Kenya School of Law v Mwangi (Civil Appeal E723 of 2023)
[2025] KEHC 10842 (KLR) (Civ) (18 March 2025) (Judgment)

Neutral citation: [2025] KEHC 10842 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E723 OF 2023

JM OMIDO, J

MARCH 18, 2025

BETWEEN

KENYA SCHOOL OF LAW ..... APPELLANT

AND

DICKSON MACHARIA MWANGI ..... RESPONDENT

(Being an appeal from the Ruling and Order of the Legal Education Appeals Tribunal (Hons. R.N. Mbanya, E. Arwa, R.W. Kigamwa and S.G. Mureithi) delivered on 14th July, 2023 in Legal Education Appeals Tribunal Cause No. E008 of 2023)

JUDGMENT

A. Background:

1. The Appellant herein, the Kenya School of Law, brought this appeal against Dickson Macharia Mwangi, the Respondent herein, being aggrieved by the ruling and order of the Legal Education Appeals Tribunal ("the Tribunal") delivered and issued on the 14th July, 2023 in Legal Education Appeals Tribunal Cause No. E008 of 2023, *Dickson Macharia v Kenya School of Law*.

2. The genesis of the dispute herein is that the Respondent preferred an appeal against the Appellant before the Tribunal following the decision by the latter declining the former's application to the Kenya School of Law for enrolment for the Advocates Training Programme.

3. Upon hearing the appeal, the Tribunal delivered its judgement on the 24th March, 2023 whereby it made the following orders:

    1. That the decision of the Respondent declining the application for admission of Dickson Macharia Mwangi to the Advocates Training Programme during the 2023/24 academic year

as communicated by the Respondent by Dr. Henry K. Mutai – Director of the Kenya School of Law – dated the 9th of January, 2023 is set aside.

2. That in lieu of the decision dated the 9th of January, 2023; the application by Dickson Macharia Mwangi for admission to the Advocates Training Programme is remitted to the Respondent for reconsideration.

3. That the Respondent does reconsider the application for admission to the Advocates Training Programme as made by Dickson Macharia Mwangi by way of determining his actual admission date to the Bachelor of Laws degree at the University of Nairobi as against the eligibility criteria that existed as at 30th January, 2018.

4. That the said exercise be undertaken within the next 14 days as of the delivery of this judgement.

5. That should the Appellant not have submitted his Bachelor of Laws degree admission letter from the University of Nairobi to the Respondent he does proceed to do so forthwith.

6. That each party to bear its own costs of the appeal.

7. That any party aggrieved has the liberty to appeal to the High Court under Section 38(1) of the *Legal Education Act*, 2021 on a point of law.

4. It would appear that the position that the Respondent thereafter took was that the Appellant did not comply with the orders issued in the Tribunal's judgement. That then prompted the Respondent's Advocate, vide a letter dated 26th April, 2023 to demand that the Appellant abides by the terms of the judgement. The Appellant responded to the Respondent's counsel's letter on 28th April, 2023. The Appellant's letter reads thus:

> Mr. Edward C. Asitiba
>
> Edward C. Asitiba & Co. Advocates
>
> 1st Floor, Waumini House
>
> Westlands
>
> NAIROBI
>
> Dear Sir,
>
> LEAA/008 OF 2023
>
> Dickson Macharia Mwangi V The Board Of Kenya School Of Law.
>
> Pursuant to the judgement of the Legal Education Tribunal delivered on 24th March, 2023, the Kenya School of Law has reconsidered your client's application to the Advocates Training Programme (ATP) and regret to inform you that he does not qualify for admission to the ATP.
>
> This determination was made based on the provisions of law and the determination of the Court of Appeal on the issue.
>
> Yours faithfully
>
> [Signed]
>
> Dr. Henry K. Mutai

Director/chief Executive Officer.

5. Vide an application dated 3rd May 2023, the Respondent (the Appellant before the Tribunal) moved the Tribunal seeking the following orders against the Appellant:

    1. [....].

    2. That the Honourable Tribunal be pleased to issue an order of certiorari to remove and quash the Respondent's letter dated 28th April, 2023.

    3. That the Honourable Tribunal be pleased to issue a committal order against the Respondent for contempt of Tribunal orders issued on 24th March, 2023.

    4. That the Honourable Tribunal be pleased to issue an order of mandamus compelling the Respondent to admit the Appellant to the Advocates Training Programme (ATP) immediately and in any case for the academic year 2023/24 based on the eligibility criteria that existed as at 30th January, 2018.

    5. That the Honourable Tribunal be pleased to issue any such orders as it deems and expedient.

    6. That the costs of this application be awarded to the Appellant/Applicant.

6. The application was opposed by the Appellant. The application proceeded and the Tribunal set down two issues for determination:

    a. Whether Dr. Henry K. Mutai is guilty of Contempt of the Court decision delivered on 10th June 2022 (sic); and

    b. Ancillary to this determination, is the question of this Tribunal's jurisdiction to determine matters relating to Contempt of Court.

7. In its determination vide the ruling that was rendered on 14th July, 2023, the Tribunal found that it did not have powers to punish for contempt and/or grant the judicial review orders of certiorari and mandamus that the Respondent had sought. The Tribunal however went on to order the Appellant to admit the Respondent for the Advocates Training Programme. The orders issued by the Tribunal were as follows:

    1. That prayers 2 – 4 of the application dated 3rd May, 2023 are hereby dismissed.

    2. That the Tribunal exercises its powers as provided in the *Legal Education Act* and as sought in prayer 5 and pronounces itself as follows:

        a. That the decision communicated by the letter dated 28th April, 2023 is set aside.

        b. That a declaration is issued that the Appellant Dickson Macharia Mwangi is qualified for admission to the Advocates Training Programme.

        c. That the Respondent is ordered to hereby admit the Appellant Dickson Macharia Mwangi to the Advocates Training Programme forthwith.

        d. That each party shall bear its own costs.

8. It is from the ruling above that the instant appeal emanates.

B. The Appeal.

9. The Appellant has presented five (5) grounds of appeal vide the Memorandum of Appeal dated 21st July, 2023, as follows:

    i. That the Honourable Tribunal erred in law and in fact in failing to find that it had no jurisdiction to hear and determine the appeal.

    ii. That the Honourable Tribunal erred in law and in fact by exceeding its mandate.

    iii. That the Honourable Tribunal erred in law and in fact by addressing itself on matters outside its jurisdiction

    iv. That the Honourable Tribunal erred in law and in fact by failing to properly apply the law on eligibility for admission to the Advocates Training Programme.

    v. That the whole ruling and Order of the Tribunal is against the law and fatally flawed.

10. The Appellant proposed that the present appeal be allowed with the result that the entire appeal in LEAT No. E008 of 2023 be dismissed and/or struck out for being nullity ab initio and that costs of this appeal and the appeal before the Tribunal be borne by the Respondent.

11. This court directed that the appeal be canvassed by way of written submissions and the two sides filed their respective submissions.

The Record(s) Of Appeal

12. It is instructive from the submissions of the Appellant that although the orders appealed from are those issued by the Tribunal vide the ruling that was rendered on 14th July, 2023 (which the Appellant wrongly refers to as the Tribunal's judgement), the submissions in fact go on to address and/or challenge the judgement of the Tribunal that was delivered on 24th March, 2023, which is irregular.

13. Worse still, there are two different records of appeal in the physical file, which convolutes this matter. Curiously, only one record of appeal is filed through the Case Tracking System (CTS). It is not clear how the second record of appeal found its way into the physical file. I will in the premises proceed to expunge it from this record as there can only be one record of appeal within an appeal, unless the court orders for consolidation of two appeals, which is not the case here. That then leaves the matter with the record of appeal that was filed through the CTS.

14. That is not all. The record of appeal that was filed through the CTS refers to an appeal against the Tribunal's judgement delivered on 14th July, 2023. The judgement in the matter was, as a matter of fact, delivered on 24th March, 2023. What the Tribunal rendered on 14th July, 2023 was its ruling on the Respondents application dated 3rd May, 2023.

15. I have above stated that the Appellant's submissions challenge both the ruling and judgement that were delivered by the Tribunal. It is however evident from the record of appeal that what is challenged is the orders issued by the Tribunal vide the ruling of 14th July, 2023.

16. I will in the circumstances treat this as an appeal against the ruling and orders of the Tribunal of 14th July, 2023 and will not address any grounds targeted at the judgement that the Tribunal delivered on 24th March, 2023. I say so because the Memorandum of Appeal, as is indicative from the CTS was filed on 25th July, 2023, well after the period for appealing against the judgement of the Tribunal had expired.

The Appellant's Submissions

17. As I address the respective positions of the parties, it is important to have at the back of one's mind the prayers that were sought in the application that resulted in the ruling and orders appealed from.

18. I have reproduced the prayers above, verbatim. It is then apparent that the particular orders appealed from are the ones that direct or order that: The decision communicated by the letter dated 28th April, 2023 is set aside; A declaration that the Respondent is qualified for admission to the Advocates Training Programme; and, An order directing the Appellant to forthwith admit the Respondent to the Advocates Training Programme.

19. The submissions filed by the Appellant were in precis that in issuing the impugned order, the Tribunal did not consider the academic qualifications that one must have in order to be admitted to the Advocates Training Programme, as espoused by the Court of Appeal in the case of *Kenya School of Law v Richard Akomo Otene & 41 others* [2021] eKLR.

20. Other than the foregoing, the Appellant did not address any other grounds respecting the present appeal (in so far as it concerns the order that is challenged) but instead went on to address the judgement delivered on 24th March, 2025, which, as I have stated, is not subject to this appeal.

The Respondent's Submissions

21. Just like the Appellant, the Respondent's submissions went beyond the appeal on the orders of the Tribunal issued on 14th July, 2023. The Respondent instead submitted on the judgement of the Tribunal, effectively addressing the criteria for admission to the Advocates Training Programme rather than the impugned order and the ruling that was delivered on 14th July, 2023.

C. Analysis

22. Despite the shortfalls of the appeal that I have pointed above, I will proceed to determine the issue that I discern the parties intended to address, that is whether the Tribunal had the jurisdiction to issue the orders of 14th July, 2023 in which

    (i). the decision communicated by the letter dated 28th April, 2023 was set aside;

    (ii). a declaration was issued that the Respondent is qualified for admission to the Advocates Training Programme; and

    (iii) an order was issued directing the Appellant to forthwith admit the Respondent to the Advocates Training Programme.

23. From the history of this matter as presented above, the judgement of the Tribunal directed that the application by the Respondent for admission to the Advocates Training Programme be remitted to the Appellant for reconsideration. The judgement further commanded that the Appellant reconsiders the said application by determining the Respondent's actual admission date to the Bachelor of Laws degree at the University of Nairobi as against the eligibility criteria that existed as at 30th January, 2018.

24. The Appellant's letter dated 28th April, 2023, whose contents I have reproduced above simply stated that the Respondent did not qualify for admission to the ATP. It is not clear from the said letter, and I am unable to tell from the record of appeal what parameters the Appellant applied in reaching that decision, and in particular whether the Appellant, in doing so, complied with those that the judgement of the Tribunal pronounced.

25. All the same, it would appear that the Respondent took the position that the Appellant had disobeyed and/or failed to comply with the terms of the judgement, hence the application dated 3rd May, 2023.

26. But then, the issue as to whether there was contempt on the part of the Appellant was not determined. Put in another way, it remains unclear, in the circumstances, whether in rejecting the Respondent's application to be enrolled for the Advocates Training Programme, the Appellant complied with the judgement of the Tribunal.

27. One thing that is clear from that judgement is that the Appellant was not ordered to admit the Respondent for the Programme, but rather, was directed to reconsider the Respondent's application in line with the parameters that the Tribunal set in its judgement.

28. Noteworthy is the position that ordinarily, a decision of the Respondent to refuse to admit a person for the Programme is appealable to the Tribunal. Whether this was such a decision in respect of which a fresh appeal would have been ideal is unclear, in light of the lack of information on the same as to whether there was compliance with the Tribunal's order/judgement or not.

29. It is to be noted further that the orders that were granted by the Tribunal were not sought by the Respondent in his application dated 3rd May, 2023. If anything, all the prayers that were sought in that application were declined in the Tribunal's ruling, where lack of jurisdiction was cited.

30. It is then apparent that the said orders were issued under the precept "any such orders as it [the Tribunal] deems fit and expedient to grant". The complaint by the Appellant, as would appear from the grounds of appeal is that the Tribunal had no jurisdiction to grant the impugned orders as the same were not specifically prayed for by the Respondent.

31. The question that then abounds is whether the Tribunal was legally placed to issue orders that the Respondent did not seek. I will proceed to consult case law on the issue.

32. In the case of *Kenya Women Finance Trust v Squaredeal Kenya Limited* (Civil Appeal 36 of 2021) [2023] KEHC 17234 (KLR) (12 May 2023) (Judgment) the High Court held that:

> " It is trite law that parties are bound by their pleadings. In the case of *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR, the Court of Appeal held as follows;
>
> > " "As the authorities do accord with our own way of thinking, we hold them to be representative of the proper legal position that parties are bound by their pleadings which in turn limits the issues upon which a trial court may pronounce. The learned Judge, no matter how well-intentioned, went well beyond the grounds raised by the petitioners and answered by the respondents before her and thereby determined the petition on the basis of matters not properly before her. To that extent, she committed a reversible error, and the appeal succeeds on that score."
>
> It therefore follows that the principle that parties are bound by their pleadings applies mutatis mutandis to the Court. It is true that there are exceptions to this general rule as was set out in the case of *Odd Jobs v Mubea* [1970] EA 476, where the then Court of Appeal of East Africa held that a Court may base its decision on an issue that is not in the pleadings as long as the same arises in the course of the proceedings and the same is fully canvassed by

the parties. Regarding this issue, the Court of Appeal commented as follows in the case of *Ann Wairimu Wanjohi v James Wambiru Mukabi* [2021] eKLR:

> " "We take the view that parties should specifically state their claim by properly pleading the facts relied upon and the relief sought, as the pleadings are the primary documents that guide the court and the parties concerning the claim and the contesting positions of the parties. In accordance with the Civil Procedure Rules, the parties should also either provide a list of agreed issues, or if there is no agreement, each provide their own list of issues so that the court can settle the issues. Although it is desirable that where necessary the pleadings should be amended to bring in all the issues, *Odd Jobs v Mubia* (*supra*) remains good law, that in limited circumstances where an unpleaded issue is crucial to the matters in issue the court may determine a suit on the unpleaded issue, provided both parties have clearly addressed the unpleaded issue in their evidence or submissions, and left the matter for the determination of the court. However, such determination will not extend to determining or awarding a relief that was not specifically sought in the pleadings."".

33. The court went on to conclude as follows in *Kenya Women Finance Trust* (*supra*):

> " I therefore have no hesitation in reaching the finding that the trial court erred in making the order. The Applicants sought an injunction to restrain the Appellant from auctioning its charged property pending hearing and determination of the suit and also the appointment of an accountant to carry out a reconciliation of accounts and file a report on the loan account. The trial Court seemingly ignored both these prayers. I am therefore satisfied that the order issued by the trial Court was erroneous. Accordingly, I set aside the order."

34. There is also the case of *Kinyanjui v Njoki* (Civil Appeal 298 of 2023) [2024] KEHC 9725 (KLR) (29 July 2024) (Judgment) where the High Court observed as follows:

> " It is well established that a claimant in a civil suit first approaches the court by way of pleadings. The pleadings can be in the form of a plaint, notice of motion, originating summons or petition. It is also well established that the respondent in turn will file their response by way of defence, replying affidavit, or answer to petition. Once parties have filed their pleadings they are bound by those pleadings. The pleadings notify the opposing party what they should expect at the hearing. A claimant is then expected to lead evidence to the satisfaction of the court that his prayers as pleaded are meritorious. A party is therefore dependent on his pleadings to secure the orders prayed for and the court cannot award any order not specifically prayed for.
>
> It has been held that a court has no jurisdiction to grant a prayer that is not pleaded. In the case of *Caltex Oil (Kenya) Limited v Rono Limited* [2016] eKLR, the Court of Appeal held as follows:
>
> > " "In the plaint, we have noted that the respondent never claimed to have suffered any damages as a result of the appellant's breach. In the circumstances, having not made a claim for general damages, there cannot be a basis for awarding the same. The court has no inherent jurisdiction to award damages whether separate or in addition to specific performance where no such plea was made in its pleadings. Damages must be pleaded so that the other party can reply through the defence.

> That is not what happened in this matter. It was not right for the trial court to purport to engage in an exercise in futility. No matter how many times it is canvassed before court, the respondent is not entitled to damages and the court has no basis to grant the same. To find otherwise would amount to the court exercising a power it does not have and rendering decisions without any parameters or borders which would lead or a total disorder and abuse of the judicial process."

> In the present appeal, the appellant faults the trial magistrate for granting orders to the respondent when the respondent never sought the same. From the Record of Appeal, it is apparent that the respondent, in opposing the appellant's prayer for removal of the caution, filed a defence dated 6th December 2022. In the defence, she specifically averred that land parcel no. Ruiru/Ruiru Westblock 3/641 is matrimonial property. She denied all other averments by the respondent and urged the court to dismiss the claim with costs while maintaining that the Environment and Land Court was not seized with the jurisdiction to hear and determine rights to parties to property acquired during subsistence of marriage."

> (All underlined emphasis mine).

35. The jurisprudence that emerges from the authorities above is that it is not available for a court or tribunal to address an issue or make an order that has not been specifically pleaded or sought by a party, unless the issue or order arises in the course of the proceedings and the same is fully canvassed by the parties.

36. The issue as to whether the Respondent was entitled to be admitted to the Advocates Training Programme, as I have said above, was not sought in the Respondent's motion. The issue as to whether the letter dated 28th April, 2023 is/was to be set aside was also not raised or addressed. Similarly, the issue as to whether the Respondent was entitled to a declaration that he was qualified for admission to the Advocates Training Programme was not one raised in the application. Lastly, the issue as to whether the Respondent was entitled to an order directing the Appellant to forthwith admit the Respondent to the Advocates Training Programme was also not one before the Tribunal when hearing the application..

37. All these issues were not canvassed by the parties and the Tribunal therefore fell into error in making the orders in the guise of "any other order that the Tribunal may deem fit".

D. Determination

38. I have stated above that the parties herein proceeded largely to address the judgement of the Tribunal, yet the appeal was in respect of the ruling and order that the Tribunal rendered and issued on 14th July, 2023 on the application dated 3rd May, 2023.

39. It is a cardinal principle of the law, as we have seen from the authorities above, that a court or tribunal will only determine issues that are before it and grant reliefs that are pleaded and/or sought by a party, or those that are comprehensively addressed by the parties in the dispute.

40. A party is bound by its pleadings and the Respondent's application did not seek the Tribunal's consideration on the above issues. The Tribunal therefore fell into error in addressing issues that were extraneous to the application and granted orders that were in the circumstances beyond its mandate.

41. In the circumstances, I find this appeal to be well merited. I proceed to allow it to the extent that I set aside the following orders issued on 14th May, 2023:

    1. The order setting aside the decision communicated by the letter dated 28th April, 2023.

2. The declaration issued that the Respondent is qualified for admission to the Advocates Training Programme.

3. The order commanding the Appellant to forthwith admit the Respondent to the Advocates Training Programme forthwith.

42. Section 27 of the *Civil Procedure Act* dictates that costs shall follow the event, unless the court or judge shall for good reason otherwise order. As it is the Tribunal that ventured into matters outside what the parties presented before it vide the application dated 3rd May, 2023, there shall be no orders as to costs.

DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 18TH DAY OF MARCH, 2025.

JOE M. OMIDO

JUDGE

For Appellant: Ms. Mbuthu.

For Respondent: Mr. Asitiba.

Court Assistants: Mr. Ngoge & Mr. Juma.