



**Odiambo & 2 others v Kenya School of Law & 6 others (Constitutional Petition E008 of 2023) [2025] KEHC 1346 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1346 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CONSTITUTIONAL PETITION E008 OF 2023**

**TA ODERA, J  
FEBRUARY 10, 2025**

**BETWEEN**

**JAMES ORENKO ODHIAMBO ..... 1<sup>ST</sup> PETITIONER  
DANIEL KEBAYA MAGETO ..... 2<sup>ND</sup> PETITIONER  
MOSES MAMUTI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**THE KENYA SCHOOL OF LAW ..... 1<sup>ST</sup> RESPONDENT  
THE COUNCIL OF LEGAL EDUCATION ..... 2<sup>ND</sup> RESPONDENT  
KISII UNIVERSITY ..... 3<sup>RD</sup> RESPONDENT  
CATHOLIC UNVERVESITY OF EAST AFRICA ..... 4<sup>TH</sup> RESPONDENT  
MOUNT KENYA UNVERVESITY OF EAST AFRICA ..... 5<sup>TH</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF EDUCATION ..... 6<sup>TH</sup> RESPONDENT  
THE HONOURABLE ATTONEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Petitioners are enthusiastic students at Kisii University pursuing diploma in law. They approached this court in their own capacity and on behalf of all students undertaking the program with the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Respondents. The petitioners contended that upon them finishing the program they aspire to study Bachelor of Law (LLB) Degree Under Section 8 (3)c of the *Legal Education Act* and finally to the Post Graduate Diploma in law offered by the 1<sup>st</sup> Respondent in order for them to become advocates of the High Court of Kenya through.



2. However, the Petitioners and the group of students on whose behalf they filed this petition have since learnt that the program they are undertaking with the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> will not enable them become advocates of the High Court of Kenya as the 1<sup>st</sup> Respondent being the only institution mandated to offer the Advocates Training Program (ATP) under the Kenya School of Law (KSL) Act insists that they must have attained a minimum grade of C+ in KCSE and minimum grade of B in either English or Kiswahili as provided for under section 16 as read together with paragraph 1(b) and (b) of the second schedule of the said Act for them to pursue the ATP.
3. They contend that the said provisions of the KSL Act are either unconstitutional and if not, the 1<sup>st</sup> Respondent is misapplying them in contravention of the constitutional rights and freedoms under Articles 27, 35(2), 43(1)(f) 46, 55(a) and (c) of *the constitution* of Kenya.
4. They submitted that that the misapplication of section 16 as read together with paragraph 1(a) and (b) of the second schedule of the KSL Act to exclude students who have attained bachelors of law degree through career progression from being admitted to Kenya school of law to undertake the Advocates Training program denies them the following rights;
  - a. The right to education under article 43(1) (f) which provides that everyone including them has a right to education.
  - b. The right to access relevant educational training and access to employment as advocates under article 55(a) and (c) of *the constitution*
  - c. The right to equality and non-discrimination under Article 27 wherein they contend that upon them attaining university degrees in accredited universities and that they have been denied an equal opportunity with other students on account of them having attained the degree through career progression
  - d. The right to legitimate expectation under article 47(1) to the extent that the respondents herein continue to let students undertake the said programs in the universities without informing them administratively and promptly that they will not at the end of the day be allowed progress to undertake the ATP program. They went on to argue that as students with the 3<sup>rd</sup> Respondent, they have a legitimate expectation after progression into LLB degree they will be able to become Advocates, Magistrates, Judges and Legal researchers but their legitimate expectation remains a pipe dream as a result of the 1<sup>st</sup> respondent misapplying its own Act.
5. The Petitioners also took issue with an advertisement that the 1<sup>st</sup> respondent had placed on their social media platforms inviting students to apply for diploma in law (para-legal studies) programmes without including a disclaimer to inform the intended applicants that their journey to legal profession ends at LLB degree and that the same is not a license for admission to the Kenya school of law for the ATP program. They contend that without the disclaimer the 1st Respondent violates the right information under Article 35(2) all those persons who will rely on the said advertisement, proceed to undertake the course but end up not becoming advocates as legitimately expected by each student who is undertaking the law degree through career progression.
6. Based on the above background the Petitioner sought the following declarations and orders
  - a. a declaration that Law as an Academic Discipline and/or Course is not Exclusive of Academic Progression and/or Career Progression.
  - b. A declaration that the provision of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act is unconstitutional,



null and void to the extent that it purports to set-out, discriminate, curve out, deny and deprive a huge section of the Students pursuing Law and/or Who pursued Law under Upgrading Programme and/or Academic Progression Programme opportunity from Joining Advocates Training Programme.

- c. A declaration be issued that misapplication of the provision of section 16 of the [Kenya School of Law Act](#), 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act by the 1st respondent is a threat to the rights, privileges and benefits of citizenship rights to Education, consumer rights as consumers of Legal Education, rights to Access relevant education and Training ,rights to access employment and rights to legitimate Expectation to Students of Law under Upgrading Programme and/or Academic Progression Programme and thus renders the provision of section 16 of the [Kenya School of Law Act](#), 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act invalid.
- d. A declaration be issued that the provision of section 16 of the [Kenya School of Law Act](#), 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act is inconsistent and in conflict with constitution of Kenya 2010 more particularly the preamble, Articles 1,2(4),10(2)(b),19,20(2),24,27(2),43(1),46(a),(b) and(c),47(1) and 55(a) and (c), section 8 (3) (a), (b), (c)(d)and (4) of the [Legal Education Act](#),2012 and thus null and void.
- e. A declaration be issued that the 1st respondent has no statutory backing to scrutinize how one gained Admission into a recognized University in Kenya.
- f. A declaration be issued that students who have pursued Law under Academic Progression Programme and/or Upgrading Programme for 6 good years and have been conferred with Bachelor of Laws (LLB) degree in Universities recognized in Kenya should not be subjected to KCSE qualifications into the Advocates Training Programme (ATP).
- g. A declaration be issued that Students who have pursued Law under Academic Progression and/or Upgrading Programme are eligible to join Advocates Training Programme (ATP) upon graduating with of Bachelor of Laws (LLB) degree.
- h. A compelling order directing the 1st and 2nd Respondents directing them to within such time this court shall direct formulate Exception rule to the provision of section 16 of the [Kenya School of Law Act](#), 2012 as read together with paragraph 1(a) and (b)of the second schedule of the said Act which allows Academic Progression into the Advocates Training Programme (ATP).
- i. A compelling order be issued directing the 2nd Respondent to within such time as this court shall direct to furnish the 3rd, 4th and 5th Respondent with License of offering Advocates Training Programme (ATP).
- j. A declaration be issued that the 2nd respondent is the only body with the legal Mandate to set requirements for the admission of persons seeking to enroll in legal Education Programmes and not the 1st respondent.
- k. A declaration be issued that the 1st respondent is not contra-distinguish from other Legal Education Providers and thus is under the supervision of the 2nd respondent.
- l. A declaration be issued that Kenya School of Law is not a requirement Admission as Advocate pursuant to section 13(1) (a), (b) (i), (ii) and (c) of the [Advocates Act](#)
- m. A declaration be and is hereby made that that advertisement of Application for Diploma in Law (Para-Legal Studies) for July Intake 2023 on the by the 1st respondent on its Social Media



Platforms without including a disclaimer to inform the intended Applicants that their Journey to legal profession end at Bachelor of Laws (LL.B) degree Level and the same 1st respondent will not Admit them to Advocates Training Programme (ATP) is contrary to article 35(2) of Constitution of Kenya 2010 on the basis that most of the persons enroll for Diploma in Law(Para-Legal Studies) Course at Kenya School of Law believing that this will lead them to become Advocates.

- n. This Honourable Court be pleased to issue an order that each party should bear their own costs on the grounds that this Petition is in the public interest.
  - o. This Honourable Court be pleased to issue such further or other ORDERS as it may deem just and expedient for the ends of justice
7. In response the 1<sup>st</sup> Respondent through it's a replying affidavit sworn on 25<sup>th</sup> August 2023 by its director, Dr. Fredick Muhia contended that the court of Appeal in the case of Civil Appeal No. E472 of 2021 - Kenya School of Law v Otene Richard Akomo & 41 others dealt with the issue of it's role to scrutinize academic documents of potential students to ensure that they meet all the mandatory provisions of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act. Dr. Muhia averred that the constitutional right to education must be interpreted together with the academic requirements which means that one must prove qualification and suitability before he can claim the legitimate expectation to enjoy such a right.
8. The 2<sup>nd</sup> Respondent equally filed a replying affidavit that was sworn by one Mary Mutugi who reiterated the role of the 2<sup>nd</sup> Respondent in legal education and averred that that it has no powers to direct the 1<sup>st</sup> Respondent in so far as admission of students to undertake Advocates training program is concerned. She averred also that even though the CLE Act provides that programs be put in place to create an opportunity for career progression in the legal education, the mere fact that one has progressed to acquire an LLB degree does not automatically qualify him to admitted to the Advocates Training Program being offered by the 1<sup>st</sup> respondent unless the conditions in Section 16 of the KSL Act as read with paragraphs 1(a) and 1(b) of the second schedule of the said act are complied with. Regarding the Para-legal Studies being offered by the 1<sup>st</sup> Respondent she averred that the said program is only designed to train paralegals but it not meant for training students to becoming mainstream advocates. The said Mutugi equally relied on the court of appeal decision in Civil Appeal No. E472 of 2021 - Kenya School of Law v Otene Richard Akomo & 41 others. (supra).
9. The 3<sup>rd</sup> Respondent filed a replying affidavit sworn by Mr. Seth Onguti who is its legal officer. He averred that the 3rd respondent is a public university, chartered under section 13(1) of the *Universities Act*, 2012, Laws of Kenya and is Licensed by the Council of Legal Education, the 2nd Respondent herein to offer Bachelor of Laws (LLB) degree and Diploma in Law (Para-legal Studies) Programmes. Also, that the 3rd respondent's mandate is to train Diploma in Law students and Bachelor of Laws students guided by curriculums approved by the 2nd respondent and the provisions of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act while admitting students who pursue Law. He contended that the 3rd respondent cannot be faulted by the petitioners for actions of the 1st and 2nd respondents for not admitting students who have pursued law degrees under Academic Progression Programme into Advocates Training Programme (ATP) since universities are guided by the provisions of *Legal Education Act*, 2012 and *Universities Act*, 2012 which are statutes they have been instructed to apply when admitting students to pursue law at the University by the commission for University Education and the 2nd respondent herein. He also contended that the body which sets admission requirements into the Universities for Diploma in Law and Bachelors of Law (LL.B) Programmes is the 2nd respondent



in collaboration with Commission for University Education vide [Legal Education Act, 2022](#) and [Universities Act, 2012](#). He deponed further the 3rd respondent lectures and examine students under Career Progression Programme and upon being satisfied that they qualify for Bachelor of Laws (LL.B) degree confer the said degrees to the said students pursuant to [Universities Act, 2012](#) and [Legal Education Act, 2012](#). He argued that the 3rd Respondent has no authority whatsoever to direct the 1st and 2nd Respondents on who to admit while offering Diploma in Law (Para-Legal) Programmes despite the 3rd respondent's compliance with section 16 of the [Kenya School of Law Act, 2012](#) as read with paragraph 1(a) and (b) of the second schedule of the said Act. He concluded by stating that the petition herein is premature as the petitioners herein are currently still pursuing Diploma in Law and have not qualified for admission to Kenya School of Law and same should be dismissed in entirety.

10. The Attorney general filed a preliminary objection on grounds that the Petitioner does not have locus standi to file this petition by dint of section 16 of the KSL Act as read together with the 2<sup>nd</sup> Schedule paragraphs 1(a) and (b).
11. The 4<sup>th</sup> Respondent filed replying affidavit sworn by Mr. Ronald Mathai who stated the Petition did not disclose any actions or omissions attributed to the 4<sup>th</sup> Respondent that led to the violation of the respondent's rights. He insisted that the 4<sup>th</sup> Respondent does not have oversight over the 1<sup>st</sup> Respondent. Just like the 3<sup>rd</sup> Respondent he reiterated that petition herein is premature as the petitioners herein are currently pursuing Diploma in Law and have not qualified for admission to Kenya School of Law and same should be dismissed in entirety. He equally stated that Petitioners have no mandate to seek directions from this court to compel the 2<sup>nd</sup> respondent to confer upon it powers to offer the Advocate Training program.
12. The 5<sup>th</sup> Respondent through the affidavit sworn by Sister Immaculate Muthoni averred that 5<sup>th</sup> respondent has no powers to direct the 1<sup>st</sup> Respondent on its mandate under the KSL Act. She stated too that the petitioners did not have any authority from them to seek an order of this court to compel the 2<sup>nd</sup> Respondent grant them license to offer the advocates training program.
13. During the Interpartes hearing this court directed that the petition and be canvassed by way of written submissions. This court notes that the both parties have filed their submissions. All the parties with the exception of the 1<sup>st</sup> Respondent filed their submissions.

#### **Determination.**

14. Having carefully considered the Petition, the responses filed by the respondents and their written submissions, I find the following as the issues arising for determination;
  - a. Whether the petitioners have the locus standi to file the petition herein by dint of Section 16 and paragraph 1a and 1b of the 2<sup>nd</sup> schedule of the [Kenya School of Law Act](#),
  - b. Whether the provision of section 16 of the [Kenya School of Law Act, 2012](#) as read together with paragraph 1(a) and (b) of the second schedule of the said Act is unconstitutional.
  - c. If the finding in (b) above is to the negative; whether 1<sup>st</sup> Respondent has misapplied the said section of the law to deny students pursuing legal education from accessing the Advocates Training Programme leading to breach of the constitutional rights under Article 27, 43, 46, 47 and 55.
  - d. Whether the misapplication of section 16 as read together with paragraph 1(a) and 1(b) of the second schedule violates right legitimate expectation of the petitioners
  - e. Whether the Applicant is entitled to the orders sought in the Petition.



**Whether the petitioners have the locus standi to file the petition herein by dint of Section 16 and paragraph 1a and 1b of the 2<sup>nd</sup> schedule of the Kenya School of Law Act,**

33. On whether the petitioners had capacity to file this petition, the 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents filed a notice of preliminary objection on the ground that the petitioner lacks locus standi to file this petition by dint of Section 16 paragraph 1(a) and (b) of the 2<sup>nd</sup> schedule of the KSL Act . The 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents submitted that the petitioners have no locus standi to question section 16 of the KSL Act as they did not attain the minimum qualification for admission to ATP. Counsel cited the case of *Republic vs Kenya school of Law & Council for legal Education ex-parte Daniel Mwaura Marai* (2017) eKLR where it was held that ‘‘ In that event the applicant having not obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C+ (plus) in the Kenya Certificate of Secondary Education or its equivalent would be locked out from admission to the ATP ‘‘ The petitioners argued that they had capacity to institute this petition as they have a stake in the legal education. They cited the case of *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] KEHC 7697 (KLR) where it was held that ‘‘ I am of the view that Article 22(1) and (2) of the Constitution has expanded the horizons of locus standi in matters of enforcement of fundamental rights and freedoms. The same provides that: -

‘‘ 22.

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by–

a person acting on behalf of another person who cannot act in their own name;

a person acting as a member of, or in the interest of, group or class of persons;

a person acting in the public interest; or

an association acting in the interest of one or more of its members.’’

Section 16 of the KSL Act provides that for one to qualify for admission to a ATP at the School, he must have met the admission requirements set out in the Second Schedule for that course Paragraph 1 (a) and (b) of the second schedule to the Kenya School of Law Act, 2012 provides as follows;

‘‘ A person shall be admitted to the school if–

- (a) having passed the relevant examination of any recognized university in Kenya, or of any university, university college or



any other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution; or

- (b) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—
  - (i) attained a minimum entry requirement for admission to a university in Kenya; and
  - (ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and
  - (iii) has sat and passed the pre-Bar examination set by the school.”

The petitioners alleged a violation of their rights as law students and they cited the Articles alleged to have been violated. The preliminary objection by the 2<sup>nd</sup> 6<sup>th</sup> and 7<sup>th</sup> respondents is more of a reply to the petition. I find that they had a right to move this court under Article 22 of *the Constitution* of Kenya. Whether the petition is merited is not for determination under this head. The preliminary objection is overruled.

Whether the provision of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act is unconstitutional.



15. When the constitutionality of a statute or provision of a statute is called to question, the court is under obligation to employ the constitutional mirror laying the impugned legislation or provision alongside the Article(s) of *the constitution* and determine whether it meets the constitutional test. The court must also check both the purpose and effect of the Section or the Act, and see whether the same is inconsistent with *the Constitution*.
16. This position was stated in the case of R v Big M Drug Mart Ltd 1985 CR 295, thus;
 

“Both purpose and effect are relevant in determining constitutionality, either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realized through impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of legislation, object and its ultimate impact are clearly linked, if not indivisible. Intended and achieved effects have been looked to for guidance in assessing the legislation’s object and thus the validity.”
17. This principle was applied in the case of Olum and another v Attorney General [2002] 2 E A, where the Constitutional Court of Uganda stated;
 

“To determine the constitutionality of a section of a statute or Act of Parliament, the court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by *the constitution*, the court has to go further and examine the effect of the implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by *the constitution*, the impugned statute or section thereof shall be declared unconstitutional...” (see Muramga Bar Operators Association & another Vs. Minister of state for Provincial Administration and Internal Security & another; (petition No. 3 of 2011) 2011 eKLR.
18. In the case of Nairobi Metropolitan PSV Saccos Union Limited & 25 others vs County of Nairobi Government & 3 others [2013] eKLR. It was observed that the burden is always on the person challenging the constitutionality of provision in a legislation or the legislation to prove the unconstitutionality alleged.
19. Section 16 of the KSL Act provides that for one to qualify for admission to a course of study at the school, he must have met the admission requirements set out in the Second Schedule for that course Paragraph 1 (a) and (b) of the second schedule to the *Kenya School of Law Act*, 2012
20. The petitioners on prayer b and d seeks this court sought a declaration that Section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act is inconsistent with constitution of Kenya 2010 and thus null and void and in violation to their constitutional rights listed therein. On the other hand the Petitioner at prayer c sought a declaration that the 1<sup>st</sup> respondent’s misapplication of the provision of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act is a threat to the rights, privileges and benefits of citizenship rights to Education, consumer rights as consumers of Legal Education, rights to Access relevant education and Training ,rights to access employment and rights to Legitimate Expectation of Students of Law under Upgrading Programme and/or Academic Progression Programme and thus renders the provision of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act invalid. It would appear that the Petitioners espoused two conflicting positions; one being that the section is inconsistent with *the constitution* the other being that 1<sup>st</sup> Respondent is misinterpreting and/



or misapplying the section by the 1<sup>st</sup> Respondent to detriment of students pursuing legal education through career progression.

21. However, a review of the entire Petition reveals that the Petitioners have not demonstrated how section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule thereof is inconsistent with *the constitution*. Instead, the Petitioners extensively took their time to demonstrate how the 1<sup>st</sup> Respondent has misapplied and/or misinterpreted the section in a manner that they deem to be discriminating and/or infringing the constitutional rights of students pursuing legal education through career progression. One would therefore wonder why the Petitioners would on one hand seek to have a section they want declared unconstitutional be also at the same time be declared as being misinterpreted by a party.
22. From the forgoing since it was the onus of the Petitioners to prove the unconstitutionality of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act; and since they did not do so and pursued the journey of proving that the 1<sup>st</sup> Respondent's Misapplication of the said section then I find no reason to declare the section unconstitutional.

**Whether 1<sup>st</sup> Respondent has misapplied the said section of the law to deny students pursuing legal education from accessing the Advocates Training Programme leading to breach of the constitutional rights under Article 27, 43, 46, 47 and 55.**

23. The Petitioners argue that 1<sup>st</sup> Respondent is misapplying and misinterpreting the provisions of section 16 of the KSL act as read together with paragraphs 1(a) and 1(b) of the second schedule in contravention of the constitutional rights and freedoms under Articles 27, 35(2), 43(1(f) 46, 55(a) and (c) of *the constitution* of Kenya. They contend that as a result of such misapplication the said provision students who have attained bachelors of law degree through career progression are likely or have been exclude from being admitted to Kenya school of law to undertake the Advocates Training program.
24. They urged this court to adopt an interpretation paragraphs 1(a) and 1(b) of the second schedule that was espoused by Mativo J(as he then was) in Republic v Kenya School of Law & another exparte Kithinji Maseka Somo & another [2019]eKLR that the conjunction "or" immediately after a semi-colon means that the paragraph 1(a) and (b) are disjunctive rather than conjunctive to each other such that once a person has attained an LLB degree from an accredited local university to offer legal education by the 2<sup>nd</sup> Respondent through say career progression program, it is not mandatory for him to meet condition under 1(b) which require one to attain a aggregate mean grade of C + and B in either English or Kiswahili.
25. Having that interpretation in mind, they contend that all students pursuing legal career with 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> which have been all been accredited to offer law diplomas and who through the section 8(3) (c) of the legal education have been given a leeway to offer career progression program in legal education should be allowed to undertake the ATP with the 1<sup>st</sup> Respondent without any hindrance upon obtaining their LLB degrees. Also, that the 1<sup>st</sup> Respondent having misinterpreted the provision and adopted regulations that insists an applicant seeking to undertake the ATP must meet all conditions in paragraph 1(a) and 1(b) without considering that they are alternatives to each other threatens to violate their constitutional rights and freedoms under Articles 27, 35(2), 43(1(f) 46, 55(a) and (c) of *the constitution* of Kenya.
26. Hon Justice Mativo (as he then was) in Republic v Kenya School of Law & another exparte Kithinji Maseka Somo & another [2019] eKLR observed as follows



49. From the dictionary and judicial precedents discussed above, it is clear that the word "or" is ordinarily used to introduce another possibility or alternative, that is either or. Depending on context, it can also be used interchangeably with the word "and." It follows that in construing statutory provisions, the context is important so as to get the real intention of the legislature.
50. Guided by the authorities cited above and the ordinary meaning of the word "or" in the context of the provision under consideration, it is my view that the use of the word "or" immediately after the semi-colon at the end of the sentence in section 1 (a) of the second schedule introduces another possibility, the first possibility being the category referred to in paragraph (a), that is:-
- "having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution."
51. The ex parte applicants hold Bachelor of Laws degrees from a recognized University in Kenya. By dint of the above provision, they qualified for admission to the ATP. To suggest otherwise, is in my view an insult to the above provision, which is framed in a simple and clear language. A contrary interpretation is misguided and unfaithful to the provision. It follows that any decision emanating from such a misguided interpretation cannot be read in a manner that is consistent with the enabling provision."
27. They also urged the court to consider the decision of Mrima J in the case *Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority* [2021] eKLR who agreed with the holding by Justice Mativo stated that: -
- "the two categories are different and ought to be treated as such. He further opined that category (1) (a) dealt with those persons who joined a recognized university in Kenya and obtained or became eligible for conferment of the Bachelor of Laws (LLB) degree of that university. Mostly, such persons would be those who studied under the 7-4-3-3 or 8-4-4 systems in Kenya and qualified to join the universities and were eligible for and were admitted to pursue studies towards the conferment of the Bachelor of laws (LLB) degrees."
28. It should be noted however that there are two schools of thought by the High court on the interpretation of paragraph 1 (a) and 1 (b) of the 2<sup>nd</sup> schedule of the KSL Act . One school fronts the position that requirements in paragraph 1 (a) and 1 (b) must be similar otherwise there shall be discrimination of the students falling within category paragraph 1 (a) and those in 1 (b). The other school of thought is of the position that the two categories are different and ought to be treated as such. Some of the decisions which posit that the qualifications must be similar include *Nairobi High Court Petition No. 20 of 2019 Victor Juma v Kenya School of Law*, *Bishar Adan Mohamed v Kenya School of Law* (2020) eKLR, *Peter Githaiga Munyeki v Kenya School of Law* (2017) eKLR, *R. v Kenya School of Law exparte Daniel Mwaura Marai* (2017) eKLR, among many others. On the other hand, the Courts in *Judicial Review Application Nos. 7, 8, 13, 20, 21 and 26 of 2020 Republic v Kenya School of Law & Others* (2020) eKLR and in *Kevin K. Mwititi & Others v Kenya School of Law & 2 Others* (2015) eKLR were categorical that the qualifications for persons intending to join the ATP under 1(a) and 1(b) are different.
29. The 3<sup>rd</sup> to 7<sup>th</sup> respondents argued that they have no capacity to set standards of who can be admitted to ATP as this the sole mandate of the KSL.



30. The Court of Appeal settled the position in the interpretation of the said provisions in Civil Appeal No. E472 of 2021 - Kenya School of Law v Otene Richard Akomo & 41 others, Asike - Makhandia, Mohammed and Kantai JJA] while overturning the decision by Justice Mativo who was the greatest of proponent of the school of thought that the two provisions are different to each other observed as follows:

“It was submitted that section 1 (a) of the Second Schedule to the Act, is clear that upon being eligible for an award of a Bachelor of Laws degree from a Kenyan University an applicant would be eligible for admission to the ATP. Further, sections 1 (a) and 1 (b) of the Second Schedule to the KSL Act, distinguishes applicants who hold a Bachelor of Laws degree from Kenyan University and those from a foreign University. We are of the view that with the use of semi-colon between 1(a) and (b) of the Act then the conditions follow which to us means that you are eligible, firstly, based on your LL.B degree either from a Kenyan University or as in (b) from a foreign university but in all situations, the conditions are same and are enlisted therein which are mandatory to all irrespective of whether you have a degree from within or without Kenya.”

31. This court is bound by decisions of the court of appeal. I have carefully considered the petition and Section 16 of the KSL Act as read with sections 1a and b of the 2<sup>nd</sup> schedule of the sad Act and find that sections 1a and 1b of the Second Schedule of KSL Act provides that for one to be admitted to the Kenya school of Law he must have a degree where acquired locally or from a foreign university and must also meet the qualifications set out under the same. The Kenyan universities offering studies leading to the award of a degree in law are thus not allowed to set their individual admission qualifications for APT as the same are already set by the law.

32. The 1<sup>st</sup> Respondent can therefore not be faulted for enforcing the Law to ensure that the conditions set in the KSL are complied with by the LLB graduates to the letter.

33. The Petitioner have also claimed that the 1<sup>st</sup> Respondent has disregarded the provisions of section 8(3) of the Council of *Legal Education Act* which provides for promotion of career progression in the legal education. However as was correctly observed by Mwita J in the case of Peter Githaiga Munyeki v Kenya School of Law [2017] eKLR The KSL is the institution mandated to train persons to become professional Advocates and that mandate is exercisable pursuant to the KSL Act and regulations made thereunder. The KSL Act in conferring that mandate to KSL does not make reference to any other Act so far as admission requirements to ATP are concerned. In that regard, section 16 of the KSL Act is clear and unequivocal that qualifications for admission to ATP are those contained in the Second Schedule to the Act. Allowing LLB graduates to join ATP at KSL on the basis that they attained an LLB degrees through career progression would be in contravention of the clear provisions of the law. The intention of the legislature in enacting Section 16 of the KSL Act is clear that it was to ensure quality assurance of the law graduates before admission to the school. The Council for Legal Education on the other hand is mandated to regulate the licensing of legal education service providers among other functions. The preamble of the *Legal Education Act*, No. 27 of 2012 provides that it is:

“ An Act of Parliament to provide for the establishment of the Council of Legal Education;

the establishment of the Legal Education Appeals Tribunal; the regulation and licensing of legal education providers and for connected purposes.” Section 8 (3) of the CLE Act must be read together with Section 16 of the KSL Act and not vice versa as for one to complete thew journey to qualify be an advocate he must go through Kenya School of Law for APT. The intention of the legislature in



enacting section 16 of the KSL Act was not ensure high standards of ATP. The career progression envisaged by section 8 (3) of the *Legal Education Act* applies only to persons who have attained the mandatory qualifications set under Section 16 KSL Act. The 1<sup>st</sup> respondent is thus acting within its mandate by enforcing the provisions of Section 16 of the KSL Act.

**Whether the misapplication of section 16 as read together with paragraph 1(a) and 1(b) of the second schedule right legitimate expectation of the petitioners**

34. The Petitioner contend that the respondents herein continue to let students undertake career progression programs in the universities without informing them administratively and promptly that they will not at the end of the day be able allowed progress to undertake the ATP program. They went on to argue that as students with the 3<sup>rd</sup> Respondent, they have a legitimate expectation after progression into LLB degree they will be able to becoming advocates, magistrates, judges, legal researchers but their legitimate remain a pipe dream as result of the 1<sup>st</sup> respondent misapplying its own Act. The respondents in opposing this noted that the right could not arise where the law dictated otherwise. Counsel for 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents submitted that ignorance of law is no excuse and that the petitioners ought to have done due diligence to know the requirements for admission to the ATP program. Further that legitimate expectation only arises where one has been promised something and this case there was no promise by 1<sup>st</sup> respondent for admit the petitioners to APT.
35. Counsel for 2, 6<sup>th</sup> and 7<sup>th</sup> respondents cited the Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR explained the principle of legitimate expectation as follows:

“(265) An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.

(268) An illuminating consideration of the concept of “legitimate expectation” is found in the South African case, South African Veterinary Council v Szymanski 2003(4) SA 42 (SCA) at [paragraph 28]: the Court held as follows:

“The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following :

- (i) The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is



always open to them to seek clarification before they do so, failing which they act at their peril.

- (ii) The expectation must be reasonable: Administrator, *Transvaal v Traub* (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).ii.The representation must have been induced by the decision- maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); Attorney- General of Hong Kong v. Ng Yuen Shiu [1983] 2 All ER 346 (PC) at 350h - j.
- (iii) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: *Hauptfleisch v Caledon Divisional Council* 1963 (4) SA 53 (C) at 59E - G.”

The petitioners did not prove that the respondents promised them admission to KSL after their studies. I also agree with counsel for the 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents that the petitioners had a duty to conduct due diligence before enrolling to the course. It cannot therefore be said that the 1<sup>st</sup> Respondents breached the petitioners legitimate expectation the KSL Act which as is clear on the qualifications for admission to the school.

- 36. The petitioners equally prayed that that this court to issues a compelling order directing the 1st and 2nd Respondents directing them to within such time this court shall direct formulate Exception rule to the provision of section 16 of the *Kenya School of Law Act*, 2012 as read together with paragraph 1(a) and (b) of the second schedule of the said Act which allows Academic Progression into the Advocates Training Programme (ATP). The Petitioners also want this court to issue an order directing 2nd Respondent directing it to within such time this court shall direct to furnish the 3rd, 4th and 5th Respondent with License of offering Advocates Training Programme (ATP). This court lacks jurisdiction to repeal or amend the KSL Act to allow the 2<sup>nd</sup> Respondent offer 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Respondent licenses to offer the Advocates training program like the 1<sup>st</sup> Respondent. The principle of separation of powers cannot allow this court assume such a role as Law making is within the ambit of parliament.
- 37. In any event, the 4<sup>th</sup> and 5<sup>th</sup> Respondents submitted that, the Petitioners did not have any capacity to seek orders on their behalf directing the 2<sup>nd</sup> Respondent to give the licence to offer the Advocates Training program. I agree with the 4<sup>th</sup> and 5<sup>th</sup> respondents as they are independent public bodies to with powers to sue and be sued on their own behalf and nothing would have stopped them from moving the court if they wanted such powers. I believe the said bodies have kept to their lanes as they are very well aware of their mandates and they do not want to usurp the powers of the 1<sup>st</sup> respondent. no compelling orders can thus issue against the 1<sup>st</sup> respondent in this petition.
- 38. In the upshot, prayer a – o in the petition must therefore fail.

## Conclusion

- 39. In the end find that the petition is devoid of merit and the same is dismissed with no orders to cost.
- 40. It is so ordered.

**T. A. ODERA**



**JUDGE**

**10.2.25**

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM ON THIS 10<sup>TH</sup> DAY OF FEBRUARY 2025**

IN the Presence of the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners, Mr Weche For 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents Miss Abuti holding brief For Mr Wasike for the 5<sup>th</sup> Respodent

C. A Oigo.

Orengo -1<sup>st</sup> Petitioner: I seek a copy of the said judgment.

Order: The same be supplied.

**T. A. ODERA**

**JUDGE**

**10.2.25**

