



LAW SCHOOL

**THIRD YEAR UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB)
DEGREE &**

PRE-KENYA SCHOOL OF LAW COMPLIANCE PROGRAMME

LABOUR LAW

RLLB 304

August 2015

Examiner: Florence Shako

Instructions:

1. Time allowed is 3 hours
2. Question One carries 30 marks while Question Two and Three EACH carry 20 marks
3. This examination paper carries a total of 70 marks
4. This is a limited open book examination. You may *only* refer to a clean copy of the Constitution.

QUESTION ONE (30 marks)

On 3rd January, 2013, Rose was employed by Rahisi Bank in the position of Relations Officer. She rose through the ranks quickly and on 1st August, 2013 was appointed as the bank manager. Her remuneration package as bank manager included her basic salary of Kshs. 500,000, housing allowance, entertainment and transport allowance, medical cover with Alliance Insurance, annual leave of 30 days, sick leave of 30 days and 3 months fully paid maternity leave. She was very happy with it.

On 1st December, 2013, she gave a seven day notice to proceed on maternity leave and to resume work in March, 2014. Her employer was not happy that her request was made soon after her new appointment but granted it. Once she resumed work after maternity leave, Rose began to feel a little unwell. She went to the hospital and the doctor recommended bed rest to recover. Rose applied for her sick leave and proceeded for sick leave as per her contract. Rose then resumed work on 2nd April, 2014 as she was now fully recovered. However, she had lost a lot of weight due to the illness and many of her colleagues noticed it.

Her employer, the Chief Executive Officer of Rahisi Bank, Mark, called her in to ask her to submit to a routine medical check up to which Rose complied. The CEO, Mark, ordered the doctor to conduct HIV testing in secret and report the findings to him. It turned out that Rose was HIV negative and Mark was relieved. He reported the findings to a board meeting explaining that their fears were allayed and that Rose had not lost weight due to HIV infection and there would be no need to dismiss her. Mark only communicated to Rose that the health check up revealed that she was in very good health.

In the months of April to July, her work was above par and she received a very good mid-year performance review. Sometime in August 2014, Rose applied for maternity leave as she had just learnt that she was expecting her second child. She suffered from a difficult pregnancy and was mostly on bed rest. She did her best to work from home and communicate with her fellow colleagues and bosses through emails. Her work was still good but her employers at Rahisi Bank felt that it lacked the ‘personal touch.’ She proceeded on maternity leave on May, 2015.

On 1st August, 2015, the board of directors of Rahisi Bank sat in a meeting whose key agenda was to discuss Rose and her absence from work. The directors were of the opinion that since her

appointment as bank manager, Rose had missed too much work. They therefore decided to terminate her employment at the end of her maternity leave. The board resolved that:

- a. Employing Rose was an expensive affair, given the fact that she was pregnant yet again, and had to proceed on maternity leave;
- b. Her services were no longer required;
- c. A replacement for Rose to be found immediately;
- d. That Rose was terminated because of poor performance and incompatibility with the culture of the firm.

The human resources department sent a letter of summary dismissal to Rose the day before she was supposed to report to work. The letter contained all the board's resolutions. Rose was furious and went to Rahisi Bank to give the directors a piece of her mind. On arrival, Rose did not notice that the floor was slippery and there was a sign written, 'Danger! Slippery floor!'. She slipped and fell and injured her leg. She is now in crutches and would like to sue Rahisi Bank not only for summarily dismissing her but for the injury that she has sustained.

Rose has come to you, a labour law advocate for advice on whether she has a cause of action against Rahisi Bank and the reliefs that would be available to her. Advise Rose.

(30 marks)

QUESTION TWO (20 marks)

Answer any **two (2)** of the following questions:

- a) "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."-*Article 22, Universal Declaration of Human Rights.*

Analyze this statement in light of the legal framework in Kenya governing social security. (10 marks)

- b) “The right to engage in collective bargaining is a fundamental human right and therefore it must be respected and protected.”-*Anon.*

Analyze this statement in light of the protection afforded by the constitutional and international human rights instruments in Kenya. (10 marks)

- c) “ADR techniques such as negotiation, conciliation, and mediation increase accessibility to justice since they are flexible, informal, cost-effective, expeditious, efficient, foster parties’ relations and produce win-win outcomes. In fact, a large number of disputes are resolved by parties through negotiations or resort to some forum that is part and parcel of the social setting within which the dispute arose.”-*Kariuki Muigua & Kariuki Francis, ‘ADR, Access to Justice and Development in Kenya,’ at p.9.*

Analyze this statement in light of the place of Alternative Dispute Resolution in the resolution of labour disputes in Kenya. (10 marks)

QUESTION THREE (20 marks)

On 5th January 2015, Maina Mkubwa was employed by Alliance Revenue Authority (ARA) as a Senior Assistant Commissioner on permanent and pensionable terms. He was earning a monthly salary of Kshs. 400,000. He contributed 10% of his basic salary to a contributory pension scheme. His contract stipulated that he could only be terminated for gross misconduct, breach of the company’s Code of Conduct or due notice of six months in writing by either party. Maina’s duties were to oversee the importation of goods at the Port of Mombasa for the company and to ensure proper inspection of the goods.

On 1st May, 2015, Alliance Revenue Authority suspended Maina from employment alleging breach of its code of conduct. The directors of the company had heard reports that Maina was receiving bribes at the port to exempt vehicles from inspections. In fact, the Human Resource Manager informed Maina that they had photographs of him receiving very expensive gifts such as Curved LG Televisions worth KShs.1, 000,000 and Rolex watches. Maina requested to see the

alleged photographs but the manager declined to show them to him simply stating “*You know what you did! Go home!*”

After a two weeks’ suspension, the directors of ARA decided to dismiss Maina. They sent him a dismissal letter dated 15th May, 2015. The letter explained that Maina was removed from office for receiving bribes which amounted to gross misconduct. Maina would no longer be allowed onto the premises and there was a clear warning not to attempt to follow up the matter with the company. It stated that the decision was final.

Maina was shocked when he received the letter as he had never received any bribes at the port. He has been diligently performing his duties and he felt blindsided. He explained to his friend Mjuaji, an accountant who worked at the same company, that he had been dismissed. Mjuaji confided in Maina that the company was going through a tough time and had very low profit margins. Due to this, the company was looking for excuses to let go of senior level staff who earned large salaries like Maina. The company simply needed to cut back.

In light of the foregoing passage:

- a) **Discuss whether there was a contract of services or a contract for services between Maina and the Alliance Revenue Authority, using case law where appropriate. (10 marks)**
- b) **Advice Maina on whether he has a cause of action against Alliance Revenue Authority and the reliefs that he may be entitled to. (10 marks)**