



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 417 OF 2019

IN THE MATTER OF ARTICLES 2(1), 3(1), 10(1) AND (2), 19(2), 20(2), 21, 22, 23(3), 24, 27(1), 28 AND 47(1), 47(2) AND 50 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF SECTIONS 4(1), 3(b), (4), 7(2)(f)(i) (iii), (m), (n), 8 AND 10 OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

IN THE MATTER OF EQUALITY BEFORE THE LAW, FREEDOM FROM DISCRIMINATION, RIGHT TO FAIR ADMINISTRATIVE ACTION, RIGHT TO HEARING

IN THE MATTER OF SECTION 19 OF THE SIXTH SCHEDULE OF THE CONSTITUTION OF KENYA, 2010, AND,

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006

BETWEEN

DIANA KEMUNTO OGEAPETITIONER

VERSUS

KENYA SCHOOL OF LAW1ST RESPONDENT

COUNCIL FOR LEGAL EDUCATION.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

Introduction:

1. The Petitioner through a Petition dated 11th October, 2019 seeks the following reliefs:-

1. A declaration do issue that the 1st and 2nd Respondents' conduct towards the Petitioner violates the Petitioner's legitimate expectation of good governance integrity, transparency, and accountability as underpinned by Article 10(2) of the constitution, right to fair administrative action and under Article 47(1), right to fair hearing under Article 50, and right to equality and freedom from discrimination under Article 27 of the Constitution of Kenya, 2010 and is therefore unconstitutional, null and void.

2. An Order of Judicial Review in the nature of Mandamus do issue to the intent that: -

a. The 1st respondent be and is hereby directed to award the Petitioner 13 marks in the Assignment submitted by Firm E 26 for the conveyancing coursework:

b. Consequent upon b(i) above, the 1st respondent do forthwith/without delay transmit the Petitioner's amended / updated overall marks for Conveyancing (ATP 107) to the 2nd respondent:

c. Consequent upon b(ii) above, the 2nd respondent upon receipt of the Petitioner's amended/updated overall marks for Conveyancing (ATP 107) do forthwith/without delay issue a suitably amended Transcript to the Petitioner.

d. The Petitioner be allowed, forthwith/without delay upon complying (as may be practicable) with the Guidelines given to students by the 1st respondent in its paid advertisement of 01/10/2019 to participate in the 4th graduation ceremony scheduled to take place on 06/12/2019 and the 1st respondent do include the Petitioner in its list of graduands for the said date.

3. In the circumstances, such further orders/directions as are just and expedient be made issued.

4. Costs of and incidental to this Petition be borne by the respondents jointly and severally, in any event.

2. The 1st Respondent is opposed to the Petition and in doing so filed a notice of preliminary objection dated 29th October 2019 setting out the following objection to the petition thus:-

a. The Honourable court lacks jurisdiction to hear and determine this matter on account of section 31(1) of the Legal Education Act, 2012 as read together with Section 8(1) (f) of the said Act.

b. The Petitioner has not exhausted alternative statutory avenues for ventilating her grievance.

3. The 2nd Respondent did not file any response whereby the 3rd Respondent filed grounds of opposition to the Petition.

4. The 1st Respondent filed submissions dated 29th October 2019 in support of the preliminary objection whereas the petitioner filed submission dated 10/11/2019 in response to the preliminary objection dated 29th October 2019.

5. I have considered the Petition, the 1st Respondents preliminary objection and the Petitioner's submission in response and from the aforesaid the issues arising for considerations are set out in the preliminary objection thus:-

a. Whether this court lacks jurisdiction to hear and determine this petition on account of Section 31(1) of Legal Education Act 2012 as read together with Section 8(1) (f) of the said Act?

b. Whether the Petitioner has exhausted alternative statutory avenues for ventilating her grievances?

A. Whether this court lacks jurisdiction to hear and determine this petition on account of Section 31(1) of Legal Education Act 2012 as read together with Section 8(1) (f) of the said Act?

6. The Respondent contention is that this court lacks jurisdiction to hear and determine this Petition by virtue of the provisions of **Section 31 (1) of the Legal Education Act 2012**, as read together with **Section 8(1) of the Legal Education Act 2012**. It is the 1st Respondent's contention that the Legal Education Appeals Tribunal and not this Court has jurisdiction to hear and determine the present petition.

7. Section 31(1) of the Legal Education Act, 2012 clearly sets out the jurisdiction of the Legal Education Appeals Tribunal as follows: -

“The Tribunal shall upon an appeal made to it 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.”

(Emphasis added)

Section 8(1)(f) of the same Act provides:

(f) “administer such professional examinations as may be prescribed under section 13 of the Advocates Act.”

8. The present Petition relates to examinations referred to under **Section 8(1) (f) of the Legal Education Act 2012**; which is administered by the 1st Respondent as an agent of the 2nd Respondent.

9. The issues raised in this Petition relate to any matter relating to the Legal Education Act to which the Legal Education Act Appeals Tribunal is required to inquire into and make a finding thereupon and notify the parties concerned. The issues raised in present petition similarly fall within the jurisdiction of the Legal Education Appeals Tribunal as a duly appointed body to actively consider various matters within its jurisdiction.

10. The Provisions of **Section 31(1) of the Legal Education Act** is clear that the Legal Education Appeals Tribunal is not restricted to Appeals only as it can deal with reference made to it by council or by any committee or officer of the Council as well as any matter relating

to this Act and proceed to inquire into the matter and make a finding.

11. I find absence of an appeal by any party is no bar of the Legal Education Appeals Tribunal from discharging other duties as set out in Section 31(1) of the Legal Education Act, 2012.

12. In the instant Petition the Petitioner is aggrieved by the way her examination marks were not awarded in the assignment submitted through form E 26 for the conveyancing course work; due to failure by the 1st Respondent and delay to transmit the petitioner’s award / updated overall marks for conveyancing (STP 107) to the 2nd Respondent. The 2nd Respondent failure or delay to issue a similarly amended Transcript to the petitioner; aggrieves the Petitioner. The grievances in my view can be described as any matter relating to **Section 31(1) of the Legal Education Act, 2012** and for which the Legal Education Appeals Tribunal, is mandated to inquire into, make a finding thereupon and notify the party concerned. This matter clearly relates to the examination referred to under **Section 8(1)(f) of the Legal Education Act, 2012** and it is my view that this Court lacks jurisdiction to hear and determine this matter on account of provisions of **Section 31(1) of the legal Education Act, 2012** as read together with **Section 8(1) of the Legal Education Act.**

13. Article 159 (2) (c) of the Constitution provides:

“Judicial Authority

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);”

14. Section 31(1) of the Leal Education Act, 2012 provides for an alternative statutory avenue for ventilating grievances similar to the one before this Honourable Court. The constitution provides that courts and tribunal shall be guided by various principles including alternative forms of dispute resolution mechanism as set out under **Article 159 (2)(c) of the Constitution.** It is trite that where an alternative mechanism is provided, by a statute a party should exhaust that process first before seeking similar reliefs before Court. In the instant petition, the Legal Education Act 2012, provides alternative dispute mechanism resolution, which the petitioner is bound to exhaust first before moving to Court. The petitioner by virtue of **Section 31(1) of the Legal Education Act** is barred from seeking the relief, sought herein without first exhausting the alternative statutory avenues for ventilating her grievances. I find it is only upon moving to the Legal Education Appeals Tribunal and upon rendering itself that the petitioner can if not satisfied with Legal Education Appeals Tribunal’s decision can move the Court by way of Judicial Review or any manner provided for appropriate reliefs.

15. To that extent the 1st Respondent’s preliminary objection is allowed, in the following terms:

a. The Court lacks jurisdiction to hear and determine the petition by virtue of the provisions of Section 31(1) of the Legal Education Act, 2012 as read together with Section 8(1)(f) of the Legal Education Act, 2012.

b. The Petitioner has not exhausted the alternative statutory avenues for ventilating the instant grievances. The matter be placed before Legal Education Appeals Tribunal within 21 days from the date of this Ruling for inquiring into the matter and make a finding, upon hearing the parties and thereafter notify them of its finding.

c. In view of the fact that the matter has not been determined on merits I direct each party to bear its own costs.

Dated, signed and delivered on 12th day of March 2020.

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J. A. MAKAU

JUDGE