



# KENYATTA UNIVERSITY

## UNIVERSITY EXAMINATIONS 2017/2018

### SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

#### LPL 204: PROFESSIONAL ETHICS AND RESPONSIBILITY

DATE: Tuesday 12<sup>th</sup> June 2018

TIME: 9.00 a.m. – 11.00 a.m.

#### INSTRUCTIONS:

- 1) Answer ALL Questions.
- 2) Support your answer with relevant illustrations from case law, 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 of your answer booklet.
- 6) Do not write anything except YOUR REGISTRATION NUMBER on this Question paper.
- 7) ALL Kenyatta University Examinations Rules apply as if they are contained here

#### QUESTION 1

KISILI eagerly waited for the day he shall be admitted to the roll of advocates as he held a very strong opinion that the lawyers in Kenya are “*ancient minded*” as they are not utilising technology and the modern developments as well as opportunities in the society to build their respective law firms.

On 15<sup>th</sup> January 2017, KISILI was finally admitted to the roll of advocates and immediately opened a law firm, KISILI & ASSOCIATES. His uncle, a famous affluent architect, agreed to

give him start-up capital of Kenya Shillings Ten Million (Kshs.10, 000,000.00) provided that he is a partner at the law firm. KISILI gladly agreed. They signed a partnership deed to that effect. KISILI has high volume of briefs due to referrals from his clients, family and friends who happily praise him for charging very “fair fees” compared to the other lawyers. One of his friends was overheard at a public gathering by one of the Council members of the Law Society of Kenya stating: *“These other lawyers insist that they have to adhere to some document called .....something fees when charging legal fees. KISILI is easy. His legal fees are affordable for the hustlers like us. Try him. You guys will not be disappointed”*.

By December 2017, KISILI had made a lot of money as his law firm was thriving. He travelled on 12th December, 2018 with his friends to Dubai for the December holidays. They all came back on 22<sup>nd</sup> January 2018 and KISILI quickly reported to his plush office as his personal assistant had informed him that his client, SIFA, had visited the office severally when he was away because she urgently needs him to represent her in the sale of her five bedroom villa in Lavington area. In his meeting with SIFA the following day, she informed him that the agreed purchase price with the potential buyer, DUNDA, is Kenya Shillings Sixty Million (Kshs.60,000,000/=). She further informed him that DUNDA promised her that he has all the cash in his account with a local bank and therefore the transaction will go very fast if they get a good lawyer.

In order for the transaction to move fast, SIFA agrees with DUNDA that KISILI's firm handles the sale as she requires money urgently to pay school fees for her children studying in universities abroad. DUNDA is comfortable with KISILI's firm as he strongly believes that he is an intelligent man having seen the following caption in the Golf Magazine, a popular magazine for golf players in Kenya: *“We are an elite law firm which handles all legal issues for local and international clientele. We have no record of failure. Our competence knows no boundaries. We never loose. If we lose, you do not pay a cent. We ensure completion of all property transactions within 30 working days. Our record speaks for itself. Visit us at Bahati Plaza, 2<sup>nd</sup> Floor, Room 31. Or call us on 066700100”*.

KISILI prepared the sale agreement and witnessed it for SIFA and DUNDA on 2<sup>nd</sup> February, 2018. DUNDA deposited the 10% deposit of the purchase price in KISILI's Client Account on the same date. The following day, the sale agreement was presented for stamping. A few weeks

later, DUNDA deposited a further Ten Million (Kshs. 10,000,000) with KISILI towards the balance of the purchase price and informed him that he will send the remaining amount as soon as the bank releases the loan he had applied for.

On 5<sup>th</sup> February 2018, KISILI's personal assistant informed him that he is yet to pay for his practising certificate for year 2018. KISILI immediately completed the required forms and presented them to the Law Society the following day. Upon payment of the requisite amount, he was issued with a receipt for the payment by Law Society of Kenya (LSK) on the same day.

A few days later, KISILI's mother fell ill and was admitted to Nairobi Hospital Intensive Care Unit. Being the only child with a job, the family expected him to pay the entire hospital bill which upon her discharge, a month later, was Kenya Shillings Fifteen Million Six Hundred Thousand (Kshs. 15,600,000/=). KISILI did not have the money as it was just the beginning of the year and he had spent all his savings at his December Dubai trip. He therefore decided to utilise the monies in the Client Account that he was holding in trust for SIFA and DUNDA, pursuant to the sale agreement between them, to defray the hospital bill hoping that the loan that he had applied for immediately his mum was admitted will be approved. The loan was however not approved.

By the completion date, DUNDA had not obtained the loan to pay the balance of the purchase price. When he asked his relationship manager at the bank, he was informed that the bank approved only Kenya Shillings Ten Million (KShs.10,000,000/=) which clearly would not be enough to complete the sale transaction as the balance was at Kenya Shillings Forty Four Million (Kshs.44,00,000/=). Distressed, he informed KISILI that he will not be able to complete the transaction. KISILI informed SIFA of the developments and she insisted that they must sue DUNDA for specific performance of the Sale Agreement.

Discuss Professional Ethics and Responsibility issues arising from the above scenario noting to support your answer with relevant case law, statutes and any other relevant references.

**30 MARKS**

## QUESTION 2

You were the best student at the Kenya School of Law in the year 2015. MAMBO & CO. ADVOCATES, one of the biggest law firms in Kenya offered you employment as an advocate which you gladly took up. In February 2018, you were promoted and you are now a Senior Associate handling more complex legal matters and solving departmental issues in your department at the law firm such as:

a) The JAMBO divorce matter.

On the day of delivery of the judgment, JAMBO comes to your office early so that you can proceed together to the court. On your way to the court, JAMBO states *“Wakili, I know that the judge will give my wife PENDO the exclusive use and possession of the matrimonial home and order me out of the home. I won't let PENDO get that house. I'd rather burn the house down than lose it. I know that she's going away with the kids to see her parents who live in Kampala and when she comes back that house will be nothing but cinders.”*

You did not reply to this statement because you were shocked by its content and the strength of JAMBO's emotions. Indeed, just as JAMBO predicted, the court gave PENDO the matrimonial home. You have, occasionally in the past, regarded JAMBO as having a very short fuse.

Using relevant cases and statutory provisions, critically discuss the above matter and the action(s) you should take in the context of Professional Ethics and Responsibility.

**10 MARKS**

b) The NJORE departmental matter

One of the advocates in your department, NJORE, a proud gentleman, is handling two high profile stressful litigation matters. He uses social media as an emotional outlet. Most of the times he posts about personal or political issues, but occasionally (particularly after a few drinks at his local bar), he gripes about work related matters. On the eve of one of his matters, he posts on Facebook: *“Just*

*finished a week of prepping witnesses for their testimony. I am a genius. No one will figure out he killed the sister. I can smell victory!! Promotion here I come."*

On the day of the trial, the trial judge overruled all his objections and NJORE lost his temper and after a few drinks in the evening at his local bar, posted on his Facebook page: "*Justice MASEKE is a complete witch and idiot. She must be having an affair with that silly prosecutor, TEPA, who had a gazillion retakes at Campus and the School of Law. I wonder how he even got the prosecutorial job.*"

Using relevant cases and statutory provisions, critically discuss the above matter and the action(s) you should take in the context of Professional Ethics and Responsibility.

**10 MARKS**

### **QUESTION 3**

*"The Judiciary has played a critical role in the development of the legal profession in Kenya".*

Anonymous.

Citing relevant statutory provisions, discuss the veracity of the foregoing statement.

**20 MARKS**