

ATP – 100 CIVIL LITIGATION PROJECT QUESTION, 2017

You have just been admitted as an advocate of the High Court of Kenya. Your long term dream of working in a serious Civil Litigation law firm is fulfilled by your first appointment with Akili & Co. Advocates, a re-known Civil Litigation law firm in Nairobi.

On 15th April 2017, while in your new office your boss summons you to his office. He asks you to join him in taking instructions from a client that was in his office. The client was introduced as Maria Joginder, a former speaker of the Wakora County Assembly. She explains as follows;

On 31st October 2015, she had gone on a bench marking trip to Germany, in company of three other members of the County Assembly. On arrival from the said official trip, she found her doors locked. Efforts to get an explanation from the office, did not yield any fruits save for a simple statement from a security guard that she was no longer a speaker of Wakora County. She had been impeached in absentia on the basis that the majority leader of the Assembly had allegedly irregularly authorized alleged procurement of motor vehicle insurance for the County Assembly. She further said that she was not present when the alleged irregular authorization was being transacted. To her recollection the only transaction she knew about had been sanctioned by the County office.

She then proceeded to instruct Mr. Mpole Advocate of Mpole & Company Advocates to proceed to court to seek appropriate remedies. Which he did and was granted leave to file appropriate legal proceedings. The said leave operated as a stay. During the pendency of the suit in the High Court of Kenya at Nairobi Mr. Mpole was involved in a fatal accident. It is at this point that Maria Joginder came to your office instructing your office to take up the matter. You then rushed to court to establish the actual status of the case, Judgment in the suit was due in two weeks’.

Despite the stay orders, the County Assembly went ahead and advertised and replaced your client as speaker of Wakora County. You however went for the ruling of the court. Judge Tuendeleo simply stated that, following the developments in the Assembly the matter had been overtaken by events, and even if it were within time the court lacked the relevant jurisdiction to determine the suit. This is because there was a special court

dealing with matters of this nature. Suit stood dismissed for lack of jurisdiction, each party to bear own costs.

Your employer Mr. Akili asks you:

- a) with the aid of any relevant statutory provisions and case law, to discuss the rationale behind Justice Tuendelele's decision in the matter.
- b) assuming the judge was right in his opinion on the court that should decide the matter, to draft the necessary pleadings to commence litigation before the right court, and to seek appropriate relief.
- c) in reference to the violation of the orders of High Court of Kenya suspending your client's purported impeachment pending the decision of the Court, to explain the procedure for instituting and prosecuting contempt proceedings against the County Assembly.

Carry out all these instructions by Mr. Akili to you.

INSTRUCTIONS:

1. Coursework to be submitted in the following format:
 - Between 20-30 typed pages (excluding annexures, introduction and cover pages)
 - Times New Roman, Font 12 and
 - Double spacing
2. The work should be submitted to the Administrative Assistant, ATP, on 15th June, 2017 by 4:00 p.m.
3. Any work that is copied from other work without appropriate acknowledgement stands automatically rejected.
4. Reference works and sources must be properly acknowledged footnoted or otherwise fully referenced.
5. Comprehensive minutes of firm discussion meetings showing how discussions of each firm progressed must form annexures to each firm's final report.
6. Each member of the firm in attendance at discussion sessions must signify his or her attendance and active participation, by signing against his or her full name, using the signature known to the School