



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
APRIL 2024
LAW OF CIVIL PROCEDURE II
UNIT CODE: RLB 210
INSTRUCTOR: MR. WASHINGTON ODONGO OMBIS

INSTRUCTIONS

1. This is the final examination in Law of Civil Procedure II. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **SIX** questions. Please answer all questions.
3. The examination has **FOUR PAGES**, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination, save that students are only allowed to use the Advocates Remuneration Order 2014. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question One**(30 Marks)**

On the 1st day of March 2024, judgment was delivered in the case of *Soi Distributors Ltd v Mukoma HCCC E 04 OF 2023 e KLR* at the High Court milimani Nairobi.

Judgment was delivered in favour of the plaintiff and the court ordered the defendant to bear the costs of the suit.

Before the judgment, the plaintiffs advocates under took the following activities:

- a) On the 10th January 2023 received instructions to file suit for breach of contract worth Kshs. 30,000,000/=
- b) On the 10th January 2023 drafted demand letter to Mukoma demanding Ksh. 30,000,000/= 10 folios for the demand letter.
- c) On the 17th January 2023 drew plaint (14 folios).
- d) On the 17th January 2023 made 4 copies of the plaint.
- e) On the 17th January 2023 drew verifying affidavit (1 folio).
- f) On the 17th January 2023 made (4 copies) of the verifying affidavit.
- g) On the 17th January 2023, drew list of witnesses (1 folio).
- h) On the 17th January 2023, made 4 copies of the witness statements.
- i) On the 18th January 2023, drew witness statements (20 folios).
- j) On the 18th January 2023 made 4 copies of the witness statements.
- k) On the 19th January 2023 drew list of documents (20 folios).
- l) On the 19th January 2023 made 4 copies of the list of documents.
- m) On the 20th January 2023, filed plaint and documents assessed at Kshs. 300,000/= (court assessment fees).
- n) On the 22nd January 2023 served the plaint and the accompanying documents to the defendant physically, (Mukoma located at South C area Nairobi area).
- o) On the 1st February 2023, received statement of defense (5 folios)
- p) On the 1st February 2023, received verifying affidavit (1 folio).
- q) On the 1st February 2023, received list of witnesses (1 folio).
- r) On the 1st February 2023, received witness statements (10 folios).
- s) On the 1st February 2023, received list of documents and documents (30 folios).
- t) On the 10th April 2023, attended court for mention pre – trial directions (30 minutes).
- u) On the 10th August 2023, attended court for hearing before Justice Ogle (½ day).
- v) On the 15th September 2023, drew submissions (10 folios).

- w) On the 15th September 2023, drew list of authorities (30 folios).
- x) On the 15th September 2023, served the submissions and list of authorities to the defendant.
- y) On the 20th November 2023, received submissions and list of documents (20 folios) from the defendant
- z) On the 1st March 2024 attended court for judgment before Lady Justice Nduta (1/2 day)

Considering the above excerpt, prepare the party – to - party bill of costs in favor of the plaintiff.

Question Two (15 Marks)

On the 10th day of February 2023, judgment was delivered in the case of Hamza v Sonal & Co Advocates LLP ELRC Nairobi as follows by Lady Justice Kelsey:

- **Claimants statement of claim dismissed**
- **Respondent awarded costs of the case**
- **Claimant granted leave to appeal against this judgment.**

Assuming the following facts as true pleaded in the claimants statement of claim:

- Claimant was unfairly terminated, contrary to the Employment Act of Kenya 2007.
- Claimant was not given opportunity to be heard.
- Claimant was not given terminal dues.
- Claimant was employed under contract of service for 7 years (renewable) beginning Jan 2021.
- Claimant was entitled to terminal dues.

Assuming you are the advocate on record for the claimant and having been dissatisfied with the said judgment, prepare the relevant documents for further action

Question Three (15 Marks)

On the 13th day of February 2024, judgment was delivered in the matter of *Bobby Distributors Ltd v Nassir Masud* HCCC No E 3 of 2023.

Judgment was delivered by Lady Justice Avni as follows:

- a) The defendant to pay the plaintiff Kshs. 200,000,000/= for breach of contract.
- b) The defendant to pay costs of the suit.
- c) The defendant granted leave to appeal within 14 days from the date of the judgment.

In the plaint of Bobby Distributors, the prayers were as follows :-

- a) Plaintiff to be compensated Kshs. 20,000,000/= for breach of contract being the total value of the contract.
- b) Defendant to pay costs of the suit.
- c) Interest to be paid.

Assuming, you were on record for the Defendant in this matter and having noted the mistake which was made in the judgment, prepare the necessary application to remedy this defect.

Hint:

- The advocates on record for the defendant are: Mcharo & Co Advocates Bruce House, Standard Street 5th Floor Room 5 P.O. Box 1 – 00100 Nairobi, Kenya.
- The advocates on record for the Plaintiff are Roxanna Nduta & Co Advocates Yaya Center, 5th Floor Room, P.O. Box 2 – 00200 Nairobi, Kenya.

Question Four (10 Marks)

Section 2 of the Civil Procedure Act defines a decree,

“[a]s the formal expression of an adjudication which so far as regards the court expressing it, conclusively determined the rights of the parties with regard to all or any of the matters in controversy in the suit and could be preliminary or final.”

Considering the above, explain some of the difficulties associated whilst extracting decrees in court and in doing so propose changes which need to be adopted to avoid such.

Question Five. (10 Marks)

“[T]he small claims court has breathed new life in civil procedure law and practice of Kenya.”¹ – Anonymous.

Considering this statement, using illustrations discuss five advantages of the small claims court over the chief magistrates court in Kenya civil procedure law practice.

Question Six (10 Marks)

ICT has enhanced the practice of civil procedure amongst advocates in the Republic of Kenya, considering this, discuss some of the potential problems experienced by advocates whilst using the virtual court systems in Kenya.

¹ In terms of timely expeditious disposal of disputes. *“The small claims court has indeed given effect to the overriding objective.”* – Washington Ombis on reflections of the small claims court in Kenya: a case for promise?