



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 85 OF 2017

BETWEEN

LAURA MUKUNGU LUMBASIO.....PETITIONER

AND

COUNCIL OF LEGAL EDUCATION.....1ST RESPONDENT

KENYA SCHOOL OF LAW.....2ND RESPONDENT

JUDGMENT

1. This is a petition dated 13th March, 2017, filed in Court on the same day. It is supported by an affidavit by Laura Makungu Lumbasio, the petitioner herein. The petition is brought against Council of Legal Education, 1st respondent and Kenya School of Law, the 2nd respondent.

2. According to the petition, the petitioner is a holder of Bachelor of Laws (LL.B) degree from the University of Botswana. She obtained her degree on 8th October 2016. She then applied for clearance from the 1st respondent to enable her join the Advocates Training Programme (ATP) at the 2nd respondent School. On reviewing of her degree, she was advised to take some remedial classes in Equity and Law of Trusts, at Riara University, a core course she had not taken in her studies. She enrolled at Riara University and successfully completed her remedial classes.

3. On 28th October 2016, she submitted her application for admission to ATP to the 2nd respondent. She then received a letter dated 30th November 2016, informing her that her application was not successful because of lack of equation of her High School grades by the 1st respondent. When she went back to the 1st respondent, she was advised to submit her High School certificate to the Kenya National Examination Council for Education, (KNEC) for equation, which she did.

4. On 27th January 2017, at 3:58 pm, the petitioner received a phone call from the 1st respondent's officers informing her that her letter was ready. On collecting the letter, dated 26th January 2017, the petitioner avers, the 1st respondent had declined to recognise her High School grades for purposes of admission to ATP at the school, and despite written demands that she be admitted, the respondents have refused to heed the demand.

5. On the basis of the above facts, the petitioner filed this petition and sought the following reliefs;

1) A declaration that the acts and omissions of the respondents complained of are unreasonable, unfair and in breach of the petitioner's legitimate expectation for a process that is procedurally fair, constitutional and law abiding.

2) A declaration that the respondents herein have violated the constitutional right to education of the petitioner.

3) An order of certiorari calling into this Honourable Court and quashing the 1st respondent's directive contained in their letter dated 26th January 2017 declining to recognise and approve the petitioner's qualification for purposes of the bar programme.

4) A permanent injunction restraining the respondents either themselves, employees, servants and or agents from discriminating the petitioner by applying a procedure that has not been applied to other entrants into the Advocacy Training Programme by the 2nd respondent.

5) An order of mandamus compelling the 2nd respondent's admission committee to admit the petitioner to the Advocates Training programme of the 2nd respondent.

6. She also sought damages and costs of the petition.

7. The 1st respondent filed grounds of opposition to the petition. The 1st respondent contended that admission to **Kenya School of Law** is governed by law and that qualifications are mandatory, and not discretionary. The 1st respondent further stated that minimum admission qualifications are contained in the Second Schedule to the Act.

8. It was also contended, that the petitioner did not qualify for admission to the school and that any letter written to her did not supersede the law, and that the 1st respondent's decision was neither unreasonable, unfair and nor discriminatory. The 2nd respondent did not file any response to the petition or attend the hearing.

9. At the hearing of the petition, **Mr Anyoka**, appearing with **Ms Machio** for the petitioner, submitted that the respondent's decision to decline to admit the petitioner to the School's ATP violated the petitioner's right to education, contrary to Article 43(1) of the constitution. The petitioner's counsel submitted that by declining to admit the petitioner on account of her High school grades the 2nd respondent acted unreasonably since the petitioner met the threshold for admission under part II of the Council of Legal Education Act 2012.

10. Counsel further submitted, that the petitioner's right to fair administrative action under Article 47 was violated, and that the respondents breached the petitioner's right to legitimate expectation. It was contended that after undertaking remedial studies at Riara University, the petitioner had a legitimate expectation that she would be admitted to the ATP.

11. The petitioners counsel contended that the issue of High School qualification was not an issue when the petitioner first submitted her documents to the 1st respondent, and that the issue had been brought up in bad faith. It was therefore contended that the 1st respondent, having earlier recognised the petitioner's qualifications for purposes of admission to ATP, it was unreasonable to deny her admission to the school's ATP. They relied on the decision in the case of **Republic v The Chief Justice of Kenya and others Ex parte Moijo Mataiya Ole Keiwua** Nairobi MCMCA NO 1298 of 2004 for the proposition that when a body is to make a decision that would affect rights of an individual, it has to consider any statutory or other legal framework in which it operates. They prayed that the petition be granted.

12. **Mr Bwire**, learned counsel for the 1st respondent, submitted in response to the petitioner's submissions, that the process of admission to ATP at the Kenya School of Law is statute based under section 16 of KSL Act 2012, and the Second Schedule to the Act. Counsel submitted that the minimum

requirement for admission is LLB, degree C (plus) in KCSE, and B (plain) in English or Kiswahili languages. It was submitted that the petitioner was equated on the basis of the degree requirement and advised what to do which she complied with.

13. Regarding admission to ATP, it was submitted that the petitioner having taken High School studies outside Kenya, her High School grades had to be equated by KNEC. This was done and a report from KNEC was received by the 1st respondent and the petitioner was promptly and duly informed. According to counsel, the petitioner had not attained the minimum of B (plain) in English as required for purposes of admission.

14. It was submitted therefore, that the letter dated 26th October 2016 by the 1st respondent to the 2nd respondent, did not create or confer a legitimate expectation, that once through with her remedial studies, the petitioner would be admitted to the school. Counsel further submitted that there was no discrimination since Section 16 of the Kenya School of Law Act and the Second Schedule thereto, have been applied across the board and without exception, and for that reason, the petitioner cannot be given special treatment.

15. Counsel went on to submit that there was no violation of the fair administrative action, in that the result of the equation was received on 25th of January, 2017 and the letter to the petitioner was done the following day, 26th January 2017. Counsel submitted that the decision was made on merit and therefore, the court cannot substitute its own decision to that of the 1st respondent. Counsel relied on a number of decisions and urged that the petition be dismissed.

16. In a short reply, Mr Anyoka submitted that the letter dated 26th October 2016 referred to Section 4(2) (a) KSL Act 2012 as read with Section 12 and 13 of the Advocates Act, which did not confer mandate on examination requirements to joining the ATP at the Kenya School of Law. In his view, qualifications are reviewed by the 1st respondent which the 1st respondent did.

17. Counsel contended that the 1st respondent acted in bad faith, un procedurally and unfairly, and as a result, violated the petitioner's rights. Ms Machio added that the petitioner's qualifications had been cleared by the 1st respondent hence there was no reason for her not being admitted to the ATP at the School.

18. I have considered the pleadings, submissions by counsel and the authorities cited. In my view, there is only one question for determination in this petition; whether the petitioner met the qualifications for admission to the ATP at the 2nd respondent.

19. The petitioner did not take her studies in Kenya. She attended High School and University in Botswana. Her High School education was based on Botswana General Certificate of Education (BGCSE) which is equivalent to the Kenya Certificate of Secondary Education (KSCE). She then joined the University of Botswana where she graduated with Bachelor of Laws (LL.B) degree in 2016.

20. On returning to Kenya, she presented her documents to the 1st respondent and was advised to take some remedial classes, since she had not done one core unit at the university, namely; **Equity and the Law of Trusts**. She successfully took remedial classes at Riara University and thereafter, presented her documents in readiness for admission to the ATP at the school. She was told at the school, that her high school grades had not been equated by the 1st respondent. This was contained in a letter from the 2nd respondent dated 30th November 2016.

21. Upon her High School grades being equated, she says, she was informed that she had the equivalent of B (plain) in KSCE but B (minus) in English which fell below the required B (plain) in English and could not be admitted.

22. The petitioner's counsel submitted that the petitioner was treated unfairly, that the letter she had

received, dated 26th October 2016, created a legitimate expectation and that the petitioner was discriminated against.

23. This petition is presented against two institutions; the Council of Legal Education and The Kenya School of Law. These are two institutions with different mandates. The 1st respondent is established under Section 4 of the Legal Education Act 2012. Under section 8(3) (b) and (d) of the Act, the 1st respondent is charged with the **responsibility of establishing criteria for recognition and equation of academic qualifications in legal education, and a system of equivalencies of legal education qualifications and credit transfers**. The 1st respondent is thus responsible for regulating professional standards in the legal profession in the country. It was in that capacity that the petitioner presented her university qualifications to the 1strespondents recognition.

24. The 1st respondent's mandate is distinguishable from that of the 2nd respondent, the Kenya School of Law, which is established under section 3 of the Kenya School of Law Act 2012 as a body corporate with perpetual succession and a common seal. Part III of the Act (Sections 16 and 17) is relevant to this petition. Section 16 provides that **a person shall not qualify for admission to any course of study at the school, unless that person has met the admission requirements set out in the Second Schedule for that course**. Section 17 on the other hand provides that;

1) "Any person who wishes to be admitted to any course of study at the school shall apply in the prescribed form and pay the prescribed application fees.

2) The school shall consider an application submitted under Paragraph (1) and if it is satisfied that the applicant meets the admission criteria, admit the applicant to the school."

25. The second schedule to the Act contains admission requirements. In the case of the petitioner, having taken his studies outside Kenya, the applicable section is paragraph 1 (b) of the schedule which requires that **one should have Bachelor of Laws, (LL.B) degree:**

(i) attained a minimum entry requirements 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.

26. I have perused the record in this petition and specifically the annexures thereto. It is clear that the petitioner has misapprehended the role of the two institutions. As stated earlier, the 1st respondent does not admit students to the ATP at the 2nd respondent School. The 1st respondent's mandate is clear under the Act, and in my view, it played its role and recognized the petitioner's degree qualifications. In playing its role under the Second Schedule to the Act, the 1st respondent's Council noted that the petitioner had not done one core unit (no 13, Part II of the Second Schedule), that is, **Equity and law of Trusts**, and advised the petitioner appropriately. That is why the petitioner took remedial classes in that subject for purposes of satisfying the requirement for the LL.B. degree in Kenya for purposes of qualification for admission to the ATP at the School.

27. The letter and advice given to the petitioner to take remedial classes, did not and could not confer a legitimate expectation to the petitioner, that once through with those remedial classes, she would be admitted to the school. I say so, because the 1st respondent cannot admit students to the school, and for that reason, cannot confer a legitimate expectation to a person on behalf of another independent institution.

28. The Principles applicable to legitimate expectations were well stated in the case of **Communication Commission of Kenya & 5 others v Royal Media Services & 5 others** by the **Supreme Court** at paragraph (269) that;

- a) there must be an express, clear and unambiguous promise given by a public authority;**
- b) the expectation itself must be reasonable;**
- c) the representation must be one which it was competent and lawful for the decision makers to make;**
- d) there cannot be a legitimate expectation against clear provisions of the law or the constitution.**

29. From the above decision it cannot be said that there was a promise that could be interpreted to amount to a legitimate expectation in the circumstances of this case.

30. The petitioner has also alleged breach of her right to fair administrative action under Article 47(1) of the constitution. Article 47 provides;

- 1) “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**
- 2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.**
- 3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—**
 - a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and**
 - b) promote efficient administration”**

31. Parliament enacted the Fair Administrative Act, (No. 4) of 2015 which provides for procedure to be followed by administrative bodies when taking administrative action. The bottom line is that the action should be expeditious, efficient, lawful, reasonable and procedurally fair,

32. The petitioner was in constant communication with the 1st respondent. She received letters and guidance on what to do at every stage. One of the letters was dated 26th January 2017 informing her of the result the equation of her High School grades. The action and decision was expeditiously communicated to the petitioner. There is no unreasonableness in the action. In my view, the 1st respondent without a doubt performed its duties as required of it by the law.

33. As to submission that she was discriminated against, there is no evidence that the petitioner was subjected to any such discrimination. Discrimination is unconstitutional in terms of Article 27 of the constitution. The constitution demands that people be treated equally. However, where a person alleges discrimination, he is bound to show that indeed, there was such conduct or circumstances that can be interpreted to amount to discrimination. What there is in this petition is mere assertion without tangible proof.

34. The court’s finding above notwithstanding, I am of the view that the petitioner’s case against the 2nd respondent is premature and her fight against the 1st respondent unwarranted. I say so because the 1st respondent did her part and recognised the petitioner’s degree qualifications, that was all it was required to do in so far as its duties under the Act are concerned.

35. Regarding the complaint against the 2nd respondent, I am unable to place blame on it based on the material before Court. On 30th November 2016, the 2nd respondent wrote to the petitioner with regard to her application for admission to ATP, informing her that her application was not successful for the reason

that she had not obtained clearance from the 1st respondent on her High School qualification (grade). This was informed by the fact that the petitioner did not sit for KCSE, hence her High School grades had to be equated to those of Kenya. This would enable the 2nd respondent determine whether she qualifies in terms of the Second Schedule to Kenya School of Law Act, 2012. It would appear from the record, that at the time the 2nd respondent wrote the letter of 30th November 2016, pointing out that equation to petitioner's High School grades had not been done, it was not possible to tell whether the petitioner was qualified or not.

36. The petitioner has not placed evidence on record to show that after the equation of her High School grades, she applied to the School for admission and the School declined. In the absence of such evidence, it would be inappropriate for the court to act on fears and apprehension by the petitioner. The petitioner cannot blame the 2nd respondent, and the Court cannot order the respondent to do what it had not declined to do.

37. For the above reasons, I find that the petition is not merited. It is hereby dismissed with no order as to costs.

Dated, Signed and Delivered at Nairobi this 2nd Day of August, 2017

E C MWITA

JUDGE