Kimani v Kenya School of Law; Council for Legal Education (Interested Party) (Appeal E002 of 2021) [2021] KELEAT 346 (KLR) (Civ) (21 August 2021) (Judgment)

Leon Kamau Kimani v Kenya School of Law; Council of Legal Education(Interested Party) [2021] eKLR

Neutral citation: [2021] KELEAT 346 (KLR)

REPUBLIC OF KENYA

IN THE LEGAL EDUCATION APPEALS TRIBUNAL

CIVIL

APPEAL E002 OF 2021

R.N MBANYA, CHAIR, EO ARWA, R.W KIGAMWA & SM GITONGA, MEMBERS

AUGUST 21, 2021

BETWEEN

LEON KAMAU KIMANI ..... APPELLANT

AND

KENYA SCHOOL OF LAW ..... RESPONDENT

AND

COUNCIL FOR LEGAL EDUCATION ..... INTERESTED PARTY

(Being an appeal against the decision declining admission to the Advocates Training Programme during the academic year 2021/2022 as communicated by Dr. H. K. Mutai the Director of the Kenya School of Law dated the 5thMay, 2021)

JUDGMENT

Introduction.

1. Leon Kamau Kimani lodged an appeal with the Tribunal against the Kenya School of Law as a respondent and the Council of Legal Education as an interested party. The appellant's appeal relates to the decision of the respondent declining admission to the Advocates Training Programme during the academic year 2021/2022 as communicated by the respondent through Dr. H. K. Mutai – Director of the Kenya School of Law on the 5th May, 2021. The appellant in his amended memorandum of appeal pursuant to leave granted by the Tribunal seeks for relief as follows:-

    a. That the decision of the Director of the Kenya School of Law dated the 5th May, 2021 Ref: no. Nxxxx be quashed.

b. That the appellant be admitted to the Advocates Training Programme for the year 2021/2022.

c. That any other order as the Honourable Tribunal deems fit be granted.

d. That the costs of the appeal be awarded to him.

2. In the appeal the appellant has taken up 6 grounds of appeal as against the impugned decision to wit:-

a. That the Director of the Kenya School of Law has no legal basis to monitor legal education in Kenya.

b. That the appellant having scored a mean grade of x+ (Plus), x- (Minus) in English, x+ Plus in Kiswahili languages in the Kenya Certificates of Secondary Education (KCSE) examinations and being eligible for the conferment of a Bachelor of Laws degree from the Mount Kenya University, he is qualified to be enrolled to the Advocates Training Programme.

c. That the respondent has infringed on his right to education.

d. That the respondent has no basis to disqualify him whereas he has completed his Bachelor of Laws degree and he is qualified for admission to the Advocates Training Programme.

e. That the only mandate of the Kenya School of Law is to offer the Advocates Training Programme and not to check how one acquired his/her Bachelor of Laws degree.

f. That the decision of the Director was ultra-vires, unlawful and illegal as in doing so the Director of the Kenya School of Law ignored the facts:-

i. The appellant did his Kenya Certificate of Secondary Education in Kenya.

ii. The appellant has a Diploma in Law from an accredited University.

iii. The appellant has completed the Bachelor of Laws from Mount Kenya University an accredited university by the Council of Legal Education.

iv. The appellant has a constitutional right to education.

3. Accompanying the appeal as instituted is a certificate of urgency urging the fast tracking of the appeal and a supporting affidavit by the appellant.

4. The respondent and interested parties were served with the requisite pleadings as originated by the appellant. The respondent filed a replying affidavit through Mr. Fredrick Muhia – The Academic Services Manager at the School. The interested party did not respond to the appeal. The Tribunal gave directions for the disposal of the appeal by way of written submissions which the appellant and the respondent filed but the interested party failed to. The appeal came up for mention for directions as to highlighting with the appellant acting as a prose litigant and the respondent represented by Ms. Pauline Mbuthu – Advocate both of whom indicated to the Tribunal that they were relying on the rival positions as tendered in the documents lodged with the Tribunal and dispensed with highlighting. The matter was accordingly set down for judgment.

2. The appellant's appeal.

5. The appellant obtained a mean grade of x+ (Plus), grades x- (Minus) in English and x+ (Plus) in Kiswahili in the Kenya Certificate of Secondary Education (KCSE) being a student at the [Particulars Withheld] High School during the examination of November/December, 2010. He enrolled at the Mount Kenya University where he pursued a Diploma in Law and successfully completed in the year

2013 obtaining an award of Credit II. He sought and was granted admission by the Mount Kenya University to pursue a Bachelor of Laws degree. By a letter of completion issued on the 1st. July, 2021 by Dr. Ronald Maathai the Registrar Academic Administration of the said University, it is acknowledged that he completed the course work and examinations for the 4 year Bachelor of Laws degree and was awaiting graduation. He applied to be enrolled to the Advocates Training Programme, however the respondent rejected his application. The letter rejecting admissibility of the appellant to the Advocates Training Programme is as follows;

> " Ref. no: No. xxxx
>
> Date: 5th May, 2021
>
> Leon Kamau Kimani,
>
> Dear Mr. Kimani,
>
> Admission to The Kenya School of Law – 2021/22 Academic Year.
>
> Reference is made to your application for admission into the Advocates Training Programme (ATP) at the Kenya School of Law.
>
> It is regretted that your application was not successful for admission due to the reason that you have grade x - (minus) and x+ (plus) in English and Kiswahili languages respectively which is below the stipulated grade of B (Plain).
>
> Yours sincerely,
>
> Dr. Henry K. Mutai
>
> Director/chief Executive Officer"

6. The appellant's grievance is that the Director did not consider his Bachelor of Laws qualification but based his decision on the Kenya Certificate of Secondary Education certificate. It is his view that it is not the duty of the Director of the Kenya School of Law to check how one was admitted to the Bachelor of Laws degree but he ought to restrict himself to only offering the Advocates Training Programme. In a nutshell he terms the Director as a busy body by the action of going into pre - Bachelor of Laws degree admission criteria. He complains of discrimination by asserting that it is unreasonable for the respondent to discriminate against him just because of his Kenya Certificate of Secondary Education certificate. In the penultimate he deposes that it is in the best interest of justice if he is admitted to the Advocates Training Programme forthwith and the decision of the Director of the Kenya School of Law quashed. He reiterates that the Tribunal has the requisite jurisdiction to decide the matter.

3. The respondent's position on the appeal.

7. It asserts that it is a state corporation established under section 3 of the Kenya School of Law Act, 2012 previously established under the Council of Legal Education Act, 1995 (now repealed). It is mandated to train persons for purposes of the Advocates Act, Cap. 16 and for which it offers the Advocates Training Programme. In its view matters of admission to the Advocates Training Programme are exclusively provided for under section 16 of the Kenya School of Law Act, no. 26 of 2012. It contests the jurisdiction of the Tribunal to deal with the appeal on the basis that it is limited to the Legal Education Act, 2012. It is the Respondent's position that it is required by the establishing law to consider applications for admission to the Advocates Training Programme and once satisfied that an applicant is qualified proceed to admit the applicant to the School.

8. The respondent then sets out the procedural route to consideration of admissibility to the Advocates Training Programme as commencing with the publication of a notice in the local newspaper of an advertisement inviting applications at the beginning of every cycle. The advert sets out the eligibility criteria as provided for in the second schedule of the Kenya School of Law Act, 2012. The respondent contends that upon the appellant making the application to the Advocates Training Programme he did not meet the eligibility criteria provided for under section 16 as read together with paragraph 1 of the second schedule of the Kenya School of Law Act, 2012. Under section 16 of the Act as read with paragraph 1 of the second schedule thereof the requirement for admission to the Advocates Training Programme is a mean grade of C+ (plus) in the Kenya Certificate of Secondary Education (KCSE) with a B (plain) in English or Kiswahili language of which the appellant does not have. The appellant was relying on his Diploma in Law qualification to be admitted to the Advocates Training Programme yet the Kenya School of Law Act, 2012 does not have any provision for academic progression. It is bound by the provisions of the said law in determining eligibility to the Programme and it cannot grant admission on any other criteria save for the second schedule of the Act.

9. The respondent notified the appellant of his unsuccessful application and has not infringed on any of his rights and freedoms. It finally asserts that its decision as taken is consistent with the position that the High Court has in more than one decision taken while relying in the authority by Justice Weldon Korir in Nairobi High Court Petition no. 20 of 2019 – Victor Juma v Kenya School of Law & Council of Legal Education.

4. Appellant's submissions.

10. The appellant submits that the respondent's powers as stipulated in section 5 of the Kenya School of Law Act, 2012 do not include a mandate to investigate how one gains admission to pursue a Bachelor of Laws degree in a Kenyan University. He submits that sections 8, 18 and 19 of the Legal Education Act, 2012 assign the said function to the interested party. He submits that the Director of the respondent has also no mandate to undertake a background check on how one gained admission to pursue a Bachelor of Laws degree in a Kenyan University as the functions of the said office are confined to the School as provided for in section 14 (4) of the Kenya School of Law Act, 2012 and do not extend to the same.

11. On academic progression it is the appellant's view that the paragraph 2 of the second schedule to the Kenya School of Law Act, 2012 allows the School to admit students for para-legal programmes who upon completion are eligible to join Universities in Kenya to pursue a Bachelor of Laws degree. He submits that the course units taught at the School are provided for in part iii of the second schedule to the Legal Education Act, 2012. The said law is the only law that governs academic programmes at the School and it administers the Bar examinations while the School offers tuition. The said law provides for academic progression.

12. It is submitted that section 1 (a) of the second schedule to the Kenya School of Law Act, 2012 is clear that upon being eligible for an award of a Bachelor of Laws degree from a Kenyan University an applicant would be eligible for admission to the Advocates Training Programme. Further sections 1 (a) and 1 (b) of the second schedule to the Kenya School of Law Act, 2012 have distinct application for applicants who hold a Bachelor of Laws degree from a Kenyan University and from a foreign University. He relies on the authority in Adrian Kamotho Njenga v Kenya School of Law (2017) eKLR in which Justices Chacha Mwita held;

> " 39. Prior to the amendment, paragraph 1 (a) read; a person shall be admitted to the school if 'having passed the relevant examination of any recognized university

in Kenya holds, or has become eligible for the conferment of the bachelor of laws degree (LLB) of that university.

40. The words introduced through the amendment immediately after the words "university or" are "any university, University College or any other institution prescribed by the council'. In my respectful view, this amendment did not change the import and or purport of paragraph 1 (a) in so far as qualifications for joining ATP in this category are concerned. The inclusion of words "any university, university colleges or other institution prescribed by the Council, cannot be interpreted to mean anything more than that these are local universities, university colleges or institutions recognized by council of legal education which is responsible for setting and maintaining standards in the legal profession.

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.

42. This interpretation is supported by the Supreme Court's interpretation of section 83 of the Election Act, 2012, a provision with the disjunctive word "or". The Supreme Court stated that "the use of the word "or" clearly makes the two limbs disjunctive under our law. It is, therefore, important that, while interpreting Section 83 of our Elections Act, this distinction is borne in mind."- (see Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 4 others & Attorney General & another, petition No 1 of 2017)."

The appellant submits that the findings by Justice Mwita supra were expounded on in the authority in Republic v Kenya School of Law & Another ex – parte Kithinji Maseka Semo & Another, (2019) eKLR in which Justice John Mativo while affirming the same held;

" 27. At the center of this issue is section 16 of the KSL Act. The section bears the short title "admission requirements." It provides 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 Section 1 of the Second Schedule to the KSL Act. The said section provides that 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...

48. Since no legislature ever intends to give two simultaneous inconsistent commands, every statute must if possible be reduced to a single, sensible meaning before it is applied to any case....

49. From the dictionary and judicial precedents discussed above, it is clear that the word "or" is ordinarily used to introduce another possibility or alternative, that is either or. Depending on context, it can also be used interchangeably with the word "and." It follows that in construing statutory provisions, the context is important so as to get the real intention of the legislature.

50. Guided by the authorities cited above and the ordinary meaning of the word "or" in the context of the provision under consideration, it is my view that the use of the word "or" immediately after the semi-colon at the end of the sentence in section 1 (a) of the second schedule introduces another possibility, the first possibility being the category referred to in paragraph (a), that is:-

> " 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."

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."

13. The Judge also noted that the respondent had on countless occasions misconstrued the law on admissibility to the Advocates Training Programme in the aforesaid matter and went on further in Republic v Kenya School of Law & Another ex – parte Otene Richard Akomo & Another, (2019) eKLR to hold;

> " 108. KSL has been so inconsistent in its interpretation of the same provisions. It has in the past admitted students from neighbouring countries having the same qualifications as possessed by the applicants in this case. Curiously, some of the cases ably cited by the KSL's counsel among them the Mwiti case and the Adrian Kamotho case involved similar issues as in these cases in which decisions were made and KSL admitted the applicants in the said cases. What is worrying is this habit of interpreting and applying the same provisions differently coming as it does from a Law School, an institution whose duty is to train lawyers. As earlier stated, there are two common components of the rule of law, namely, the predictability of the law and the coherence of the legal system as a whole. This incessant inconsistent interpretation and application of the same provisions by the KSL despite clear judicial pronouncements on the subject and selectively citing decisions or paragraphs which are perceived

to be favorable to their position is a direct affront to the principle of the predictability of the law and the coherence of the legal system as a whole."

14. The appellant winds up his submissions by stating that the final examinations are offered by the interested party and marked by it of which it is the only body that regulates legal education in Kenya. It also prescribes through regulation the units to be undertaken in the Advocates Training Programme offered by the respondent. However, it seems not to have an issue with the admissibility of the appellant to the programme and thus it would be absurd for the respondent to be allowed to decline his admissibility.

5. Respondent's submissions.

15. It contests the jurisdiction of the Tribunal as the relief sought by the appellant falls outside the scope of its jurisdiction the Tribunal having been established under the Legal Education Act, 2012. The interested party plays a regulatory role only in legal education as opposed to one for admission to the Advocates Training Programme. The jurisdiction of the Tribunal is espoused in section 31 (1) of the Legal Education Act, 2012 as being;

> " The Tribunal shall, upon an appeal made to it in writing by any party or a reference to it by the council or by any committee or officer of the council, on any matter relating to this Act, inquire into the matter and make a finding thereupon, and notify the parties concerned."

16. The respondent then submits on legitimate expectation quoting the treatise by B. N. Pandley, titled The Doctrine of Legitimate Expectation that it imposes in essence a duty on a public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. It acknowledges that the appellant has a law degree from Mount Kenya and applied for admission to the Advocates Training Programme. It reproduces the requirements for admission as set in the sections 1 (a) and (b) of the second schedule to the Kenya School of Law Act, 2012. It is submitted that the appellant cannot gain benefit from section 1 (a) of the schedule to the Act as he fails to meet the minimum KCSE mean grade of C+ (plus). It relies on the decision in Peter Githaiga Munyeki v Kenya School of Law (2017) eKLR by Justice Mwita in which the Learned Judge in interpreting section 1 (a) of the schedule to the Act he indicated that it applied to persons who attended local universities while 1 (b) applied to persons with foreign law qualifications. He then proceeded to apply the holistic reading tenet of interpretation as including the minimum secondary school qualification to both those who attended local universities and foreign universities. Reliance is then placed on the decision in Union of India v Hindustan Development Corporation (1993) 3 SCC 499 where the court noted;

> " Legitimate expectation was not the same thing as anticipation. It was also different from a mere wish, desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequences."

17. The respondent well asserts the provisions of article 47 of the Constitution of Kenya, 2010 as providing that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The respondent then invokes the aid of the decision in Kenya Revenue Authority v Menginya Salim Murgani, Civil Appeal no. 108 of 2009 in which the Court of Appeal rendered itself as follows;

> " There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they

achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed."

18. The respondent submits that the Kenya School of Law Act, 2012 does not provide for academic progression. It is erroneous to refer to regulations 3, 4, and 5 of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 that provide for academic progression in legal education. The subsidiary legislation was inconsistent with the establishing statute of the School. Section 31 (b) of the Interpretation and General Provisions Act, Cap. 2 provides;

> " Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall unless a contrary intention appears have effect with reference to the making of the subsiding legislation:
>
> a) .....
>
> b) No subsidiary legislation shall be inconsistent with the provisions of an Act."

19. The decision in Evans Odhiambo Kidero & 4 Others v Ferdinand Ndungu Waititu & 4 Others (2014) eKLR is quoted to fortify the said view. The respondent also relies in Victor Juma v Kenya School of Law & Another (2020) in which Justice Weldon Korir held;

> " It is therefore my finding 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 Kenya School of Law Act.
>
> This means the petitioner cannot benefit from the vertical progression recognized in the Legal Education (Accreditation and Quality Assurance) Regulations, 2016."

20. Finally, it submits that the respondent as an institution, it cannot look beyond the provisions of its enabling Act in admitting students to the Advocates Training Programme. It relies in the authority in Peter Githaiga Munyeki v Kenya School of Law (2017) eKLR in which Justice Mwita held;

> " That the Kenya School of Law is the institution mandated to train persons to become professional Advocates and that mandate is exercised pursuant to the Kenya School of Law Act, 2012 and regulations made thereunder. The KSL Act, 2012 in conferring that mandate to KSL does not make reference to any other Act in so far as admission requirements to Advocates Training Programme are concerned. In that regard, section 16 of the Kenya School of Law Act, 2012 is clear and unequivocal that qualifications for admission to the Advocates Training Programme are those contained in the second schedule to the Act."

6. Analysis and determination.

a. Jurisdiction.

21. John Beecroft Sanders in his treatise, Words and Phrases Legally Defined, vol. 3 at page 113 gives the definition of the term 'jurisdiction' as follows;

> " By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to

the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.....where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given".

22. The issue has to be decided first in tandem with Justice Nyarangi J. A. as he then was in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd, [1989] KLR 1. The relevant edict from the authority is as follows;

> " I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

23. The appellant and the respondent have both canvassed the issue of progression in the legal progression. The position of the appellant is that he did after completion of his secondary school education undertake a Diploma in Law qualification and then proceeded to obtain a Bachelor of Laws degree. The position of the respondent is that academic progression is not provided for in the law governing its operations which is the Kenya School of Law Act, 2012. It is apparent the appellant gained admission into the degree by dint of the Diploma qualification which brings out the fact that he derives benefit from academic progression. The said progression is a matter falling under the mandate of the interested party which is established under the Legal Education Act, 2012 and in which law the Tribunal is also established. Therefore, it is clear that Tribunal is empowered to deal with the appeal as by dint of section 31 (1) of the Legal Education Act, 2012 it is entitled to deal with any matter under the Act. The Tribunal derives guidance from the authority in Republic v Kenya School of Law & 2 others Exparte Kgaborone Tsholofelo Wekesa (2019) eKLR in which Justice Mativo held at paragraph 33 therein;

> " The preamble to the Legal Education Act provides that it is an Act of Parliament to provide for the establishment of the Council of Legal Education; the establishment of the Legal Education Appeals Tribunal; the regulation and licensing of legal education providers and for connected purposes. Section 31 of the act provides for the jurisdiction of the Tribunal. A reading of the section leaves me with no doubt that the Tribunal's jurisdiction is to determine an appeal made to it in writing by any party or a reference made to it by the Council or by any committee or officer of the Council, on any matter relating to the Act. The ex parte applicant's dispute distilled above in my view squarely falls within the Tribunal's jurisdiction."

24. Also the respondent cannot purport to operate in sole isolation of the Kenya School of Law Act, 2012 as the power to make regulations for persons wishing to enroll in legal education programmes and progression in the legal education sphere are a sole preserve of the interested party. The relevant provisions are in sections 8 (1) (a), 8 (2), 8 (3) (a) and (b) of the Legal Education Act, no. 27 of 2012 which provides;

> " (1) The functions of the council shall be to-
>
> a. Regulate legal education and training in Kenya offered by legal education providers;

(2) Without prejudice to the generality of subsection (1), the council shall, with respect to legal education providers, be responsible for setting and enforcing standards relating to the .....

(3) In carrying out its functions under subsection (2), the council shall:-

a) Make regulations in respect of requirements for the admissions of persons seeking to enroll in legal education programmes;

b) ...;

(c) formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels."

25. Also, the body mandated to administer examinations for persons who intend to be admitted to the Bar is the interested party and the respondent remains a delegate for the purposes of admission to the programme and the conduct of the examinations. Infact, the Bar examination structure confirms that the interested party is a central player as the school deals with 40% of the total examination mark through the project course work and oral examinations while the interested party deals with the written examination marked out of 60%. Thus the Tribunal has the mandate to inquire into the admission process that will eventually lead to the Bar examinations. The said issue was addressed by the High Court in Nabulime Miriam & Others v Council of Legal Education & 5 Others, (2016) eKLR in which Justice Odunga held;

> " That the body with the legal mandate to determine the qualification for Admission, registration of Applicants to the Kenya School of Law is the Council but the actual admission of students to the School is to be undertaken by the School. That the body with the legal mandate as between Kenya School of Law, and the Council for Legal Education, to set, supervise or mark Advocate Training Programme examinations is the Council though in this instance, that mandate was delegated to the School by the Council."

26. In the premises the Tribunal confirms that it has the requisite jurisdiction to deal with the appeal.

b. The appeal.

27. The admission qualifications for entry into the Advocates Training Programme are well spelt out in sections 1 (a) and 1 (b) of the second schedule to the Kenya School of Law Act, 2012. For ease of reference the same provides as follows;

> " A person shall be admitted to the School if—
>
> (a) having passed the relevant examination of any recognised 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."

28. The contention by the appellant that he falls under section 1 (a) of the second schedule is proper. He has become eligible to be conferred with an LLB degree by the Mount Kenya University which is a recognized University in Kenya based on the letter of the Registrar of the said University. The respondent has sought to extend the requirements in section 1 (b) of the second schedule to the appellant, it is the finding of the Tribunal that the same would be improper. The conjunction 'or' between (a) and (b) means that only one is applicable to an applicant. If the applicant is from a recognized university in Kenya the category applicable is (a) without resort and reference to (b). The distinction is well addressed by Justice Chacha Mwita in Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority, (2021) eKLR at paragraph 110 as follows;

> " Given the diverse nature of the persons targeted under categories (a) and (b) of the Second Schedule of the KSL Act, it is obvious that their qualifications cannot be similar. It is for those reasons that I echo the position that category (a) and (b) are different hence the visible use of the word 'or'."

29. The Learned Judge addressed the various pronouncements made by the courts and which covers the decisions relied on by the parties to this appeal on said legal provisions relating to admissibility to the Advocates Training Programme as follows;

> " 106. There are two schools of thought on the interpretation of the above provision. One school fronts the position that requirements in paragraph 1 (a) and 1 (b) must be similar otherwise there shall be discrimination of the students falling within category paragraph 1 (a) and those in 1 (b). The other school of thought is of the position that the two categories are different and ought to be treated as such.
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> 107. Some of the decisions which posit that the qualifications must be similar include Nairobi High Court Petition No. 20 of 2019 Victor Juma vs. Kenya School of Law, Bishar Adan Mohamed vs. Kenya School of Law (2020) eKLR, Peter Githaiga Munyeki vs. Kenya School of Law (2017) eKLR, R. vs. Kenya School of Law exparte Daniel Mwaura Marai (2017) eKLR, among many others.
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> 108. The Courts in Judicial Review Application Nos. 7, 8, 13, 20, 21 and 26 of 2020 Republic vs. Kenya School of Law & Others (2020) eKLR and in Kevin K. Mwiti & Others vs. Kenya School of Law & 2 Others (2015) eKLR were categorical that the qualifications for persons intending to join the ATP under 1(a) and 1(b) are different.
>
> 109. I have carefully read the said decisions among others on the interpretation of paragraph 1(a) and 1(b) above. I associate myself with the school of thought that the two categories are different and ought to be treated as such.

110. I must acknowledge the great detail in which the Court in Judicial Review Application Nos. 7, 8, 13, 20, 21 and 26 of 2020 Republic vs. Kenya School of Law & Others (2020) eKLR went in demonstrating the difference between the words 'or' and 'and'. The discussion is highly persuasive and is a reasonable and candid exposition of the law.

111. If I may add my voice to the discussion, I find the use of the word 'or' by the drafters was very deliberate. To me, category 1(a) dealt with those persons who joined a recognized university in Kenya and obtained or became eligible for the conferment of the Bachelor of Laws (LLB) degree of that university. Mostly, such persons would be those who studied under the 7-4-3-3 or 8-4-4 systems in Kenya and qualified to join the universities and were eligible for and were admitted to pursue studies towards the conferment of the Bachelor of Laws (LLB) degrees."

30. In the premises the decision of the respondent rejecting the appellant's application to the Advocates Training Programme is not supported by the law. The Tribunal has a duty to ensure that the respondent and the interested party follow the law as it is not a choice but an obligation on their part. The Tribunal derives guidance from the authority in Resley v The City Council of Nairobi, (2006) 2 EA 311 where it was held that;

> " In this case there is an apparent disregard of statutory provisions by the respondent, which are of a fundamental nature. The Parliament has conferred powers on public authorities in Kenya and has clearly laid a framework on how those powers are to be exercised and where that framework is clear, there is an obligation on the public authority to strictly comply with it to render its decision valid...the purpose of the court is to ensure that the decision making process is done fairly and justly to all parties and blatant breaches of statutory provisions cannot be termed as mere technicalities by the respondent. That the law must be followed is not a choice and the courts must ensure that it is so followed and the respondent's statements that the Court's role is only supervisory will not be accepted and neither will the view that the Court will usurp the functions of the valuation court in determining the matter. The court is one of inherent and unlimited jurisdiction and it is its duty to ensure that the law is followed...if a local authority does not fulfil the requirements of law, the court will see that it does fulfil them and it will not listen readily to suggestions of "chaos" and even if the chaos should result, still the law must be obeyed. It is imperative that the procedure laid down in the relevant statute should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public Bodies and Ministers must be compelled to observe the law: and it is essential that bureaucracy should be kept in its place."

31. The decision of the respondent becomes one amenable to be set aside by the Tribunal based on it being an action or decision which has been materially influenced by an error of law as provided for in section 7 (2) (d) of the Fair Administrative Action Act, 2015. This is so notwithstanding the fact that the respondent has sought to justify its actions based on the decision in Kenya Revenue Authority v Menginya Salim Murgani, Civil Appeal no. 108 of 2009 in which the Court of Appeal concluded that there is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. The Tribunal makes a finding that the said position is no longer permissible with the enactment of the Fair Administrative Action Act, 2015 and the promulgation of the Constitution of Kenya, 2010 which in article 47 of therein recognizes the

right to fair administrative action and of which the respondent well acknowledges to be applicable in its submissions.

32. The Tribunal having arrived at a finding that the appellant is eligible to admission to the Advocates Training Programme it will not delve into the issues of the mandate of the Director of the respondent and the breach of the right to education as taken up by the appellant and the issue of legitimate expectation raised by the respondent as they are now otiose, bearing in mind the finding reached on the admissibility of the appellant to the Advocates Training Programme.

7. Disposition.

a. That the decision of the respondent as communicated by the Director of the Kenya School of Law dated the 5th May, 2021 Ref: no. Nxxxx declining admissibility of the appellant to the Advocates Training Programme is set aside and substituted thereof a finding that the appellant is eligible to admission based on section 1 (a) of the second schedule to the Kenya School of Law Act, 2012.

b. That the appellant be admitted to the Advocates Training Programme forthwith.

c. That each party to bear own costs of the appeal.

d. That any party so aggrieved is at liberty to lodge an appeal with the High Court on a point of law in-accordance with section 38 (1) of the Legal Education Act, 2012.

It is so ordered by the Legal Education Appeals Tribunal.

DATED AT NAIROBI THIS 20TH DAY OF AUGUST, 2021

ROSE NJOROGE – MBANYA - (MRS.)

CHAIRPERSON

EUNICE ARWA - (MRS.)

MEMBER

RAPHAEL WAMBUA KIGAMWA (MR.)

MEMBER

STEPHEN GITONGA MUREITHI (MR.)

MEMBER

I Certify this is a true copy of the original judgment of the Tribunal.

GILBERT ONYANGO - REGISTRAR