

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

PRB 004 LAND LAW

THURSDAY 27TH SEPTEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks each**
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Mr. and Mrs. Muringo wa Mali have been married for the last 20 years. They operate a tours and travel firm based in Nairobi called Muringo Ltd and which has branches in Mombasa and Narok. After the July 2012 high tourism season, Mr. and Mrs. Muringo's business reported a 1,000% growth in revenues as a result of their policy of 'looking East'. This policy entailed targeting high spending tourists mainly from China and South Korea. The policy had initially been described as a gamble, which gamble paid off very handsomely.

At the close of their financial year on 31 August 2012 the Board of Directors of Muringo Ltd declared a dividend payment to the two shareholders (Mrs. and Mrs. Muringo) with a total payout of Kshs.75 million. Mrs. Muringo received Kshs.50 million while Mr. Muringo was paid Kshs.25 million and the couple is very excited by the financial results of the ended year.

Mrs. Muringo has identified a house in Kayole Estate (Kayole Property) valued at Kshs.60 million. She is convinced that they should use the dividends to purchase the Kayole Estate house. Mr. Muringo on the other hand wishes to invest his share of dividends in a property near the proposed Konza City. After negotiations, it was agreed that Mrs. Muringo would contribute Kshs.50 million towards the purchase of the Kayole Estate house while Mr. Muringo would top-up the difference of Kshs.10 million. In return, the Kayole house would be registered in the names of Mr. and Mrs. Muringo.

As for the remaining Kshs.15 million on Mr. Muringo's account, it was agreed that he invests it in the Konza city project (Konza Property) but that the same be co-owned by Mr. Muringo and their first born daughter Ms Supu Babes.

Before the three named persons (Mr. Muringo, Mrs. Muringo and Ms Babes) execute some agreements for the two properties they call on you in the chambers of M/s Marod Matata and Company Advocates. You are the senior associate in charge of Research and Strategic Planning in the firm. The three request for a comprehensive legal opinion on the options of co-ownership available to them under the new Land Registration Act, 2012. While preparing the legal opinion, note to capture the following:

- (a) Available modes of co-ownership and their respective scope;
- (b) Advantages and disadvantages of each mode of co-ownership.

(25 marks)

2. Mr. De Matteo is a relatively wealthy man. He owns various properties around the country. In Mombasa's Nyali Estate he owns a palatial eight bedroom town house standing on an acre of beach front property. The house has been let out to one Mr. Van Persie a wealthy businessman from the Netherlands. Mr. Van Persie lives in the house with his girlfriend Ms Mwanaisha Zawadi. Mr. Van Persie, who is popularly known as

VP has been living in Mr. De Matteo's house for the last one year (since the beginning of September 2011).

No formal lease between the parties has been executed. There is, however, a letter of offer from Mr. De Matteo executed in August 2011 by Mr. Van Persie. It reads as follows:

"FROM THE DESK OF DE MATTEO SC, EGH, SENIOR CITIZEN TO MR. R. VAN PERSIE

OFFER TO STAY ON MY PROPERTY IN NYALI ESTATE

This offer to you is for tenancy on my above captioned property. If you wish to be my tenant, please consider signing and returning this letter to me. This letter is not a lease instrument. It is only an offer letter. The proper lease will be prepared in due course.

Yours faithfully

Xxx

DE MATTEO

VAN PERSIE

Signature

"

Upon receipt of this letter, Ms Zawadi signed the offer letter for and on behalf of Mr. Van Persie. Every month, Ms Zawadi collects rent of Kshs.250,000 and deposits it on Mr. De Matteo's account. On 1 September 2012 a dispute arose as to the repair of the cabro blocks on the driveway to the house. Mr. De Matteo argues that since there is no formal lease between himself and Mr. Van Persie, he should not be expected to repair the drive way. Mr. Van Persie advances the same argument, in his favour, not to foot the repair bills.

You are appointed by Mr. Van Persie and Mr. De Matteo as an arbitrator. In the brief referring the matter to you, you are expected to inform the parties of their respective implied covenants under the Land Act, 2012.

Prepare your considered opinion.

(25 marks)

3. The National Land Commission is a constitutional commission established under Article 67 of the Constitution of Kenya 2010. After the recent appointment of commissioners and the establishment of the Commission's Secretariat, the chairperson of the commission desires to hold what he calls a 'Historical Appraisal of Land Laws in Kenya'

You are the consultant engaged to deliver on this task. The commission has instructed you to prepare a brief on the various legislative interventions affecting land in Kenya since 1895 to the enactment of the Land Act, 2012.

Prepare your presentation noting to explain the policy objective of each piece of legislation.

(25 marks)

4. Discuss the scope and content of the Freehold Land tenure as established by Section 5 (1)(a) of the Land Act, 2012.

(25 marks)

5. Mr. Naikara Drogba owns 50 acres of land that abbutts the Jomo Kenyatta International Airport in Nairobi. He recently undertook a foreign trip to China's Shanghai Province where he met several investors with a keen interest in Kenya's real estate sector and the promising oil industry. After discussions with Mr. Drogba a Chinese company M/s Wei Wei Oil Ltd has conducted detailed evaluation of seismic data of Mr. Drogba's land and is persuaded that it could contain gold and oil reserves. M/s Wei Wei Ltd has mobilized rigs and related equipment to sink an oil well. It also intends to dig tunnels for the mining of gold. Contemporaneously, M/s China Office Builders Ltd has agreed to build on Mr. Drogba's land, right next to the airport fence what is described as the tallest building south of the equator consisting of 100 floors of office space. The two companies have agreed with Mr. Drogba to share revenue in the ratio of 1:1

On applying for the mining and oil exploration licences, M/s Wei Wei Ltd are denied the licences by the Department of Mines and Geology on grounds that Mr. Drogba does not own the minerals beneath his land. Similarly, M/s China Office Builders are denied approvals to building the office complex on Mr. Drogba's property, on objections of the Kenya Civil Aviation Authority.

Mr. Drogba is extremely upset by the turn of events and calls on you in your chambers for a legal opinion on his rights and obligations. Prepare the legal opinion.

(25 marks)

6. "The landlords chuckle and the tenants groan but the fixture remains where it was and passes to the landlord free of liability to pay compensation." Scammell in *"The law of Agricultural Holdings 4th Ed at page 108* **(25 marks)**

Discuss the foregoing quote in the context of Article 260 of the Constitution of Kenya 2010 that defines land as:-

“Land” includes –

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine water in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface.

(25 marks)
