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EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

REGISTRATION NUMBER:

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CENTRE:  Co-operative University  JKUAT  KASNEB  Kenya School of Law

ATP100: CIVIL LITIGATION

Examination Series: November 2025

Date: 13<sup>th</sup> November 2025

Time: 09:00AM - 12:00PM

Duration: 3 hours

Instructions to Candidates:

- Enter your registration number and tick the exam Centre in the space provided.
- Answer **FIVE (5)** questions, including question **ONE**, which is **COMPULSORY**.
- Question **ONE** carries **20 Marks**. All other questions carry **10 Marks** each.
- Attempt each question in the space provided.
- Answers **MUST** be supported by relevant statutory provisions and case law where required.
- Do not write your name in the booklet.
- Ensure your handwriting is **LEGIBLE**.

FOR EXAMINER'S USE ONLY

Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
1.								
2.								
3.								
4.								
5.								
6.								
<b>Total Marks</b>								



## QUESTION ONE

Mwaka Hima sued Daima Tele in *Milimani High Court Civil Case No. E304 of 2023* for special damages of Ksh. 35,000,000/= plus costs and interest. The Plaintiff conducted the matter in person whereas the Defendant was represented by the law firm of Sheria Bora & Company Advocates, where Mr. Sheria Bora is the sole proprietor. Judgment was delivered on 8<sup>th</sup> September 2023, whereupon the Court dismissed the matter with costs to Daima Tele since, according to the Court, Mwaka Hima failed to prove his case on a balance of probabilities.

Conclusion of the matter notwithstanding, Mwaka Hima has taken issue with paragraph 5 of Daima Tele's Statement of Defence dated 4<sup>th</sup> July 2023 filed in the matter, which read as follows:

**"5. The Defendant avers that the Plaintiff is not entitled to the sums claimed as alleged, or at all. The Defendant hastens to add that the alleged sums claimed by the Plaintiff were fraudulently siphoned by the Plaintiff from MwaHiDaTe Company Limited, which is a separate legal entity and, in any event, has not been sued in this matter. The Plaintiff is an unapologetic thief, conman and insensitive fraudster, who has tormented the Defendant, who is his co-director/shareholder in the company, hence, the Defendant is nonsuited to the Plaintiff."**

Based on the foregoing paragraph, Mwaka Hima filed a fresh claim as follows:

REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
CIVIL CASE NO. E450 OF 2025

MWAKA HIMA..... PETITIONER  
-VERSUS-  
DAIMA TELE.....1<sup>ST</sup> ACCUSED  
SHERIA BORA..... 2<sup>ND</sup> ACCUSED  
MWAHIDATE COMPANY LIMITED.....3<sup>RD</sup> ACCUSED

### PLAINT

1. The Plaintiff is an adult of sound mind and disposition, a businessman based in Nyeri. The Plaintiff's address for purposes of this suit shall be Nyeri Business Centre, 3<sup>rd</sup> Floor, P.O. Box 100, Nyeri; email address [mwakahima2023@gmail.com](mailto:mwakahima2023@gmail.com).
2. The 1<sup>st</sup> Defendant is a female adult and a businesswoman based in Nairobi.
3. The 2<sup>nd</sup> Defendant is a male adult, an Advocate of the High Court of Kenya and the sole proprietor of Sheria Bora & Company Advocates, whose offices are situated in Kitale. The 2<sup>nd</sup> Defendant has been sued in his individual capacity for misadvising the 1<sup>st</sup> Plaintiff, who was his client in *Milimani High Court Civil Case No. E304 of 2023* as the Defendant.
4. The 3<sup>rd</sup> Defendant is a limited liability company, duly incorporated as such under *the Companies Act, Cap 486 of the Laws of Kenya*, with its registered offices in Kwale.
5. The Plaintiff avers that in the 1<sup>st</sup> Defendant's paragraph 5 of his Statement of Defence dated 4<sup>th</sup> July 2023 filed in *Milimani High Court Civil Case No. E304 of 2023*, the 1<sup>st</sup> Defendant stated as follows of and concerning the Plaintiff:

**"5. The Defendant avers that the Plaintiff is not entitled to the sums claimed as alleged, or at all. The Defendant hastens to add that the alleged sums claimed by the Plaintiff were fraudulently siphoned by the Plaintiff from MwaHiDaTe Company Limited, which is a separate legal entity and, in any event, has not been sued in this matter. The Plaintiff is an unapologetic thief, conman and insensitive fraudster, who has tormented the Defendant, who is his co-director/shareholder in the company, hence, the Defendant is nonsuited to the Plaintiff."**

6. The Plaintiff contends that the said words, either in their natural or ordinary meaning, were meant or understood to mean that the Plaintiff:
  - i) is a thief;
  - ii) is a conman;
  - iii) is fraudulent;
  - iv) is dishonest;
  - v) lives off dishonest activities; and
  - vi) is untrustworthy and cannot be anyone's co-director/shareholder.
7. By the 1<sup>st</sup> Defendant's conduct aforesaid, the Plaintiff has been subjected to ridicule and his reputation has been lowered in the eyes of the right-thinking members of the society.
8. The Plaintiff further avers that initially, he was a successful businessman in Nyeri and beyond, but upon the 1<sup>st</sup> Defendant's impugned paragraph, his businesses have suffered and he has lost a string of clientele.
9. There is no other suit pending between the parties herein.
10. REASONS WHEREFORE the Plaintiff prays for:
  - (a) KSh. 10,000,000/= for special damages for defamation.

DATED AT NYERI this 3<sup>rd</sup> September 2025.

Mwaka Hima  
Plaintiff

### DRAWN AND FILED BY:

Mwaka Hima  
Nyeri Business Centre, 3<sup>rd</sup> Floor  
P.O. Box 100 NYERI  
Email address [mwakahima2023@gmail.com](mailto:mwakahima2023@gmail.com).

### TO BE SERVED UPON:

Daima Tele  
NAIROBI

Sheria Bora  
C/o Sheria Bora & Company  
Advocates whose  
KITALE

MwaHiDaTe Company Limited  
KWALE



All the Defendants have approached you to enter appearance on their behalves and defend them in the matter.

- (a) Analyse the Plaintiff as drawn and advise your clients on the defects thereto. (8 Marks)
- (b) Upon entering appearance and filing the Statement of Defence, you raised a Notice of Preliminary Objection, which was upheld by the Court. Assuming you were the presiding Judge, draft the decision. (6 Marks)
- (c) The additional information that you were given by your clients when you were taking instructions is that upon filing the matter, Mwaka Hima called Daima Tele's estranged wife and maliciously effected service of the Pleadings and Summons to Enter Appearance on her so that Daima Tele does not come to learn of the proceedings. For Sheria Bora, he effected court process on the Laws Society of Kenya headquarters in Nairobi. He later caused an advert to be published in *the Daily Nation*, notifying the company of the existence of the proceedings. Advise your clients whether or not Mwaka Hima followed the right procedure. (6 Marks)

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**QUESTION TWO**

Land title number Kitale/Kapomboi/101 has been the subject matter of litigation between Briant Erskine Lichete, on the one hand, and Nicholas Bukulutu (as administrator of the estate of the late Jacob Bukulutu), on the other hand. Nicholas Bukulutu filed the matter as ELC Number 15 of 2014 at the Environment and Land Court (ELC), Kitale. He claimed that Briant Erskine Lichete obtained registration and title to the suit land by fraud.

In his defence, Briant Erskine Lichete claimed that he bought the said land from Eunice Bukulutu, the widow of the late Jacob Bukulutu. This was prior to the demise of Jacob. At the time of the transaction, the widow had a duly registered general power of attorney. Following successful transfer of the title to Briant, a deed of revocation of the power of attorney by Jacob Bukulutu to Eunice Bukulutu was registered. The said deed of revocation expressly preserved the validity of all transactions entered into in good faith by Eunice pursuant to the revoked power of attorney. Eunice attended court and testified in support of the case by Briant. The case by Nicholas at ELC was that Eunice, his step mother, had forged the power of attorney. He further claimed that the notice of revocation of the power of attorney was procured on the instructions of the late Jacob to his lawyers to annul (and not revoke) the said Power of Attorney. That as at the time of his death, the late Jacob did not have knowledge that the power of attorney had been used to procure the transfer of Land. In any event, Nicholas argued that this transaction for the transfer of land had not been entered into *in good faith* and could, therefore, not benefit from the saving clause in the deed of revocation. On the other hand, Briant argued that he was an innocent purchaser of the suit property without notice of any fraud.

Five days ago, the ELC judge at Kitale, Hon Dr Mwerevu Mjanja, dismissed the suit by Nicholas with costs. He relied on the parole evidence rule to hold that the power of attorney, and the deed of revocation thereof “spoke for themselves”. That they were sufficient foundation for the validity of the transfer of the suit property to Briant.

Briant feels that after the ten years of the struggle he has had to endure in court over this parcel of land, he does not wish to own it any more. He has requested a property agent to get for him a buyer. He wishes to sell the land and buy another parcel, which he can enjoy peacefully. Nicholas, on the other hand, wishes to challenge the decision of Justice Mwerevu Mjanja before the Court of Appeal at Eldoret. He also wishes to preserve the subject matter of the intended appeal by way of an order from the Court of Appeal.

You, an advocate at **Sigomre and Sigomre Advocates LLP**, are his counsel. Prepare the appropriate Notice of Appeal with the necessary application to preserve the subject matter as instructed. **(10 marks)**

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**QUESTION THREE**

AB sued KUTDA Limited and obtained judgment in the sum of Ksh. 14,984,000/= in the Chief Magistrates court sitting at Machakos in CMCCC E023 of 2020. AB instructed K & K Auctioneers to attach all moveable properties belonging to the Judgement Debtor. The Auctioneers proclaimed goods belonging to Hacı Trading Company Limited. Upon proclamation, Hacı Trading Company Limited contemporaneously filed a Notice of Objection and Notice of Motion dated 15<sup>th</sup> May 2024 with a supporting affidavit. Hacı Trading Company Limited attached to the Notice of Objection a Certificate of Change of name from Hacı Warehousing Limited to its current name; invoices, delivery notes and receipts for the supply of computers, office equipment and accessories; and Registration Certificates for the motor vehicles that had been proclaimed.

In the Motion, Hacı Trading Company Limited prayed for a permanent injunction restraining the Decree Holder and K & K Auctioneers either by themselves, their servants, employees and/or assigns from attaching, selling by way of public auction or any other way the moveable property listed in the proclamation issued to the Objector by the Auctioneer pursuant to a warrant of attachment of moveable property in execution of a decree for money.

In the supporting affidavit., it was averred that the goods which had been proclaimed did not belong to the Judgment Debtor, but to the Objector. The application was opposed on the grounds that the objection was frivolous, vexatious and an outright abuse of the court process, and was based on falsehood to deny the decree-holder the fruits of his judgment. The decree holder averred that the summons to enter appearance were received by the same person who had sworn the supporting affidavit, and that the Judgement Debtor shared the same address with the Objector. It was further contended that the attached goods belonged to the Judgment Debtor and not the Objector, who had wholly failed to establish title and ownership to the goods and that the goods belonged to the Judgment Debtor as the holding company of the Objector.

On the basis of the materials placed before the court, the parties filed written submissions and the matter is pending for ruling before the trial Magistrate.

- a) Analyse the procedural defects in the above facts. **(5 marks)**
- b) In its ruling delivered on 25<sup>th</sup> July 2024, Hon C Mheshimiwa dismissed the objection proceedings on the ground that even though the Objector was not a party to the suit, the Defendant Judgment Debtor held the majority shares in the Objector. Furthermore, the person who deponed the supporting affidavit was also the one who had received the summons to enter appearance in the suit on behalf of the Judgment Debtor. There was also evidence to the effect that the Objector had changed its name to Chai Trading Company Ltd after the institution of the suit. Therefore, both the Judgement Debtor and the Objector shared the same premises and, in the circumstances, the Objector and the Judgement Debtor were the same. Although the Objector had a legal and/or equitable interest in the attached goods, it was one and the same company as the Judgment Debtor and the Decree Holder rightly attached the property in question.

The Objector has instructed you to appeal against the said ruling. Draft the appropriate pleading you intend to file. **(5 Marks)**



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### QUESTION FOUR

Christabel got a judgment and decree against Kim in Kikuyu Law Courts Chief Magistrates Civil Case No. 70 of 2023. The decree was for a sum of six million shillings (Ksh. 6,000,000). Christabel made several attempts to execute the said decree in vain. At some point, she took out proceedings to commit Kim to civil jail, as a result of which the Judgment Debtor served civil jail for the entire period of six (6) months, but came out of jail without paying the decretal sum. Therefore, Christabel felt that the further commitment of Kim to civil jail would be tantamount to throwing good money after bad money.

When she was just about to give up on the prospects of ever recovering her money, she got a tip off from a friend, who works at the National Transport and Safety Authority (NTSA) that Kim had a motor vehicle registered under his name. An official search at the Registry revealed that, indeed, Motor Vehicle Registration No. KBH 851P was registered in the name of Kim. Therefore, Christabel instructed an auctioneer to trace, proclaim, attach and sell motor vehicle KBH 851P for purposes of recovering at least part of the decretal sum.

Pursuant to this instruction, on 30th October 2025, armed with the warrants of attachment obtained from court, the auctioneer found the motor vehicle KBH 851P parked outside Stand Bar at Kamirithu shopping centre. He clamped it and towed it to his yard ready for auction.

At that juncture, Leonard, who was in possession of the motor vehicle, reported it stolen. The police tracked the vehicle to the auctioneer's yard, where the auctioneer narrated the circumstances under which the motor vehicle had been attached and towed. For his part, Leonard explained that he had purchased the motor vehicle from Kim twelve months prior to the incident and had paid the full purchase price for it. He even produced the sale agreement and the payment details, indicating that what was outstanding was the formal transfer. Having heard the parties, the police advised Leonard that this was not an appropriate case for criminal investigations and prosecution. The best remedy lay in a civil action.

Leonard comes to your office of **Wakili Mnoma Advocates LLP** crestfallen. He asks you to take all measures known to the law to ensure that his vehicle is not auctioned. He has paid the deposit of your legal fees as discussed.

Draft the necessary documents to safeguard Leonard's interests.

(10 marks)

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**QUESTION FIVE**

QUE Limited, a company engaged in construction business, is one of the oldest clients in the Law Firm you have been working at as an associate. QUE Limited offices are located at Thika, Kiambu County. On 13<sup>th</sup> June 2024, QUE Limited won a tender to construct a Four Storey building at Hela Estate in Thika. Instead of undertaking the construction, QUE Limited Sub-Contracted the work to EON Limited under a sub-contractor agreement. As per the terms of that agreement, EON Limited was to hire all the laborers, insure them as required under the law and take responsibility for any claims that would arise in relation to the construction.

One Monday morning, Kijana, who was a foreman in the construction site stumbled and fell in a manhole at the construction site. He broke his leg and sustained serious bruises on his face. When he sought help from the project manager, he discovered that EON Limited had not taken insurance cover for the laborers on site. He was forced to foot the hospital bills. Therefore, upon recovery, he instructed Wakili Mjanja & Co Advocates to file a suit against QUE Limited, seeking damages for the losses he had suffered.

The suit was filed and pleadings served upon QUE Limited, who has forwarded the case to you with instructions to defend it and ensure that based on the sub-contractor agreement entered between QUE Limited and EON Limited, EON Limited is held responsible.

Explain the process that will be taken to add EON Limited as a party to the suit on the facts of this case. **(10 Marks)**

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