



LAW SCHOOL

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLETION PROGRAM

LABOUR LAW

RLLB 304

August 2014

Instructions:

1. Time allowed is 3 hours
2. This exam comprises of THREE compulsory questions
3. Question One carries 30 marks while Question Two and Three EACH carry 20 marks
4. This examination paper carries a total of 70 marks

QUESTION ONE

Bill Kiasi is a manager at Twende Haraka factory located on Menelik Road in Kisumu County. They are engaged in large scale manufacturing of blankets. Omeraa is engaged in the same factory as a machine operator earning a monthly salary of Kshs. 9,500. He has worked in that industrial set up for about 20 years and is therefore, conversant with the general safety measures in the factory. One of the safety measures is that if the wool is stuck while being processed in one of the shifts, the machine operator is required to switch off the machine and use a provided instrument called 'swallos' to remove the stuck wool.

Omeraa having had a long experience with the machine operation tried to stop the machine but due to a technical fault, the machine failed to stop. No maintenance had been done on the machine for a period of 18 months. In a bid to keep the process of production going, Omeraa attempted to remove the stuck wool with his bare hands. The floor where he worked was slippery and in the process of removing the stuck wool, he tripped, his right hand was caught in the roller blade and as a result sustained serious injuries. There was no notice displayed warning the employees that the floor was slippery or of imminent danger to make the employees take extra precaution. Before the accident, Omeraa had informed Atoti Yawa his immediate supervisor that the machine was faulty but she ordered him to continue working and ensure that the production process is not interrupted.

Following the accident, Omeraa was rushed to Mateke International Hospital for treatment and given off duty for five weeks to recuperate. After the five weeks' rest, Omeraa returned to work but was told by his employer that they no longer needed his services and was sent home without any pay. Omeraa was very bitter as the entire 20 years that he worked at the factory, he had never missed work neither had he taken leave or received pay in lieu of leave. Upon request for a certificate of service, Omeraa's employer refused to grant it and instructed the security at the main entrance of the company that Omeraa should not be allowed on to the premises. If Omeraa came, he was to be treated as a trespasser and the guard would lose his job should he manage to gain entry. The guard executed his duties as directed and at no time allowed Omeraa on to the premises.

Required:

- a) Using relevant provisions from statute, the Constitution of Kenya, 2010, international instruments and case law, discuss fully the legal issues in the above case (20 marks)
- b) Advise Omeraa on the possible causes of action that he can take against Twende Haraka factory (10 marks)
- (TOTAL: 30 MARKS)

QUESTION TWO

Answer any **two** of the following questions:

- a) “The NSSF Act, 2013 came into force on 10th January, 2014 and it has significantly improved the landscape of social security rights in Kenya.”- Anonymous. Analyze this statement. (10 marks)
- b) The right to go on strike is a fundamental human right and therefore it must be respected and protected. Discuss this statement in light of the history of the teachers’ strikes in Kenya. (10 marks)
- c) Even though Kenya lacks a single anti-discriminatory statutory regime, the courts are committed to the enforcement of the law on discrimination. Analyze this statement. (10 marks)
- (TOTAL: 20 MARKS)

QUESTION THREE

- a) Mr. Kamau Dot Com recently bought new accounting software that is easing operations at his company. However, he has noticed that the accountants are getting bored and even prolonging their lunch breaks. He has realized that with the new software, he only needs two out of the five accountants on staff. However, he is afraid that if he dismisses the accountants he no longer needs, he will face an expensive lawsuit.

Mr. Dot Com is particularly concerned about one employee, Mzee Kuchoka, who is 54 years old and always seems extremely tired. He is often seen dozing off in the afternoons. However, Mr. Dot Com is afraid that if he fires him, Mzee Kuchoka's trade union will come after him or incite other workers to go on strike. Mr. Dot Com is contemplating secretly giving Mzee Kuchoka Kshs. 10,000 to minimize the blow of having to let him go.

Mr. Dot Com has now come to you for advice on whether and how he can legally dismiss the excess employees, and particularly, Mzee Kuchoka.

As an expert in labour law matters, advise Mr. Dot Com (10 marks)

- b) By virtue of Section 3 (b) of the Labour Relations Act, the National Police Service is not allowed to form, join or participate in all the activities of a trade union. Discuss this position. (10 marks)

(TOTAL: 20 MARKS)