



**Law Society of Kenya v Federation of Kenya Employers (Petition 505 of 2019)
[2023] KEHC 17853 (KLR) (Constitutional and Human Rights) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 505 OF 2019

HI ONG'UDI, J

MAY 23, 2023

BETWEEN

LAW SOCIETY OF KENYA PETITIONER

AND

FEDERATION OF KENYA EMPLOYERS RESPONDENT

The advertisement by the Federation of Kenya Employers stating that it offered legal services to the public is unlawful.

The petition sought among other orders; a declaration that the advertisement by the respondent as to its offering of legal services constituted an infringement of the petitioner's members rights and practice of an exclusive profession and a threat to consumer rights. The court noted that the Kenya Consumer Protection Advisory Committee was not vested with the requisite jurisdiction to answer questions of interpretation and violation of the Constitution. The court held that provision of legal services was solely mandated to qualified advocates and that did not include body corporates. The court found that legal services were broad and the only scope accorded to the respondent by the law was representation of its members in a court proceeding.

Reported by Kakai Toili

Legal Practice – legal services – legal services by body corporates - what was meant by the term 'legal services' and whether body corporates were qualified persons to offer legal services – Employment and Labour Relations Court Act, Cap 8E, section 22; Advocates Act, Cap 16, sections 10, 32A and 43.

Jurisdiction – jurisdiction of the Kenya Consumer Protection Advisory Committee – jurisdiction to answer questions of interpretation and violation of the Constitution - whether the Kenya Consumer Protection Advisory Committee had the jurisdiction to answer questions of interpretation and violation of the Constitution – Constitution of Kenya, 2010, article 165(3)(d); Consumer Protection Act, Cap 501, section 89.

Words and Phrases - legal service – definition of legal service – legal service means any service that may only be provided by a person licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided - The Law Insider Dictionary.



Words and Phrases - legal service – definition of legal service – work done by a lawyer for a client - Cambridge English Dictionary.

Words and Phrases - legal service – definition of legal service – the advice and assistance provided by a lawyer or attorney who practices law-related services - Legal explanations dictionary.

Words and Phrases - legal service – definition of legal service – the work performed by a lawyer for a client - Legal Institute Information Dictionary.

Brief facts

The petitioner's (the Law Society of Kenya) case was that the respondent unknown to its members and the general public, released misleading information with regards to its scope to offer legal services. The petitioner claimed that the respondent (the Federation of Kenya Employers) vide a billboard advertised that it was a person qualified to provide legal services among other several services it offers in Kenya. Aggrieved by the use of the term 'legal services' in light of the Advocates Act, the petitioner vide a demand letter demanded that the respondent ceases to provide legal services outside the scope its allowed under section 22 of the Employment and Labour Relations Court Act.

The petitioner requested the respondent to correct the misleading information by removing the term 'legal services' as one of its services. The respondent asserted that it had a right to offer legal services and declined to delete the service from the billboard. The petition thus sought among other orders; a declaration that the advertisement by the respondent as to its offering of legal services constituted an infringement of the petitioner's members rights and practice of an exclusive profession and a threat to consumer rights.

Issues

- i. What was meant by the term 'legal services' and whether body corporates were qualified persons to offer legal services?
- ii. Whether the Kenya Consumer Protection Advisory Committee had the jurisdiction to answer questions of interpretation and violation of the Constitution.

Held

1. The court's jurisdiction to entertain the matter was settled and affirmed. The petition was not concerned with the respondent's right of association under article 36 of the Constitution. That was with regard to who should or should not join the respondent's union. The right to freedom of association was not relevant in the context of the dispute as the respondent's members were free to associate as they desired.
2. The respondent was bound by his response in his pleadings and as such could not introduce a new angle via the submissions.
3. As a legal requirement, a party had to have exhausted the available statutory dispute resolutions before invoking the court's jurisdiction. The Consumer Protection Act No 46 of 2012 under section 89 established the Kenya Consumer Protection Advisory Committee whose jurisdiction in light of the matter under section 90(f) was: creating or facilitating the establishment of conflict resolution mechanisms on consumer issues, investigation of any complaints received regarding consumer issues, and where appropriate, referring the complaint to the appropriate competent authority and ensuring that action had been taken by the competent authority to whom the complaint had been referred.
4. The court was obliged to look at whether a dispute resolution mechanism was competent in the circumstances of each case in the interest of justice. In addition, it must consider the efficacy of the remedies if any, available in the deposed mechanism in view of the nature of the issue at hand. Although protection of consumer rights was one of the grievances in the petition, it was not the bedrock of the petition and neither was it the main issue. The petition raised constitutional issues on alleged violation of constitutional rights and interpretation of statutes. A reading of the Kenya Consumer Protection Advisory Committee's mandate made it plain that it was not vested with the requisite jurisdiction to answer questions of interpretation and violation of the Constitution and the law.



5. Ordinarily the court would not interfere with a body's authority to determine a dispute. However, it was necessary for the court to look carefully at the suitability of the dispute mechanism in the context of each particular case in making its determination.
6. The dispute resolution mechanism provided in the Consumer Protection Act was not sufficient to address the issues raised in the petition. That was because the Advisory Committee was not vested with the requisite jurisdiction to answer the questions raised. It was therefore the court by virtue of article 165(3)(d) of the Constitution which should determine the issues raised therein.
7. The courts while interpreting Acts of Parliament were primarily called upon to interrogate the intention articulated and intended by the Legislature in enacting the law. The statutory term the court was called upon to interpret was the term legal services. It must ascertain the Legislature's intention in provision of legal services by the petitioner and respondent so as to answer the petitioner's apprehension and respondent's claim otherwise.
8. The Advocate's Act did not define the term legal services. The common consensus was that according to ordinary language and a layman's understanding, the term legal service was universally understood to mean work done by a lawyer.
9. The only person authorized to offer legal services in Kenya was an advocate who was qualified under the provisions of the Advocates Act and the persons mentioned under section 10. The Legislature's intention was for that right to be exclusively bestowed upon persons who were qualified advocates and, in the manner, prescribed by law.
10. The respondent described itself as a national umbrella organization for employers in Kenya with the key mandate of promoting the interests and welfare of employers within its membership. From that description, the respondent was not a person within the meaning of the Advocates Act in terms of offering legal services. Body corporates were not deemed as qualified persons to offer legal services and in fact such an act was termed as an offense.
11. Provision of legal services was solely mandated to qualified advocates. That did not include body corporates. The scope of section 22 of the Employment and Labour Relations Court Act, 2011, only referred to court proceedings and nothing more. That was the extent to which the respondent was allowed by the statute to engage its members legally. That was so because legal services offered a broad range of services for instance consultation for legal information and advice, consultation to review legal documents, mediation, arbitration on behalf of the client with third parties, representing clients in various negotiations and court proceedings among others. Against that setting it was plain that legal services were broad and the only scope accorded to the respondent by the law was representation of its members in a court proceeding.
12. A qualified advocate employed by the respondent fell within the purview of section 32A of the Advocates Act. Being employed to work for the respondent, the advocates were charged with the role to work within the legal constraints of the respondent's mandate and not in the manner of a law firm which was authorized to offer legal services, as was noted from the advertisement.
13. The respondent was unlawfully representing itself as a qualified advocate (by stating they offered legal services) contrary to the dictates of the Advocates Act and the limited scope and extent granted under section 22 of the Employment and Labour Relations Court Act, 2011. Consequently, any act purported to have been undertaken including erecting of the billboard and charging of legal fees was unlawful and in contravention of the cited Acts.
14. To prove its case against the respondent, the petitioner was required to satisfy the constitutional threshold set for constitutional petitions. The petitioner satisfied that threshold and proved its case against the respondent. That was because the respondent did indeed erect a billboard communicating to the general public that it offered legal services. The term legal service was understood by a common man as services offered by a qualified advocate or lawyer as known by many.



15. The respondent did not fall under the category of a qualified person and it purporting to be so, was an offence under section 43 of the Advocates Act. It was not known the number of persons including its members who had received legal services from the respondent and paid legal fees in effect. The scope of regulation of the services was also not brought under the petitioner's mandate which exposed consumers to a service that was not of a reasonable standard.
16. The Legislature in enacting an Act of Parliament to regulate advocates in Kenya, was desirous that legal services be regulated in line with the law. That was also perceivable from the enactment of the Law Society of Kenya Act which assured and ascertained a uniform standard of regulation among all qualified persons to offer legal services. That was meant to prevent a situation such as the one before the court.
17. If the Legislature intended that the respondent offers legal services as purported, nothing could have been easier than to stipulate the same in an Act of Parliament. The petitioner's rights as envisaged under articles 19, 35, 40 and 46 of the Constitution were violated by the respondent. The petitioner was entitled to the reliefs sought.

Petition allowed.

Orders

- i. *A declaration that the advertisement by the respondent as to its offering of legal services over and above what was set out under section 22 of the Employment and Labour Relations Court Act No 20 of 2011 constituted an infringement of the petitioner's members rights and practice of an exclusive profession under articles 19, 35, 40 of the Constitution and a threat to consumer rights under article 46 of the Constitution.*
- ii. *A declaration that the respondent's advertisement on its billboard as to be offering legal services was unlawful and misleading to the general public.*
- iii. *A permanent injunction was issued restraining the respondent whether by itself, its officers, employees and/or agents from advertising, providing or purporting to provide legal services save as set out under section 22 of the Employment and Labour Relations Court Act, No 20 of 2011.*
- iv. *A permanent injunction was issued restraining the respondent from charging legal fees to members outside the membership fees paid by its members.*
- v. *A mandatory injunction was issued compelling the respondent to forthwith correct the information contained in their billboard, website and any other communication to their members or the general public to reflect they were qualified save for the limited legal representative role.*
- vi. *Each party to bear its own costs.*

Citations

Cases

Kenya

1. *Communications Commission of Kenya and 5 others v Royal Media Services Limited & 5 others* Petition 14, 14A, 14B & 14C of 2014; [2015] KESC 13 (KLR) - (Mentioned)
2. *Cortec Mining Kenya Limited v Cabinet Secretary, Ministry of Mining & 9 others* Civil Appeal 105 of 2015; [2017] KECA 515 (KLR) - (Mentioned)
3. *County Assembly of Machakos v Governor, Machakos County & 4 others* Petition 17 of 2017; [2019] KEHC 9999 (KLR) - (Explained)
4. *County Government of Nyeri & another v Ndungu* Civil Appeal 2 of 2015; [2015] 1 KLR 253 - (Explained)
5. *Githunguri Dairy Farmers Co-operative Society Ltd v Attorney General & 2 others* Petition 257 of 2015; [2016] KEHC 7104 (KLR) - (Explained)
6. *Independent Electoral and Boundaries Commission & another v Mule & 3 others* Civil Appeal 219 of 2013; [2014] KECA 890 (KLR); [2014] 1 KLR 176 - (Explained)



7. *Kenya Agricultural and Livestock Research Organization v Okoko & another* Civil Appeal 36 A of 2021; [2022] KEHC 3302 (KLR) - (Explained)
8. *Kenya Pipeline Company Limited v Glencore Energy (U.K.) Limited* Civil Appeal 67 of 2014; [2015] KECA 835 (KLR) - (Explained)
9. *Law Society of Kenya v Kenya Revenue Authority & Attorney General* Petition 39 of 2017; [2017] KEHC 8539 (KLR) - (Explained)
10. *Leonard Otieno v Airtel Kenya Limited* Petition 218 of 2017; [2018] KEHC 9063 (KLR) - (Explained)
11. *Mohamed, Twaber Abdulkarim v Independent Electoral & Boundaries Commission (IEBC) & 2 others* Civil Appeal 154 of 2013; [2014] KEHC 6357 (KLR) - (Mentioned)
12. *Mugenda, Olive v Wilfred Itolondo & 11 others* Civil Application 21 of 2015; [2016] eKLR - (Mentioned)
13. *Mugiri, Husus v Music Copy Right Society of Kenya & another* Petition 25 of 2018; [2018] KEHC 2074 (KLR) - (Explained)
14. *Nkunja, Wilson Kaberia v Magistrates and Judges Vetting Board & another* Petition 154 of 2016; [2016] KEHC 7269 (KLR) - (Mentioned)
15. *Oduor, Michael Kizito v Magistrates and Judges Vetting Board & another* Petition 251 of 2016; [2018] KEHC 8888 (KLR) - (Explained)
16. *Republic v Independent Electoral and Boundaries Commission (IEBC) Ex parte National Super Alliance (NASA) Kenya & 6 others* Judicial Review 378 of 2017; [2017] KEHC 4663 (KLR) - (Explained)
17. *Republic v Ministry of interior and Coordination of National Government* Judicial Review Application 009 of 2021; [2024] KEHC 5112 (KLR) - (Mentioned)
18. *Republic v Sacco Societies Regulatory Authority; Maiyo & 3 others (Ex parte)* Judicial Review Application 489 of 2017; [2017] KEHC 8345 (KLR) - (Mentioned)
19. *Speaker of the National Assembly v Karume* Civil Application 92 of 1992; [1992] KECA 42 (KLR); [1992] KLR 22 - (Explained)
20. *Timothy Njoya v Attorney General & Kenya Revenue Authority* Petition 479 of 2013; [2014] KEHC 8340 (KLR) - (Mentioned)
21. *Waity, Sammy Ndung'u v Independent Electoral and Boundaries Commission & 3 others* Election Appeal 2 of 2018; [2018] KECA 420 (KLR) - (Mentioned)
22. *Wangechi, Hellen Wangari v Carumera Muthoni Gathua* Civil Appeal 15 of 2010; [2015] KEHC 1758 (KLR) - (Mentioned)
23. *Yusuf v Attorney General and 2 others* Petition 8 of 2013; [2013] KEHC 6055 (KLR); [2013] 1 KLR 311 - (Mentioned)

Malawi

Malawi Railways Ltd v Nyasulu Civil Appeal 13 of 1992) [1998] MWSC 3 - (Followed)

Texts

1. Bacchini, S., (Ed) (2011), *Concise Oxford English Dictionary* New York: Oxford University Press 12th Edn
2. Garner, BA., Black, HC., (Ed) (2014), *Black's Law Dictionary* St Paul, Minnesota: Thomson Reuters 10th Edn

Statutes

Kenya

1. Access to Information Act (cap 7M) section 21- (Interpreted)
2. Advocates Act (cap16) sections 9, 10, 31, 33, 34, 37, 43, 82 - (Interpreted)
3. Constitution of Kenya articles 2, 6, 10, 19, 22, 23, 24, 33, 35, 36, 40, 41, 46, 47 & 48, 165(3)(d); 258- (Interpreted)
4. Consumer Protection Act (cap 501) sections 89, 90(f)- (Interpreted)



5. Employment Act (cap 226) section 48 - (Interpreted)
6. Employment and Labour Relations Court Act (cap 8E) section 22- (Interpreted)
7. Labour Relations Act (cap 233) section 6(2)(a); 8; 53; 73(3)- (Interpreted)
8. Law Society of Kenya Act (cap 18) In general - (Cited)
9. Trade Disputes Act (Repealed) (cap 234) In general - (Cited)

Advocates

None mentioned

JUDGMENT

1. The petition dated December 16, 2019 was filed under articles 2, 10, 19, 22, 23, 35, 40, 41, 46, 47 and 48 of the Constitution. The petitioner seeks the following orders:
 - a. A declaration that the advertisement by the respondent as to its offering of legal services over and above what is set out under section 22 of the *Employment and Labour Relations Court Act* No 20 of 2011 constitutes an infringement of the petitioner’s members rights and practice of an exclusive profession under article 19, 35, 40 of the *Constitution* and a threat to consumer rights under article 46 of the Constitution.
 - b. A declaration that the respondent’s advertisement on its billboard as to be offering legal services is unlawful and misleading to the general public.
 - c. An order for a permanent injunction restraining the respondent whether by itself, its officers, employees and/or agents from advertising, providing or purporting to provide legal services save as set out under section 22 of the *Employment and Labour Relations Court Act*, No 20 of 2011.
 - d. An order of permanent injunction restraining the respondent from charging legal fees to members outside the membership fees paid by its members.
 - e. An order for a mandatory injunction compelling the respondent to forthwith correct the information contained in their billboard, website and any other communication to their members or the general public to reflect they are qualified save for the limited legal representative role.
 - f. Any other orders that this honourable court may deem necessary to grant.
 - g. Costs of this petition.

The Petitioner’s Case

2. The petitioner’s position as supported by the affidavit of its Chief Executive Officer, Mercy K Wambua, is that the respondent unknown to its members and the general public, released misleading information with regards to its scope to offer legal services. She deposed that sometime in July 2018 the respondent vide a billboard located at the roundabout of Silver Springs Hotel advertised that it was a person qualified to provide legal services among other several services it offers in Kenya.
3. Aggrieved by the use of the term “legal services” in light of the Advocates Act, the petitioner *videa* demand letter dated July 23, 2018 demanded that the respondent ceases to provide legal services outside the scope its allowed under section 22 of the Employment and Labour Relations Court Act. It also requested the respondent to correct the misleading information by removing the term “legal services”



as one of its services. This communication was opposed to by the respondent through its letter dated August 13, 2018. It asserted that it had a right to offer legal services and declined to delete the said service from the billboard.

4. She further deposed that the respondent charges legal fees for its service as seen from its official website (www.fke-kenya.org). The information as deposed was published as follows:

‘Because we monitor all emerging issues in the employment and labour laws both in Kenya and beyond, we are uniquely equipped to advise and represent our members on complex employment and labour issues at a reasonable fee.’

5. She further averred that the respondent’s proclamation with reference to legal services was in error since as a federation, it is not legally empowered to offer general legal services in a manner that contravenes the provisions of the *Advocates Act*, cap 16. Further that section 22 of the *Employment and Labour Relations Court Act* only allows the respondent to offer restricted legal services limited to that of representation of its member’s rights, and that what it was doing amounted to overstepping its mandate as prescribed by law.
6. The respondent’s action was further disputed by the petitioner as it takes away the privilege of exclusive professional practice by its members who as qualified advocates are authorized to provide legal services. Therefore the respondent’s offering general legal services was in contravention of the *Advocates Act*. She deposed that the petitioner filed this petition because the respondent’s advert and provision of general legal services has created reasonable fear, confusion and deception to the members of the public who are the consumers of general legal services.
7. Finally that the petitioner as the regulator of the legal profession in Kenya is concerned that the respondent’s services are outside the ambit of the strict regulation of the legal bar. She averred that this action prevents the protection of public interest and guarantee of consumer protection as envisaged under article 46 of the *Constitution*.

The Respondent’s Case

8. The respondent in response filed grounds of opposition dated February 20, 2020 which are summarized as follows:
- i. The High Court lacks jurisdiction to entertain the petition, and the petition does not meet the threshold for a constitutional petition. It has also avoided the provided alternative dispute resolution.
 - ii. The petition violates articles 10, 20, & 24(i)(d) of the *Constitution*. It also violates the respondent’s rights under articles 27, 35, 36, 41(3) & (3), 46(1)(b) of the *Constitution* and the International Labour Organization’s Convention
 - iii. The prayers sought in the petition are geared towards curtailing the respondent’s constitutional and statutory powers to represent its members.
 - iv. The respondent is authorized by Statute to charge fees and its provision of legal services is not illegal under the *Advocates Act*.
9. The respondent as well, filed a relying affidavit dated September 13, 2021 sworn by its Executive director, Jacqueline Mugo. She deposed that the respondent was established under the *Trade Disputes Act* which was repealed by the *Labour Relations Act* No 14 of 2007. That the respondent’s mandate is to regulate the employers’ organizations in Kenya. She deposed that the respondent is governed by its



- Constitution in line with the Labour Relations Act. As such, its core mandate is to bring together, coordinate speak in any relevant forum for or otherwise articulate, make known, champion, advance and or defend the rights and interests of members; and in that respect advise, assist or support the members to realize, in accordance with the national Constitution, other written laws and in its own constitution all their rights.
10. She deposed that the respondent has in its employment, Advocates of the High Court of Kenya who are members of the petitioner and who take out practicing certificates yearly in relation to offering the cited legal services. It's her averment that the respondent has a right to inform its members and other prospective members that it can provide them with legal services as envisaged by article 22 and article 258 of the Constitution. Further that section 22 of the Employment and Labour Relations Court Act 2011 grants the respondent the express right to provide legal services with respect to proceedings conducted in the court.
 11. Similarly, she deposed that section 48 of the Employment Act 2007 authorizes it to offer conciliation and mediation services in proceedings for its members. Equally that section 73(3) of the Labour Relations Act provides that trade disputes can only be referred to the Employment and Labour Relations Court by authorized representatives of the employers' organization.
 12. On the legal fees charged, she deposed that section 53 of the Labour Relations Act permits employers' organizations to make provisions in their constitutions for payment of fees for services offered. This is provided for under article 6(5)(b) as read with article 10(5)(a) & (b) of the respondent's Constitution. That the respondent's activities including provision of legal services are conducted within the framework of fundamental rights and freedoms guaranteed under article 41(4) of the Constitution and section 8 of the Labour Relations Act.
 13. She deposed that the petitioner's interpretation of the term "legal service" to include all kinds of legal assistance was not supported by any legal basis. Further that the respondent was not in contravention of section 43 of the Advocates Act since its activities are authorized by law. She in view of this asserted that the information on the Bill board was not misleading and the respondent had not violated the petitioner's rights.

The Petitioner's Submissions

14. The petitioner through the firm of Munyao, Muthama & Kashindi Advocates filed written submissions dated August 3, 2022, and supplementary submissions dated February 6, 2023 plus two sets of case digests. On whether the respondent's actions amount to a breach and violation of various provisions of the Constitution, the Advocates Act, Law Society of Kenya Act and subsidiary legislations, counsel submitted that the legislative framework for regulation of legal services in Kenya is the Advocates Act and the Law Society of Kenya Act as read together with various subsidiary legislation made thereunder. As such, only individuals qualified and authorized can offer certain legal services and once qualified, become subject to regulation by the Law Society of Kenya.
15. It was contended that the term "legal services" includes all kinds of legal assistance/services offered by any person qualified as an advocate under section 9 of the Advocates Act and any person deemed qualified to practice as such under section 10 of the Act. In view of these provisions he submitted that Section 33 states that any person who willfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as an advocate shall be guilty of an offence. Further that section 43 of the Advocates Act provides that it is an offence for a corporate body to act in such a manner as to imply that the body corporate is qualified to act as an advocate.



16. Counsel thus submitted that the respondent offers the services as a body corporate in the same manner a law firm would to the extent of provision of legal services. This is notwithstanding the fact that the respondent is neither an advocate nor a law firm. Moreover it was asserted that the respondent charges a legal fee which is prohibited under section 34 of the [Advocates Act](#). He challenged the assertion that the respondent employs qualified advocates. This is since section 37 of the [Advocates Act](#) makes it an offense for an advocate to agree to share his/her profits in respect of any professional business whether in a contentious or non-contentious matter.
17. Counsel noted that section 82 of the [Advocates Act](#) provides that an unqualified person can only conduct, defend or otherwise act in relation of any legal proceedings if permitted by any written law. This authorization as seen under section 22 of the [Employment and Labour Relations Court Act](#) is limited in its scope in comparison to a qualified advocate, and this is the only exemption which the respondent is allowed to operate under.
18. It was submitted therefore that the respondent's claim that it has a right to provide 'legal services' and advertising the same without specifying to the general public who the recipients of these corporate services are, was in breach of the [Advocates Act](#)'s clear provisions under section 31 and outside the scope of section 22 of the [Employment & Labour Relations Court Act](#). In support reliance was placed on the case of [Kenya Pipeline vs Glencore Energy \(UK\) Ltd](#) [2015] eKLR where the Court of Appeal held that the [Constitution](#) cannot possibly protect rights supposedly acquired through violation of law. He contended that of the above law and regulations the respondent which is not a law firm falls outside the strict bar regulations exposing the public to unregulated practice and charging of fees. That such practice denies the clients legal protection and benefits such as advocate-client privilege, competency and other strict bar regulations.
19. Counsel further submitted that according to section 6(2)(a) of the [Labour Relations Act](#), employers have a right to join the respondent and participate in its lawful activities and so qualifies article 41(1) (4) of the [Constitution](#) to the extent that the respondent can only determine its own administration, programme and activities as long as it is lawful. Equally it was noted that article 24 of the [Constitution](#) allows limitation of rights where enjoyment of the same prejudices the rights of others.
20. It was counsel's submission that the respondent by offering and purporting to offer legal services encroached on the preserve of qualified advocates thus violating rights preserved by article 19(3) of the [Constitution](#). He relied on the case of [Githunguri Dairy Farmers Co-operative Society Ltd v Attorney General & 2 others](#) [2016] eKLR where it was held that article 19 of the [Constitution](#), in so far as is relevant, declares under article 19(3)(b) that rights and freedoms in the Bill of Rights do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with the constitutional provisions on the Bill of Rights.
21. With regard to the alleged violated rights, counsel submitted that the respondent contravened article 35 of the [Constitution](#) by giving misleading information since the right and practice of an exclusive profession dictates that only legitimate members of the profession can engage in the profession's activities. Further that the respondent violated article 40 of the [Constitution](#) offering and charging legal fees, qualified advocates are denied fees earned by the respondent.
22. Counsel additionally submitted that the petitioner in view of article 46 of the [Constitution](#) has the responsibility to protect and assist members of the public in Kenya in matters relating to the law. In this case the information provided by the respondent on its website and billboard, purporting to provide general legal services outside the ambit of the petitioner as the regulator is not subject to bar regulations under the law and violates the right to consumer protection as provided for under article 46 of the [Constitution](#).



23. Turning to the second issue, as to whether the petitioner is entitled to the reliefs sought counsel submitted that the petitioner having demonstrated that the respondent had violated the rights protected under articles 35, 40 and 46 of the Constitution, it was entitled to the same so as to curtail any other and/or further attempts by the respondent to pass off as practicing law and offering broad based legal services in contravention of the relevant provisions of the law.
24. In the supplementary submissions, counsel begun by pointing out that the respondent had introduced new issues that were not pleaded in their response. This is with reference to the particulars of the alternative dispute resolution mechanisms. He decried this as being prejudicial and irregular as they had not been given an opportunity to respond to the new issues.
25. In support reliance was placed on the case of Livestock Research Organisation v Okoko & another [2022] eKLR where it was held that the general rule is that courts should determine a case on the issues that flow from the pleadings and therefore a court may only pronounce judgment on the issues arising from the pleadings or such issue as the parties have framed for the court's determination and therefore it is also a principle of law that parties are generally confined to their pleadings unless pleadings are amended during the hearing of a case. Similar reliance was placed on the case of Twaber Abdulkarim Mohamed v Independent Electoral & Boundaries Commission (IEBC) & 2 others [2014] eKLR and Olive Mugenda v Wilfred Itolondo & 11 others [2016] eKLR.
26. With reference to the issue of exhaustion of the mechanisms available counsel submitted that there are exceptions to the rule as set out in the case of R v Independent Electoral and Boundaries Commission (I.E.B.C.) & others ex parte [2017] eKLR where it was held that while, exceptions to the exhaustion requirement are not clearly delineated, courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies.
27. Counsel on this issue further pointed out that although the petitioner's case was with respect to various constitutional provisions, the Consumers Protection Act, the Law Society Act and the Advocates Act, the key contention was violation of the petitioner's members' fundamental rights and freedoms, and the rights of the members of the public. In effect the issues were intertwined. For this reason, the purported available dispute resolution mechanism under the Consumers' Protection Act and the Advocates Act could not thus be construed to oust this court's jurisdiction, to determine the issues in dispute.
28. In support reliance was placed on the case of County Assembly of Machakos v Governor, Machakos County & 4 others [2019]eKLR where it was held that it would not be fair, convenient or conducive to the proper administration of justice to require a petitioner to split its case into two or more causes and file them before different Tribunals when the matter can be dealt with by one Tribunal. In their case the Tribunal best placed to deal is the High Court.

The Respondent's Submissions

29. The respondent filed written submissions dated November 1, 2022 through the firm of Obura Mbeche and Company Advocates. Counsel identified four (4) issues for determination:
 - i. Whether there exists an alternative dispute settlement procedure applicable to the present case and whether it is a bar to institution of the petition.
 - ii. Whether the bill board erected by the respondent stating that it provides legal services is in violation of the Advocate Act chapter 16 of the Laws of Kenya.



- iii. Whether the billboard erected by the respondent was in violation of the provisions of the *Advocates Act* and *Constitution*.
 - iv. Whether the respondent is entitled to the charge fees for provision of legal services.
 - v. Whether the petitioner is entitled to the reliefs sought.
30. On whether the alternative dispute settlement procedure applies here counsel submitted that the petitioner had not exhausted the alternative dispute resolution procedures in the relevant Statutes. To begin with, sections 31, 33 and 34 of the *Advocates Act* make it an offense to pretend to be an advocate and so the petitioner ought to have reported the matter to the police so that criminal proceedings may be initiated.
 31. With reference to the *Consumer Protection Act* No 46 of 2012, counsel submitted that section 89 of the *Act* establishes the Kenya Consumer Protection Advisory Committee which is charged with the mandate to handle conflicts in relation to the provisions of the Act. Turning to the *Access to Information Act* No 31 of 2016, counsel submitted that section 21 establishes the Commission on Administrative Justice which also handles complaints in relation to the Act.
 32. In support of this argument, counsel cited the case of *Speaker of the National Assembly v James Njenga Karume* (1992) eKLR where it was held that where there is clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. Also see: (i) *Cortec Mining Kenya Limited v Cabinet Secretary Ministry of Mining and the Attorney General* (2017) eKLR, (ii) *Republic v Sacco Societies Regulatory Authority ex parte Joseph Kiprono Maiyo and others* (2017) eKLR, (iii) *Republic v Ministry of interior and Coordination of National Government* (2014) eKLR, (iv) *Sammy Ndung'u Waity v IEBC and 3 others* (2019) eKLR among others.
 33. On the issue of the erection of the bill board and violation of the *Advocate Act* counsel submitted that the court's finding on the matter was dependent on the fact as to whether the petitioner had satisfied the burden and standard of proof as held in the case of *Helen Wangari Wangechi v Carumera Muthini Gathua* (205) eKLR. According to counsel the billboard advertisement cannot be deemed to be a violation of the *Advocates Act* since the word "legal services" is not defined in the said Act as the petitioner purports to propose. He stated that the term "legal is" defined in the *Black's law Dictionary* as falling within the province of the law while service is defined as work carried on behalf of others in the *Concise English Dictionary*. In view of this he submitted that legal service applies to execution of any human activity that is not unlawful. He further argued that the *Advocates Act* regulates advocates not legal services. He asserted that the petitioner's definition gives the term a restrictive meaning.
 34. In support of this argument he submitted that according to principles of statutes interpretation, words must be given their plain and ordinary meaning as seen in the cases of *Abdi Sitar Yusuf v Attorney General and 2 others* (2013) eKLR. and *Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board and another* (2018) eKLR. He thus submitted that the respondent was justified to inform its members and prospective members that it can provide legal services be it in the generic sense or as authorized by the law.
 35. Still on the issue of erection of the Billboard counsel submitted that was within its rights under the Bill of Rights. He relied on articles 22 and 258 of the *Constitution* that state that any person can institute proceedings claiming that a right or fundamental freedom has been violated, and in this case as an association acting in the interest of one or more of its members. He further relied on articles 33, 36 and 41 of the *Constitution* that allow the formation and workings of an association. Counsel equally argued that article 35 of the *Constitution* allows it to communicate to the public information with



respect to provision of legal services for those who choose to be its members. Thus no violation on its point had been shown to have been committed. To buttress this point counsel urged the court not to deal with hypothetical and academic issues as jurisdiction to interpret the *Constitution* does not exist in a vacuum as held in the case of *Timothy Njoya v Attorney General & another* (2014) eKLR.

36. On the issue of charging legal fees, counsel submitted that section 53(b) of the *Labour Relations Act* states that an employer's organization may provide in its Constitution for its members to charge its members a fee for services rendered and expenses incurred on behalf of the members. In light of this it was submitted that the respondent is entitled to determine its own administration, programmes and activities as well as the fees to charge its members.
37. On the final issue, of whether the petitioner is entitled to the reliefs sought counsel submitted that the petitioner had failed to prove how the conduct of the respondent had violated the constitutional rights of its members. He relied on the case of *Leonard Otieno v Airtel Kenya Limited* (2018) eKLR where it was held that a litigant bears the burden of proof in respect of the propositions he asserts to prove his claim. Also see: *Communications Commission of Kenya and 5 others v Royal Media Services Limited and 5 others* (2014) eKLR. Counsel therefore submitted that the petitioner was not entitled to the reliefs sought.

Analysis and Determination

38. Before this court commences interrogation of the issues raised, it is imperative to point out issues already addressed by this court in its ruling dated March 17, 2021. In view of this, the court will not re-interrogate the said issues with a view of making a determination.
39. This court's jurisdiction to entertain this matter was settled and affirmed. The court in that regard determined as follows under paragraph 27, of the said ruling by Makau J:

“...Looking at the reliefs sought and facts of the petition, it appears that the petition raises serious questions of contravention of constitutional and statutory provisions, violation of constitutional rights and constitutionality of acts of the respondent in so far as the right of the members of the petitioner and public are concerned and who are not members of the respondent. This court's jurisdiction in constitutional matters is expressly spelled out under article 23 and 165 of the *Constitution*.”
40. Secondly, the court found at paragraph 30 of the said ruling that that the instant petition was not concerned with the respondent's right of association under article 36 of the *Constitution*. This is with regard to who should or should not join the respondent's union. The court accordingly determined that the right to freedom of association was not relevant in the context of this dispute as the respondent's members were free to associate as they desired.
41. That said and having perused the pleadings and submissions of the parties herein, it is my considered view that the issues for determination are as follows:
 - i. Whether the petitioner violated the doctrine of exhaustion;
 - ii. Whether the indication by the respondent on its Billboard that it provides legal services is in contravention of the *Constitution*, the *Advocates Act* cap 16 and the *Law Society of Kenya Act*;
 - iii. Whether the respondent violated the petitioner's rights under article 19, 35, 40 and 46 of the *Constitution*; and
 - iv. Whether the petitioner is entitled to the reliefs sought.



Issue No (i). Whether the Petitioner Violated the Doctrine of Exhaustion

42. In its grounds of opposition the petitioner stated that the petitioner in filing the instant petition had failed to exhaust the alternative dispute resolution mechanisms available in the cited Statutes as required by the law. The petitioner disputed this position stating that the issues in the petition were intertwined and could not be separated so as to be adjudicated by various mechanisms. It was further argued that the respondent had introduced a new issue in this regard not particularized in its response.
43. A perusal of the pleadings indicates that the respondent in its grounds of opposition did not particularize the mechanisms alluded to in the submissions. In its replying affidavit the respondent only alluded to the mechanism in the [Consumer Protection Act](#) No 46 of 2012.
44. The Court of Appeal in the case of [Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others](#) [2014] eKLR discussing introduction of new issues and citing the Malawi Supreme Court of Appeal decision in [Malawi Railways Ltd v Nyasulu](#) [1998] Mwsc 3 with approval held as follows:

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “any other business” in the sense that points other than those specific may be raised without notice.”

45. The court went on to hold that:
- “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.”
46. Guided by the legal principles above it is clear that the respondent in its submissions introduced mechanisms under the [Advocates’ Act](#) being criminal proceedings and procedures set out under the [Access to Information Act](#). These mechanisms were not specified in their reply to the petition and accordingly the petitioner did not get an opportunity to address the same in a further affidavit. The



specified mechanisms will therefore not be subject of the following determination. This is because the respondent is bound by his response in his pleadings and as such cannot introduce a new angle via the submissions.

47. As rightly submitted by the respondent it is trite that a party exhausts the available statutory dispute resolutions before invoking this court's jurisdiction. This was affirmed by the Court of Appeal in the case of *Geoffrey Muthinja & another (supra)* where it observed as follows:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with article 159 of the *Constitution* which commands courts to encourage alternative means of dispute resolution.”

48. The respondent asserted that the *Consumer Protection Act* No 46 of 2012 provides for a mechanism with reference to disputes raised therein. The *Act* under section 89 establishes the Kenya Consumer Protection Advisory Committee whose jurisdiction in light of this matter under section 90(f) is:

creating or facilitating the establishment of conflict resolution mechanisms on consumer issues, investigation of any complaints received regarding consumer issues, and where appropriate, referring the complaint to the appropriate competent authority and ensuring that action has been taken by the competent authority to whom the complaint has been referred.

49. It is imperative to state that this court is obliged to look at whether a dispute resolution mechanism is competent in the circumstances of each case in the interest of justice. In addition, it must consider the efficacy of the remedies if any, available in the deposed mechanism in view of the nature of the issue at hand. A perusal of the instant petition reveals that although protection of consumer rights is one of the grievances, this is not the bedrock of the petition and neither is it the main issue. As already discussed the petition raises constitutional issues on alleged violation of constitutional rights and interpretation of statutes. A reading of the Kenya Consumer Protection Advisory Committee's mandate makes it plain that it is not vested with the requisite jurisdiction to answer questions of interpretation and violation of the *Constitution* and the law.

50. Ordinarily this court will not interfere with a body's authority to determine a dispute. It is however not lost on it as guided by the principles in *Geoffrey Muthinja & another (supra)* that it is necessary for the court to look carefully at the suitability of the dispute mechanism in the context of each particular case in making its determination.

51. In this matter, it is discernible that the dispute resolution mechanism provided in the *Consumer Protection Act* is not sufficient to address the issues raised in the petition. This is because the Advisory Committee is not vested with the requisite jurisdiction to answer the questions raised. It is therefore this court by virtue of article 165(3)(d) of the *Constitution* which should determine the issues raised herein.



Issue No (ii). Whether the indication by the respondent on its Billboard that it provides legal services is in contravention of the Constitution, the Advocates Act cap 16 and the Law Society of Kenya Act

52. This is the heart of the instant petition. It is crucial to point out that provision of a legal service by the respondent was not disputed by the petitioner, as long as the service offered is confined to the dictates of section 22 of the Employment and Labour Relations Court Act, 2011. What is in contention however according to the petitioner is that the respondent exceeded its statutory mandate in this provision by purporting to offer general legal services contrary to the Advocates Act. The petitioner for this reason instituted this suit as the regulatory body of qualified advocates in Kenya and in public interest with regards to the consumers who may take on this legal service, which as argued by the petitioner, is unregulated.
53. The respondent relying on articles 22 and 258 of the Constitution decried the petitioner's attempt to stop and limit it from offering legal services to its members and prospective members. It was argued that this was well within its mandate and dictates of article 41(4) of the Constitution that allows it to determine its own administration, programmes and activities as an association.
54. The courts while interpreting Acts of Parliament are primarily called upon to interrogate the intention articulated and intended by the legislature in enacting the Law. This was established by the Court of Appeal in the case of County Government of Nyeri & another v Cecilia Wangechi Ndungu [2015] eKLR where it opined as follows:

“ 14. ... the cardinal rule for construction of a statute; that is, a statute should be construed according to the intention expressed in the statute itself. *Halsbury's Laws of England*, 4th Edition (Reissue), Butterworths, 1995, Vol 44(1), para 1372 provides:-

“The object of all interpretation of a written instrument is to discover the intention of its author as expressed in the instrument. Therefore the object in construing an Act is to ascertain the intention of Parliament as expressed in the Act, considering it as a whole in its context...”

55. To interpret a statute, the court in the case of Law Society of Kenya v Kenya Revenue Authority & another [2017] eKLR discussed this as follows:

“Statutory interpretation is the process by which courts interpret and apply legislation. The court interprets how legislation should apply in a particular case as no legislation unambiguously and specifically addresses all matters.”

56. The court went on to observe that:

“There are numerous rules of interpreting a statute, but in my view and without demeaning the others, the most important rule is the rule dealing with the statutes plain language. The starting point of interpreting a statute is the language itself. In the absence of an expressed legislative intention to the contrary, the language must ordinarily be taken as conclusive. Thus, when the words of a statute are unambiguous, then this first canon is also the last, judicial inquiry is complete.



In my view, it is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court cannot go to its aid to correct or make up the deficiency. Courts decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but cannot legislate itself.”

57. In this matter, the statutory term this court is called upon to interpret is the term ‘legal services’. It must ascertain the legislature’s intention in provision of legal services by the petitioner and respondent so as to answer the petitioner’s apprehension and respondent’s claim otherwise.

58. As rightly pointed out by the respondent, the Advocate’s Act does not define the term legal services. In such an instance reference to the dictionary has been accepted as one of the ways the court can inform itself on the meaning of ordinary words. I find guidance in the case of *Michael Kizito Oduor v Magistrates and Judges Vetting Board & another* [2018] eKLR where it was held that:

“28. ...Dictionaries have an aura of authority about them—words mean what the dictionary says they mean. It therefore seems only sensible that courts seeking the plain meaning of language would look to dictionaries to find it. Dictionary usage is particularly important in textualist analysis, which seeks to find “a sort of ‘objectified’ intent—the intent that a reasonable person would gather from the text of the law” and places foremost priority on the text itself, as opposed to utilizing external sources of understanding. Courts have long used dictionaries to aid their interpretive endeavors. Dictionaries are, after all, reference books that help readers comprehend the meanings and boundaries of words, which is precisely the function judges must often perform. The process of divining statutory meaning necessarily implicates linguistic concepts, and the value of dictionaries to interpretation must be judged in part on their ability to reflect the complexities of language.”

59. The term legal service is defined as follows in various dictionaries.

a. The *Law Insider Dictionary*

legal service means any service that may only be provided by a person licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided. If the same service could be provided in Canada by a person who is not a lawyer, such a service is not a legal service for the purposes of this rule.

b) The *Cambridge English Dictionary* work done by a lawyer for a client.

c) The *Legal Explanations Dictionary*

Legal services refer to the advice and assistance provided by a lawyer or attorney who practices law-related services.

d) The *Legal Institute Information Dictionary*

The work performed by a lawyer for a client.



60. The common consensus is that according to ordinary language and a layman's understanding, the term legal service is universally understood to mean work done by a lawyer. The law insider dictionary takes this definition further by noting that it means work done by a person licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided.
61. The *Advocates Act* at section 2 defines this person as follows:
- “advocate” means any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel and, for the purposes of Part IX, includes any person mentioned in section 10
62. Section 9 provides that the qualifications of this person are:
- a. he has been admitted as an advocate; and
 - b. his name is for the time being on the Roll; and
 - c. he has in force a practising certificate;
63. Section 10 further mentions other persons who are qualified to act as advocates:
- a. an officer in the office of the Attorney-General or the office of the Director of Public Prosecutions.
 - (b) the Principal Registrar of Titles and any Registrar of Titles; or
 - (c) any person holding office in a local authority established under the *Local Government Act*, (cap. 265).
 - (d) such other person, being a public officer or an officer in a public corporation, as the Attorney-General may, by notice in the Gazette, specify:
64. My interpretation of the foregoing is that the only person authorized to offer legal services in Kenya is an Advocate who is qualified under the provisions of the *Advocates Act* and the persons mentioned under section 10. It is discernible that the legislature's intention was for this right to be exclusively bestowed upon persons who are qualified advocates and in the manner prescribed by law.
65. The respondent described itself as a national umbrella organization for employers in Kenya with the key mandate of promoting the interests and welfare of employers within its membership. From this description it is clear that the respondent is not a person within the meaning of the *Advocates Act* in terms of offering legal services.
66. In this context the *Advocates Act* under Section 43 provides that:
- (1) If any act is done by a body corporate or by any director, officer or servant hereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as an advocate, the body corporate shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings for each such offence, and, in the case of an act done by any director, officer or servant of the corporation, he shall, without prejudice to the liability of the corporation, be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings for each such offence.
 - (2) In this Part, references to unqualified persons and to persons include references to bodies corporate.



67. Unmistakably, body corporates are not deemed as qualified persons to offer legal services and in fact such an act termed as an offense.
68. It is imperative to qualify this against the dictates of section 22 of the *Employment and Labour Relations Court Act*, 2011 which was not in contention. This Section provides that:

Representation before the court

In any proceedings before the court or a subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee, specially authorised for that purpose.

69. Two things are apparent from the foregoing. Provision of legal services is solely mandated to qualified advocates. This does not include body corporates. Secondly, the scope of section 22 of the *Employment and Labour Relations Court Act*, 2011 only refers to court proceedings and nothing more. This is the extent to which the respondent is allowed by the Statute to engage its members legally.
70. I say so because legal services offers a broad range of services for instance consultation for legal information and advice, consultation to review legal documents, mediation, arbitration on behalf of the client with third parties, representing clients in various negotiations and court proceedings among others. Against this setting it is plain that legal services are broad and the only scope accorded to the respondent by the law is 'representation of its members in a court proceeding.'
71. It is key to note moreover that a qualified advocate employed by the respondent falls within the purview of section 32A which provides as follows:
1. A person who is qualified to act as an advocate under this Act may be employed as an in-house advocate.
 2. A person who is employed as an in-house advocate shall—
 - (a) be an independent professional legal advisor to his or her employer and
 - (b) not charge fees for services rendered below the minimum prescribed fees under Section 44.

72. This essentially means being employed to work for the respondent, these advocates are charged with the role to work within the legal constraints of the respondent's mandate and not in the manner of a law firm which is authorized to offer legal services, as is noted from the advertisement.

73. The inevitable conclusion in light of interpretation of the cited Acts is that the respondent is unlawfully representing itself as a qualified advocate (by stating they offer legal services) contrary to the dictates of the *Advocates Act* and the limited scope and extent granted under section 22 of the *Employment and Labour Relations Court Act*, 2011. Consequently any act purported to have been undertaken including erecting of the Billboard and charging of legal fees is unlawful and in contravention of the cited Acts.

Issue No (iii). Whether the respondent violated the petitioner's rights under Article 19, 35, 40 and 46 of the Constitution

74. The petitioner in view of the respondent's actions submitted that it violated their constitutional rights as highlighted above. First that the Bill of rights under Article 19 of the *Constitution* includes rights that are not stated in the *Constitution*; The petitioner's right to correct or deletion of untrue or misleading



information that affects that person; The petitioner's members right to property in that the Advocates Act recognizes qualified persons as the only ones who can benefit from offering of legal services; Lastly that the consumers have a right of protection from services that are not of reasonable quality. This is with regard to the legal services offered by the respondent and not regulated in line with the standards set in the Law Society Act. The respondent in view of this asserted that the petitioner had not proved its case in light of the stated violations.

75. To prove its case against the respondent, the petitioner was required to satisfy the constitutional threshold set for constitutional petitions. This was appreciated by the court in the case of Husus Mugiri v Music Copy Right Society of Kenya & another [2018] eKLR where it noted that:

“ 18. In order for a petition to qualify to be a constitutional petition that seeks to enforce or protect fundamental rights and freedoms under the bill of rights, it must meet the test set in Anarita Karimi Njeru v Republic [1979] eKLR. That is, the applicant must specify which specific provisions of the Constitution that declare the rights, the specific rights and freedoms that have been or are threatened to be infringed or violated and the manner in which the respondent has infringed the subject rights. This position has been reiterated time and again.”

76. Owing to the conclusion arrived at on the first issue it is apparent that the petitioner satisfied this threshold and proved its case against the respondent. I say so because the respondent did indeed erect a billboard communicating to the general public that it offers legal services. As discussed above, the term legal service is understood by a common man as services offered by a qualified advocate or lawyer as known by many.

77. It was further established that the respondent does not fall under the category of a qualified person and it purporting so, is an offence under section 43 of the Advocates Act. It is not known the number of persons including its members who have received legal services from the respondent this far and paid legal fees in effect. The scope of regulation of the services was also not brought under the petitioner's mandate which exposed consumers to a service that is not of reasonable standard.

78. It is discernible that legislature in enacting an Act of Parliament to regulate Advocates in Kenya, was desirous that legal services be regulated in line with the law. This is also perceivable from the enactment of the Law Society of Kenya Act which assures and ascertains a uniform standard of regulation among all qualified persons to offer legal services. This is meant to prevent a situation such as the one before this court.

79. Manifestly if the legislature intended that the respondent offers legal services as purported, nothing could have been easier than to stipulate the same in an Act of Parliament. I am accordingly compelled to find that the petitioner's rights as envisaged under articles 19, 35, 40 and 46 of the Constitution were violated by the respondent. I therefore find that the petitioner is entitled to the reliefs sought.

80. The upshot is that the petition has merit and is allowed. In view of the nature of the matters discussed herein I order that each party pays its own costs. The following are the orders issued:

a. A declaration that the advertisement by the respondent as to its offering of legal services over and above what is set out under section 22 of the Employment and Labour Relations Court Act No 20 of 2011 constitutes an infringement of the petitioner's members rights and practice of an exclusive profession under articles 19, 35, 40 of the Constitution and a threat to consumer rights under article 46 of the Constitution.



- b. A declaration that the respondent's advertisement on its billboard as to be offering legal services is unlawful and misleading to the general public.
- c. A permanent injunction restraining the respondent whether by itself, its officers, employees and/or agents from advertising, providing or purporting to provide legal services save as set out under section 22 of the *Employment and Labour Relations Court Act*, No 20 of 2011.
- d. A permanent injunction restraining the respondent from charging legal fees to members outside the membership fees paid by its members.
- e. A mandatory injunction compelling the respondent to forthwith correct the information contained in their billboard, website and any other communication to their members or the general public to reflect they are qualified save for the limited legal representative role.
- f. Each party to bear its own costs.

DELIVERED VIRTUALLY, SIGNED AND DATED THIS 23RD DAY OF MAY, 2022 IN OPEN COURT AT MILIMANI, NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT

