

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

CONVEYANCING – ATP 107

3RD DECEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **THREE OTHER** Questions.
- (b) All questions carry fifteen (15) marks each.
- (c) Marks may be lost for illegibility.

PLEASE TURN OVER

QUESTION ONE (1)

You are recently admitted to the Bar. *A fortiori*, you are a member of the Law Society of Kenya (LSK). The LSK, a body corporate with perpetual succession, is intent on purchasing a property and constructing thereon an International Arbitration Centre. The LSK council recently identified "Borsch Palace" as the ideal site. Borsch Palace is a run-down pub operating in the middle of the fashionable Lavington residential area. The proprietor Karl Borsch holds a registered title vide a Certificate of Title issued under section 30 of the Land Registration Act, No. 3 of 2012. He however only has a photocopy. The agreed purchase price is Kshs. 300,000,000/- of which a sum of Kshs. 100,000,000/= will be raised by the membership including yourself. The balance is to be syndicated to three banks and secured by an undertaking by the lead bank's lawyers. The LSK membership is aware that undertakings constitute a critical aspect of conveyancing but are wary of their constant dishonour. The members attribute this to the very wanting skills of newly admitted advocates. The membership has, therefore, raised issues to be discussed at a scheduled special general meeting of the LSK. You have now been co-opted to help the LSK Council to prepare in addressing the issues, which are:-

- a) How 'vacant' must a property be for the vendor to be taken to have given vacant possession? (3 Marks)
- b) What is the process of obtaining a duplicate Certificate of Title where the original is lost or destroyed? (5 Marks)
- c) State any four principles that govern professional undertakings. (4 Marks)
- d) Suggest one possible reform to the realm of professional undertakings in real property transactions. (1 Mark)
- e) Outline the skills expected of a Conveyancer. (2 Marks)

Please prepare a memo to the LSK Council addressing singularly all the above five issues.

QUESTION TWO (2)

Wanjiru is a good old Law School chum of yours. She is now into business. Wanjiru's rich husband Joe has agreed to transfer to her a ten-acre property popularly known as 'Precious Pooches', which is also where they both reside. Wanjiru has applied to be advanced Kshs. 20,000,000/= by Rudy Bank Ltd. This will entitle the couple to raise the much needed finance for their business. Precious Pooches is constituted in a Certificate of Lease issued by the local land registry. It is a 99-year leasehold tenure granted by the local land buying company Maisha Farmers Ltd. The property is situate in rural Taita Taveta County. Precious Pooches is valued at Kshs. 30,000,000=/. Wanjiru will want to develop a student-house thereon to cater for the local student population. She also wants

to donate and give a portion of Precious Pooches measuring one acre to her best friend Wanjiku. Wanjiru storms into your Chambers waving a Facility letter by Rudy Bank. She does not want to sign the Facility letter until you have addressed and advised her on the following issues:

- a) The stamp duty consequences of the intended transactions. (5 Marks)
- b) The remedies, if any, which will be available to her as chargor and as a matter of law once the formal Charge is registered. (3 Marks)
- c) Which other professionals she has to contact to ensure the transactions are successful and their respective roles. (4 Marks)
- d) The consents she needs to avail for the transaction(s) and from whom. (3 Marks)

QUESTION THREE (3)

You are the transaction advocate of Abdalla Issa the purchaser of Machakos/Block 110/Syokimau15. The vendor is Mohammed Hassan. The property the subject matter of this transaction is an expansive piece of land in Syokimau in Athi River Machakos County. The Title Deed is registered at the Machakos District Lands Registry pursuant to the Registered Land Act Cap 300(Now Repealed) and comprises 134 acres. The property is situated in an agricultural zone. Parties had signed the Agreement for the Sale of 78 acres to the purchaser and the full purchase sum of Kshs.135,000,000/= has been paid to the vendor directly.

The vendor has nonetheless refused to transfer the 78-acre piece of land and part-possession of that same portion has been granted to Sarova Limited. Sarova Limited, have leased 50 acres of the same property for 25 years from the vendor. Sarova's managers never visited the property and only relied on a report and pictures by an agent who procured the property on behalf of the company.

Muriu wa Mwangi represents the vendor and Sarova Limited. No documents were ever signed between Mohammed Hassan and Sarova Limited.

Mr. Muriu has not responded to any calls by yourself. Your letters to Mr. Muriu's firm have also been ignored. Assistants at Muriu's office intimate to you that you can only get hold of their boss at the Karen Country Club where he plays golf daily from 10 am every morning.

Your client is demanding that you ensure that Sarova Limited vacates his land forthwith.

A recent search of the title reveals Nil encumbrances in the Register. Your client informs you that the vendor is showing the same property to prospective purchasers for the purposes of a re-sale, and instructs you to take stern action.

- (a) What quick steps will you take on behalf of the purchaser? **(5 Marks)**
- (b) (i) What professional(s) should be engaged to resolve the dispute between the purchaser and Sarova Limited? **(2 Marks)**
- (ii) What documents will be prepared and/or revised by the said professional(s) and which government officers will process the said documents at Machakos District Lands Registry? **(3 Marks)**
- (c) (i) Which party's advocate prepares the transfer?
(ii) What is the appropriate time to prepare the Transfer on behalf of the purchaser?
(iii) What consents must be produced to enable the District Lands Registrar register the Transfer? **(5 Marks)**

QUESTION FOUR (4)

Skita Mueni a prominent business woman in Nairobi, owns a property in downtown Nairobi, known as Land Reference Number 209/6666, *vide* a grant registered as number IR 68688. She has put a five storey building on the piece of land. She has rented the basement and the 1st floor to Dawa Pap Limited, a pharmaceutical company. Dawa pap limited stores cartons of medical products in the basement while its offices are located on the 1st floor. Skita Mueni furnished to Dawa Pap Limited a one page lease document that states as follows:

*"Monthly rent is Kshs. 300,000/= payable quarterly in advance;
Monthly service charge is Kshs. 75,000/= payable quarterly in advance;
Security deposit is Kshs. 900,000/=;
Here are the keys to the premises."*

The lease did not have any other terms and conditions. Both parties duly executed the lease.

- a) Dawa Pap Limited brought in medical supplies and stocks and stored them in the basement.

There was a leakage of raw sewage in the building that flooded the basement that was caused by some structural defects in the building. Dawa Pap Limited are claiming for the

value of their medical supplies from Skita Mueni. Skita Mueni has unequivocally stated that it is not her liability. You are recently admitted to the Bar and you are working for Wakili Mwema & Company Advocates. The tenant has come to you for advice. Give the requisite advice to the tenant.

(3 Marks)

- b) Dawa Pap Limited took the lease documents to Brown & Company Advocates for review where you have recently been employed as an associate. Please list at least any **FOUR** covenants that should have been included on the part of the Lessor and **FOUR** covenants on the part of the Lessee in addition to the covenant to pay.

(8 Marks)

- c) What is the difference between a lease and a licence?

(4 Marks)

QUESTION FIVE (5)

Gayle White is a Kenyan citizen by birth and runs a successful tour agency. She identified a villa in Runda registered as a leasehold interest as Land Reference Number 856/5555 comprised in a grant number IR 98756 and which is near her office located at the Splendour mall.

Her Lawyer Red & Herring Company Advocates have conducted a search over the property and confirmed that it does not have any encumbrances. Gayle White has applied for a loan of Kshs. 30,000,000/= from Cash money Limited to be secured by the Villa. The loan was granted to her for 15 years with monthly repayment of Kshs. 250,000/= inclusive of interest. Interest is at the rate of 21% per annum. The lease was registered in favour of Gayle White and the charge was duly registered in favour of Cash Money Limited for the sum of Kshs. 30,000,000/=.

Gayle White has repaid Kshs. 5 million. Following the travel advisories, business has been low and for the last seven (7) months she has not made her monthly repayments.

- a) Gayle white has identified another financier Easy Money Limited who is willing to take over the loan at a lower interest rate of 10%. She has approached Cash Money Limited to transfer the loan to Easy Money Limited. Cash Money Limited has demanded Gayle white to pay up the entire outstanding loan and the entire interest for the remaining loan period before transferring the loan. Gayle White is not agreeable to pay interest for the remaining period of 10 years. Gayle white has come to you for advise.

(5 marks)

- b) Assuming Cash Money Limited has finally agreed to transfer the loan to Easy Money Limited outline the process you would undertake to perfect Easy Money Limited Security.

(10 marks)

QUESTION SIX (6)

You are newly admitted and have recently opened your law firm and plan on practising conveyancing law predominantly. Your clerk is older than you and more experienced. He has introduced 16 prospective clients to the firm all of whom shall be purchasing apartments on Ngong Road in Nairobi. The apartment block constituting the subject property is according to the purchasers on a property, which is very lush with mature trees and baboons. Settlors previously occupied the property and its precincts only. The great grand-son and a descendant of the Delemere family sold the subject property to the developer. Pictures of the property also emailed to you by the purchasers evidence an impressive new building. You notice from the construction sign board in the pictures that the property's L.R Number is 209/883927 and that Knight Frank Limited are the sole selling agents. The said construction signboard indicates the clients as Green Park Limited and the supervising architects as Symbion International. The said signboard also notifies all and sundry the projects structural engineers, quantity surveyors, electrical engineers and the contractor Trend Limited.

All the 16 clients were procured through a selling agent known as Quick Deals, a sole proprietorship registered under Cap 499 according to a certificate of Registration of Business Names, which your clerk has also availed for your scrutiny. The agents are freelancers but aggressive marketers and claim to represent the owner Green Parks Limited.

The vendor's advocate Muchilwa and Co Advocates are based in Down Town Centre Nairobi, a new building next to the old bus station. The said lawyer will be acting for the vendor and 8 purchasers. The apartment block comprises 24 apartments. Copies of documents availed to you indicate that the Title was recently issued in 2011 pursuant the Registration of Titles Act (Now Repealed). Its I.R is 443271. Its Land Reference Number is 209/889327. The vendor's advocate has also emailed you the standard contract and the sublease.

Your clients have never met the vendor and were introduced to the property by Mr. Karis of Quick Deals and one Mr. Kamwaki who was working at the construction site. Both claim to know the owners of the property. Mr. Kamwaki's business card has been availed to you. He advertises himself as a constructor. The certificate of registration of Green Parks Limited annexed to the documents send by Mr. Muchilwa indicates the company was incorporated in 2013.

Being a diligent advocate you have advised your clerk to conduct a search of the title availed to you by the vendors advocate L.R 209/889327. The Registrar of Titles has advised that the Inland Land Titles Registry does not maintain any Deed File for L.R 209/889327. The Registrar has therefore declined to certify the copy of the title attached to the Application for Copy presented to the registry by your clerk.

All of your 16 prospective clients work for Kenya Revenue Authority and will be cash buyers. Each apartment is being sold for Kshs.20,000,000/-.

Out of curiosity you decide to read the rest of the documents emailed by the purchasers and you notice that copies of the Certificate of Practical Completion by Symbion International particularizes the development as being on L.R 209/883927. The Nairobi County Government has also issued the Certificate of Occupation in respect of L.R 209/883927 as per a copy of the planning consent to construct also annexed therewith. Upon perusing the Agreement for Sale you stumble upon clause (g) that provides as follows:

"The seller does not guarantee the title at all as it has no knowledge of the property or the title history. The purchaser hereby accepts the right of the vendor to sell the apartment and shall not require any evidence of or raise any objections, requisitions or inquiry in respect of the vendor's right to the site"

The draft lease emailed by the vendor's advocate indicates the head title as an indenture of conveyance registered in volume 209/ File 883 /volume 927. According to the draft lease the Lessor will be granting the purchasers fee simple leases of 99 years. Mr. Muchilwa had also indicated to you verbally on the phone that the District Lands Registrar in Nairobi will issue Certificates of Lease to your clients in view of the recent operationalization of the Land Registration Act 2012.

Your clerk talks directly to the purchasers and the vendor's advocate. The purchasers are threatening to debrief you. According to them you are too slow and they may lose the apartments to bank-financed prospective buyers.

- a) Advise the purchasers and outline briefly how you will proceed with this transaction. (5 Marks)
- b) Comment generally on clause (g) of the Agreement for Sale. (5 Marks)
- c) Your clerk is not happy with the Registrar of Titles and you notice from the transaction file that he has applied for and obtained a certificate of official search in respect of L.R 209/889327 from the Nairobi District Lands Registry. The said official search reveals no cautions, inhibitions and restrictions, and the encumbrances section is indicated as NIL. Comment? How will you deal with the said document? (5 Marks).

END OF EXAMINATION