



KENYATTA UNIVERSITY
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS
LPL 201: ALTERNATIVE DISPUTE RESOLUTION

2ND SEMESTER 2020/2021

TIME: 2 HOURS

INSTRUCTIONS:

- ❖ Answer **ALL** questions
- ❖ Support your answer with relevant illustrations from case law, statutory provisions and any other references
- ❖ Your writing must be **NEAT** and **LEGIBLE**.
- ❖ Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
- ❖ Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
- ❖ Do not write anything except your **REGISTRATION NUMBER** on this question paper.
- ❖ **ALL** Kenyatta university Examinations rules apply as if they were contained herein.

Question 1

You are a lawyer who specializes in Alternative Dispute Resolution (ADR). You are approached by Mrs. Njenga regarding a dispute she has with Realife Contractors Ltd. Mrs. Njenga and Realife contractors Ltd entered into a formal contractual engagement under which Realife Contractors Ltd. Were to construct an office block for Mrs. Njenga at a total cost of Kshs. 100,000,000. The contract contained the following arbitration clause:

“Any dispute arising out of or relating to this contract shall be referred to and finally resolved by arbitration conducted by a single arbitrator who shall be appointed by the Chairperson of the Finance Institution of Surveyors of Kenya (ISK) provided that such arbitrator shall either be a qualified valuer or a surveyor. The arbitration shall take

place in Nairobi, Kenya. The language to be used in arbitration proceedings shall be English."

Realife Contractors Ltd. completed construction of the office block and claimed its cost from Mrs. Njenga, who at the time hadn't arranged her finances and wanted to delay the payment until the time her bank loan goes through. Mrs. Njenga decided to negotiate with the Realife Contractors Ltd. to be given more time to process the payment, to which negotiations Realife Contractors Ltd. agreed.

During the said negotiations, the parties reached consensus that Mrs. Njenga would pay the contract price six months from the date of the negotiated agreement. The negotiated agreement was reduced into writing and signed by both parties. In the evening, after successful negotiation settlement, Mrs. Njenga visited the construction site and found that the work was not done to the agreed standard. She immediately wrote to Realife Contractors Ltd. cancelling the negotiated agreement and informing Realife Contractors Ltd. of her refusal to pay the contract price until alteration works on the office block are completed. Realife Contractors Ltd without responding to Mrs. Njenga's letter cancelling negotiation settlement, invoked the arbitration clause of their construction contract and requested the Chairperson of ISK to appoint an arbitrator.

The Chairperson of ISK appointed Mr. Otieno, a former immediate chairperson of the ISK, a qualified surveyor with over 30 years of post-qualification experience as an arbitrator.

The parties appeared before the arbitrator and the arbitration proceedings commenced. Upon completion of arbitration, the arbitrator made and published his Award on notice to the parties. However, Mrs. Njenga's lawyer, Mr. Ngugi, failed to attend on the date of publication of the Award and thus, had no opportunity to receive it.

The arbitrator found in favor of Realife Contractors Ltd and awarded the firm the full contract sum, as claimed. Additionally, despite the fact that the construction contract was silent on the issue of any interest in default of payment, the arbitrator, together with the payment of the full contract price also awarded payment of interest chargeable at the rate of 12% from the date the contract price ought to have been paid until its payment in full.

After reading the award in presence of the advocate representing Realife Contractors Ltd. only, the arbitrator emailed copies of the Award to both, Realife Contractors Ltd and Mrs. Njenga. Mrs. Njenga, surprised to receive the arbitrator's decision on mail, telephoned Mr. Ngugi to find out why the arbitrator contacted her directly and not through her counsel. Mr. Ngugi explained to Mrs. Njenga that on the date when the Award was delivered, he was not available to have it received. Upset by Mr. Ngugi's negligence, Mrs. Njenga fired him at once. When Mrs. Njenga read the Award, she realized that the document was dated but wasn't signed.

In the interim, Realife Contractors Ltd. filed an application before the High Court of Kenya for recognition and enforcement of the Award. Mrs. Njenga, dissatisfied with the Award comes to you for legal opinion and representation.

Using relevant statutory provisions and judicial authorities, draft legal opinion, explaining causes of action available to Mrs. Njenga and any challenges she might encounter.

(30 marks)

QUESTION 2

You are an employment and industrial relations legal consultant. Mr. Fred Mutinda approaches you for advice. Fred states that he was employed by Plastics Ltd. on 6.8.2016 as a machine operator for recycling plastics.

In August 2019, he joined the trade union that was already established by Plastics Ltd.'s employees and in the same year he became the chairman of the trade union.

In December 2020, Mr. Fred Mutinda's boss learned about Fred joining and chairing the trade union and became displeased with Fred. In December 2020, when Fred reported back to work from Christmas holidays, he found that all the employees who had joined the union were locked out. The Plastics Ltd.'s manager gave all the "locked out" employees "revocation of trade union membership" forms and asked them to sign the forms. Only those who signed the forms and revoked their union membership were allowed back, but Fred and other thirteen employees refused to revoke their membership and were dismissed from employment.

The 14 dismissed employees reported the matter to the trade union. The union reported this dispute to the labor office and a conciliator, Mr. Waweru was appointed to resolve the dispute. However, no one from the management of Plastics Ltd attended conciliation meetings such that Plastics Ltd ended up without representation during conciliation proceedings. After conciliation hearing, the Plastics Ltd refused to implement recommendations offered by the conciliator.

Advice Fred Mutinda as the chairperson of the trade union on the validity of conciliation proceedings conducted by the trade union, explaining the courses of action available to the union.

(20 marks)

QUESTION 3

Critically analyze and discuss legal framework for court-annexed mediation in Kenya, citing the initiatives by the Kenyan judiciary as examples in promoting the use of mediation as a form of alternative dispute resolution.

(20 marks)