

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**MAIN EXAMINATION PAPER, DECEMBER 2017**

**TITLE OF PAPER: CIVIL PROCEDURE**

**COURSE CODE: L401**

**TIME ALLOWED: 3 HOURS**

**INSTRUCTIONS: (1) ANSWER ALL FOUR (4) QUESTIONS**

**(2) MARKS FOR QUESTIONS OR PARTS  
THEREOF ARE INDICATED IN BRACKETS**

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GRANTED BY THE INVIGILATOR**

## **QUESTION 1**

**Musa Sukati** hails from a rural community of **Bulunga area in the Manzini district**. Mr. Sukati comes from a large extended family with lots of siblings comprising of both boys and girls. He is the third eldest of ten (10) boys born of his late polygamous father who had three (3) wives. Before his demise, Sukati senior allocated each one of his sons with vast portions of land on Swazi Nation Land with the authority of the elders of the extended family and under the supervision and blessing of the area's traditional authorities. Just like all the other boys, Musa was allocated his own portion of land in 2010. As yet no structures have been built on the land except growing maize and beans yearly.

During the winter season of 2014 Musa learnt that **Sikhaleni Sukati** who is a half brother from the extended family **now residing in Mbabane in the Hhohho district** had fenced off half of his (Musa's) land on the contention that it was his (Sikhaleni's) because it initially belonged to his late father. A meeting of the extended Sukati family was convened where witness after witness testified that the land never at any stage belonged to Sikhaleni's father but that it rightfully belongs to Musa. After hearing the insurmountable evidence against him, Sikhaleni conceded that he had been ill-advised, he extended his apologies and instantly removed the fence he had erected on Musa's land and the issue seemed to have been amicably resolved within the family. To everyone's surprise, on or about August 2015 Musa was summoned to attend a meeting of the Bulunga Inner Council before which Sikhaleni had lodged an appeal against the decision of the Sukati family Council. At the meeting of the Inner Council once again Sikhaleni was beaten hands down by the overwhelming evidence supporting Musa's title to the land in question and the Council ruled against him.

In October 2015 Sikhaleni further appealed to last traditional structure in Bulunga, namely; Bandlakhulu. On a vote of 80:2, this authority once again ruled in favour of Musa Sukati and dismissed Sikhaleni's appeal outright. At the conclusion of this stage Sikhaleni expressed that he was going to appeal further to the Swazi Court, instead, on October 1, 2016 Musa woke up to find that the entire piece of land allocated to him had since been fenced off once again by Sikhaleni. Musa is now completely annoyed with Sikhaleni's conduct and has lost confidence in the processes of the traditional structures and has come to you for legal advice on the remedy which the Magistrate's courts exercising their civil jurisdiction can afford to him to put this matter at rest once and for all. Advise him on the following:-

- (i) Which court has competent jurisdiction over this matter and on what basis? *[10 marks]*
- (ii) What legal remedy will best serve Musa's interests in this case. What purpose will this remedy serve? *[5 marks]*
- (iii) Discuss the requirements which must be established before such a remedy can be granted by the Court? *[10 marks]*

*Possible Attainable Total: [25 marks]*

## QUESTION 2

Jacobus Van Zyl was born on December 20, 1974 in Nelpruit in the Republic of South Africa. Soon after completing his college studies he migrated into Swaziland and has been in the country since 2003. He has worked for Ubombo Sugar Limited and Transship Trucking both in Big Bend and Du Van Construction to name just a few. At present he is employed by Construction Associates as a heavy duty mechanic. Construction Associates is a construction company with its principal place of business situated in Matsapha in the Manzini region. While still working for Transship Trucking in Big Bend he fell in love with a girl he then believed was the love of his lifetime by the name of Annastacia Bezuidenhout born and bred in Big Bend on June 12, 1979.

On or about May 5, 2008 the couple exchanged their marriage vows out of community of property before a marriage officer in Piet Retief, South Africa and on the following day they returned to their matrimonial house in Big Bend where the marriage was celebrated in the presence of family members and close family friends. It was at this auspicious event that speeches were made, drinks enjoyed and presents presented to the newly-weds.

In 2010, Mr. Van Zyl was employed by Du Van Construction a company based in Matsapha in the Manzini region, before later moving to the current employers. Since 2010 to date, the couple has been living in House No. 135 in Mhlambanyatsi in the Hhohho region. Annastacia is employed at Usuthu Forest Primary School at Mhlambanyatsi and the couple now has two wonderful children aged seven and five respectively who are going to the same school.

Late in 2016, the couple became entangled in serious marital problems pursuant to which Annastacia initiated divorce proceedings against her husband on the basis of malicious desertion at the High Court of Swaziland. Upon receipt of the Summons Jacobus engaged his wife with a view to reconciliation but in vain. Ultimately Jacobus gave in to the wishes of his wife. He agreed to have his wife get the divorce decree, that custody of the minor children be granted to her and that he will enjoy only visitation rights to the children. He also agreed to pay E9,500.00 monthly maintenance per each child until both attained the age of 23 or became self-sustaining, whichever came first. In August 2017, the court granted the divorce decree and the agreement between the parties was also made an order of the court.

Jacobus has been referred to you as a civil litigation specialist. He tells you that his sixth sense tells him that critical legal considerations pertaining to this matter could have been overlooked resulting in the present outcome. He has asked you to advise him whether or not his sixth sense is anything to go by. Advise him accordingly with legal authority.

**[25 marks]**

### **QUESTION 3**

The High Court rules inter alia provide that service of Summons on human beings must if possible, be personal. However, there may be circumstances which may render personal service of Summons impossible. Discuss the different methods that may then be used to effect service of Summons on an individual in cases where personal service has failed. [25 marks]

### **QUESTION 4**

Assuming you are dealing with defended action proceedings in the High Court in a claim for damages, carefully map out the required and imperative court processes and stages which must be exchanged, gone through and/or issued by the court from the commencement of the action up to execution of whatever judgement or Order of the court which may be issued. Assume further that no interlocutory interventions become necessary. [25 marks]

**Total Possible Marks:[100]**