

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 18TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates MUST 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. Prestige property limited is registered as the proprietor as lessee from the Government of Kenya of all that property known as Land Reference No.209/8595/975 and registered as IR.NO.71717 measuring approximately 10 acres. The property is situated in Nairobi County and borders Ngong forest on one side.

Prestige property limited is in the process of developing 45 4-bedroomed luxurious apartments on the property known as Refreshing Springs Apartments.

Neema Waite was introduced to Dan Muliro, a director of Prestige Property Limited by her brother. The meeting resulted in an agreement for sale dated Pt November, 2015 between Neema as the purchaser and Prestige Property Limited as the vendor. Neema decided to buy one of the apartments off-plan based on the building plans and brochures. The purchase price of each apartment is Kshs.50 million. The agreement for sale was prepared by Brown & Brown Advocates on behalf of the vendor. The firm of Jay & Jay Advocates was acting for the purchaser. The purchaser paid a deposit of Kshs.5 million and applied for a loan from Kashmani Bank Limited of Kshs.45 million. The firm of Wema & Company Advocates is acting for the bank in the transaction.

- a) Explain the role of each advocate in the transaction until completion. (10 marks)
 - b) What is the cost implication of the transaction to the purchaser? (4 marks)
 - c) Identify the title documents in this transaction. (1 mark)
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2. Engineers Joan Omondi and Jahari Anyango are good friends and partners in an engineering consulting firm. In 2012 they purchased all that property known as Land reference number 55/222/3 registered as IR No.77777 measuring approximately 50 acres located in Meru County. They were registered as joint tenants over the property.

In 2013 they purchased another property known as Ngenia/Wone/2015 measuring approximately 20 acres located in Kakamega County. They were registered as tenants in common. Unfortunately, Engineer Omondi died in December 2014 through a tragic road accident. She was survived by two sons namely George Washington Omondi aged 20 years and Abraham Lincoln Otieno aged 19 years. You are a newly admitted advocate working for the firm of Black and Black Associates.

- a) Outline the process that you will follow in order to transfer Engineer Joan Omondi's interest in the properties to her sons. (8 marks)

b) Engineer Johari Anyango after the demise of her friend engineer Joan Omondi is no longer interested in carrying out agricultural activities on all that property known as Land Reference number 55/222/3 registered as I.R. NO. 77777. She has decided to give her interest in the said parcel of land to her son Bill Clinton Obama and his fiancée Faiza Wanjiku as a wedding present in their upcoming nuptials.

Advise her on what she needs to do in order to successfully transfer her interest in the said parcel of land to her son and fiancé. She would like the gift to be a surprise. (7 marks)

3. Your client, Koigi Ido, a prosperous businessman is desirous of purchasing the land known as Land Reference No.209/85235 and IR No.20151 measuring about 100 acres situated in Nairobi County. It is rumoured that the property borders Nairobi National Park on one side, a proposed by-pass on another side and Wilson Airport on another side.

LSK Housing Sacco registered under the Co-operative Societies Act 1997 are registered as the proprietors as lessees of the above mentioned property from the Government of Kenya for a term of 99 years with effect from 1st January 2005. The revisable annual rent is Kshs.20,000. The proposed purchase price is Kshs.750 million and your client will pay a deposit of 10% to the Vendors Advocate to hold as a stakeholder.

a) Discuss the kind of due diligence you will undertake as the purchaser's advocate and why? (5 marks)

b) List completion documents you will expect to receive from the Vendors advocate in order to successfully complete the transaction? (5 marks)

c) Subsequent to executing the agreement for sale your client was not able to raise the balance of the purchase price within the completion period. Time was not of the essence as the agreement was silent.

Discuss the remedies the vendor may opt to exercise and how these may be exercised. (5 marks)

4. Mr. Kosha Singh, a Kenyan National, is registered as the proprietor as Lessee from the Government of Kenya of all that property known as Land Reference No.72/783 registered as IR.N0.2828 measuring approximately 15 acres and located in Meru town in Meru County. The lease term is 99 years with effect from 1st January 2000 and a revisable annual rent of Kshs.50,000/-. There is a 5-storey block erected on the property as well as a concrete factory. A valuation report conducted 5 years

ago show that the property was valued for Kshs.250 million. Mr. Kosha Singh deposited the title with Ferocious Bank Limited in the first instance to secure the facility of Kshs.50 million that he urgently required to clear 2 containers of raw material at the Mombasa port. He subsequently approached the bank for a further facility of Kshs.75 million to increase its working capital. You have recently started your firm Wakili Associates. Ferocious Bank Limited has instructed you to act for them in the transaction.

- a) Identify the nature of the security that was originally created and its advantages if any. (3 marks)
- b) Explain the process of creating and perfecting the security on behalf of the chargee. (8 marks)
- c) The charger and his wife have instructed you to act for them as well in a bid to reduce legal costs. Advise them. (4 marks)

5. Mohamed Ali Mahmood is registered as the proprietor as lessee of all that property known as MakatianiTown/Block 10/4494 located in Isiolo town. He has erected a commercial building on the property comprising of shops and offices. He leased a shop on the ground floor of the building to Ahmed Haji Kaji. The written lease between Mohamed and Ahmed commenced on 1st October, 2007 and expired on 31st December, 2013. During the last year of the lease Ahmed was paying a monthly rent of Kshs.150,000/- quarterly in advance. At the end of the lease term no new lease was signed but Ahmed remained in possession of the premises. He continued to pay the monthly rent of Kshs.150,000/- quarterly in advance until 30th of June, 2015. He has not paid the rent for the 3rd and 4th quarters. Ahmed told Mohamed two days ago that he intends to vacate the premises by 30th November, 2015. Mohamed informed Ahmed that his payment of rent in January 2014 extended the lease for another 5 years and 3 months and that Ahmed will be liable for all unpaid rent during this period.

- a) Critically analyse whether Ahmed is liable for all the unpaid rent until 31st March, 2019 giving reasons for your answer. (5 marks)
- b) Ahmed was not able to find a shop that was as strategically located as Mohamed's shop. He agreed to renew the lease with Mohamed. Ahmed has appointed you to act on his behalf. You have received for your perusal a one page document drawn by Mohamed's nephew, a 1st year law student in a local University.

The lease states as follows:

'This lease will take effect from 1st January 2016 for 5 years 6 months. The monthly rent of Kshs.200,000/- is payable quarterly in advance. The rent

will escalate by 10% every year. The Lessee will pay a monthly service charge of Kshs.30,000/- payable quarterly in advance. The service charge may increase depending on expenses. Service charge accounts will be furnished to the Lessee every year.'

Your client was requested to execute the lease document. List at least 5 covenants that should be imposed on the Lessor and 5 covenants that should be imposed on the Lessee. **(10 marks)**

6. Makau Kilonzo bought all that property known as Mavoko Town/Block 3/4595 measuring approximately 50 acres from Kieti Kiema in January 2014. The agreement for sale and the prescribed transfer document reflect the Vendor is Kieti Kiema and the purchaser is Makau Kilonzo. The title was issued on 30th March, 2014 in the name of Makau Kilonzo & Sons. Subsequent to the transfer in March 2014, Kathoka Kiema lodged a caution against the property in August 2014 alleging a beneficiary's interest. Two weeks ago Makau Kilonzo decided to sub-divide the property into 100 plots of approximately half an acre each. However, he realized that he could not commence the process of sub-division due to the anomaly on the title and the caution. You have just been employed as a land Registrar by the Ministry of Lands.

- a) Discuss the shortest and quickest way of dealing with the anomaly on the title. **(3 marks)**
- b) Outline the process of removing the caution from the land. **(6 marks)**
- c) Set out and analyse other ways of removing caution as stipulated under the Land Act. **(6 marks)**

7. Menelik Kipchumba and his wife Donna Kipchumba are the shareholders and Directors of Meld Tea Limited. Meld Tea Limited is registered as the absolute Proprietor of all that land known as Kericho/Kaptagat/430 measuring approximately 250 acres. The company has planted tea on 245 acres and erected staff quarters on 5 acres.

Mno Bank Limited advanced to Meki Tea Limited a facility of Kshs.250 million secured by a charge over Kericho/Kaptagat/430 in August 2013. Meld Tea Limited is in default of repaying the loan and has not make any payment since January 2015.

As a newly admitted associate of Kip & Kip Advocates, you have been instructed by the senior partner to give a written legal opinion stating and briefly describing the remedies available to the chargewander the Land Act.

(15 marks)

8. Omondi, Tanui and Kemji Patel are registered as the proprietors and Lessees from the Government of Kenya of the property known as Land Reference No.209/9898/99 IR No.67670, measuring approximately 2.05 hectares. The lease is for a term of 99 years with effect from 1st of January, 2010. A nine storey building comprising of 8 shops on ground floor and 16 equal size flats on 8 floors is erected on the property located in Ngara. The property has a car park, gardens, swimming pool and passageways. Kemji Patel controls the premises. He collects all the income, pays all the outgoings and gives Omondi Tanui his share. Omondi Tanui is dissatisfied with Kemji Patel's management of the premises and Kemji has refused to furnish Omondi with current accounts pertaining to the premises. Omondi Tanui proposed to Kemji to subdivide the building under the Sectional Properties Act No.21 of 1987 so that he may have a title to his premises. Kemji Patel objected to the proposal on the grounds that the Sectional Properties Act did not apply to the title. He argued further that it was not possible to divide the common areas.

- a) Address the objections raised by Kemji Patel. (5 marks)
- b) Identify at least 5 a Sectional Plan under the Sectional Properties Act 1987. (5 marks)
- c) Identify at least 5 differences between issuing titles of apartments as sub-leases and issuing titles under the Sectional Properties Act. (5 marks)

9. Shindig Limited is registered as the absolute owner of all those properties known as Ngong/Ngong/2030 and Ngong/Ngong/2031 measuring approximately 5 acres each. Sindig Limited leased all that property known as Ngong/Ngong/2030 to a religious order so that they could use the property as a convent. The lease commenced on 1st January, 2015 for a term of 15 years and a monthly rent of Kshs.300,000/- which is escalated with 10% every year. Subsequent to granting the lease to the convent Shindig started constructing a state of the art pub, wedding and conference venue on the property known as Ngong/Ngong/2031. There are two trucks going to and from Ngong/Ngong/2031 delivering supplies. Once the convent started operations on the buildings erected on Ngong/Ngong/2030 they realized that some parts of the building had a leaking roof causing damage to their furniture and equipment.

Shindig Limited has directed the contractor of the pub to store some of the building materials on Ngong/Ngong/2030. Upon completion of the construction of the pub there are parties held there day and night. The religious order requested the Lessor to have the noise reduced. However Shindig Limited responded by saying it had a constitutional right to own property.

- a) Briefly highlight the covenants that the Lessor has breached if any. (5 marks)
- b) Discuss the Lessees remedies, if any. (5 marks)

- c) The Lessee has approached you for legal advice on whether it can assign the lease to a third party.

Advise.

(5 marks)

10. Mr. Mali Malik is a Kenyan National who has been living and working in Maryland in the United States. He has been a resident of the United States for the last twenty years. He has heard that Kenyan property prices are at an all-time high.

Recently he wrote to you an email as an associate in the firm of Black and White Advocates. He stated as follows in his email:

"I am the registered owner of a 2 acre piece of land in Kileleshwa. My mum tells me that if I develop apartments on it and sell I will make a lot of money. At the moment the property is vacant. I intend to develop 40 4-bedroom apartments that I can sell for Kshs.60 million a piece.

I have been out of the country for a very long time and I do not know which professionals I am supposed to work with to actualize my dream. I have attached copy of my title. I eagerly wait for your advice."

Your perusal of the title document shows that Malik is registered as a lessee of the property from the Government of Kenya for 99 years with effect from 15 of January 2000 of all that property known as Land Reference No.450/78725 and registered as IR No.750 measuring about 0.80 hectares. The property is for a single dwelling.

- a) Advise Malik on the other professionals that he would require to work with and their roles. (6 marks)
- b) Identify the consents you would require and from whom in order to realize Malik's dream. (6 marks)
- c) List the title documents that will be issued to the prospective purchasers. (3 marks)
