



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CONSTITUTIONAL PETITION NO. 9 OF 2017

**IN THE MATTER OF: ARTICLES 27, 43(f) 47(1)54(b), (f) OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF: S 18 OF THE PERSONS WITH DISABILITIES ACT NO. 14 OF 2003 AS
REVISED IN 2012**

AND

IN THE MATTER: S 28 AND 36 OF THE MENTAL HEALTH ACT CAP 248

AND

**IN THE MATTER OF: REGULATION 9(5) OF THE COUNCIL OF LEGAL EDUCATION
(KENYA SCHOOL OF LAW) REGULATIONS 2009**

AND

**IN THE MATTER OF: VIOLATION AND OR INFRINGEMENT ON CONSTITUTIONAL AND
LEGAL RIGHTS OF PETITIONER**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PACTICE AND PROCEDURE RULES 2013**

M M O NPETITIONER

VERSUS

COUNCIL OF LEGAL EDUCATION.....RESPONDENT

JUDGMENT

1. This is a Petition by **M M O N** (hereinafter referred to as '**the Petitioner**') challenging the decision by the **COUNCIL OF LEGAL EDUCATION** (hereinafter referred to as '**the Council**' or '**the Respondent**') refusing to allow the Petitioner to register and sit for his Bar Examinations on the ground that the Petitioner is time-barred by dint of **Regulation 9(5)** of the **Council of Legal Education (Kenya School of Law) Regulations 2009** (hereinafter referred to as '**the Regulations**').

2. The Petitioner is a resident of Kuria East District within Migori County. He graduated from [particulars withheld] with a Bachelor's Degree in Laws (LL. B) in 2007 and was admitted to the Kenya School of Law (hereinafter referred to as '**the School**') to undertake the Advocate Training Programme (hereinafter referred to as '**the Programme**') in 2008 under Admission No. [Particulars withheld].

3. By a Petition dated 20/07/2017 and filed in Court on 24/07/2017 the Petitioner avers that upon joining the School aforesaid he was taken ill with a mental condition but he continued with his studies until 2010 when he sat the Bar Examinations and passed in all of them save Conveyancing (ATP 107) and Commercial Transactions (ATP 108).

4. That from 2010 the mental condition worsened through to 2017 as the Petitioner would get short interludes of lucidity followed by relapses to serious mental disability and disorders. The Petitioner sought medical intervention and as the condition became worse he was forced to abandon his studies at the School. Sometimes in 2012 the Petitioner enjoyed some lucidity period and sat for the two examinations he had failed in 2010. He passed in Conveyancing (ATP 107) and again failed in Commercial Transactions (ATP 108).

5. The Petitioner was again forced to be out of the School as the mental condition worsened from 2012 until sometimes in 2017 when the Petitioner's Doctors certified that the Petitioner was undergoing a sustained lucidity period and advised that he proceeds to sit for the remaining examination. The Petitioner contends that his guardian regularly kept the School abreast of his mental condition. He annexed several copies of correspondences from his Doctors to the School in proof thereof.

6. By a letter dated 07/06/2017 the Petitioner applied to the Council (which Council had by then taken over the mandate of administering Bar Examinations from the School) to sit for the remaining Commercial Transactions (ATP 108) examination sometimes in July 2017. The Council replied to the Petitioner's letter vide its letter dated 16/06/2017 and informed him that he was not eligible to sit for any Bar Examinations since 5 years had lapsed from the time the Petitioner joined the School and as such Regulation 9(5) of the Regulations barred him from sitting any further Bar Examination. The Council wished him well in his future endeavors.

7. Being aggrieved by the decision of the Council, the Petitioner filed the Petition subject of this judgment. He contended that the failure to complete sitting the Bar Examinations within the period of 5 years post admission was not deliberate or out of incompetence but as a result of an exogenous factor; that he suffered from a serious mental disability/disorder. The Petitioner cited the provisions of **Articles 27, 43(f), 47(l), 54(1)(a) and (b) of the Constitution** in contending that the decision of the Council remains a violation of his constitutional rights. The Petitioner further contended that the impugned decision infringed **Section 18 of the Persons with Disabilities Act No. 14 of 2003** and meant that the Petitioner would not be able to become an Advocate of the High Court of Kenya thereby curtailing his prospects of earning a livelihood and a future.

8. The Petitioner also raised the issue that whereas he was admitted to the School in 2008 the Regulations came into force in 2009 and as such the Regulations could not apply retrospectively.

9. The Petitioner alluded that further to the **Constitution, Section 28 of the Mental Health Act Chapter 248 of the Laws of Kenya** also empowers this Court to make any necessary orders in the circumstances of this case. He then prayed for the following orders: -

a) A Declaration be issued that the petitioner is entitled to protection under the Constitution 2010.

b) A Further declaration that under the Constitution and the persons with disability Act the petitioner is entitled to admission to the Advocates training programme for ATP 108 COMMERCIAL TRANSACTION.

c) A declaration that the provisions of Regulation 9(5) of the council of legal education (Kenya

school of Law) 2009 Regulations do not apply to the petitioner and further that if they violate the petitioner's rights under the constitution and the persons with Disabilities Act.

d) Declaration that the petitioner qualifies and is entitled to all those benefits and privileges given by article 54 of the Constitution as well as S 18 of the persons with disabilities Act No. 4 of 2003.

e) An order directing the respondent to admit the petitioner to any subsequent examination schedule depending on his medical / mental condition, and further to apply and accord to him the privileges set out on S 18 (2) of the persons with disabilities Act No. 14 of 2003.

f) An order of costs to be borne by the Respondent.

g) This Honourable court be pleased to issue such orders and/or wits as the court may deem fit or expedient.

10. Opposing the Petition, the Respondent filed Grounds of Objection dated 13/09/2017 on 14/09/2017. It is the Respondent's position that Regulation 9(5) of the Regulations is still law and the Respondent is enjoined in law to abide by it since the Regulation is very instrumental in facilitating legal education and training in Kenya and that it passes the constitutional threshold of valid statutory law back at **Article 24** of the **Constitution**. The Respondent further contended that the Petitioner failed to demonstrate any justiciable violation of any of the alleged fundamental rights and as such called this Court to respect the law and enforce it to ensure a consistent implementation of legal education policy in Kenya as the contrary would open a precedent of violation of the law.

11. The Petition was heard by way of oral submissions. **Mr. Jura** Learned Counsel appeared for the Petitioner whereas **Mr. Oduor** Learned Counsel appeared for the Respondent. Mr. Jura took the Court through the Petition and the various legal provisions in emphasizing that the Petitioner's constitutional rights have been variously infringed by the Respondent's decision in declining to register the Petitioner for the Bar Examination. Counsel also submitted that the Respondent shall not be prejudiced in any way by the grant of the orders sought.

12. In reiterating the Grounds of Objection Mr. Oduor submitted that the Respondent never denied the Petitioner admission or access to the Advocates Training Programme as the Petitioner was so admitted in 2008 and subsequently sat for the Bar Examinations. That, since the Petitioner did not seek to declare Regulation 9(5) unconstitutional the same remains good law and must be adhered to. Counsel further argued that although the Regulations were repealed by subsequent regulations, Regulation 9(5) was saved by dint of **Section 29(3)(a)** of the **Kenya School of Law Act** and that the said regulation has no exceptions whatsoever. Further submissions were made that alleged rights were not falling under **Article 25** of the **Constitution** and as such could be limited by way of the Regulations.

13. In a rejoinder the Petitioner urged this Court to note that the Regulations were repealed and as such cannot be a basis of the decision of the Respondent. He prayed for the orders sought.

14. I have keenly read and understood the contents of the Petition and the Grounds of Objection as well as the parties' submissions and do hereby frame the issues for determination as follows: -

a) Whether Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009 is still in force;

b) If the answer to (a) above is in the affirmative, whether the Regulation 9(5) should apply in the circumstances of this case;

c) Prayers.

15. In answer to the first issue, I will briefly revisit the background of the law that regulated Bar

Examinations prior to the Petitioner joining the School and thereafter. The **Council of Legal Education Act Chapter 16A** of the Laws of Kenya (hereinafter referred to as '**Cap. 16A**') came into being on 27/12/1995. It was an Act of Parliament to provide for the establishment and incorporation of the Council of Legal Education and for connected purposes. It established the Council of Legal Education whose mandate was *inter alia* to establish, manage and control such training institutions as may be necessary and to conduct examinations for the grant of such academic awards as may be prescribed (*Section 6*). One of the training institutions under this Act (Cap. 16A) was the School which was by then already operational.

16. By Legal Notice No. 169 of 2009 the Council of Legal Education under Cap. 16A formulated the **Council of Legal Education (Kenya School of Law) Regulations 2009**. Regulation 9 was on the School's examinations. Regulation 9 (5) which is in issue in this Petition provided as follows: -

'9. (5) Unless stated in the specific programme of study, a candidate shall be allowed a maximum of five examination sittings in each course of study, which shall be undertaken within a maximum period of three years.'

17. Regulation 9(5) aforesaid was amended vide the Council resolution dated 18th November 2011 to the effect that: -

"In respect of the Advocates Training Programme a candidate shall be allowed a maximum of five years within which to complete the course of study"

18. As the amendment caused confusion on its effect especially on the continuing students the Chief Executive Officer who is also the Secretary of the Council issued a General Notice No. 17 of 2016 which clarified that all candidates whether or not they had taken the Bar Examinations as at 18th November 2011 were allowed five (5) years within which to qualify from the programme beginning 18th November 2011. The Petitioner was therefore required to sit all his examinations by November 2016.

19. The then Cap. 16A was repealed by the enactment of the **Legal Education Act No. 27 of 2012** (hereinafter referred to as '**LEA**'). The LEA became effective as from 28/09/2012. **Section 47** of the **LEA** provided as follows: -

'47. The Council of Legal Education Act, 1995 (Cap. 16A) is repealed.

20. From the reading of the **Section 47** aforesaid the Regulations which were formulated vide Legal Notice No. 169 of 2009 were not repealed. The Council under Cap. 16A was succeeded by the Council of Legal Education under LEA which then Council of Legal Education under LEA assumed *inter alia* the role of administering professional examinations under Section 13 of the Advocates Act (*Section 8*).

21. The repeal of Cap. 16A also brought forth the birth of **The Kenya School of Law Act No. 26 of 2012** (hereinafter referred to as '**KSLA**') which Act established the Kenya School of Law which was the successor of the Kenya School of Law under Cap. 16A to be an independent legal education provider responsible for the provision of professional legal training as an agent of the Government. For clarity purposes, the new legal regime meant that the Council under the LEA would administer examinations and the School under KSLA would provide the necessary legal training.

22. Pursuant to **Section 28** of the **KSLA** the School formulated **The Kenya School of Law (Training Programmes) Regulations, 2015** under Legal Notice No. 175 dated 11/09/2015. **Regulation 42** thereof revoked the Council of Legal Education (Kenya School of Law) Regulations 2009. **Regulation 43(1)** provided that: -

'43. (1) Despite the revocation of Council of Legal Education (Kenya School of Law) Regulations, 2009, any act, thing or decision pending under the Council of Legal Education (Kenya School of Law) Regulations, 2009, shall be continued or concluded as if the act or thing was done or decision made under these Regulations.

23. The effect of **Regulation 43(1)** of The Kenya School of Law (Training Programmes) Regulations, 2015 was that Regulation 9(5) was saved and continued being in force which position has been so to date.

24. I therefore answer the first issue in affirmative and return the verdict that Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations, 2009 is still in force.

25. I will now consider whether the Regulation 9(5) should apply in the circumstances of this case. As demonstrated above the Petitioner was to complete all his examinations by November 2016. That did not however happen due to the mental challenges the Petitioner underwent up to 2017. I have seen several correspondences from as early as 2010 to 2017 by the Doctors who variously attended the Petitioner addressed to the School and the Council. One of the letters is dated 02/05/2017 by Dr. F. R. Owiti (Consultant Psychiatrist) addressed to the Chairman of the Council of Legal Education on the Petitioner. The letter states as follows: -

'RE: MR. M M O. N. – ID NO. [particulars withheld]

I refer to the above and other previous medical letters addressed the Kenya School of Law concerning Mr. M M.

Mr M M was first diagnosed with Schizophrenia – a mental condition in the year 2008. He has been treated at my clinic –Chiromo Lane Medical Centre and other hospitals including Moi Teaching and Referral Hospital Eldoret and Kisii Level 5 hospital in Kisii.

Currently he is under medical and his condition is stable. I strongly advise that you allow him to sit for his exams and or any other requirements at your institutions in this period as his condition is stable.

Without prejudice to the above, the condition of such patient is unpredictable and as such, kindly assist.

DR. F. R. OWITI

26. The Petitioner then applied to the Council to be allowed to sit for his last Bar Examination out of time. By a letter dated 04/05/2017 the Council through its Chief Executive Officer/Secretary Prof. W. Kulundu Bitonye, EBS declined to register the Petitioner for the July 2017 Bar Examinations on the ground of affluxion of time pursuant to Regulation 9(5) aforesaid.

27. The Petitioner did not relent in his quest to sit for the final examination. He again applied to the Council on 07/06/2017 and enclosed various medical records on his previous mental condition and begged the Council to allow him sit the examination out of time. The Petitioner's application was met with a like response. The Council through its letter dated 16/07/2017 reiterated its earlier position that there was no room for extension of time under Regulation 9(5). The letter read in part as follows; -

'Consequently, when you applied for registration for the July 2017 Bar Examination, in April, the application was rejected because it was out of time. More importantly, no documentary evidence of prolonged indisposition and/ or treatment was availed in support of that application. The letters from Dr. Owiti and Dr. Mutinda dated 2nd May 2017 and 20th July 2016 respectively were availed to Council on 3rd May and 7th June, 2017 respectively.

Council was unaware of your indisposition and treatment until May 3rd 2017 which is post facto your registration request. Since you were relying on medical records to fortify the case for registration out of time, the relevant documentation should have been submitted to the Council before expiration of the period of registration. In any case, the five year rule militate against the consideration of your application and since you did not seek to use your medical condition to open up that issue, you stand barred on the basis of that rule,

Regrettably, registration for the July 2017 Bar examination cannot be re-opened.

Accordingly, your request to register for the foregoing examination is declined.

28. Having hit a dead end, the Petitioner filed the Petition under consideration for the various reliefs hoping to be registered for the November 2017 examinations if his Petition succeeds.

29. It is not in doubt from the contents of the Respondent's letter dated 16/07/2017 that the Respondent has a discretion to allow or decline the Petitioner to sit for his examination outside the period provided for under the Regulation 9(5). It is therefore the exercise of that discretion by the Respondent that the Petitioner contends to have infringed on his rights under **Articles 47(1)** and **54 (b)** and **(e)** of the **Constitution** as well as the provisions of the **Mental Health Act**, Chapter 248 of the Laws of Kenya (hereinafter referred to as '**the MHA**') and the **Persons with Disabilities Act** (hereinafter referred to as '**the PDA**').

30. There is no contention that the Petitioner has been a '*person suffering from mental disorder*' as defined under **Section 2** of the **MHA**. The various letters from the Doctors vouch for that. It therefore follows that the condition in which the Petitioner had been fits into the description of '**disability**' under **Section 2** of the **PDA** and as such the Petitioner is a '*person with disability*'. That being so **Article 54** of the **Constitution** and **Section 18** of the **PDA** make specific provisions for such class of persons. **Article 54** of the **Constitution** provides as follows: -

'54. (1) A person with any disability is entitled-

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interest of the person;

(c) to reasonable access to all places, public transport and information;

(d) to use Sign language, Braille or other appropriate means of communication; and

(e) to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

31. **Section 18** of the **PDA** provides as follows: -

'18. (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

32. The Respondent was therefore under a constitutional and statutory duty to consider the Petitioner's

application on the foregone background and to ensure that its decision met the expectations of **Article 47(1)** of the **Constitution** and the provisions of the **Fair Administrative Act, 2015** (hereinafter referred to as '**the FAA**') which states that: -

“47. (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.”

33. The **FAA** defines an '**administrative action**' to include: -

“i. the powers, functions and duties exercised by authorities or quasi-judicial tribunals: or

ii) any act, omission or decision of any person, body or authority that affects the legal rights or interest of any person to whom such action relates;”

34. **Section 4(1)** of the **FAA** provides that: -

‘1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.’

35. In the context of this matter, I wish to appreciate the importance of fair administrative action and to associate myself with **Majanja, J.** when he expressed himself in **Moses Kiarie Kuria & 4 Others v. Attorney General & 3 others (2014) eKLR** thus:

‘The Constitutional guarantee of the right to fair administrative action is aimed at instilling discipline to administrative action so that the values and principles of the Constitution are infused in matters of public administration.’

36. From the definition of a '*fair administrative action*' in the **FAA** and the reading of **Article 47** of the **Constitution** together with **Section 4** of the **FAA**, the decision by the Council on the Petitioner's application was an administrative action and as such the process undertaken in reaching that decision had to be in tandem with the said law. The process has varied elements of procedure which include: -

i) Whether the decision was expeditious and efficient;

ii) Whether the decision was lawful,

iii) Whether the decision was reasonable;

iv) Whether the decision was procedurally fair;

v) Whether written reasons were given; and

vi) Whether the principles of good governance, integrity and transparency were adhered to.

37. I will hence subject the process taken by the Council in reaching the impugned decision to the above elements so as to ascertain its extent of compliance to the law. The Petitioner made the application for late registration on 07/06/2017 and a response was rendered vide the Respondent's letter dated 16/06/2017. The decision was hence made expeditiously. From our discourse on the first issue, the decision was also made within the law. As to whether the decision was reasonable the case of **Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948) 1 KB** comes to play. The Court in that case came up with the three 'logical principles' (the Wednesbury principles) to be followed in making a decision on reasonableness. They are: -

- i) To take into account all relevant considerations.
- ii) Not to take into account an irrelevant consideration, and
- iii) Not to take a decision which is so unreasonable that no reasonable person properly directing himself or herself could have taken it.

38. In buttressing the foregone principles **Lenaola, J** (as he then was) in the case of **Garissa County Government v. National Land Commission & 3 others (2016) eKLR** had the following to say: -

‘88.....I can only hazard to add that an action or decision can only be deemed reasonable if it is undertaken or reached following a process that is well reasoned and logical, so that even if a reasonable person would disagree with the action or decision reached, the person would still deem the process leading thereto as coherent and sensible.

39. In this case a look at the letter that contained the impugned decision reveals that the Respondent acknowledged that indeed the Petitioner was indisposed for a long period but contended that the fact of indisposition ought to have been communicated to the Council well before the expiry of the registration period. What the Respondent failed to note is that the Petitioner’s father had kept the School well aware of the Petitioner’s condition by forwarding various letters from the Doctors since February 2010, long before the Council came into being. Despite that background having been brought to the attention of the Respondent vide the letter by Dr. F. R. Owiti dated 02/05/2017 which bears the Respondent’s receipt stamp dated 03/05/2017 the Respondent again did not bother to ascertain the position from the School. There is no indication that the contents of the Doctor’s letter are false. The Respondent just handled the matter in such a casual and dismissive manner and did not effectively address itself to and consider the core fact that the Petitioner as a person with disability has defined rights and privileges under the law.

40. It is also imperative to note that the Respondent failed to take into account the fact that the Petitioner, who is under a disability, was not to be subjected to the same expectations as the other students with no disabilities. To that end the Respondent discriminated against the Petitioner and thereby infringed the Petitioner’s right to freedom from discrimination under **Article 27(4)** of the **Constitution**.

41. Further the Respondent being the Examiner remained under a duty to understand the background of the Petitioner well. Had that happened the Respondent would have easily realized that further to the mental disorder the Petitioner also hailed from the marginalized Kuria community within Migori County and **Article 56** of the **Constitution** called for special opportunities to be accorded to such people in educational and economic fields. On the foregone considerations I find that the impugned decision was not reasonable in the unique circumstances of this case.

42. Closely linked with the above is whether the decision was procedurally fair. The answer thereto is in **Section 4(3)** and **(4)** of the **FAA**. The section provides as follows:-

‘3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature of the proposed administrative action;

(b) an opportunity to be heard to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;...

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross – examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

4. The administrator shall accord the person against whom administrative action is taken an opportunity to-

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross – examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”

43. The Court in the case of **Doody v. Secretary of State for the Home Department and other appeals (1993) 3 All ER 92 (HL)** held as follows on fairness: -

“What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.....Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both.”

44. Likewise, in the case of **Minister of Health and Another v. New Clicks South Africa (Pty) Ltd and others (2005) ZACC 14** it was held that: -

“An individual needs to know the concerns of the administrator and to be given an opportunity of answering those concerns. The decisions may depend on particular facts and may sometimes involve disputes of fact that have to be resolved.”

45. Lenaola, J (as he then was) in the case of **Garissa County Government v. National Land Commission** (supra) went further and held as follows/; -

“98. To my mind: prior notice means informing a person in understandable terms that a certain type of administrative action will be taken against them, sufficiently early enough for the person being informed to be able to plan how to appropriately respond to the administrative action; opportunity to make representations means that keeping in mind the nature of administrative action, granting the person affected opportunity to make his/her representations, respond to the decision makers, provide any new information if necessary or raise any complaints; adequate notice of any right to appeal or review means informing then persons affected by the administrative action that they can challenge the administrative action within the auspices of the decisions maker, replete with timeline and procedure for such action/or by way of approaching the Courts for judicial review.”

46. By taking into account all the above alongside the contents of the Affidavit and its annexures I find that the decision to decline to register the Petitioner as to sit for the Bar Examination out of time was procedurally unfair for the reasons that the decision was unilaterally made by the Respondent who did not accord the Petitioner an opportunity to make representations and explain the history of the matter and why the decision should not be taken against him (even by way of written submissions) and that the Petitioner was not given adequate notice and direction on his right to appeal the administrative action taken against him.

47. Whereas written reasons were given for the decision I find that the impugned administrative action failed to attain the values espoused in **Article 10** and **Chapter 6** of the **Constitution** the same having been taken unilaterally and in total disregard to the provisions of the PDA. In so finding I am persuaded

by the decision in **Garissa County Government v. National Land Commission** (supra) where the foregone was discussed as follows: -

‘110. While good governance denotes upright and wholesome means for making decisions and relating to members of the public, integrity embodies always being honest and riven by strong moral conviction, and transparency indicates operating in a manner that allows for the public to see how institutions arrive at decisions or perm actions.

111. The Courts have clarified the place of these values in administrative action. In the case of Republic v Kenya Revenue Authority Ex-parte LAB International Kenya Limited [2010] eKLR, the Court held thus:

“[By way of] Article 47 of the Constitution of Kenya, 2010 persons such as the applicant have a right to fair administrative action, which must not be denied whether by the respondent, or by the other Government agencies and mechanisms to which the respondent may happen to be operationally attached; the whole set of those agencies, which are statutory and public bodies, are subject to Article 10 of the Constitution which, under the head, ‘national values and principles of governance’, requires ‘good governance, integrity, transparency and accountability.’”

112. In addition, in the case of Dry Associates Limited v Capital Markets Authority and Another Nairobi Petition No. 328 of 2011 [2012] eKLR, the Court held that national values and principles of governance articulated in Article 10 including good governance, integrity, transparency and accountability must be infused in administrative action.

113. Majanja I was of the same view when he pronounced thus in Geothermal Development Company v Attorney General [2013] eKLR:

“.... That certain values and principles of governance be infused into the decision-making process of any State organ. Such values as are relevant to these proceedings include good governance, integrity, transparency and accountability.”

48. Having considered the tenets of fair administrative action it is my finding that the decision by the Respondent declining to register the Petitioner to sit for the Bar Examination out of the time prescribed by Regulation 9(5) infringed the Petitioner’s rights under **Articles 47(1) and 54(1) of the Constitution** alongside **Section 18(2) of the PDA**. The impugned decision further denied the Petitioner an opportunity to realize his lifetime dream of becoming an Advocate on account of a disability and as such further infringed the Petitioner’s right to inherent dignity and the right to have that dignity respected and protected under **Article 28 of the Constitution**.

49. From the foregone discourse and in view of the provisions of the **Constitution, the Persons with Disabilities Act** and **the Mental Health Act** I find that this case is very unique and is based on genuine and reasonable grounds and that the Petitioner ought to have been exempted from the requirement of Regulation 9(5).

50. For the aforesaid reasons and in light of **Article 23(3) of the Constitution** this Court makes the following final orders: -

a) A declaration do hereby issue that the Petitioner is entitled to the protection of the **Constitution, the Persons with Disabilities Act and the Mental Health Act**.

b) A declaration do hereby issue that, in the unique circumstances of this matter, **Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009** contravenes **Article 27(4) of the Constitution** and should not apply to the Petitioner herein, M M O N.

c) A declaration do hereby further issue that, in the unique circumstances of this matter, the

decision by the Council of Legal Education to decline to register and allow the Petitioner herein, M M O N of Admission No. *[particulars withheld]* to sit for ATP 108 Commercial Transactions Bar Examination contravenes Articles 28, 47(1), 54(1) (a) and 56(b) of the Constitution.

d) Subject to the Petitioner's mental condition and to the payment of any fees as the case may be the Respondent shall forthwith register the Petitioner herein, M M O N of Admission No. *[particulars withheld]*, and allow him to sit for any subsequent Bar Examination in respect to subject ATP 108 Commercial Transactions and that in the course of dealing with the Petitioner herein the Council of Legal Education shall *inter alia* adhere to provisions of the Constitution and all other applicable statutory requirements.

e) Costs of the Petition to be borne by the Respondent.

DELIVERED, DATED and SIGNED at MIGORI this 22nd day of September 2017.

A. C. MRIMA

JUDGE