

**COUNCIL OF LEGAL EDUCATION.**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.**

**ATP 107: CONVEYANCING**

**MONDAY 15<sup>TH</sup> JULY, 2019.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains **Four (4) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks each**.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

**PLEASE TURN OVER**

## QUESTION ONE

Your client Mark has a property for sale and attends your office accompanied by Jane a prospective purchaser. In the client interview, the following facts emerge:

- i) Mark is the registered owner and produces a Certificate of Lease for the property Title Number Nairobi Block/1700/100 and copy of a lease by the Government of Kenya for the same. The documents show:
  - The tenure is leasehold for 99 years from 1<sup>st</sup> June 1989 under the Registered Lands Act (Cap 300).
  - Land rent is indicated as 'a Peppercorn (if demanded)'
  - Size of the property is 0.5010 hectares
  - The property is situated within Nairobi City County
  - The user on the lease document is indicated as "Light Industrial Purposes with Ancillary Offices"
- ii) Mark is concerned because he has learnt that unknown property brokers have been showing the property to would-be purchasers and he fears the brokers may defraud would be purchasers and leave him facing claims from the victims.
- iii) Jane is interested in the property on which she hopes to develop a housing estate to be known as Cystal Apartments.
- iv) Mark and Jane have agreed on a purchase price of Kshs.10 million but Jane only has 1 million cash and intends to finance the balance of Kshs.9 million through her bankers CIn Bank. The bank has verbally confirmed willingness to lend her the money subject to perfection of security.

Mark and Jane now seek your advice on the following respective matters:

- (a) Both Mark and Jane seek to know what is the meaning of Peppercorn rent and its logic in law. (2 marks)
- (b) Mark seeks your advice on how he can secure the property from possible fraud pending the completion of the sale to Jane or any other purchaser with whom he may end up contracting. (3 marks)
- (c) You have explained that it is Mark's obligation to procure the clearances and consents necessary to effect the transfer to the Purchaser.

Discuss the clearances and consents necessary for this transaction and why other clearances and consents normally required for other types of property are not necessary in this particular case. (5 marks)

- (d) Jane is concerned about the demand for a security by the bank since she does not own any land. She wants to know whether she can use the property under purchase and if so how, since the title is presently in Mark's name.

Mark is hesitant to have Jane use the title under purchase to secure her loan because he thinks it might expose him to liability and is unsure whether he will receive the full purchase price. How will you structure the transaction to take care of both Mark and Jane's concerns? (5 marks)

- (e) Jane has noted the user indicated on the title document is Light Industrial Purposes and at the last minute of the meeting wants to pull out of the transaction because she thinks she may not be able to develop her dream apartments on the land. What is your advice to her? Discuss the process, if any, that she may undertake to obtain permission to develop the apartments on the land. (5 marks)

## QUESTION TWO

Mr. and Mrs. Imani own 2100 acres of land as tenants in common. They intend to sell 2000 acres and retain 100 acres. The parcel is registered as Nairobi/Block 104/77 in Nairobi Lands Registry.

- (a) Your client Huruma intends to buy 1000 acres of the parcel. Explain to Huruma the steps and actions to be taken to get the 1000 acres registered to his name. (6 marks)
- (b) Unfortunately, Mr. Imani passes on before the transaction between them and Huruma is completed. Explain to Huruma the steps and actions the advocate representing Mr. and Mrs. Imani has to take to ensure the transaction explained above is completed. (4 marks)

## QUESTION THREE

The Government of Kenya intends to construct a level five hospital in Nakuru town. The parcels identified as suitable location for the hospital are owned by individuals. Mr. and Mrs. Juma are not willing to give their parcel to the Government as they plan to construct a house on the land. They approach you as an advocate to advise them on the following:

- (a) The transaction(s) the Government intends to enter into with the owners of the affected parcels of land. (4 marks)
- (b) The rights of the owners of the parcels affected. (4 marks)
- (c) Discuss the remedies available to the owners should the Government fail to meet its obligation. (2 marks)

## QUESTION FOUR

You act for Kam who is selling his property to James. The property is Nairobi Block 2019/001. Sale price is Kshs.5 million. Deposit of Kshs.500,000/- was paid at the time of execution of the sale agreement. Under the sale agreement completion was expressed to be in 90 days which have now expired. Your client Kam comes to your office and indicates that upon following up with James, the latter indicated that he is yet to raise the balance of the purchase price and is still making efforts to raise the balance of Kshs.4.5 million but cannot say when he will be ready. Your client asks you to terminate the agreement immediately but note from the agreement that the same requires a 21 days' completion notice before termination. James is represented by Hakika Advocates.

- (a) Discuss the meaning of 'completion' and 'completion notice' respectively. (3 marks)
- (b) What are the necessary prerequisites before either party can issue a completion notice in a transaction such as this one. (2 marks)
- (c) Draft the completion notice that you will issue in the matter. (5 marks)

#### QUESTION FIVE

- (a) You act for Emukule who is in the process of buying an apartment from Bongo Land Company. The head title is charged to Banki Kuu Limited. Emukule is also getting financing from XYZ Bank who have made it clear that they will only disburse the financed amount upon receiving legally registered and enforceable securities. You also happen to act for the developer. As per the Agreement for Sale, the registration of the documents shall be done by the Developer's Advocates to control movement of the head title and also closely monitor the transactions. All the completion documents are in place and the registration process about to begin.

Develop a detailed process flow of the registration process at the various departments of the Ministry of Lands and Physical Planning that will guide your conveyancing clerk to ensure that all the mandatory formalities are complied with. (5 marks)

- (b) Ten years later, Emukule shows up at your Chambers requesting that you redraft the lease afresh after failure to trace his title. He advises you that he has since redeemed his loan with XYZ Bank and collected the title for discharge but it was misplaced when he was relocating to his new home.

Advise Emukule the legal redress suitable to him in the circumstances. Lay out the process that he should follow as well as the timelines involved. (5 marks)

#### QUESTION SIX

Wendy and Lucia are a mother and daughter owning property L.R. No.209/1449. Erected on the property are go-downs for letting. Lucia and Wendy had commenced negotiations for a lease with Valentina and even executed a head of terms for one of the godowns. Unfortunately, Wendy suffered a stroke and died prior to registering the lease. She had not even signed the lease at the point of her demise. Lucia allowed Valentina to occupy the godown owing to the cordial relationship she had with Lucia's late mother. Soon after Wendy's burial, Lucia forwards Valentina a duly executed lease (executed by Lucia and attested by her Advocate) for her execution and return for registration. Accompanying the lease is a copy of certificate of title for the property dated 30<sup>th</sup> May 1998.

- (a) Advise Valentina on the registrability of the lease document. (2 marks)
- (b) Compare and contrast a lease to a licence. (4 marks)
- (c) Identify at least four express and implied covenants that a prudent Advocate would consider incorporating in a lease document when acting for the Lessee. (4 marks)

-----  
END