



**Republic v Director, School of Law & 2 others; Kuria (Exparte) (Application E081 of 2024)
[2024] KEHC 16437 (KLR) (Judicial Review) (27 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E081 OF 2024
J NGAAH, J
DECEMBER 27, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR, SCHOOL OF LAW 1ST RESPONDENT

KENYA SCHOOL OF LAW 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

LINET NJERI KURIA EXPARTE

JUDGMENT

1. The application before court is the applicant’s motion dated 15 April 2024 filed under articles 22,23, 43, 47, 48 and 50 of *the Constitution*; sections 2, 7, 8,9 10(1) and 11 of the *Fair Administrative Action Act* 4 of 2015 and order 53 rule 3 and 4 of the Civil Procedure Rules. It seeks the following orders:

- “ 1. That an Order directing the hearing of the Application for Judicial Review be expedited and heard on priority basis as the Advocates Training Programme (ATP) for 2024/2025 academic year is currently ongoing having commenced on 5th February, 2024.
- 2. That an Order of Certiorari be issued to remove to this Honourable Court and quash the decisions made by the 2nd Respondent through the 1st Respondent whereby it was adjudged on the 28/11/2023, 8/12/2023 and 21/12/2023 that the Applicant does not qualify for the Advocates Training Programme (ATP).



3. That an Order of Mandamus do issue compelling the 1st and 2nd Respondent to comply with the Order and Judgement of the Legal Appeal Tribunal delivered on 20th March, 2023 by issuing a Letter of Admission co the Advocates Training Programme for the Academic Year 2024/2025 to the Applicant within 30 days from the date of Judgement
 4. That the cost of this application be provided for.
 5. That this Honourable Court be pleased to grant any other order it may deem fit and just to issue.”
2. The application is based on the applicant’s statutory statement dated 15 April 2024 and an affidavit of even date sworn by the applicant to verify the fact relied upon.
 3. The facts are rather straight forward. According to the applicant, on 20 March, 2023, the Legal Education Appeals Tribunal delivered judgement according to which, the Tribunal set aside and quashed the 1st respondent’s decision declining the applicant’s admission to the Advocates Training Programme for the year 2023/2024. The Tribunal further directed the 1st and 2nd respondent’s to forthwith admit the applicant to the Advocates Training Program.
 4. On 29 March, 2023 the applicant served the judgement and decree upon the 1st and 2nd respondents who acknowledged receipt and requested the applicant to write a letter, apparently applying for admission. On the material date, the applicant wrote the letter as requested and submitted it immediately to the 1st and 2nd respondents who acknowledged receipt.
 5. Even then, the respondents have neglected, ignored or refused to admit the applicant in disobedience of the Tribunal’s judgment. It is for this reason that that the applicant has sought an order of mandamus to compel the respondents to comply with the Tribunal’s judgment and admit the applicant to the Advocates Training Program.
 6. Mr. Fredrick Muhia has sworn a replying affidavit on behalf of the 1st and 2nd respondents. He states that he is the principal academic affairs officer at the Kenya School of Law. He swears that he has been advised by his advocate on record which advice he believes to be true, that this Honourable Court, sitting at Mombasa in Judicia Review Application No. E002 of 2024 made a determination in a similar matter and, that, the respondent is “properly guided in the matter”.
 7. As far as the Tribunal judgment to which the applicant has made reference is concerned, Mr. Muhia has sworn that “respondent herein” has lodged an appeal against the judgement in this Honourable Court as Civil Appeal No. E217/2023; Kenya School of Law versus Mbae Jacob Meeme and Linet Njeri Kuria.
 8. Despite challenging the decision of the Tribunal, Mr. Muhia has sworn that without prejudice to the its right to prosecute its appeal, the respondent is agreeable to admitting the appellant in the next intake which, I understand to be the 2025/2026 training program.
 9. As much as I gather, there is not much of a dispute on the facts of the applicant’s case and, more importantly, it is not contested that the Legal Education Appeals Tribunal has rendered a judgment in an appeal against the 1st and 2nd respondents’ decision not to admit the applicant to the Advocates Training Program. A copy of the judgment is exhibited to the applicant’s affidavit and it shows the case before the Appeals Tribunal was cited as no. LEAA/E002/2023; Linet Njeri Kuria versus Kenya School of Law.



10. A decree extracted from the Tribunal’s judgment shows, inter alia, that the applicant’s appeal against the decision of the Kenya School of Law declining admission of the applicant to the Advocates Training Program was not only allowed but the school was also ordered to admit the applicant. The pertinent orders in the decree read as follows:
- “b) That the appeals by Linet Njeri Kuria and Mbae Jacob Meeme are allowed and the decisions dated the 4th of January 2023 as communicated by Dr. Henry K. Mutai Director of the Kenya School of Law declining admission to the Advocates Training Programme are quashed and set aside.
 - c) That an order is issued directing the Respondent to forthwith admit the appellants Linet Njeri Kuria and Mbae Jacob Meeme to the Advocates Training Programme.”
11. Although Mr. Muhia says that there is an appeal against this decision, no proof has been exhibited to his affidavit to demonstrate that indeed such an appeal has been filed. In any event, even if there is an appeal, there is no evidence of any stay of the judgment of the Legal Education Appeals Tribunal.
12. Mr. Muhia has also referred to a decision in which he admits unequivocally that:
- “...I am advised by my advocate on record which advice I verily believe to be true, that the High Court in Mombasa In JR E002 of 2024 made a determination in a similar matter and the Respondent is properly guided in the matter.”
13. Again, there is no proof of the existence of such a case exhibited to Mr. Muhia’s affidavit but there is a decision by this Honourable Court sitting at Malindi according to which the judgment in Legal Education Appeals Tribunal in appeal case no. LEAA/E013/2023 was enforced by grant of the order of mandamus. The judgment was rendered by Thande, J. in Judicial Review Application No. E001 of 2024.
14. That the facts in that case are similar to the instant one can be discerned from paragraph 2 of the judgment in which the learned judge captured the applicant’s case as follows:
- “The applicant’s case is that he on 28.1.22 applied for the Advocates Training Programme (ATP) offered by the 2nd respondent. Through the 1st respondent however, the 2nd respondent rejected his application on 4.1.23 for the reason that he had not attained the minimum threshold in KCSE grades. Being aggrieved, the applicant filed an appeal dated 2.2.23 with the Legal Education Appeals Tribunal (the Tribunal). In its judgment dated 5.4.23, the Tribunal set aside the decision of the 2nd respondent and directed that he be admitted to the ATP for the 2023/2024 academic year. The applicant contends that the respondents have failed to comply with the said judgment which has not been varied, reviewed, set aside or appealed against in accordance with Section 18 of the [Legal Education Act](#). Further that in response to his written demand dated 8.1.24 that the respondents comply with the said judgment, the 1st respondent vide an email dated 10.1.24 informed him that his application for admission had been rejected. The applicant thus claims that failure of the respondents to comply with the said judgment has resulted in irreparable harm and damage to his right to education enshrined in Article 43 of [the Constitution](#) and to fair administrative action under Article 47. He urged the Court to grant the judicial review orders as sought.”



15. In allowing the applicant's case, the learned judge held, inter alia, that:

- “38. The orders given by the Tribunal as indeed by any court of competent jurisdiction, are not in vain and a party to whom an order is directed is required to obey the same.
40. Compliance with court orders is central to the rule of law, which is one of the national values and principles of governance provided in Article 10 of *the Constitution...*
41. The said national values and principles of governance are binding on all persons including all state organs, state and public officers. As such, the 1st and 2nd respondents are bound by the same when interpreting *the Constitution* or any law or making or implementing public policy decisions. In particular, being bound by the rule of law, they ought to have complied with the decision of the Tribunal or being dissatisfied thereby, appealed against it as set out in law. There being no appeal against the decision of the said decision or stay thereof, the respondents were obligated to comply with the same and admit the applicant to the ATP as directed. Defiance of the said decision is not an option available to them. Accordingly, the Court would be justified to grant the orders sought.
47. In the end and in view of my analysis and conclusion herein above, it is my finding that the Applicant has established grounds for the Court to grant the orders sought. Accordingly, I make the following orders:
2. An order of mandamus be and is hereby issued compelling the 1st and 2nd Respondents to comply with the judgment and order of the Legal Education Appeals Tribunal delivered on 5.4.23.”

16. In paragraphs 5, 6 and 7 of their submissions, the applicants have urged with respect to this decision as follows:

5. On 22nd March 2024 the High Court in Malindi in JR E001 of 2024 Anthony Waziri Kitsao v. Kenya school of law delivered a judgement in a matter with similar facts, and upon studying the judgement, the Respondents are properly guided and intend to comply similarly.
6. Without prejudice to the respondent's appeal HCCAIE217/2023 Kenya School of Law V Mbae Jacob Meeme and Linet Njeri Kuria, the 1st and 2nd Respondents have stated in this honourable Court that they intend to offer admission to the Applicant herein in the 2025/2026 academic year and that this application ought to be marked as settled.
7. Without prejudice to the right to prosecute the aforementioned appeal, and subject to the outcome of thereof, the 2nd respondent is agreeable to admitting the Appellant to the Advocates Training Programme 2025/2026 intake. In so acting, the 1st and 2nd respondents are further guided by the Overriding Objective provided under sections 1A (3) and 1B of the *Civil Procedure Act* that is meant for the efficient attainment of justice.”

17. If the 1st and 2nd respondents were not just “properly guided” but bound by the decision of this Honourable Court, sitting at Malindi, there is absolutely no plausible reason why they could not admit the applicant to the Advocates Training Program as ordered by the Legal Education Appeals Tribunal as soon as that decision was delivered.



18. Be that as it may, as far as the applicant's instant application is concerned, I am satisfied that she is entitled to the order of mandamus. The order has been defined in Halsbury's Laws of England/ JUDICIAL REVIEW (VOLUME 61 (2010) 5TH EDITION)/5. JUDICIAL REMEDIES/ (1) INTRODUCTION at paragraph 689 where it is stated, thus:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

19. This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”

20. And with particular reference to public officers who, like in the instant case, fail to perform their public duty, paragraph 706 is clear that a mandamus order may be issued to compel them to carry out the duty. It reads as follows:

“706. Public duties by government officials.

If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *R v London Transport Executive, ex p GLC* [1983] QB 484, [1983] 2 All ER 262, DC.)”

21. Although the applicant had specifically asked to be admitted to the 2024/2025 academic program, it would be futile to compel the 1st and 2nd respondents to admitted her to this program because it may have as well been concluded or may be at its tail end at the time of rendering this judgment. As a matter of fact, the program was underway when the application was filed.

22. Accordingly, I hereby allow the applicant's application to the extent that the order of mandamus is hereby granted compelling the 1st and 2nd respondents to admit the applicant to the 2025/2026 Advocates Training Program or such other Advocates Training Program available immediately after the 2024/2025 program, as the case may and, in any event, to admit the applicant in accordance with the judgment delivered on 10 March 2023 by the Legal Education Appeals Tribunal. The applicant will have the costs of this application. It is so ordered.

SIGNED, DATED AND POSTED ON THE CTS ON 27 DECEMBER 2024

NGAAH JAIRUS

JUDGE

