**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. 58 OF 2014**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF THE KENYA SCHOOL OF LAW ACT (ACTS NO. 26 OF 2012 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF THE KENYA SCHOOL OF LAW BOARD**

**AND**

**IN THE MATTER OF THE DECISION OF THE KENYA SCHOOL OF LAW BOARD TO REVOKE ADMISSIONS OF THE APPLICANTS TO THE ADVOCATES TRAINING PROGRAMME (ATP) AT THE KENYA SCHOOL OF LAW FOR THE ACADEMIC YEAR 2014/2015**

**REPUBLIC**

**VERSUS**

**THE KENYA SCHOOL OF LAW.................................... 1ST RESPONDENT**

**THE ATTORNEY GENERAL........................................... 2ND RESPONDENT**

**AND**

**COUNCIL OF LEGAL EDUCATION....................... INTERESTED PARTY**

***Ex parte* JULIENT WANJIRU NJOROGE, VINCENT OMONDI OWUOR, SOLOMON WACHIRA NGARI, ANTHONY EREGAE ELAINI, ELIZABETH NANJENDO WERE AND KEVIN AKONYA**

## JUDGEMENT

**INTRODUCTION**

1. By a Notice of Motion dated 18th February, 2014, the *ex parte* applicants herein seek the following orders:

1. **An order of Certiorari do issue removing to this Honourable Court for purposes of the same being quashed the decision of the 1st respondent made on 22nd January, 2014, to revoke the admission to the Kenya School of Law of the 1st to 6th ex-parte applicants.**
2. **An order of Mandamus do issue compelling the 1st respondent to readmit, register or re-register the 1st to 6th ex-parte applicants at the Kenya School of Law until determination of this application or until the Honourable Court orders otherwise.**
3. **An order of Prohibition do issue prohibiting the respondents from barring the 1st to 6th ex-parte applicants from attending studies at the 1st respondent; Kenya School of Law commencing from 10th February, 2014.**

***EX PARTE*** **APPLICANTS' CASE**

2. The application is based on the following grounds:

1. **The ex-parte applicants are holders of Bachelor of Laws from the Uganda Pentecostal University, each of the applicant qualified for the admission at the Kenya School of Law ("the school") within the meaning of Section 16 and 17 of the Kenya School of Law Act (~Act No. 26 of 2012) and as such they belong to the class of persons for whose benefit the Act herein stipulates.**
2. **The 1st respondent by its decision on 22nd January, 2014 to revoke the admissions of the ex-parte applicants from commencing registration and the studies at the school was done without according them a hearing, thus being detrimental to the applicants' legitimate expectations and a breach to the rules of natural justice.**
3. **The 2nd respondent by failed in advising the 1st respondent on the process admission and revocation of the ex-parte applicants letters of admission thereto.**
4. **The respondents owes the applicants a concrete reason for the revocation of the letters of admissions, each being a holder of Bachelor of Laws from Uganda Pentecostal University-Uganda within the meaning of the Kenya School of Law Act (No. 26 of 2012) Laws of Kenya.**
5. **There is serious want of institutional memory in respect of the 1st and 2nd respondents which cannot be visited upon the innocent ex-parte applicants, in that a decision is alleged to have been made against the admission of the Uganda Pentecostal University Bachelor of Law degree graduates to the Kenya School of Law on 18.9.2013 after a visit by the Council of Legal Education of the University on 24.1.2013 which decision the ex-parte applicants had no prior knowledge of and or privy to.**
6. **The Council of Legal Education as established under the Legal Education Act (No. 27 of 2012) Laws of Kenya has no authority to accredit foreign institution, save that they can only liaise with the regulator of the Legal Education in a foreign country vide an existing reciprocating agreement. Thus Uganda Pentecostal University-Uganda holds a letter of conditional accreditation dated 30.6.2008 to its law degree programme leading to the award of Bachelor of Laws therefrom.**
7. **Without derogating from the foregoing, the ex-parte applicants, applied to join the Kenya School of Law for the Advocates Training Programme (ATP) and indeed all of the ex-parte applicants were admitted at the school for the bar course in diverse dates between 1.12.2013 and 15.1.2014 only for their admissions to be revoked on 22.1.2014 without following due process.**
8. **All of the ex-parte applicants had in deed paid school fees as indicated on each of their respective admission letter to the school and even admission numbers allocated to them, way before the decision to revoke the letters of admissions was communicated.**
9. **The ex-parte applicants' legitimate expectation in the right to an administrative action that is efficient, lawful, reasonable and procedurally fair as espoused under Constitution of Kenya, 2012 was greatly compromised by the respondents and amounts to condemning the**

**ex-parte applicants without a hearing thereby departing from the rules of natural justice.**

10. **Any decision made in breach of the rules of natural justice are ultra-vires, irregular, null or void ab initio and are amenable to Judicial Review Jurisdiction of this Honourable Court and ought to be removed for purposes of being quashed.**
11. **The respondents 'actions are unlawful, arbitrary, malicious, capricious, unreasonable, discriminatory, actuated by bad faith, based on extraneous considerations against the ex-parte applicants' lawful, legitimate and rightful expectations and taken in breach of the rules of natural justice.**
12. **The ex-parte applicants shall rely on the violation of the foregoing principle of law in seeking the orders of certiorari, mandamus and prohibition herein.**

3. The said application was supported by several verifying affidavits sworn by the applicants herein.
4. According to the affidavit sworn by **Juliet Wanjiru Njoroge** she studied for her undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the Uganda Pentecostal University-Uganda hereinafter referred to as the University), having successfully completed the prescribed course of the university and satisfied the examiners thereof. Thereafter on 10th February, 2014, she applied and was admitted for a whole year (12 months) Advocates Training Programme (ATP) on 7th December, 2013 at the Kenya School of Law ("hereinafter referred to as the school"), having qualified as such and having satisfied the condition set under the ***Kenya School of Law Act*** (No. 26 of 2012) Laws of Kenya (hereinafter referred to as the Act) . Thereafter on 24th January, 2014, she paid 75% of the total fees, being direct cash deposit of Kshs. 142,500.00, payable in line with the letter of admission to the school, at the National Bank of Kenya.
5. According to her, when she arrived at the school on 24th January, 2014, with a view of registering thereto and signing the Nominal Roll, on the presentation of the banking slip for her school fees, the same was declined by the cashier and instead she was immediately issued with a letter dated 22nd January, 2014, revoking her admission to the Advocates Training Programme (ATP) at the Kenya School of Law for the academic year 2014/2015.
6. According to her she was not accorded a hearing by the Kenya School of Law Board before her admission was revoked and was not privy and or aware of any decision contained in a letter **ref: CLE/GN/01/Vol. I (91)** dated 18th September, 2013 allegedly forwarded to **Prof. John Nitambirweki**, Vice Chancellor, Uganda Pentecostal University and or any visit by the Council of Legal Education (hereinafter referrd to as the Council). To her the Council as established under ***The Legal Education Act*** (No. 27 of 2012) Laws of Kenya has no authority to accredit foreign institution, save that it can only do so in liaison with the regulator of Legal Education in a foreign country vide an existing reciprocating agreement. As the Uganda Pentecostal University holds a letter dated 30th June, 2008 from the Regulator of Legal Education in the country, being the Law Council – Uganda, for conditional accreditation to its Law degree programme leading to the award of Bachelor of Laws therefrom and the Council cannot go beyond that accreditation.
7. She deposed that she was greatly aggrieved by the said decision and action of the 1st respondent to revoke her said admission and that the 1st respondent's said decision was arrived at without observing the Principles of Natural Justice in that: It failed to accord her sufficient or any reasonable notice of the proceedings (if any) of the Kenya School of Law Board before revoking her admissions to the school; It failed to accord her a fair opportunity to present her case and to enable her to correct or contradict any relevant statements and or allegations prejudicial in her view; It failed to avail and or show her and or apply any evidence, whether written or oral in support of allegations (if any) made prior to making its decision to revoke her admission at the school; and it made and reached a decision unilaterally in revocation of her admission which decision was merely rubber stamped.
8. It was further averred that the 1st respondent acted ultra-vires as to the law governing admission to the school and the Kenya School of Law Bard as provided under Sections 6, 10, 16 and 17 of the Act, in arriving at the decision to revoke her admission to the school due to breach of the Admission Requirements into the Advocates Training Programme, as articulated in the Second Schedule to the Act; acting without following the prescribe procedure therein; and failing to adhere to the institutional framework and or composition and or the conduct of affairs and

business of the Kenya School of Law Board of Directors.

9. According to her, the 1st respondent actions were in abuse of power and with improper motive in arriving at its decision to revoke her admission to the school and in failing to register her by acting without exercising substantive fairness and acting irrationally and without regard to the principles applicable in its decision making process. The said decision, it was contended was outrageous and unwarranted as the same was founded on false allegations and was unreasonable in failing to provide any evidence to her prior to making its decision to revoke the admission to the school for the course. To the deponent, the 1st respondent in its actions failed to strike a fair balance between the adverse effects its decision and action would have upon her vis-à-vis its decision contained in its letter dated 22nd January, 2014 to her, revoking her admission to the school and or refusing and or denying her registration at the 1st respondent's school. To her, the 1st respondent in its decision and actions acted in breach of its duty to act in good faith in her interest in that it acted with *mala fide* and violated the legal principle of legitimate since her legitimate expectations among others is that the 1st respondent's Board established under the Act would adhere to the regulations governing the conduct of its business and to fairness and principle of law and honour its duties to that effect.
10. To her, the 2nd respondent failed in its duty as an advisor to the 1st respondent on the process of admission and revocation of admissions to the school hence the 1st and 2nd respondents owe her a concrete reason for the revocation of her letter of admission to the school, as a holder of Bachelor of Laws (LL.B) degree from the University within the meaning of the Act.
11. Based on legal advice from her advocates she believed that whereas Courts of law in Kenya are very loath to interfere with decisions of domestic bodies and tribunal including institutions board and have no desire to run such learning institutions or indeed any other body, they will however interfere to quash decisions of public body or public official when they are moved to do so where it is manifest that the decisions have been made without fairly and justly hearing the person concerned or the other side and that it is the duty of the court to curb excesses of officials and bodies which exercise administrative authority which her case merited. She further deposed that any decision made in breach of the rules of natural justice are ultra-vires, irregular, null or void *ab initio* and are amenable to Judicial Review Jurisdiction of this Honourable Court and ought to be removed for purposes of being quashed.
12. It was her view that in the circumstances the 1st respondent's decision to revoke her admission to the Kenya School of Law for the ATP and any other issue arising therefrom are a nullity and devoid of legal effect.
13. In her further affidavit sworn on 18th March, 2014, the deponent stated that she was a stranger to the contents of the interested party's affidavit and in that the matters arising in the interested party's replying affidavit have been dealt with in challenging a decision dated 18th September, 2013 of the interested party in J.R. Miscellaneous Application No. 105 of 2014, High Court Nairobi. Further it was her view that the decision-maker, the 1st respondent has not challenged the application herein and the same should be allowed to that extent.
14. **Vincent Omondi Owuor** similarly swore an affidavit on 18th February, 2013. Apart from associating himself with the contents of the affidavit sworn by **Juliet Wanjiru Njoroge**, he deposed that he studied for his undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the University, having successfully completed the prescribed course of the university and satisfied the examiners thereof. Thereafter applied and was admitted for a whole year (12 months) Advocates Training Programme (ATP) on 7.12.2013 at the School, having qualified as such and having satisfied the condition set under the School. Consequently on 20th January, 2014 he paid 75% of the total fees, being cash deposit of Kshs. 145,000.00, payable in line with his letter of admission to the school and was issued with a receipt there from. He accordingly on the same date registered as a student of the 1st respondent and signed the Nominal Roll in accordance with his letter of admission.
15. However, when he arrived at the school on 22nd January, 2014, he was called at the admissions office, whereupon arrival was presented with a letter dated 22nd January, 2014 containing a decision for his revocation of admission to the Advocates Training Programme (ATP) at the School for the academic year 2014/2015 which decision greatly aggrieved him.

16. **Solomon Wachira Ngari** also apart from associating himself with the averments contained in the affidavit sworn by **Juliet Wanjiru Njoroge**, deposed that he studied for his undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the University, having successfully completed the prescribed course of the university and satisfied the examiners thereof. Thereafter applied and was admitted for a whole year (12 months) Advocates Training Programme (ATP) on 7.12.2013 at the Kenya School of Law ("the school"), having qualified as such and having satisfied the condition set under the School. Consequently on $16^{th}$ January, 2014 he paid 75% of the total fees, being cash deposit of Kshs. 145,000.00, payable in line with his letter of admission to the school and was issued with a receipt there from. He accordingly on the same date registered as a student of the $1^{st}$ respondent and signed the Nominal Roll in accordance with his letter of admission.
17. However, when he arrived at the school on $22^{nd}$ January, 2014, he was called at the admissions office, whereupon arrival was presented with a letter dated $22^{nd}$ January, 2014 containing a decision for his revocation of admission to the Advocates Training Programme (ATP) at the School for the academic year 2014/2015 which decision greatly aggrieved him.
18. According to **Anthony Eregae Elaini**, he similarly studied for his undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the University, having successfully completed the prescribed course of the university and satisfied the examiners thereof. He applied and I was admitted for a whole year (12 months) Advocates Training Programme (ATP) on $10^{th}$ January, 2014 at the School, having qualified as such and having satisfied the condition set under the Act. On $20^{th}$ January, 2014 he paid 100% of the total fees, being cash deposit of Kshs. 190,000.00, payable in line with his letter of admission to the school's and presented his deposit slip to the cashier with the $1^{st}$ respondent and was issued with a receipt therefrom. He was however, called at the admissions office, whereupon arrival he was presented with a letter dated $22^{nd}$ January, 2014 containing a decision for his revocation of admission to the Advocates Training Programme at the School for the academic year 2014/2015. He was similarly greatly aggrieved by the said decision and action of the $1^{st}$ respondent.
19. **Elizabeth Najendo Were** similarly associated herself with the deposition by **Juliet Wanjiru Njoroge** and added that she studied for her undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the University, having successfully completed the prescribed course of the university and satisfied the examiners thereof. She then applied and was admitted for a whole year (12 months) Advocates Training Programme (ATP) on $10^{th}$ January, 2014 at the School, having qualified as such and having satisfied the condition set under the Act. On $22^{nd}$ January, 2014 she paid 75% of the total fees, being cash deposit of Kshs. 145,000.00, payable in line with her letter of admission to the school's account and thereafter presented her deposit slip to the cashier with the $1^{st}$ respondent and was issued with a receipt therefrom. The same date she registered as a student of the $1^{st}$ respondent and signed the Nominal Roll in accordance with the letter of admission. However when on $2^{nd}$ January, 2014 she arrived at the school, she was called at the admissions office, whereupon arrival was presented with a letter dated the same day containing a decision for her revocation of admission to the Advocates Training Programme (ATP) at the School for the academic year 2014/2015 which decision greatly aggrieved her.
20. The last verifying affidavit was sworn by **Kevin Akonya** who deposed that just like the other applicants he studied for his undergraduate course leading to an award of Bachelor of Laws (LL.B) degree at the same University-after successfully completed the prescribed course of the university and satisfying the examiners thereof. He then applied and was admitted for a whole year (12 months) Advocates Training Programme (ATP) on $10^{th}$ January, 2014 at the School, on qualifying as such and having satisfied the condition set under the Act. He accordingly paid 75% of the total fees, being cash deposit of Kshs. 120,000.00, payable in line with my letter of admission to the school's account and on presenting the deposit slip to the cashier with the $1^{st}$ respondent was issued with a receipt therefrom. However he was immediately told to visit the admissions office, whereupon arrival was presented with a letter dated $22^{nd}$ January, 2014 containing a decision for his revocation of admission to the Advocates Training Programme (ATP) at the School for the academic year 2014/2015 which decision greatly aggrieved him.

## 1$^{ST}$ RESPONDENT'S CASE

21. In response to the application the 1st Respondent filed a replying affidavit sworn by **Margaret W. Mugai**, the 1st Respondent's action Director and Chief Executive Officer on 3rd March, 2014.
22. According to the deponent, he respondent is established under Section 3(1) of the ***Kenya School of Law Act***, 2012 for objects under Section 4 of the said Act. In admission of students to the school the respondent is guided by provisions of the ***Legal Education Act***, 2012 as to universities that are accredited or whose qualifications have been equated and classified as qualifying and section 17 read with Schedule 2 to the Act. According to her, section 16 and Schedule 2 to the Act are applied by the respondent subject to satisfaction that the university from whence the applicant is, is accredited, for local universities or is approved and its qualifications duly equated, for foreign universities and the accreditation and approval of universities and equation of qualifications is done by the Council of Legal Education, the regulator. Therefore the respondent is by law enjoined to defer to the decision of the Council of Legal Education on which universities are accredited and approved, whose students' merit admission to the school.
23. According to her, by practice and because applications are normally numerous, the respondent issues provisional letters of admission to prima facie qualified students initially and subsequently vets the provisional admittees interrogating the conditions of admission exhaustively and it is only those who satisfy all conditions that make to the final list of students.
24. It was deposed that under the aforesaid framework, the respondent received applications for admission from the ex parte applicants, students from Uganda Pentecostal University and then issued provisional admission letters to the ex parte applicants. However, at the second stage of scrutiny of applications, the respondent discovered that the Bachelor of Law degree from Uganda Pentecostal University was not approved for purposes of admission to the school which situation followed an inspection by the Quality Assurance, Accreditation and Compliance Committee of the Council of Legal Education of the Uganda Pentecostal University Campus on 24th January 2013. The report of the investigation together with the decision of the council had been communicated to the university through the Vice Chancellor. She deposed that in deference to the regulator's decision aforesaid, the respondent rescinded the admission of the ex parte applicants and that the letters of rescission carried the reasons for the decision. Because of the rescission, the respondent has advised the applicants that it shall rebate to them monies paid as fees to the school.
25. It was further deposed that in rescinding the applicant's provisional admission at the school the respondent was only guided by the law as aforesaid hence the allegations of unreasonableness, discrimination, malice, violation of natural justice and legitimate expectation are denied. To her the respondent has not in its existence administered its regulations preferentially to any individual or institution.
26. It was further contended that the application as presently drawn and filed is wholly unsustainable and misconceived, with respect, because of the decision of the Council of Legal Education has not challenged and as long as it stands the respondent is enjoined at law to defer to it; the provisional letters of admission were conditional on satisfaction of all requirements and criteria for admission including the criteria exacted on the applicants' former university by the ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations of 2009***; the letter of admission, were issued without jurisdiction, since there was no jurisdiction to admit the applicants at the school; Certiorari cannot issue in the circumstances of the present case; Mandamus cannot issue in the circumstances of this case, for Mandamus cannot issue to compel a public authority to breach the law; Prohibition cannot issue in the circumstances of this case; and that Legitimate expectation cannot issue against the law.
27. According to the deponent, the applicants are not without recourse or way forward, as averred in their pleadings the Law Development Centre recognizes their university and its qualifications, the applicants have thus the opportunity to become advocates.

## INTERESTED PARTY'S CASE

28. In response to the application the interested party filed the following grounds of opposition:

**1. That 2nd respondent acted within the premises of the law.**

**2. The application has no merits since the 2nd respondent as a member of the interested party acted within the law while discharging it's duties hence the application is an abuse of the court process.**

**3. The Kenya School of Law is the public legal education provider responsible for the provision of professional legal training as an agent of the Government of Kenya. Admission to the Kenya School of Law is regulated by law, and regulations have been made to support that law.**

**4. The Parliament clearly vests the power of formulating the policy of training and examining of advocates on the Council of Legal Education.**

**5. The Council of Legal Education is the sole body mandated with overseeing the quality of legal education in Kenya.**

**6. The Council of Legal Education has the power to set educational standards to ensure that the highest professional standards are maintained in the legal profession and to that extent in its reciprocal arrangements with foreign institutions it ensures that all applications for admission to the 1st respondent's school must be considered against the same standards set by the council.**

**7. The respondent's actions were performed well within the law was laid down and at no time have the respondent's ever acted based on malice, discrimination, bad faith or extraneous considerations.**

**8. That in the circumstances and based on the foregoing reasons, the notice of motion is therefore baseless, misconceived and devoid of any merit and the orders sought should not be granted.**

29. The 2nd Respondent further filed a replying affidavit sworn by **Professor W. Kulundu Bitonye**, the secretary to the interested party on 26th February 2014.
30. According to him, the interested party is established under Section 4 of the ***Legal Education Act*** No. 27 of 2012 as the regulator with the principal purpose of supervision and regulation of professional legal education and training in Kenya. In exercise of this mandate the interested party liaises with universities, the Kenya School of Law and other institutions offering legal education in Kenya. According to him, prior to enactment of the ***Legal Education Act***, regulation of legal education was provided for under the ***Council of Legal Education Act*** (Chapter 16A of the laws of Kenya) and subsidiary legislation made under that Act, ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations of 2009*** which continue in operation through Section 48(2)(a) of the ***Legal Education Act, 2012***.
31. It was deposed that ***The Legal Education Act*** enjoins the interested party as the regulator to inter alia accredit legal education providers, set curricular and mode of instruction, set mode and quality of examinations, harmonize legal education programmes, monitor and evaluate legal education providers and programmes. In order to achieve the objectives above, under Section 8(3)(h) of the Act, the interested party carries out regular visits and inspections of legal education providers. Whilst the ***Legal Education Act*** is legislated to have application over legal education providers in Kenya, in exercise of the council's mandate to consider, approve and or equate degrees from foreign universities, the council has reciprocal agreements with its equivalent in the Republic of Uganda, Tanzania and Malawi under which the council is allowed to inspect legal education providers in the said countries and advise them of acceptability of their graduates at the Kenya School of Law. This enterprise, it was deposed was created firstly by the need to harmonize standards of legal education and qualification in East Africa and secondly because a significant number of Kenyans were getting enrolment in universities in Uganda and Tanzania and would

thereafter apply for admission to the Kenya School of Law for the Diploma in Law.

32. According to him, for a degree to be acceptable for admission to the Kenya School of Law under Section 12(d) of the ***Advocates Act*** (Chapter 16 of the Laws of Kenya) and Section 16 read together with the Second Schedule to the Kenya School of Law Act, 2012, the legal education provider/university must satisfy the criteria set under the Act supervised by the council. Under Rule 11 of the ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations of 2009***, the standards governing the operation of legal education institutions are carried in the third Schedule to the Regulations which provides criteria for physical standards, Library Standards and Curriculum Standards. To him, Regulation 19(1) of the ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations of 2009*** mandates the respondent to consider and recognize or reject recognition to any foreign university, notwithstanding the general recognition jurisdiction of the Commission of Higher Education. It was his view that Regulation 19(2) of the ***Council of Legal Education (Accreditation of Legal Education Institutions) Regulations of 2009*** mandates the respondent to equate every qualification from a foreign university against its standards and make recommendations as appropriate and the qualifications from a university that does not satisfy the criteria aforesaid for accreditation are not recognized by the Council of Legal Education and are not recognized for inter alia admission to the Kenya School of Law.

33. The deponent contended that the Council has also always advised foreign universities of the requirements for admission to the Kenya School of Law and the implication to the students in event of noncompliance and this included Uganda Pentecostal University. In exercise of its mandate as aforesaid the Quality Assurance, Accreditation and Compliance Committee of the Council visited the Uganda Pentecostal University Campus on 24$^{th}$ January 2013 and conducted an evaluation basing on the criteria provided by the regulations which inspection was made on the physical standards, library standards and curriculum standards at the university. Thereafter, the Council then deliberated on the standards as obtaining and made out a report of its evaluation which report was duly forwarded to the Vice Chancellor of Uganda Pentecostal University by letter dated 18$^{th}$ September 2013 vide registered courier.

34. The deponent added that as at the time of the inspection of Uganda Pentecostal University, the applicants were students at the university and the council had no jurisdiction over them and could therefore only communicate to them through the university as was done. Therefore, having issued and made the report as hereinabove, the applicants could not legally be admitted at the Kenya School of Law unless and until Uganda Pentecostal University complied and rectified the deficiencies pointed out in the council's report hence the applicants do not satisfy the council for admission to the Kenya School of Law under Section 16 read with Schedule 2 to the ***Kenya School of Law Act***, 2012. Notwithstanding the letter and report produced herein, the applicants, students from Uganda Pentecostal University applied to the Kenya School of Law for admission to the Advocates Training Programme and The Kenya School of Law by inadvertence issued generic provisional admission letters. By practice, and because applications are normally numerous, the Kenya School of Law issues provisional letters of admission to prima facie qualified students initially and subsequently vets the provisional admittees interrogating the conditions of admission exhaustively and it is only those who satisfy all conditions that make to the final list of students.

35. In this case, it was deposed that subsequent to the issuance of the provisional letters of admission, the school on further vetting noted that the applicants were from Uganda Pentecostal University, which university's qualifications had been determined as non-qualifying for admission to the Kenya School of Law and for the reason above, the applicants provisional admission was rescinded and the applicants duly notified of the fact of rescission and the reasons for the decision. According to the deponent, in arriving at the report, the council was acting purely per its jurisdiction at law, was objective and was not actuated by any ill will or bias and considered relevant issues having duly investigated and interfaced with Uganda Pentecostal University faculty of law.

36. According to him, the Kenya School of Law acts in accordance with regulation of the council and in the circumstances, until and unless the decision of the council is upset, Kenya School of Law has no jurisdiction to admit the applicants. In his view based on the provisional letters, Section 12(d) of the ***Advocates Act*** (Chapter 16 of the Laws of Kenya and Section 16 read with Schedule 2

to the ***Kenya School of Law Act***, 2012 the Kenya School of Law had no jurisdiction to issue even provisional admission to the applicants and the provisional letters of admission to the applicants having been done without jurisdiction, are none actions and the rescission was therefore only an act of formality. To him, legitimate expectation cannot be upheld to override the law and the interested party cannot be compelled to compromise on the quality control standards with which it is charged hence the orders of Certiorari, Mandamus and Prohibitions do not lie.

37. In his view, the applicants are not without recourse or way forward, as averred in their pleadings the Law Development Centre of Uganda recognizes their university and its qualifications, the applicants have therefore the opportunity to become advocates.

**APPLICANTS' SUBMISSIONS**

38. It was submitted on behalf of the applicants by their learned Counsel **Mr Nzaku** that there was no admission to be revoked since the applicants had already been admitted to the School. Since the University is recognised in Uganda the revocation of the applicants' admission was done without mandate. Further before revocation the applicants were never afforded an opportunity of being heard hence the Respondents acted beyond their powers under the Act and hence the decision negates the principles of fair hearing. By the decision to revoke the applicants' admission the Respondents acted beyond their powers since the applicants had been accorded the status of students and they had expectation of commencing their studies and completing the same.
39. With respect to the 2nd Respondent, it was submitted that he failed to advise the 1st Respondent on legal matters pertaining to how a student ought to cease being a student through in disciplinary measures.
40. It was submitted that though there was allegation of communication between the interested party and the University there is no evidence that this communication was brought to attention of the applicants.
41. In the premises the applicants submitted that their application was merited.

**RESPONDENTS' SUBMISSIONS**

42. On behalf of the Respondents it was submitted through their learned Counsel **Mr. Odhiambo** that there is no evidence to support the claim against the 2nd Respondent and that no relief can be sought against him personally in light of the fact that he acted in his official capacity hence there is no justification for the joinder of the 2nd Respondent to these proceedings as all action as taken by the 2nd Respondent were taken in his official capacity.
43. It was submitted that it had not been demonstrated that the procedure adopted by the 1st Respondent was marred with impropriety, that it committed an illegality or acted ultra vires its jurisdiction.
44. It was submitted that what the applicants seek is that he court should replace the 1st Respondent's decision and find contrary to the 1st Respondent's finding that the applicants were not eligible for admission. To do so would amount to going into the merits of the matter or sitting on appeal from the decision. To the Respondents judicial review cannot be used to curtail or stop statutory bodies or public officers from the lawful exercise of power within their statutory mandate. It was submitted that the Council is the best judge with respect to matters pertaining to standards
45. According to the Respondents, the application is baseless, misconceived and devoid of merits hence the orders sought ought not to be granted. In support of their submissions the Respondents relied on **Eunice Cecilia Mwikali Maema vs. Council of Legal Education & 2 Others [2013] eKLR**, **Republic vs. Council of Legal Education [2007] eKLR** and **Republic vs. The Council of Legal Education ex parte Keniz Otieno Agira & 23 Others [2013] eKLR**.

**INTERESTED PARTY'S CASE**

46. On behalf of the interested party, it was submitted by its learned Counsel **Mr. Echesa** that a standard is set with regard to accreditation in Kenya and outside Kenya and in this case at the time of the application for admission by the applicants the institution from which they qualified was not

accredited. What the applicants seek, it was submitted, was for the Court to substitute its decision on merit not to admit the applicants from a non-credited institution yet this is not the purpose of judicial review proceedings.

47. It was reiterated that what was offered to the applicants was a provisional admission the effect of which would give the School the power to rescind the same on realisation that the institution was not accredited. It was submitted that the application ought not to be allowed as the effect of allowing the same would be to sanction an act not legally permitted. In support of this submission the interested party relied on **Republic vs. The Council of Legal Education ex parte Keniz Otieno Agira & 23 Others** (supra).

**DETERMINATIONS**

48. I have considered the foregoing.
49. From the evidence on record which evidence is not controverted the applicants or at least some of them had been admitted to the School. I am saying at least some of them because with respect to the 5th ex parte applicant, **Elizabeth Nanjendo Were**, although she deposed that she was similarly admitted to the School no letter of admission was exhibited. Nor was the letter rescinding her admission exhibited. However in paragraphs 9 and 10 of the affidavit sworn by **Margaret Muigai**, there is an unreserved admission that applications for admissions were received from the applicants and that the Respondent issued provisional admission letters to the ex parte applicants.
50. The applicants contend that the 1st Respondent's decision was ultra vires their powers since the applicants had already been admitted to the School and that the decision to rescind the admission was taken without the applicants being afforded an opportunity of being heard.
51. That the applicants were not heard before the 1st Respondent rescinded its decision to admit them as students at the School is not contested. What the Respondents contend is that the said letters were expressly stated to be provisional and were subject to further investigations by the interested party. It is however admitted by the interested party that the 1st Respondent had no jurisdiction to provisionally admit the applicants to the School. This position is curiously admitted by the 1st Respondent.
52. That the applicants were not heard before the said decision was made is not in doubt. However, the Respondents contend that they were under no obligation to hear the applicants before rescinding their admission since the applicants' university had been notified of the decision.
53. In my view the Respondents' position misses the point. The applicants at the time of the rescission of their admission to the School were nolonger students at the University and had nothing to do with the University. To equate the information given to the University as having been transmitted to the applicants would in my view be irrational.
54. Article 47 of the Constitution provides as follows:

***(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.***

55. In the Uganda case of **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300,** it was held:

**"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety ...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...**

**Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."**

56. In **Republic vs. The Honourable The Chief Justice of Kenya & Others Ex Parte Moijo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004** the High Court expressed itself as follows:

**"Whereas the rules of natural justice are not engraved on tablets of stones, fairness demand that when a body has to make a decision which would affect a right of an individual it has to consider any statutory or other framework in which it operates. In particular it is well established that when a statute has conferred on a body the power to make decision affecting individuals, the courts will only require the procedure prescribed to be introduced and followed by way of additional safeguards as that will ensure the attainment of fairness. In essence natural justice requires that the procedure before any decision making authority which is acting judicially shall be fair in all circumstances. The right to be heard has two facts, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule which regulates all procedures is that persons who are likely to be affected by the proposed/likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence…….. Although the courts have for a long time supplemented the procedure that had been laid down in a legislation where they have found that to be necessary for that purpose, before this unusual kind of power is exercised, it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of legislation. Additional procedural safeguards will only ensure the attainment of justice in instances where the statute in question is inadequate or does not provide for the observance of the rules of natural justice. The courts took their stand several centuries ago, on the broad principle that bodies entrusted with legal powers could not validly exercise them without first hearing the people who were going to suffer as a result of the decision in question. This principle was applied to administrative as well as judicial acts and to the acts of individual ministers and officials as well as to the acts of collective bodies such as justices and committees. The hypothesis on which the courts built up their jurisdiction was that the duty to give every victim a fair hearing just as much a cannon of good administration is unchallengeable as regard its substance. The courts can at least control the primary procedure so as to require fair consideration of both sides of the case. Nothing is more likely to conduce to good administration. Natural justice is concerned with the exercise of power that is to say with acts or orders which produce legal results and in some way alter someone's legal position to his advantage. As part of a reasonable, fair and just procedure the court has a cardinal duty to uphold the constitutional guarantees, the right to fair hearing which entails a liberal and dynamic approach in order to ensure the rights enjoyed by an individual is not violated...."**

57. Similarly in **Msagha vs. Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 [2006] 2 KLR 553** the High Court expressed itself as follows:

**"The Court observes firstly that the rules of natural justice "*audi alteram partem*" hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialisation of the globe during the hey-days we of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. *If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision*. ………. The principle of legitimate expectation lies in the proposition that where a person or a class of persons has previously enjoyed a benefit or advantage of procedure which, on reasonable grounds, seemed likely to be continued as a standard way or guide, with respect to the resolution or disposal or certain questions a claim of legitimate expectation may arise. Put differently, legitimate expectation is but one variant aspect of the duty to act fairly and natural justice is but a manifestation of a broader concept of fairness. The rules of natural justice are minimum standards of fair decision-making imposed by the common law on persons or bodies who are under a duty to "act judicially". They were applied originally to courts of justice and now extend to any person or body deciding issues affecting the right or interests of individuals where a reasonable citizen would have a legitimate expectation that the decision-making process would be subject to some rules of fair procedure. The content of natural justice is therefore flexible and variable. All that is fundamentally demanded of the decision maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case. Nevertheless some judges prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice, often the terms are interchangeable. But it is perhaps now the case while a duty to act fairly is incumbent on every decision-maker within the administrative process whose decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure. The rules of natural justice are generally formulated as the rule against bias (*nemojudex in sua causa*) and in respect of] the right to a fair hearing [*audi alteram partem*]."** [Emphasis mine].

58. In this case, the applicants had already been admitted whether rightly or wrongly. In my view, the rules of natural justice mandated that the applicants be notified of the intention to revoke their admission to the School and the reasons therefor disclosed before the decision was taken.

The applicants were nolonger students of the University but were students of the School provisionally or otherwise. In my view by the said admission they had acquired some rights and were therefore entitled to be treated fairly before a decision adverse to their interest was made. It is not a question whether the Respondents would have arrived at the same decision even if the applicants had been heard. As was held in **Onyango Oloo vs. Attorney General [1986-1989] EA 456**:

**"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...To "consider" is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... "Consider" implies looking at the whole matter before reaching a conclusion...*A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at*...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in**

**substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...Denial of the right to be heard renders any decision made null and void ab initio."** [Emphasis mine].

59. It is therefore clear that it is not the perceived hopelessness of a person's case that determines whether or not he ought to be heard in a decision likely to adversely affect him. The right to be heard is a fundamental human right that is not given by the State since human rights are generally universal and inalienable rights of human beings. A Constitution simply recognises the natural and original human rights of mankind which any and every human being should have in order to lead a dignified life till his natural death. As was held by **Nyamu, J** (as he then was) in **Kenya Bus Services Ltd & 2 Others vs. Attorney General [2005] 1 KLR 787.**

    **"The only difference between rights and the restrictions are that the restrictions can be challenged on the grounds of reasonableness, democratic practice, proportionality and the society's values and morals including economic and social conditions etc. whereas rights are to the spiritual, God given, and inalienable and to the non-believers changeless and the eighth wonder of the World."**

60. Therefore, it is at that hearing that the applicants would have been afforded an opportunity to urge their case whether or not in the circumstances of the case the Respondents were empowered to take the decision they took. This case must be distinguished from the decision in **Republic vs. The Council of Legal Education ex parte Keniz Otieno Agira & 23 Others**. In that case the applicants had not yet been admitted to the School. What was in contention was the decision by the Respondents not to accredit the concerned University.
61. Having concerned the issues raised herein it is my view and I so hold that the applicants ought to have been afforded an opportunity of being heard before the decision to rescind or revoke their admission to the School was made.
62. It was argued that the orders sought herein cannot be granted without quashing the decision by the interested party. It suffices to state that in these proceedings what the applicants are contesting is the decision revoking their admission by the 1st Respondent and not the decision not to accredit the University.

**ORDER**

63. In the premises an order of certiorari is hereby issued removing to this Honourable Court for purposes of being quashed the decision of the 1st respondent made on 22nd January, 2014, to revoke the admission to the Kenya School of Law of the 1st to 6th ex-parte applicants which decision is hereby quashed.
64. With respect to the prayer for mandamus the same cannot be granted at this stage as it is couched on temporary terms pending this determination.
65. I however wish to observe that there was no reason why the 2nd Respondent was joined to these

proceedings. There was no evidence that the advice of the 2nd Respondent was sought and he failed to give the same.

66. In the premises there will be no order as to costs.

**Dated at Nairobi this day 2nd of April 2014**

***G V ODUNGA***

***JUDGE***

***Delivered in the presence of:***

***Mr Nzaku for the Applicant***

***Mr Bitta for 2nd Respondent***