



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS
SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAW
SECOND SEMESTER, 2021/2022
(JUNE - SEPTEMBER, 2022)

LLBK 224: CIVIL PROCEDURE II

STREAM: LLBK 2 S2

TIME: 2 HOURS

DAY: THURSDAY, 9:00 – 11:00 A.M.

DATE: 08/09/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

Dickman Caparo is a software developer currently pursuing his studies in Bachelor of IT at JKUAT University. He is particularly interested in promoting financial inclusion and especially in the area of mobile money. In his free times, he did several trials and noticed that one could deposit money directly to phone numbers outside the local cellular location areas with the consequence that Safaricom Limited potentially lost millions of shillings in revenue in lost commissions usually charged for sending mobile money from one cellular location to the other. He wrapped his mind on this problem and came up with

an APP that prevents one from successfully depositing money to a mobile number outside their cellular location. Armed with the prototype demo and the concept note, Caparo secures a meeting with Safaricom Limited Innovations team. At the meeting, he demonstrates the use of the APP and its value addition. An excited Safaricom Innovations team laud his innovativeness and creativity. One member of the team even confirms that such a solution to a stinging problem at Safaricom does not exist yet and they are certain the Management at Safaricom will adopt and implement it. Caparo is told to return home and await feedback on the commercial discussion.

Three weeks after the long wait, Caparo receives an email containing feedback from Safaricom. In the feedback, Safaricom is grateful for Caparo's pitch and time. However, it communicates that the APP's implementation and rollout costs are very high compared to the likely savings it would give them. It also adds that its different internal departments have suggested and are currently piloting an alternative solution to assist in curbing the direct deposits menace. A distraught Caparo quits the APP project and focusses his energy on other matters.

Four months after he quit the APP project, Caparo sees a Facebook Advert in which Safaricom is announcing the introduction of a Tibitisha Program. Tibitisha, Safaricom says, will help eliminate fraudulent transactions by preventing direct deposits and will ensure that mobile money deposits are limited to a given cellular location. On further analysis of Tibitisha Program Caparo notices several striking similarities between Tibitisha and his APP Project. He is so persuaded that Tibitisha is a mere corruption of his APP Project. He believes this is intellectual property theft and seeks the services of Intellectual Property lawyers.

On their part Safaricom Limited insists that the Tibitisha Program is way different from the APP Project. Safaricom concedes that it indeed engaged Caparo but that his proposal never sailed to the next level. It insists that the Tibitisha

Program was implemented as a global solution supplied to it from its UK based parent company – Vodacom Limited.

You have been retained as Counsel for Dickman Caparo:

- (i) Prepare a list of issues with respect to the suit (5 marks)
- (ii) Prepare a witness statement for DickmanCaparo (5 marks)
- (iii) Explain to Dickman Caparo the trial process informing him how you will prosecute his hearing and what he should expected during the full trial (20 marks)

QUESTION TWO

The purpose of the pre-trial conferencing is to dispense with the case management requirements and proceed to set a matter ready for hearing.

Explain the process of pre-trial conferencing bringing forth at least four items for consideration by the Court before certifying a matter ready for hearing.

(20 marks)

QUESTION THREE

Identify and explain any four modes of execution of decree of the Court

(20 marks)

QUESTION FOUR

Explain the procedural requirements especially identifying the pleadings required in filing the following:

- (i) Constitutional Petition;
- (ii) Judicial Review;
- (iii) Bill of Costs (20 marks)

QUESTION FIVE

Identity and explain three modes in which one can respond to a Notice of Motion Application bringing forth the reasons for taking the said modes

(20 marks)