



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157

00200 Nairobi - KENYA

Telephone: 891601-6

Ext 1022/23/25

MAIN EXAMINATION

SEPTEMBER –DECEMBER 2021

FACULTY OF LAW

REGULAR PROGRAMME

CLS 435: GENDER AND THE LAW

Date: DECEMBER 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any TWO Questions

(NB QUESTION 1 IS COMPULSORY AND CARRIES 30 MARKS. THE REST OF THE QUESTIONS CARRY 20 MARKS EACH)

Q1. The United Nations Economic and Social Commission (ECOSOC), has voted Kenya a 'Model Democracy' whose citizens' rights are not only enshrined in an expanded Bill of Rights in her constitution, but the rights can be enforced by court rulings and be implemented by institutions which have been reformed for greater accountability. Your boss, the Hon Cabinet Secretary (CS) for Public Service, Gender and Youth Affairs has been invited by ECOSOC to deliver the keynote address at the Commission on the Status of Women Conference to be held in Washington DC in March 2021 as a prelude to International Women's Day. The CS has briefed you to draft her speech whose theme is *The Constitution of Kenya, 2010 – Specific Gains for Women*. Citing constitutional provisions, enabling statutes, case law and policy, describe the specific gains for women enshrined in the Constitution of Kenya 2010 and how the gains impact a woman's:-

- a) **Political life** **[10 MARKS]**
- b) **Family life** **[8 MARKS]**

- c) **Economic** life [5 MARKS]
- d) **Social** life [4 MARKS]
- e) **Cultural** life [3 Marks]

Q2. Although the Constitution of Kenya 2010 does not condone discrimination, it nonetheless provides for affirmative action. [The Constitution of Kenya, 2010: An Introductory Commentary, PLO Lumumba and Luis Franceschi, Strathmore University Press, Nairobi, Kenya, 2014]

- a) What is affirmative action in the context of gender discrimination? [5 MARKS]
- b) Citing relevant constitutional and statutory provisions, case law and policy, what **three** imperatives must affirmative action comply with for it to meet the requisite constitutional, legislative and policy thresholds? [15 MARKS]

Q3. Your client, Hon Kamau MacOnyango, Member of Parliament for Tabubika Constituency, has retained you to act for him in a matter whose solution he believes will not only free his conscience, but will shape the political future of his beloved country Kenya. His brief is well-articulated and to the point. He wishes to abandon the Raia Bila Mipaka Democratic Party (RBMDP), on whose ticket he won a Parliamentary seat in 2017, to form a new political party, Wanaume Musilale Bado Mapambano Men's Party (WBMMP). His reason for leaving RBMDP is that, his party leader has been sucked into what MacOnyango calls the "two thirds gender rule madness" a thing that is contrary to the law of God and nature. This, according to MacOnyango, has influenced RBMDP to taking a dangerous stance in supporting concepts and notions which are contrary to African traditions and practices, where women's role was in the kitchen as ordained by God.

For ease of reference, MacOnyango has given you a copy of the WBMMPs Manifesto whose key pillar is empowerment of men and restoration of their lost glory by: i) Locking women out by denying them party membership; ii) Putting in place strategies that will

ensure that the “river goes back to its course,” where women must only be seen but not heard; and iii) insulating WMBMMP from interference by “busybody” watchdogs particularly inter-governmental/governmental authorities and civil society activists.

Citing relevant constitutional and statutory provisions, case law, policy and practice, advise Hon MacOnyango on his chances of success in registering his proposed party.

[20 MARKS]

Q4. The World Health Organisation (WHO) has declared maternal mortality, maternal morbidity and female genital circumcision “a serious threat to a woman’s life” and “disablers that impact men negatively.” **[The State of the World’s Health, 2019 WHO Report]**

a) How do the three disablers affect men?

[2 MARKS]

b) How do they affect women?

[6 MARKS]

c) Name **three (3)** each of the legislative and human rights approaches which have been employed at international and municipal levels to address these threats?

[12 MARKS]

Q5. In order to counter the ever escalating HIV infection rate in the country, your boss, the Cabinet Secretary for Health, has drafted Revised Policy Guidelines for Primary Health Care in Kenya, which guidelines will take effect immediately they are published in the Kenya Gazette. Guideline No. 15 provides for compulsory circumcision of all males over 15 years of age, and the modalities of implementing it.

Your boss has instructed you to go over the guidelines with a toothcomb to ensure that there are no loopholes that might expose him to litigation by “nosy, busybody, human rights and gender activists.” What would you advise him in the context of Guideline No.15 of her draft? Cite relevant constitutional and statutory provisions, international instruments, case law and policy

[20 MARKS].

DTE DEC 2021

END