REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civil Case 137 of 2004

REPUBLIC ..... APPLICANT

VERSUS

THE COUNCIL OF LEGAL EDUCATION ..... RESPONDENT

EX-PARTE

1. **JAMES NJUGUNA**
2. **LEONARD NYAKERIGA**
3. **LUCY NJERI**
4. **DAPHNA NYAMWEYA**
5. **GLADYS NYAMWEGA**
6. **ELIAS GITARI NJOROGE**
7. **ELIJAH MIGIRO**
8. **DAVID MIGOI**
9. **ERIC MUSYOKA**
10. **LEWA ATUGA**
11. **HENRY MICHIRA**
12. **DONALD WAMARI**
13. **JOHNSON GICHOHI**
14. **GEOFFREY CHERUIYOT**
15. **JAMES N. NYAMBANE**

JUDGMENT

The application before the court is dated 19th February 2004. The applicants are Law Students who have obtained Bachelor of Laws from various Universities outside Kenya. As required by the Council of Legal Education the applicants enrolled at the Kenya School of Law to sit for certain specified subjects totaling 8 in number. According to the statement the applicants have passed all the papers save for one or two

subjects each.

In January 2004 the Council of Legal Education informed the Applicants that by virtue of Regulation 9(4) of the Advocates (Admissions) Regulations 1997, the applicants were barred from sitting any further examinations.

Hon Justice Aganyanya in ***H.C. Misc. 1156 of 2000*** had in an application filed by another applicant who is not party to this suit granted a stay in respect of operation of Regulation 9 of the Advocates (Admissions) Regulation 1997. The applicants contend that after the said stay the Respondents have admitted more than 100 students to sit for examination for more than four times and that some of the applicants have in fact sat for the examination for more than four (4) times.

The grounds upon which the relief is sought are:

(1) The decision by the respondent is discriminatory and unfair and unjust

(2) The Regulations relied upon by the respondent in making the decision are ultra vires the enabling Act, that is the Council of Legal Education Act 1995 and which Regulations are also in contravention of the Constitution of the Republic of Kenya

(3) The decision of January 2004 and the regulations are harsh, unconscionable and inherently passive

(4) The decision made by the respondent in January 2004 is against the principle of the rule of natural justice.

The applicants have sought relief as follows:

(a) An order of certiorari to remove to the High Court and quash the proceedings and decision made by the respondent in January 2004 to bar the Applicants from sitting any further examinations

(b) An order of Mandamus to compel the Respondent to allow the applicants to sit and/or do further examinations of the Council of Legal Education at the Kenya School of Law.

The application is opposed by the Council of Legal Education, the respondent and both parties have filed skeleton arguments and lists of authorities.

The Respondents response relies heavily on the Advocates Act especially Part IV.

Section 12(5) states that subject to the Act no person shall be admitted as an advocate unless he is duly qualified in accordance with section 13.

Section 13(1) b (ii) of the Advocates Act allows the Council to require the passing of any examinations as may be prescribed by the Council of Legal Education.

The Council of Legal Education is governed by the Council of Legal Education Act (Revised 1998) Chapter 16 A of the Laws of Kenya which provides in section 14 that, the Council with the approval of the Minister, may make regulations for the purposes of the giving effect to the provisions of the Act.

Under s 14 of the (CLE) Act, the Council made or promulgated the Advocates (Admission) Regulation 1997 vide Legal Notice 357 and it is through these Regulations that the Council exercises general supervision and control over Legal Education in Kenya.

In particular Part IV of the Regulations governs the course structure and duration. To illustrate the nature of the requirement Regulation 9(2) provides that:

"the maximum number of attempts permitted at the council's examination is four which shall be made within a period of two academic years."

Regulation 9(3) provides that:

"where a student has entered for an examination at the first instance and is referred in some papers such student shall be eligible to re-sit the papers at a second, third and fourth sitting"

Regulation 9(4) provides for consequences of failure to pass at the fourth sitting as follows:

"where a student has failed the examination papers the fourth sitting, such student shall not be entitled to any further attempts."

The Respondent contends that any person who has not met all of the above requirements or complied with the regulation as set out is not eligible for admission as an Advocate, and as each of the Applicants had been given the opportunity to sit the Council of Legal Education

Examinations and failed to pass in all the examinable papers at the 4th attempt. The Respondent contends that as the applicants failed at 4th attempt Regulation 9(4) prohibits any further attempts by the applicants. In addition in the affidavit in support sworn by one of the applicants Mr Jumes Njuguna on 19th February 2004, he expressly admitted in para 6 that the Applicants have not met the requirements set down by the Council of Legal Education.

Concerning the alleged discrimination and abuse of discretion the Respondent contends that the only exception made to the requirements of the Regulation as set above were done pursuant to and within the ambit of Regulation 9(5) which states:

"Where a student is unable to sit the examination due to illness, or other reasonable cause, the Council may grant such student such additional attempts as it may deem necessary."

Under Regulation 9(5) an applicant must apply and show just cause such as illness and in the case of the applicants, they have not provided evidence of the abuse of such discretion either in the statement or in the affidavit in support of the application. The Council contends that, a challenge or abuse of discretion must demonstrate that the decision was unfair, prejudicial capricious, biased and was activated by external circumstances such as personal dislikes and that in any event the discretion vested in the council must be exercised on the basis of the individual merits of individual applicant. Moreover it has not been shown that any of the applicants did in fact apply under Regulation 9(5) and if they did so, that an abuse of discretion has been shown.

On the contrary the Respondents contend that the Council did allow the Applicants, first, second, third and fourth attempts as per the Regulations cited above and that upon receipt of Plea letters from the individual applicants herein the Council took into consideration the reasons put forward and supporting evidence to each individual case, before reaching their decision not to permit the applicants any further sittings. On this they conclude by submitting that the Council of Legal Education did exercise its discretion reasonably, fairly and justly.

On the issue of alleged discrimination the Council of Legal Education has submitted by citing the Blacks Law Dictionary 7th Edition which defines discrimination as:

"effect of a law of established practice that confers privileges on a certain class or that denies privileges to a certain class because of race; age; sex; nationality; religion or handicap."

There is no proof of discrimination against them on the basis of their shared class circumstances. They shared the same facilities with those who have satisfied requirements by passing the exams as per the Regulations. Instead the decision not to allow a re-sit was made in conformity with the regulation whose applicability and effect the applicants were well aware of from when they enrolled at the School of Law and the decision cannot be discriminatory since it is based on a general criteria applicable to all candidates and which they must satisfy. In the case of the applicants they do not contest the fact that they have actually failed to pass all the papers in four attempts made available to them by the Council of Legal Education and they have also not challenged the validity of the regulations which are operational and have served the Country well so far.

Turning to the allegation that the decision was Ultra Vires and illegal the Respondent has submitted that the decision was made within its mandate as conferred by the Council of Legal Education Act Cap 16A and the decision is also within the cited Regulations which were in turn made pursuant to the Act. It has not been demonstrated how the Regulations are ultra vires the Act – if this were so the applicant should have sought their nullification which they have not done.

The Respondent contend that the order by Honourable Justice Aganyanya in ***High Court Misc 1156 of 2000 dated 22nd November 2000*** is not of general application and does not bind this court which is handling another application. The cited case only dealt with the applicant therein Mr Gekenana. The issue of the decision being illegal does not arise.

In conclusion the respondent have raised the point that the regulations as cited charge the Council of Legal Education with the responsibility of general Supervision and control over legal training and qualification of Advocates in Kenya and for this reason the Council is the body competent to handle affairs or concerns arising from the Legal Training and qualifications and as such its decision was not in excess of its mandate and was not ultra vires the Parent Act i.e. Council of Legal Education Act Cap 16A and the Advocates Act Cap 16 of the Laws of Kenya.

Counsel for the Respondent has cited the Indian case of ***MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION and ANOTHER v KURMARSTHETH [1985] LRC India Constitution)*** for the finding that:

"so long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or the efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provision of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation – making power conferred on the delegate by the statute. The responsible representative entrusted with the power to make bylaws must ordinarily be presumed to know what is necessary, reasonable, just and fair."

The Applicant has relied on the list of authorities filed on 21st June, 2004 which cites twelve (12) authorities which inter alia include the local cases of ***RITA BIWOTT v CLE 1122/94 and CACA 238 of 1994*** and the ***CACA No.98 of 1989*** (unreported) ***DANIEL NYONGESA &***

OTHERS v EGERTON UNIVERSITY COLLEGE.

In the RITA BIWOTT case cited above at the High Court level the following findings, holdings or observations made by Judge A.B. Shah have been relied upon:-

(1) "As I have said the Council of Legal Education has cast upon itself a task which (amongst other matters) could affect the livelihood of a Kenyan, if such task or responsibility is not properly carried out or discharged. Council of Legal Education cannot lay down a rule of thumb and say "we are not going to admit candidates who have completed the LLB degree in a lesser period." That would be capricious exercise of discretion and not judicial exercise of discretion.

Rules of natural justice must apply and must be followed by Council of Legal Education in admitting candidates."

(2) "There is a presumption in the interpretation of statutes that the rules of natural justice will apply."

(3) "The mere fact that the exercise of discretion making authority affects the legal rights or the interest of some person makes it judicial and therefore subject to the procedure required by natural justice. Thus the discretion must be exercised judicially. That is to say fairly. The fact that the exercise of discretion is administrative does not make it less judicial.

(4) A court can interfere in exercise of such discretion if the court is satisfied that the discretion was not exercised judicially or fairly."

(5) "I am unable to accept the argument that the applicant seeks what she wants by a plea of sympathy. She seeks her right as I see it of being admitted an advocate in Kenya. She is Kenyan citizen; to deprive a qualified Kenyan citizen of the right to follow his then chosen career is not fair; it is not just. That is where Council of Legal Education went totally wrong."

At the Court of Appeal level a stay was refused because "loss of about 3 to 4 years in the career of a young woman cannot be replaced by anything tangible."

Again the ***NYONGESA v EGERTON*** cited above it turned on failure to give the applicant an opportunity of being heard. And the other highlights follow herein.

- **Every college authority or body must be taken to be conversant with the requirements of natural justice.**
- **One of the purposes of an order of mandamus is to issue to the end that justice may be done.**
- **Rules of natural justice apply because any decision would affect the rights of legitimate expectations of those concerned.**
- **Courts in Kenya have no desire to run Universities or indeed any other bodies.**
- **Court will interfere when decision has been made without fairly and justly hearing the person concerned**
- **Courts are the ultimate custodians of the rights and liberties of people whatever their status and there is no rule of law that courts will abdicate jurisdiction merely because the proceedings or enquiries are of an internal disciplinary character."**

The court has considered the cited cases and the principles relied on but at the outset the court must stress that the facts in this case are different from any of the cited cases. In addition the mandate entrusted on the Council of Legal Education under the Act and the Advocates Act to uphold the best training and educational standards did not feature in any of the cases. The cases turned on admission, not failure to pass examinations which is the matter before me. In discharging the mandate and policy as per the Act and the supporting Regulations it must be appreciated that Council of Legal Education is the best judge of merit pertaining to academic standards and not the courts. Parliament clearly vests the power of formulating the policy of training and examining of Advocates on the Council of Legal Education and it would be wrong in the view of this court to intervene with the merits of the decision by Council of Legal Education. Council of Legal Education is Parliament's delegate. To illustrate the point it is clear from the cited regulation that the discretion is vested in the Council of Legal Education. This court can only intervene in the following situations:

(1) *Where there is abuse of discretion.* **No evidence of abuse has been offered**

(2) *Where the decision makers exercise their discretion for an improper purpose.* **There is no evidence that Council of Legal Education has gone outside the purpose or objects of the Act or the relevant Regulations**

(3) *Where the decision maker is in breach of the duty to act fairly.* **This has not been proven. There is no shortcut to passing exams in any discipline.**

(4) *Where the decision maker has failed to exercise statutory discretion reasonably.* **The Council of Legal Education has applied the regulations uniformly and has applied the same to all except those that successfully brought themselves under the defined exception**

(5) *Where the decision maker acts in a manner which frustrates the purpose of the Act donating the power.* **The purpose of Council of Legal Education Act is inter alia to uphold the best possible educational standards for those who qualify to be advocates. There is no**

evidence that the challenged decision is not within the policy and objectives of the Act. If the council has considered four (4) other attempts as the maximum permissible for all candidates except for illness or any other just cause, a court of law would have no reason to interfere with the merit of the decision reached within the four corners of the Act and the relevant regulation. A candidate who fails to satisfy the requirements has only fate to blame and not the Council of Legal Education. Surely all manner of candidates would want to qualify to become lawyers if given say 10 years or a lifetime to pass the exams but is this the purpose of the Act that is supposed to regulate such a crucial profession that demands certain minimum standards for all candidates to attain so as to render the best services to the nation? By analogy the attempts at sitting the exams are equivalent to the University entry – cut off points. Whoever said that the courts could interfere in such matters and for what reasons. As said before the youth see visions and the old dream dreams. In real life however very few visions are ultimately achieved or realized. It is not every student who can become a lawyer or a doctor but this is not the end of life or livelihood for those who fail to meet the requirement. There are other professions where they can equally excel. Even the old do not all see the realization of their dreams. Confining ourselves only to the ability to earn a livelihood in a particular career and as a result disregarding educational standards is not proper and a sense of proportionality and balance is called for including giving proper weight to policy matters.

(6) *Where the decision maker exercises his discretion arbitrarily or improperly.* **There is no proof of this here.**

(7) *Where the decision maker fetters the discretion given.* **It is not the case here.**

(8) *Where the decision maker fails to exercise discretion.* **It is clear that Council of Legal Education clearly and properly did address each of the Regulation and how they affect each applicant. It should not be forgotten that every candidate who enrolls at the Kenya School of Law as the applicants did is aware of the regulations at the commencement of the course including the course structure and the duration. It follows therefore that the challenge on the ground that the applicants were not heard cannot reasonably be sustained. The applicant had prior knowledge of the requirements on the number of permissible attempts at sitting the relevant examinations.**

(9) *Where the decision is irrational or Wednesbury unreasonable.* **It is not the case here.**

It is for the above reasons that I adopt the reasoning in the ***CARLTONA LTD v COMMISSIONER OF WORKS (1943) 2 ALL ER 560*** where the court held:

"Parliament had given the executive the discretion to decide when a requisition order should be made under the regulation. No court could interfere with that discretion if exercised properly."

I find and hold that it would not be proper or right for the court to veto powers conferred by Parliament on a public authority or body such as the Council of Legal Education and for the court to substitute its own view from that of the Council of Legal Education to which discretion was given except where the discretion has been improperly exercised as enumerated in the ten situations above. In judicial review, the courts quash decision made by public bodies so that these same bodies remake the decisions in accordance with the law. It is not proper for the court to substitute its decision which is what this court is being asked to do by issuing a mandamus to compel a re-sit. I reiterate my earlier findings on this point in the case of ***R v JUDICIAL SERVICE COMMISSION ex-parte PARENO Misc Civil Application No. 1025 of 2003*** (now reported) that it is now the function of the courts to substitute their decisions in place of those made by the targeted or challenged bodies.

Concerning the alleged breach of rules of natural justice I wish to adopt in full the reasoning in the case of ***LLYOD v McMAHON [1987] I A.C 625*** where group of Councilors were asked to make written representations as to why they should not be surcharged by the district auditor for having willfully refused to set a rate. They did so and were surcharged. The Divisional court dismissed their appeals on the basis that they had had sufficient opportunity to rebut the case against them. They refused to give oral evidence to the Divisional Court whose decision was upheld by the Court of Appeal. The councilors appealed on the basis that the auditors failed to offer an oral hearing. The holding was that the auditor had not acted unfairly nor had the councilors been prejudiced by the decision not to hear them.

The applicants in this case did make written pleas and representations although they were also aware of the content of the regulations concerning the number of attempts at sitting the examinations. I therefore hold that they had no right to an oral hearing.

I must add that although rules of natural justice have stood the test of time and have laid a solid foundation for justice and peace whenever they have been cherished and applied they are not cast in the Biblical Mosaic tablets at Sinai and do not apply in all situations and the circumstances of each case must be specifically examined to determine whether they should apply or not apply.

As stated above I have come to the conclusion that the facts of this case and the demands of high standards of education for advocates and other professions distinguish it from the line of authorities relied on by the counsel for the applicant. In addition I hold the view that while the court would otherwise be justified in claiming as much territory as possible in the name of fairness, this being its core business it is not necessarily the best judge in academic or professional matters which should be left to the bodies mandated by Parliament by Acts of Parliament. In this regard I would like to react to the wise words of Lord Roskil in the illuminating case of ***COUNCIL OF CIVIL SERVICE UNIONS v MINISTER FOR THE CIVIL SERVICE [1985] AC 374 HL*** where he said the following about the "rules of natural justice" otherwise known as the duty to act fairly:-

"But the latter phrase must not in turn be misunderstood or misused. It is not for the courts to determine whether a particular policy or particular decisions taken in fulfillment of that policy are fair. They are only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary greatly from case to case as indeed the decided cases since 1950 consistently show. Many features will come into play including the nature of the decision and the relationship of those involved on either side before the decision was taken."

The Council of Legal Education followed to the letter the purpose and objects of the Act including the applicable regulations and this court has no reason to intervene in a way that interferes with the merit of decisions clearly falling within the relevant regulations and which have been applied by Council of Legal Education without any procedural irregularity or for an improper purpose. I decline to do so. The Council of Legal Education has the power and duty to insist on the highest professional standard for those who wish to qualify as advocates. The Regulations are aimed at achieving this. The decision was made on merit and this court has no reason to intervene. The Regulations and the policy behind the rules were properly made pursuant to the Act and it is not for the court to be concerned with efficaciousness of the decision made pursuant to the regulations.

In dismissing the application I wish to adopt as good law the citation set out above in the Indian case of ***MAHASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION AND ANOTEHR v KURMARSHETH 1985 LRC*** (Indian Const) - ibid.

It is not for the court to concern itself with the policy behind the Act and the regulations as long as the latter are within the purview of the parent Act. This court prefers to keep away from usurpation of power or any manifestation of usurpation of power clearly vested in a competent authority by Parliament.

The other reason why this court has declined to intervene is one of principle in that in academic matters involving issues of policy the courts are not sufficiently equipped to handle and such matters are better handled by the Boards entrusted by Statute or regulations. Except where such bodies fail to directly and properly address the applicable law or are guilty of an illegality or a serious procedural impropriety the field of academia should be largely non justiciable. I see no reason why in a democratically elected Government any detected defects in such areas including defects in policy should not be corrected by the Legislature.

While still on the alleged discrimination it is important to observe that the allegation has no basis in fact or in law. In addition, there is no discrimination as defined in the Constitution and the case law in the Country. Firstly there is no discrimination in fact because the examinations apply to all across the Board.

Secondly there is no discrimination in law because as observed in the constitutional case of **RM** (suing through next friend) ***JOSEPHINE KAVINDA v ATTORNEY GENERAL & ANOTHER H.C.C.C. 1351 OF 2002 (O.S.)*** equal protection of laws means subjection to equal laws applying to all in the same circumstances. In the case in point the regulations apply to all the students and the regulation on exceptions (if any) apply to all the students.

Thirdly the matter does not fall within the description of "discrimination" under the Constitution namely s 82 of the Constitution. As observed in the **RM** Constitution case cited above pg 55 I would like to restate the findings of the Constitutional Court which addressed the point as follows:-

"When a law is challenged as offending against equal protection the question for determination by the court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of the legislation."

In the case in point there is no difference at all so the question of discrimination does not arise at all.

The other point which demands attention is the challenge that the applicants have only one or two subjects to re-sit. The point here is that the purpose of the legislation and the regulations is to ensure that the highest standards possible are attained by those admitted as advocates. If the decision of the Council of Legal Education is that those not able to make in four attempts are not good, the decision cannot be substituted by a court of law because this is the function of the Council. It is important to observe that at all stages of the academic life of students a system of cut offs has been established by the relevant authorities and many candidates who wanted to become lawyers, doctors, pilots etc and who not attain the points were weeded out in the course of time. It is not for the court to decide for example why all law students should pass Accounts examinations or any other subject. If courts were to do so this would be usurpation of statutory power from the Council of Legal Education. A single subject is as important as anything else in the molding of future advocates or any other discipline.

As long as the requirements as set out in the Regulations are aimed at achieving the objective of the Act or the purpose of the legislation, there cannot be a successful challenge to the regulations or the decisions of Council of Legal Education based on the Regulations. It is the view of the court even if the challenge were to be based on lack of proportionality in this case it has not been so attacked. Instead it has been attacked on alleged unfairness. The challenge on proportionality would still fail because proportionality is concerned with balance and whether the means justify the ends. In Europe the principle has been defined:-

"An appropriate balance must be maintained between the adverse effects which an administrative authority decision may have on the rights, liberty or interests of the person concerned and the purpose which the authority is seeking to pursue."

In my view the effect of the decision is not out of proportion with the objectives - of the Council of Legal Education Act. The purpose the Council of Legal Education is seeking to achieve is maintaining high standards of qualifications in the legal profession. Even from this standpoint the decision can neither be said to be unfair or unreasonable or out of proportion as explained above.

In the matter before the court the relevant body, namely the Council of Legal Education has correctly addressed its mandate and also correctly addressed the relevant law and for this reason the challenged decision must command deference from the court by upholding it.

It is for the Council of Legal Education to set educational standards for those to be admitted as advocates. In this, the law has given the

Council of Legal Education discretion to set those standards. No other body has that function including the court. A mandamus cannot lie to enforce discretionary power. As a point of principle no civilized society can afford to disregard the results of examinations otherwise it would be farcical to hold the examinations in the first place.

In addition it is quite evident that the requirement for the four sittings is applicable to every candidate except those falling under the regulation on exception as set out above.

The decision for the same reasons as above cannot be said to be Wednesbury unreasonable firstly because the Council of Legal Education has properly addressed the law and the decision cannot as well be said to be abuse of power and secondly the decision to disallow further sittings cannot be said to be manifestly unreasonable. These are the two meanings of Wednesbury unreasonableness. The object of the decision is to maintain high standards in legal education. Section 6 of the Council of Legal Education Act describes the functions of Council of Legal Education as follows:

"The object and purpose for which the council is established is to exercise general supervision and control over legal education in Kenya and to advice the Government in relation to all aspects thereof."

In particular s 6 (2) (a)(i) provides:

"Organising and conducting courses of institution for the acquisition of legal knowledge professional skills and experience by persons seeking admission to the Roll of Advocates in Kenya, in such subjects as the Council may prescribe."

6 (2) (b) reads:

"Conduct examinations for the grant of such academic awards as may be prescribed."

In conclusion I wish to recapture the reasons why the Court should not intervene by exercising its judicial review jurisdiction by quoting an extract from Justice Arthur Chaskalson, President of the South African Constitutional Court in his paper "***The Role of the Judiciary in Translating Human rights law into Practice Bangalore, India 27-30 December 1998 – Legal and Constitutional Affairs Division Commonwealth Secretariat London p 251-2:***

"Courts which have the power of judicial review over the actions of all organs of state, including the power to review Acts of Parliament, as our courts do, need to be guided by a theory of democracy consistent with the provisions and underlying values of the Constitution, paying particular attention to the interrelationship between the courts and other organs of the State, and the defference that each owes to the other. It is not the function of the courts to govern the country. On the other hand the Legislature and the executive are obliged to respect democracy and the provisions of the Constitution from which they derive their power, and it is the duty of the courts to ensure that this is done. A balance has to be struck, and how this is done is of particular importance to the standing of the courts, and their efficacy, and the respect their judgments command."

I could not agree more. Only the courts can determine whether or not they have jurisdiction or the power in judicial matters but we must say as eloquently as we can when it is not suitable to intervene. Thus, courts are considered an unsuitable fora in the following situations:-

i. where there may be no clear standards or rules by which to resolve a dispute

ii. where a court may not be able to supervise the enforcement of its decisions

iii. or where what is at stake is at a highly technical nature, and the questions or the large questions of policy involved may be thought to present insuperable obstacles to the useful involvement of the courts.

See ***Yash Ghai and Jill Cottrell – The Role of Judges in implementing Economic Social and Cultural Rights.*** In this case I consider it inappropriate to intervene for the reasons indicated and which overlap the three situations.

In the result, the challenged decision cannot be said to be outside both the provisions of the parent Act and the regulations. I find no sound reason for challenging the decision.

For the above reasons the application is dismissed with costs to the Respondent.

DATED and delivered at Nairobi this 7th day of May 2007.

J.G. NYAMU

JUDGE

E.N. Mutua Counsel for the applicant

Ochieng Oduol Counsel for the Respondent