



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2017/2018
FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS
LIL 302: ENVIRONMENTAL LAW

DATE: Wednesday, 7th February 2018

TIME: 9.00a.m-11.00p.m

INSTRUCTIONS:

1. Answer question **ONE** and any other **TWO** questions. Penalties accrue for failure to answer question **ONE**
2. Support your answer with relevant illustrations from case 1a, statutory provisions and any other references
3. Your writing must be **NEAT** and **LEGIBLE**
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein
5. Do not scribble or draft answers on the inner or outer cover pages or your question paper
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper
7. **All** Kenyatta University Examinations rules apply as if they were contained herein

Question 1 (Compulsory) (30 marks)

BAMBOO REPUBLIC is one of the largest countries in Africa with a rich cultural and diversified heritage. With numerous languages spoken, it is a home to people of different religions and communities. It is a quasi-federal country and a leading economic player in Africa; consisting of East , West, North, South and Central Provinces. The Central Province is comparatively rich in copper, lead and titanium minerals and other natural resources covered by vast green forests and mountains.

In 2012, Government of BAMBOO authorized a Dutch company, DELTA LIMITED, to extract Lead from the Central Province to contribute to the economic development of the country. The government never bothered to inform the OZIZA people who predominantly occupied the XSHOSHI FOREST in the Central Province. The OZIZA people are gatherers. They dress in hides and skins and adhere to their culture and religion practices aimed at conserving the forest. They worship their god OMUNU below OMUSE trees; rare tree species found only in the XSHOSHI FOREST.

In October 2013, the Minister for Development was heard on Radio saying that the government had approved the Delta Company Limited to extract Lead in the XSHOSHI FOREST. He also stated that based on the Company's international profile the government was convinced that it was competent to extract the mineral and there was no need to conduct an environmental impact assessment on the project.

In December 2013, the Minister of Security deployed the military to eject the OZIZA people to pave way for the extraction of Lead for the development of the State. The OZIZA people and the ADVOCATES FOR XSHOSHI ENVIRONMENT (AXE), a Non Governmental Organization registered in BAMBOO REPUBLIC to advocate for protection and conservation of the XSHOSHI FOREST, opposed the project on a large scale. The government deployed police and para-military forces to suppress the protests. The police were able to stop the protests for about 4 months.

In January 2014, the DELTA COMPANY commenced the extraction of the Lead. Four months after the commencement of the project, it was later realized that DELTA COMPANY had discharged a substantial amount of Lead waste in to the XSHOSHI FOREST. The waste considerably degraded the XSHOSHI FOREST and caused the drying of about 5,000 trees in the forest. Further, large amounts of lead were found in RIVER YOMBE that originates from XSHOSHI FOREST and drains into LAKE SHOSHO in the neighboring REPUBLIC OF MANDINKA. As a result of the discharge of Lead to RIVER YOMBE, 100 people, 500 domestic animals and undocumented number of wild animals died in BAMBOO for drinking the poisoned water. In addition, 50 expectant women were reported to have miscarried after drinking the water.

Further, in MA-DINKA REPUBLIC 70% of the mangrove forest at the mouth of LAKE SHOSHO dried up. MA-DINKA government was surprised to find out that the REPUBLIC OF BAMBOO was extracting Lead from XSHOSHI FOREST without its knowledge and that the project had caused the drying of its Mangrove forest.

Distressed by the massive environmental degradation of XSHOSI FOREST, the AXE mobilized people for peaceful demonstrations to condemn the actions of the DELTA COMPANY and the BAMBOO government. AXE also filed a suit against the government of BAMBOO and the DELTA COMPANY Limited before the High Court of BAMBOO seeking legal redress for affected persons and protection of the XSHOSHI environment.

The BAMBOO Republic and MA-DINKA REPUBLIC are members of the United Nations and the African Union. They are party to the Statute of the International Court of Justice; the Vienna Convention on the Law of Treaties and the Convention on Wetlands of International Importance especially Water Fowl Habitat (Ramsar), 1971. Article 30 of the BAMBOO Constitution provided that every person has a right to a clean and healthy environment while Article 31 of the BAMBOO Constitution states that the High Court has jurisdiction to hear

matters of violation or infringement of the Constitution and disputes relating to the environment land use and occupation.

You are a newly admitted advocate of the High Court of Bamboo, AXE has asked you to join its team and assist in the trial preparations for the case, which is slated for hearing in a few weeks. Draft a concise legal opinion on the following legal issues:

- (a) Using provisions of the Bamboo Constitution and decided cases, discuss whether the High Court of Bamboo has the jurisdiction to hear and determine the case filed by AXE. (5marks)**
- (b) Using at least five (5) relevant environmental law principles and decided cases, discuss how you will argue your case before the court. (20marks)**
- (c) What orders will you be seeking from the court and why? (5marks)**

Question 2.20Marks

THE REPUBLIC OF MUZIZE is a Sovereign State. It borders the REPUBLIC OF ATANGANE to the South, REPUBLIC OF MAZINGIRA to the North REPUBLIC OF PEPINO to the West and the Indian Ocean to the East. The four (4) sovereign state are members of the United Nations (UN) and the East African Community (EAC). They have all signed and ratified the Treaty for the Establishment of the East African Community (EAC Treaty), Statute of the International Court of Justice; the Vienna Convention on the Law of Treaties; and the 1972 Convention for the Protection of World Cultural and Natural Heritage.

At the border between MUZIZE, ATANGANE and PEPINO is a fresh water Lake called MUZIZANGA. The lake is shared by all the three states and it is a source of RIVER UTA which supplies water to the arid Northern parts of PEPINO and arid state of MAZINGIRA. 80% of the REPUBLIC OF MAZINGIRA is arid and depends solely on water from RIVER UTA for its domestic use, large-scale rice and cotton farming, industrial use and survival of its exotic hippos and Crocodiles at RIVER UTA NATIONAL PARK. The UNESCO World Heritage Committee added RIVER UTA NATIONAL PARK as a cultural and natural heritage in 2010 upon the application of MAZINGIRA.

Due to climate change and low-recorded rainfall between 2014 and March 2017, the states of ATANGANA, MUZIZE and PEPINO were hit hard by drought. About 150,000 people were reported on NTC BROADCASTING CORPORATION and BBC NEWS to have died in the three states and 100,000 domestic and wild animals died due to lack of water and food. Thousands of people were reported to be facing death due to lack of water and food.

Consequently, the three states held meetings to deliberate on how they were to use water from LAKE MUZIZANGA by tapping water for its populace and animals who were facing death. The three states in the exclusion of MAZINGIRA came up with an oral memorandum of understanding on the Use of Water from LAKE MUZIZANGA. Upon concluding the memorandum of understanding, the three states began to tap 1.2 Million litres of water each on daily basis for their domestic consumption. As a result of the tapping of large amounts of water

from the lake, the volumes of water reduced significantly to the extent that water drained by RIVER UTA to MAZINGIRA was way below 10,000 Litres. Owing to the acute drought experience in MAZINGIRA and low levels of water in RIVER UTA, its rice and cotton farms

dried up and the hippos and crocodiles at RIVER UTA NATIONAL PARK died. In April 2017 MAZINGIRA decided to move to the East African Court of justice to challenge the legality of the actions of its neighbours under the EAC Treaty.

Article 111 of the EAC Treaty provides as follows;

1. The Partners States recognise that development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a prerequisite for sustainable development. The Partner States therefore:
 - (a) Agree to take concerted measures to foster co-operation in the joint and efficient management and sustainable utilization of natural resources within the Community;
 - (b) undertake, through environmental management strategy, to co-operate and co-ordinate their policies and actions for the protection and conservation of the natural resources and environment against all forms of degradation and pollution arising from developmental activities;
 - (c) Undertake to co-operate and adopt common policies for control of trans-boundary movement of toxic and hazardous waste including nuclear materials and any other undesirable materials;

- (d) Shall provide prior and timely notification and relevant information to each other on natural and human activities that may or are likely to have significant trans-boundary environmental impacts and shall consult with each other at an early stage; and
 - (e) Shall develop and promote capacity building programmes for sustainable management of natural resources.
2. Action by the Community relating to the environment shall have the following objectives:
- (a) to preserve, protect and enhance the quality of the environment;
 - (b) to contribute towards the sustainability of the environments;
 - (c) To ensure sustainable utilization of natural resources like lakes, wetlands, forest and other aquatic and terrestrial ecosystems; and
 - (d) to jointly develop and adopt water resources conservation and management policies that ensure sustenance and preservation of ecosystems.

You are a legal researcher at the East African Court of Justice and you have been requested to draft a brief legal opinion on the principles governing the management and proper use of a shared natural resource. Draft a concise legal opinion while noting to use provisions of the EAC Treaty, other relevant international treaties and decided cases. (20marks)

Question 3- 20marks)

- (a) "Sustainable development is achieved when development allows for the needs of the present generation to be met while not compromising the ability of future generations to meet their needs." *The Brundtland Report 1983*

Critically analyze the above statement.

(10marks)

- (b) Discuss the relationship between the sovereign right of states to exploit their own natural resources and the responsibility of states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction

(10marks)

Question 4-20marks

'Enforcing environmental rights in pre-2010 Kenya was problematic in the absence of a constitutional provision or more importantly an enabling legislative framework to support these rights. The problem was compounded by traditional and timid judges. Hence, the most

conservative of traditions and concepts drawn from English Common law were applied during this time. Environmental matters were considered to be strictly private law issues and of little concern to public law. This partly explains why a court declared that the Kenya Ports Authority lacked standing to sue the East African Power and Lighting Company for damages to clean up Mombasa Port after an oil contamination, the water was classified by the courts *as res nullius* (nobody's property)". (Oloka-Onyango 2017)

Question 5-20marks)

Write short explanatory notes on **ANY TWO (2)** of the following heading:

- (a) Five Key aspects of the UN Paris Agreement of 2015 (10marks)
- (b) The jurisdiction of the National Environment Tribunal (10marks)
- (c) Agenda 21 (10marks)