



**Kenya School of Law v Maina & another; Council for Legal Education (Interested Party)  
(Civil Appeal E388 of 2022) [2024] KEHC 3168 (KLR) (Civ) (2 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E388 OF 2022**

**AN ONGERI, J**

**APRIL 2, 2024**

**BETWEEN**

**KENYA SCHOOL OF LAW ..... APPELLANT**

**AND**

**PAUL NDUCHI MAINA ..... 1<sup>ST</sup> RESPONDENT**

**ASHA ABDISALAN GUREH ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**COUNCIL FOR LEGAL EDUCATION ..... INTERESTED PARTY**

*(Being an appeal from the judgment and decree of the legal Education Appeals Tribunal (Rose Njoroge Mbanya(chairperson), Eunice Arwa and Raphael Wambua Kigamwa (Members) in the Legal Education Appeals Tribunal consolidated Appeals no. E012 and E014 both of 2022 delivered on 27/5/2022)*

**JUDGMENT**

1. The respondents in these consolidated appeals Paul Ndichu Maina and Abdisalan Gureh appealed to the Legal Appeals Tribunal at Nairobi against the decision of the appellant The Kenya School of Law.
2. The decision of the appellant was in respect of refusal to admit the respondents on the basis that the respondents did not attain the minimum qualifications for admissions to study law.
3. The 1<sup>st</sup> respondent attained a mean grade of x- in his Kenya Certificate of Secondary School (KCSE) and scores of x- and x+ respectively in English and Kiswahili.
4. The 2<sup>nd</sup> respondent attained a mean grade of x in her Kenya Certificate of Secondary Education (KCSE) with grades C+(plus) and x-(minus) in English and Kiswahili respectively.



5. The appellant maintained during the hearing of the appeal that it is a state corporation established under Section 3 of the [Kenya School of Law Act](#) 2012 and the successor of the erstwhile school established under the Council of [Legal Education Act](#) Cap 16A (repealed) with the mandate to train persons for purposes of the [Advocates Act](#) Cap 16.
6. They submitted that matters of admission to the said Advocates Training Program (ATP) were solely regulated by [Kenya School of Law Act](#) 2012 while the Tribunal is established under the [Legal Education Act](#) 2012 and it is devoid of jurisdiction.
7. The Tribunal heard the appeal interpartes and ruled as follows;
  - i. That the appeals by the 1<sup>st</sup> and 2<sup>nd</sup> respondents are allowed.
  - ii. That the decision by the appellant's director declining the appellant's admission to the Advocates Training Program are quashed.
  - iii. That an order directing the appellant to admit the respondents to the Advocates Training Program to issue.
  - iv. That each party to bear its own costs.
8. The appellant has appealed against decision on the following grounds;
  - i. That the honourable tribunal erred in law and in fact in failing to find that it lacked 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 judgment and order of the tribunal is against the law and fatally flawed.
9. This is a second appeal and the same is restricted to points of law.
10. The appellant filed submissions stating that the Tribunal acted ultra vires by entertaining and determining the claim which had been filed before it by the respondents herein, in view of the fact that its jurisdiction was limited to matters relating to the [Legal Education Act](#), pursuant to Section 31(1) of the [Legal Education Act](#).
11. That matters pertaining to the admission criteria of advocates under the Advocates Training Programme are catered for under Section 16 of the [Kenya School of Law Act](#), 2012. The appellant submitted that in view of the foregoing, the Tribunal conferred upon itself jurisdiction that it did not have. In so submitting, the appellant borrowed from the Supreme Court's decision in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR to the effect that jurisdiction flows either from the [Constitution](#) or legislation.
12. The appellant advanced the argument that the proper admission criteria to be followed was laid out by the Court of Appeal in the case of [Kenya School of Law v Richard Otene Okomo & 41 others](#)-Nairobi Civil Appeal No. E472 of 2021 pursuant to Sections 16 and 17 of the [Kenya School of Law Act](#), 2012.
13. On those grounds, the appellant urged the court to allow the appeal with costs and in so doing, to disturb the impugned decision by the Tribunal.



14. The respondents were not found for purposes of this appeal. They never appeared for the hearing and neither did they file written submissions despite having been served with notices to file their submissions.
15. The issues for determination in this appeal are as follows;
  - i. Whether the Legal Education Appeals Tribunal had jurisdiction to hear the appeal from the appellant's decision.
  - ii. Whether the Legal Education Appeals Tribunal failed to properly apply the law on eligibility for admission to the Advocates Training Programme (ATP).
16. On the issue as to whether the Legal Education Appeals Tribunal had jurisdiction to hear the appeal from the appellant, I find that the issue for determination was regulated by [Kenya School of Law Act 2012](#) and therefore not within the province of [Legal Education Act](#).
17. Sections 3 and 4 of the [Kenya School of Law Act 2012](#) are applicable here, and provide as follows;

### 3. Establishment of the School

- (1) There is established a School to be known as the Kenya School of Law.
- (2) The School shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:—
  - (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding or disposing of movable and immovable property;
  - (c) entering into contracts; and
  - (d) doing or performing such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.
- (3) The School shall be the successor of the Kenya School of Law established under the Council of [Legal Education Act](#), 1995 (No. 9 of 1995).
- (4) Subject to this Act, all the rights, duties, obligations, assets and liabilities of the Kenya School of Law existing at the commencement of this Act shall be automatically and fully transferred to the School.
- (5) The headquarters of the School shall be in Nairobi.

### 4. Objects and functions of the School

- (1) The School shall be a public legal education provider responsible for the provision of professional legal training as an agent of the Government.
- (2) Without prejudice to the generality of subsection (1), the object of the School shall be to—
  - (a) train persons to be advocates under the [Advocates Act](#) (Cap. 16);
  - (b) ensure continuing professional development for all cadres of the legal profession;
  - (c) provide para-legal training;
  - (d) provide other specialized training in the legal sector;



- (e) develop curricular, training manuals, conduct examinations and confer academic awards; and
- (f) undertake projects, research and consultancies.

18. Moreover, the Second Schedule to the Act expresses thus:

- (a) Admission Requirements into the Advocates Training Programme
  - (1) 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 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 x (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.

19. The issue of admission was determined in the Court of Appeal decision of *Kenya School of Law v Richard Otene Okomo & 41 others*-Nairobi Civil Appeal No. E472 of 2021 as follows;

“The KSL Act in its preamble states that it is an Act of Parliament to provide for the establishment, powers and functions of the Kenya School of Law (KSL) and for connected purposes. Among its various functions is to train persons to be advocates under the *Advocates Act*. KSL, therefore, has the power to admit persons for the necessary training. Section 16 and the Second Schedule of the KSL Act provide for the criteria for admission of students to the KSL. For purposes of this judgment, the text of the qualifications in the Second Schedule to the Act provides as follows: -

- 1. “A person shall be admitted to the school if –
  - a. having passed the relevant examination of any recognized university in Kenya or 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;
- ii. Obtained a minimum grades B(plain) in English language or Kiswahili and a mean grade 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.”

This is the text after an amendment was introduced in 2014. Prior to this amendment, paragraph 1 of the Second Schedule provided as follows:-

1. “A person shall be admitted to the school if:
  - a. having passed the relevant examination of any recognized university in Kenya holds, or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) of that university; 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 x (plain) in English Language or Kiswahili and a mean grade of C(plus) in the Kenya Certificate of Secondary Education or its equivalent;  
or

- 2. Has sat and passed the Pre-Bar examination set by the school.

The parties in this appeal have repeatedly made reference to Legal Notice No 169 of 2009 as applicable to some of them and particularly Regulation 5 which provides as follows:

“A person shall not be eligible for admission for the Post Graduate Diploma (Advocate Training Programme) unless that person has;

- a. passed the relevant examination of any recognized university in Kenya, he holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) of that university;
- b. passed the relevant examinations of a university, university college or other institutions prescribed by the Council, he 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, had prior to enrolling that university, university college or other institution-
  - i. attained a minimum entry requirement for admission to a university in Kenya; and
  - ii. a minimum grade x (plain) in English Language and a mean grade of x+ (plus) in the Kenya Certificate of Secondary Examination or its equivalent;
- c. A Bachelor of Laws Degree (LLB) from a recognized university and attained a minimum aggregate grade of x (plain) in the



Kenya Certificate of Secondary Examination, holds a higher qualification eg “A” level, “IB”, relevant “Diploma”, other “undergraduate degree” or has attained a higher degree in Law after the undergraduate studies in the Bachelor of Laws Programme; ord.A Bachelor of Laws Degree (LLB) from a recognized university and attained a minimum grade of x- (x minus) in English and a minimum of an aggregate grade of x- (C minus) in the Kenya Certificate of Secondary Examination sits and passes the Pre-Bar Examination set by the Council of Legal Education as a per- condition for admission.”

The contention between the two parties is the interpretation of the above provisions as to whether given the two scenarios of joining KSL, whether the first one (1)(a) does not require one to have the KCSE mandatory requirements of a mean gradex + (plus) and a grade x (plain) in English or Kiswahili. That the said KCSE requirements only applies to those making applications under 1(b) of the said section. To us, the interpretation we discern from the above section is that the section should be read as a whole. The text is that paragraph 1(a) and (b) is separated by a semicolon, then there are the key elements mentioned after the colon on 1(b) which means that both 1(a)(b) must meet the conditions precedent in roman (i) and (ii). In essence, whether you obtained a degree in a Kenyan or out of a Kenyan University, the basic requirement is the score in one’s KCSE results which should correspond to those cited in the Act.

In interpreting Statutes, it is also a requirement that the court looks at both the text and context in order to ascertain the true legislative intent. In *Reserve Bank of India v Peerless General Finance and Investment Co Ltd*, 1987 SCR (2) 1 the Supreme Court of India stated thus:

“Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important... A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”



- 20. I find that the process of admission of Advocates Training Program is governed by the *Kenya School of Law Act* Sections 16 and 17 exclusively. The said Sections stipulate thus:
  - 21. Admission requirements

A person shall not qualify for admission to a course of study at the School, unless that person has met the admission requirements, set out in the Second Schedule for that course.
  - 22. Application for admission
    - (1) Any person who wishes to be admitted to any course of study at the School shall apply in the prescribed form and pay the prescribed application fees.
    - (2) The School shall consider an application submitted under paragraph (1) and if it is satisfied that the applicant meets the admission criteria, admit the applicant to the School.
  - 23. I allow the appeal and set aside the decision of the Legal Education Appeals Tribunal dated 27/5/2022 and I replace it with one dismissing the respondents appeals from the appellant’s decisions communicated in the letters dated 22/3/2022, 30/3/2022 (in respect of the 1<sup>st</sup> respondent) and 8/2/2022 (in respect of the 2<sup>nd</sup> respondent).
  - 24. I find that the Legal Education Appeals Tribunal failed to properly apply the admission criteria.
  - 25. I allow the appeal and set aside the judgment and decree of the Legal Education Appeals Tribunal with no orders as to costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 2<sup>ND</sup> APRIL, 2024.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent

