REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 20 OF 2019

VICTOR JUMA.....PETITIONER

VERSUS

KENYA SCHOOL OF LAW.....RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION.....INTERESTED PARTY

JUDGEMENT

1. The Petitioner, Victor Juma, by way of the petition dated 17th January, 2019 seeks the following reliefs:-

> **a. A declaration that the decision of the 1st Respondent to reject the Petitioner's Application for the Advocates Training Programme 2019/2020 scheduled to commence on the 5th February, 2019 contravened the Petitioner's fundamental rights and freedoms protected under Articles 27, 43 and 47 of the Constitution of Kenya 2010.**
>
> **b. An order directing the 1st Respondent to admit the Petitioner into the Advocates Training Programme for the 2019/2020 academic year scheduled to commence on the 5th February 2019.**

2. The facts of the case are that in 2018 the Petitioner applied to join the Respondent, Kenya School of Law ("KSL"), for the Advocates Training Programme ("ATP") for the 2019/2020 academic year. However, his application was rejected by KSL on the ground that he had not met the minimum entry requirement laid out in Section 16 and the Second Schedule the Kenya School of Law Act, 2012 ('KSL Act') of a mean grade of C (plus) and a B (plain) in English or Kiswahili in the Kenya Certificate of Secondary Education ("KCSE"). The Petitioner had not met the minimum requirements as he attained a mean grade of C (plus) with a C (plus) in English and Kiswahili in KCSE. The Petitioner appealed the decision to the Admission Board of KSL but the appeal was rejected.

3. The Petitioner claims that the entry requirements of the KSL Act takes away his right to academic progression and amounts to discrimination. The Petitioner asserts that the decision of the Respondent infringes Articles 10; 19; 20; 22; 27(1), (2) & (4); 43(1) (f); and 47 of the Constitution. The Petitioner further alleges that the decision to reject his application is in conflict with Section 22 of the Legal Education Act, 2012 ("the LEA"), as read with paragraph 6 of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The Petitioner contends that Section 16 of the KSL Act should be interpreted holistically to include persons who prove vertical academic progression as any lesser interpretation will contravene the provisions of the Constitution.

4. In the affidavit he swore in support of the petition, the Petitioner alleges that the Respondent acted *ultra vires* and in contravention of Section 8 of the LEA by purporting to be the regulator of legal education in Kenya whereas that is the sole mandate of the Interested Party, the Council of Legal Education ("CLE").

5. The Petitioner filed a notice of motion application dated 27th February, 2019 in which he sought among other orders an order directed at the Respondent compelling it to produce the academic records of all students admitted for 2019/2020 ATP. The application was nevertheless dropped and the Petitioner decided to concentrate on the petition.

6. In response to the petition, the Respondent filed a replying affidavit sworn by Fredrick Muhia on 9th April, 2019. Through the affidavit the Respondent confirms that the Petitioner's application was rejected on the ground that he did not meet the admission criteria under the Second

Schedule to the KSL Act which was in force at the time the Petitioner enrolled for his Bachelor of Laws (LL.B) degree in 2015.

7. It is further deposed that the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 upon which the Petitioner relies are inconsistent with the KSL Act, a fact which has allegedly been confirmed by the High Court.

8. The Respondent further asserts that the Petitioner has failed to demonstrate any violation of the Constitution and is merely citing the Constitution in his petition.

9. The Petitioner filed his written submissions dated 5th September, 2019 in which he submits that the Respondent acted *ultra vires* by making the impugned decision. The Petitioner submits that the KSL Act cannot be read in isolation and must be read together with the LEA which mandates the CLE with accreditation and licensing of university education.

10. It is contended that in rejecting the Petitioner's application and his appeal the Respondent acted *ultra vires* as it exceeded its powers of training and usurped the role of the Interested Party in accrediting and qualifying institutions and degrees attained therefrom. This, according to the Petitioner, breached Section 7(2)(o) of the Fair Administrative Action Act, 2015. Reference is made to the decision in **Republic v Public Procurement Administrative Review Board & 2 others [2019] eKLR** on the *ultra vires* principle.

11. The Petitioner submits that the decision of the Respondent is unreasonable. It is submitted that even if the Respondent was mandated to make the impugned decision, the same was unreasonable hence a violation of Section 7(2)(k) of the Fair Administrative Action Act. The Petitioner asserts that the decision defies logic such that no reasonable person or body could have reached the same considering the facts of the case and the applicable law.

12. It is further urged that the decision is unreasonable as it lacks ostensible logic or comprehensible justification as to why the Petitioner is the only amongst 20 of his former classmates to be denied admission. The Petitioner relies on the case of **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223** which sets out the standard of unreasonableness of public-body decisions that would make them liable to be quashed by the courts.

13. It is also the Petitioner's submission that the Respondent's decision violates his rights to education and legitimate expectation. The Petitioner relies on the decision in **Gabriel Nyabola v Attorney General & 2 others [2014] eKLR** on the right to education. The Petitioner argues that he had a legitimate expectation, protected under Article 43(1)(f) of the Constitution and Section 7(2)(m) of the Fair Administrative Action Act, that upon graduating from the LL.B programme in 2018 he would advance to the ATP. On the doctrine of legitimate expectation, the Petitioner cites the decision in **Republic v Kenya Revenue Authority Ex-parte KSC International Limited (In Receivership) [2016] eKLR** which relied on the case of **Keroche Industries Limited v Kenya Revenue Authority & 5 others [2007] KLR 240.**

14. The Petitioner argues that the Respondent's refusal to admit the Petitioner on the basis of lack of qualification despite the fact that he had advanced his education discriminated against him thereby violating Article 27(4) of the Constitution. The Petitioner refers to the definition of discrimination provided in **Andrews v Law Society of British Columbia [1989] 1 SCR 143**, as cited in **H.O.O. (a child suing through his father and next friend P.O.O.) v Board of Management N School & 2 others [2019] eKLR.**

15. Another issue identified by the Petitioner for the determination of this Court is whether this case is distinguishable from **Kevin Mwiti v Kenya School of Law & another, Petition No. 377 of 2015** and **R v Kenya School of Law, Ex parte Daniel Mwaura Marai, JR 529 of 2017.** The Petitioner highlights the two cases to demonstrate that they are distinguishable from the current case as the former dealt with the pre-bar administration and the latter addressed the position of the quality assurance standards under the LEA. The Petitioner asserts that this petition concerns his selective treatment by the Respondent.

16. The Petitioner urges that he should be granted the benefit of the inconsistencies in the KSL Act and the Council of Legal Education Act ("CLE Act") as well as the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

17. The Interested Party filed its grounds of affirmation and skeletal arguments dated 4th February, 2020 in support of the petition. It asserts that the Petitioner's qualifications have met the requirements of Section 16 as read with Paragraph 1(a) of the Second Schedule to the KSL Act and Paragraph 5 of Part II of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

18. The Interested Party claims that the Respondent's argument is inaccurate in as far as it is stated that the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 were declared to be inconsistent with the KSL Act in **JR 529 of 2017, R v Kenya School of Law, Ex-parte Daniel Mwaura Marai.** It is asserted that the Court in that case held that a person wishing to be admitted to the ATP must comply with the provisions of the KSL Act and the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. It is submitted that the Court in **Petition No. 566 of 2017, Peter Githaiga Munyeki v Kenya School of Law** agreed with that position.

19. The Interested Party also relies on the decisions in **Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR; Republic v Kenya School of Law & another Ex-parte Kithinji Maseka Semo & another [2019] eKLR;** and **Republic v Kenya School of Law Ex-parte Victor Mbeve Musinga [2019] eKLR** in which it was decided that the requirements set out in paragraph 1(a) & (b) of the Second Schedule of the KSL Act are distinct and dependent on whether the student studied abroad or locally.

20. The Interested Party contends that it is the regulator of legal education in Kenya and is mandated to make regulations for purposes of giving effect to the LEA, as it did with the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The Court is directed to paragraph 5(d) Part II of the Third Schedule of the Regulations, which the Interested Party claims that no other Court has adjudicated upon and therefore remains constitutional. It is asserted that this is the only law that gives the university entry requirements.

21. It is finally argued that because the Petitioner obtained a diploma with a credit pass from Mount Kenya University, and later a law degree

in line with Section 16 as read with paragraph 1(a) of the Second Schedule to the KSL Act and together with paragraph 5 Part II of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016, he qualifies for admission to the ATP. It is therefore the Interested Party's position that the Respondent acted illegally.

22. The Respondent filed submissions dated 12th July, 2019 in which it is submitted that at the time Petitioner commenced his diploma studies the KSL Act was already in force. The Respondent relies on the case of **Kevin Mwiti v Kenya School of Law & another, Petition No. 377 of 2015** for the proposition that every application for the ATP must be evaluated on the basis of the law in place at the time when the applicant commenced studies. It is therefore submitted that the KSL Act is the relevant law for purposes of evaluation of the Petitioner's application to join the ATP.

23. It is further asserted that the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 do not support the Petitioner's case as they were made after the Petitioner commenced his legal studies, and the High Court has already declared the relevant provisions of those Regulations to be inconsistent with the KSL Act in **JR 529 of 2017 R v Kenya School of Law, Ex parte Daniel Mwaura Marai.**

24. The Respondent claims that the authorities relied upon by the Petitioner do not support his case as they relate to litigants who benefited from the Council of Legal Education (Kenya School of Law) Regulations, 2009 (L.N. No. 169 of 2009) which are inapplicable in this case.

25. Having considered the pleadings and the arguments of the parties herein, it becomes clear that the Petitioner places reliance on Paragraph 5 Part II of the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 in support of his argument for admission to the ATP. This leads to the question as to the effect of the contradiction between Section 16 and the Second Schedule of the KSL Act on one hand and Paragraph 5 Part II of the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 on the other hand. A determination of the issue will answer all the other issues raised by the parties.

26. The Petitioner submits that the rejection of his application to join the ATP by the Respondent is based on Section 16 and the Second Schedule of the KSL Act. It is however the Petitioner's contention that he is fully qualified to be admitted to the School on the basis of vertical progression recognised under the LEA and its regulations. This is the same position taken by the Interested Party. On the other hand the Respondent contends that Paragraph 5 Part II of the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 is inconsistent with the KSL Act and therefore the applicable law in this matter is the KSL Act.

27. The Interested Party in supporting the Petitioner's case introduces a different dimension and places reliance on the interpretation of the Second Schedule of the Kenya School of Law Act, 2012 in the cases of **Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR; Republic v Kenya School of Law & another Ex-parte Kithinji Maseka Semo & another [2019] eKLR;** and **Republic v Kenya School of Law Ex-parte Victor Mbeve Musinga [2019] eKLR.**

28. It is necessary to review the language of the provisions which is causing the contradiction between the KSL Act and the regulations under the LEA. According to the Part II of the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 at paragraph 6(1) the minimum requirements for admission to the ATP are:-

> **"(a) a Bachelor of Laws (LLB) degree from a recognised 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."**

29. On the other hand, Section 16 of the KSL Act refers to the Second Schedule of the Act on the requirements for admission to the KSL. According to the Second Schedule, the admission requirements to the ATP are 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 of 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 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; and**
>
> **(iii) has sat and passed the pre-Bar examination set by the school."**

30. The contradiction is evident from the language of the two provisions as Paragraph 5 Part II of the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 does not require proof by applicants for the ATP of the KCSE grades or the

equivalent unlike the KSL Act which does. Furthermore, the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 recognise academic progression as a prerequisite for admission, which is not recognised by the KSL Act. There is therefore conflict between the two statutory instruments and the question is which of these two legal instruments should supersede the other?

31. In resolving the conflict, one must begin by considering the nature of the legal instruments themselves. The Legal Education (Accreditation and Quality Assurance) Regulations, 2016 is subsidiary legislation under the LEA. On the other hand the KSL Act is an Act of Parliament with express statutory provisions. The place of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 has previously been litigated in our courts. In **Republic v Kenya School of Law & Council of Legal Education Ex-Parte Daniel Mwaura Marai [2017] eKLR** Odunga, J held that:-

> **"62. It is therefore my view 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."**

32. In making the above decision the Court relied on the decision of the Supreme Court in **Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others [2014] eKLR** where the Court sought to determine whether a rule under the Court of Appeal Rules, 2010 which is a subsidiary legislation, can override the Elections Act. The Court held that:-

> **"60. […] Such a position cannot, in our view, be sustained: for it flies in the face of the time-hallowed principle of 'the hierarchy of norms.' It is well recognized that an instrument of subsidiary legislation cannot override the provisions of an Act of Parliament."**

33. Justice Odunga went ahead and concluded that:-

> **"61. In the above cases, it is clear that the Courts were dealing with rules made under one Act of Parliament vis-à-vis the provisions of an Act of Parliament other than the one under which they were made. To my mind therefore the provisions of a subsidiary legislation can under no circumstances override or be inconsistent with any Act of Parliament be it the one under which they are made or otherwise."**

34. A similar position was taken by Mativo, J in **Republic v Kenya School of Law [2019] eKLR** where he held that:-

> **"72. Guided by the above clear statements of the law, I find no difficulty concluding that the provisions of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 cannot override the express provisions of section 16 of the KSL Act, which prescribe the admissions requirements to the ATP as those stipulated in the Second Schedule to the Act. Had Parliament desired any other qualifications to apply, it would have expressly provided so in section 16 of the KSL Act."**

35. I agree with the decisions of my brothers in the cited cases and only add that the decisions are consistent with the provisions of Section 24(2) of the Statutory Instruments Act, 2013 which states that a 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 the inconsistency. I see no reason why the provisions of a subsidiary legislation should override the express provisions of an Act of Parliament. It is therefore my finding that the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 are not applicable in this case, and the relevant legislative instrument to be applied is the KSL Act. This means that the Petitioner cannot benefit from the vertical progression recognised in the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

36. The Interested Party is indeed correct that the Second Schedule of the KSL Act has recently been interpreted by Mwita, J and Mativo, J. The Interested Party in its submissions raise the issue of the distinction between paragraph 1(a) and paragraph 1(b) of the Second Schedule. In **Republic v Kenya School of Law [2019] eKLR**, Mativo, J when interpreting the provision paid special attention to the word "or" between the two provisions and stated that:-

> **"40. In its elementary sense the word 'or' is a disjunctive particle that marks an alternative, generally corresponding to 'either,' as 'either this or that. But there are also some exceptions, situations "in which the conjunction 'or' is held equivalent in meaning to the copulative conjunction 'and.' Normally, of course, "or" is to be accepted for its disjunctive connotation, and not as a word interchangeable with "and." However, this canon is not inexorable, for sometimes a strict grammatical construction will frustrate legislative intent. In the construction of statutes, it is the duty of the court to ascertain the clear intention of the legislature. The proper course in all cases is to adopt that sense of the words which best harmonizes with the context, and promotes in the fullest manner the policy and objects of the legislature. The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings."**

37. The learned Judge further stated that:-

> **"46. 'And' provides inclusiveness. By saying 'A and B', it means BOTH 'A' and 'B' In addition, 'and' can be used in positive and negative sentences. On the contrary, 'or' provides exclusiveness between choices. By saying 'A or B', it means ONLY ONE between 'A' and 'B' can be considered. If you choose 'A', then it is not 'B' and vice versa. One may use 'or' in positive and negative sentences. It is now clear that inclusive OR allows both possibilities as well as either of them. Thus, if Parliament in its wisdom intended both possibilities to apply, then, nothing prevented it from using the word 'and' immediately after the end of paragraph 1 (a) instead of the word 'or'."**

38. In **Republic v Kenya School of Law & another Ex-parte Kithinji Maseka Semo & another [2019] eKLR** Mativo, J affirmed that:-

"51. The *ex parte* applicants hold Bachelor of Laws degrees from a recognized University in Kenya. By dint of the above provision, they qualified for admission to the ATP. To suggest otherwise, is in my view an insult to the above provision, which is framed in a simple and clear language. A contrary interpretation is misguided and unfaithful to the provision. It follows that any decision emanating from such a misguided interpretation cannot be read in a manner that is consistent with the enabling provision.

52. The second possibility is the category provided in section 1 (b) which provides:-

> **"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—**
>
> **iv. attained a minimum entry requirement for admission to a university in Kenya; and**
>
> **v. 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; and**
>
> **vi. has sat and passed the pre-Bar examination set by the school."**

53. Parliament in its wisdom provided for the second category. A reading of the second category shows clearly that it applies to those who meet the three conditions stipulated therein. These are having attained a minimum entry requirement for admission to a university in Kenya; and 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; and has sat and passed the pre-Bar examination set by the school.

54. It is unfortunate that the Respondents have on countless occasions misconstrued and or confused the above two categories to the detriment of innocent applicants."

39. In the case of **Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR**, Mwita, J took a similar position with Mativo, J and held that:-

"41. This is so because paragraph 1(a) does not prescribe any university entry requirements for the simple reason that entry requirements for LLB programmes in local universities are known and no one can be admitted to undertake this degree without meeting the basic KCSE grades required for this course. Furthermore, paragraph 1(a) contains the disjunctive word "or" at the end of the paragraph just before the beginning of paragraph 1(b). That means qualifications under paragraph 1(a) are distinct from those under paragraph 1(b). That can only mean one thing- that the two sub-paragraphs apply to two different and distinct categories of applicants."

40. However, Mwita, J gave a different interpretation to the Second Schedule of the KSL Act in **Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR** when he held that:-

"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)."

41. I do not wish to go into the question as to whether Paragraph 1(a) and Paragraph 1(b) of the Second Schedule of the KSL Act provides two distinct standards for admission to the ATP. Indeed Mwita, J appreciated in his decision in **Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR,** which he made after **Adrian Kamotho Njenga v Kenya School of Law [2017] eKLR,** that there is need for holistic interpretation of a statute.

42. The question I would ask myself therefore is whether the lawmaker intended to have two different standards for a law degree. In my view, the answer would be in the negative. I find it difficult to imagine that Parliament would enact a statute that requires one set of students to meet certain qualifications and allow another set of students aspiring to join the same profession not to meet similar qualifications.

43. It cannot be that Kenyan universities offering studies leading to the award of a degree in law are allowed to set their individual admission qualifications but the qualifications for admission to foreign universities is set by the law. Such a law would in my view be discriminatory. I therefore do not agree with the suggestion by the Interested Party that whenever the Respondent is confronted with a law degree obtained from a Kenyan university then it must admit such a student without further interrogation. In my view, the requirements of Paragraph 1(b)(i) & (ii) as to the qualifications for admission for law studies in foreign institutions are equally applicable to admission to local universities.

44. I do not walk this path alone for it was clearly stated in **R v Kenya School of Law, Ex-parte Daniel Mwaura Marai [2017] eKLR** that:-

> **"66. As regards the interest parties' case, it is contended that they were in the LLB Programme in 2014. There is no indication when they joined the programme. As I have held hereinabove if they joined after the commencement of the amendments to the Second Schedule of the *Kenya School of Law Act* then they were bound by the same in which event they could only qualify for admission to the School if they had *"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"* and not just the minimum qualifications prescribed in the Third Schedule of the *Legal Education (Accreditation and Quality Assurance) Regulations, 2016."***

45. Indeed Mwita, J agreed with this position in the already cited case of **Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR** when he held that:-

> **"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….**
>
> **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."**

46. The Petitioner admits that although he has a law degree, he does not have the statutory qualifications being **"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"** for purposes of admission to the ATP. The Respondent cannot be faulted for enforcing the law and neither can the doctrine of legitimate expectation come to the aid of the Petitioner in such circumstances.

47. The Petitioner claimed that he was treated differently from those he went to school with but he failed to place any evidence before this Court in support of the averment. The right to education can only be enjoyed in the context of the laws of the country. One can only pursue a course of his choice if he qualifies for that course. Being denied the opportunity to pursue a course that one does not qualify for cannot be said to be a violation of the right to education.

48. From the evidence and arguments placed before this Court, I must agree with the Respondent that this petition is without merit. Consequently, the petition is dismissed with no order as to costs.

Dated, signed and delivered through video conferencing/email at Nairobi this 25th day of June, 2020.

W. Korir,

Judge of the High Court