



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILLIMANI LAW COURTS
PETITION NO 566 OF 2017
PETER GITHAIGA MUNYEKIPETITIONER
VERSUS
KENYA SCHOOL OF LAW.....RESPONDENT
JUDGMENT

Introduction

1. This petitioner brings to focus once again the never ending question of requirement for admission to Advocates' Training Programme (ATP), at the Kenya School of Law (KSL). The respondent herein.

2. The facts of this case are straight forward. **Peter Githaiga Munyekei**, the petitioner, is a holder of the degree of Bachelor of Laws (LLB) from Mount Kenya University having graduated on the 7th July 2017. The petitioner sat for Kenya Certificate of Secondary Education, KCSE, in 2003 and obtained a mean grade of B-(minus) with B-(minus) and C (plain) in English and Kiswahili languages respectively. He was enrolled at the Catholic University of Eastern Africa to pursue a degree in Bachelor of Commerce (B.Com) and graduated in 2007. He was then admitted to Mount Kenya University on 19th April 2013 to pursue LL.B and graduated on 7th July 2017. Upon graduating, he applied to join ATP at the KSL but his application was declined prompting this petition.

Petition

3. In a petition dated 10th November 2017 and filed in Court on 13th November 2017 and supported by the petitioner's affidavit, the petitioner challenged the respondent's decision declining to admit him to ATP contending that the respondent had violated his constitutional right by discriminating against him, violated his rights under Articles 19(2), (3)(e), 21(1) and (3) and that respondent had limited his right in violation of Article 24(1) of the Constitution.

4. The petitioner also averred that the respondent violated his socio-economic rights under Article 43(1) (f) of the Constitution and his rights under Article 55. The Petitioner further stated that the respondent violated KSL Act (No 26) of 2012, by intending to subject prospective students to Pre-Bar examination and also that it violated the Legal Education Act(No 27) of 2012 and the Subsidiary regulations namely Legal Education (Accreditation and Quality Assurance) Regulations, 2016 by rejecting his application to join ATP.

5. The petitioner averred, therefore, that by virtue of that rejection, he will suffer irreparable time and financial loss due to the violations alluded to above. He sought the following reliefs:-

a. *Mandamus to compel and command the respondent to admit the petitioner Advocates Training Programme;*

b. *A declaration of rights.*

c. *Costs of the suit.*

d. *He also sought any other orders the court may deem fit and just to grant.*

Response

6. The respondent filed a replying affidavit by ***Fredrick Muhia***, the Academic Manager, sworn on 17th November 2017 and filed in court on 20th November 2017. ***Mr. Muhia*** deposed that the respondent's mandate is to train persons for purposes of admission as Advocates and in the discharge of that mandate it placed an advertisement, on 4th July 2017 inviting interested and qualified persons for the Pre Bar examination.

7. ***Mr. Muhia*** further deposed that pursuant to that following that notification, the petitioner applied for admission to the 2018/19 academic year which was received on 18th August 2017. It was deposed that after considering the application as guided by Section 16 of KSL Act as read with the Second Schedule to the Act, the petitioner was found ineligible since he did not meet the requirements in his KCSE grades. The determination was communicated to the petitioner by letter dated 30th October 2017.

8. ***Mr. Muhia*** deposed that the petitioner's allegation that KSL violated the Counsel of Legal Education (Accreditation and Quality Assurance) Regulations 2016 is erroneous since these regulations do not apply to admissions by KSL to ATP contending that KSL operates under its own legal regime. He deposed that on the basis of the above facts, there was no violation of the petitioner's rights.

Petitioner's Submission

9. The petitioner, who appeared in person, submitted that the respondent had violated his fundamental rights in that it did not follow the law in admitting students to ATP. He contended that the respondent violated the law by failing to allow him sit for the Pre Bar examination as a pre requisite for joining ATP.

10. The petitioner referred to the respondent's letter dated 30th October 2017 to contend that the respondent was wrong in stating that he did not meet KCSE requirements in English or Kiswahili languages. In the petitioner's view, the respondent's reason for rejecting his application was not in tandem with section 16 of KSL Act as read with the Second Schedule. According to the petitioner, under section 16 as read with Paragraph 1(a) of the KSL Act, one need only have LLB degree from a recognized University, University College or other institution in Kenya recognized by the Council to qualify for admission to ATP.

11. The petitioner further contended that for one to qualify to join ATP, he/she must have minimum qualifications which, in his view, are those contained in the Council of Legal Education (Accredited and Quality Assurance) Regulations 2016 which give qualification for one to join the programme. He contended that he has a degree from a recognized university and therefore meets the threshold for joining ATP.

12. The petitioner blamed respondent for relying on the KSL Act alone while ignoring the Council of Legal Education Act and Regulations made there under, thus made an erroneous decision which violated his fundamental rights. In the petitioner's view, the Council of Legal Education Act sets out standards that must apply and which standards he met and should therefore have been allowed to join ATP.

Respondent's Submission

13. **Miss Kiverenge**, learned counsel for the respondent, submitted that the respondent never violated the petitioner's rights and fundamental freedoms. Council contended that the reason why the petitioner's application was declined was because he did not meet the minimum requirements for admission to ATP.

14. According to counsel, under section 16 of the KSL Act as read with Paragraph 1 of the Second Schedule, the requirement for admission to ATP is a mean grade of C+(plus) in KCSE with B(plain) in English or Kiswahili languages which the petitioner did not have. Counsel submitted that the petitioner obtained a mean grade of B-(minus) in KCSE with B-(minus) and C(plain) in English and Kiswahili languages respectively which could not have him admitted to ATP.

15. **Miss Kiverenge** submitted that the petitioner's reliance on the Legal Education (Accredited and Quality Assurance) Regulations, 2016 is untenable since those regulations are inapplicable when it comes to admission to ATP. In counsel's view, the regulations are in conflict with the KSL Act and are therefore invalid.

16. Counsel relied on the decision in the case of ***Republic v Kenya School of Law and Council of Legal Education Ex Parte Daniel Mwaura Marai*** [2017] eKLR for the submission that regulations made pursuant to the Council for Legal Education Act do not supersede the KSL Act especially the Second Schedule. Counsel argued that when it comes to eligibility for admission to ATP, the requirements to be considered are those in the KSL Act namely; section 16 as read with the Second Schedule. Counsel concluded, therefore, that the respondent was right in its decision and did not violate the petitioner's rights and fundamental freedoms.

Analysis and determination

17. I have considered the petition, response thereto submissions by parties and the authorities relied on. This petition raises one question for determination namely; whether the petitioner was qualified to join ATP at KSL.

18. The petitioner contended that he is qualified to be admitted to ATP and relied on section 16 of the KSL Act as read with paragraph 1(a) of the Second Schedule to the Act, as well as the Council of Legal Education Act and Council of Legal Education (Accreditation and Quality Assurance) Regulations, 2016 made there under.

19. The respondent on the other hand opposed the petition arguing that the petitioner does not have the minimum KCSE qualification and for that reason he does not qualify to join ATP. The respondent just like the petitioner relied on section 16 of KSL Act as read with paragraph 1 of the second Schedule. The respondent contended that the petitioner did not have B (plain) either in English or Kiswahili languages to qualify to join ATP.

20. From the contestations raised by either side, what comes out clearly is that parties are disagreed on the interpretation of the provisions of both the KSL Act and the CLE Act and regulations made there under as they relate to requirements for admission to ATP. In order to resolve the issue raised herein the court is called upon to interpret provisions of the statutes in dispute and determine who between the petitioner and the respondent is right.

21. KSL the respondent is established under section 3 of the KSL Act as a body corporate. Its objects and functions are provided for under section 4 which states that (1) ***The School shall be a public legal education provider responsible for the provision of professional legal training as an agent of the Government. (2) Without prejudice to the generality of subsection (1), the object of the School shall be to- (a) train persons to be advocates under the Advocates Act.*** To that extent it is KSL as an institution that is responsible for professional legal training in the country and no other,

22. The mandate of the KSL is therefore clear and ambiguous as can be discerned from the Act. It is duty

bound to train persons to be admitted as advocates under the Advocates Act (Cap 16). The KSL Act also provides for criteria and requirements for admission to ATP. Section 16 of the Act provides for the requirements for admission to ATP. It states that **a person shall not qualify for admission to a course of study at the School, unless that person has met the admission requirements set out in the Second Schedule for that course.**

23. Section 17 provides for the mode of application and states that **(1) any person who wishes to be admitted to any course of study at the School shall apply in the prescribed form and pay the prescribed application fees. (2) The School shall consider an application submitted under paragraph (1) and if it is satisfied that the applicant meets the admission criteria, admit the applicant to the School.**

24. The second Schedule to KSL Act which is central for admission to ATP provides as follows;

1. “A person shall be admitted to the school if –

a. having passed the relevant examination of any recognized university in Kenya or any university, university College or any other institution prescribed by the council, holds or becomes eligible for the conferment of the bachelor of Laws (LLB) degree of that university, University college or Institution, or

b. having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of laws – Degree (LLB) in the grant of that university, University college or other institution –

i. Attained a minimum entry requirement for admission to a university in Kenya and

ii. Obtained a minimum grades B(plain) in English language or Kiswahili and a mean grade C(plus- in the Kenya Certificate of Secondary Education or its equivalent; and

iii. Has sat and passed the Pre bar examination set by the school”

25. According to the Schedule, there are two categories of persons who can be admitted to the ATP. First are those who attended local universities who fall under paragraph 1(a). The other is persons who attended universities outside Kenya who fall under paragraph 1(b) of the Schedule. Paragraph 1(a) of the Schedule does not specifically state the KCSE grades one should have. but a reading of paragraph 1(b) shows that persons who obtained LLB degrees from outside Kenya should have KCSE grades that would have enabled them join LLB programmes in universities in Kenya, and goes ahead to state those grades as a mean grade of C+ (plus),in KCSE, with B(plain) in either English or Kiswahili languages.

26. In that regard, therefore, applying the principle a holistic reading of a statute persons falling under paragraph 1(a) of the Schedule to KSL Act, must have obtained a mean grade of C+(plus) with B(plain) in English or Kiswahili languages to have qualified to join LLB programme in local universities. That is why there is reference of this requirement in paragraph 1(b)(ii) of the Schedule. (See **Adrian Kamotho Njenga v Kenya School of Law** (petition No 398 of 2017).

27. The question that arises in this petition, therefore, is; did the petitioner meet the requirements set by section 16 as read with the Second Schedule for admission to ATP? The petitioner has contended that he did and has relied on paragraph 1(a) and also the CLE Act and the Council of Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

28. The petitioner sat his KCSE in 2003 at Pumwani Secondary School and according a copy of his certificate annexed to his petition as **“PGM1”**, he obtained a mean grade of B-(minus) with B-(minus) and C(plain) in English and Kiswahili languages respectively. The petitioner did not join LLB degree programme immediately thereafter. He enrolled for the Degree of Bachelor of Commerce (B.com) at Catholic University of Eastern Africa, graduating in 2007 as shown by annexure **“PGM 2”**.

29. The petitioner was then admitted to pursue LLB degree at Mount Kenya University on 18th April 2013 and graduated on 7th July 2017. By the time the petitioner was joining LLB degree programme, admission requirements to ATP were a mean grade C+(plus) with B(plain) in either English or Kiswahili languages. That would mean that admission requirements for LL.B degree must be those for ATP or their equivalent.

30. The petitioner cited the case of ***Kevin K Mwiti & Others v Kenya School of Law & 2 Others*** [2015] eKLR, arguing that by virtue of that decision he was qualified. That argument is however, unacceptable. The holding in **Kevin K Mwiti's** case was to the effect that students who had joined Universities to pursue LLB programmes by the time KSL Act 2012 came into force, were not bound by the ATP admission requirements in the 2012 Act. They were to be admitted pursuant to the admission requirements in force prior to the enactment of the KSL Act, 2012. Had the petitioner joined LLB degree programme prior to the KSL 2012 Act he would have benefited from the holding in the ***Kevin Mwiti case***, but not anymore.

31. The petitioner also relied on the Legal Education Act and in particular the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 promulgated pursuant to that Act. Part 11 of the Third Schedule of the Regulations relates to admission requirements to various institutions. Paragraph 5 is in relation to admission to under graduate degree programme. The paragraph states that –

“(1) the minimum admission requirements for an undergraduate degree in law shall be

a. A mean grade of C+(plus) in the Kenya Certificate of Secondary Education Examination or its equivalent with a minimum grade of B plain in English or Kiswahili.

b. At least three principal passes in the Kenya Advanced certificate of Education Examinations;

c. A degree from a recognized university; or

d. A credit pass in Diploma in law examination from an accredited institution.(emphasis)

32. With regard to admission to ATP, Paragraph 6 provides;

“The minimum requirements for admission to the Advocates’ Training Programme shall be;-

a. A bachelor of law (LLB) degree from a recognized university;

b. Where applicable, a certificate of completion of a remedial programme;

c. Proof of academic progression in accordance with paragraphs 3 and 4 of this schedule; and

d. A certificate of completion of the Pre-bar Examination”

33. The petitioner has argued that he has a degree from a university and on that basis, he was qualified to join LLB degree programme by virtue of paragraph 5(c) of the Third Schedule to Council of Legal Education (Accreditation and Quality Assurance) Regulations, 2016.. The respondent contended that KSL is guided by section 16 of KSL Act and paragraph 1 of the Second Schedule in admitting students to ATP. Reliance was placed on the decision in ***Republic v Kenya School of law & Council of Legal education Ex parte Daniel Mwaura Marai*** (supra) on that submission,

34. It must be clear to everyone that KSL is the institution mandated to train persons to become professional Advocates and that mandate is exercisable pursuant to the KSL Act and regulations made thereunder. The KSL Act in conferring that mandate to KSL does not make reference to any other Act in so far as admission requirements to ATP are concerned. In that regard, section 16 of the KSL Act is clear

and unequivocal that qualifications for admission to ATP are those contained in the Second Schedule to the Act.

35. The requirements under paragraph 1 of the Second Schedule are also clear and KSL does not have to look elsewhere for admission requirements to ATP. An applicant who wishes to join ATP will be admitted on the basis of those requirements and nothing else. Either he meets or does not meet those requirements. The admission requirements to ATP are provided for by the principle KSL Act and not any other Act.

36. Paragraph 5 of the Council of Legal Education (Accreditation and Quality Assurance) Regulations, 2016 which the petitioner relied on, provide for admission to under graduate LLB degree programme. They include a degree from a recognized university as separate and singular requirement. Even though that may be the case, that a person may be admitted to LLB degree programme if he already has a degree from a recognized university, such a person will have to bear in mind that KSL will only admit students to ATP on the basis of the requirements set out in its statute.

37. Any university admitting students to pursue LLB degree, on the basis that that they have a degree from another university must be aware that such student will only be admitted to ATP on completion of their LLB degree if they will meet the requirements set out in section 16 of the KSL Act as read with paragraph 1 of the Second Schedule. The regulations under CLE Act are clearly in conflict with section 16 of the KSL Act as read with paragraph 1 of the Second Schedule in so far as they make reference to admission requirements for ATP at KSL.

38. In terms of section 24 of the Statutory Instruments Act (No.23) of 2013, those regulations are invalid in so far as admission requirements to ATP are concerned. Section 24 (2) of the Statutory Instruments is to the effect that **statutory instrument should not be inconsistent with the provisions of the enabling legislation, or of any Act, and the statutory instrument shall be void to the extent of such inconsistency.**

39. I agree with *Odunga J's* observation in **Republic v Kenya School of law & Council of Legal education Ex parte Daniel Mwaura Marai (supra)** that **the applicant having not obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C+ (plus) in the Kenya Certificate of Secondary Education or its equivalent would be locked out from admission to the ATP.** I also agree with the learned judge when he stated that **if the provisions of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 are in conflict with the provisions of section 16 of the Kenya School of Law Act as read with the Second Schedule to the said Act, the former cannot override the latter.**

40. Allowing people to join ATP at KSL on the basis that they had a degree prior to joining LLB degree programme would be to circumvent clear provisions of a statute and would result into discrimination and application of double standards. The upshot is that the petitioner was not qualified for admission to ATP hence the respondent was right in declining to admit him.

41. For the foregoing reasons the petition dated 10th November 2017 is dismissed with no order as to costs.

Dated, Signed and Delivered at Nairobi this 18th December 2017

E C MWITA

JUDGE