

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION

TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 27TH JULY 2011

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. Royal Development Limited has purchased a parcel of land registered as Title number Ngong/Ngong Kiserian/5334 comprising 19 acres in Kiserian, Ngong area in Kajiado District. The company is desirous of developing 19 country town houses which they intend to sell for Kshs. 20,000,000/= each upon completion of construction. It is expected that separate titles in the Developer's name will be issued for each unit. The development is being marketed as a secure gated country-style home community as the prospective buyers will share a main gate and parts of the compound although each home will be on its own 1 acre compound with ample parking and lush flower and vegetable gardens.

You are newly admitted and now practising as a junior associate at the firm of Mwangi & Mwangi Advocates. You are quite knowledgeable in all aspects of property and conveyancing law. The senior partners in the firm have entrusted you with this brief as Royal Development Limited has retained your firm as its conveyancing lawyers for this transaction. The client has expressly informed you that its previous advocates had advised that the "sub-lease" selling regime was inapplicable in this transaction because of the registration regime of the title. In any event the relevant Registrar has also advised the developer that separate titles for each unit can be issued provided the law is complied with. Royal Development Limited has instructed their Architects, Archplan Limited to prepare designs of the country houses which comply strictly with the provisions of the Sectional Properties Act 1987. A sectional plan number 153826 which reiterates the architectural designs but outlines the units and proportionate common areas appertaining to the units has actually been approved by the Director of Surveys and the relevant Lands Registry. As the advocate for Royal Development Limited you are now required to advise prospective purchasers of the 19 units on:

- (a) What titles Royal Development Limited will issue purchasers upon successful sale/purchase of the units? **(3 marks)**
- (b) The substantive law that governs the statutory regime pursuant to which titles will be issued? **(3 marks)**
- (c) The nature of the entity that will be charged with management of the common areas within the development. **(3 marks)**
- (d) The land registry that will handle the registration of the titles and the relevant officer that will issue titles. **(3 marks)**
- (e) What consent(s) (if any) that the developer must obtain to facilitate transfer of the separate titles. The land was previously designated as agricultural but the developer has obtained a provisional change of user from Olkaria County Council owing to the fact that Kiserian is now designated as *peri-urban*. **(1 marks)**
- (f) What documents Olkaria County Council and the project architect should issue respectively to confirm that Royal Development Limited has constructed the

country houses as per the drawings submitted and approved upon construction completion. **(2 marks)**

2. Patrick Ndegwa resides in Geneva Switzerland and works for the World Health Organization. His father Maina Ndegwa has negotiated for Patrick to purchase C.R 888392 which is at the outskirts of Nyali for the sum of Kshs. 22,000,000/=. Patrick had given his father a general power of attorney which was registered at the Registry of Documents in Nairobi at 14.15hrs on 5th day of January, 2011 and with which Maina Ndegwa has handled all Patrick's "affairs" including collecting rent from Patrick's two flats in Kilimani in Nairobi. Maina Ndegwa instructs you to handle the transaction relating the purchase of C.R 888392 even though your firm is based in Nairobi. Patrick will pay for legal fees and all disbursements relating to obtaining a proper title. A copy of the title reveals the following;

- i. Transfer to Aboud Abdalla on 8th April 1970;
- ii. Charge to Standard Chartered Bank Limited on 15th June, 1996 for Kshs 1,500,000/=. There are no further entries on the title.

Advice on the following:

- (a) Which Land Registry will issue the official search results of title and deal with the registration of the transfer ultimately? **(3 marks)**
 - (b) Under what statutory regime is title registered and what substantive statute law governs matters not explicitly stated in the registration statute? **(2 marks)**
 - (c) Is the General Power of Attorney referred to above valid for the purpose of this transaction? Explain. **(3 marks)**
 - (d) What steps would you take to ensure that ultimately Maina Ndegwa can execute the transfer instrument for and on behalf of Partick Ndegwa? **(3 marks)**
 - (e) Aboud Abdalla paid Standard Chartered Bank Limited all sums due and owing relating to the loan but the bank's then in-house lawyer did not give him any documents other than the original title and charge instrument. Advice on the steps necessary in relation to the removal of the encumbrance noted on the title. Aboud Abdalla has instructed that you deal with everything. He only wants the Kshs.22,000,000/=. **(4 marks)**
3. As a recently appointed Advocate of the High Court of Kenya you have been invited by the conveyancing lecturer to speak at the inaugural class of para legal diploma students at the Kenya School of Law on property and conveyancing law. The

students are interested in hearing about the Law Society Conditions of Sale (1989) Edition. Expound on the following;

- (a) The meaning of "*interest*" in a Sale/Purchase contract; **(3 marks)**
 - (b) The conditionalities of possession pending completion in a land transaction; **(3 marks)**
 - (c) Apportionment of income and outgoings in a land transaction on the contract completion date; **(3 marks)**
 - (d) Payment of expenses relating to subdivision of land where the vendor intends to transfer part of his land to a prospective purchaser. **(3 marks)**
 - (e) The obligations of a purchaser to the Mortgagee on the contract completion date in a transaction where the purchaser is financed for 90% of the purchase sum. **(3 marks)**
4. Rudolf Longrin, a German citizen, recently came to Kenya for an international convention on trade.

He was very impressed by the business opportunities Kenya has, and he has decided to buy 10 acres of agricultural land in order to grow fruits and vegetables for export to the European market.

He asked around and was referred to Mrs Kiprop who is selling 25 acres out of the 50 acres she owns, comprised in a freehold title registered under the Registered Land Act (Cap 300) as Title No. Nakuru/Kiu/6576. The asking price per acre is 1,000,000/=

On the other hand, Mr and Mrs Mutiso are looking to buy 5 acres of land to build their retirement home. They were told about Mrs. Kiprop's property and are interested in purchasing 5 acres from Mrs Kiprop. They however do not have all the money but have approached Bidii Yangu Bank for a loan of Kshs.5,000,000/= to finance the purchase. Bidii Yangu Bank agreed subject to the land being used as security.

The parties have come to your office seeking advice on;

- (a) What Mrs Kiprop needs to do in order to sell the 25 acres of land. **(4 marks)**
- (b) Whether Mr Rudolf can acquire the 10 acres for agricultural use. **(3 marks)**
- (c) How can Bidii Yangu secure its interest and what completion documents would the bank require to see. **(8 marks)**

Please advise the parties to the intended transactions limiting your answer to the issues raised under items (a),(b) and (c) above.

5. Mrs. Collins enters into an agreement on 1st January, 2010 to buy Blackacre Farm situated in rural Kajiado from B Pty Limited. The farm measures 6 acres. The consideration is the sum of KShs.1,000,000/= per acre payable immediately. The

agreement provides that pending receipt of a request by Mrs Collins to transfer Blackacre Farm to her, B Pty Limited declares that it will hold Blackacre upon trust for Mrs. Collins. On 1st January, 2011 Mrs Collins and B Pty Limited execute the Transfer. Mrs Collins also executes on 2nd January, 2011 another Transfer to transfer the property to the Austrian Embassy for the pricey sum of Kshs.13,000,000/=. The rookie Advocate who prepared the Transfers dated them on the day and the date of execution. Mrs Collins will use the balance to pay off the purchase price of KShs.11,500,000/= for the Townhouse she recently bought in Mombasa City.

Mrs. Collins wants to know the stamp duty consequences of the transactions and has come to see you. Advise Mrs Collins. **(15 marks)**

NB. An assumption is to be made that the true values of properties are as stated in the narrative. If it is considered that any other assumption(s) should be made to assist in answering the questions please state what these assumptions are.

6. Your client Tycun Girumo intends to buy from Bab Ltd a 15-storey commercial building situate along Koinange Street in the City of Nairobi, which building he hopes to lease to a local University for use as a satellite College. The property where the building is situate is currently registered under the Government Lands Act (Cap 280) as a leasehold with a lease of 99 years from 1920. The property will cost KShs.0.5 billion. Though just recently constructed, the property is leased to various tenants.

TASK

Prepare a brief Memo to your client Tycun Girumo outlining:

- (i) the documents you will require to see and also those you will ultimately prepare. **(8 marks)**
- (ii) the sort of investigation of title,with specific queries, that you will undertake and why. **(7 marks)**