



# **CASE BRIEFS**

**LINDA ALUVALE**

**LINDAALUVALE@KSL.AC.KE**

# INTRODUCTION

- + A case brief is a dissection of a judicial opinion/decision
- + It contains a written summary of the basic components of a Court's decision.

# PURPOSE OF CASE BRIEFING

- + Case briefing helps you acquire the skills of case analysis and legal reasoning. Briefing a case helps you understand the case better.
- + It helps one to understand the court's opinion through careful and purposive reading. This enables one to:
  - + o Find the principles of law set forth in the decision
  - + o Extract from the opinion its future value as a precedent
- + Predict the outcome of a case – this happens when the facts faced by your client are very similar to the facts faced by the parties in the case brief
- + Assists Counsel to come up with arguments for a client's case – it may be hard to draft arguments for your client's case, especially in new and emerging areas of law

# PURPOSE OF CASE BRIEFING

- + Master new case law in a particular area of expertise
- + Respond to a specific question about a case
- + Reminder of the important details making the case significant in terms of the law
- + It acts as a good reference tool
- + It helps in analysing legal problems
- + It aids your memory

# BRIEFING A CASE – THE STEPS

- + (i) Read through the judicial opinion that you are briefing
- + (ii) Identify the facts → name of the case and its parties (look at: amicus, interested parties, etc.), what happened factually and procedurally, etc.
- + (iii) Identify the issues → what exactly is at dispute?
- + (iv) Identify the law applicable to the dispute
- + (v) Decipher the holding (applied rule of law)
- + (vi) Identify/decipher the reasons behind the holding (i.e. ratio decidendi)

# PROCEDURAL FACTS

- + This is the first basic component of a case brief
- + These are procedural events that occur after a lawsuit has been filed → i.e. you have to track what has happened through the case procedurally, right from the time it was given a case number to the time it was filed
- + o Which party was aggrieved and why?
- + o Which party was given a favourable judgment?
- + o Which party won at the court of first instance and why?
- + o Who is being sued? By whom? For what? Which court?

# PROCEDURAL FACTS

- + On appeal, procedural facts include which party won/lost in the trial court and why
- + • They are normally found at the beginning of the court opinion since they set out the context for the issues the court will address
- + • Remember: these are procedural facts and not substantive facts → they are merely procedural details about how the law suit has moved

# SUBSTANTIVE FACTS

- + Referred to as historical or evidentiary facts
- + These describe the factual story underlying the parties dispute → i.e. there is always a narrative before the culmination of a dispute
- + They describe what happened before the parties ended up in court
- + They explain why parties are in court; a court is giving a decision because the parties were unable or unwilling to settle the dispute themselves
- + When judges are determining what triggered the case placed before them, they analyse the substantive facts → the judges anchor their holding on substantive facts, which is why they are extremely important to any legal writer drafting a case brief



# STATEMENT OF FACTS

When preparing a case brief, start with the Statement of Facts

- + Identify the relationship/status of the parties
- + Include more descriptive generic terms to identify the relationship/status at issue, e.g. is it a buyer/seller or landlord/tenant or employee/employer?
- + At this point one may choose to identify the legally relevant facts → facts that either prove or disprove an issue before the court

# ISSUES

- + These are legal questions a court must answer to resolve the dispute between the parties in a particular case
- + It entails identification of the legal questions that must be resolved in order to resolve the dispute between the parties
- + A case may have more than one issue, and in some instances the Court might not be able to discuss all the issues in one place

# ISSUES

- + LAW CENTRED ISSUES: → i.e. when the Court must interpret what a particular law means, e.g. when the matter is about a particular statute and the Petitioner wants to know whether the particular statute is constitutional or not. Examples:
  - i. Eunice Nganga v LSK → Constitutionality of certain sections of the Advocates Act and LSK Regulations
  - ii. Supreme Court Advisory Opinion No. 2 of 2012 on Implementing the 2/3rd Gender Rule → In this case the former CJ dissented because he said the rule can and should be implemented immediately, whereas his colleagues said that it needs to be implemented progressively

# ISSUES

- + FACT CENTRED ISSUES/FACT SENSITIVE ISSUES: →  
i.e. when the court must apply a rule of law to the factual dispute between the parties
- + Majority of decisions before the court are fact-centred issues
- + There are instances where a court may be asked to resolve a law centred issue or a fact centred issue or both
- + o E.g. in the Presidential Petition, August 2017, the Court had to deal with both law and fact centred issues

# ISSUES

- + Some court opinions will identify the issues in a straight forward manner → *'The issue before us is whether a business owner has a claim for slander against a competitor who called him a cheap skate'*
- + In other situations, the court might occasionally flag the issues, by reciting what the parties have identified as the issues and then defines the issues in its own language → *'The sole question for my determination is whether the Petition raises a substantial question of law to warrant a certification and reference of the Petition to the Honourable Chief Justice for empanelment of a bench of an uneven number of judges numbering at least three to hear and determine the Petition'*

# **LAW/LEGAL PRINCIPLES APPLIED**

- + The Court applies the law to determine the substantive rights of the parties
- + In every case, the Court must decide what law applies to the parties' dispute
- + The law is derived from the Constitution, Statute, Case law, relevant subordinate legislation, or Common Law
- + It may be expressly stated in a ruling/judgement or it may be implied

# HOLDINGS

- + A holding is the court's answer/finding to an issue → this is how the court resolves the issues in the case
- + The number of holdings in a case is dictated by the number of issues the parties in a dispute have raised before the court
- + The issues before the court also dictate whether the holding is law-centred or fact-centered

# REASONING/RATIONALE

- + Courts are required to state their reasoning, explanation or rationale that justify their holdings
- + The reasoning is the heart of the case brief
- + The Court applies the legal principles/rules to the particular facts in the case to reach its decision
- + It includes policy considerations to justify the holding



# JUDGMENT

- + This is the Court's final decision to the prayers sought by the Petitioners/Plaintiffs/Applicants.
- + It is the part of the decision in which the Court indicates the formal action that is to be taken, once the Court has resolved the legal issues before it
- + You always need to conclude your case brief with a description of how the Court disposed of the case as a result of its holding
- + E.g. *'having given due consideration to this matter and considering the circumstances thereof I have come to the conclusion that this is not a proper case for referred to a three-judge bench. Consequently, the notice of motion dated 25th January, 2017 is declined and is hereby dismissed with no order as to costs'*

# DISSENTING/CONCURRING OPINIONS

- + A Judge may not agree with the majority's decision, in which case he/she is entitled to write a separate dissenting opinion
- + A Judge may agree with the decision but not with the majority's reasoning, in which case he/she is entitled to write a separate concurring opinion

# EXTRA ELEMENTS

- + Obiter dictum (that which is said in passing) → Refers to a judge's comments or observations, in passing, on a matter arising in a case before him/her which does not require a decision – these remarks may have a bearing elsewhere. Obiter remarks are not essential to a decision and do not create binding precedent. However, obiter remarks of senior judges, for example, may be indirectly instructive or persuasive, especially in areas in which the law is developing.
- + Party's arguments
- + Comments (e.g. personal comments) → must feature in the case brief! → this is the reaction to the decision of the case, and if need be then even a critique

# TIPS AND ADDITIONAL COMMENTS

- + The essence of case briefing is to transfer the case analysis into written form
- + A case brief should be brief
- + Avoid overly long and cumbersome briefs
- + Do not accept the court's opinion blindly
- + Assess the reasoning in each case
- + Is the reasoning/judgment sound or is it contradictory? What are the political, economic, social impacts of the decision?

**QUESTIONS?**