



**Chepkwony v Kenya School of Law; Council of Legal Education (Interested Party)
(Appeal E004 of 2023) [2024] KELEAT 668 (KLR) (Civ) (19 April 2024) (Judgment)**

Neutral citation: [2024] KELEAT 668 (KLR)

**REPUBLIC OF KENYA
IN THE LEGAL EDUCATION APPEALS TRIBUNAL
CIVIL
APPEAL E004 OF 2023**

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

APRIL 19, 2024

BETWEEN

KIPKOECH EVANS CHEPKWONY APPELLANT

AND

KENYA SCHOOL OF LAW RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION INTERESTED PARTY

*(Being an appeal against the decision rendered by the Respondent,
declining the admission of the Appellant to the Advocates Training
Programme for the 2024/25 academic year issued on 13th December 2023)*

JUDGMENT

A. Introduction and background.

1. The Appellant Kipkoech Evans Chepkwony filed a memorandum of appeal dated 19th January 2024, against the Respondent's decision dated 13th December 2023. He has enjoined the Council of Legal Education as an Interested Party.
2. The Memorandum of Appeal sets out the following grounds:
 - a. The Respondent erred in holding that the Appellant did not have a B in English or Kiswahili, yet the Appellant was admitted to Moi University, School of Law, after being recognized by the institution to have met the admission criteria of the same.
 - b. The Appellant subsequently attained a Bachelor of Laws (LLB) degree from Moi University School of Law.



- c. The Appellant met, as it then was and now is, the minimum requirements for admission to the Advocates Training Program (ATP).
 - d. Section 1(a) and (b) of the Second Schedule of the [Kenya School of Law Act](#) apply to different categories of Applicants and fall under Section 1 (a) therefore the Appellant qualifies to be admitted to the ATP.
 - e. The role of the Kenya School of Law is to offer postgraduate training in law and not to investigate the acquisition of a law degree in Kenya, whose role is for the Council of Legal Education.
 - f. The Legal Education Appeals Tribunal is the right institution established in law to hear the Appellant's appeal and consequently order for his admission at the ATP.
 - g. The decision of the Kenya School of Law to deny him admission is not consistent with the previous holding of the court and this Tribunal namely: High Court of Mombasa, Constitutional Petition No. E033 of 2019, Sabrina Jelani Badawi vs Kenya School of Law.
3. The Respondent filed its Replying affidavit sworn by Frederick Muhia dated 23rd January 2024 stating that:
- a. The Respondent's mandate is, inter alia, to train persons for purposes of the [Advocates Act](#) (Cap 16) for which the Respondent offers the Advocates Training Program.
 - b. Matters of admission to the Respondent's Advocate Training programme are exclusively provided for under Section 16 of the [Kenya School of Law Act](#) No. 26 of 2012.
 - c. This Tribunal's jurisdiction is limited to matters that relate to the [Legal Education Act](#) 2012.
 - d. The Respondent is required by its establishing Act; the [Kenya School of Law Act](#), to consider applications for admission to the ATP and once satisfied the Applicant is qualified, admit the Applicant to the School.
 - e. Upon the Appellant making an application to the ATP, the Appellant was found not eligible per the eligibility criteria as provided for under Section 16, read together with Paragraph 1 of the Second Schedule of the [Kenya School of Law Act](#) 2012.
 - f. Under Section 16 of the [Kenya School of Law Act](#) 2012, as read with paragraph 1 of the Second Schedule, the requirements for admission to the STP is a mean grade of C+ (plus) in KSCE with B (Plain) in English or Kiswahili languages which the Appellant did not have.
 - g. The Appellant was relying on academic progression to be admitted to the ATP, yet the [Kenya School of Law Act](#) 2012 does not have a provision for academic progression.
 - h. Allowing people to join ATP at the school on the basis that they had a previous unrelated degree prior to joining the LLB degree programme would be to circumvent clear provisions of a statute and explicit determination of the Court of Appeal.
 - i. The Appellant claims that he had obtained admission to the university to commence in 2019 and consequently cannot rely on the now voided CLE Quality Assurance Regulations.
 - j. The Appellant's diploma is not related to law and cannot consequently be interpreted to be academic progression in the field of Law.
 - k. The question of admission has been settled by the Court of Appeal.



1. The Appellant is not qualified for admission to ATP and the Respondent was right in declining to admit.
4. The parties filed submissions in support of their respective positions. We have considered the submissions which largely reproduced the pleadings and cited decisions and various provisions of the law in support of their case. Some decisions are common ground and we have considered them in this judgment.

B. Analysis and Determination

5. The Appellant's primary contention is that he is entitled to admission to the Advocates Training Programme predicated on the fact that he held a Bachelor of Laws degree from Moi University, a recognized university in Kenya. Thus, he ought to be subjected to the scrutiny in section 1 (a) as opposed to 1 (b) of the Second Schedule to the [Kenya School of Law Act](#), 2012.

The section provides as follows;

“(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.”

6. The Court of Appeal in Nairobi Civil Appeal no. E472 of 2021 - *Kenya School of Law v Otene Richard Akomo & 41 Others* in which Justices Asike - Makhandia, J. Mohammed and Kantai JJ.A observed as follows;

“It was submitted that section 1 (a) of the Second Schedule to the Act, 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 ATP. Further, sections 1 (a) and 1 (b) of the Second Schedule to the KSL Act, distinguishes Applicants who hold a Bachelor of Laws degree from Kenyan University and those from a foreign University. We are of the view that with the use of semi-colon between 1 (a) and (b) of the Act then the conditions follow which to us means that you are eligible, firstly, based on your LL.B degree either from a Kenyan University or as in (b) from a foreign university but in all situations, the conditions are same and are enlisted therein which are mandatory to all irrespective of whether you have a degree from within or without Kenya.”



7. Based on a conjunctive interpretation, as pronounced by the Court of Appeal, the Appellant must achieve the KCSE grades and or their equivalent as set out in Section 1 (b) in order to qualify for admission to the Advocates Training Programme. The Appellant scored a mean grade C+ and attained a B plain in English and a C plus in Kiswahili, his KCSE marks do not meet the set criteria, and therefore the Respondent's decision to decline his admission on that ground that would be upheld.
8. The Appellant's reliance on Section 1 (a) as laid out in Ground (d) of his Memorandum of Appeal therefore fails.
9. The Appellant contends that his admission would still be guarded by Regulation 18 of the Legal Education (Accreditation of Legal Education Institutions Institutions) Regulations 2009. It provides:

“Part III — Legal Education Training

Recognition, equation of foreign qualifications and equivalence.

18. A student shall not be eligible for admission to a legal education training programme under these Regulations, unless that student has attained the required minimum qualifications set out in the Second Schedule.”
10. The Tribunal finds it appropriate to investigate whether the Appellant is entitled to benefit from the provisions of the Council for Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009. We note that the cited regulations relate to the standards for institutions offering legal education. Moreover, the 2009 Regulations were repealed upon the enactment of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 and are no longer operable. We find therefore that reliance on these regulations cannot aid the Appellant.
11. The Council of Legal Education formulated the criteria for admission to the Bachelor of Laws degree and the Advocates Training Programme based on its mandate under section 8 (3) (a) of the [Legal Education Act](#), 2012. For the Bachelor of Laws degree, the same was provided for vide 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.”
12. The legality of the formulation of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 was challenged on account of failure to obtain Parliamentary approval as required



by the Statutory Instruments Act, 2013. The matter was addressed in the High Court at Nakuru in Petition No. 20 of 2016 - Javan Kiche Otieno & Another v Council of Legal Education & Another, where Hon. Justice Maureen Odero in a judgment delivered on the 30th January, 2018 stated as follows;

“The first issue here is the legality of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The petitioners contend that the said regulations were made in contravention of article 10 of the Constitution. They further contend that the 1st respondent was not properly constituted in accordance with section 4 (5) of the Legal Education Act at the time of making the said Regulations and that the 1st respondent does not have the powers to accredit foreign institutions. However, the true position is that the Regulations have not yet become subsidiary legislation because they have not yet been adopted by Parliament as required by section 14 of the Statutory Instruments Act. Thus this provision renders the said regulations void and unenforceable.”

13. This High Court declaration of invalidity whose operative date is 30th January 2018 was subsequently affirmed by the Court of Appeal. The said Regulations which contained the criteria for admission ceased to have had any legal consequence from their inception. This included the set-out admission criteria to the various legal education programmes contained in them.

14. The Court of Appeal whilst upholding the declaration of invalidity made it clear that it does not apply to crystalized actions. The decision in Javan Kiche Otieno & Another v Council of Legal Education, (2021) eKLR Justices D. K. Musinga (P), R. N. Nambuye and A. K. Murgor; JJ.A in paragraphs 34, 35 and 47 of the judgment stated;

“34. The record does not disclose that following gazetting of the impugned regulations, that they were thereafter, laid before Parliament and adopted....

35. Since there is nothing that shows that they were at any time passed into law in accordance with the procedures set out in the above cited provision, and which shortcomings the appellants have conceded, it becomes evident that the impugned regulations were not adopted and as a consequence, did not acquire the force of law...

47. consequently, it is explicit that a court having declared a piece of legislation or a section of an act to be unconstitutional, that act or law becomes a nullity from the date of inception or enactment and not from the date of judgment. But it will not be applicable to actions already crystallized whilst the expunged law was in force.”

15. The Appellant cited Muceke v Kenya School of Law (Appeal E026) [2022] KELEAT 853 KLR, wherein this tribunal had stated that the operative date for the declaration of invalidity was 21st December 2021. However, it was later clarified and thereafter held in several judgments of this tribunal, that indeed, the operative date is 30th January 2018 when the superior court made the declaration which was subsequently affirmed by the Court of Appeal.



16. The High Court in *Law Society of Kenya v Kenya Revenue Authority & another* [2017] eKLR stated as follows:

“It is trite that an unconstitutional law is not law and actions or decisions taken pursuant to an unconstitutional law would outrightly be illegal. It follows that once a law has been declared unconstitutional, it has no business remaining in the law books”.

17. In this appeal, the crystallized action, being securing admission to the Bachelor of Laws degree program, would require to fall between 6th February 2016 and 30th January 2018, when the 2016 regulations subsisted.
18. It is not clear the exact date that the Appellant secured admission to the Bachelor of Laws degree, He has not provided his letter of admission, however he has indicated in his submissions that it was on 1st July 2019. It can be gleaned from his academic transcripts that his first academic year was in 2019/2020.
19. It is apparent therefore that the appellant’s admission date does not fall within the crystallized action period, he therefore cannot derive benefit from the 2016 regulations.

C. Disposition

It Is Decreed:

- a. That the appeal is dismissed.
- b. That each party bears its costs of the appeal.
- c. That any party aggrieved by this decision is at 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 19th day of April 2024.

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.

REGISTRAR

