



**Syoki v Kenya School of Law & another (Civil Appeal E053 of 2024)
[2025] KEHC 1767 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E053 OF 2024
JK NG'ARNG'AR, J
FEBRUARY 4, 2025**

BETWEEN

MARK JERMAINE SYOKI APPELLANT

AND

KENYA SCHOOL OF LAW 1ST RESPONDENT

COUNCIL OF LEGAL EDUCATION 2ND RESPONDENT

(Being an appeal against the Judgment and orders of the Legal Education Appeals Tribunal (Hon. Rose Njoroge-Mbanya, Hon. Eunice Arwa, Hon. Raphael Wambua Kigamwa & Hon. Stephen Gitonga Mureithi) delivered on 7th February 2024 LEAT Appeal No. E001 of 2024, Mark Jermaine Syuki v Kenya School of Law & Council of Legal Education)

JUDGMENT

1. The background of the appeal is that the Appellant sat for the Kenya Certificate of Secondary Education in the year 1990 and attained a mean grade of C+ (plus) with a C+ (plus) in English and a B- (minus) in Kiswahili. That he enrolled for a diploma in paralegal studies on 19th April 2017 and subsequently admitted to Daystar University on 24th July 2019 to undertake a Bachelor of Laws degree which he completed in the year 2023. That the Appellant applied to be admitted to the Advocates Training Program offered by the Respondent for the 2024/2025 academic year but the application was unsuccessful because the Appellant failed to meet the minimum entry grade of a B (plain) in either English or Kiswahili languages in the Kenya Certificate of Secondary Education examinations.
2. The Appellant being dissatisfied with the decision of the Kenya School of Law appealed to the Legal Education Appeals Tribunal against the decision of the Kenya School of Law declining admission to the Advocates Training Program during the 2024/2025 academic year and which was communicated on 2nd January 2024 for reasons that the Appellant having been admitted to the university for LLB



after 8th December 2014 did not qualify for admission to KSL as he did not attain the minimum grade in either English or Kiswahili.

3. The Appellant filed a Memorandum of Appeal dated 8th January 2024 prayed that the appeal be allowed and the decision of the 1st Respondent be set aside in its entirety and be substituted with a finding that the Appellant was eligible for admission to the Advocates Training Program based on Section 1 (a) of the Second Schedule to the [Kenya School of Law Act](#) No. 26 of 2012. That the 1st Respondent be compelled to forthwith admit the Appellant to the Advocates Training Program for the 2024/2025 academic year. That the 2nd Respondent be compelled to regulate, supervise and enforce the 1st Respondent's compliance with the admission requirements to the 1st Respondent as set out in Section 16 and the Second Schedule to the [Kenya School of Law Act](#) No. 26 of 2012. That costs of this appeal be awarded to the Appellant against the 1st Respondent and such costs be assessed on the scale applicable to appeals at the High Court.
4. The appeal at the Legal Education Appeals Tribunal was determined and judgment delivered on 7th February 2024 where the court found that the appeal failed and most specifically that the Respondent's decision could be faulted because the Appellant did not qualify for admission to the Advocates Training Program and could not benefit from the [Legal Education \(Accreditation and Quality Assurance\) Regulations](#), Legal Notice No. 15 of 2016 in view of the cutoff date of 30th January 2018 caused by the declaration of their invalidity. The appeal was dismissed and each part was ordered to bear their costs.
5. Being dissatisfied, the Appellant subsequently appealed before this court against the judgment and orders through the Memorandum of Appeal dated 4th March 2024 on grounds that the honourable tribunal erred in law in failing to express a view on [Kenya School of Law v Akomo & 14 Others](#) (Civil Appeal E472 of 2021) (2022) KECA 1132 (KLR) which was taken to be dispositive of the matter, yet the correctness of that decision was itself in issue. That the honourable tribunal erred in law in finding that the relevant crystallized action was the Appellant's admission to the LLB program, yet the Appellant had started with a diploma in law on the strength of the same regulations. That the honourable tribunal erred in law in finding that the cut-off point for that crystalized action was when the High Court rendered its judgment and not when the Court of Appeal affirmed that decision.
6. The Appellant prayed for orders that this appeal be allowed with costs payable by the 1st Respondent. That the judgment and orders of the tribunal made on 7th February 2024 be set aside and be substituted with orders that the decision by the 1st Respondent communicated on 2nd and 5th January 2024 be set aside in its entirety and be substituted with a finding that the Appellant is eligible for admission to the Advocates Training Program, and that the 1st Respondent be compelled to forthwith admit the Appellant to the Advocates Training Program for the 2024/2025 academic year, or in the next immediate applicable year.
7. The appeal was canvassed by way of written submissions. The Appellant in their submissions dated 28th October 2024 argued that there was failure by the tribunal to address all the issues. That pursuant to Order 21 Rule 5 of the Civil Procedure Rules, judgment of the court must identify issues and provide a resolution to all the issues. That the Appellant invited the tribunal to comment on Akomo for purposes of future appeal to a court capable of overruling Akomo but the tribunal did not appreciate the necessity for pronouncing itself on Akomo. The Appellant relied on the holdings in the cases of [Kenya Hotels Limited v Oriental Commercial Bank Limited](#) (2018) KECA 692 (KLR) and [National Agricultural Export Development Board v Cargill Kenya Limited](#) (2014) KEHC 5294 (KLR).



8. The Appellant submitted that the invalidation of the 2016 regulations in *Javan Kiche Otieno & Another v Council of Legal education* (2021) eKLR did not affect crystallized actions taken under the 2016 regulations. That what the tribunal had to decide was what amounted to crystallized action for purposes of the appeal before it. That the tribunal was required to establish when the 2016 regulation became invalid and whether the Appellant's right had crystallized. The Appellant maintained that the 2016 regulation became invalid in 2018 when the High Court rendered its judgment in Javan Kiche. The Appellant cited the case of *Mucheke v Kenya School of Law* (2022) KELEAT 853 (KLR) which held that the regulations were declared unconstitutional on 21st December 2021 but subject to crystallized actions not being affected. That a judgment does not become final and executory until appeal rights have been exhausted.
9. The Appellant argued that the tribunal failed to realise that the 2016 regulations permitted admission to an LLB degree course for those who did not score a mean grade of C+ and a B (plain) in either English or Kiswahili. That otherwise the Appellant would not be eligible to enroll for the diploma in paralegal studies on 19th April 2017 and subsequently for the LLB degree studies on 24th July 2019. The Appellant prayed that the appeal be considered merited and allowed, and that since admission to the 2024/2025 academic year is now a mirage, the appropriate order would be that the Appellant be admitted to the 2025/2026 academic year.
10. As at the time of writing this judgment, the Respondents had not filed their submissions despite being served. This court will however proceed and determine the case on merit.
11. This is a second appellate court and its jurisdiction is set out in set out in Section 38 of the *Legal Education Act* as follows: -

Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.
12. I have considered the Record of Appeal dated 22nd March 2023 and submissions by the Appellant. The issues for determination are: -
 - a. When the Legal Education (Accreditation and Quality Assurance) Regulations, *Legal Notice No. 15 of 2016* became invalid and whether the Appellant's rights had crystallised
 - b. Whether the Appellant thereafter qualifies for admission to the Advocates Training Program at the Kenya School of Law
13. The Appellant appealed the decision of the Legal Education Appeals Tribunal which found that he was not eligible for admission to the Advocates Training Program and could not benefit from the 2016 regulations in view of the cutoff date of 30th January 2018 when the invalidity was declared. The Appellant stated that he attained a mean grade C+ (plus) with a C+ (plus) in English and a B- (minus) in Kiswahili. That he enrolled for a diploma in paralegal studies on 19th April 2017 and subsequently admitted to Daystar University on 24th July 2019 to undertake a Bachelor of Laws degree which he completed in the year 2023. That the Appellant applied to be admitted to the Advocates Training Program offered by the Respondent for the 2024/2025 academic year but the application was unsuccessful because the Appellant failed to meet the minimum entry grade of a B (plain) in either English or Kiswahili languages in the Kenya Certificate of Secondary Education examinations.



14. Regulation 5 (1) of the 3rd Schedule to the impugned Legal Education (Accreditation and Quality Assurance) Regulations, 2016 provided for minimum admission requirements to study for a Bachelor of Laws degree as follows: -
 - a. a mean grade of C+ (Plus) in the Kenya Certificate of Secondary Education examination or its equivalent with a minimum grade of B Plain in English or Kiswahili
 - b. at least three Principal Passes in the Kenya Advanced Certificate of Education examination
 - c. a degree from a recognised university
 - d. a Credit Pass in a diploma in law examination from an accredited institution
15. The Appellant submitted that it is on the basis of the 2016 Regulations that the Appellant enrolled for a diploma in paralegal studies on 19th April 2017 and subsequently for the LLB degree studies on 24th July 2019. It is on the basis of career progression herein that the Appellant applied to be admitted to the Advocates Training Program at the Kenya School of Law.
16. On 30th January 2018, Lady Justice Maureen Odero delivered a ruling in the High Court at Nakuru Petition No. 20 of 2016, Javan Kiche Otieno & Another v Council of Legal Education & Another, where she held that the 2016 Regulations were void and unenforceable. This position was upheld by the Court of Appeal on 21st December 2021 in Otieno & another v Council of Legal Education (Civil Appeal 38 of 2018) [2021] KECA 349 (KLR) (17 December 2021) (Judgment). Invalidity of the Regulations in issue therefore stands at 30th January 2018 when the pronouncement by the Justice Maureen Odero was made and not on 21st December 2021 when the Court of Appeal delivered its judgment.
17. This therefore meant that admission requirements reverted to provisions under Section 1 of the Second Schedule to the *Kenya School of Law Act* No. 26 of 2012. The provisions were conclusively dealt with by the Court of Appeal in Richard Otene Akomo & 41 others [2022] KECA 1132 (KLR)(Makhandia, Mohammed & Kantai, JJA) that beside holding a degree from institutions accredited, prescribed or approved by the Council of Legal Education as prescribed in paragraph 1 (a), one also had to meet requirements in paragraph 1 (b). This therefore meant the Appellant was disqualified having attained a mean grade C+ (plus) with a C+ (plus) in English and a B- (minus) in Kiswahili.
18. At this point, the question that this court begs to ask is whether actions taken by the Appellant had crystallised to benefit from the 2016 regulations. The court in Otieno & another v Council of Legal Education (Civil Appeal 38 of 2018) [2021] KECA 349 (KLR) (17 December 2021) (Judgment) held that: -

Consequently, it is explicit that a court having declared a piece of legislation or a section of an act to be unconstitutional, that act or law becomes a nullity from the date of inception or enactment and not from the date of the judgment. But it will not be applicable to actions already crystallised whilst the expunged law was in force.
19. This court finds that it is on the basis of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 that the Appellant enrolled for diploma in paralegal studies on 19th April 2017 with the aim of career progression in the legal profession. His actions therefore had crystalized before 30th January 2018 when the regulations were declared void and unenforceable. The Legal Education Appeals Tribunal therefore erred in holding that the Appellant did not qualify for admission to the Advocates Training Program.



20. In the upshot, the appeal is merited and allowed. No orders as to costs.

DELIVERED VIRTUALLY VIA CTS AT MOMBASA THIS 4TH DAY OF FEBRUARY, 2025

J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

..... Advocate for the Appellant

..... Advocate for the Respondents

Court Assistant – Shitemi

