



KENYATTA UNIVERSITY
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS
LPL 203: CIVIL PROCEDURE

SECOND SEMESTER 2020/2021

TIME: 2 HOURS

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

On 29th APRIL, 2021 MOKET saw an advertisement in one of the local dailies offering to sell some land in Kiambu County. MOKET, who had just received his pension after retirement, was excited and thought that buying the land was a good investment for his pension. He quickly called the advertising agents known as WISE MEN INVESTORS and expressed interest in buying the land. He was invited to visit their offices the following day. He arrived at the agent's offices at 8.00 am on 30th April, 2021 with all his personal documents and a cheque book ready to purchase. Although he was aware of the importance of investigating the title and confirm its validity, when he visited the agent's office, he was shown a recent search and the agent convinced him that there was no need to spend more money undertaking further investigations.

MOKET was given a sale agreement to sign. He paid a deposit of half of the purchase price being Kshs 15,000,000.00. The sale agreement provided that he would pay the balance in one month's time and thereafter the possession of the land would be handed to him. It was also agreed that a transfer would be signed and title deed issued in his name immediately after paying the balance.

MOKET left the agents office excited and started looking forward to paying the balance of the purchase price, which he promptly paid upon expiry of one month.

On 3rd May, 2021 MOKET went back to the agent's office to sign the transfer and equally receive possession of the land. As at that day he had paid the full purchase totaling Kshs 30,000,000.00. He had also paid an agency fee of Kshs 120,000.00. The agents gave him a transfer to sign and promised to go with him to the land for official hand over. It was agreed he would meet the agent at the land in two hours time. MOKET who was driving his own car left for the land. As he approached the land, he was surprised to see tear gas smoke all over. Upon enquiry, he was informed that police officers were dispersing people who had grabbed public land. He tried to call the agents who had sold the land to him but they were not picking his calls. He quickly drove back to the agent's office. The agents informed him that they had also purchased the land from a third party who had assured them that the land was private land. Upon further enquiry, MOKET was able to establish that the ^{title} deed and the search given to him by the agents were forgeries. He had to spend further Kshs 80,000.00 to pay the investigator who informed him that the documents were forgeries.

The land agents have refused to refund MOKET the purchase price alleging that they had already spent the money in another land transaction. MOKET immediately suffered depression and was admitted for 10 days in hospital. He had to seek help from his brother to settle a hospital bill totalling Kshs 300,000.00. He has not fully recovered and has to see the doctor every two days. He is still going through the agony of fearing losing all his life time savings.

MOKET has instructed you to file a suit against WISE MEN INVESTORS.

a) Draw up the relevant pleadings in this matter.

(20 marks)

b) Discuss the various matters to be considered while drafting the pleadings.

(10 marks)

Question 2

- a) NASORO filed a suit by way of a Plaint at the Chief Magistrates Court at Nairobi. After service of the Plaint and the Court Summons, he notices that he forgot to include some important particulars in the Plaint. He has approached you seeking for legal advice on the process of amendment of pleadings before and after close of pleadings. Advise him.

(10 Marks)

- b) You have been served with a Defence in NASORO's case. NASORO indicates to you that the defence is based on false and misleading allegations and he wants it struck off. Explain principles that guide courts in determining applications for striking out pleadings.

(10 Marks)

Question 3

With the aid of relevant authorities, discuss the principle of overriding objective and how Courts in Kenya have applied it.

(20 Marks)

*Amendments Order & Rule 3.
Amendment can be done at any time by close of pleadings.
- After that which the parties want to amend should seek leave of court.
- First amendment should be in red then the rest should be underlined.
- Pleadings should be numbered sequentially.
- Pleadings should be straight line.
- Pleadings should be numbered sequentially.*