

DAYSTAR UNIVERSITY**SCHOOL OF LAW**

JANUARY 2022 END OF SEMESTER EXAMINATIONS

LLB 201 RESEARCH METHODS FOR LAWYERS

TIME: 2 HOURS

INSTRUCTIONS:

1. This paper has FIVE questions
 2. Question ONE is compulsory
 3. Answer a total of THREE questions.
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QUESTION ONE**30 MARKS**Re-write the following text in **OSCOLA** format

32. According to the 1st and 2nd Interested Parties, by a letter dated 16th November, 2016, the 1st Interested Party requested the then President of the Court of Appeal, the current Respondent, to submit a paper on the number of judges in post and the optimal appointment against the workload in the Court of Appeal to inform the recruitment of new judges.

33. They submit that in his letter dated 23rd May, 2017, the Respondent, then the President of the Court of Appeal, wrote to the 1st Interested Party justifying the need to urgently appoint a minimum of six Judges to that Court given that between the years 2010 and 2017, 3 Judges of that court had retired; one was to retire in December 2017, and three other Judges of the Court were expected to retire in the next three years. At the time, the Court of Appeal had three stations outside Nairobi with three Judges posted to each station.

34. In this regard, the letter stated that there was need for a fourth Judge to be posted to each of the stations to enable those stations operate independently without having to rely on Nairobi in cases of recusals, indisposition or other factors which had resulted in failure to constitute benches to conduct proceedings.

35. The 1st and 2nd Interested Parties also referred to the “Court of Appeal Performance Report for the 3rd & 4th Quarter 2018/2019 & 1st Quarter 2019/2020”, presented to the 1st Interested

Party by the current President of the Court of Appeal on 15th October, 2019; noting that the Court of Appeal was operating with only 18 judges: that one judge retired in August 2019, another retired in October 2019 and one more was expected to retire by the end of 2019.

36. They submit that the report made it clear that by December 2019 that Court would have 15 judges against the minimum constitutional establishment of 12 and the maximum of 30 provided for in law. In the circumstances, they argue that the Court of Appeal has been unable to constitute a bench to hear cases in Nyeri, Meru, Busia, Eldoret, Nakuru and Kisii sub-registries leading to closure of those sub-registries.

37. It is further submitted that the “Performance Report for the ELC Court 3rd & 4th Quarters 2018/19 and 1st Quarter 2019/20” presented to the 1st Interested Party in January 2019 by the Presiding Judge of the ELC, requested it to consider appointment of more judges to boost the current number of judges serving in the 26 court stations throughout the country against a total case load of 20,435 cases. It is submitted that as at January 2019, there was a crisis in the ELC Division in Nairobi and as a result, judges were allocating hearing dates in 2020. This, they submit, demonstrates the dire need for more judges in that court.

38. The 1st and 2nd Interested Parties also refer to a progress report presented by the Principle Judge of the ELRC in January 2019. The report highlights the shortage of judges as the court’s biggest challenge with only 12 judges serving the entire country. According to them, as at January 2019, that Court had a backlog of 9,309 cases countrywide. They also submit that in October 2019, the Principal Judge presented the 3rd and 4th Quarter Progress Report which confirmed that there was a shortage of judges in the court and that appointment of additional 10 judges would assist the court to reduce case backlog.

39. They further submit that the requests by the President of the Court of Appeal, Presiding Judge of the ELC and the Principal Judge ELRC were considered as well as the availability of resources before the declaration of 11 vacancies in the Court of Appeal, 20 vacancies in the ELC and 10 vacancies in the ELRC.

[...]

48. The 1st and 2nd Interested Parties maintain that under PART VI of the First Schedule to the Act there is no provision for the President to reject or disapprove of any of the persons recommended for appointment. They argue that the appointment process referred to in the replying affidavit of Mr Joseph Kinyua is not envisioned under the Constitution or the Act; that

under the Constitution, the duty of the President in the appointment of judges is ceremonial and is only intended to formalize the appointment of the persons recommended by the 1st Interested Party.

49. They rely on a publication titled “Kenya Democracy and Political Participation: a Review by AfriMap, Open Society Initiative for Eastern Africa and the Institute for Development Studies (IDS), by Professor Karuti Kanyinga, for the submission that under the 2010 Constitution, the 1st Interested Party exudes more credibility in its operations, particularly because of the concept of the nomination of judges before their formal appointment by the President, unlike under the former Constitution.

50. The 1st and 2nd Interested Parties rely on decisions in *Justice Alliance of South Africa v President of Republic of South Africa and Others (consolidated with) Freedom Under Law v President of Republic of South Africa and Others and Centre for Applied Legal Studies and Another v President of Republic of South Africa and Others (CCT 53/11)* and *Karahunga v Attorney General [2014] UGCC 13*.

QUESTION 2 **15 MARKS**

Discuss the various measurement scales in research.

Question 3 **15 Marks**

You have been invited to give a talk to a group of people who wish to write their research projects. They come from diverse backgrounds. They were taught research methods in different places. At the time of studying they were only interested in passing their examinations. Now they need to put their knowledge into practice. They have heard about your prowess in the area of research methods for lawyers. They have invited you to talk to them about how they 'can know that they know'. In order to get the maximum from you they have collected about KShs. 12 million to pay for the service. Give your brief to them.

QUESTION 4 **15 MARKS**

The Kenya Human Rights Commission has undertaken a study on the realization of the 'right to health' by all Kenyans. They sought to know from Kenyans how much money each household makes, what they normally eat, whether they are aware of a balanced diet, the number of meals they eat in a day, whether they can afford fruits, whether they get treatment at the nearest health facility and how much they spent on treatment in a year, amongst other issues. They collected data from 100,000 people using a closed-ended questionnaire comprising of 20 questions and two open-ended questions. Now being lawyers who never studied research methods, they are stranded on how to analyse the data. They seek your help.

QUESTION 5 **15 MARKS**

Discuss the structure of a research proposal.