



# KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2018/2019

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

### LPL 216: HUMAN RIGHTS LAW

DATE: Monday 8<sup>th</sup> April 2019

TIME: 9.00a.m -11.00a.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 or 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 were contained herein.

#### QUESTION 1

In June 2016, Masha, a twenty seven year old woman with a physical disability, visited Akap Hospital, a mission hospital owned by Fishers of Men Holiness Church in North Western Kenya for malaria treatment. She tested positive for HIV/AIDS but was not informed of the results. Masha only got to know that she was HIV positive when she read what had been written on her medical card on her way back home.

One evening in August 2017 Masha was admitted at Akap Hospital with pregnancy complications. She was immediately taken to theatre for emergency surgery. The following morning when doctors were doing their rounds, she overheard one doctor briefing the other that he had performed sterilization surgery on her. She asked the doctor to explain to her about the surgery she had undergone. The doctor explained to her that the baby she delivered had been put in the nursery and would be availed

to her later. Further, the doctor explained that since she was HIV positive the Hospital had decided to perform sterilization surgery on her. Devastated by the Hospital's decision but feeling vulnerable Masha decided not to question the decision.

Using relevant constitutional and statutory provisions and case law:

- |                                                      |            |
|------------------------------------------------------|------------|
| i. Discuss four (4) rights violated in this scenario | (12 Marks) |
| ii. Obligations of Akap Hospital and the Government  | (10 Marks) |
| iii. Constitutional remedies available to Masha      | (8 Marks)  |

## QUESTION TWO

Pasi, a Government driver lives with his wife and adult daughter in Jengo, one of Kenya's informal settlement situated in the Southern part of Nairobi. Jengo has about 300,000 inhabitants on a fifty (50) acre piece of land. There are no public basic amenities in Jengo, as the land on which the informal settlement stands is owned by a Government parastatal. The inhabitants of Jengo thus have no running water, toilets or sewerage systems. In August 2018, there was an outbreak of typhoid in Jengo which affected many people including Pasi's wife and adult daughter.

In November 2018, Pasi filed a petition in the High Court in relation to enforcement of the right to adequate water and sanitation in Jengo. In response to Pasi's petition, the Government submissions were twofold. First, economic, social and cultural rights are to be achieved progressively subject to availability of resources. Second, the Government had no resources, in light of the ensuing external debt, hence it could not provide the right to adequate water and sanitation in Jengo and it was up to Pasi to prove availability of resources.

The High Court found in favour of Pasi and ordered the Government to table in Court within ninety (90) days an action plan on provision of adequate water and sanitation in Jengo. Reflecting on the ruling of the High Court, Pasi Opined that the remedy given is rather structural and not individualized.

Using relevant Constitutional provisions and relevant case law:

- |                                                               |           |
|---------------------------------------------------------------|-----------|
| i. Evaluate the Government's arguments                        | (8 Marks) |
| ii. Evaluate the nature of the remedy given by the High Court | (6 Marks) |

Besides, the High Court, Pasi could approach the Constitutional Commissions established in the Bill of Rights. Explain.

(6 Marks)



### QUESTION THREE

Using relevant constitutional provisions write comprehensive notes on the following:

- i. Human dignity as the *grund norm* in the Kenya Bill of Rights (10 Marks)
- ii. Declaration of a state of emergency in the Bill of Rights (10 Marks)