

**CHUKA UNIVERSITY**

**FACULTY OF LAW**

**UNIVERSITY EXAMINATION 2023**

**THIRD YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS**

**BLAW 313: ENVIRONMENTAL LAW**

**DATE: MAY**

**INSTRUCTIONS:**

**ANSWER THREE QUESTIONS**

**QUESTION 1 IS MANDATORY**

Immediately upon graduation from Chuka University School of law, you are fortunate to get a job with an environmental advocacy group dedicated to protecting disadvantaged communities from environmental hazards and toxins. Your first client is a neighborhood association whose members include homeowners in Mawenzi Enclave, a predominantly Mimona ethnic community.

They are extremely upset because Pesti Corp, a large chemical company, has announced plans to build an entirely new large chemical production facility on abandoned property at the Mimona Waters Channel. Pesti Corp's new facility lies within a half mile from the neighborhood, and at the facility's property line, resides a new high school whose students are drawn almost entirely from Mawenzi Enclave. Pesti Corp's new facility will produce artificial rubber, and the production process is likely to involve the use of feedstocks that include benzene and other organic compounds.

Once constructed, the facility will likely include reactor towers that will discharge volatile organic compounds through pipes to a large flare at the facility. Some fumes, like nitrous oxides, will simply escape into the air as fugitive emissions. The facility will draw water from the Mimona Waters Channel, use it in its production process, and then discharge the water back into the Mimona Waters Channel along with some production effluent. Lastly, the proposed production site sits next to the Mimona community land. As a result, the land will frequently be wet and marshy, as storm water runoff

from the site will flow directly into the Mimona water boat Channel. The area also, has a sizable biological community growing onsite with plants like cat tails and is a hub for and migratory birds as well. The birds are known to use the area as a roosting spot during migrations. Some of those birds are listed as either threatened or, in one case, endangered.

One of the residents believes passionately that Pesti Corp's new facility violates her constitutional rights against environmental injustice. She has approached you.

Explain to her which cause(s) of action Mawenzi residents might have to pursue and administrative remedies for environmental justice are available to them under these circumstances (20 Marks)

In addition to the environmental justice issues, explain the potential challenges under environmental statutes that the Mawenzi Enclave residents might raise to the construction and operation of Pesti Corp's new facility. (10 Marks)

## **QUESTION TWO**

In response to the uniquely critical challenges posed by environmental degradation, a significant body of nonbinding agreements, statements, declarations, resolutions, and recommendations has emerged in international environmental law referred as "soft laws"

Discuss the above statement while focusing mainly on "Agenda 21" plan of action & the United Nations Environmental Program UNEP (16marks)

b) Write a brief note on Public Environment Awareness (4marks)

## **QUESTION THREE**

Kiogora, intends to set up a mining and quarrying plant near Kwetu village. However, he lacks sufficient information on how to go about it. He has also heard that the local Member of County Assembly has been 'inciting' the villages to oppose the project. He is now a stressed man. He has sought your expertise on the crucial aspects to be considered for compliance purposes from inception to completion before undertaking the project. Prepare a comprehensive write up on the advice you would give him (20 Marks)

## **QUESTION FOUR**

Granted, historically, legislation and policy in the whole environmental sector has fallen short of many an environmentalist's expectations. Kenya's first two development plans for the period between 1965 and 1974 had no mention of an environmental policy. However, in subsequent years, there has been notable growth in Environmental Law and Policy. Discuss this statement tracing the history and growth of environmental Law as a branch of law. (20 Marks)

### **QUESTION FIVE**

Write an explanatory note on each of the following cases: (5 Marks each)

- (a) Wangari Maathai vs The Kenya Times Media Trust (1989) KLR 267
- (b) Lawrence Nginyo Kariuki vs County Council of Kiambu (HC Misc No.1446 of 1994)
- (c) Rodgers Muema Nzioka & others vs Tiomin Kenya Ltd. (Mombasa H.C.C 97 of 2001)
- (d) Tim Busienei & 2 Others vs Director General, Nema & Another (2007)