in a joint sitting of parliament during the state of the nation address by H. E. the President of the Republic of Kiza. Musa on several occasions during the sitting, raised points of orders to draw the attention of the President on the suffering of his constituents. He did this pursuant to his constitutional right to protest as envisaged under Article 37 and the right of his constituents to representation.

The Speaker of the National Assembly, in utter disregard of the provisions of Article 201 of the Constitution, unlawfully ordered Musa out of the National Assembly without according him an opportunity to be heard. His attempts to catch the attention of the Speaker to explain himself were unlawfully and unjustly construed as disobeying orders of the Speaker.

The Speaker invoked the provisions of the Standing Order No.111 of the National Assembly and suspended him for the remainder of the session. The speaker disregarded clear provisions of the Constitution, laws of natural justice and fair administrative action. He publicly declared that his decision was final and would not be rescinded and that Musa would not be given any room to appeal against the decision to suspend him.

Attempts by Musa to explore internal remedial measures to get justice have all been frustrated. He has effectively been barred from accessing the precincts of parliament and cannot therefore discharge his constitutional duty of representation, to the prejudice of his constituents.

Musa has approached you to challenge the decision of the Speaker. Write a legal opinion on the nature and scope of the pleadings you will advise Musa to file to successfully challenge the decision of the Speaker. (10 mark)

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Checker	MW
Data Entry	CM
1 st Verification	MD

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

UNIT CODE: A T P 1 0 0 SUBJECT/UNIT CIVIL LITIGATION

REGISTRATION NUMBER:

DATE: 16/3/23

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
3	10	VA	10			
6	8	VA	8			
1	18	VA	18			
4	10	CM	10			
2	10	DM	10			
TOTAL MARKS	56	WK	56	ED		

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Questions 3

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Entry Points in Constitutional Litigation in Kenya

The Constitution of Kenya 2010 has been commended for being a transformative document. Unlike the previous Constitution which had claw back clauses in the Bill of Rights, the 2010 Constitution has an expansive Bill of Rights. In addition, Article 10 spells out the natural values and principles that bind all persons and State organs. These include rule of law, patriotism, accountability, non-discrimination among other values.

In this presentation, I extensively discuss the avenues in the Constitution that provide bases for litigating constitutional questions.

To begin, Article 22 and 23 of the Constitution provides that any person alleging that their fundamental rights and freedoms have been violated or are likely to be violated can petition the High Court. The High Court can grant orders such as declarations, injunctions, judicial review orders, and compensation among others. As a Constitutional Court, the High Court is the primary forum where violation of rights are heard and determined. One can bring the claim on their behalf or on behalf of another person. This new intervention has been

progressive because everyone has locus standi to bring the claim. In the former constitutional dispensation, there were limitations on the Boarding to bring a claim.

While the High Court is the primary forum for determining violations of rights, the Magistrates Court have jurisdiction to determine petitions on the freedom from servitude, torture and rights under Article 25 of the Constitution which are non-negotiable. Be that as it may, magistrates court cannot determine matters falling under Article 25 of the Constitution or make orders for compensation and orders under Article 23 of the Constitution.

Secondly, the Constitution of Kenya declares its supremacy under Article 2. Any law which is ^{contrary and} inconsistent with the Constitution is invalid taking into account the level of inconsistency. Under Article 165 of the Constitution, the High Court has original jurisdiction to determine any claim that a provision of a law or entirety of a law is contrary or inconsistent with the Constitution.

Any person can bring such a petition because Article 258 of the Constitution empowers any person to defend the Constitution. In *David Ndii v Attorney General*, the High Court observed that

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It is the gate keeper of the Constitution. Anything, law, or exercise of power that contravenes the Constitution cannot stand.

The Constitution of Kenya gives the Supreme Court original and exclusive jurisdiction in determining questions as to the validity of a presidential election under Article 163.

This means that only the Supreme Court can determine a presidential election petition. The Constitution obligates the court to render itself on the petition within 14 days. In its judgement, the Supreme Court can declare that a president elected was validly elected, or not. It can also declare that the presidential election was not done in accordance with the principles governing elections in the Constitution such as transparency, free and fair, simple, and verifiability.

In 2017, the Supreme Court overruled the presidential election. Last year, the court upheld the declaration of H.E. Samuel Ruto as the president-elect by the Independent Boundaries Commission of Electorate Boundaries Commission.

All in the Supreme Court, the Constitution compels the Supreme Court to give an advisory opinion on request by a state organ, county government.

In re Matter of the Speaker of the Senate (2011) held the Supreme Court held that its advisory opinions are binding and not mere recommendations.

The fourth instance where the Constitution provides an avenue is under Article 162(2) of the Constitution. This provision establishes specialised courts with equal status of the High Court.

In Karisa Chango v Republic, the Supreme Court was categorical that the specialised courts namely Environment and Land Court and Employment and Labour Relations Court are superior courts. They are not subject to the supervision of the High Court. Moreover, they are not mere divisions within the High Court. This is because the High Court is barred under Article 165(5) of the Constitution to entertain matters within the jurisdiction of the specialised courts.

Pursuant to Article 162(2) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relation Court Act. Under Section 12 of the ELC Act, the ELC Court has jurisdiction to determine claims relating to the occupation of land, climate change issues, land use and planning among other things.

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The Employment and Labour Relations Court has original jurisdiction to hear and determine claims arising between employer and employee, b/w trade unions disputes arising from collective bargaining agreements.

These specialised courts have jurisdiction to hear appeals on land and environment and employment matters arising from Magistrates Courts when exercising jurisdiction subject to pecuniary limits.

The specialised courts can also determine questions and claims of infringement of fundamental rights that are incidental to the matters they are constitutionally empowered to determine. This position has been affirmed by Court of Appeal (in Daniel Mugendi v Kenyaatta University).

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Questions 6

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OUR REF:

MN Advocates,
ABC PLAZA

Ivan Kura
(Senior Partner)
Jack Mwangi
(Partner)

MN ADVOCATES
P.O BOX 112-00100, NAIROBI
ABC PLAZA, 3RD FLOOR
ALONG KILIMANJARO ROAD
NAIROBI

OUR REF: MN/LUT/S
Date: 16 March 2023

YOUR REF: TBA

MUSA,
MEMBER OF PARLIAMENT,
UMBEA CONSTITUENCY
P.O BOX 12345 - 00600, UMBEA
KIZA.

Dear Sir

"Advance copy by email"

RE: LEGAL OPINION ON THE NATURE AND
SCOPE OF PLEADINGS

We make reference to your instructions
and advise you as follows:

A. CAUSE OF ACTION

1- Before we advise on the nature and
scope of pleadings, it is important to
consider whether there is a cause of
action.

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either margin

2 From our understanding of the facts you told us, the circumstances raise questions and claims on fair administrative action, laws of natural justice, and judicial review.

3 We believe that you have a cause of action because the facts disclose potential infringement and violation of fundamental rights and freedoms as provided in the Constitution.

B. NATURE AND SCOPE OF PLEADINGS

4. From our understanding of the facts, you may choose to pursue the claims either through a petition or judicial review application under the Fair Administrative Action Act (FAAA)

5. In the first instance option, you may choose to file a petition under Article 22, 23 and 165 of the Constitution in the High Court. In the petition, you can demonstrate that your right to fair administrative action under Article 27 was violated; Article 50 on the right to fair trial was also violated for having been denied a chance to make your case.

6. The Courts in Ararita Karim v. Republic and Mumo Matemo v. Titled Human Rights Alliance have held that one has to show a reasonable degree of

parison between the rights alleged to have been infringed and the manner in which they were enforced.

With a petition, you can be granted orders such as declarations/injunctions, and also judicial review orders.

Under the Mutura Rules, the petition may be supported by the affidavit and documents you intend to rely on.

The second option is pursuing judicial review under section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules as well as FATA.

In this option, you will have to first seek leave to file the judicial review application. This is done through an application of ex parte chamber summons accompanied by a statutory statement and verifying affidavit. These are filed at the High Court.

When leave is granted, you are then required to file a Notice of Motion and accompanied with a supporting affidavit. These must be served to the Speaker of the National Assembly within 15 days.

In this second option, you can show that internal remedial measures were frustrated and inadequate. This way, you can be allowed and excused from the requirement of exhausting internal measures under sections 8 and 9 of the FATA.

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C: OUR RECOMMENDATION

Based on our analysis, we believe that the petition may be a faster way of pursuing the claim. This is because one can still get the judicial review orders. In addition, the Court has wide powers to grant orders not listed under Article 23. If you choose the second option, you can only get judicial review orders of non-damages certiorari and prohibition.

We are waiting for your instructions to file the necessary pleading should you choose to pursue the matter.

Yours faithfully,


IVAN KEWRA
Senior Partner
for and on behalf of MN Advocates

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(8)

OYACA BIOSI AND COMPANY ATTORNEYS
Shule Jasheria Plaza,
Ground floors along Langata South
Road Nairobi County
Email: oyacabiosi@onyatabisi.co.ke

OUR REF: OBC/CL/UT/112 YOUR REF: TBA Date 16/3/23

KYADUNDU SSEMPERWA,

P.O BOX 35

JINJA, UGANDA

Email: ksempewwa@gmail.com

Dear Sir

Dear Sir

"Advance copy by email"

RE: PERSONAL INJURY BY YOU AGAINST
FUMO LYONGO

We have been instructed by our
client, Fumo Lyongo, to address you
as follows:

1. On or about 9 August 2022, our
client was going to vote in the general
election at Wetlands Primary school.

2. While crossing the road along Waiyaki
way at a duly designated pedestrian
crossing point, he was knocked down
by a speeding vehicle registration
number UBA 007M which is yours
and is registered in your names -

Write on both sides of the paper

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Questions

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3. Plaintiff suffered multiple injuries; namely broken leg, broken arm; and multiple bruises on the head and stomach as a result of the incident.

4. As a result of the injuries, plaintiff has been undergoing treatment which has caused him several financial constraints and difficulties.

5. The said treatment has so far costed our client Kenya Shillings 2,500,000. Moreover, the other projects that the post discharge medical expenses and proceedings will cost fund another Kenya Shillings 500,000.

6. Our instructions are that we demand the following amounts from you:

(a) Compensation for pain and suffering at a sum of Kshs. 3,500,000
 (b) Kshs 3,000,000 for the costs incurred for treatment and post discharge expenses.

7. Please take note that if our client's demand is not met within 15 days, we have instructions to sue you.

Yours faithfully

ONYALA BOSI

forward on behalf of Onyala Bosi Advocates

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. OF 2023

FUMO LITONGO _____ PLAINTIFF
VERSUS

EYADUNDU SSEPEBWATTA _____ DEFENDANT

PLAINT
("FIRST TRACK")

1. The Plaintiff is an adult male Kenya
of sound mind living and residing in Nairobi
within the Republic of Kenya. His
address for the purposes of this suit shall
be the care of ONYATA BLOD and
COMPANY PROMOTERS, SUITE Y A SHERIA
PLAZA, GROUND FLOOR ALONG LANGATA
ROUTE ROAD, NAIROBI, Email:
onyalabiosonyalabiosi.co.ke.

2. The Defendant is an adult male
Ugandan living and residing in Uganda and of
P.O BOX 35 Jinja. (Service of summons
shall be effected through the Plaintiff's
Advocates)

Write on both sides of the paper

Questions

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either margin

3- On 9 August 2022, the Plaintiff was going to vote in the general election at Westlands Primary School.

4- As he was crossing Waiyale Way at a duly designated and marked pedestrian crossing point, he was knocked down by a speeding vehicle registration number UBA 007K.

5- According to the police affidavit (marked exhibit 1), the vehicle belongs to the Defendant who was visiting Kenya for a conference.

6- In his statement with the police, Omondi (marked exhibit 2) indicates that the Defendant was rushing to Kila Shiba Hotel along Mombasa Road for the said conference.

7- As a result of the incident, the Plaintiff has suffered multiple injuries, namely; a broken leg, a broken arm and multiple bruises on the head and stomach.

8- The Plaintiff has been undergoing medical treatment and has incurred the following costs from Mama Karaba Hospital (see exhibit 3).

Cost	Amount incurred
Medical treatment	KSh 2500,000
Projected post discharge review	KShs 500,000

9. The plaintiff has also suffered intense pain and suffering.

10. Despite the plaintiff issuing demand for the damages and costs incurred, the Defendant has refused and/or neglected to meet the demands.
(Demand letter annexed as exhibit 4)

11. There is a related ^{criminal} case between the parties about the incident

12. The cause of action arose within the jurisdiction of this Honourable Court

REASONS WHEREFORE, the Plaintiff prays for a judgement against the Defendant for
(a) General damages
(b) Specific damages of KShs 3,000,000
(c) Compensation for pain and suffering
of KSh 10,000,000
(d) Interest on (b)
(e) Costs of this suit

Dated at NAIROBI this 6th day of March 2023

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~~(Signature)~~

ON YACCA BOSI AND COMPAGNE
ADVOCATES
MEMORANDUM FOR PLAINTIFF
TO BE SERVED UPON:
DEFENDANT
Copies as in the plaint

VERIFYING AFFIDAVIT

I, Jummo Lyango, an adult male Kenyan
of P.O Box 712100 Nairobi, Kenya
do hereby make oath and state as
follows: -

That I am the Plaintiff for this matter
fully conversant with the facts of this
matter hence competent to swear this
affidavit

That I have read the contents of
the plaint and each paragraph.

That I verify that the averments
made are true and correct

That what is deposed herein is true
based on my knowledge and belief.

Do not write in
either margin

Questions

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Write on both sides of the paper

SWORN by the said

Fumo Liyong'o

)

on THIS DAY OF

)

2023

)

DEFONENT

BEFOREME

)

)

COMMISSIONER FOR
OATHS

)

)

Captor as in plaint

LIST OF WITNESSES

(Under Order 3 Rule 2 Civil Procedure Rules)

1. Fumo Liyong'o

2. Any other witness with the leave of
Court

8

P/E

Caption as in plaint

NOTICE OF MOTION

(Under Order 5th Rule 1, Order 40 and
Order 39 Rule 5th and 6th of Civil Procedure
Rules)

TAKE NOTICE that this court will be moved
on the _____ day of 2023 at 9' o'clock
in the forenoon or soon thereafter as

Counsel for the Applicant will be heard
on an application for ORDERS THAT;

1. The application be certified urgent
2. That the motor vehicle UBA 007M
remains within the boundaries of the
Republic of Kenya
3. That the Honorable Court grants a ^{junction} ~~junction~~ ^{order} ~~order~~ ^{for that}
that the application is based on the
grounds THAT

1. The execution of the decree
will be satisfied unless the motor
vehicle UBA 007M remains within the
boundaries of the Republic of Kenya

2. That the Applicant has an arguable
case with high chances of success
3. That there is a high likelihood of
the car being taken out of the
jurisdiction of Kenya

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Questions

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WHICH APPLICATION IS FURTHER SUPPORTED
BY AN AFFIDAVIT OF FUMO LIGORIO
ANHELD TO THIS APPLICATION

Dated at Nairobi this _____ day of _____
2023

~~(Signature)~~
ONYACAT BLOS1 AND
COMPANY ADVOCATES
ADVOCATES FOR APPLICANT

DRAWN AND FILED BY
ONYACAT BLOS1 AND COMPANY ADVOCATES
(address as per plaint)

TO BE SERVED UPON
Kyaguru Ssempebwa
(Address as in Plaintiff)

Write on both sides of the paper



Questions

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Caption as in plaint

SUPPORTING AFFIDAVIT

I, Fumo Kyango, an adult resident in Kenya do hereby make oath and state as follows

THAT the exhibit motor vehicle off the defendant Respondent has been at the hands of police station and will be released 14 days from the date of judgement to the defendant

THAT once the defendant will be driving back to Uganda with the car, the compensation may be awarded will not be negligible prosecution unless the vehicle remains within the boundaries of the Republic of Kenya

THAT ^{the} interests of justice for this honorable court to grant the Marewa injunction requiring the said vehicle to remain within Kenya.

THAT the applicant has an arguable case with a high chance of success

THAT what I depono to hereunder is true and correct based on my knowledge and belief - Commissioner of Oaths in ...

James can recover the debt through a future garnishee proceeding against PNB Bank Nong Broek. This is through an ex parte notice of motion where he will be seeking garnishee order nisi that invites the bank to show cause why the money should not be transferred to him as judgment entered above. When the court grants this order, he should serve it to the bank to appear and can grant the garnishee order absolute ordering the bank to transfer the amount held by the bank on behalf of maleo to James.

Another method is attachment of salary. The salary of maleo can be attached as a means of execution.

James can also apply to court for attachment of sale of the property (motor) vehicle owned by maleo. The application is done through a Notice of Motion to the court that issues the decree. If the car is within another local jurisdiction, James may apply to court for transfer of part order or execution of the decree and attachment of the motor vehicle. The decree and part execution order

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Should he be fined by the court. Seen

James can also seek attachment of sale of the farm in Ngoro to get his money and enjoy fruits of his judgement.

As a last resort, James can seek to have Ma Leo arrested. However, the courts are reluctant to grant execution against a person where there is property that can still satisfy the decree. In addition, should Ma Leo be committed to jail, James will bear the cost of taking care of him while there.

10/10

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
CIVIL SUIT NO. OF 2020

DAVID MUNIRI

APPLICANT/
CLAIMANT

PETER DOE (^{defendant} suing as the
executor of the late John
Doe)

RESPONDENT/
DEFENDANT

RUNNING

The background of this matter can be
traced in March 2019 when the Applicant
sued the late John Doe claiming adverse
possession over a plot of land known as Ngong's Block
1147577.

In March 2019, the Applicant obtained
judgement and the court ordered
John Doe to transfer the plot of
land to him. However, the Applicant
never followed up on the matter
to have land transferred to him.

Unfortunately, John Doe passed
away in June 2020. On return from the
United States of America, his executor,
the Respondent obtained letters of
administration and filed a suit against
Pandeyars to have him created
from the suit.

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Vide a notice of preliminary objection, the Applicant applied to this court on the ground that it is a abuse of the court process.

Having considered the parties rival submissions on the preliminary objection, the main issue is whether the Applicant has met the conditions of raising a preliminary objection.

Under Order 2 of the civil Procedure Rules, a party may raise a preliminary objection as a way of responding to a writ.

In the locas classicas of Musing Biscuitry West End, D-18m butens, the court defined a preliminary objection as one which when raised, if incapable of disposing off the suit as a whole.

The court laid down the conditions for a preliminary objection to succeed.

First, it must be on points of law, it cannot be successfully raised where there are controversial or conflicts about the facts.

In the matter before me, I note that judgement was already entered in favour of the Applicant against late John Doe on his claim for adverse possession. The respondent has not disputed that fact.

This leads me to establish whether there are points of law raised. Under Section 7 of the Civil Procedure Act, the bar of res judicata prevents parties from re-litigating a matter which has been finally decided previously by a court of competent jurisdiction.

While the respondent was not a party to the initial proceedings, they sued as the claimants of the deceased. Essentially, it is the same parties in the same subject matter (piece of land).

I agree with the Applicant that the matter was already determined by the court and reopening the same matter is res judicata.

It is my finding that the applicant has successfully met the conditions for grant of a preliminary objection.

In view of the above, the Applicant's preliminary objection is hereby allowed.

The Respondent shall bear the costs of the application.

Dated at NAIROBI on this 16th day of March 2023


MARK KIRAGU

JUDGE ENVIRONMENT AND LAND COURT
NAIROBI

Affidance:

Applicant in person

Ms Jennifer, Court Clerk

LEAST SCORED

Officer	Initials
Checker	MW
Data Entry	CM
1 st Verification	MA

205759



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

UNIT CODE: A T P I O O SUBJECT/UNIT CIVIL LITIGATION

REGISTRATION NUMBER: [REDACTED] DATE: 16/13/2023

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
9	00	XAK.DH				
5	00	WK				
	—	—				
1	3	VA				
6	0	VAT				
	/	/				
TOTAL MARKS	03	CM				

THE REPUBLIC OF KENYA
IN THE HIGH COURT LAND AND ENVIRONMENT AT NAIROBI
THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
E.C.T. 123, 2020

PETER

PETER DOE - - - - - Appellant

VERSUS

DAVID MUNGALA - - - - - Defendant

DECREE

NOTICE OF MOTION: In the urgency of the matter presented in this court by the plaintiff on 7th June 2020, on the land paul P Mgong/Mgong Block 1/47577

See

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

IN THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ECL. 123 2020

DAND MUNGALA - - - Plaintiff/Applicant

VERSUS

JOHN DOE - - - - - 1st Defendant

AMP

PETER DOE - - - - - 2nd Defendant

DECREE

NOTICE: the urgency of the matter placed before this court on - - day of June 2020, on the owner or Land parcel Ngong / Ngong BLOCK 1142577

In Order

- 1 To settle the urgency of the matter.
- 2 The cost to be incurred by the urgency of the matter.

Claim Claim:

Defendant Plaintiff raised preliminary objection on the propriety of the suit filed by defendant on the ground that it is an abuse of the court

PROCEDURE:

- 1 Joe was away for United States for studies in the first ruling of the case.

Write on both sides of the paper

Questions 2 2

Do not write in
either margin

The court ^{ADJUDICATED} ruling it out that the parcel of Land to be transferred to the legal owner David Mungalg where of

1 In March 2019 the court had made a judgment that ordered John Doe to transfer the parcel of Land to Mr David Mungalg.

Date -- of June 2020

Draft and written by

John App

✓ ✓

✓ ✓

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil case no 1603 of 1971

Muiru General Stores - - - - - Applicant/plaintiff
below

Attorney General - - - - 1st defendant

High Court of Kenya at Nairobi - - - 2nd defendant

LEGAL OPINION

I am the advocate of the defendant on behalf of the defendant having present the defendant will be deprived of his cast. The defendant will hold the photographs or sketch-map of the scene of the accident from the plaintiff so as to be able to present them as evidence of defence at the stage or hearing. Do ask the Court not to deprive the defendant of costs as the defendant

- - - signed by
John and Company Advocates

Draft and prepared by
John and Company Advocates

Klimabongo

1st Court Street

P.O. BOX 10309-01100

Nairobi

To be served by

(Signature)

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA, AT NAIROBI

CIV Case No. . of 2023

FUMO NYONGA - - - plaintiff/Applicant
VERSUS
KYADUNDU - - - defendant
DEMAND LETTER

- i) Onyala the Advocate or the plaintiff here in submit present the urgency of this matter to the presence of the honourable judge to help in hearing of this matter as soon as possible or else the plaintiff will suffer the cost of the matter in order of
- v) withholding of the
 - 1) determining the cost of the matter
 - 2) settle the urgency of the matter

Claim:

- 1) Compensation for pain and suffering and loss of earnings 3,00,00/-
Withholding of the motor vehicle VBA C7M with the boundaries of the Republic of KENYA

The court should move as quick as possible to help prevent the plaintiff defendant who is not a resident of Kenya from living the country before fully compensating the plaintiff for the injury incurred.

Dated - - - of March 2023

AM

Write on both sides of the paper

Questions ... 1

Do not write in
either margin

Ong'ata Biasi and Company

Advocates

Drafted and prepared by

Ong'ata Biasi and Company Advocates

Shule ya Sheria Plaza Ground floor

Langata South Road in Nairobi County

Email Ong'atabiasi@oib.co.ke.

To be served to

Kyandunda Sempebwog

P.O. Box 35

ksjsempebwog@gmail.com,

5)

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 92 OF 2023

NOTICE CHAMBERS SERMONE

CHAMBERS SERMONE
NOTICE OF MOTION, The plaintiff and the defendant
 are required to appear before this court on
 date --- or march 2023 at 9.00 o'clock or afternoon
 for the hearing of the urgency of this matter
 in order of

- 1) determining the cost of this matter
- 2) settling the urgency of this matter.

where or on the claim that:

- 1) being stuck on 9/8/20 down while crossing;
- 2) Plaintiff's compensation to the plaintiff of the injury occurred which ranges of Ksh 3000,000 to Ksh 350,000;
- 3) With holding of the defendant motor vehicle VBA 007M within the boundaries of the Republic of Kenya.

which is supported by Annexed affidavit Mr Onyala Biasi and any other evidence to be dependent upon the hearing.

Dated - - - of March 2023

signed

Onyala Biasi and Company Advocates

Drafted and prepared by

Onyala Biasi and Company Advocates

Shule ya Sheria Plaza, Ground floor

Langata Road South Road in Nairobi Country

onyalabiasi@onyalabiasi.co.ke.

To be signed upon:

K

Dated - - - of March 2023

LC

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO - ... OF 2022

AFFIDAVIT

I Mr Onyango the advocate of the plaintiff do here by sign and swear in this affidavit on behalf of the plaintiff:

That I am an adult

I Mr Onyango, ^{an advocate of the plaintiff} of address P.O. Box 155, Langata in Nairobi. Do swear in this affidavit on behalf of the plaintiff:

THAT I am an adult of sound mind and good mental state that the matters to this affidavit are true.

THAT, I am the managing Partner of the firm representing the plaintiff.

THAT on 9/8/2022 the defendant the owner of motor vehicle number UBA 007M knocked down the plaintiff while crossing Koiyaki way.

THAT the police abstract in the plaintiff possession shows that the owner and driver of the motor vehicle was on Kyanduka Street being the defendant.

THAT the plaintiff is liable for a compensation to help cover his medical expenses which ranges from Ksh 300,000 to Ksh 350,000.

THAT the Motor Vehicle number UBA 007M remains within the boundaries of the Republic of Kenya until the matter of judgment is passed out since the defendant is not a citizen of Kenya but was in the country at the time of accident for 01/81/22 purely for conference attendance and -

Date -- or 2022

signed

Sworn in the presence of -- dependent
Commissioner of Ongata Rongai Company Advocates
Signed and sworn by

Sworn in the presence of -- dependent

Commissioner of Ongata Rongai Company Advocates
Signed and sworn by

Ongata Rongai Company Advocates

Shule ya Shang'a Plaza

Langata South Road, Nairobi County

(To be signed to be valid)

3

Write on both sides of the paper

Questions 6

Do not write in
either margin

THE REPUBLIC OF KENYA KIZA
IN THE HIGH COURT OF KENYA AT NAIROBI

THE REPUBLIC OF KIZA

IN THE HIGH COURT OF KIZA, NAIROBI

CONSTITUTIONAL LAW

CL NO 31/9/2022

MUSA - Plaintiff/ Applicant

VERSUS

ATTORNEY GENERAL - - - 1ST DEFENDANT

SPEAKER OF THE NATIONAL ASSEMBLY - - - 2ND DEFENDANT

MANDATORY INJUNCTION

I Apollo, the advocate or the plaintiff do herein present this matter to the present of the Kenyan Council of Judges to hear this matter as soon as possible.

claim

on 31st November 2022, the plaintiff while in attendance on the joint sitting of parliament during the state of the nation address by H.E the president of the Republic of Kenya despite his pursuant to redraw the attention of the the defendant on the suffering of his constituents which he did to his constitutional right to speak as enshrined under Article 37 and the right of his constituents to representation he was unlawfully ordered out of the National

Assembly which was wrongful notwithstanding in disregard of the provisions of Article 207 of the Constitution.

Unlawful of suspension of the plaintiff without any hearing by the Speaker who invoked the provision of the standing order No. 11 of the National Assembly: Which further is pointed out by the Speaker disregarding clear provisions of the Constitution, law of natural justice and fair administrative action.

Based on the evidence presented in this court, I would request the court to allow the plaintiff to be granted the opportunity to be lawfully heard and allowed to present his defence within his constitutional rights.

Date - 08/02/2022

Drafted and prepared by
Ode, Apollo and Company Advocates
Shauni Moyo Plaza
Mizingo Road Street
P.O. Box 2706-00200 Nairobi

