Charity v Kenya School of Law; Council of Legal Education (Interested Party) (Appeal E005 of 2021) [2022] KELEAT 26 (KLR) (28 January 2022) (Judgment)

Wamuyu Charity v Kenya School Of Law; Council Of Legal Education (Interested Party) [2022] eKLR

Neutral citation: [2022] KELEAT 26 (KLR)

REPUBLIC OF KENYA

IN THE LEGAL EDUCATION APPEALS TRIBUNAL

APPEAL E005 OF 2021

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

JANUARY 28, 2022

BETWEEN

WAMUYU CHARITY ..... APPELLANT

AND

KENYA SCHOOL OF LAW ..... RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION ..... INTERESTED PARTY

(Being an appeal against the decision of Dr. H. K. Mutai – Director/Chief Executive Officer of the Kenya School of Law dated the 26th. April, 2021 rejecting admission into the Advocates Training Programme during the 2021/2022 academic year)

JUDGMENT

1. Introduction.

1. The appellant Wamuyu Charityhas lodged an appeal against the decision of the Director/Chief Executive Officer of the respondent dated the 26th. April, 2021. By the impugned decision, the respondent declined to grant her admission to the Advocates Training Programme during the 2021/2022 academic year. The decision as communicated assigned the reason for declining admission to the Advocates Training Programme (ATP) as being that the appellant had a mean grade of C (plain) in the Kenya Certificate of Secondary Education (KCSE) which was below the stipulated minimum entry grade to the said programme of C+ (plus).

2. The appellant in her memorandum of appeal invokes an array of legal provisions to wit; the Constitution of Kenya, 2010, the Legal Education Act, 2012, the Kenya School of Law Act, 2012 as amended through Statute Law (Miscellaneous Amendments) Act, no. 18 of 2014 and the Fair Administrative Action Act, 2015. Accompanying the appeal is a supporting affidavit. The respondent and the interested party were duly served with the appeal however, only the respondent filed a replying affidavit through Mr. Fredrick Muhia the Academic Services Manager of the Kenya School of Law.

The appellant filed a further affidavit sworn on the 12th. November, 2021. The appeal was directed to be disposed of by way of written submissions. The parties duly lodged the same with the Tribunal. The appellant was represented by the law firm of Muri Mwaniki Thige & Kageni LLP while the respondent was represented by Ms. Pauline Mbuthu. The interested party did not appear during the proceedings.

1. The appeal by the appellant.

3. The position of the appellant is that on the 24th. November, 2014 she applied and was enrolled at the Mount Kenya University to pursue a Diploma in Law and graduated in 2016. She then proceeded to apply and was admitted by the University of Nairobi to pursue a Bachelor of Laws degree which she successfully completed and graduated in the year 2020 with a Second Class Honours Upper Division. Upon the respondent placing an advertisement inviting applications for admission to the Advocates Training Programme, she applied but however, by a letter dated the 26th. April, 2021 the respondent notified her that her application was not successful since she had a mean grade of C plain rather than the stipulated grade of C+ (plus).

4. She appealed to the respondent against the decision vide a letter dated the 6th. May, 2021 in which she contended that in September, 2014 she enquired at the Mount Kenya University on the Diploma in Law Programme and was informed that the institution was accredited to offer the same. Also upon graduation she would be admissible to the Advocates Training Programme subject to joining a recognized University to undertake the LLB degree. She was assured that it was the right path to follow since it was inaccordance with the eligibility criteria of the Kenya School of Law. It was her contention that at the time of admission to the Diploma in Law there were no rules pertaining progression as the same came thereafter in December, 2014 after she had already secured admission at the Mount Kenya University.

5. The respondent on the 13th. May, 2021 addressed the appellant's appeal and reiterated that she did not meet the minimum admission requirements to the Advocates Training Programme as provided for under the Kenya School of Law Act, 2012. The appellant did not relent on her quest to seek admission to the programme and on the 8th. June, 2021 addressed a further appeal to the respondent in which she reiterated that on the 24th. November, 2014 she made an application to Mount Kenya University School of Law for a Diploma in Law course. According to her this was several weeks before the rules pertaining to progression from Diploma to Degree came into force on 8th. December, 2014. She attached a letter from the Mount Kenya University dated the 25th. May, 2021 confirming her enrollment on 24th. November, 2014 for the 2014/2015 academic year. She successfully completed the course and graduated with a Diploma in Law, upon which she was admitted to the University of Nairobi and successfully completed the LLB degree in December, 2021.

6. The respondent rejected the said further appeal on the 15th. June, 2021 indicating that the relevant date for purposes of determining her suitability for admission to the Advocates Training Programme was the date of admission to the LLB degree and not the Diploma in Law. In light of that her appeal was unsuccessful and the position of the School remained as communicated on the 13th. May, 2021.

2. The respondent's position on the appeal.

7. The respondent acknowledged that the appellant made an application to be admitted to the Advocates Training Programme however, the same was unsuccessful as she had not attained the stipulated mean grade of C+ (plus) and B (plain) in English as provided for in section 16 as read together with the second schedule to the School of Law Act, 2012 as amended in 2014. It contests the jurisdiction of the Tribunal to entertain the appeal as the respondent is established by its own statute being the Kenya School of Law Act, no. 26 of 2012 with the objective of training persons to be advocates. The respondent based

on its statutory mandate as conferred by section 17 of the Kenya School of Law Act, 2012 assessed the application by the appellant and she was found ineligible since she did not meet the required secondary school qualifications of a B (plain) in English or Kiswahili together with a mean grade of C+ (plus) in the Kenya Certificate of Secondary Education. Based on the decision as taken and the Tribunal having been established under the Legal Education Act, 2012 it was devoid of jurisdiction to deal with an appeal against the said decision.

8. It is further contended that the decision declining the application to the Advocates Training Programme was not illegal or unreasonable. The respondent denies that the appellant qualifies for admission by dint of academic progression since its establishing regime has no provision on the same.

3. The appellant's submissions.

9. On the challenge on the jurisdiction of the Tribunal, the appellant contends that at the heart of the appeal is the question of academic progression her having obtained admission into the LLB degree programme by virtue of her Diploma in Law. The said issue of progression is well addressed in the Legal Education Act, 2012. The Superior Courts together with the Tribunal have settled that the issue of admission to the School ought to be addressed by the Tribunal. She calls into aid the decisions of the Tribunal in LEAT no. 1 of 2020 – Bethsheba Achieng Nyamiwa v Kenya School of Law & the Council of Legal Education; Leon Kamau Kimani v Kenya School of Law & the Council of Legal Education, (2021) eKLR and John Kibegwa & 8 Others v Kenya School of Law & the Council of Legal Education, (2021) eKLR. She also relies in the decision of Republic v Kenya School of Law & 2 Others ex –parte Kgaborone Tsholefelo Wekesa, (2019) eKLR in which Justice John Mativo refrained from dealing with a dispute involving admission to the Kenya School of Law while finding that the same was a matter to be addressed by the Tribunal. The appellant also contended that the bar examinations structure made the interested party a central player on the issue of admissions. The appellant invoked the decision 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."

11. As regards the eligibility of the appellant to the Advocates Training Programme, the appellant submits that she holds a Bachelor of Laws degree from a recognized University in Kenya which renders her to qualify to join the programme by dint of section 1 (a) of the second schedule to the Kenya School of Law Act, 2012. The appellant relies in the decision of Adrian Kamotho Njenga v Kenya School of Law, (2017) eKLR in which the court concluded that in considering the issue of admissions to the Kenya School of Law applicants who hold qualifications from recognized Universities in Kenya are to be dealt with based on the criteria set in section 1 (a) of the second schedule to the Kenya School of Law Act, 2012 while for graduates with LLB degree qualifications from foreign Universities are to be governed by section 1 (b) of the second schedule to the Kenya School of Law Act, 2012.

12. The appellant contends that the discourse on the conjunction 'or' between sections 1 (a) and (b) of the second schedule to the Kenya School of Law Act, 2012 was settled by Justice Mativo in Republic v Kenya School of Law, Nairobi High Court Misc. Appli. No. 32 of 2019 (JR). It was further addressed

in Robert Uri Dabaly Jimma v Kenya School of Law & the Kenya National Qualifications Authority, (2021) eKLR in which at paragraph 110 the Learned Judge rendered himself as follows;

> "Given the divers 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'."

13. It is her submission that once she had established that she had a Bachelor of Laws degree from a recognized University, the inquiry by the respondent ought to have ended there and proceeded to grant admission. It is further submitted that the powers of the respondent under the Kenya School of Law Act, 2012 do not include how one gained admission to pursue a Bachelor of Laws degree at a Kenyan University. Sections 8, 18 and 19 of the Legal Education Act, 2012 assign the said function to the interested party. Further, the admission requirements to a Bachelor of Laws degree are not provided for in the Kenya School of Law Act, 2012 but under regulation 5 (1) of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 made under the third schedule to the Legal Education Act, 2012 and previously in section 18 of the Council of Legal Education Act, Cap. 16A as read with regulation 2 of the second schedule to the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009. It is her contention that the 2016 Regulations are not applicable to her as her admission ought to be governed by the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009. The same provided;

> "A student shall not be eligible for admission into an undergraduate Degree Programme unless the student has:-
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> a) A degree from a recognized University;
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> b) At least two principal passes at an advanced level or an equivalent qualification;
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> c) A mean grade of C+ (plus) in the Kenya Certificate of Secondary Education (KCSE); or
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> d) A Diploma of an institution recognized by the Commission for Higher Education and the applicant shall have obtained at least a credit pass."

14. The appellant's Diploma in Law was a superior qualification to the Kenya Certificate of Secondary Education (KCSE). The appellant relied in the decision of Kihara Mercy Wairimu & 7 Others v Kenya School of Law & 4 Others, (2019) eKLR in which Justice Makau held that an applicant to the Advocates Training Programme with alternative or superior qualifications to the Kenya Certificate of Secondary Education was not locked out from admission to the Kenya School of Law.

15. It is further submitted that the respondent was trying to impose upon the appellant admission requirements under section 1 (b) which were not supported by the law, thus its decision was unlawful, unreasonable, procedurally unfair and materially influenced by an error of law. The decision offended the right to access education, attendant economic and social rights guaranteed by article 43 of the Constitution of Kenya, 2010 as she held the qualifications for admission stipulated under section 16 of the Kenya School of Law Act, 2012 as read with section 1 (a) to the second schedule of the Act.

16. The respondent as a public institution and being with the monopoly of offering the programme, it ought to have considered the appellant's huge investment in both time and money. In any event, the respondent had the responsibility to pursue resolution of any confusion in the legislative enactments as to the state of the admission requirements to the Advocates Training Programme in favour of the

appellant as opposed to riding the confusion to the disadvantage of persons who would legitimately rely on the reading of the Act to gain admission to the programme.

4. The respondent's submissions.

17. It contends that the Tribunal lacks jurisdiction to entertain the dispute which is the subject of the appeal as matters of admission to the Advocates Training Programme are governed by the Kenya School of Law Act, 2012 while the Tribunal is established under the Legal Education Act, 2012. On whether the decision declining to admit the appellant was illegal and unreasonable, the respondent well recites the provisions of article 47 (1) of the Constitution of Kenya, 2010. It supports the position taken in its decision with the authority 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. It contends that it would be discriminatory to admit a student who does not meet the basic qualification for joining the Advocates Training Programme. The respondent then submits that the conjunction 'or' in sections 1 (a) and 1 (b) to the second schedule to the Kenya School of Law Act, 2012 should be read disjunctively as requiring both applicants from recognized Universities in Kenya and those from foreign Universities to hold similar qualifications. The respondent relies in the decision in Peter Githaiga Munyeki v Kenya School of Law, (2017) eKLR in which Justice Mwita held;

> " That KSL is the institution mandated to train persons to become professional Advocates and that mandate is exercisable pursuant to the KSL Act, 2012 and regulations made there-under. 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 the ATP are concerned. In that regard, section 16 of the KSL Act is clear and unequivocal that qualifications for admission to the ATP are those contained in the second schedule to the Act."

19. The respondent winds up its opposition to the appeal by submitting that academic progression is not provided for in the Kenya School of Law Act, 2012 thus the respondent does not qualify for admission based on the qualifications in the Act. It also contends that the respondent cannot ignore an examination of the appellant's Kenya Certificate of Secondary Education qualifications as this was not the intention of Parliament. Was this to happen, it would lead to a dual admission criterion for local Universities and foreign Universities. This would create an outright absurdity. It relies on the decision Peter Githaiga Munyeki v Kenya School of Law, (2017) eKLR where it was stated;

> " In that regard, therefore, applying a holistic reading of a statute persons falling under paragraphs 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."

20. The respondent finally relies on the decision in Republic v Kenya School of Law & Council of Legal Education ex-parte Daniel Mwaura Marai, (2017) eKLR in which Justice Odunga held that the applicant having not obtained a minimum of grade B (plain) in English or Kiswahili languages 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 Advocates Training Programme.

5. Analysis and determination.

a) Jurisdiction of the Tribunal.

21. The parties have adopted rival positions on the jurisdiction of the Tribunal to deal with the appeal. The position of the appellant being that the Tribunal is vested with jurisdiction to deal with the matter on the basis that she relies on academic progression which is provided for under the Legal Education Act, 2012 as a basis for admission to the Advocates Training Programme. The appellant also contends that the applicable subsidiary legislation when addressing the issue of her admission to the Programme and in considering her Bachelor of Laws degree qualification is the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009 and not the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 of which the former was a creature of the Council of Legal Education Act, Cap. 16A while the latter are made under Legal Education Act, 2012. The position of the respondent is that the Tribunal is bereft of jurisdiction as the issue of admission to the Advocates Training Programme is one provided for exclusively under the Kenya School of Law Act, 2012. The issue of progression is not provided for under the said Act and the Tribunal is established under the Legal Education Act, 2012.

22. Given the afore-going, the Tribunal in deciding on the question of jurisdiction it will be guided by the authority in The 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."

23. The Tribunal being guided by the fact that both parties are agitating over the application of academic progression as a consideration to the admission of an applicant to the Advocates Training Programme finds that it has jurisdiction in the matter. The matter of progression is provided for in the establishing statute of the Tribunal. Also the Tribunal is being called upon to decide on the application of subsidiary legislation under the Legal Education Act, 2012 together with the repealed Council of Legal Education Act, Cap. 16A (repealed). The appellant and the respondent have addressed the said issue even though they seem not to have a commonality on the same. Accordingly, the Tribunal finds that it has jurisdiction to inquire into the appeal being so guided by the Legal Education Act, 2012 which by section 31 (1) therein 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 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."

b) The appeal.

24. The genesis of the appeal arises from the decision of the respondent declining the appellant admission into the Advocates Training Programme. The appellant on the 24th. November, 2014 was enrolled at the Mount Kenya University to pursue a Diploma in Law and graduated in 2016. She then proceeded to apply and was admitted by the University of Nairobi to pursue a Bachelor of Laws degree which she successfully completed and graduated in the year 2020 with a Second Class Honours Upper Division. It is her contention that the applicable subsidiary legislation to her is the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009 and not the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The Tribunal finds that by the time the appellant was admitted to pursue the Bachelor of Laws degree, the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009 had been revoked by the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. Accordingly, the ideal situation would have been that the former Regulations could not apply to her but however, the Tribunal notes that the latter Regulations were found to be inconsistent with the Kenya School of Law Act, 2012 for being in conflict with the second schedule to the said Act in which Parliament has set the admission requirements to the Advocates Training Programme. The Tribunal makes reference to the decision in Republic v Kenya School of Law ex – parte Victor Mbeve Musinga, (2019) eKLR in which Justice Mativo held;

> "68. A fundamental question warrants consideration. This is whether the provisions of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 can override express statutory provisions. These Regulations were promulgated by the Council of Legal Education pursuant to powers conferred upon it by section 46 (1) of the Legal Education Act, with the approval of the Cabinet Secretary. The Regulations provide for the admission requirements to the ATP which as explained earlier differ from the requirements provided under section 16 of the KSL Act contained in paragraphs 1 (a) (b) of the said Second Schedule.
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> 69. Despite the importance and relevancy of this issue, which clearly flows from the material presented to the court, none of the parties addressed it.
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> 70. By subjecting the applicant to the requirements under the Regulations as opposed to the category expressly provided under paragraph 1 (a) under which his qualifications fell, the Respondent not only ignored the express provisions of section 16, but also elevated the Regulations above the provisions of the act.
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> 71. In Republic vs Kenya School of Law & Council of Legal Education ex parte Daniel Mwaura Marai [66] it was held that 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. A similar position was held in Republic v Council of Legal Education & another Ex parte Sabiha Kassamia & another [67] and Republic v Council of Legal Education & another Ex-Parte Mount Kenya University. [68] Also relevant is Section 31 (b) of the Interpretation and General Provisions Act [69] which provides that no subsidiary legislation shall be inconsistent with the provisions of an Act of Parliament.

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."

25. The Tribunal further finds that the relevant time for consideration on checking for eligibility to the Advocates Training Programme would not have been when the appellant was enrolled for the Diploma in Law qualification but, when she was admitted to pursue her Bachelor of Laws degree at the University of Nairobi. The Tribunal is so guided by the authority in Claire Njoki Kirera v Council for Legal Education & 2 Others, (2021) eKLR Justice Mrima held;

" 30. The above discussion, therefore, yields that the governing legal regime for admission into the School depends on when one was admitted into a University to pursue a degree leading to the award of Bachelor of Laws (LL. B) degree. For instance, the legal regime for those who were admitted to the University prior to the enactment of the KSL Act on 15th January, 2013 is the CLE Act and the Regulations. Those who were admitted into the University after the enactment of the KSL Act are governed by inter-alia the KSL Act."

26. The appellant has taken up the issue that the powers of the respondent under the Kenya School of Law Act, 2012 do not include how one gained admission to pursue a Bachelor of Laws degree at a Kenyan University. Sections 8, 18 and 19 of the Legal Education Act, 2012 assign the said function to the interested party. The Tribunal finds that for purposes of applicants to the Advocates Training Programme from recognized Universities in Kenya, the contention of the appellant is correct. The respondent is a Postgraduate Institution offering the Advocates Training Programme whose minimum entry qualifications are well spelt out by Parliament in the second schedule to the Kenya School of Law Act, 2012. It will be acting ultra - vires to undertake an exercise of inquiry on minimum University eligibility grades for applicants to the Advocates Training Programme who are from the recognized Universities in Kenya. It is as good as usurping the authority reposed upon the interested party and the Commission for University Education.

27. The Tribunal now proceeds to consider the application of section 1 (a) and (b) of the second schedule to the Kenya School of Law Act, 2012 as amended in 2014 to the appellant. For ease of reference the Tribunal sets out the same in verbatim as follows;

" 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."

28. The appellant by virtue of having the Bachelor of Laws degree from the University of Nairobi well fits into category 1 (a) of the second schedule to the Kenya School of Law Act, 2012. The same is in the category of the recognized University in Kenya therein. Thus, the appellant is eligible to admission to the Advocates Training Programme. The Tribunal finds that the appellant cannot be subjected to the qualifications in 1 (a) and (b) of the said schedule. The Tribunal stands guided by not only its previous decisions as set out by the appellant in her submissions but also by the decision of the superior court by Justice Chacha Mwita in Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority, (2021) eKLR in which at paragraph 110 he held 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 issue of procedural fairness in arriving at the decision to exclude the appellant from admission to the Advocates Training Programme was taken up in the appeal. The respondent dealt with the same by making reference to the authority in Kenya Revenue Authority v Menginya Salim Murgani Civil Appeal no. 108 of 2009 for the proposition that it is a master of its own procedures. The Tribunal takes exception to the route sought to be adopted by the respondent on the matter. Based on article 47 of the Constitution of Kenya, 2010 and the enactment of the Fair Administrative Action Act, 2015 to augment the fundamental right to fair administrative action, the respondent ceased to be a master of its own procedures as the minimum guarantees are now well spelt out in the written law. The appellant was not accorded the guarantees set out in section 4 (3) of the Fair Administrative Action Act, 2015. The same provides;

> " Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—
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> (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
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> (b) an opportunity to be heard and to make representations in that regard;
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> (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
>
> (d) a statement of reasons pursuant to section 6;
>
> (e) notice of the right to legal representation, where applicable;
>
> (f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action."

7. Disposition.

30. Ultimately the Tribunal decrees as follows:-

a) That the entire decision of the respondent contained in the letter dated the 26th. April, 2021 (and all consequential decisions in the letters dated the 13th. May, 2021 and the 15th. June, 2021) denying the appellant admission into the Advocates Training Programme for the 2021/2022 academic year and for any other academic period are set-aside.

b) That an order is issued compelling the respondent to admit the appellant into the current 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 28TH DAY OF JANUARY, 2022.

ROSE NJOROGE – MBANYA - (MRS.)

CHAIR PERSON

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