

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION

TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

FRIDAY 20TH JULY, 2012

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. The following is a witness statement taken in connection with a suit for division of matrimonial property where Faith Mueni is suing Alphonse Muoki.

"My name is Faith Mueni. I am 35 years old. For the last twelve years, I have been married to Alphonse Muoki. We did not do a church wedding but he went to my parents, took dowry and asked for my hand in marriage. Exhibit C is an old photo of my parents dressed up at the betrothal. By that time, we were already living together in Machakos town where I was working as a waiter in a local hotel. Two years after he visited my family and was given permission to marry me, we bought a *shamba* near the Katumani Research Institute. The *shamba* is thirteen acres. I do not know the name on the title deed for the *shamba* because Alphonse was dealing with the seller and I left all of the details to him to do properly. There was no question that the *shamba* belonged to both of us however it was registered. I do not remember contributing any specific amounts to buy the *shamba* but during those two years, Alphonse asked me to take care of all the bills at home so that he could accumulate enough money to put in the down-payment. I kept a small diary of my earnings and the expenses because I was proud to be able to show Alphonse how careful I was with money.

The year after we bought the *shamba*, Alphonse asked me to move from town to the *shamba* so that we could start building a home there. By then, we had one son – Sebastian Nyamu Muoki. So, I moved to the *shamba* in 2000. I grew maize, cassavas and millet in the farm and helped feed the family. Whatever remained, Alphonse would sell and use the proceeds to build the house I live in now. I made note of this money from the sale of the crops so I could show Alphonse my thrift. Alphonse remained in Machakos town because he had a good job as an Inspector in the Ministry of Education. He is now the District Education Officer in Machakos District.

In 2002, two years after we first moved to the *shamba*, I agreed with Alphonse that I should move our home to the southern end of the farm near the stream so that I could start a Dairy farm. We bought two Friesian cows and had *fundis* construct pens for them. A *fundi* also built a house for us there. By that time, we had added a second child, Stella Mwende, to our family. I have been working in the dairy farm since then. We produce a lot of milk in the farm. We use some of it as a family and sell the rest to neighbors. I keep track of the sales in my diary and have managed to buy two more cows, seven goats and a few chickens with the produce of the farm.

We got our third child, our last born, Ann Mutheu, four years ago.

Since I started the dairy farm, I agreed with Alphonse that he would use his salary to complete payment of the mortgage for the farm, and I would use the proceeds from the Dairy farm to pay for subsistence for the family and to send our children to school. As a result, I never received any financial support from Alphonse to raise our children.

After Alphonse finished paying off the mortgage, I asked him to start contributing towards the upkeep of the family. He became very hostile and said that it was my business to take care of my children since I had the farm. We quarreled a lot about this as I felt that I was straining too much to provide for our three children with only money from the dairy farm. I showed him the diary I kept to prove that I had been thrifty and needed his help with the family. When I requested Alphonse to help again, he became abusive verbally and physically and claimed that I had insulted him by saying that he is not "man enough" to provide for his family. He even yelled at me for "keeping book" on him and took my diary of income and expenses away. I have not seen it again.

Although at that time he used to come home every weekend, his visits became a lot more infrequent. After some time, he stopped coming home at all. That was last year March.

Two weeks ago, I noticed a construction at the Northern end of our farm. I approached the *fundi* who was in-charge (the same one who built my house and the cow pens) and he told me that he was constructing a house for Alphonse and his wife, Gachungwa. I was shocked. I immediately travelled to Machakos town to confront Alphonse. When I got to his house, I met another woman who introduced herself to me as his "wife." Her name is Alice Gachungwa. When Alphonse came home, he started shouting at me that I had no business being in his house and I should leave immediately. He told Alice that I was a "mad woman" for claiming that I was his wife because he doesn't have another wife except Alice. He showed me a marriage certificate indicating that they got married in a Catholic Church on April 16, 2008. Alphonse claims that I am just a long term tenant in his farm and not his wife. I was very upset but did not want to cause a scene – so I returned home.

The following day, I received a hand-delivered letter from Alphonse's lawyers stating that it was the requisite 15-day notice to end the month-to-month lease I had with the owner of the *shamba*, Alphonse Muoki, and that failure to vacate the premises by the end of the following month will result in eviction proceedings.

I would like to file a suit to block my eviction from the farm and to demand that a court of law apportions me my equitable share of the farm."

Faith Mueni

- a) Assuming you are Mueni's Advocate, prepare **TEN (10)** questions for examination-in-chief of your client based on Mueni's witness statement. (10 marks)
 - b) Assuming you are Muoki's Advocate, prepare **FIVE (5)** questions in cross-examination of Mueni based on Mueni's witness statement. (5 marks)
- 2.
- a) Discuss the law relating to opening statements in civil cases in Kenya. (7 marks)
 - b) Using the witness statement provided in Q1, prepare a suitable opening statement in respect of Faith Mueni's case. (8 marks)
- 3.
- a) Set out briefly the rules relating to production of documentary evidence in civil and criminal trials in Kenya. (7 marks)
 - b) Prepare a set of questions that you would put to your witness for purposes of producing a title deed as an exhibit in a case. (8 marks)
4. Expert witnesses present a unique challenge to trial advocates both in examination-in-chief and cross-examination.
- Discuss the rules and techniques applicable in examining expert witnesses. (15 marks)

5. (a) The use of judicial precedents is universally accepted as a unique characteristic of the common law legal system.

Outline the specific procedure of submitting judicial authorities in the following instances:

- i. Interlocutory applications in civil cases; (3 marks)
- ii. Full trial of civil cases; (3 marks)
- iii. Full trial of criminal cases. (3 marks)

(b) What is the proper procedure of presenting a statutory authority to court in the following instances:

- i. Interlocutory applications; (2 marks)
- ii. Full trial of a civil/criminal case; (2 marks)
- iii. Appeals. (2 marks)

6. Present a critical analysis of the law and practice relating to the use of skeleton arguments and written submissions in civil and criminal proceedings in Kenyan Courts, noting to highlight the advantages and disadvantages of their use.

(15 marks)
