



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA**

**AT NAIROBI**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION NO.182 OF 2019**

**IN THE MATTER OF: ARTICLES 2(1), 3(1), 10(1) (2), 19(2), 21, 22, 23, 24, 25, 27(1), 28,  
43, 47, 48, 55, 56, 165(3), 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS UNDER ARTICLES 2(1), 3(1), 10(1) (2), 19(2), 20(2), 21(1), 22, 23, 24, 27(1),  
28, 43, 47, 48, 55, 56, 165(3), 258, 259 & 260 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS AND FREEDOMS PRACTICE AND PROCEDURE RULES, 2013)**

**AND**

**IN THE MATTER OF: SECTION 3(1) (A) AND (C), 4(1) (2) (3)**

**& (11) OF THE FAIR ADMINISTRATIVE ACTION**

**AND**

**IN THE MATTER OF: KENYA SCHOOL OF LAW ACT NO. 26 OF 2012 LAWS OF KENYA**

**BETWEEN**

**KIHARA MERCY WAIRIMU.....1<sup>ST</sup> PETITIONER**

**MWASHIGADI KEZIAH MBALA.....2<sup>ND</sup> PETITIONER**

**ABDI SAMIRA ALLY.....3<sup>RD</sup> PETITIONER**

**KANYI ALEX KARINGITHI.....4<sup>TH</sup> PETITIONER**

**SOMOW IBRAHIM HAMDIL.....5<sup>TH</sup> PETITIONER**

**KHANBHAI SARRAH MUSTANSIR.....6<sup>TH</sup> PETITIONER**

MICHELLE WANJIKU WANYEE.....7<sup>TH</sup> PETITIONER

SARAH MWHIHAKI MWANGI.....8<sup>TH</sup> PETITIONER

VERSUS

THE KENYA SCHOOL OF LAW.....1<sup>ST</sup> RESPONDENT

THE COUNCIL FOR LEGAL EDUCATION.....2<sup>ND</sup> RESPONDENT

KENYA NATIONAL EXAMINATION COUNCIL.....3<sup>RD</sup> RESPONDENT

KENYA NATIONAL QUALIFICATION AUTHORITY.....4<sup>TH</sup> RESPONDENT

THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT

RULING

**PETITIONERS/ APPLICANTS APPLICATION**

1. The Applicants/Petitioners through a Notice of Motion dated 23<sup>rd</sup> June 2020 pray for the following orders:-

*a) That the matter be certified urgent and heard ex-parte in the first instance.*

*b) That this Honourable Court be pleased to order to find that the memorandum of satisfaction filed in Court vide an affidavit of Dr. Juma Mukhwana not being in compliance with the Court judgment and rulings on record be deemed and declared a non-compliance document and hence for striking out from the record and appropriate orders do issue to that effect.*

*c) That having qualified for admission in Kenya School of Law and there being judgment on record in their favour the Honourable Court be pleased to issue an order directing the 1<sup>st</sup> Respondent herein to directly and forthwith admit the applicants to the Kenya School of Law without any conditions whatsoever.*

*d) That the Honourable Court be please to issue an order directed to the 2<sup>nd</sup> Respondent directly to register applicants herein for the Bar exams without any conditions whatsoever.*

*e) That the Honourable Court be pleased to issue any subsequent or any other order or orders deemed fit and necessary to give effect to the court judgment and other subsequent orders to enable the applicants realise the fruits of the judgment in their favour.*

*f) That the costs of this application be provided to the applicants.*

2. The Applicants/Petitioners Application is premised on grounds on the face of the application and further supported by affidavit of Mwashigadi Keziah Mbala.

3. The Applicants/Petitioners contend inter alia; that they obtained judgment in their favour on 28<sup>th</sup> November 2019, which judgment was subject to correction and/or amendment made on the 13<sup>th</sup> February 2020; that despite the Judgment rendered in favour of the applicants, the applicants are yet to enjoy the fruits of their judgment; that the 4<sup>th</sup> Respondent, through the Court's orders was ordered to issue clearance certificate to enable the applicants to be admitted to Kenya School of Law; but instead KNQA issued equation and not clearance certificates.

4. The Applicants/Petitioners further state that on a recent application, the court ordered the 4<sup>th</sup> Respondent to withdraw letters dated 19<sup>th</sup> and 21<sup>st</sup> February 2020 in which they had equated the applicants qualifications; but the order was not complied with; instead KNQA issued a fresh equations which they filed in Court in what they call memorandum of satisfaction as per filled affidavit of KNQA Director General / CEO Dr. Juma Mukhama. The Applicants therefore urge the 4<sup>th</sup> Respondent has to date not issued clearance certificates as directed by this Honourable Court.

5. The Applicants/Petitioners urge that the 4<sup>th</sup> Respondent has intentionally refused or declined to perform and comply with the court's orders warranting the invitation of this Court to intervene to see that the applicants enjoy the fruits of the Judgment.

6. It is further urged that at any event the court having found the applicants, were duly qualified in the judgment, then the court is mandated to issue subsequent orders to give effect to the judgment and that is the applicants intention that the court issues further and subsequent orders; which it can issue in the interest of justice; expeditiously and propositionately in an order of striking out a non-compliant affidavit of Dr. Juma Mukhwana.

7. It is further averred that the 4<sup>th</sup> Respondent derives its power from the Kenya National Qualification Framework Act, which came into

force on the 14<sup>th</sup> January 2015; when the Applicants herein had already been admitted to undertake their Bachelor of Laws Programme. The Kenya National Qualifications Framework Regulation, were not gazetted until late 2018 when the Applicants had already completed the LLB degree Programme. That prior to the publishing of the said Regulations, there were no regulations or guidelines whatsoever in the country, to guide either students, parents or institutions of higher learning on how the IGCSE qualification would equate to the Kenyan qualifications (KCSE).

8. It is the Applicants/Petitioners contention that the only provisions in law was in **University's Act 2012**, wherein **Section 35(b) of the Act** provides that each University shall have a Senate, which shall be in charge of all academic matter of the university and shall undertake the functions assigned to it in charter of university.

9. It is Petitioners/Applicants contention that it is an affront and a total injustice to the rights and legitimate expectation of the students/Applicants for them to be subjected retrospectively to regulations that were not in existence at the time of their admission to their degree programme. Something KNQA has suppressed from the Court. It is further contended that all parties have a duty to exercise care and disclose a provision of law which does not favour them.

#### **THE 1<sup>ST</sup> RESPONDENT'S RESPONSE**

10. The 1<sup>st</sup> Respondent filed a Replying affidavit sworn by Fredrick Muhia on 15<sup>th</sup> July 2020; urging that at no time did the Court rule that the Applicant need not have the required Secondary School qualifications. It is contended that a person pursuing an LLB degree in Kenyan University must possess the minimum statutory qualification, as to hold otherwise would result in an absurdity where a person need not have any secondary school qualification before enrolling for the LLB degree.

11. The 1<sup>st</sup> Respondent further contend that given the understanding of the minimum statutory requirement above, the court issued the order that the Petitioners/Applicants do submit their International General Certificate of Secondary Education (IGCSE, GSCE and GCE Certificates together with equation letters (Secondary School qualifications clearance letter) from Kenya National Qualification Authority together with LL.B degree certificate from Riara University.

12. The 1<sup>st</sup> Respondent aver that its understanding of the prayers sought in the application is that the Petitioners now seek variations that would alter the intention of the orders of 28<sup>th</sup> November 2019 as revised on by the orders of 13<sup>th</sup> February 2020. It is contended the Applicants seeks to re-open and re-litigate the case which has already been heard, revised and finally determined by introducing new issues.

#### **THE 4<sup>TH</sup> RESPONDENT'S RESPONSE**

13. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn by Dr. Juma Mukhwana dated 15<sup>th</sup> July 2020 in opposing the Petitioners'/Applicants' application.

14. The 4<sup>th</sup> Respondent aver that he has read and understood the Court's Judgment delivered on 28<sup>th</sup> November 2019 which judgment read inter alia:-

***“29. (i) A declaration be and is HERBEY issued that the Petitioners do submit Their International General Certificates of Secondary Education (IGCSE, GSCE and GCE) Certificates together with equation letters (Secondary School Qualification Clearance Letter) from Kenya National Qualification Authority together with LL.B degree certificate from Riara University within 7 days, from the date of this order.***

***(ii) The Petitioners upon complying with (i) above and upon meeting the qualifications the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do register and forthwith admit the Petitioners herein to undertake the Advocate Training Programme (ATP) at the Kenya School of Law without any other constitutions.”***

15. The 4<sup>th</sup> Respondent aver further that the Petitioners did not submit the documents as ordered in paragraph 29 (i) within 7 days or at all. Instead, it is their lawyers who wrote to the 4<sup>th</sup> Respondent through a letter dated 8/6/2020 saying that the Petitioners had submitted the requisite Certificates for IGCSE, GCSE and GCE.

16. That the KNQA proceeded to equate the Certificates submitted, prepared and served memorandum of satisfaction as set out under paragraph 10 of the Dr. Juma Mukhwana.

17. The 4<sup>th</sup> Respondents state that at no time did the honourable court order KNQA to issue clearance certificates to the Petitioners as alleged by the Petitioners/Applicants and are as such said to be peddling falsehood; but instead of submitting the deficient academic papers, have elected to inundate the court with applications, with hope of circumventing the law by coercing the KNQA to do that the law does not allow.

18. The 4<sup>th</sup> Respondent aver that the students taking UK qualifications are required (in Kenya and the UK) to study and complete “O Level” qualifications (IGCSE or GCSE) and take and pass “A” level (GCE) qualifications (with at least a principal C in 3 subjects).

19. It is further stated that it is the 3 Principal C's and A” level (GCE) that can be equated to KCSE mean grade C+ and that allows the students to join a University in Kenya and this means that students cannot join a University in Kenya, if they have not done both O Level (IGCSE and GCSE) and a “A” Level (GCE) and obtained at least 3 principals in three subjects at A' level.

20. The 4<sup>th</sup> Respondent urges that KNQA has not violated any court order as alleged in paragraph 11 of the supporting affidavit and it has no intention to do so. It urges the court not to strike its memorandum of satisfaction as it explains the qualifications to be met before issuing a clearance certificate.

### **ANALYSIS AND DETERMINATION**

21. I have very carefully considered the Petitioners'/Applicants' application and the Respondents' Replying Affidavits as well as the respective written submissions and from the aforesaid the issues for consideration can be summarized as follows:-

**a) Whether the Petitioners/ Applicants has satisfied the conditions to warrant striking out the Affidavit of Dr. Juma Mukhwana?**

**b) Whether the 1<sup>st</sup> Respondent should admit the Petitioners/Applicants to Kenya School of Law without any conditions?**

#### **A. WHETHER THE PETITIONERS/ APPLICANTS HAS SATISFIED THE CONDITIONS TO WARRANT STRIKING OUT THE AFFIDAVIT OF DR. JUMA MUKHWANA?**

22. The Petitioners/Applicants pray that the Court do find that the memorandum of satisfaction filed through the affidavit of Dr. Juma Mukhwana not being in compliance with the Court's Judgment and Ruling on record and as such be deemed and declared non-compliant document and be struck out from the record and appropriate orders be issued.

23. This Court's Judgment was delivered on 28/11/2019 in the following terms:-

**a) A declaration be and is HEREBY issued that the Petitioners submit their A-Level certificates together with an equation letters (Secondary School qualification clearance letter) from the Kenya National Qualification Authority together with LL.B degree certificate from Riara University within 21 days from the date of this judgment.**

**b) A declaration be and is HEREBY issued that the petitioners were discriminated by the Respondents by dint of the fact that the Petitioners have been denied admission at Kenya School of Law unlike their predecessors who are from the same University with same qualifications and who were admitted to ATP Programme.**

**c) A declaration be and is HEREBY issued that the acts of 1<sup>st</sup> Respondent of rejecting and/or non-admitting the Petitioners to ATP (Advocates Training Programme) without a certificate of their A-Level results and despite having qualified in terms of the second Schedule of the Kenya School of Law Act 1(a) and despite having been conferred their Bachelors of Laws (LL.B) degree by a local University, the Riara University, contravened the Petitioners fundamental rights and freedoms under Articles 2(1), 3(1), 10(1) (2), 19(2), 20(2) 22, 23, 24, 27(9), 28, and article 47 of the Constitution of Kenya, 2010, and therefore such violation and/or infringement was unconstitutional, unlawful, illegal, null and void, in consequence this Honorable Court intervenes to quash, set aside and/or put a stop to the same forthwith.**

**d) A declaration be and is HEREBY issued to the effect that the application by the 1<sup>st</sup> respondent of the provisions of second Schedule 1(b) of the Kenya School of Law Act No. 26 of 2012 to the extent that the same applies dissimilar treatment exclusively to the petitioners is discriminatory, irrational, unreasonable, arbitrary, abuse of discretion, exercise of discretion for improper purposes, unlawful, acting unfairly, unreasonable and amounted to exercising of discretion arbitrarily and had violated the rights and fundamental freedom of the petitioners.**

**e) A declaration be and is HEREBY issued that the 1<sup>st</sup> Respondent conduct above amounted to acting unfairly, acting in violation of Article 47 of the Constitution of Kenya and Section 4(3) of the Fair Administrative Actions Act, 2015 to the extent that the Petitioners were not afforded the benefit of the rules of natural justice and were not heard before the decision to bar or reject the applications for admission and therefore the whole process leading to the non-admission to the Kenya School of Law ATP Programme was in expeditious, inefficient, unlawful, unreasonable, procedurally unfair, unconstitutional, nullity, null and void ab initio and is accordingly quashed and/or set aside in its entirety.**

**f) An order be and is HEREBY issued upon the petitioners complying with order (a) herein above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do register and forthwith admit the petitioners herein to undertake Advocate Training Programme (ATP) at the Kenya School of Law without any other conditions.**

**g) In the alternative to (f) above an order be and is HEREBY issued directed upon the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to issue the petitioners with equation certificate for respective academic papers upon the Petitioners application within the period of 15 days from the date of application.**

**h) Prayer (f) is declined.**

**i) As both parties have won and lost in some way I direct each party to bear its own costs.**

24. The Petitioners aggrieved with judgment of the Court, moved the court through a Notice of Motion dated 10<sup>th</sup> December 2019 seeking to review order (a) of the Judgment rendered on 28/11/2019. The gravamen of the Petitioners/Applicants Application was that they did not have A Level Certificates. They only had IGCSE, GSCE and GCE certificates. Upon hearing of the application the court allowed the application. The Petitioners returned to Court on 25/2/2020 with a contempt application which was dismissed on 29/4/2020.

25. The Court in its ruling dated 29<sup>th</sup> April 2020 stated as follows under paragraphs 36 and 38.

***“36. The orders issued on 13<sup>th</sup> February 2020 for clarity required the Petitioners/Applicants to submit their International General Certificate of Secondary Education (IGCSE, GSCE & GCE) Certificates to the Kenya national Qualification Authority for issuance of equation letters. The order as issued only required the 4<sup>th</sup> Respondent to equate their certificates with KCSE. The 4<sup>th</sup> Respondent was to indicate the equivalent grade either indicating as usually done in KCSE either the Petitioner scored equivalent to A or B or C or D or E. it was only required to grade the petitioners’ certificates an nor more.***

***37. The 4<sup>th</sup> Respondent must have misapprehended what was required of it and assumed a role that it did not have nor that was not required of it when it wrote letters contrary to the court’s order. It was not required in equation of the international certificates of Education in respect of the Petitioners to indicate which between the two certificates was higher or lower than the other as it did; nor to decide whether the petitioners were qualified to be admitted at the 1<sup>st</sup> Respondent institution or not. This act went beyond the court’s order and as such Dr. Juma Mukhwana acted beyond what was expected of the 4<sup>th</sup> Respondent.***

***38. In view of the foregoing I direct the 4<sup>th</sup> Respondent to withdraw or retract the letters already issued not in compliance with the court’s order do what the order demands of it within the next 7 days from the date of this Ruling in default the court shall be at liberty to cite the 4<sup>th</sup> Respondent herein.”***

26. The 4<sup>th</sup> Respondent did file a memorandum of satisfaction as per Court’s order sworn on 4<sup>th</sup> June 2020. In the aforesaid memorandum of satisfaction the 4<sup>th</sup> Respondent indicated the Petitioners did tender their qualifications for equation and that the 4<sup>th</sup> Respondent equated the Petitioners’ qualifications as per its report annexed to the affidavit and marked B.

27. This Court is therefore satisfied that the 4<sup>th</sup> Respondent did as directed and/or ordered by this Court. I am from the above satisfied that the 4<sup>th</sup> Respondent did equate the Petitioners Certificates with KCSE and further has given detailed explanation in its Replying affidavit. I find no basis for proceeding to strike out the memorandum for satisfaction.

***B. WHETHER THE 1<sup>ST</sup> RESPONDENT SHOULD ADMIT THE PETITIONERS/APPLICANTS TO KENYA SCHOOL OF LAW WITHOUT ANY CONDITIONS?***

28. The Petitioners/Applicants prayer that this Court do issue an order directing that 1<sup>st</sup> Respondent herein to directly and forthwith admit the Applicants to Kenya School of Law without any conditions whatsoever, and further issue an order to the 2<sup>nd</sup> Respondent directing it to register applicants herein for the Bar examinations without any conditions whatsoever.

29. The Courts decisions herein were based on clear grounds and on understanding that all Kenyan Universities are bound in admitting students for LL.B degree by statutory requirements for admission to the respective universities. A person pursuing a particular degree in a University in Kenya, and in particular an LL.B degree must possess the minimum statutory qualifications; as to hold otherwise, in my view, would result in an absurdity, where a person need not have any secondary school qualifications, which is used as a cut mark, before enrolling for LL.B degree. I do not agree that an applicant for the ATP need not have the required secondary school qualification. This clearly explains why the court’s order required the Petitioners/Applicants to submit their International General Certificate of Secondary Education (IGCSE; GSCE and GCE Certificates together with equation letters (Secondary School qualification clearance letter) to KNQA together with LL.B degree certificates from Riara University. The Court was clear in its intention even at the point of review, as the tenor and intent of the Judgment did not vary in anyway.

30. Looking at the current Notice of Motion, it is clear that the prayers sought are substantive prayers in an application. The Petitioners/Applicants are seeking variations, that would, alter the intention of the orders of 28<sup>th</sup> November 2019 as revised by the orders of 13<sup>th</sup> February 2020. I do not find that there is an error nor slip in the judgment, as the intention of the court in making that decision was clear as to what was required for compliance with Court’s directions. The court was specific in what was required of the 4<sup>th</sup> Respondent in this matter.

31. I find the Petitioners/Applicants in their Notice of Motion are seeking substantive orders through a Notice of Motion. To issue such orders that would fundamentally alter this Honourable Courts’ manifest intention and a true reflection of the intention of the Judgment, to cater to the whims of the applicants which would in my view be contrary to subsisting Judgment of this court. The application on the other hand seek to re-open and re-litigate the case before this Court where it has already been heard, revised and finally determined. This Court is not supposed to allow introduction of new issues when it has already determined the matter, save in a case of correcting a glaring error on the face of the record; which is not the case herein.

32. I wish to add that this court heard and determined all matters that were in dispute between the parties. This Court further reviewed its Judgment and made orders which clarified the intention of the court. If this Court had the intention to rule that the 4<sup>th</sup> Respondent had no role in the equation of the Applicants’ qualifications, the Court would have clearly stated so either at the time of original judgment or when the orders were reviewed. In addition no party raised such an issue then for this Court’s consideration. The Applicants/Petitioners if they were aggrieved by the Judgment and the review thereto, they should have preferred an appeal This Court cannot at all purport to alter its decision as sought now as that would be tantamount to sitting on an appeal in its own Judgment. I find that if the Petitioners/Applicants feel aggrieved by this Court’s Judgments and /or orders, the only recourse available to the Applicants in this case, would be to appeal to the Court of Appeal.

33. From clear reading of the Judgment of this Court, this Court did set out clear conditions for the Petitioners/Applicants to join the Kenya School of Law; where the partly stated:-

**“The Petitioners ought to have obtained equation letters from the 4<sup>th</sup> Respondent. In the absence of the equation letters, there is no way the Petitioners can directly join the Kenya School of Law as they will be jumping the gun.”** (Emphasis added)

34. The equation requirement is derived from the provisions of clause 5(b) of the First Schedule of the Council of Legal Education (Kenya School of Law) Regulation, 2009 which provides:-

**“II – Admission Requirements into the Advocates Training Programme**

**5. A person shall not be eligible for admission for the Post Graduate Diploma (Advocate Training Programme) unless that person has –**

**a) passed the relevant examination of any recognized university in Kenya, he holds or has become eligible for the conferment of the Bachelor of Laws Degree (LL.B) of that university;**

**b) passed the relevant examinations of a university, university college or other institutions prescribed by the Council, he holds or has become eligible for the conferment of the Bachelor of Laws Degree (LL.B) in the grant of that university, university college or other institution, had prior to enrolling at that university, university college or other institution –**

**(i) attained a minimum entry requirement for admission to a university in Kenya; and**

**(ii) a minimum grade B(Plain) in English Language and a mean grade C (Plus) in the Kenya Certificate of Secondary Examination or its equivalent;**

**c) A Bachelor of Laws Degree (LL.B) from a recognized university and attained a minimum grade of C+ (C Plus) in English and minimum aggregate grade f C (plain) in the Kenya Certificate of Secondary Examination, holds a higher qualification e.g. “A” levels, “IB”, relevant “Diploma”, other “undergraduate degree” or has attained a higher degree in Law after the undergraduate studies in the Bachelor of Laws Programme; or**

**d) A Bachelor of laws Degree (LL.B) form recognized university and attained a minimum grade of C – (C Minus) in English and minimum of an aggregate grade of C- (minus) in the Kenya Certificate of Secondary Examination sits and passes the Pre-Bar Examination set by the Council of Legal Education as a precondition for admission.”**

35. There is clearly use of the word equivalent in **clause 5(b) of the First Schedule of the Council of legal Education (Kenya-School of Law) Regulations, 2009**, which makes it prudent for the Petitioners/Applicants International General Certificates of Secondary Education to be equated since the 1<sup>st</sup> Respondent could not tell if the Petitioners’ O Level were equivalent to B plain in English or if the Petitioners’ qualifications were equivalent to C+. It should further be noted that Regulation 5 of the Council of the legal Education (Kenya School of Law) Regulations, 2009 is clear in its provisions.

36. In the instant application it turns out that the Petitioners seek unconditional admission, to Kenya School of law and registration for the Bar examination without any conditions whatsoever contrary to clear statutory provisions. The Petitioners/Applicants, in my view are seeking preferential treatment to directly join the 1<sup>st</sup> Respondent institution. It is clear that prior to anyone joining the 1<sup>st</sup> Respondent institution, one is required amongst other requirements to pay school fees, make an application for admission; be subjected to scrutiny and verification of document tendered to the 1<sup>st</sup> Respondent. It will be a case of gross discrimination if the Petitioners/Applicants were to be admitted unconditionally as they seek herein.

37. The 2<sup>nd</sup> Respondent on the other end cannot proceed to unconditionally register the Petitioners/Applicants for Bar examination since;

**a) One must have qualified to join the 1<sup>st</sup> Respondent institution.**

**b) One must have paid the Examination Fees.**

**c) One must fill an application form for the bar Examination.**

**d) One must submit to CLE the documents they submitted to KSL to be admitted to the Kenya School of Law;**

**e) One must possess the requisite qualifications;**

**f) Further, for a person to be registered for the bar exams, she/he must have attended a requisite number of classes, that is, at least two thirds;**

**g) One must have sat for and done 40% of the exams, that is, 20% project work and 20% oral examinations.**

**38. The upshot is that the application is without merits. The same is dismissed and each party to bear its own costs.**

**Dated, Signed and Delivered at Nairobi on this 1<sup>st</sup> day of October, 2020.**

**J. A. MAKAU**

**JUDGE**