

## COUNCIL OF LEGAL EDUCATION



### EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

#### **ATP 107: CONVEYANCING**

**WEDNESDAY 30<sup>TH</sup> NOVEMBER, 2016**

**DURATION: 3 HOURS**

#### **Instructions to Candidates**

- (a) This paper contains **Five printed pages** including the cover page, with a total of **Six questions**
- (b) Candidates **MUST** answer **FIVE** questions
- (c) **Question ONE is compulsory and carries 20 marks**
- (d) **All other questions carry 10 marks each**
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required

**PLEASE TURN OVER**

## QUESTION ONE

Kesha Miles is a 20 year old world famous marathoner and a citizen of Kenya. Last year he won the Boston Marathon and was awarded Kshs.100m prize money some of which he would like to invest in Kilifi County.

Miles has identified twenty acres of unsurveyed land in Kilifi County not far from the Indian Ocean coast line. He would like to acquire the land in order to build cottages for sale to international and local vacationers. The land is owned by African locals under customary title. Miles has approached several families settled on the land. They are willing to sell to him and he believes he will convince others to do the same.

*consent from NLC  
change of user  
consent from NELC*

What special considerations will you as Miles's Advocate take into account to eliminate the possibility of title contests and loss of his investment? (10 marks)

(a) Assuming that Miles eventually identifies willing sellers and he is ready to purchase the land, what legal processes need to be undertaken in order for him to acquire freehold title to the 20 acres of land?

- contract
- Execution & Attestation
- completion Date
- Execute transfer Documents.
- launch the transfers Doc for registration

(10)

## **QUESTION TWO**

Bamzi is registered as the proprietor of an estate in fee simple of a property known as Land Reference Number 97251/144/3. The property is for industrial purposes. Bamzi is a customer of Jitegemee Bank Limited which has agreed to lend him Kshs.2,000,000/= (Kenya Shillings Two Million). Bamzi intends to use the loan amount to expand his business of importing and selling farm machinery. Bamzi will execute a legal charge in favour of Jitegemee Bank Limited over his property referred to above to secure the loan. The property is registered under the Government Lands Act (Chapter 280 Laws of Kenya, repealed). It is situated in Industrial area in Nairobi County. The bank has instructed you to draft and register a legal charge to secure Kshs.2,000,000=

Draft the Legal charge.

(a) Discuss the procedure you will follow in effecting the Bank's instructions up to completion of the transaction. Note: the procedure must follow the correct and logical sequence of the steps in the transaction. (8 marks)

- borrow  
back

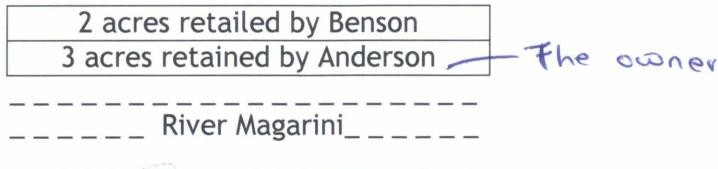
(b) Calculate the Stamp Duty payable on the legal charge. **(2 marks)**

### \* QUESTION THREE

$$\begin{array}{lcl} \text{duty payable on the legal charge.} & & (2 \text{ marks}) \quad 8' \\ 1/- = \$1000 & = \frac{2,000 \text{ adq} \times 1}{100} & 60 \\ ? = 2,000,000 & = 2,000 & \text{or } \frac{0.1 \times 2000}{100} \\ & & = 2000 \end{array}$$

Anderson Mogoya is the proprietor of 5 acres of land located in Kericho County. He wishes to sell two of the five acres to Benson Mutuku in order to build himself and family a residential house.

The five acres are adjacent to River Magarini. Anderson will retain the three acres next to the river while disposing off the two acres northwards - as shown in this diagram:



On the two acres sitting across Anderson's land from the river, Benson would like to engage in irrigation farming growing rare vegetables for urban consumers, especially the hotel industry. In order to get water from the river, Benson will need to run pipes underneath land retained by Anderson.

- (a) Advise Benson how he can achieve his plan of acquiring part of Anderson's land as well as installing an irrigation pipe system from the river to his two (2) acre farm with specific reference to the following:
- (i) Information required in order to prepare the necessary agreements and instruments. (3 marks)
  - (ii) The essential terms and conditions to be included in the instruments. (3 marks)
- (b) A severe drought struck the area and the river dried up. It has been four years since there was reasonable river flow. As a consequence, Anderson has blocked the points at which the pipes enter and exit his land. Benson protests the move as malicious. He hopes the river will flow again, and at minimum, he insists that the pipes are his and he should be allowed to remove them. Anderson will have none of it.

In whose favour should this question be decided and why? *(5)* (4 marks)

#### QUESTION FOUR

For the following question, discuss what the state of title, is the hierarchy of interests and the entries you are likely to find in the land register.

*✓ Mozi Mezi is the proprietor of five acres of land on which he has built six houses. Each house sits on its own compound surrounded by lawns and gardens. certificate of title*

*✓ Mozi lives in one of the houses with his two wives and five children. Each of the houses is spacious with six self-contained bedrooms.*

*✓ Mozi has rented the remaining five houses to lessees A,B,C,D,E for three year terms at Kshs.200,000/= per month. certificate of lease*

In order to obtain finance for required renovations of the six houses, Mozi borrows Kshs.6 million from Bank Besa and charges the houses as security for the loan. *charge*

When Mozi completes the renovations he sells the entire estate - 5 acres of land and the six houses - to Mwene Nguvu who pays Kshs.40 Million for each house inclusive of the land.

Unfortunately, soon thereafter, Mozi dies in a gruesome car accident. One of his two wives challenges dispositions of their home saying that her consent was not given. The other wife, her co-wife is the only one who had signed consent to dispose documents.

Further, the lessees in all the houses seek to continue their leases.

In addition to Bank Besa, Mwanamwali comes forward with documents showing that he had paid a Kshs.4 million deposit to Mozi to buy one of his houses but Mozi died before it was completed. He would like to receive a refund on the deposit. 6 (10 marks)

#### QUESTION FIVE

- (a) Anastatia Nduku is a proprietor of land in Kisii County. For the last two years, the land has been leased to Kamukunji Pember for Kshs.50,000/= per year. Kamukunji leases the land annually to grow maize for sale in the local market. It is 10 acres in size.

Anastatia sold the land to Matimbi Hezo at the price of Kshs.100,000/= per acre. After registering the land, Matimbi finds that Kamukunji has not vacated the land. His maize crop is not yet ready for harvesting and his equipment and workers are still on the land.

Matimbi would like to take immediate possession of the land. What legal recourse does he have in light of the Land Act and the Land Registration Act on the transfer of land from Anastatia to him? (3 marks)

- (b) Amidi Sachu is a prisoner in Malewa Prison in Laikipia County. He is doing time for murdering his wife after she left him for another man. While in prison, he decides to sell the land he owns in Eldoret County in order to pay school fees for his only child who expects to join form one at Malewa High School in three months' time.

Through a friend, he has found a buyer who lives in Kisumu County by the name Amollo Pondi. He is willing to buy the five acres of land for half a million Kenya Shillings.

Explain the steps you will take to represent Amidi to carry out the disposition of the land. P.O.A  
Contract of sale  
Prepare (4 marks)

- (c) Ben Hamizi is in the process of purchasing a house from Oliver Tito. He has paid a 10% deposit. He expects to take possession of the house in six months' time when the sale and transfer process is expected to be complete.

Soon after paying deposit on the house, a lessee/tenant in possession of the house at the time knocks over a kerosene lamp during a blackout one evening. Unfortunately a fierce fire engulfs the whole house and it burns down completely.

The buyer, Hamizi has demanded the 10% deposit back. The seller, Oliver, is demanding the full purchase price from Hamizi and full rent from the lessee.

Explain who should prevail and why. (3 marks)

- Rescission bcoz of frustration.

## QUESTION SIX

In 2012, the procedural and substantive law of Kenya relating to land was extensively reviewed and various statutes were repealed. In particular, the statutes that were repealed include the following:

- i. The Indian Transfer of Property Act 1882;
- ii. The Government Lands Act (Cap 280);
- iii. The Registration of Titles Act (Cap 281);
- iv. The Land Titles Act (Cap 282); and
- v. The Registered land Act (Cap 300).

The above mentioned Acts were replaced by the following Acts:

- i) The Land Registration Act No. 3 of 2012;
- ii) The National Land Commission Act No. 5 of 2012; and
- iii) The Land Act No. 6 of 2012.

Discuss in detail the provisions of Sections 104 and 105 of the Land Registration Act No. 3 of 2012 relating to:

- |  |                  |
|--|------------------|
| (a) Saving registers under the repealed Acts; and              | <b>(5 marks)</b> |
| (b) Transiting title documents issued under the repealed Acts. | <b>(5 marks)</b> |
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**END**