



**Kariuki v Kenya School of Law; Council of Legal Education (Interested Party)
(Appeal E024 of 2022) [2022] KELEAT 199 (KLR) (Civ) (15 July 2022) (Judgment)**

Neutral citation: [2022] KELEAT 199 (KLR)

**REPUBLIC OF KENYA
IN THE LEGAL EDUCATION APPEALS TRIBUNAL
CIVIL
APPEAL E024 OF 2022**

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

JULY 15, 2022

BETWEEN

JOHN GUTHEKA KARIUKI APPELLANT

AND

KENYA SCHOOL OF LAW RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION INTERESTED PARTY

(Being an appeal against the decisions by Dr. H. K. Mutai – Director of the Kenya School of Law dated 2nd March 2022 rejecting the Appellant's application for admission to the Advocates Training Programme)

JUDGMENT

A. Introduction and background.

1. The appellant, John Gutheka Kariuki lodged a Memorandum of Appeal dated April 20, 2022 against the Kenya School Of Law as a Respondent and the Council Of Legal Education as an Interested Party with the Tribunal. The Appeal was accompanied by a Notice of Motion Application filed under a Certificate of Urgency and a Supporting Affidavit all dated April 20, 2022. The Application which sought the certification of the matter as urgent was dispensed with in the first instance.
2. The Appeal and the accompanying documents were served upon the Respondent and the interested party.
3. The interested party did not appear or file any documents in the matter despite being duly served.



4. The respondent entered appearance on May 9, 2022 and lodged a replying affidavit in response to the Appeal sworn by Mr. Fredrick Muhia – the Academic Services Manager of the Kenya School of Law on May 6, 2022.
5. The Appeal was directed to be disposed of by way of written submissions upon the consent of the appellant and the respondent. The appellant and respondent lodged their submissions on May 25, 2022 and May 31, 2022 respectively.

B. The appeals.

6. John Gutheka Kariuki the appellant seeks to impugn the decision of the respondent as taken on the March 2, 2022 in respect of his application for admission to the Advocates Training Programme. The Appellant attained a mean grade of C (Plain), grades C+(Plus) in English and C+ (Plus) in Kiswahili languages in the Kenya certificate of Secondary Education examination (KCSE).
7. He was admitted by the respondent to pursue a Diploma in Law and was awarded a Diploma in Law (Paralegal Studies) in 2017.
8. The appellant submits that he secured admission to pursue a Bachelor of Laws degree at the Kenyatta University.
9. Prior to the University granting him admission it sought confirmation as to the eligibility of the appellant from the interested party. The said interested party on the August 30, 2017 wrote to the University confirming that the appellant was eligible for admission. An extract of the letter is in the following terms;

“A review of the High School and Diploma in Law qualifications for the persons listed below reveal that they all obtained Diploma in Law qualifications from the Kenya School of Law with at least a credit pass. They therefore meet the LL.B entry requirements prescribed in paragraph 5 of the 3rd schedule of the Legal Education (Accreditation and Quality Assurance) Regulations.”

10. The appellant graduated with an LL.B degree from the Kenyatta University on December 17, 2021 with a Second Class Honours Upper Division.
11. In rejecting the appellant’s application to the Advocates Training Programme the Respondent in its letter of March 2, 2022, wrote as follows;

“It is regretted that your application was not successful for admission due to the following reason(s):

Does Not Meet The Minimum Qualification Of Kcse Of B Plain In English Or Kiswahili

12. The appellant seeks a declaration that he qualifies for admission to the Advocates Training Programme (“ATP”) as provided in section 1(a) of the Second Schedule of the Kenya School of Law Act of 2012 as amended by the Statute Miscellaneous (Amendments) Act of 2014. He also seeks that an order be issued compelling the respondent to admit him to the ATP.

C. The Response to the Appeals.

13. The respondent contends that it is a state corporation established under section 3 of the Kenya School of Law Act, 2012 and is the successor of the erstwhile School established under the Council of Legal Education Act, Cap. 16A (repealed) with the mandate to train persons for the purposes of the Advocates



Act, Cap. 16. To this end it offers the Advocates Training Programme. Matters of admission to the said Programme are solely regulated by the Kenya School of Law Act, 2012 while the Tribunal is established under the Legal Education Act, 2012 and therefore lacks jurisdiction in this matter.

14. The respondent avers that the appellant made his application to the ATP and was found to be ineligible as per the eligibility criteria under section 16 of the Kenya School of Law Act, 2012 as read with Paragraph 1 of the Second Schedule to the said Act. It is the view of the Respondent that based on the said law, the appellant in order to be eligible for admission to the Advocates Training Programme ought to have attained a mean grade of C + (Plus) and a B (Plain) in English or Kiswahili languages at the Kenya Certificate of Secondary Education (KCSE) examinations which the appellant did not have.
15. The respondent contends that the appellant was relying on academic progression to gain admission into the ATP which is not provided for in the Kenya School of Law Act, 2012. The respondent is bound by its statute to only admit students who meet the admission requirements in it. It contends that allowing people to join the ATP on the basis that they had a Diploma in Law prior to enrolling for admission to the LLB Degree would amount to discrimination and application of double standards while circumventing the clear provisions of the law.
16. The respondent contends that the High Court has on more than one occasion supported its interpretation of the law on admission to the ATP. The interpretation to be accorded to the conjunction 'or' in sections 1 (a) and (b) of the Second Schedule to the Kenya School of Law Act, 2012 ought to be a conjunctive one in order to avoid absurdity and discrimination of applicants to the ATP. It seeks to challenge the application of the statutory canon on interpretation by contending that it ought only to apply where it furthers the legislative intention. It further seeks to have an interpretation that will not create an obnoxious result on public policy even when words *prima facie* carry only one meaning.
17. The prayer of the respondent is for dismissal of the Appeal.

D. Analysis and determination.

Jurisdiction and competence of the appeals

18. The respondent has taken up the issue of the jurisdiction of the Tribunal to deal with the appeal. The issue of jurisdiction was addressed in the decision in Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited, (1989) KLR 1 in which Justice Nyarangi JA. as he then was held;

"By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognisance 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 the 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 cognisance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist."

19. The Tribunal in addressing its jurisdiction revisits the facts of the appeal. The appellant herein obtained a Diploma in Law qualifications from the respondent before enrolling for a Bachelor of Laws degree



at the Kenya University. The said University before granting him admission wrote to the interested party to confirm his eligibility. The interested party in its communication to Kenyatta University on the August 30, 2017 confirmed that the appellant was eligible for admission to the Bachelor of Laws degree. It took into account the High School and Diploma in Law qualifications. The interested party relied on the provisions of regulation 5 of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The interested party's statutory mandate under section 8 (3) (a) of the Legal Education Act, 2012 is to make Regulations in respect of persons wishing to enrol in Legal Education Programmes. The same provides;

“ Functions of the Council:

- 1)
- 2) ...
- 3) In carrying out its functions under subsection (2), the Council shall—
 - a) make Regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes;....”

20. The Interested Party and the Tribunal are established in the same statute. The Tribunal finds that an inquiry into this matter is part of the functions of the Tribunal in this appeal. The Tribunal will be addressing matters within the confines of section 31 (1) of the Legal Education Act, 2012. The Tribunal stands guided by the authority in Republic v Kenya School of Law & 2 others ex parte 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.”

21. The appellant also relies on academic progression in seeking to gain admission to the Advocates Training Programme. The respondent on its part contends that academic progression is not provided for in its establishing law. The Tribunal finds that in section 8 (3) of the Legal Education Act, 2012 it is provided inter – alia on the Interested Party's functions;

“ Functions of the Council:

- 1)
- 2) ...
- 3) In carrying out its functions under subsection (2), the Council shall—...
 - 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;....”



22. The Tribunal finds that in determining the question of application of academic progression as a consideration to admission to the Advocates Training Programme which is well spelt-out in the Legal Education Act, 2012 in section 8 (3) (c) it will be dealing with matters within its statutory mandate.

23. The Tribunal has taken time to consider the application of the authority relied on by the respondent in Republic v Rent Restriction Tribunal ex-parte: Mayfair Bakeries Limited & another, (1982) eKLR in which Justices Sachdeva and Brar JJ were dealing with the exercise of jurisdiction by the Rent Restriction Tribunal and in which the challenge as to its jurisdiction failed. The Learned Judges as they then were found that a Tribunal is a creature of statute and has only such jurisdiction as has been specifically conferred upon it by the Statute. In this instance section 31 of the Legal Education Act, 2012 expressly confers upon this Tribunal the jurisdiction to deal with any dispute on admission to a Legal Education Programme since section 8 (3) (a) of the Act reposes upon the Interested Party the mandate to make regulations as to admission requirements to the said Programmes. The programs include the Diploma in Law, the LLB degree and the Postgraduate Diploma in Law being offered by the respondent. Before the Tribunal is an appeal by the appellant who applied for admission to the Advocates Training Programme whose qualifications were set by the interested party in its Regulations. Section 31 provides;

“(1) The Tribunal shall, upon 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 this Act, inquire into the matter and make a finding thereupon, and notify the parties concerned.

(2) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence on oath or affirmation and to call for the production of books and other documents.

(3) Where the Tribunal considers it desirable for the purposes of avoiding expenses, delay or for any other special reasons, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.

(4) When determining any matter before it, the Tribunal may take into consideration any evidence, which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence, would not otherwise be admissible under the law relating to evidence.”

24. While section 8 (3) (c) of the Act addresses progression. The appellant has appealed in writing to the Tribunal under section 31 (1) of the Act. The Tribunal has wide powers to inquire into any matter under the Act. The Tribunal thus finds that it has jurisdiction to hear the appeal.

The Appeal

25. The respondent has denied the appellant admission to the Advocates Training Programme on the basis of his failure to meet minimum Kenya Certificate of Secondary Education qualifications. It is noted that the interested party in its letter dated August 30, 2017 confirmed the eligibility of the appellant for admission to the Bachelor of Laws degree based on the provisions of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

The respondent cannot subsequently seek to overturn the position as communicated by a public institution, being the Council of Legal Education on the appellant's eligibility. The Tribunal is well



guided by the authority in *Robert Uri Dabaly Jimma v Kenya School of Law & another*, (2020) eKLR by Justice Antony Mrima as follows at paragraphs 85 – 86;

“ 85. A synopsis of the Legal Act posits that it is the Council which is at the heart of legal training and education in Kenya. The Council has powers not only to regulate and licence the legal education providers but also to supervise what and how they offer their services to the public.

86. It can, therefore, be only the case that the Council has a duty to regulate how the universities admit students to pursue various cadres of legal education; that is at the certificate, diploma and degree levels. That duty must be discharged at the point of entry of the student at the institution offering such courses. A legal education provider, must, at the direction and supervision of the Council, be able to determine whether a student is qualified to pursue studies in law at the time the student applies to join the institution, that is a college or a university.”

26. The law relied on by the interested party in making the representation as to the eligibility of the appellant was regulation 5 of the 3rd Schedule to the *Legal Education (Accreditation and Quality Assurance) Regulations, 2016* which provided;

“ 5. Undergraduate Degree Programme

(1) The minimum admission requirements for an undergraduate degree programme in law shall be —

(a) a mean grade of C+ (Plus) in the Kenya Certificate of Secondary Education examination or its equivalent with a minimum grade of B Plain in English or Kiswahili;

(b) at least three Principal Passes in the Kenya Advanced Certificate of Education examination;

(c) a degree from a recognised university; or

(d) a Credit Pass in a diploma in law examination from an accredited institution.”

27. The appellant relied on the said Regulations as they then were in force before the Court of Appeal declared the same to be invalid for want of compliance with the *Statutory Instruments Act, 2013* on December 21, 2021 in the decision of *Javan Kiche Otieno & another v Council of Legal Education*, (2021) eKLR in securing admission to the undergraduate Degree Programme. The respondent cannot now deny them admissions to the Advocates Training Programme as their admissions were crystallized actions prior to the declaration of invalidity.

28. The respondent by virtue of the *Fair Administrative Action Act*, 2015 was not empowered to take the decision or undertake the exercise it did of inquiring into minimum undergraduate LL.B degree entry requirements as it was a function of the interested party as a regulator. The same provides at section 7 (2) (a) (i) therein while empowering the Tribunal to review the decisions of the respondent in the following terms;

“A court or tribunal under subsection (1) may review an administrative action or decision, if –



(a) The person who made the decision ---
was not authorized to do so by the empowering provision; ...”

29. With regards to the application of section 1 (a) instead of section 1 (b) of the Second Schedule to the *Kenya School of Law Act*, 2012 to the appellant, the Tribunal finds that the appellant being from a recognized University in Kenya was only to be subjected to section 1 (a) thereof. The provisions in issue provide;

“(a) Admission Requirements into the Advocates Training Programme.

(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 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 conjunction ‘or’ can only be read as connoting an election of the route an applicant to the Advocates Training Programme chooses in pursuing his/her LLB Degree qualification. This Tribunal is bound to make a finding which is consistent with the express text of the law, it cannot deviate from it in a bid to seek to remedy what the respondent alleges to be the application of double standards or perceived discrimination. The Tribunal is guided by the



authority in *Warburton v Loveland*, (1831) 2 Dow & Cl. (H.L) at page 489 in which Tindal LJ held;

“Where the language of an Act is clear and explicit we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature.”

31. The Tribunal is further fortified by *Maxwell on Interpretation of Statutes*, 12 edition page 1 in which it is observed;

“Granted that a document which is presented to it as a statute is an authentic expression of the legislative will, the function of a court is to interpret that document ‘according to the intent of them that made it.’ From that function the court may not resile; however ambiguous or difficult of application the words of an Act of Parliament may be, the court is bound to endeavour to place some meaning upon them. In so doing it gives effect, as the judges have repeatedly declared, to the intention of Parliament, but it may only elicit that intention from the actual words of the statute. ‘If,’ said Lord Greene M.R.,

‘If the language is clear and explicit, the court must give effect to it, ‘for in that case the words of the statute speak the intention of the Legislature.’

And in so doing it must bear in mind that its function is *jus dicere*, not *jus dare*: the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament.”

32. Finally, The Tribunal adopts the interpretation of the second schedule to the *Kenya School of Law Act*, 2012 in *Republic v Kenya School of Law & another ex – parte Kitinji Maseka Semo & another*, (2019) eKLR by Justice Mativo as follows;

“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.”

E. Disposition

The Tribunal now decree as follows:-

- a. That the appeal dated April 20, 2022, is allowed.
- b. That the decision dated the March 2, 2022 as communicated by the Director of the Kenya School of Law to John Gutheka Kariuki denying him admission to the Advocates Training Programme, is quashed.
- c. That an order is issued directing the respondent to forthwith admit the appellant John Gutheka Kariuki to the Advocates Training Programme.
- d. That each party to bear its own costs of the appeal.
- e. That any party aggrieved has the liberty to appeal to the High Court under section 38 (1) of the Legal Education Act, 2012 on a point of law.

It is so ordered by the Legal Education Appeals Tribunal.

Dated at Nairobi this 15th day of July, 2022.

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

