

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 100: CIVIL LITIGATION**

**MONDAY 18<sup>TH</sup> JULY, 2011**

**DURATION: 3 HOURS**

**Instructions to Candidates**

- (a) Answer question ONE and any other three (3) questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

**PLEASE TURN OVER**

1. Mureithi Quresh Ochich aged 35, a finance manager of Purity Banking Corporation Limited in Nairobi died along the Limuru-Nairobi road while driving his motor vehicle, Registration No. KXZ 9000AA Mercedes Benz. At a corner around Kinoo, a lorry Registration No. KQQQ 130YY hit his car from behind, killing Ochich on the spot. He was survived by a widow, Jacky Johnson Khaoya, but the couple had no children. Before his death he was on a monthly salary of Shs.400,000/- out of which he was spending Shs.300,000/- on his family, and the balance on himself. According to the police abstract report, the driver of the lorry was Charles Ole Matendechere. The registered owner of the lorry was Mate Mate Enterprises Limited. The lorry was insured by Bima Yetu Underwriters Limited.

You, practicing as an advocate at Twelfth View Park Towers, 11<sup>th</sup> floor, Cossy Street, under the firm name of Mulole & Co. Advocates, have obtained letters of administration for Jacky on her instructions. The lady has further instructed your firm to make a claim in a suit to be filed in a court, concerning the fatal accident.

Prepare the necessary claim and file in court the appropriate documents to commence the suit.

*(For the purposes of this particular question, the new requirements in the Civil Procedure Rules, 2010, will not be insisted on)*

**(15 marks)**

2. Jane Trader Asidza filed a suit in the court to claim shs.350,000 from Jackton Mercury Awuka. She claimed costs and interest from 1.2.2011 till payment in full. In the plaint it is alleged that the defendant had in January, 2011 ordered 350 bags of maize from the plaintiff at the price of Shs.1,000/- per bag.. Delivery of all the 350 bags was effected on 5.1.2011. Payment for the maize was agreed to be made by 1.2.2011. The payment date passed without payment being made and so Asidza went to court. She has in her possession the contract of sale setting out the above terms of sale, dated 1.1.2011. She also has got the delivery note countersigned by Omuka, acknowledging receipt of the maize under the contract. Omuka filed a defence in which he denied the existence of the contract, and the allegation in the plaint that he owes the plaintiff any money. Asidza instructs your esteemed firm of advocates, of which you are the sole partner, to procure for her a quick and early judgement in the matter without going through the rigours of a trial.

Explain how, and give reasons why, you will go about carrying out these instructions in the manner you adopt.

**(15 marks)**

3. Peter Ling Hu Lisamula owns premises within the area of jurisdiction of the City Council of Nairobi. On 22.2.2011 he got a notice from the City Council of Nairobi, dated the same day. It instructed him to demolish his premises said to contravene City Council planning by-laws. This, despite the fact that the premises were put up in strict compliance with the approved plans of the City Council. Certificates of occupation were issued by the Council. The National Environmental Management Authority recently approved the premises. On making inquiries at the Office of the Director of City Planning, Lisamula was informed that his only problem was belonging to an ethnic group not liked by the majority of Councilors, and that the Director could stand members of Lisamula's ethnic group to continuing to own premises in the city.

Lisamula instructs you to commence civil proceedings in the nature of judicial review to quash the decision of the City Council of Nairobi made on 22.2.2011, the same being an administrative malpractice adversely affecting Lisamula. Prepare the necessary documents that you will file in court.

(15 marks)

4. Give an outline of the objection proceedings by a non-party, following a proclamation made in execution of a civil judgement and decree.

(15 marks)

5. Kombokombo Swift is a freelance process server of the court. Bidii & Co Advocates instructed him on 6.5.2011 to serve a defendant, known as Madeni Mengi, with a plaint and summons to enter an appearance in Kwale Chief Magistrate's Court, Civil Case No.101 of 2011 in which Madeni Mengi is sued by Tom Ravanger. Swift comes back and informs the advocates that he found Madeni Mengi at Kula Raha Busaa Club on the same date of the instructions, where Madeni Mengi was imbibing an alcoholic substance ordinarily sold there. This was not the first time Swift served Madeni Mengi with court process. He had served him with many other summonses in many other cases. Nevertheless, Swift re-introduced himself and the purpose of his visit on this occasion. Madeni Mengi received the summons and the plaint, and acknowledged receipt thereof by signing the return copies and endorsing them with his national identity card number as well.

Kombokombo Swift asks you, as an advocate, to prepare for him an appropriate Affidavit of service for him to sign. Prepare the appropriate Affidavit of service.

(15 marks)

6. Makesikesi filed a suit against Isa for alleged violation of intellectual property rights in certain published works of literature. Isa has been served with an application by Makesikesi seeking the leave of the court to serve Isa with a written set of questions to him and to require him to answer those questions on affidavit before the trial of the case. Isa seeks advice from you, as a practising advocate as to the various available grounds on which this kind of application may be resisted by Isa. Set out those grounds and briefly explain what each of them means.

(15 marks)

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