



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2023/2024
(JANUARY-APRIL, 2024)

LLBK 224: CIVIL PROCEDURE II

STREAM: Y2 S2

TIME: 2 HOURS

DAY: FRIDAY, 12:00 – 2:00 P.M.

DATE: 05/04/2024

INSTRUCTIONS

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

QUESTION ONE

- a) William Willis sued Ken Kambosi in the High Court of Kenya seeking the payment of Kshs 36,500,000/= In a judgment delivered on 14th December 2022, the court dismissed his claim with costs.

Being dissatisfied With the said decision, he instructed his advocates on 10th January 2023 to file a notice of Appeal against the judgement. The advocate filed the Notice of Appeal on 30th January 2023 and applied for typed proceedings on 11th February 2023. He served both the Notice of Appeal and the letter requesting for proceedings on the defendant's advocates on 14th February 2023.

His advocate filed the Record of Appeal on 12th March 2023 and served it on the Respondent's Advocate on 11th March 2023. The Respondent's Advocate filed an application seeking to strike the Notice of Appeal and Record of Appeal on 20th April 2024, and served it on the Appellant's advocate on 30th April 2023.

The Application has been fixed for hearing and William has not filed his replying affidavit.

William has approached you and instructed you to immediately take over the conduct of the appeal and to prepare a replying affidavit opposing the application. He has also requested you to study the file and identify if it contains any anomalies and the steps he needs to take to remedy them.

- i Advise William on how he can successfully oppose the application
(3 marks)
 - ii Examine the facts and identify if there are any anomalies in relation to the execution of the instructions to file the appeal.
(6 marks)
 - iii Advise William on the nature of the application he needs to take in order to remedy the anomalies you have identified and the conditions he must satisfy before the court can grant the application.
(6 marks)
- b) L & B Auctioneers attached and sold a truck belonging to Mr Peter. Mrs Omari claims that the truck belonged to her and the proceeds of the sale should be surrendered to her. L & B Auctioneers does not know whether to surrender the proceeds to Mr Peter or Mrs Omari.

You have been asked to handle the matter on behalf of the Auctioneer so that he releases the proceeds to the right person. Advise the Auctioneer the nature and scope of the application he needs to make, the law applicable and the conditions he must fulfil in order to successfully prosecute the application.
(15 marks)

QUESTION TWO

- a) The Courts are under a duty to convene a Case Management Conference where it will consider several issues.

Discuss the purpose of Case Management Conferences in the process of hearing of civil cases.
(10 marks)

- b) Joslyn, obtained a decree for the payment of Kshs 39,768,00/= against Ken. His efforts to execute the decree were not fruitful because he would not trace any attachable goods. Recently, he has discovered that the judgement debtor owns several pieces of land of great value. He intends to attach and sell one of those pieces of land in execution whose value is enough to satisfy the decretal sum, costs and interest.

Joslyn has instructed you to undertake..

Discuss the procedure you will follow to achieve the expected result.

(10 marks)

QUESTION THREE

- a) Charles sued Clifford at the Chief Magistrates' Court at Kisii, claiming a sum of Kshs 15,900,000/=. Judgment was delivered in favour of Charles and the sum claimed was awarded as prayed in the plaint together with costs and interest. Clifford is dissatisfied with this decision and wishes to appeal to the High Court of Kenya. He has approached you with instructions to file an appeal against the said judgment before the expiry of the period within which an appeal should be filed and requested you to advise him on what is required to file an appeal to the High Court.

Write a concise brief containing the procedure you will follow and the documents that must be contained in the record of appeal. **(10 marks)**

- b) Explain the difference between a decree and an order. **(5 marks)**
- c) Discuss the procedure of summoning a witness whom a party to a civil suit may require to give evidence court. **(5 marks)**

QUESTION FOUR

- a) Explain the circumstances under which a party who is dissatisfied with an order or decree can apply for review and the rules governing the hearing of such an application. **(10 marks)**
- b) Angelina has obtained an order restraining the Ukwetu Bank Limited from selling her residential property after an interpartes hearing of the application. She has approached you and want to know how to extract the order so that it can be served on the Bank.

Explain to her the procedure of preparing and dating orders. **(10 marks)**

QUESTION FIVE

Write explanatory notes on the following. **(20 marks)**

- i) Selection of a test suit
- ii) Computation of days and when time does not run.
- iii) Attachment of debts..
- iv) Properties not liable to attachment in execution of a Decree
- v) Issuance of commission to examine witnesses.