

## COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

### **ATP 105: PROFESSIONAL ETHICS & PRACTICE**

**THURSDAY 6<sup>TH</sup> AUGUST, 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. Irene Mudogo is an advocate of eight (8) years standing. Irene failed to apply for a Practicing Certificate for the years 2014 and 2015. She nevertheless continued to take instructions from clients, draw and execute the necessary pleadings and represent her clients in court. Since her admission, she has been practicing under her own firm known as Mudogo and Company Advocates. One of her clients, Mteja wishes to file a complaint against her with the Advocates Complaints Commission. Mteja alleges that Irene successfully concluded a case in which she was the Plaintiff, judgement was awarded against the defendant and payment of the decadal sum had in fact been deposited in Irene's personal fixed deposit account from which Irene has been earning interest at the rate of 12% per annum. Irene is yet to release the decadal sum to Mteja despite many requests in writing.

Mteja has shown you a retainer which prescribes the legal fees payable to Irene and a receipt for full payment of the same. The last time Mteja heard from Irene about the case was the day Mteja attended court for hearing. That was three years ago.

Mteja got to know about the payment by the defendant only recently and even then, from a third party. When Mteja visited Irene's office with a view to discuss his case Irene threw him out physically assaulting him in the process.

- (a) What ethical issues arise from the scenario presented above? **(5 marks)**  
(b) Mteja wishes to make a formal complaint against Irene. Advise Mteja on the process and procedure before the disciplinary organs. **(10 marks)**

2. Sinachuki is an advocate of the High Court of Kenya. She attended the August 2014 Annual Conference of the Law Society of Kenya at Leisure Lodge in Mombasa dressed as shown in the picture below:



The Law Society has instituted proceedings against Sinachuki before the Council of the Law Society accusing her of disgraceful or dishonourable conduct incompatible with the status of an advocate. Sinachuki has received a notice to show cause why she cannot be sanctioned by the law Society of Kenya. Sinachuki contends that the accusations against her are too broad, too vague, quite amorphous and indeed unknown to the Advocates Act (or any rules made thereunder), the Law Society Act or any Code of Conduct and ethics applicable to Advocates in Kenya. She also takes the position that the intended proceedings before the Council are not well founded in law. In any event, contends Sinachuki, matters of dress are form of freedom of expression of her femininity and cannot be made the subject of professional regulation.

- (a) Sinachuki has decided not to appear before the Council of the Law Society in answer to the notice to show cause. She has approached you to advise her on the position she has taken.

Advise Sinachuki.

(9 marks)

- (b) What difference, if any, would it make if Sinachuki had appeared (dressed as she is) as an advocate for a doctor in proceedings before the Medical Practitioners and Dentists Board?

Justify your answer using any Code of Conduct or ethical obligations applicable to advocates in Kenya.

(3 marks)

- (c) What difference, if any, would it make if Sinachuki dressed as she is as a Master of Ceremony at a wedding of a professional colleague, attended by a good number of advocates, judges, senior politicians and the public at large?

(3 marks)

3. As a newly recruited advocate you have been requested by a senior partner at your Law Firm to prepare an opinion for Mrs. Kamili, who is a defendant ~~in~~ an ongoing case. The plaintiff in the case is a bank.

Mrs. Kamili wishes to be advised on the viability of an application she intends to file seeking Orders that the plaintiff's advocate, Mr. Wakili withdraws from acting for the plaintiff bank. Her contention is that Wakili had drawn and witnessed a charge document between Mrs. Kamili and the plaintiff bank.

Mr. Wakili then acted as advocate for both parties. The charge is the basis of the present suit in which your firm is representing the defendant, Mrs. Kamili. Upon your perusal of the charge in question you realize that there will be need for its drawer to assist the court in understanding some of its contents.

- (a) With the aid of decided cases, statutory provisions and the provisions of the LSK Code of Conduct and Etiquette, advise the Senior Partner of your firm on the viability of the proposed application.

(6 marks)

- (b) What difference, if any, would it make if there was no need to call the drawer of the charge to assist the court in understanding some of the contents? Support your answer with a decided case.

(3 marks)

- (c) Suppose Mr. Wakili is a partner in a firm which has 10 partners and 80 advocates. One of the 80 advocates is the drawer and a testator of the charge instrument. What difference would it make? Support your answer with a decided case.

(3 marks)

- (d) What strategies can law firms use to avoid situations like the one depicted in this scenario?

(3 marks)

4. It is easier, pleasant and more advantageous professionally for barristers to advise, represent or defend those who are decent and reasonable and likely to succeed in their action or their defence than those who are unpleasant, unreasonable, disrespectful and have an apparent hopeless case. Yet it would be tragic if our legal system came to provide no reputable defenders, representatives or advisers for the latter. Per Lord Pearce in Rondel v Worsleu (1969 1 AC 191)

- (a) Discuss this statement in the light of the current trend in the Law Society of England and Wales to review the time honoured common law duty of a barrister (read advocate) captured by the above dictum of Lord Pearce. **(10 marks)**
- (b) Should the Law Society of Kenya follow in the footsteps of the Law Society of England and Wales? Justify your answer by liberally reviewing local or foreign case law as well as the views of text writers on the matter. **(5 marks)**
5. Mathew Luke Mark and Co. Advocates successfully represented John the Baptist (the Plaintiff) in a case against Judas Iscariot (the defendant) in a breach of trust case filed in Bethlehem Chief Magistrates Court civil case No.1234 of 2015.

The plaintiff's advocates claimed the following amounts as party and party costs: Instruction Fees100,000, attending court for hearing on 1/1/2015 and 2/2/2015 – 2,500/- on each occasion, attending court for judgement on 3.3.2015 – Kshs.1,500, drawing plaint – 3 folios at Kshs.525 per folio, perusing the defence 2 folios at 100 per folio, making 3 copies of the plaint at Kshs.100 per folio. They also claimed process servers fees at Kshs.1,000, witness expenses at Kshs.5,000, telephone calls to client at Kshs.6,000, attending client at Kshs.15,000, seeking a second opinion at Kshs.75,000 and VAT at 16%.

- (a) Draw a bill of costs for Party and Party costs. **(7 marks)**
- (b) Draw a bill of costs for advocate client costs. **(8 marks)**
6. Mkora Jamecho Advocate acted for Sinabahati Sana in a running down claim. Sinabahati has many complaints against Mkora but the substance of the complaints are as follows:

Mkora withdrew the case (NRB HCCC No.123456 of 2015 without informing Sinabahati. Mkora then proceeded to settle the claim at Kshs.450,000 all-inclusive without informing Sinabahati.

On several occasions Mkora informed Sinabahati that the case was still pending in court. On five occasions long after the case had been settled, Mkora even wrote letters inviting Sinabahati to attend court for hearing with all his witnesses and documents. Sinabahati dutifully attended court and waited in the court corridors for the whole day for his case to be called out.

At the end of each of those days Mkora informed Sinabahati that the case had not been adjourned as the trial magistrate had too many cases for hearing and Sinabahati case could not be reached.

Mkora received the settlement cheque which he proceeded to discount with a shylock on the same day paying the shylock a commission of 5% of the value of the cheque in consideration for receiving cash on the same day.

When Sinabahati had had enough of the frustrations at the hands of his advocates, he reported the matter the Advocates Complaints Commission. The complaints commission wrote to Mkora on 4/4/2015 and 5/5/2015. Mkora did not respond. The complaints commission has appointed you to prosecute Mkora before the disciplinary tribunal.

- (a) Draw a charge sheet against Mkora. **(10 marks)**
- (b) Advise Sinabahati of the possible sanctions against the advocate in the disciplinary proceedings at the tribunal. **(5 marks)**