THE LAW SCHOOL OF TANZANIA

HOSTED BY THE UNIVERSITY OF DAR ES SALAAM

LAST SEMESTER – FINAL EXAMINATIONS

FINAL EXAMINATION

LS107: CONVEYANCING

Date: 13th JANUARY, 2009 **Time: 09 – 12 hrs**

Instructions:

(i) This **FINAL EXAMINATION** consists of **SIX** questions, out of which you must **attempt FOUR questions**, including Question No. 1, and all carry equal marks. You have a total of three hours to answer the questions. You may bring into the Examination Room any Statutory Materials, Case Law and Materials handed out in class or emailed to the Class by the Instructors. You may also have with you **Zebron Gondwe's, Manual for Transfers of Rights of Occupancy**,[Dar Es Salaam: Mkuki na Nyota, 2001]. Other Books and Notes are not allowed.

(ii) Please take the time to think through and map out the organization of your answers **before** writing out the answer in the exam booklet. This will help you not only with organization, but also with spotting issues.

(iii) If you assume any facts or legal arguments not mentioned in the fact pattern, make those assumptions clear and express in your answer. Argue both sides of each issue, where appropriate.

(iv) Your handwriting should be legible, and your answers lucid but concise. Avoid verbiage and unnecessary quotations.

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1. Consider the process and various steps required for the conveyancing of registered properties in Tanzania, especially as suggested by Gondwe (1999), the MKURABITA Report (2005) and the annual Doing Business in Tanzania, World Bank Reports. Each report gives emphasis on certain steps and suggests reforms. Given your understanding of the conveyancing process of such properties as provided under the Land Act, Cap. 113 and the Land Registration Act Cap. 334 and the above-mentioned reports –
   (a) What are the most essential steps in the conveyancing of registered properties that must be considered by a conveyancer in Tanzania
   (b) Evaluate the present system of registered conveyancing and suggest any areas that need improvement.

2. Joyce Mwakipesile, popularly known as 'Mama Sophie', is a holder of an Agricultural Right of Occupancy for 99 years, from 1st of July 1977, over a 10 acre farmland in the SalaSala 'A' area, Kinondoni Municipality, Dar es Salaam. She uses the land as a poultry raising farm and on it she has built 30 barns for the business, and she has built also a farm house where she stays with her husband and their 7 grown up children. Last year in July she advertised the sale of the farm and in December one Mzee Iddi Mchovu, a retired East African Community Officer, who had just received his long awaited benefits, promptly offered to buy the farm at the price of Tsh. 750,000,000/=. Mama Sophie accepted the offer and Mzee Mchovu immediately appointed the law firm of Wakili & Co,Advocates to prepare the conveyance and deposited 15% of the sale price in the Clients' account of the Advocates to cover initial disbursements and fees (5%) and a deposit towards the payment of the final price(10%). He then commissioned M/S Jinco Valuers Ltd, for a sum of Tsh. 7,500,000/=, to assess the property and lodge an Evaluation Report to be approved by the Chief Government Valuer, as is the practice. The Valuers finished their report a fortnight ago indicating the market value of the property to be Tsh. 950 Million.

   Last week Mzee Mchovu, considering himself a lucky purchaser, took his wife, Edda Mchovu, to view 'their' new property in SalaSala 'A', only to find the place occupied by Mzee Ali Kajanja, another EAC retiree, and a friend of Mzee Mchovu, in occupation. Kajanja claimed to have purchased the property from Mama Sophie three days before for a sum of Tsh. 950 Million, which he paid on spot and moved into occupation. Mzee Kajanja told Mzee Mchovu that the price was proved by a recent Valuation Report done by M/S Jinco Valuers Ltd!

You are a law student from LST, doing your internship at M/s Wakili Advocates & Co, and Mzee Mchovu, and his crying wife Edda, comes to you seeking a legal opinion on the following issues:

(a) **Whether under the law he may enforce Mama Sophie's promise to sell the property to him, considering that she used the Valuation Report he paid for to get another buyer.**

(b) **If he can enforce the agreement, can he remove Ali Kajanja from the premises?**

(c) **If he cannot enforce the agreement, what are the available remedies for the costs he had incurred, and, the loss of his lawful expectation that he had obtained a bargain to purchase a valuable piece of property?**

3. Daniel Hochberg in 'Misrepresentation in Property Transactions' (UK, 2007) states:

> *"A contract for the sale of an interest in land contains an implied term that the vendor is selling the interest free from encumbrances. In order for the vendor not to put himself in breach of that term, he will need to disclose any encumbrances which are not patent or obvious, but which are latent. Thus…. the caveat emptor rule applies to the extent that there is no general duty of disclosure of all defects, latent and patent; but the vendor is obliged to disclose latent defects.".*

(a) **Review provisions in the law relating to pre-contract Vendor's Disclosures in land transactions.**

(b) **What are the purchaser's remedies in the case of vendor's failure to disclose particulars as required by the law?**

4. (1) What is the distinction between a defect in title, and, a defect in quality?

   (2) Iddi Malingumu is in the process of purchasing registered land in Kibaha township held under a commercial-cum-residential right of occupancy for 99 years from 1st May 2001. On the property there are two separate buildings. The vendor of the property, one Maya Shaaban, has already received from Malingumu the sum of Tsh. 150 Million, which is the agreed purchase price for the property. The agreement and deed of sale have been signed. However, before proceeding further for the approval and registration of the disposition Malingumu makes a further physical inspection of the property and discovers the following:

   i. The two buildings on the property have no building permit from the Kibaha planning authority;
   ii. One of the buildings is unoccupied but it actually encroaches on the neighbouring property by about five metres;
   iii. During the rain season half the plot is flooded by water and no drainage system exists;
   iv. The second building is occupied by a month-to-month tenant, a fact not previously disclosed to him. The tenant runs a licensed dry-fish business in the premises.
   v. Only last week the Kibaha Urban Authority has issued a notice to repair or demolish the buildings, as they were apparently built in contravention of health and safety regulations of the urban authority.

   Malingumu comes to you saying after all these disclosures he wants to rescind the sale agreement and wants to know whether he can do so, and what would be the consequences. Advise Malingumu.

5. The Commissioner for Lands is presented with an Application for approval of a disposition of registered land held by one Abel Fumbuka, as a residential right of occupancy, for 99 years from 1st January 1985, situate at Oyster Bay low-density Area, Kinondoni Municipality, Dar es Salaam. The purchaser of the property is one Hassan Ali, a well-known Dar Es Salaam socialite rumoured to have gay inclinations, and the Commissioner is similarly informed, through the city's fertile gossip grapevine and the 'udaku' media (gossip press), that Hassan Ali is buying the property as a 'love nest' and gift for an undisclosed gay friend of his

who is a foreigner. The purchase price of the property is Tsh. 15,000,000/=, only. Although all the necessary documents have been presented the Commissioner for Lands is suspicious of the 'low' sale price for such prime land; and, as a 'saved' Christian and lawyer, he has both moral and legal objections at countenancing immoral and unnatural relationships through the approval of the disposition,.

You are a Land Officer in the Commissioner's office and he directs you to write an inter-office legal memorandum on his powers of approval under the law and advice on what he should do in the present case.

Write the memorandum.

6. Mzee Kapapa owns 13 acres of land along the Indian Ocean in Msasani within the city of Dar es Salaam. On that piece of land he has built his matrimonial home, while a big chunk of that land remains undeveloped. Mzee Kapapa is renowned in the city for running a successful business in timber industry. In June 2003 he approached Barclays Bank Limited for a loan to the tune of Tsh. 2,000,000,000/= based on an evaluation report assessing the property to have a market price of Tsh. 13 billion. The loan facility was granted forthwith, payable in equal instalments over 10 years, with one year moratorium on repayments of the principal sum, and his matrimonial house was taken as collateral and interest was fixed at 8% per annum. In 2006 after heavy rainfall he lost all his working machines and sustained colossal losses to the tune of Tsh. 5,000,000,000/=. Mzee Kapapa in his determination to succeed did not despair and therefore tried again to make things work out. This time he approached CRDB Bank Ltd for a loan amounting to Tsh. 1,000,000,000/= and with the consent of Barclays Bank he placed his matrimonial home as collateral to secure that facility. The bank granted that facility to be repayable in 60 equal monthly installments of principal and interest at 10%. In 2007 the situation did not seem to improve even after massive capital injection in the business. It all seemed as though the spiral effect was not coming to an end. In November 2008 Mzee Kapapa offered to sell his property to Artumas Company Limited (herein 'Artumas') for a negotiable sum of Tsh. 15 Billion, on the basis of which Artumas has agreed in principle to purchase the property. The company is registered in Tanzania under Cap. 212, and the majority shareholders are

foreigners. It has a current Tanzania Investment Center's (TIC) certificate of incentives as an investor in petroleum exploration.
You are the legal counsel for Artumas. The company management has placed all necessary documents in your hands to advice on how the property may be properly transferred. Write an internal office legal memorandum that would contain the following:

(i) **Tracing all steps which should be carried out to make sure the property is purchased;**

(ii) **What are the important legal facts that must be taken into account before the C.E.O. of Artumas is advised to sign the sale agreement;**

(iii) **A checklist of what documents will have to be prepared and/or filed in the relevant registries?**

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