

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.

**ATP 101: CRIMINAL LITIGATION**

MONDAY 20<sup>TH</sup> MARCH, 2023.

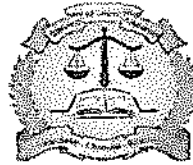
DURATION: 3 HOURS.

**Instructions to Candidates:**

- (a) This paper contains SEVEN (7) 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

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PLEASE TURN OVER

## QUESTION ONE

- A. On the 24<sup>th</sup> of January, 2015, Honourable Mwamburi Mwanzo and another were arraigned before the Chief Magistrates Court at Mutongwe Law Court, where they were jointly charged with two offences in Count 1 and Count 2.

In Count 1, the two were jointly charged with the offence of Creating Disturbance Contrary to Section 95(1) (b) of the Penal Code. The particulars of the offence were stated as follows:

On 24<sup>th</sup> Day of January, 2015, at about 8.30am at NISI center in Mutongwe, within Mombasa County, jointly created disturbance by shouting and uttering abusive words at PC Mwamba, while demanding release of motor vehicle KMCH0002B which had been impounded by PC Mwamba for failure to comply with traffic rules.

In Count 2, both accused persons were jointly charged with the offence of Intimidation Contrary to Section 238 (1) of the Penal Code. The particulars of the charge were stated as follows:

On 24<sup>th</sup> Day of January, 2015, at about 8.30am at NISI center in Mutongwe, within Mombasa County, jointly intimidated PC Mwamba a duty officer at NISI patrol base by invoking the name of senior government officers with the intention of causing him to release motor vehicle KMCH 0002B which had been impounded for failure to comply with traffic rules.

The accused persons pleaded not guilty to both charges. The two were released on cash bail pending the hearing and determination of the case. Two weeks later, a pre-trial conference was conducted and the case was set for hearing. The Prosecuting Counsel indicated to the court and to the defense that he intended to call 15 witnesses during the trial. The trial process began in June, 2015, before Hon. TGG, who was then Senior Principal Magistrate. Hon. TGG heard the evidence of seven witnesses, while the 8<sup>th</sup> Prosecution Witness was stood down. Hon. TGG was then transferred before completion of the case.

Before Hon. TGG was transferred, the Prosecution had applied to the court to introduce a CD containing a video of the incident in question which was taken vide an iPhone belonging to PW 8. Which iPhone could not be traced for production in court. The application was opposed by the defense, the trial court disallowed the playing of the subject CD without a certificate as prescribed under section 106B of the evidence Act. On 13<sup>th</sup> February, 2020, the Hon. KBB, chief Magistrate took over the case, the prosecution recalled Prosecution Witness No.8 and applied once more to rely on the CD as they complied with the requirements under the evidence Act. The application was allowed on the basis that the Prosecution had availed the Certificate as required.

Dissatisfied with the ruling of the Court, the defense filed an appeal in the High Court on various grounds. While the Criminal Appeal was pending, the defense filed an application for stay of proceedings. The application was filed under certificate of urgency, it was heard *ex parte* and a stay order issued. The Appeal was heard and determined in June, 2022. At this point, Hon. KBB had been transferred and the case was taken over by Hon. JLL, Chief Magistrate, who heard the remaining 8 witness and both accused persons placed on their defense.

The accused persons once again appealed the ruling of the court on the basis that the Prosecution had not established a *prima facie* case against them. While the appeal was pending before the High Court, Hon. JLL was transferred. On 20<sup>th</sup> December, 2022, the Deputy President of the Republic of Kenya made a statement on the national television that all criminal cases where accused persons had been charged unfairly should be withdrawn! This statement prompted the 2<sup>nd</sup> accused person to write a letter to the Director of Public Prosecutions requesting for review of the evidence and particularly that she was willing to plea bargain. The appeal is yet to be heard and determined. The Prosecuting Counsel requested the court for typed proceedings and upon perusal, he discovered that none of the two trial magistrates, Hon. KBB and Hon. JLL, complied with the law requiring the Court to inform the accused of their right to recall witness or to rehear the case.

- i. Discuss 5 Criminal Trial Procedural Issues the Prosecution Counsel encountered in this case. (10 Marks)
  - ii. Discuss 5 procedural safeguards that have been put in place to protect and support vulnerable witnesses and offenders. (5 Marks)
- B. Marsha, a mother of three has been charged for the murder of her three children. During the trial, evidence adduced pointed to the fact that the murder was occasioned by Marsha's desire to avenge her husband's decision to marry Furaha as a second wife. After the close of the hearing, the court found that Marsha had a case to answer. On the date set for the defense hearing, Marsha was not availed in court. The Report furnished by the Prison authorities stated that Marsha had been experiencing acute depression and had been incoherent in speech. She had since the last court attendance attempted to walk out of the prison facilities purporting to be leaving for work, which affairs led the authorities to believe she was not in a proper mental condition.
- Explain to the Court the procedure of handling Marsha's trial. (5 Marks)



## QUESTION TWO

Ndoige Sugunyo was convicted by the Chief Magistrates Court at Makadara for the offence of defilement contrary to Section 8(4) of the Sexual Offences Act. Upon conviction, the Resident Magistrate, Hon. John Said sentenced Mr. Sugunyo to life imprisonment, stating that it was a necessary sentence, "due to the rising cases of defilement" within that Court's jurisdiction. Part of the trial court's judgement dated 11<sup>th</sup> November 2022 reads as follows:

"On the question of age, I am convinced without doubt that the complainant in this matter was below the age of 18 years as submitted by the Prosecution. Even though an original birth certificate was not produced in this case, I am convinced that an age assessment was not necessary as the copy of the birth certificate produced indicated that the complainant was aged 17 at the time of the offence. Furthermore, the complainant had not completed her secondary school education having dropped out in form three that year. This evidence is therefore conclusive enough to reach a determination that age as an essential element of this offence was satisfied.

The accused, in his defence, has argued that he was led to believe that the complainant was not a minor and in this regard he has relied on Section 8(5) and (6) of the Sexual Offences Act to argue that the complainant held herself out as an adult which led him to reasonably believe that she was one. The accused further argued in his defence, that he had stayed with the complainant as "husband and wife" for a period of one year with the knowledge of her parents. That this complaint arose from his failure to raise 50,000 Kenyan shillings which had been demanded by the complainant's father. I find this defence unsustainable as the accused ought to have known that the complainant was a minor having been in the same secondary school."

Ndoige Sugunyo has now approached you to pursue an appeal on his behalf.

- a) Draft the necessary appeal. (7 Marks)
- b) Citing case law and relevant legal provisions, advise your client on the possibility of being granted bail pending appeal. (3 Marks)

## QUESTION THREE

Mzuri intended to purchase land to construct a house for her mother. Her colleagues at work referred her to Ngamwaya, a land broker. Ngamwaya led her to Tapeli Bonoko who showed her a half an acre plot of land at Maji Mazuri area. She was then shown copies of title deed and a search for land Ref. No. K/Maji Mazuri/VJ/2. She was referred

to the land registry to meet one, Baya, for faster processing. Baya confirmed to her that the land belonged to Tapeli and issued her with a search certificate. Mzuri and Tapeli executed a sale agreement before an Advocate who is a friend to Ngamwaya. Baya, Ngamwaya, and Tapeli's wife, Giza, were all witnesses to the sale agreement. Mzuri paid Kshs. 2,000,000/= being 75% of the purchase price as deposit and the balance was to be paid by the purchaser once she receives all completion documents to help her effect the transfer. Upon execution of the agreement, she took possession and moved to fence off the plot. She was stopped by Mzee Moja who claimed to be the owner of the plot for over three decades. He showed her the title documents in his possession. She then tried to call Tapeli but the line went dead. She could not reach Ngamwaya and Baya either. She went to the Lands registry to follow up and found out that no one by the name Baya or his description is an employee of that office. She reported the matter to the police upon discovering that the copies of title deed and search certificate she was given were all forgeries.

On learning this, her husband who had financed the transaction by taking a loan from a bank was distraught. This strained their relationship leading to separation. He lost his job from the impact of the anguish and as a result their children were transferred to public schools in the village.

After a manhunt, the police arrested Baya. He led them to Ngamwaya, Tapeli, and Giza. On investigation, it's been discovered that the money paid on the transactions was used for different purposes. Tapeli had bought a car, Ngamwaya was on holiday in Ukunda, while Giza and Baya had received Kshs. 100,000/, and Kshs. 20,000/= respectively.

(a) Explain the action to be taken against Baya, Ngamwaya, Tapeli and Giza.

(4 marks)

(b) Given the circumstances of Mzuri, explain the role of Victim Impact Assessment.

(6 Marks)

#### QUESTION FOUR

Jaani Jaanu is a prominent opposition figure in the Republic of Dagostan (a commonwealth country) where he unsuccessfully vied for presidency in the last general election 5 years ago. In the build-up to the upcoming general election, key members of his Freedom Party have been subjected to arrests on allegations of planning to overthrow the government of incumbent President, Tan Tun, who has sought re-election. Despite these arrests, pollsters have placed Jaani Jaanu ahead by a huge margin against President Tan Tun. One week ago, a warrant of arrest was issued against Jaani Jaanu on allegations of committing the crime of "gross unpatriotism" contrary to Section 5 of the Patriotic Act, a legislation which has been criticized by human rights bodies for being a tool for targeting political dissenters. Many of the political dissidents

who have been tried under this law have been detained for years without trial. Dagostan has also been cited by the United Nations Committee Against Torture for its use of unconventional methods of interviewing suspects which include, "being placed in the same room with menacing dogs while in police detention" in order to extract false confessions. Fearing for his life, Jaani Jaanu left the Republic of Dagostan for Nairobi where he is currently being hosted by political dissidents from his country. President Tan Tun's government has made a formal request for the extradition of Jaani Jaanu to face justice.

Citing case law, advise the Director of Public Prosecutions on the chances of success of the request were it to be taken to court for determination. (10 marks)

#### QUESTION FIVE

Goodlyffe, a famous public figure in the Republic of Kenya had an illicit affair with a socialite girlfriend Qeun Saly. He was so fond of her that in his drunken stupor he would indicate that he was willing to do anything to make her happy. Unknown to Goodlyffe, Qeun Saly was a drug peddler wanted by the United States of America on charges of trafficking narcotics in Mombasa County. On several occasions, Goodlyffe sent 'fare' amounting to Kshs 2million to Qeun Saly for trips to Nairobi and Maasai Mara. While on a trip to Diani, Qeun Saly discovered that Goodlyffe had accumulated about Kshs 2 Billion in his bank Account. She was able to secure the password to his account and transferred Kshs 500 million into an account in Uganda. She disappeared in the pretext of a sick mother and could not be traced. Goodlyffe was able to locate her in Uganda having a good time with her Tanzanian boyfriend. He reported the matter to the Banking Fraud Unit for investigations.

The investigators through their informal channels managed to convince her to return to Kenya for a bigger and more lucrative deal. On arrival at Jomo Kenyatta International Airport, she was accosted by the investigators from Banking Fraud unit who arrested her and detained her at JKIA Police Station.

You have learnt from the investigating officer that they intend to arraign her in Court to face charges of Obtaining by False Pretense contrary to Section 313 of the Penal Code among others and that bail will be opposed by the State since she had been out of the jurisdiction of the Court for long. Her partners in the drug trafficking business have heard that you are a hot shot lawyer who has ability to secure her freedom.

Evaluating the relevant provisions of the statutory provisions, case law and legal principles, develop an appropriate strategy you will use to secure your client's freedom pending trial. (10 Marks)

### QUESTION SIX

A demonstration organized by *Unga Revolution*, a local Non-Governmental Organisation, over the high cost of living turned violent leading to the intervention of police on 20<sup>th</sup> December, 2022. As a result of the police intervention, over 20 demonstrators were arrested in downtown Nairobi and bundled into police cars. Most of the demonstrators who were arrested were later released without charge and 2 were charged at Milimani Law Courts for unlawfully damaging buildings contrary to Section 86 of the Penal Code, Cap. 63 of the Laws of Kenya.

Kiombo Okiomeri, the leader of the demonstration, who was among those arrested was however neither charged nor released more than 24 hours since he was last seen being bundled into police car, registration GKX911. The *Daily Gossip*, a nationwide newspaper contained a photo of Kiombo Okiomeri being bundled into the police car in its publication, a day after the riots with a headline, '*Police Break Violent Food Protest.*' The family of Kiombo Okiomeri in efforts to trace his whereabouts has visited all the police stations in Nairobi and nearby counties to no avail. It has now been more than a month since Kiombo Okiomeri was arrested but the police have officially denied having him in custody through a letter signed by the Regional Commander, Nairobi County.

Abu Kiombo, Kiombo Okiomeri's father has now retained you to file the necessary application in Court to help find his son. Draft the application. (10 Marks)

**HIGHEST  
SCORED**

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Checker	LM
Data Entry	RM
1 <sup>st</sup> Verification	RM



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

UNIT CODE: 

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 SUBJECT/UNIT CRIMINAL LITIGATION

REGISTRATION NUMBER

DATE: 20/3/23

**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
4	10	PM				
5	10	LM				
6	10	JK				
3	09	RM				
1	13	JK				
<b>TOTAL MARKS</b>	<b>52</b>	<b>RM</b>				



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Questions ..... 4

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Extradition is the surrender of an accused person from the extraditing country to the requesting country where such person is charged of an offence they committed in the requesting country.

Extradition involving commonwealth countries is governed by the Commonwealth Countries Extradition Act.

As confirmed by the Supreme Court in DPP v Okero & Others, the DPP is the one in charge of receiving or initiating requests for extradition.

Having set out the background, the essay will advise the DPP on the chances of success of the request when it is before for determination in a court.

To begin, the magistrate court or High Court must first establish whether there is an extradition agreement between the extraditing country and the requesting country. In this case, since the Republic of Dagostan and Kenya are commonwealth countries, the extradition proceedings are governed by the Extradition (Commonwealth Countries) Act. For the purposes of this discussion, it is presumed that Dagostan was gazetted by the Attorney General.



The Magistrates Court / High Court must also satisfy itself that the offence charged in the requesting country is an offence under the extraditing country. This is important and is anchored in the bilateral relationships between countries. The offences that are extraditable are outlined in the Second Schedule of the Extradition (Commonwealth Countries Act). They include murder, arson, manslaughter, assault, gross bodily harm, robbery with violence among others. The court is unlikely to allow the extradition because the offence of gross unpatriotism is not an offence that is extraditable in Kenya under the Extradition Act. Moreover, such offence has been enticed by human rights bodies for being tools for targeting political dissenters.

In addition, the court is likely to decline the application for extradition because the offence charged is motivated by political agenda. From the facts, it is clear that Jaani Jaanu is an opposition leader and members of his party have been subject to arrests on allegations of planning to overthrow the government. The offence of gross unpatriotism is a political witch hunt.



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Furthermore, for a court to allow an application for extradition, it must be satisfied that the right to fair trial of the accused will be guaranteed in the requesting country. The right to fair trial is a fundamental right that is non-derogable. This has been upheld by the Supreme Court in several cases such as *Francis Murotefa v Republic*. The same has also been upheld by the Human Rights Committee. The right to a fair trial includes rights such as freedom from detention without trial, right to a fair trial before an impartial tribunal, right to be released on bond and bail. From the facts, Dago Stan has a history of detaining political dissidents for years without trial. In view of this fact, the court is unlikely to allow the application because to do so will be a flagrant breach of international law and fundamental rights.

Lastly, the court may also decline the request for extradition because of the prevalent torture in Dago Stan. The prohibition against torture is a jus cogens norm. All countries are obligated to prevent torture and not to torture victims. Section 25 of the Prohibition of Torture Act Kenya prohibits the extradition of an accused person to a country where there are chances of being



fortured. If the court were to allow the application, it would be furthering torture.

In view of the above, the court is likely to decline the application. This is because of the clear potential violations of the human rights of the accused person in R v Akash Abdullah. The court was categorical that accused persons that are to be extradited have rights as spelled out under the Commonwealth Countries Act. These include right to a fair trial, right to have their rights respected and protected. Such that international law applies to Kenya by dint of Article 2(5) and 2(6) of the Constitution, it will be against not only the Extradition (Commonwealth Countries Act) but also international law to allow the accused person to be extradited to Dagestan where their fundamental rights will be violated.

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The question deals with the issue of bail pending trial. Bail is defined in the Bail and Bond Policy Guidelines to mean an agreement between the accused person and the court to procure attendance of court by the accused. This is after secured by a cash-bail (amount).

Under Article 49, the Constitution provides that an arrested person is entitled to many other things and rights including the right to be released on bail and bond by a court or reasonable terms. Below is the strategy that (will use to secure my client (Quensaly's) freedom pending trial.

The first is emphasizing in the Notice of Motion application and accompanying affidavit that the right to bond is outlined in the Constitution. The 2010 Constitution has been recognised as a robust and transformative document in guaranteeing fundamental rights and freedoms. In *John Karuri v Republic* the court recognised that unlike the repealed independence constitution that created distinctions between bailable and non-bailable offences, the 2010 Constitution provides that the right to bail applies to all offences.



In the instant case, the Prosecution may argue that the offence of obtaining by false pretences is a non-bailable offence and very serious. However, a keen examination of Section 313 of the Penal Code is clear that the offence of obtaining by false pretences is a misdemeanour. As a result, there is no justification for not releasing the accused on bond.

Still on the Constitution, the supreme law binds all powers and organs. Article 50 guarantees the right to a fair trial. In addition, every accused person has the right to be presumed innocent until proven guilty. This is a fundamental principle of criminal law and the justice system as held in *Woolmington v DPP*. The Constitution further declares in Article 25 that the right to a fair trial is an orderable right. It follows that my client is innocent until proven guilty. It therefore means that her right to freedom of her security and freedom from detention which is unnecessary will be threatened grossly if she remains in detention for the presumption of innocence is applicable.

Further, Article 27 of the Constitution provides that every one is equal before the law and are entitled to the equal benefit of the law. In the recent past,



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courts have granted bail to accused persons who are alleged to have committed capital offences such as murder, robbery with violence, and treason. For instance in *R v Okoth Obodo*, the court granted bail pending trial despite the fact that the accused was charged with a capital offence.

The same is evident in attempted murder in the trial involving Honourable Babu Owino. Therefore, my client should enjoy the equal protection of the right to be released on bail because they are even charged with a misdemeanour.

Admittedly, the right to bail is not absolute, the court has discretion to grant or not to grant bail. In *George Kamau v Republic* and *John Karuri v Republic*, the courts have laid down some of the conditions that a court looks at when determining whether to grant bail. Court look at factors such as: severity of crime, the extent of flight risk, the ability of the accused to attend trial, threat or interference with investigations.

Concerning the ability of the accused to attend the trial, courts consider the willingness of accused persons to attend court. I would make a case for my client's readiness to abide by the terms the court may impose.

11.0



As earlier stated, the offence charged is a misdemeanor so my client should be given a chance.

Moreover, my client has no previous criminal record. I will seek to demonstrate to the court that she is a first offender. The prosecution intend to raise the fact that she has been out of the jurisdiction of the court for long. My strategy will be to persuade the court that my client is willing to deposit her passport with the court.

Lastly, I would urge the court to determine the application based on the circumstances. The true test for bail is whether the accused will attend court. If satisfied then court should grant the bail. I will hasten to argue that the offence charged is a misdemeanor. Further, there are no intentions to interfere with witnesses or any public interest involved.

These arguments will be made in my application but also orally before court to highlight.

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

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either margin~~IN THE REPUBLIC~~

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

MISC. CAUSE NO OF 2023

IN THE MATTER OF ARTICLE 51(2) OF THE  
CONSTITUTION OF KENYA 2010IN THE MATTER OF SECTION 389 OF  
THE CRIMINAL PROCEDURE CODEIN THE MATTER OF THE DIRECTIONS  
FOR ISSUE OF THE WRIT OF HABEAS CORPUS  
BETWEEN

ABU KIOMBO, \_\_\_\_\_ APPLICANT

VERSUS

THE INSPECTOR GENERAL OF 1ST RESPONDENT  
POLICE

THE ATTORNEY GENERAL \_\_\_\_\_ 2ND RESPONDENT

CERTIFICATE OF URGENCY

I, Cliff Njuguna, an advocate of the  
High Court of Kenya of P.O. Box 4156-00100  
Nairobi practicing as such in the law firm of  
Messrs Njuguna Company Advocates do  
hereby certify that this application is  
extremely urgent and should be heard  
on priority on grounds:

THAT the applicant is the father of  
Abu Kionbo, the leader of the demonstrators  
over the high cost of living on 20th December  
2022.



THAT Kiombo Okomeri (the Subject)  
was arrested but neither charged  
nor released more than 24 hours  
since being last seen into police car  
GKX 911.

THAT the subject's fundamental  
right to freedom from unlawful  
detention continues to be violated by  
the 1st Respondent

THAT unless this Honorable Court  
intervenes, the subject's dignity will  
continue being violated.

THAT the 1st Respondent be directed  
through the writ of habeas corpus to  
produce the subject as this Honorable  
Court directs the appropriate time within  
which to comply

Dated at Nairobi this 20th day of  
March 2023

NJUGUNA COMPANY ADVOCATES  
ADVOCATES FOR THE APPLICANT  
DRAWN AND FILED BY \_\_\_\_\_ TO BE SERVED ON:  
NJUGUNA COMPANY ADVOCATES INSPECTOR GENERAL  
PO BOX 4156 - 00100 OFFICE  
SHELTER AFRICARE, 2ND ATTORNEY GENERAL  
FLOOR, ROOM 10  
LEGION ROAD, UPPER HILL  
Nairobi.



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Captor as in Certificate of  
Urgency

EX PARTE CHAMBER SUMMONS  
(UNDER Section 389 OF THE CRIMINAL PROCEEDURE  
CODE and Article 50(2) of the Constitution)

LET ALL PARTIES CONCERNED meet the  
Honourable Judge in chambers on this  
day of \_\_\_\_\_ 2023 at 9'0 clock  
in the forenoon or soon thereafter as  
counsel for the Applicant will be heard for  
orders!

THAT the application be certified urgent  
THAT the Honourable Court be pleased to  
issue the writ of habeas corpus against  
the 1st Respondent to cause them to produce  
the subject (Kionbo OKIOMERI) before the  
Court.

THAT the Honourable Court be pleased to  
order the respondents to show cause  
as to why the subject should not be  
released and order costs for this application.

THIS APPLICATION is supported on grounds  
THAT:

1. On 20th December 2022, a demonstration  
organised by Unga Revolution, a local  
Non-Governmental Organisation over  
cost of living turned violent



2. THAT as a result of the police intervention  
over 20 demonstrators were arrested  
in downtown Nairobi and bundled  
into police cars

3. THAT most of the demonstrators  
who were arrested were later released  
without a charge and two were  
charged at Milimani Law Courts for  
unlawfully damaging buildings  
contrary to Section 82 of the Penal  
Code

4. THAT Kiombo Okome (the  
subject) and leader of demonstrators  
who was among those arrested  
was however neither charged  
nor released more than 24 hours since  
he was last seen being bundled  
into police car, registration CK X911.

Which Application is further supported  
by the annexed affidavit of ABU  
KOMBIO which states more facts.

DATED at Nairobi this 20th day of March  
2023

NGUGUNA & COMPANY ADVOCATES  
ADVOCATES FOR APPLICANT

DRAWN AND FILED BY  
(see Certificate  
of urgency)

TO BE SERVED UPON  
(see previous  
details in  
Certificate of urgency)



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caption as in the  
Certificate of urgency.

### SUPPORTING AFFIDAVIT

I, Abu Kiombo of PO BOX 12345-00100  
Nairobi do hereby make oath and  
state as follows:

THAT I am the father of Kiombo  
Okomeri the leader of the demonstration  
organised by Unga Revolution on 20th  
December 2022. As such, I am fully  
conversant with facts and competent  
to swear this affidavit.

THAT as a result of the demonstration  
running violent on 20th December 2022,  
the police intervened and arrested over  
20 demonstrators in downtown and  
bundled into police cars.

THAT most of the demonstrators were  
arrested and later released without  
charge and 2 were charged of Miliman  
(law) courts for unlawfully damaging  
buildings.

THAT my son who was among those  
arrested was neither charged nor  
released more than 24 hours since  
and seen being bundled into police car  
registration GKX911.

THAT the Daily Nation newspaper  
contained a photo of my son being  
bundled into the said police car  
in its publication, a day after the note



with a headline, (Police Break Violent  
Food Protest

THAT as a family, we have visited all  
police stations in Nairobi and nearby  
counties to trace his whereabouts  
to no avail.

THAT it has now been more than  
a month since my son was arrested  
but the police have officially denied  
having him in custody through  
a letter signed by the Regional  
Commander, Nairobi County.

THAT I hereby believe as advised by  
my advocate that my son is being illegally  
detained.

THAT unless this Honorable Court  
intervenes, my son's rights will continue  
being violated.

THAT what I depone to herein is true  
to my knowledge and belief.

SWORN by the said

ABU Krombo

on this — day of March  
2023

BEFORE ME

Commissioner for OATHS

TO BE FILED AND SERVED AS INCERTIFICATE  
OF DEPOSITION.

DEPONENT

10/10



Write on both sides of the paper

Baya, Ngamwaya, Tapeli and Giza should be jointly charged under Section 134 of the Criminal Procedure Code for offences such as conspiracy to do so, contrary to Section 377 of the Penal Code. In another count, they can be charged with obtaining by false pretences contrary to Section 313 of the Penal Code.

They should be jointly charged because the money paid on the transactions was used for different purposes but arising from the same transaction.

This is allowed under Section 134 of the Penal Code and has been upheld by courts such as in *Bulutikwa v Republic*

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Under Section 12 of the Victim Protection Act, a victim impact assessment is a statement that details the experience of the victim in dealing with the physical, psychological effects of the crime.

A victim impact assessment gives a victim of a crime a chance to share their views on the case and any evidence adduced at trial. In Warsaw Republic, the Court of Appeal emphasized that victims have an absolute right to participate in proceedings as dictated in Article 50(9) of the Constitution.

Under the Plea Bargaining guidelines and the Victim Protection Act, the victim impact statement is key in influencing the plea negotiations between the accused persons and the Prosecution under Section 137 of the Criminal Procedure Code. Their views ought to be heard and hence can impact on the success of such negotiations.

During sentencing, the court is required to consider the victim impact assessment to determine the appropriate sentence. The court looks at the experiences of the victim. In the instant case, the victim Mwari lost her marriage and suffered



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Annual difficulties.

The victim impact statement empowers the victim because it gives them an opportunity to share how they are coping. This can be a therapeutic initiative for they will feel heard once the default position is that the state is the complainant in the criminal justice system.

The victim impact statement will be vital in establishing the other forms of sentencing like compensation that court should grant. This is because the victim (Nauri) lost her job and had to transfer her children to public schools in the village.

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Prosecution encountered the production of a certificate under Section 106B of the evidence on the production of electronic evidence. Courts in *Kusereverson* and *William Odhiambo v IBC* have emphasized that a certificate must be produced when adducing electronic evidence lest its weight and relevance is minimal.

Second, the Prosecution indicated that they intended to call 15 witnesses during trial. Under the Criminal Procedure Code, the prosecution is at liberty to call any number of witnesses. However in *Bukuruwa v Uganda*, the Court cautioned that relevance of the witnesses' testimonies should guide the number of witnesses. It is unnecessary to bring and call several witnesses when they end up repeating each other's testimony and their relevance is in question.

Third, the Prosecution Council encountered the failure by the trial Court to inform the accused of their right to recall witnesses or to rehear the case. The Criminal Procedure Code provides that the subsequent judge who replaces and takes over a case from a transferred judge shall inform the accused of their right to recall witnesses or rehear the case. Failure to follow this rule makes the trial nullity especially where the accused persons suffered a



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onstantial injustice. This is because the right to a fair trial under Article 50(2) is non-derogable as also outlined in Article 25.

Fourth, the 2nd accused wrote a letter to the DPP stating that she was willing to plea bargain. Plea bargaining is a procedure provided under Section 137A of the Criminal Procedure Code. Basically means negotiations between the accused and prosecution where the accused makes concessions such as pleading guilty for a lesser offence for lesser sentence among others. Plea bargaining can be initiated by either the prosecution or accused as spelled out in the Plea Bargaining Guidelines. Plea bargaining can be entered into before judgment is entered.

Lastly, the prosecution encountered the issue of appeal of interlocutory decisions by the defence. In most cases, accused persons wait until the final judgment is given then they appeal. The Supreme Court in *Narsimha V Republic* held that interlocutory decisions or rulings of trial courts should not be appealed at that time and that accused persons wait for end of judgment. However, the appellate court can allow such appeals where there are grave miscarriage of justice, admission of false evidence or electronic evidence is at the heart of the case.



Under section 162 of the Criminal Procedure Code, the courts required to postpone the proceedings.

Court may grant bail where sufficient security is provided that she will be in safe custody where she will not hurt self.

If court is not convinced about the sufficiency of security and also the fact that it is murder, it may decline to grant bail. But the court must then order and have Marsha placed in safe custody as appropriate in the circumstances.

In the meantime, Section 162 obligates the court to make a report of Marsha's condition to the Cabinet Secretary of Interior and National co-ordination who then informs the President.

Upon receiving the record from the court, the President can direct that Marsha be put into a mental health facility or make any other order he deems fit. In Marsha v Republic, the Court of Appeal held that the court cannot direct and order the accused to be taken to a mental health facility directly. This can only be done by the President. In that case, the court discouraged shortcuts that exclude the President and Cabinet Secretary.



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A mental health professional in the facility where Marsha has been put, may at the time when pronounced that she is now in a better state of mind, send a certificate to the DPP to that extent.

The DPP will then inform the court and whether they will continue or discontinue charges.

If they wish to discontinue, Section 160 of the Criminal Procedure Code requiring the court to discharge the accused but that does not stop future investigations and proceedings.

If they wish to continue, court will order for Marsha to be produced before it and the trial will resume. Court must be satisfied that she is now in a proper mental condition lest the whole process is repeated.

When the Prosecution adduce evidence to prove Marsha committed the murder and the court is convinced that the ingredients have been successfully proved. The court ~~may~~ <sup>is</sup> required to make a record of its findings and forward to the President through the Cabinet Secretary of Interior. The President on receipt can order that Marsha be placed in a mental health facility or make other orders he deems fit.

The Process above was laid out in Marsha VR  
(See overleaf for Act)



procedures that have been put in place to protect witnesses and offenders.

Vulnerable witnesses and offenders can appeal against the decision of the trial court (interlocutory). This helps to ensure that the offenders are not prejudiced.

Where the vulnerable witnesses are the victims of the crime, the Victim Protection Act stipulates that such witnesses & victims shall not be intimidated. It provides that they should be protected.

Under the Legal Aid Act, the Court is obligated to recommend that the National Legal Aid Service obtains counsel to represent an unrepresented accused person. This is also stipulated in Article 50 and 48 of the Constitution. Vulnerable offenders can benefit from legal representation sponsored by the State if it can be proved that they are indigent and courts satisfied. This procedural safeguard ensures that the offenders can actively participate in the trial process.

Courts are cautious about the admissibility of electronic evidence while Section 75A of the Evidence Act makes such evidence admissible. The weight attached to it varies depending on meeting the requirements of Section 106 (b) 4 of the Evidence Act on production of



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a certificate that will describe how the  
video was transferred from the phone to  
computer then CD. The computer used  
these safeguards help to ensure that  
electronic evidence is tested as it is  
susceptible to forgery and fraud.

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

207754



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

UNIT CODE: 

A	T	P	I	O	I
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 SUBJECT/UNIT CRIMINAL LITIGATION

REGISTRATION NUMBER:

DATE: 20/03/2023

**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
<u>6</u>	<u>00</u>	<u>PM</u>				
<u>1</u>	<u>00</u>	<u>PM</u>				
<b>TOTAL MARKS</b>	<u>00</u>	<u>JK</u>				



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Questions ..... 516

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MILIMANI LAW COURTS  
CRIMINAL APPLICATION NO OF 2023

KIOMBO OKIMERI - - - - - APPLICANT

VERSUS

NAIROBI COUNTY - - - - - RESPONDENT

NOTICE OF MOTION

(UNDER CHAPTER IV OF THE CONSTITUTION, SECTION 86 PENAL  
CODE & ALL RELEVANT APPLICATIONS OF THE LAW)

- 1) May this Honorable Court Certify this Application as Urgent.
- 2) May the Applicant Kiombo Okimeri, who was the leader of the demonstration organized by Unga Revolution be stated as being present.
- 3) May the continued absence of the Applicant be held as against the police force of the Respondent County WHICH Application is BASED UPON
  - 1) The fact that the applicant was a leader of the local demonstration
  - 2) The daily <sup>gossip</sup> post has contained the applicant's picture of being banded into police car.
  - 3) Everyone so arrested by the police has either been left open or charged at Milimani law courts.
  - 4) Failure to release the Applicant raises issues with the both the family of the Applicant & members of the organization.
  - 5) Releasing the Applicant will serve in promoting the needs of the said revolution and the Applicant's family.

DATED AT NAIROBI THIS DAY OF 2023  
D.K. & CO. ADVOCATES



NATIONAL LAW COURTS

CRIMINAL APPLICATION NO OF 2023

KIONDO OKIONDO - - - - - APPLICANT

VERSUS

NAIROBI COUNTY - - - - - RESPONDENT  
BI

I swear on behalf of Kiondo Okiondo that what  
is contained in the Notice of Motion is true to the best  
of my knowledge and belief.

2) I swear that should the Application be granted  
every other thing that was too being looked for by  
the police shall be enabled by Kiondo Okiondo.

3) No possit shall be undertaken as a result of  
Daily gossip nation wide newspaper Regarding his above  
4) The Applicant shall be of considered directed upholding  
Upon the Application being permitted.

DATED AT NAIROBI THIS DAY OF 2023  
SK & Co Advocates

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Questions ... ONE (1) ...

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- 1) The issue of having two offenders in two law courts that is Chief Magistrate Court at Mombasa law court.
- 2) Both the accused had similar case laws of creating disturbance contrary to Section 95(i) of the Penal Code and of Intimidation contrary to Section 238(i) of the Penal Code which they both denied.
- 3) Both the two offenders had a Release on cash bail pending hearing and determination of the case law.
- 4) When the matter came up for hearing the Judge who had been given the opportunity for hearing then TGG was transferred before completion of the case.
- 5) Apart from several hearings by different Judges in the matter it was allowed 5 years before.

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ONE 11

- 1) Appeal has been put in place
- 2) Both the <sup>hearing</sup> Appeal Judges and Magistrate were given an opportunity to transfer.
- 3) The matter was heard by more than one Judge.

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