

FACULTY OF LAW – UGANDA MARTYRS UNIVERSITY NKOZI

BACHELOR OF LAWS (LLB)

YEAR III - END OF SEMESTER FINAL EXAMINATION

Academic year: 2022/2023

CIVIL PROCEDURE II, LLB 3201

DATE: 18th May 2023

TIME: 2:00 – 5:30 pm

FINAL EXAMINATION

INSTRUCTIONS

1. This is a partially open book examination. Students are allowed to sit the exam with **Statutes and a clean reading List ONLY**.
2. Candidates **MUST** answer **Four (4)** questions in total. Answer **2 (Two)** questions form each part.
3. Start each number on a fresh/different page.
4. Well-structured and authoritatively supported arguments are considered for good grades.

PART A

QUESTION 1

At an inaugural lecture of law students into the faculty of law at Uganda Martyrs University Nkozi, a guest speaker made a presentation about affidavits and in summary made the following points.

The law on affidavits is surely this. These are statements on oath filed as witness statements of individuals in any matter before Court. They are used to prove service of Court process and used only as a means of verifying suits brought under Order 36 of the Civil Procedure Rules.

Affidavits must be in English and, if a person making the affidavit does not know English then they should not go to Court or they should get another person to whom they tell the information and then that person swears on their behalf.

Courts are however slow to throw out an affidavit for failure to meet certain standards due to the existence of Article 126(2)(e) of the 1995 Constitution and

also the case of *Bitaitana Vs Kananura (1977) HCB 34* where Court held that even where an affidavit is full of falsehoods, Court cannot merely throw it out. That among the things Court does not concern itself with is; whether the affidavit states the place, date and time of signing, whether it is commissioned, whether the advocate commissioning is competent. Additionally, Court does not concern itself on whether the affidavit is drafted in consecutive paragraphs, whether the affidavit is in black or red ink, whether there are inconsistencies in the affidavit, if the affidavit is it be argumentative or prolix or whether the attachments to the affidavits are sealed and stamped by the commissioner for oaths.

That one need not show whether the information is hearsay or within their knowledge or obtained from another person as long as they can speak English. He asserts that all these are easily curable. Even if one is required by law to file an affidavit and they do not, Court still must hear them as these are mere statements on Court record.

As an LLB III student at UMU, discuss the accuracy of the above statement. (25 marks)

QUESTION 2

Briefly discuss the following-

- (a) Attachment of property before a judgement. **(5 marks)**
- (b) Certificate of great importance in a matter in the Court of Appeal. **(5 Marks)**
- (c) The law on amendment of pleadings **(5 marks)**
- (d) The case of *Nalongo Burashe Vs Kekitibwa Mangadalena CACA No.89 Of 2011* **(5 marks)**
- (e) Costs in the event *vis a vis* costs reserved. **(5 marks)**

QUESTION 3

- a) Distinguish between review and the slip rule as post judgement remedies in Uganda's civil procedure. **(10 marks)**
- b) Discuss the law, procedure and practice governing setting aside judgements under Order 9 R.12 and setting aside *ex parte* decrees under Order 9 R. 27 of the CPR; identify the distinction if any between the two. **(15 Marks)**

PART B

QUESTION 5

Address the scenarios before you and provide logical solutions.

- a) Mrs. Ejobi filed a matter against Dona Bank Ltd. The suit is for stoppage of sale of land she pledged as security for a loan. The bank desires to sell it and get money. She claims she only owes UGX 600 million and not 1 billion as the bank alleges. She has applied for a temporary injunction against the bank. **Respond to this application as counsel for the bank. (5 marks)**
- b) While in the High Court Commercial Division, Greenville bank filed a suit for recovery of money lent to Sekabira Ben. The matter was decided against Ben and he was directed to pay back the money. A year later, Ben discovered a letter (new evidence) showing that interest on the loan had been frozen and he owed less money. Ben applied for review. The High Court Judge dismissed the application for review. In his ruling, he ordered that the letter had no value. Ben then immediately lodged an appeal to the Court of appeal. He did not want anything to do with High Court alleging bias. **As counsel for the Bank, how do you counter this? (5 marks)**
- c) Nyashinski sued for conversion against Bisoboka Pork Merchants and obtained judgement in his favour. He proceeded to attach property among which was a truck transporting pigs belonging to Bisoboka Pork Merchants. The truck is in the names of Namuli Stella, a director in the said company. Stella is before you puzzled. **Please help Stella. (5 Marks)**
- d) In an appeal by Mr. Mukalazi to the Supreme Court, he applied for security for costs and further security for costs. Court heard the application but it was dismissed. He intends to appeal the decision to the East African Court of Justice since it can hear matters arising from any East African state. **Advise the lad. (5 marks)**
- e) In a former appeal to the Court of Appeal, a matter was heard by Court but the decision of the Court of Appeal was issued/delivered and signed by two (2) justices. This issue has been raised in the current appeal to the Supreme Court. As a member of the panel of justices hearing this appeal, **what is your decision? (5 marks)**

QUESTION 6

Study the document below and address the questions thereunder.

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA COMMERCIAL DIVISION
CIVIL SUIT NO. 364 OF 2022**

PAMFEL (U) LIMITED ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

MASABA JEMBA DEFENDANT

DECREE

DECREE
This suit coming up for final disposal this 15th day of **September 2022** before **Her Lordship Angellah Namayanja** in the presence of **Mrs. Gishai Justine**, counsel for the Plaintiff and in the absence of the Defendant; and default judgement having been entered against the Defendant upon failure to apply for leave to appear and defend as required by law

IT IS HEREBY ORDERED AND DECREED THAT

1. The Defendant pays the Plaintiff a sum of Uganda Shillings 200,000,000
2. Interest on the sum in (a) above is granted at 6% since the day of signing the contract.
3. The claim for general damages and interest on the same be and is hereby withdrawn
4. The Defendants pays costs of the suit.

GIVEN under my hand and seal of this Honourable Court this 20th day of September 2022.

ဒီအမည်ကို
ANGELLAH NAMAYANJA

JUDGE

EXTRACTED BY:

Akwero, Gishai & Kiweewa Solicitors
NSSF House, P. O. Box 775 Kampala.

- a) Explain the legal process that could have led to the passing of the above decree. **(10 Marks).**
- b) Assuming you are counsel for Masaba Jemba, and he informs you that he was only served through Mukobere News Paper yet no service was attempted on his person. He only became aware of this decree when his BMW car was impounded & sold by bailiffs of the Plaintiff. He also says he does not know where the 200 million demand comes from yet his company paid back all the money. **How would you come to his aid? (15 Marks)**

QUESTION 6

Navibhai Singh filed a suit in Nabweru Chief Magistrates Court for defamation against Old Vision News Paper which published information that he was involved in child sacrifice scandals. Being of Indian origin, this was blasphemous. On 17th November 2020, his case was dismissed with costs for failure to dispel the truth of the statements. Navibhai then lodged an appeal to the High Court on 10th December 2020 against the whole decision.

In the High Court, *Justice Nabirala Muhangi* in his judgement dated 9th May, 2022 stated that Navibhai had filed his appeal without a Notice of Appeal and out of time stipulated by law. He further held that as the 1st appellate Court, his hands were tied and he had to rely on evidence in the trial Court and could not depart from their decision since he did not see the witnesses. Moreover, the matter was decided upon the discretion of the Magistrate which Court cannot interfere with. The appeal was dismissed with costs.

Navibhai then filed a notice of appeal on 16th May 2022, this time within 14 days. He also filed an application for stay of execution just in case Old Vision News Paper comes after his small savings.

Navibhai Singh has now come to your office to assist him take it on from here as he thinks he has a fighting chance in the Court of Appeal which is said to be just!

- a) As counsel for Navibhai Singh, what grounds would you rely on to make an appeal to the Court of Appeal? (6 Marks).
- b) Discuss the steps you would take from hereon to have an objection-free appeal. (12 Marks)
- c) Assuming you are counsel for Old Vision News Paper, how would you challenge the appeal and the application. What other solutions would you obtain for your client. (7 Marks).

S/HE IS NO LAWYER WHO CANNOT TAKE TWO SIDES!