

COUNCIL OF LEGAL EDUCATION.



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

ATP 100: CIVIL LITIGATION

THURSDAY 11TH JULY, 2019.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Five (5) 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

Tom Pillar, your client filed a suit against Sangura Limited claiming a sum of Kshs.5 million.

The case was heard and judgement was delivered in favour of your client. A decree was issued and it is still unsatisfied and your client informs you that Sangura Limited has an account with Mkulima Bank Limited with Kshs.3 million. The account number is 12345678. Your client is apprehensive that he may not recover the amount.

Draft appropriate pleadings indicating the nature of reliefs you will be seeking. (20 marks)

QUESTION TWO

Mary Timber, the deceased was the absolute and registered proprietor of land known as Shirika/Shirika/2030 which was charged to Shark Loans PLC. The deceased's brother commenced proceedings (Succession No.10 of 2019) to administer her estate. The court thereafter issued Conservatory Orders and subsequently the deceased's estate fell into arrears and neglected to service the loan. The deceased's brother has refused to remit the monthly rent payable by each tenant to the bank to service the loan.

The bank has approached your law firm and informed you that it was not aware of the Conservatory Orders and was neither party to nor aware of the proceedings or orders sought.

Based on the facts provided, advise the bank on the type of application and reliefs you will seek and grounds for such an application. (10 marks)

QUESTION THREE

1. An application has been filed in court by the plaintiffs, Joseph and Others who are officials of Kibos Forest Association.
2. The orders sought are that the respondents who are also defendants in the case, Kibos Forest Service and Kibos Sawmillers Association be restrained by themselves and/or their agents from harvesting timber and fuel materials in Kibos Forest within Bot County pending hearing and determination of the suit.
3. The grounds upon which the application is based are that:
 - The respondents are not qualified to harvest timber.
 - The forest rules have not been adhered to.
 - That the allocated sawmillers are overharvesting the trees.
 - That Kibos Forest Association was not involved when allocation for cutting trees was being done and this is contrary to the forest rules.
 - That there is no harvesting licence issued and no environmental impact assessment has been done.
4. The Plaintiffs aver that they stand to suffer untold loss as they also depend on the forest for their livelihood.
5. The Plaintiffs further state that the environment stands to suffer irreversible loss if the harvesting of trees is not stopped.

You have been retained by the plaintiffs in this case. Draft the submissions that will be used to argue the application stating clearly the orders sought by the applicants. (10 marks)