



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

**FIRST YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)**

LLBK 127: CRIMINAL PROCEDURE AND PRACTICE

STREAM: LLBK 1 S2

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 31/05/2022

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

Yesterday but one (deduce the date by looking at the date of this examination) at 5pm in Kwa Kunywa Pombe Estate within Nakuru Township, Susan Mwoga Makelele was walking home to her house within the estate while clutching her pouch which contained Ksh 1500/=. Its value was Ksh 750/=. When she reached a junction known as Kona Mbaya, she met some three young persons (two men and a woman) whom she knew by appearance. She vaguely remembers one of them as John Mtenda. The three brandished knives at her and asked her to surrender her pouch and any monies she may have had. She started running away but John Mtenda ran after her and grabbed her pouch, cutting its strap, resulting in the pouch remaining with him while she escaped from the danger. On seeing this people raised alarm and began chasing the three who scattered in different directions. None of the three was arrested. In

fact, John Mtenda was held by hand by Peter Sharp Holder whom he knocked on the face, causing a cut wound on the lip and at the same time threatened with death when he gets a chance to do so. However, a few minutes later Jane Mama Mboga (who seemed to be the woman who was with the attackers) was spotted trying to entice Annangel Traffiura to buy the pouch. She was arrested and is in custody since then. She reported to the police station within her estate. The police took up the matter and recorded her statement and some more from five eye witnesses. They have decided to forward to you the file and you are of the opinion that John Mtenda and Martin Mwana should be charged in court. Meanwhile, today morning the police have arrested Martin Mwana, the man whom most eyewitnesses mentioned, but John Mtenda who was at that time with him escaped to some house which had three women in it at the time. Some policemen on patrol rushed to the place where the house is situated and are wondering what to do since they do not have a search warrant.

Required:

- (a) Advise the police on what they should do regarding searching the house **(4 marks)**
- (b) Advise the police on the process of obtaining a search warrant (if any) **(4 marks)**
- (c) Draw (using the Penal Code, Chapter 63, Laws of Kenya) charges facing the people arrested. **(12 marks)**
- (d) Is there a Constitutional issue which may be raised in court regarding arrest and incarceration of Jane Mama Mboga? Explain. **(2 marks)**
- (e) What factors will the court consider in granting or refusing to grant bail? **(8 marks)**

QUESTION TWO

It is often said that a charge is a formal written accusation of an offence drawn by a magistrate or by a police officer and signed as required by law for the purpose of use in preliminary proceedings or in a proper trial. Discuss the Kenyan law regarding the framing of charge sheets, identifying all the important aspects of a proper charge. **(20 marks)**

QUESTION THREE

An arrest occurs when a person restrains the freedom of movement of another. Under Kenyan law, who may conduct a lawful arrest? What legal principles apply in conducting arrests? **(20 marks)**

QUESTION FOUR

What factors and/or principles govern sentencing policies in the Republic of Kenya? **(20 marks)**

QUESTION FIVE

- (a) Using decided cases, explain what is an identification parade (ID), why it should be conducted? **(8 marks)**
- (b) (b) Discuss the process of conducting an identification parade. **(12 marks)**