



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF
THE DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2023/2024
(AUGUST-DECEMBER, 2023)

LLBK 216: CIVIL PROCEDURE AND PRACTICE I

STREAM: Y2 S1

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 2:00 PM

DATE: 27/11/2023

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

As a legal assistant at the Law firm of Mke Mwenza and Company Advocates. The law firm is based at Gorofa Plaza, Fourth Floor Herufi Road, P.O. Box 202000-00100, Nairobi. The law firm's email address is mkenwenzaadvocates@gmail.com. Tom Liyando, a client, of P.O. Box 12929-20100 Nairobi, has come into the office and you have been assigned to take instructions from him. He gives you the following information:

On 9/8/2022 he was going to vote in the general election at Tigoni Primary School. Having alighted from a matatu that he had boarded from Limuru to Tigoni he had to cross the road to get to the polling centre at Tigoni Primary School. While crossing at a duly designated and marked pedestrian crossing point, motor vehicle registration number UBA 100M that is registered in the neighbouring Republic of Uganda drove so fast and knocked him down causing him multiple injuries.

The police abstract in his possession shows that the owner and driver of the motor vehicle was one Dembe Achen, a Ugandan national who was visiting Kenya for a conference. Achen's statement with the police at the nearby Tigoni Police Station indicates that at the time of the accident, he was rushing to Kiambu Town for a meeting. Achen's address on the said statement is P.O Box 35 Jinja and his email address is also provided as dembeachen@gmail.com.

Medical reports from Pona Memorial Hospital in Tigoni area where Tom Liyando was treated for 4 months show that he suffered a broken leg, a broken arm as well as multiple bruises on the head and the stomach. Receipts in the possession of Tom Liyando show that he had already spent Kshs. 2,500,000/= on medical treatment. The doctor projects that post-discharge medical reviews and procedures will cost Tom another Kshs. 500,000/=.

Your research on relevant case law for similar injuries shows that the expected compensation for pain and suffering and loss of amenities is in the range of Kshs. 3,000,000/= to Ksh. 3,500,000/=. This is by virtue of recent awards by the courts in similar cases.

You have just briefed the managing partner at the firm, Mke Mwenza, who in turn has instructed you to prepare a draft letter of demand together with draft pleadings to be filed in court because you have a reputation for generating impeccable drafts at the office.

- a) Discuss the factors that you will consider before taking any action. **(5 marks)**
- b) Prepare the draft demand letter. **(5 marks)**
- c) Prepare the appropriate draft pleading for this case. **(20 marks)**

QUESTION TWO

- a) David Mungala filed a suit against John Doe claiming adverse possession over all that parcel of land known as Ngong/Ngong Block 1/47577. In March 2019, he obtained judgement and the court ordered John Doe to transfer the parcel of land to him, David never followed up the matter to have the land transferred to him. John Doe passed away in June 2020.

Peter Doe, John's eldest son who was away for studies in the United States of America returned home and found David Mungala on the parcel of land. He obtained Letters of Administration and filed a suit against David seeking to have him evicted from the suit land.

David has raised a preliminary objection on the propriety of the suit filed by Peter on the ground that it is an abuse of the court process. You are a judge sitting in the Environment and Land Court and the matter has been placed before you and the parties have made their rival submissions on the preliminary objection.

With the aid of decided cases, write a well-reasoned ruling on the preliminary objection. **(10 marks)**

- b) Explain the difference between “*res judicata*” and “*res sub judice*”. **(5 marks)**
- c) Discuss the conditions that must be fulfilled before a court can discharge or set aside an order of injunction. **(5marks)**

QUESTION THREE

- a) The Republic of Kiza has a constitution and standing orders like those of the Republic of Kenya. Musa is a sitting elected Member of Parliament for Umbea Constituency within the said Republic. On 31st November 2022, Musa was

in attendance in a joint sitting of parliament during the state of the nation address by H. E. the President of the Republic of Kenya. Musa on several occasions during the sitting, raised points of order to draw the attention of the President on the suffering of his constituents. He did this pursuant to his constitutional right to picket as envisaged under Article 37 and the right of his constituents to representation.

The Speaker of the National Assembly, in utter disregard of the provisions of Article 201 of the Constitution, unlawfully ordered Musa out of the National Assembly without giving him an opportunity to be heard. His attempts to catch the attention of the Speaker to explain himself were unlawfully and unjustly construed as disobeying orders of the Speaker.

The Speaker invoked the provisions of the Standing Order No. 11 1 of the National Assembly and suspended him for the remainder of the session. The speaker disregarded clear provisions of the Constitution, laws of natural justice and fair administrative action. He publicly declared that his decision was final and would not be rescinded and that Musa would not be given any room to appeal against the decision to suspend him.

Attempts by Musa to explore internal remedial measures to get justice have all been frustrated. He has effectively been barred from accessing the precincts of parliament and cannot therefore discharge his constitutional duty of representation, to the prejudice of his constituents.

Musa has approached you to challenge the decision of the Speaker. Write a legal opinion on the nature and scope of the pleadings you must advise Musa to file to successfully challenge the decision of the Speaker. **(10 marks)**

- b) Discuss the function and objectives of pleadings in civil litigation. **(10 marks)**

QUESTION FOUR

- a) Scotch Whiskey Limited is a foreign company carrying on business in Kenya. It has brought a suit against KWVD (Kenya) Limited for the recovery of Kshs 10,385,480/=. KWVD (Kenya) Limited is of the view that the suit against it has no merit. The company is also aware that the Plaintiff company has undergone some liquidity issues and is not financially stable.

The Defendant Company has an exceptionally good defence against the Plaintiff. The Defendant is therefore apprehensive that should the Plaintiff's case fail, it will not be able to recover the costs of defending the suit. The Defendant has entered appearance and it is not sure of what steps to take to protect itself against incurring further losses.

With the aid of decided cases write a legal opinion on the steps which the Defendant company needs to take and the legal principles applicable when such a step is taken. **(6 marks)**

- b) Discuss the overriding objective of courts under the Civil Procedure Act and the duty of the courts and parties in furthering the objective. **(6 marks)**

- c) With the aid of relevant examples, explain the instances when pleadings are deemed to have been closed. **(8 marks)**

QUESTION FIVE

Discuss any **FOUR** of the following.

(20 marks)

- a) Procedure for filing suits by or against minors.
- c) Summary Judgment.
- d) Third party notice.
- d) Death of a single plaintiff in a suit.
- e) Representative suits.
- f) Jurisdiction of the resident magistrate courts in handling employment and labour relations matters and environment and land matters.