

1. In January, 2012 Ahmed Raymond Kundu employed Mwangi Khakhefwi as his agent to sell ten residential maisonnettes at Athi River Town. On February 1, 2012, Mwangi sent an e-mail message enquiring if Ahmed allow him to sell the said properties on that date at the price rate of Shs.50million per maisonnette. Ahmed immediately replied by e-mail communication the same day instructing Mwangi to wait and not to sell unless and until the price reached Shs.80million per maisonnette. Mwangi ignored the instructions, and, in breach of his duty sold the maisonnettes on February 1, 2012 at the price of Shs.50million each. As a matter of fact, on March 1, 2012, the maisonnettes could have been sold at Shs.90million each. Ahmed considers himself having suffered damage considering the price difference between what the maisonnettes were actually sold for and what they would have fetched only one month after they had been sold, if only Mwangi had abided by the instructions given to him.

You are a junior advocate in the firm of Originals & Co. Advocates who practice as such at Unswampy Towers, 10th Floor, Broad Avenue, Nairobi. The senior partner in the firm, having meticulously written down these facts as distilled from Ahmed, passes to you these factual details. He asks you to make a draft plaint for him to scrutinize. Draft the plaint.

(15 marks)

2. In a bad road accident which happened at a junction of a minor road along which the defendant was driving in company of his girlfriend (to whom all his attention was concentrated at the time of the occurrence of the accident) and a major road along which the plaintiff was driving with due care, the plaintiff lost cash Shs.100,000. He sustained bodily injuries including a fracture of his right thigh bone, right arm bone, and injuries to his right wrist and left leg. He was aged 52 years. Afterwards he spent Shs.30,000 to repair his motor vehicle. He sued, through your firm of advocates, to recover general damages for his injuries and the financial loss he sustained. He based his claim on the defendant's negligence. The defendant having been duly served with the plaint and a summons to enter appearance within 15 days entered none. You have applied for a judgement in default of appearance.

- i) What default judgement have you applied for and which the court may grant? **(3 marks)**
- ii) What is its significance? **(3 marks)**
- iii) Explain the procedure and what (if at all) the plaintiff will be called upon to do after this judgement is granted. **(9 marks)**

3. On March 10, 2012, Ramnik Otongolo was employed by your firm of advocates as a process server. On April 5, 2012, you gave him a plaint already filed in the High Court at Meru. You also gave him a summons to enter appearance. You instructed him to go and serve the plaint and the said summons upon Dambastas Kamau Ole Soup, the defendant in the suit. Ole Soup resides at Funny Crescent, House Six. He runs a Cow Hide and Skin Retail Shop in Kajiado and travels a lot to Beijing, China, where he is setting up a new branch of his business. Four weeks later Otongolo reports back to you that every time he has tried to serve the documents you gave him, he has not been getting Ole Soup.

- (a) Prepare the document(s) that you expect from Otongolo. **(8 marks)**
- (b) Outline the way forward. **(7 marks)**

4. Joho Duale Heh entered into a valid contract with Raskol Luk, by which Joho was to supply to Raskol eight bags of dried smoked pigeons, a delicacy at Raskol's restaurant. The agreed price was Shs.5,000 per bag, payable thirty days after delivery. Joho considers that he performed his part of the contract but Raskol is in breach. Joho files a suit to recover the agreed price. Paragraph 6 of the plaint reads:

"6. On or before May 2, 2012, the plaintiff delivered eight bags of dried smoked pigeons, a delicacy at Raskol Luk's restaurant."