

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

CIVIL LITIGATION- ATP 100

17TH NOVEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **THREE OTHER** Questions.
- (b) All questions carry fifteen (15) marks each.
- (c) Marks may be lost for illegibility.

PLEASE TURN OVER

1. Rosemary Oldish Netondo travelled to Eldoret by air using Rapid Airways Ltd. She paid for, and received her air travel ticket at the airline's offices on Conspicuous Emporium, Sixth Floor along Restoration Avenue, Nairobi. The airline was also to carry Netondo's brief-case containing her wearing apparel, rare reading materials, and share-holder certificates. The airline received and took charge of the said brief-case and placed it in their luggage chamber of the aircraft in which Netondo was about to travel, for the purpose of its being carried to Eldoret on the travel day, June 8, 2014. Netondo travelled by the said aircraft to Eldoret, but her brief-case did not arrive, apparently Rapid Airways Ltd had not carried it to Eldoret, nor delivered it to her on her arrival there, or at all. It seems that the airline has either lost or retained the said brief-case, thereby depriving the lady of her brief-case and all its contents. She has gone through and suffered tremendous inconvenience, and has incurred expense in endeavoring to recover possession of her brief-case, without success. On returning to Nairobi, Netondo has come to your firm of Advocates which practises at Hefty People's Plaza, Second Floor, Famous Street, Nairobi, and instructed you to file a civil suit for the lost luggage.

(a) Draft a plaint with appropriate claims.

(13 Marks)

(b) Other than necessary fees, explain to Netondo what you will require at the time of filing the plaint in Court Registry to commence the suit.

(2 Marks)

2. Double Nine Kamau sued Moka Moka Omwene, and in his plaint there were the following allegations, among others:

"3. On May 22, 2014, the parties entered a written agreement signed by them, whereby the plaintiff sold to the defendant gemstones for Kshs.200,000,000.

4. Upon delivery, the defendant was to pay for the goods within 60 days.

5. The plaintiff delivered the goods promptly in accordance with the agreement.

6. Four months after the said delivery of the gemstones to the defendant, the said defendant has not made any payment of the purchase price, despite demand made for payment and notice of intention to sue in default given the defendant has refused, failed or neglected to pay for the gemstones"

The plaint sought for judgment for the purchase price and costs. Upon being served with the plaint, Moka Moka Omwene brings it to a well-known civil litigation law firm where you are a pupil and instructs the firm to enter appearance and file a defence properly responding to the plaintiff's allegation. In the client-advocate interview, Moka Moka Omwene tells you that whilst there was the signed written agreement between him and Double Nine Kamau, payment was to be made only after Moka Moka Omwene had received from abroad the proceeds of the gemstones, either on