



**Kenya School of Law v Kitsao; Council for Legal Education (Interested Party)
(Civil Appeal E685 of 2024) [2025] KEHC 6110 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E685 OF 2024**

TW CHERERE, J

APRIL 8, 2025

BETWEEN

KENYA SCHOOL OF LAW APPELLANT

AND

ANTHONY WAZIRI KITSAO RESPONDENT

AND

COUNCIL FOR LEGAL EDUCATION INTERESTED PARTY

RULING

Introduction

1. Before the Court is the Respondent's Notice of Motion dated 27th February 2025, brought under Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 rule 1 of the *Civil Procedure Rules* and other enabling provisions of law, seeking to strike out the appeal filed by the Appellant against the judgment of the Legal Education Appeals Tribunal (LEAT) delivered on 05th April 2023, which directed the Appellant to admit the Respondent to the Kenya School of Law.
2. The application is supported by the affidavit of the Respondent sworn on 27th February 2025, which reiterates, inter alia, that:
 1. The High Court in *Republic v Director, Kenya School of Law & 2 others; Kitsao* (Judicial Review Application No. E001 of 2024) rendered judgment on 22nd March 2024, quashing the Appellants' rejection of the Respondent's application to the Advocates Training Programme (ATP), and issued an order of mandamus compelling compliance with the Tribunal's judgment dated 5th April 2023;
 2. The Appellants have since complied with the judgment by admitting the Respondent to the ATP;



3. Consequently, the appeal has been overtaken by events and should be struck out.
3. Additionally, the Respondent filed a Notice of Preliminary Objection dated 26th June 2024, arguing that:
 1. The Court lacks jurisdiction by virtue of Article 165(5) of the Constitution and in view of the judgment in High Court in Republic v Director, Kenya School of Law & 2 others (supra)
 2. The Appellants failed to demonstrate sufficient cause to justify the delay in filing the appeal.
 3. Hon. Justice Ongeru had no jurisdiction to grant leave to appeal out of time after the judgment in Kitsao;
4. In opposition, the Appellants filed grounds of opposition dated 02nd April 2025, contending that:
 1. They have already complied with the judgment in Republic v Director, Kenya School of Law & 2 others (supra)
 2. Compliance does not bar them from pursuing the appeal on legal and factual grounds.
5. Appellant additionally relied on a replying affidavit sworn on 04th March 2025 by Lawrence Ndirangu, an officer in charge of Academic Services at the Kenya School of Law, who deposes that:
 1. The Appellants complied with the High Court judgment in Republic v Director, Kenya School of Law & 2 others (supra) by admitting the Respondent
 2. The appeal raises serious legal and factual issues regarding the Respondent's academic qualifications and eligibility for admission;
 3. The right of appeal is a statutory right and ought to be preserved.

Issues For Determination

6. Having considered the Notice of Motion dated 27th February 2025, the Notice of Preliminary Objection dated 26th June 2024, the supporting and replying affidavits, grounds of opposition and submission of the Respondent, I have identified the following issues for determination:
 1. Whether this Court can re-evaluate the sufficiency of cause for extension of time, in light of the orders already issued by Ongeru J.
 2. Whether this Court can interrogate the issue of whether illness constituted sufficient cause for delay in filing the appeal3. Whether the Court had jurisdiction to grant leave to appeal out of time despite the decision in Republic v Director, Kenya School of Law & 2 others (supra)4. Whether the appeal has been overtaken by events and rendered moot.5. Whether the appeal amounts to an abuse of court process or is contrary to the public interest.6. Who bears the costs

Analysis And Determination

1. Whether this Court can re-evaluate sufficiency of cause for extension of time

7. The Respondent argues that the Appellant failed to demonstrate sufficient cause for extension of time.



8. The Court in *Desai v Warsama* [1967] EA 351 held that:

“No court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter, its decision amounts to nothing. Jurisdiction must be acquired before a court can act.”

9. The orders granting leave were made by Ongeru J on 31st May 2024. The Respondent neither applied for review of the orders nor appealed them.

10. This Court finds that is functus officio in respect of that decision by Ongeru J. for the reason that a judge of concurrent jurisdiction cannot sit on appeal or review the discretion exercised by another unless by formal appeal or review.

11. The issue of sufficiency of cause having already been determined by Ongeru, J, this Court lacks jurisdiction to revisit that decision. The objection on this ground is without merit.

2. Whether 1st Appellant’s illness constitutes sufficient cause

12. The Respondent challenges the claim of illness as the reason for delay in filing this appeal.

13. In *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi* [2004] eKLR, the Court held:

“As a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.”

14. In *Mbutia Macharia v Annah Mutua Ndwiga* [2017] KECA 290 (KLR), the Court held:

“The legal burden is discharged by way of evidence, with the opposing party having the evidential burden to rebut the evidence. That decision stands unless set aside or appealed.

15. The affidavit evidence presented regarding illness was part of the material before Ongeru J, who granted the extension.

16. As stated at paragraph 8 of this ruling, this Court is barred from re-evaluating evidence already considered in the earlier application. This ground therefore similarly fails.

3. Whether the Court had jurisdiction to grant leave post-Kitsao

17. The Respondent contends that the decision in *Republic v Director, Kenya School of Law & 2 others* (supra) rendered the appellate process nugatory or impermissible.

18. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil* (Kenya) Ltd [1989] eKLR, the Court stated:

“Jurisdiction is everything. Without it, a court has no power to make one more step... A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

19. In *Macharia & another v KCB* [2012] eKLR, the Supreme Court emphasized:

“A court’s jurisdiction flows from either the Constitution or legislation or both... It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”



20. Nonetheless, the judgment in *Republic v Director, Kenya School of Law & 2 others* (supra), was rendered in the context of judicial review proceedings. It was not an appellate decision and therefore did not, in law or effect, bar or extinguish the Appellants' statutory right of appeal under the [Civil Procedure Act](#).

4. Whether the appeal is overtaken by events

21. It is undisputed that the Respondent has been admitted to the Advocates Training Programme. The Respondent contends the appeal is now academic.
22. In *Public Service Commission & 4 others v Cheruiyot & 20 others* [2022] KECA 15 (KLR), the Court stated:
- “It is trite that compliance with a court order does not render an appeal moot where there are substantive issues that remain unresolved.”
23. The Appellant argues that the appeal raises questions of fact and law about the Respondent's academic qualifications, including whether the Respondent met the minimum statutory and regulatory requirements for admission to the Advocates Training Programme, and whether the Tribunal correctly evaluated the evidence and legal framework governing such qualifications.
24. These issues, they contend, have implications for the broader regulatory standards in legal education and admission to the Bar.
25. In view of the foregoing, I find that the appeal raises triable issues and remains live. Compliance with the Tribunal's orders and the subsequent admission of the Respondent to the Advocates Training Programme does not in my considered view render the appeal nugatory, particularly where substantial questions of legal interpretation and qualification standards remain unresolved. The Appellant retains the right to challenge the Tribunal's findings through the appellate process.

5. Whether the appeal is an abuse of process

26. The Respondent argues that allowing the appeal would be prejudicial and contrary to public interest.
27. In *Munya v Kitbinji & 2 others* [2014] KESC 38 (KLR), the Supreme Court stated:
- “Conservatory orders... are orders in rem and can be granted on the inherent merit of a case, and public interest.”
28. By pursuing this appeal, the Appellant is exercising a lawful right of appeal. There is no evidence of bad faith or procedural abuse. Moreover, the appeal implicates matters of public interest, particularly in the regulation of legal education and the standards for admission to the legal profession, which merit ventilation through the appellate process.
29. It has not been demonstrated that the appeal is an abuse of process. The appeal raises legitimate and important legal questions that go beyond the immediate parties and affect the broader legal and regulatory framework, thus engaging public interest considerations.

6. Who bears the costs

30. Section 27(1) of the [Civil Procedure Act](#) gives courts unfettered discretion to determine by whom costs are to be paid. It is trite that costs follow the event and a successful litigant ought not to be denied



costs unless for good cause to be shown. (See [Farah Awad Gullet v CMC Motors Group Limited](#) [2018] KECA 158 (KLR)).

Disposition

31. From the foregoing analysis, the Court finds that:
1. The Notice of Motion dated 27th February 2025 is without merit, and it is dismissed
 2. The Preliminary Objection dated 26th June 2024 is similarly dismissed
 3. Respondent shall bear the Appellant's costs
 4. Appeal is admitted for hearing
 5. Mention before the DR on 24th April 2025 to confirm filing and service of submissions

DELIVERED AT NAIROBI THIS 08TH DAY OF APRIL 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Ms. Mbuthu Advocate

For Respondent - Mr. Kenga for Kenga & Kenga Advocates

