



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2011/2012
SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR
OF LAW

LIL 302: ENVIRONMENTAL LAW

DATE: Saturday, 14th April, 2012

TIME: 9.00 a.m. – 11.00 a.m.

INSTRUCTIONS

- 1) Answer question ONE and any other TWO questions
- 2) You will be penalised for failing to answer question One
- 3) Support your answer with relevant case law, statutes and any other relevant references
- 4) Write neatly and legibly
- 5) Your answer sheet must bear your student registration number

QUESTION 1

The Government of Kenya has earmarked 50 acres of land outside Garissa City for establishment of an industrial park, in line with the objectives of Vision 2030. Jian Ltd, a Chinese company has been invited by the local authorities and the Export Processing Zones (EPZ) to establish a tannery for purposes of processing hides and skins for export. The factory, which will provide much needed employment to local youths and a ready market for the livestock industry, intends to draw water from River Tana for industrial purposes, while discharging effluent into the same river. Garissa city depends entirely on R. Tana for its water needs. Local politicians and civil society leaders have heard about the plans and have begun a campaign to stop the establishment of the tannery, on grounds that it will abstract too much water leaving behind little for the consumption by Garissa city dwellers. The same group also claims that the tannery will pollute the water and therefore deny the downstream communities access to whatever little flow remains in the

river. No scientific proof exists to back the claims made by these groups. This notwithstanding, Jain Ltd intends to go ahead with the project, after receiving necessary assurances by the local authority and the EPZ. A representative of Jain Ltd has come to your law firm, seeking opinion on the regulatory issues under environmental law they have to navigate before commencing the project. Prepare a brief, advising them on the same, while explaining in detail the obstacles they are likely to face and how your law firm will use legal ingenuity and deep knowledge of environmental law to navigate these regulatory issues-

(30 Marks)

QUESTION 2

Discuss any five principles of environmental law and the extent to which the same have been incorporated by Kenyan's environmental law regime

(20 Marks)

QUESTION 3 (answer a & b)

Tajiri Mali owns 1000 acres of land in Mizingoni area, which until 5 years ago lay idle and fallow. Upon advice by an environmental specialist, Tajiri went ahead and converted the land into a private forest and managed to have it registered as such by the Kenya Forest Service. Consequently, Tajiri received support from the KFS in obtain seedlings and loans to improve the forest. Within a short time, the natural springs emerged from the fringes of the forest and began supplying clean water to nearby villages that were hitherto on the verge of desertification. Rare birds and mammals moved into the forests and established habitats, attracting local and foreign bird watchers who started boosting the local economy. Tajiri extracted timber products from the forest in consultation with the KFS to ensure that the optimum sustainability yield was never breached. One day however, Tajiri learnt that the government had imposed an indefinite ban on harvesting of timber products in all state forests. This presented owners of private forests an opportunity to make a kill. He never hesitated. He began to cut down trees in total disregard of advise given by the KFS. In no time, vast areas of the forest disappeared. Water springs began drying up. The rare birds and mammals began moving away from the area. Local residents concerned about the new developments have approached Tajiri and beseeched him to stop the destruction, but he has persistently argued that the forest is

his private property and hence he has all rights under the sun to use and abuse it as he wished. Frustrated, the residents have approached you for legal advice. Explain to them:

- a) Some of the conservation measures KFS could carryout to save the forest under the Forest Act of 2005, citing specific provisions **(10 Marks)**
- b) If KFS fails to carryout the necessary measures, what recourse to legal redress do the residents have under the Forest Act of 2005, citing specific provisions **(10 Marks)**

QUESTION 4:

Describe the salient features of Kenya's physical planning law and the extent to which it can contribute to modern environmental management in the country? **(20 marks)**

QUESTION 5

Write brief explanatory notes on any of **FOUR** of the following:

- a.) Historical development of Kenya's framework environmental law **(5 Marks)**
- b.) Nature and scope of riparian rights under common law **(5 Marks)**
- c.) Weaknesses of the United Nations Convention on the Law of the Sea **(5 Marks)**
- d.) Weaknesses of National Environment Management Authority (NEMA) and suggestions for reform **(5 Marks)**
- e.) The concepts of environmental preservation and conservation **(5 Marks)**

