

REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL NO. E053 OF 2025

MARK JERMAINE SYUKI.....APPELLANT

-VERSUS-

KENYA SCHOOL OF LAW..... 1ST

RESPONDENT

COUNCIL FOR LEGAL EDUCATION.....2ND RESPONDENT

JUDGMENT

1. This is an Appeal from 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 07/02/2024 in LEAT Appeal No. E01 of 2024.
2. The Appellant, having completed his Diploma in Law (para- legal studies) at the Kenya School of Law (1st Respondent), and a Bachelor of Law program at the School of Law, Daystar University. The Appellant thereafter applied for admission at the Kenya School of Law for the Advocate Training Program (ATP) for the 2024/2025 academic year.

3. The 1st Respondent gave a Regret Notice dated 28/11/2023 denying the Appellant's Admission to the Institution, on grounds that the Appellant had failed to meet the minimum grade in English or Swahili language as per the eligibility criteria as provided for under Section 16 of the Kenya School of Law Act as read with Paragraph 1 of the Second Schedule of the Act.
4. Aggrieved by the 1st Respondent's decision, the Appellant filed an appeal before the Legal Education Appeals Tribunal, herein after referred to as the Tribunal. The Tribunal dismissed the appeal hence filing of this appeal before this court.
5. The appeal had been heard and determined ex-parte after the Respondents having been served with the Record of Appeal and the submissions by the Appellant failed to file their submissions. Through the Judgment delivered on 27/01/2025 by Hon. Justice Julius K. Ng'arng'ar, the appeal was allowed and the Tribunal was said to have erred in holding that the Appellant did not qualify for admission to the Advocates Training Program.
6. The Appellant filed a Notice of Motion Application dated 27/02/2025 seeking to have the 1st Respondent held in contempt of court for failing to admit the Appellant as per the judgment of the court. The 1st Respondent

also filed a Notice of Motion Application seeking to set aside the ex-parte judgment against it. Both applications were compromised on terms that; The application dated 27/02/2025 be withdrawn with no orders as to costs.

The application dated 13/02/2025 be allowed with no orders as to costs.

That the 1st Respondent do file its written submissions on the appeal.

7. The Appellant had already filed its submissions dated 28/10/2025. The Appellant filed Further Submissions dated 03/04/2025. The Respondent filed the submissions dated 05/05/2025.

Analysis and determination

8. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (See ***Mbogo and Another vs. Shah [1968] EA 93.***)
9. The main issue for determination is whether the Appellant qualifies for Admission to the Advocates Training Program. I have perused through the judgment delivered by Justice Julius Ng'arng'ar. I fully associate myself with the analysis and the findings of my brother judge to which I adopt in this judgment.

10. Further, even though the Respondent filed their submissions dated 05/05/2025, this court's duty to make a determination on the appeal has been made easy by the finding of the Court of Appeal in the case of ***Otinga v Cabinet Secretary, Ministry of Education & 3 others (Civil Appeal E625 of 2023) [2025] KECA 460 (KLR)*** which was cited by the Appellant in the Further Submissions dated 03/04/2025.

11. The Court of Appeal held as follows;

(43). *It is evident that the **Legal Education Act** is the framework of legal education and training in Kenya including training in ATP.*

(44). *Consequently, the provisions therein are the ones applicable to all legal trainings in Kenya including the ATP.*

(45) *Having arrived at those conclusions, it is obvious that the appeal is for allowing. We accordingly set aside the judgment and decree of the High Court and substitute thereof on order that the petition be and is hereby granted as prayed.*

12. The orders that were being sought for by the Petitioner were listed in paragraph 8 of the judgment. Specifically, paragraph 8 (b) reads as follows;

8 (b). *A declaration that section 16 of the **Kenya School of Law Act No. 26 of 2012** and the second schedule thereto, are inconsistent*

*with the provisions of **section 8 (3) (a) of the Legal Education Act No. 27 of 2012** in so far as they purport to prescribe requirements for admission of persons seeking to enroll in legal education programs such as the Advocate Training Program (Postgraduate Diploma in Law)*

9 The 1st Respondent had denied the Appellant Admission based on section 16 of the Kenya School of Law Act which required a mean grade of B in either English or Swahili. The Appellant started his legal education journey from Diploma in Law, Degree in Law and now desirous of pursuing Postgraduate Diploma in Law.

10 **Section 8 (3) (c)** of the **Legal Education Act** requires the Council for Legal Education to;

“Formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels”

11 The Appellant progressed in the legal education pursuant to **Regulations 4 and 5** of the **Legal Education (Accreditation and Quality Assurance) Regulations 2016**. By the time the said regulations were declared unconstitutional, the Appellant’s rights had already crystallised when he joined the Diploma in Law program on 19/04/2017, hence the invalidation of the regulations cannot be applied retrospectively.

12 The Tribunal erred in making a finding that the Appellant's right crystallised when he enrolled for the Bachelor of Law studies on 24/07/2019 hence finding him unqualified for admission to the Advocates Training Program.

13 Based on the nature of the proceedings, each party to bear its own costs.

Determination

14 In the upshot, I make the following Orders:

- i. The appeal has merits and find that the Appellant is eligible for admission to the Advocates Training Program.*
- ii. The 1st Respondent is hereby compelled to admit the Appellant for the 2025/2026 academic year.*
- iii. Each party to bear its own costs.*

Delivered, dated and signed at Mombasa on this 15th day of May 2025.

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F. WANGARI

JUDGE

In the presence of:

Mr. Kongere Advocate for the Appellant

N/A by the Respondents.

M/S Norah, Court Assistant