



CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

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JANUARY – APRIL 2022

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FACULTY OF LAW

REGULAR PROGRAMME

DCLS 065: CIVIL PROCEDURE AND PRACTICE

Date: APRIL 2022

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any Other TWO Questions

Q1. Mr Peter Kamau is a well-known businessman with significant interests in breweries, fish canning, and plastic manufacturing among many others. He ordinarily and voluntarily lives in Naivasha Town although he also spends a lot of time in Nairobi where he previously used to work for gain. In addition, he also has various business interests within Langas Area of Eldoret Town. Of late, the political bug has bitten him and he has become a suave political operative who is presently eyeing the Nakuru Senatorial Seat during Kenya's forthcoming August 2022 general elections. He has realised that he needs to deploy up to 10 Pajero Land Cruisers in his campaigns to enable him cover the huge swathe of the Nakuru County. However, he only has 3 such vehicles and would like to either buy or hire the rest. On 1st August 2021, Mr. Kamau entered into a contract with one Mr. James Muthoka, a car dealer and hirer, for the hire of the seven Land Cruisers for a period of 12 months. Mr. Kamau was to pay the sum of Kshs 200,000.00/= as monthly consideration for the hire of each of those seven vehicles. In addition, Mr. Kamau also leased an office within Nakuru City from Mr. Muthoka for the purpose of being his campaign headquarters. The monthly rent for the office space is Kshs 300,000.00/=. The Lease period is supposed to be 12 months with effect from 10th August 2021. However, as from the month of November 2021, Mr. Kamau has defaulted in making the monthly payments for all the 7 vehicles as well as the rent for the office space. When Mr. Muthoka followed up, Mr. Kamau has become very evasive and keeps on giving false promises about his commitment to the terms of the two contracts. Mr. Muthoka has approached your law firm, Kamata Kamata & Co. Advocates to advise on a number of issues, including the possibility of suing Mr. Kamau. In the meantime, it emerged that sometimes on 23rd February 2022, the Police arrested Mr. Kamau for the offence of obtaining campaign goods worth Kshs 2 million from one supplier in Ruaka and failing to pay for the same. When he was presented in a criminal court in Kiambu Town, he was unable to raise the cash bail to secure his

release from custody. As a result, he is committed to Kiambu Prison's Remand Home.

a) Relying on the appropriate provisions of the law, explain to Mr. Muthoka in which court(s) Mr. Kamau would be sued in for the dispute relating to the following;

i) Failure to pay for the contracts on the hiring of vehicles **(8 marks)**

ii) Failure to pay rent for the office space in Nakuru Town **(4 marks)**

b) Mr. Muthoka insists to you that he fears that Mr. Kamau would go into hiding immediately he leaves Kiambu Prison Remand Home as and when he manages to post the cash bail. He therefore requires you to move with speed and file the suits relating to his matters in Kiambu Law Courts. Citing appropriate provisions of the law, explain to him whether his proposal is tenable or not **(4 marks)**

c) Identify and explain to Mr. Muthoka what the cause(s) of action is/are in his disputes with Mr. Kamau **(4 marks)**

d) Citing the relevant provision(s) of the law, identify the appropriate pleading that would be used to institute the suit(s) against Mr. Kamau **(4 marks)**

e) Relying on the relevant provisions of the law, identify all the other documents that would be filed together with the pleading identified in (d) above **(6 marks)**

Q2. Distinguish between the principles of *Res Judicata*, and *lis pendens*, i.e. stay of suits **(20 marks)**

Q3. Citing the appropriate provisions of the law and applying relevant case law, identify and explain the three stages involved in the examination of a witness during a civil trial, taking note to explain the rules applicable at each of the three stages **(20 marks)**

Q4. a) Citing the appropriate provisions of both the Constitution of Kenya 2010 and relevant statutes, explain the hierarchy of the Kenyan court system **(12 marks)**

b) Discuss the sources of civil procedure law in Kenya **(8 marks)**

Q5. Write short and concise notes on the following doctrines of Civil Procedure **(20 marks)**

a) Justiciability

b) Jurisdiction

c) *Audi alteram partem*

- d) Cause of action
- e) Overriding objective

END

DTE APRIL 2022