

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 7TH AUGUST, 2013

DURATION: 3 HOURS

Instructions to Candidates

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

PLEASE TURN OVER

1. Zipporah Waitindi signed the letter of offer dated 23rd June 2013 to purchase the property known as Apartment Number A9. The letter of offer had been prepared by Knight Realtors Limited the vendors agents. The agents received the 10% deposit for the apartment being the sum of Kshs.1,200,000/ and wired it immediately to the vendors account.

The Apartment is situate in Block A and is part of a 300 units housing estate development christened NEW SOUTH C being undertaken by Kenya Ports Authority Pension Scheme. The land upon which the development is being undertaken is registered under the provisions of the Registration of Titles Act Cap 281 of the laws of Kenya, (now repealed). Ms Waitindi has recently received a 32 page Agreement for sale and has appointed you as her advocate in view of the complicated nature of the document. Your client has instructed you to represent her, as she cannot fathom the legal implications of most of the clauses on her own. The sale/purchase price of the apartment is Kshs.12, 000,000/=. Ms Waitindi has indicated to you that she will be borrowing the balance of the purchase sum from KCB Limited as her employer has negotiated a preferential interest rate for staff.

The Agreement for Sale contains the following clauses amongst others:

- (i) *The purchaser hereby accepts the right of the vendor to sell the apartment and shall not require any evidence or raise any objections, requisitions or inquiry in respect of the vendor's title to the site;*
- (ii) *Completion on the part of the vendor shall be 15 days from the date when the vendor's architect avails a certificate of practical completion of the property. The purchaser shall complete the contract on or before 90 days from the date of its execution by the parties.*
- (iii) *If the balance of the purchase sum is being financed, late interest charges at the rate of 19% per annum above the Barclays Bank of Kenya base lending rate shall be charged on the balance of the purchase sum from the completion date until payment in full;*
- (iv) *The vendor shall not be liable for any latent or patent defects discovered after hand over of possession of the property to the purchaser and the purchaser hereby acknowledges that the property had been constructed in a workmanlike manner.*

(v) *The Law Society Conditions of Sale (1987) edition are explicitly excluded from this contract. If the purchaser shall default to complete the contract on or before 90days from the date of execution, the vendor will issue no completion notice to the purchaser. The deposit paid shall then be forfeited to the vendor. The vendor shall resell the apartment to another ready able and willing buyer. The purchaser shall be liable for all of the vendors and its agent's costs expenses and fees incurred for the purposes of such as resale. Where the resale realizes a profit, the vendor will retain the profit solely.*

(a) Advice the purchaser restricting your advice to the contents of the above referenced clauses. **(10 marks)**

(b) What steps will you take before contract execution and at contract completion? The purchaser insists she must purchase the apartment as it is reasonably priced and its location is ideal for Ms Waitindi's commute to work. **(5 marks)**

2. You responded to an advert in the Nation Newspaper calling for applications for the legal officer II position and have been invited for an interview by the Board of Directors of National Housing Corporation. The interview panel is chaired by the Managing Director assisted by the Corporation Secretary Mr Bundi. Other Board Members are also present. The Managing Director and the Corporation Secretary have informed you that they only need to test your basic literacy of conveyancing law, as your position will entail mainly the selling of the Corporations property. National Housing Corporation (NHC) has developed 155 low and medium income priced housing units in Langata Estate. The information you have is that the housing units are being sold vide a Tenant Purchase Scheme and also to cash buyers. Most of the cash buyers will be financed by CFC Stanbic Bank Limited as the Corporation has negotiated a preferential interest rate. The housing project is practically complete. The Corporation Secretary informs you that they have a certificate of practical completion from the project architect. Nairobi County Government has also issued a certificate of practical completion. NHC has however received numerous letters indicating long lists of snags identified by prospective purchasers through their independent engineers and architects after inspection of the properties. The construction contract between the builders and the corporation contains a defects liability clause. The Corporation Secretary informs you that the title to the subject land is registered under the Registered Land Act (Cap 300) (now repealed). The Title to the entire parcel is Nairobi/ Langata/ KIBRA/1904. NHC will be issuing sectional titles most of which are already in the custody of the organization and the rest with the corporations external advocates. At the interview you are required to answer the following questions:

- (a) What is the distinction between a tenant purchase scheme transaction and outright sale/purchasing? **(5 marks)**
- (b) What documents will be required by advocates representing outright buyers or the buyers' financiers' advocates at contract stage and at contract completion? **(5 marks)**
- (c) What role will the advocates representing CFC STANBIC play in this transaction and what fiduciary duty do they owe the corporation. **(5 marks)**
3. You are newly employed as the Nairobi District Land Registrar and are working at the Nairobi District Land Registry. You report to work on the 7th of August 2013 and are served with a letter from the firm of XYZ & Associates advocates warning you of their client's intention to sue you for an order of mandamus as you have deliberately refused and reneged to issue resultant titles in respect of a subdivision of title number Nairobi/ Ngong Forest Sanctuary/ KFS/1969. Upon perusal of the relevant records you discover that the said title is none existent although you note the prior registration of another almost similar title Nairobi/Ngong Forest Sanctuary/KFS/19699. Upon speaking to the relevant officers you are informed that the latter title relates to a playing field next to Ngong Race Course, which is vested in Kenya Forest Service. You consult the Chief Lands Registrar and are advised to respond to the letter sternly.
- (a) What documents do you cite in your letter as the basis of validating your refusal to issue the resultant titles? **(5 marks)**
- (b) What instrument should you register to safeguard title Number Nairobi/Ngong Forest Sanctuary/KFS/19699 from fraud or improper dealings? **(5 marks)**
- (c) Interns from local universities attached to your office want to know how they can assist you with the retrieval of deed files? And also that you explain the distinction between transfer of land and transfer of lease? Comment. **(5 marks)**
4. Damaq & Co Advocates is one of the reputable firms in Nairobi as it represents more than half of all banks lending money on the security of title in Nairobi. They have recently recruited you as an assistant in the conveyancing department. The firm also represents CFC Stanbic Bank Limited. CFC Stanbic Bank Limited has agreed to participate in a home exposition by developers targeting mainly first time homebuyers and those

who want to pledge title of un-developed land for development loans. The senior partner in the conveyancing department is testing your preparedness to participate in the exposition and requires that you answer the following questions:

- (a) The role of financiers advocates in lending and borrowing transactions. **(5 marks)**
 - (b) (i) The procedure for completing conveyancing transactions where the homebuyers are borrowing part or the entire purchase sum. **(2 marks)**

(ii) The prerequisites that precede the release of funds to the sellers or other lenders? **(3 marks)**
 - (c) The role of private valuers in lending and the basis for calculation of legal fees? **(5 marks)**
5. China Wu Yi Limited is a foreign company desirous of constructing a 25-floor storey building in the Central Business District of the City of Nairobi and have asked you to write them a detailed opinion on how to ensure their Kshs1.1 billion worth of investment finance is protected. The proposed title for the site is a conveyance registered at the Government Lands Registry in Volume 115:File115/1939/Folio1939/1. The client is desirous of understanding how they can legitimately own that land and also avoid the problem of controlled tenancies as they have heard that courts in Kenya protect tenants to the detriment of landlords. Write a short legal opinion on how you would go about the sale/purchase transaction and the subsequent leasing of floor space in the building. **(15 marks)**
6. Green House Limited owns Green House on Wabera Street in Eldoret. The shareholders of Green House Limited obtained a loan of Kshs.350,000,000/= from Kenya Commercial Bank Limited as construction finance and pledged their title I.R 88654/1 as a security. The building is practically complete. Grid floors are being sold to willing buyers most of whom are also borrowing from the same lender. The proposed titles for the grid floors are sub-leases. The firm of Kibet & Co Advocates represents vendor whereas the firm of Masai and Kariuki Advocates represent the buyers so far identified and KCB Limited.
- (a) List all the documents that Kibet & Co advocates will prepare on behalf of the vendor. **(8marks)**
 - (b) What do you consider be the roles of Masai & Kariuki Advocates? **(7marks)**