REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 235 OF 2017

EUNICE NGANGA..1ST PETITIONER

SAMUEL G. WAIGANJO..2ND PETITIONER

VERSUS

THE LAW SOCIETY OF KENYA...1ST RESPONDENT

ATTORNEY GENERAL.........................…..........................2ND RESPONDENT

THE CHIEF REGISTRAR OF THE JUDICIARY............3RD RESPONDENT

JUDGMENT

1. This Petition is challenging the constitutional validity of sections 22 (1) (b), (c) and 23 of the Advocates Act, Section 7 of the Law Society of Kenya, and regulations 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004.

2. The Petitioners, who are citizens, have sued the Law Society of Kenya, The Attorney General and the Chief Registrar of the Judiciary as the 1st, 2nd and 3rd respondents.

3. The Petitioners aver that Section 22 (1) (b) and (c) of the Advocates Act compels all advocates to become members of the Law Society of Kenya to be able to practice law in Kenya and so is section 23 of the same Act. They also contend that section 7(1) of the Law Society of Kenya Act makes advocates automatic members of the Society of Kenya and the Advocates Benevolent Association upon admission to the Bar whether or not they wish to be members. It is the petitioners' case that section 22 (1) (b) and (c) violates Article 36 of the Constitution which guarantees freedom of association. Further Section 22 (1) (b) and (c) of the said Act and Section 7 (1) of the Law Society of Kenya Act are inconsistent with Article 27 (2) of the Constitution.

4. Lastly, the petitioners argue at paragraph 7 of the petition that rules 10 and 11 of the ***Advocates (Continuing Legal Education) Regulations, 2004*** contravene Article 33(1) of the constitution which guarantees the right and freedom to seek, receive or impart information or ideas and academic freedom. Their contention is that by making continued professional development courses a prerequisite to getting annual practicing certificates, these regulations violate the Constitution and the Bill of Rights.

5. Based on the above contestations the Petitioners have sought reliefs to the effect;

> **a)** ***That the court declares Section 22 (1) (b) and (c) of the advocates Act, Section 23 of the advocates Act, Section 7 of the Law of Kenya Society Act, Rule 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004 unconstitutional and therefore invalid.***
>
> ***b) That the court orders the creation of a regulatory body/commission/authority independent of the Law Society of Kenya or any other society for that matter, whose powers and functions shall include certifying advocates, handling all complaints and disciplinary matters, certify various entities to offer continued professional development courses but that the regulatory body should not impose continued personal development points as a prerequisite to renewal of the practicing certificate.***
>
> ***c) That the court prohibits the regulatory board/commission/authority from requiring advocates to be members of the Law Society of Kenya or any other society for that matter before granting or renewing their practicing certificates.***
>
> ***d) That the court declares advocates free to join any legal professional society and free not to join any.***

e) ***That costs of the petition be borne by the Respondents.***

1st Respondent's response

6. The 1st respondent filed a replying Affidavit by **Mercy K. Wambua,** sworn on 24th January, 2018 and filed in court on 25th January, 2018. She disposes that the Petitioners do not have *locus standi* for the reason that they are not members of the 1st respondent, and that they have not demonstrated that they are qualified to be admitted to membership of the 1st respondent. Ms. Wambua further deposed that the 1st respondent is the established Bar Association for all practicing advocates in Kenya in accordance with the Law Society of Kenya Act, 2014 whose core mandate is to regulate the conduct of its members and ensure continuous professional development with a view to enhancing competence and service delivery to the public.

7. She contended that the institutional framework mechanism under the Advocates Act, the LSK Act and the attendant regulations is meant to create conducive environment for the development of professionally competent advocates with clear channels of responsibility thus engendering transparency and accountability.

8. The deponent further contends that historically, professions have been regulated as units in order to ensure that standards required of the professions' members are adhered and that members are continually trained to serve the public. In any event, it is contended, associations are nonprofit making organizations which concern themselves with public interest and such associations are a means by which members of a specialized profession can meaningfully realize the right to associate as provided for under Article 36 of the Constitution.

9. According to Ms. Wambua, there is a heightened sense of the need to tighten regulation of the legal profession to prepare its members to handle quality demanded by the public they intend to serve and as such, the framework established by the impugned provisions actualizes the right to meaningfully associate. She states that the requirement for continuing legal education assists advocates receive and impart information that is necessary for their professional development.

10. In the 1st respondent's view, membership to LSK forms the basis for jurisdiction of the Advocates Complaints Committee and the Disciplinary Tribunal over errant members; that it is proper practice that advocates are regulated under a unitary Bar Associations and that the regulation of other professions is also modelled in a similar fashion. She therefore urges the court to dismiss the Petition.

Petitioners' submissions

11. It is submitted on behalf of the petitioners that they possess requisite capacity and standing to bring and maintain these proceedings and relied on the cases of ***John Wekesa Khaoya v Attorney General , Petition No. 60 of 2012*** and ***John Kipng'eno Koech & 2 Others v Nakuru County Assembly & 5 Others (2013) eKLR*** to illustrate the court's shift from the narrow interpretation of *locus standi*. They also reiterate the fact that Articles 22(1) and (2) and 258(1) of the Constitution confers upon every person the right to institute court proceedings where a constitutional right has been violated, infringed, denied or threatened. They submit that they are lawyers currently undertaking the Advocate Training Program at the Kenya School of Law.

12. They further submit that the respondents have violated the advocates' rights to freedom of association contrary to Article 36, freedoms of expression contrary to Article 33 and right to equality and freedom from discrimination contrary to Article 27 of the Constitution.

13. The petitioners argue that other than compelling advocates to become members of the 1st respondent to be able to practice law in Kenya, they further required to pay, apart from a practicing certificate, subscription fee, contributions to the Advocates Benevolent Association, the building fund and any others fees that the 1st respondent may prescribe. According to the petitioners, the only regulatory charge is on the practicing certificate fee given that the rest are associational charges which advocates should not be compelled to be part to. They relied on the case of ***Katiba Institute v Presidents Delivery Unit & 3 others (2017) eKLR*** for the submission that a right granted and protected by the constitution is inviolable because it is neither granted nor grantable by the state.

14. They submit that the letter and spirit of Article 36 of the Constitution is to protect Kenyans from legislation that would compel them to belong to any association and relied on the case of ***SDV V Transami Kenya Limited & 19 others v Attorney General & 3 Others, Constitutional Petition No. 76 of 2012 (Formerly Nairobi Petition No. 291 of 2011)*** for the contention that constitutional rights could not be waived or infringed by acquiescence of the right holder or his consent with the state or any other person.

15. On the right to freedom of expression, the Petitioners submit that rules 7, 8, 10 and 11 of the Advocates (Continuing Professional Development) Regulations 2014 compel advocates to pay and attend several continuous development programs every year despite six years of rigorous studies before becoming advocates, which they argue is contrary to Article 33(1) of the Constitution. On equality, they submit that judges and magistrates are not compelled to be members of the Law Society of Kenya nor are they unlike advocates required to obtain a minimum number of CPDs points to continue working, which they argue is discriminatory against a section of members of the profession and contrary to Article 27(1) of the constitution.

16. The Petitioners relied on a number of decisions including ***Eric Gitari v Non-Governmental Organizations Co-ordination Board & 4 Others (2015) eKLR*** on the definition of a person, ***Muwang Kivumbi v Attorney General (Constitutional Petition No. 9 of 2005)*** and Francis ***Mwangi Munyiti v Attorney General (2017) eKLR.***

17. In a nutshell, the petitioners submit that they are only seeking to have a distinction between the functions of the regulator of the legal profession and the association so that their rights to association, expression and non-discrimination are protected.

1st respondent's submissions

18. Mr. Kanata, learned counsel for the 1st respondent submitted that the Petitioners have no *locus standi* to institute these proceedings since they are neither members of the 1st nor have they demonstrated that they are qualified to be admitted to membership. He relied on the case of ***Omiya Umtatah Okoiti v Attorney General & another*** [2013] eKLR on the question of ***locus standi***. According to Mr. Kanjama, although Article 22 of the Constitution has broadened the horizons of ***locus standi*** to institute proceedings to enforce fundamental rights and freedoms, in the instant petition, the Petitioners lack foundational basis to institute these proceedings.

19. Counsel went on to submit that Articles 36 and 33(1) of the Constitution do not constitute absolute freedoms and can be limited in a manner that is justifiable and acceptable in an open and democratic society based on human dignity, equality and freedom. In counsel's view, all rights and freedoms enshrined in the Constitution except those rights in Article 25 can be limited in accordance with Article 24(1) of the Constitution. To buttress this argument, counsel relied on the case of ***Council of Imams and Preachers of Kenya, Malinda & 4 others v Attorney General & 5 others*** [2015] eKLR.

20. Regarding section 22(1) (b) and (c) of the Advocates Act counsel contended that it does not violate Article 36 of the Constitution and that the limitation falls within the parameters set out in Article 24 of the Constitution; that it limits freedom of association in a manner that is justifiable and acceptable in an open and democratic society and it seeks to promote purposes that are of compelling importance to the public and to the legal profession. In that regard, he relies on the case of ***Podia Management Limited & 4 others v Attorney General & 5 others*** [2016] eKLR on the constitutionality of statutes.

21. Mr. Kanjama furthers submits that the requirement that practicing advocates be members of the 1st respondent meets the proportionality test and relies on the case of ***R v Jakes (1986) 26 DLR 4th edition at 227*** cited in the case of ***Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others*** [2014] eKLR. In counsel's view, the 1st respondent's membership is not an arbitrary, unfair or irrational consideration but one founded on sound law which seeks to safeguard the professional interests of advocates among other things.

22. Submitting on the requirement for continuing legal education as espoused by rules 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004 counsel contends that they do not violate the right to freedom to seek, receive or impart information or ideas including academic freedom as enshrined in Article 33 (1) of the Constitution. He relies on the case of ***Geoffrey Andare v Attorney General & 2 others*** [2016] eKLR. It was their contention that continuous legal education facilitates and enhances advocates' ability to receive and impart information that is necessary for professional development while choosing from a wide variety of Continuous Development Programme (CPD) events in each year of practice. This, he argues, leads to quality service that sufficiently responds to demands of clients, meets the requirements of the legal profession and ultimately protects the public from incompetent advocates.

23. Lastly, counsel submits that failure to require judges, magistrates and state counsel to obtain CPDs just like advocates in private practice does not amount to unfair discrimination and does not offend Article 27(1) & (2) of the Constitution. He relies on the case of ***Federation of Women Lawyers Kenya (FIDA-K) & 5 others v Attorney General & another*** [2011] eKLR for the contention that the constitution does not require things and circumstance which are different in fact or in opinion to be treated in law as though they were the same. Reliance was also placed on the case of ***Nyarangi & 3 Others v Attorney General*** [2008] KLR 688 that the law does not prohibit discrimination but unfair discrimination.

24. In conclusion, counsel submits that legal practice is not just a business but a profession which values, ethics, professional responsibility and one committed to the highest ideals of justice. He cites the case of ***Okenyo Omwansa & another v Attorney General & 2 others*** [2012] eKLR; ***Lucia Mwethya T/A Kalebran Enterprises v Nairobi Bottlers Limited & 3 others*** [2012] eKLR and ***Rachel Odhiambo Ogola & anotherr v Council of Legal Education & another*** [2017)]eKLR to underscore the necessity of regulation and training of advocates to promote the highest ideals of justice, protect members of the public from exposure to incompetent and unscrupulous lawyers and promotion of professional development of advocates.

Analysis and Determination

25. I have considered the petition; the response, submissions and the authorities relied on. The issue that arises for determination is whether the impugned provisions are constitutionally invalid. The petitioners have challenged sections 22(1) (b) and (c) and 23 of the Advocates Act and section 7 of the Law Society of Kenya Act, contending that they violate the Constitution for making it mandatory that an advocate must be a member of the Law Society of Kenya and on the issue of practising certificates. They argue that the sections also violate Articles 27 and 36 of the Constitution hence they are null and void.

26. The petitioners have further faulted regulations 10 and 11 of the Advocates (Continuing Legal Education) Regulations 2004, arguing that these regulations are inconsistent with Article 33(1) of the Constitution in so far as it guarantees freedom to seek, receive or impart information or ideas and (c) academic freedom. They want advocates to be free to join any professional body of their choice and not necessarily to belong to the 1st respondent in order to obtain and renew practicing certificates.

27. The respondents on their part argue that there is no inconsistency between the impugned provisions and the constitution; that members of the legal profession are committed and subject to known standards and that by virtue of their duties, advocates require regulation for their own benefit and that of the public. They also argue that continuous education is necessary to equip advocates with the development of the law and other emerging issues.

28. There is a preliminary issue of ***locus*** which has been raised by the respondents but which the court should not spend much time on. The respondents' argument is that the petitioners are not advocates or qualified lawyers and therefore have no locus to bring this petition. the petitioners have however submitted that they are lawyers awaiting admission hence they have a stake and the necessary ***locus*** to institute the petition.

29. The issue of locus is no longer a novel one in constitutional petitions. Article 258 resolved the issue when it allowed every person to institute proceedings contending that the constitution is being violated, infringed or threatened. Proceedings can also be instituted on behalf

of the person or others. The issue in the petition is that the impugned provisions are unconstitutional. This would appear to be perfectly reasonably within the ambit of public interest because if the provisions are unconstitutional, they violate the constitution and are, therefore, against public interest. The issue of locus has no legal basis and it is dismissed.

30. The crux of this petition is that it challenged the constitutionality of sections 22(1) (b) (c) and 23 of the Advocates Act, section 7 of the Law Society Act and regulations 10 and 11 of the Advocates (Continuing Legal Education) Regulations 2004 I must, however, point out The Advocates (Continuing Legal Education) Regulations, 2004, were revoked and replaced by **The Advocates (Continuing Professional Development) Rules, 2014**, Legal Notice No. 43 of 2014. In order to determine whether or not there is inconsistence between the impugned statutory provisions and the constitution, it is appropriate to briefly consider the principles applicable when considering constitutional validity of statutes or provisions

31. First, there is a rebuttable presumption that a statute or provision is constitutional and that the burden is always on the person alleging constitutional invalidity to prove the alleged unconstitutionality. The reasoning behind this principle is that the legislature being peoples' representative understands the problems people face and, therefore the laws enacted are intended for resolving those problems. In that regard, the court held in ***Ndynabo v Attorney General of Tanzania*** [2001] EA 495 that an Act of Parliament is presumed constitutional and that the burden is on the person who contends otherwise to prove the contrary.

32. Second, to determine constitutional validity, the court has to examine the purpose or effect of the impugned statute or provision. The purpose of enacting a legislation or the effect of implementing it may lead to nullification of the statute or its provision if found to be inconsistent with the constitution. In ***Olum and another v Attorney General*** [2002] EA, the court stated;

> "***To determine the constitutionality of a section of a statute or Act of parliament, the Court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by the Constitution, the Court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the Constitution, the impugned statute or section thereof shall be declared unconstitutional."***

33. In ***The Queen v Big M. Drug mart Ltd,*** 1986 LRC (Const.) 332, the Supreme Court of Canada also stated that;

> ***"Both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. The object is realized through impact produced by the operation and applications of the legislation. Purpose and effect respectively, in the sense of the legislation's object and ultimate impact, are clearly limited, but indivisible. Intended and achieved effect have been looked to for guidance in ascertaining the legislation's object and thus validity."***

34. And in the case of ***Centre for Rights Education and A wareness & another v John Harun Mwau & 6 others***[2012] eKLR, the court opined that in determining whether or not a statute is constitutional, the court must determine the object and purpose of the impugned Act which should be discerned from the intention expressed in the Act itself.

35. Based on the above principles, we now turn to consider whether Sections 22 (1) (b) and (c) and 23 of the Advocates Act, section 7 of the Law Society of KenyaAct and Regulations 10 and 11 of the Advocates (Continuing Professional Development) Rules, 2014, are unconstitutional, beginning with section 7 of The Law Society of Kenya Act

Section 7(1) of the Law Society Of Kenya Act

36. According to section 2 of The Advocates Act, the word **"advocate"** means any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person mentioned in section 10. Section 10 contains persons who are entitled to have audience in court including public officers working in government departments. The Advocates Act is therefore a legislation intended to regulate the conduct of the advocates on the Roll. Once one's name is entered on the Roll, he/she is bound by the provisions of this Act.

37. On the other hand, the Law Society of Kenya is a body corporate established under Section 3 of the Law Society of Kenya Act with mandate stipulated in section 4 of the Act. Its mandate includes to assist the Government and the courts in matters relating to legislation, the administration of justice and the practice of law in Kenya; uphold the Constitution and advance the rule of law and the administration of justice; ensure that all persons who practise law in Kenya or provide legal services in Kenya meet the ***"standards of learning, professional competence"*** and "***professional conduct***" that are appropriate for the legal services they provide.

38. The Society has the responsibility to protect and assist members of the public in Kenya in matters relating to or ancillary or incidental to the law; "***set, maintain and continuously improve the standards of learning, professional competence and professional conduct"*** for the provision of legal services in Kenya; determine, maintain and enhance the standards of professional practice and ethical conduct, and learning for the legal profession in Kenya; facilitate the acquisition of legal knowledge by members of the Society and ancillary service providers, including paralegals through promotion of high standards of legal education and training among others.

39. Just like the Advocates Act, section 7(1) of the Law Society of Kenya Act provides that the membership of the Society shall consist Membership of any person who has been ***admitted as an advocate and whose name has been entered into the Roll of Advocates***; any person admitted to membership under section 8 of the Law Society Act; and any person elected as an honorary member of the Society under section 9 of the Act. In this regard, membership of the 1st respondent reserved to the persons whose names have been entered on the Roll of Advocates. Section 7(1) of the Act is, therefore, in consonance with section 2 of the Advocates Act in relation to who an advocate is.

40. The long title to the Law Society of Kenya Act states that it is an Act of Parliament to establish the Law Society of Kenya, to provide for

the objects, and conduct of the affairs of the Society; to provide for the establishment of the "***Advocates Client Compensation Fun"*** and for connected purposes. It is, therefore, clear that the Act establishes the society, provides for its functions and establishes clients compensation fund meant to cushion clients in the event there is need for compensation.

41. The 1st respondent's mandate is clear as stipulated in section 4 of the Act. That mandate cannot be achieved if the membership was scattered instead of being that of a body of associated members. As an association, the 1st respondent falls within the definition of ***"Person"*** in Article 260 of the Constitution being an association of persons either incorporated or unincorporated.

42. The legal profession is a unique one, for it deals with issues that are dissimilar to those of other professions. It would therefore be difficult to argue, as the petitioners do, that advocates can join any other profession and still practice the profession. This is because advocates deal with clients and are accountable to the clients and the court. The obligations of members of the profession, including holding client funds in the Advocate-client accounts regulated by rules contained in the Advocates Act is unique to the profession. It is, therefore, not clear from the petitioners' point of view, how one who is not a member of the 1st respondent can be subjected to regulation by the professional body responsible for the wellbeing of the profession body of Advocates..

43. The petitioners have argued that a different organ can regulate the legal profession and, for that reason, they do not have to be members of the 1st respondent Society. In their view, compulsory membership violates the constitutional guarantee of freedom of association. I do not agree with the petitioners on this. The legal profession is unique compared to other professions. The services advocates render may not be understood by many outside the profession. The sentiments and suggestions the petitioners advance in support of their quest, may not apply to the legal profession. Self-regulation is the best way of ensuring a robust and effective Advocates' body, and this obtains in other countries of the world where the legal professions regulate themselves. For that reason, I am unimpressed that this country should take a different trajectory. I therefore find the petitioners' argument unpersuasive.

44. I do not also agree that there is any inconsistence between the provisions and with the constitution. The legal profession is a special category and for that reason its operations are regulated in a manner that may, in a way, be seen as limiting rights and fundamental freedoms of members. However, it must be borne in mind that rights under Article 36 are not absolute. They are capable of limitation in terms of Article 24(1) of the constitution so long as the limitation is reasonable and justifiable in an open and democratic society. In that respect, I see no inconsistence to make section 7 fail the nuster of constitutionality in Article 2(4) of the constitution.

Sections 22(1) (b) (c) and 23 of the Advocates Act

45. Section 22 of the Act is on the application and issuance of practicing certificates. The section provides that;

> ***(1) Application for a practising certificate shall be made to the Registrar—***
>
> ***(a) by delivering to him an application in duplicate, signed by the applicant specifying his name and place of business, and the date of his admission as an advocate;***
>
> ***(b) by producing evidence satisfactory to the Registrar that the applicant has paid to the Society the fee prescribed for a practising certificate and the annual subscriptions payable for the time being to the Society and to the Advocates Benevolent Association; and***
>
> ***(c) by producing a written approval signed by the Chairman of the Society stating that there is no objection to the grant of the certificate.***
>
> ***(2) Subject to section 31, the Registrar, if satisfied that the name of the applicant is on the Roll and that he is not for the time being suspended from practice, shall within fourteen days of the receipt by him of the application issue to the applicant a practising certificate.***
>
> ***(3) The Registrar shall cause one copy of each declaration delivered to him under this section to be filed in a register kept for that purpose, and any person may inspect the register during office hours without payment."***

46. The section is a form of regulation on the person to whom a practicing certificate should be issued. This is meant to weed out those who are not qualified members; those suspended and those struck off the Roll from practicing or holding themselves out as advocates. The impugned clause (b) requires one to produce satisfactory evidence that s/he has paid the applicable charges to the 1st respondent. The charges are for purposes of sustaining the 1st respondent's activities for the fulfilment of its mandate under the Act. That in, my respectful view, is not inconsistent with the constitution. The petitioners have not shown how the requirement to pay charges to their professional body violates the constitution to render the provision constitutionally invalid.

47. Furthermore, clause (c) requires one to produce a written approval signed by the President of the 1st respondent to the effect that there is no objection to the issuance of the certificate. This is meant to ensure that only qualified persons and those that have met their obligations to the society, are allowed to take out practising certificates. This being a membership club of professionals, I see no violation of rights of its members or any constitutional invalidity. The requirement is intended to protect the profession and its members from intrusion by non-members as well as protect the profession from being infiltrated by quacks. Rather than allege that the section violates Article 36 of the Constitution, the view I take is that this is positive step in the protection of the society and those seeking services of professional members of the society.

48. I agree with the court's observation in ***Philomena Mbete Mwilu v Director of Public Prosecutions & 3 others*** [2018] eKLR that; ***"one of the reasons why a practicing certificate is issued, is to disqualify any person who has been suspended from practice. The occasion for***

issuing the certificate is also the occasion for checking, among other things, that the applicant is an admitted Advocate and has paid the prescribed practicing fees to the Law Society of Kenya as well as to the Advocates Benevolent Association." That being the case, I see no constitutional fault in section 22(1) (b) and (c).

49. Regarding section 23, it serves to determine those who join the profession as members of the society. The section provides as follows;

> ***(1) Every advocate to whom a practising certificate is issued under this Part shall thereupon and without payment of any further fee, subscription, election, admission or appointment, and notwithstanding anything contained in the Law Society of Kenya Act (Cap. 18) or in any regulations made thereunder, become a member of the Society and the Advocates Benevolent Association and be subject to any provision of law or rule of the Society and the Advocates Benevolent Association for the time being affecting the members thereof.***
>
> ***(2) Every advocate who has become a member of the Society under this section shall remain a member until the end of one month after expiration of his practising certificate, unless his name, whether at his own request or otherwise, is removed from or struck off the Roll, whereupon he shall cease to be a member of the Society.***
>
> ***(2A) The Society shall issue to every advocate registered with it a stamp or seal bearing the advocate's name, admission number and the year of practice in such form as may be approved by the Council of the Society and prescribed in regulations, and such stamp or seal shall be affixed on every document drawn by such advocate and lodged for registration in any registry in Kenya or issued for any other professional purpose.***
>
> ***(3) An advocate who has become a member of the Society under this section and who is suspended from practice shall not be entitled during the period of the suspension to any of the rights or privileges of such membership."***

50. The section is clear that once one applies for the practising certificate in terms of section 22, and the Chief Registrar is satisfied with the suitability to issue the certificate, the issuance confers on the holder the benefit of joining a member of the 1st respondent. That is; membership to the 1st respondent is reserved to those who are qualified and on the Roll of advocates. Doing away with this provision as the petitioners crave, would cause confusion in the legal profession because it will be infiltrated by quacks which would ultimately damage the affairs of the society, including issues of discipline of its members.

47. The petitioners have based their argument on the rights in the Bill of Rights. Our Bill of Rights is very expansive and protects rights and fundamental freedoms of every person. Although Article 33 and 36 form part of the provisions in the Bill of Rights, the rights under these Articles are not absolute. The Articles must be read in conjunction with Article 24(1) of the Constitution so that the limitation, if any, must be reasonable and justifiable in an open and democratic society.

48. There is no doubt that the limitation the petitioners complain of is by law, the Advocates Act and the Law Society of Kenya Act and Rules. The impugned law is in my view, reasonable in that it seeks to protect the profession and members of the public who seek services from qualified and professional advocates. To that extent, only qualified advocates and only advocates holding practicing certificates should render professional services.That then makes the limitation justifiable, for it is for the benefit of the profession and the public. In that context, I see no less restrictive means of dealing with the situation than through the impugned provisions.

Rules 10 and 11 of The Advocates (Continuing Professional development) Rules, 2014

49. The petitioners have also challenged the Advocates continuing professional development programmes developed by the 1st respondent under the impugned rules terming them unconstitutional. The rules require advocates to regularly attend programmes of the Society as a way of enhancing knowledge and professional skills. One is required to accumulate points which will be considered when applying for the annual practicing certificate. A certificate may not be issued where one has not satisfied these requirements.

50. Rule (10) provides that private study is not an approved activity except where it involves the private study of audio, video or electronic material and such study is considered an approved activity by the Committee and for which an advocate may accrue only one-unit. Rule (11) states that regular or pro bono legal work is not an approved activity except for legal work that is for the purposes of the Legal Aid Programme and for which the Committee shall determine how many units an advocate may accrue in a CPD year for that work.

51. I must confess that I have had difficulty in understanding the petitioners' contention in relation to those rules. The law keeps changing so are practice matters. Members of professional bodies such as those of the 1st respondent must keep themselves abreast with new developments in the law and practice. The only way they can do so is through regular training. Attending programmes initiated and developed by their society for their benefit cannot be deemed unconstitutional. This is because the programmes are meant to enhance members' knowledge and skills. If the petitioners' argument was to carry the day, it would render the profession moribund in terms enhancing knowledge and skills. I therefore see nothing unconstitutional with the impugned rules.

52. Having, therefore, considered this petition, submissions, the constitution and the law, I am least persuaded on its merit. The petitioners have failed to demonstrate the constitutional invalidity of the impugned provisions, or how they violate any of the rights in the Bill of Rights. As a professional body the 1st respondent has mandate to discharge for the benefit of its members and the public. For the above reasons, my view of the matter is that the petition is not merited. It is declined and dismissed. Each party do bear own costs.

Dated, Signed and Delivered at Nairobi this 14th March 2019

E C MWITA

JUDGE