

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 29TH JULY, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should answer **FOUR** questions
- (b) **Question ONE** is compulsory
- (c) All questions carry 15 marks each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

1. Two months ago, you were recruited as a conveyancing advocate in the firm of LBA Associates. So far you have not handled any single client. This morning to your consternation Mr. Libanga called you to his office and informed you that due to other engagements he wanted to send you, alone, to take instructions from a client of the firm, Choppy Industries to take instructions from Mr. Choppy Senior on a piece of land the Company, Choppy Industries, wanted to purchase and transfer his Industry from rented premises. While there, you will be required to visit the site with Mr. Choppy Senior and the Company's other managers.

(a) Mr. Libanga has asked you to prepare a small Memo for his perusal before you leave for the meeting. The Memo is to satisfy him on the information you will call for from Mr. Choppy Senior. **(3 marks)**

(b) While at the site you notice that the property is next to Embakasi Primary School, and adjacent to the Railway line. The buildings around seem to all squat and used as warehouses. And there seems to have been too many planes flying overhead and a bit low as to make conversation difficult. Mr. Libanga asks your opinion as to the amounts and clearances you may require in the transaction. **(10 marks)**

(c) Three days later the firm of MMX Associates acting for the seller send you a draft Agreement for sale and a copy of the title, Land Reference No.209/862 (LR.8444). From your perusal of the title you note that the user of the property is residential and it is a leasehold from the Government of the Republic of Kenya for 99 years from 1920.

What advice would you give to Mr. Choppy Senior as to his intended acquisition? **(2 marks)**

2. Your childhood friend Rosemary Chebet has called on you at your law firm. She is recently returned from Turkey where she was working. While there, she met and married a German known as Adolf Knitz. Knitz has fallen in love with the Kericho countryside and has decided to invest in a farm and settle in Kenya. His father-in-law has identified for him a freehold property known as Title Number: Kericho Cheptigech/Blk1/167 LR. NO.18202. Chebet is happy on the turn of events but is not impressed by the idea of leaving in the countryside. She was brought up in the county and more importantly she thinks it would be taboo to set up her matrimonial home so close to her parents' home. She has identified a 1.5 acre plot of land in Kericho town. The plot overlooks the tea farm and Knitz is not opposed to it. When she shows you the copy of the title the owner gave her you note that it is a leasehold from the Government of the Republic of Kenya for a term of 99 years from 1947. There is also registered on the title a charge for Kshs.2,7000,000/- to Heri Bank Corp Ltd. Chebet is concerned that the owner has

not shown her the Original Title document and to be sure as to the authenticity of the transaction she has requested the owner of the plot to have you as his lawyer too.

(a) i) Chebet wants to know if it is possible to act for both parties to the transaction.

(2 marks)

ii) She has asked for your opinion as a lawyer as to which plot to purchase. Since Knitz is to pay for the part of the purchase price they will purchase the property in their joint names.

(5 marks)

iii) How would you help Chebet confirm the authenticity of the plot L.R.No.18202?

(1 mark)

(b) Chebet is anxious about the purchase as they can only raise 50% of the purchase price. She intends to borrow the balance from CHAI SACCO where she has been a contributory member. Your firm is enlisted as a legal service provider for CHAI SACCO.

i) Explain to Chebet how you intend to handle the transaction to purchase L.R.No.18202 to ensure that the title she is purchasing is free of the charge to Heri Bank Ltd.

(3 marks)

ii) Which document will you register to complete the transaction? In what order?

(4 marks)

3. You have just been admitted as an advocate of the High Court of Kenya after successfully completing your course at the Kenya School of Law. You have secured your first job as an associate dealing with conveyancing matters in the firm of Black and White Advocates.

Your client Mr. Muiruri Kahuna walks into your office waving a copy of the Daily Nation. Very excitedly he shows you an advertisement in the newspaper of a sale by public auction in the exercise of a charges statutory power of sale, or a six bedroomed maisonnette located on the outskirts of Nyeri Town. The property is known as Title Number: Nyeri/Nyeri Municipality Block 3/5555 and measures approximately 5 acres. The property is registered in the name of the charger Maina Muchai. The auction is scheduled to take place at the auctioneer's offices in Shangure house along Shangure Avenue in five days.

Mr. Muiruri Kahuna has established that properties of a similar size and nature are being sold for about Kshs.25 million.

The conditions of the sale are:

- i) That 25% of the purchase price must be paid to the auctioneer at the fall of the hammer and the balance will be payable in 45 days.
- ii) The sale is subject to a reserve price of Kshs.15 Million
- iii) The auctioneers and charges do not warrant the condition of the property

On the day of the auction you discover that the charge is Cosy Bank Limited, Mr. Muiruri Kahuna's employer. Mr. Muiruri Kahuna turns out to be the highest bidder followed by Mr. Mali the accountant of the auctioneers firm.

- (a) Comment on the legality of the sale. **(4 marks)**
- (b) Set out the duties of the chargees advocate and your duties as Mr. Muiruri Kahuna's Advocate. **(8 marks)**
- (c) List the pros and cons of an auction sale. **(3 marks)**

4. XYZ limited owns a 20 storey commercial building that is comprised of shops, offices and parking space. The building is erected on all that property known as Land Reference Number 2030/15 and IR Number 2013. It measures approximately 0.4 hectares. The property is a leasehold interest for 99 years from the Government of the Republic of Kenya with effect from 1st January, 2000.

Ms Pretty Awesome is a tenant in the building having rented the North Wing of the second floor comprising of 700 square metres. Ms Pretty Awesome runs a modelling agency from the said premises. She was given a six year lease over the premises from 1st September 2009.

Your firm Meril & Onyango Associates have just received instructions from XYZ's in-house lawyer to renew Ms Pretty Awesome's lease for another six years from the date of expiry of the lease.

- (a) Enumerate the steps you need to take to successfully renew her lease including the obligations of the advocates for the parties. **(7 marks)**
- (b) One year after the renewal of the lease Ms Pretty's business encounters difficulty leading her to default in rent payment. XYZ limited has written to you asking you to advise it on the remedies available to it under the law. **(6 marks)**
- (c) Two years after the renewal of the lease part of the building including Ms Pretty Awesome's modelling agency is destroyed by fire following a terrorist attack. No timeline has been given of when that part of the building will be re-instated.

What are Ms Pretty Awesome's legal options? Advise.

(2 marks)

5. Mr. Mali borrowed a loan of Kshs.50 million from International Bank House in January, 2013. He used his 10 acre piece of land located along Mombasa Road as security for the loan. He is registered as the proprietor as lessee of that 10 acre piece of land which is known as Land Referenced Number 1963/01 IR Number 1978. He has constructed his matrimonial home on two acres of the above mentioned property. He has leased 5 acres of the said piece of land to Come and Go Import and Export Limited who have erected some warehouses. He has leased 3 acres to a flower growing company known as Sunshine Flowers Limited. Both Lessees have been granted 6 year leases.

Mr. Mali has a second charge over the same property in favour of Pesa Pap Limited. The loan was advanced in June 2014 with the consent of the 1st Chargee.

Mr. Mali's employment contract with a multi-national company was terminated on 31st of January 2015 due to gross misconduct and negligence. He has been unable to service his loans to the two institutions. International Bank House wishes to exercise its statutory power of sale.

- (a) International Bank House has advised you as its in-house advocate to issue a statutory notice to Mr. Mali. Identify the critical elements that must be contained in the statutory notice. **(4 marks)**

- (b) List the persons who must be served with the statutory notice. **(4 marks)**

- (c) Mr. Mali was told by his drinking friends at the pub that banks are in the habit of selling people's property at a throw away price. In addition they told him that he should not expect to get even a cent from the sale. Mr. Mali knows that the value of his property is approximately Kshs.200 million.

Address Mr. Mali's concerns by advising him of the statutory position.

(7 marks)

6. In 1995, Justine Breber bought a 3 bedroom maisonnette in Imara Daima Estate, L.R.209/16650 IR 2424. To pay the balance of the purchase price, he secured a mortgage from Savings & Loan for Kshs.14,750,000 repayable within 20years. Unfortunately in 2013, Justine Breber fell upon some hard times and could not keep up with the loan repayments. The wife is distressed about the whole issue.

After some consultation with the bank, the Credit Manager suggested that Justice sells this house by way of private sale. Mr. and Mrs. Kanye West agreed to buy the property at a price of Kshs.7,500,000. The outstanding loan amount at the time was Kshs.7,300,000, so Justin would use the extra Kshs.200,000 to settle other

debts. Both parties, the vendor and purchaser instructed you to act for them in the transaction. An Agreement for sale was executed on March 25, 2014 and 15% deposit paid directly to the vendor. The balance of purchase price would be payable upon completion. It was expected that the completion would be within 90 days and the vendor agreed to hand over vacant possession to the purchaser upon completion. At the time of execution of Agreement for sale, the property was being rented for Kshs.25,000/-.

In May 2014, the Cabinet Secretary in the Ministry of Lands directed the closure of the lands offices at Nairobi in order to allow for investigations and streamlining of operations. The Registry re-opened in July 2014 but normal operations resumed in August 2014.

Acting for both parties, you were able to obtain all completion documents by August 29th 2014 and the transfer was duly registered on September 15th 2014. A Title Deed was issued to Mr. & Mrs. Kanye West.

- (a) Highlight the relevant completion documents required in this transaction. **(10 marks)**
- (b) Briefly comment on the various tax implications for the parties to the transaction and the effect of non-payment. **(5 marks)**
