



**Odongo v Council for Legal Education & another (Petition E011 of 2020) [2023] KEHC 17592 (KLR) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17592 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
PETITION E011 OF 2020**

**FA OCHIENG, J**

**MAY 9, 2023**

**IN THE MATTER OF ENFORCEMENT AND INTERPRETATION OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF ARTICLES 2, 3, 19, 20, 21, 22,  
23 AND 251 OF THE CONSTITUTION OF KENYA,**

**AND**

**IN THE MATTER OF CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION  
OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10, 27(1)(2)  
(4)(5), 35, 43(1)(F), 47(1)(2)(3), 48 AND 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF PROVISIONS OF COUNCIL OF LEGAL EDUCATION (KENYA  
SCHOOL OF LAW) ACT, REGULATION 2009, LEGAL NOTICE NO. 169 OF 2009**

**AND**

**IN THE MATTER OF THE PROVISIONS OF COUNCIL  
OF LEGAL EDUCATION (ACCREDITATION OF LEGAL  
EDUCATION INSTITUTIONS) REGULATION 2009, L.N. NO. 170**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**BETWEEN**

**ZEDEKIAH ODONGO ..... PETITIONER**

**AND**

**THE COUNCIL FOR LEGAL EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA SCHOOL OF LAW ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

1. The Petitioner, Zedekiah Odongo who is a male adult of sound mind residing in the Republic of Kenya has commenced this suit by virtue of the constitutional provisions contained in the citation of this petition.
2. The 1<sup>st</sup> Respondent, the Council of Legal Education in Kenya, is a body corporate established under the [Legal Education Act](#) No. 27 of 2012. One of its core mandates is the regulation of legal education in Kenya. The 2<sup>nd</sup> Respondent is the Kenya School of Law, a body corporate established under the [Kenya School of Law Act](#) No. 26 of 2012.
3. The petitioner approached this Court vide a petition dated 29<sup>th</sup> September, 2020. The petition is premised on Articles 2, 3, 19, 20, 21, 22, 23 and 251 of [the Constitution](#) of Kenya. The brief facts giving rise to the cause of action are as follows. That the petitioner had been admitted to Busoga University in August 2012 and was subsequently awarded an LLB degree in September 2016. Prior to admission at the University, the petitioner obtained Kenya Certificate of Secondary Education (KCSE) in 2004 where he scored a mean grade of C (plain) and C+ plus in English. He then proceeded to acquire a Diploma in Law from Kenya School of Professional Studies (K.S.P.S.) where he graduated in 2007. That sometime in September 2018, the petitioner came across an advertisement placed by the 2nd Respondent calling for applications from qualified prospective students for admission into the Advocates Training Program (ATP) for the Academic year 2018/2019 and which was to commence on 4th February 2019. It is the petitioner's case that the advert laid out two criteria for the prospective applicants. The Petitioner fell under the 2<sup>nd</sup> criteria on eligibility, having been admitted to Busoga University in the academic year 2012/2013, being before 8<sup>th</sup> December, 2014. The petitioner avers that the same advertisements were made again in September 2019 and the petitioner applied in both occasions but his applications were rejected by the Respondents.
4. On or about November 2018 and September 2019, the 1<sup>st</sup> respondent rejected the petitioner's applications for admission to Kenya School of Law (KSL) for the Advocates Training program (ATP), on two grounds. First, that the University in which petitioner obtained the Bachelor degree in laws had not been licensed to provide legal education by the Regulatory Authorities in Uganda as at August 2012; and second, that the petitioner's Diploma Certificate obtained at Kenya School of Professional Studies (KSPS) is below the required minimum qualifications for the admission at the Kenya School of Law for the Advocates Training Program. The petitioner avers that being satisfied that he qualified to enroll for Advocate Training Program at the Kenya School of Law for the 2018/2019 and the 2019/2020 academic years, he sought the required clearance from the Council of Legal Education and paid Kshs. 10,000 for foreign qualification for academic certificates. The clearance was rejected in letters dated 15th of November 2018 and an appeal on the same was also rejected.
5. The Petitioner contends that the 1<sup>st</sup> respondent has no powers to clear students wishing to join Kenya School of Law for the Advocate Training Program (ATP). Instead, he argues that it is the 2<sup>nd</sup> respondent which has the mandate of admitting qualified students. He also states that he acquired a clearance letter from the Law Council of Uganda indicating that Busoga University is a duly accredited University by the Committee on Legal Education and training, the regulatory authority mandated by the government of the Republic of Uganda. That the University was given full accreditation by the Regulatory authority on 22/1/2015 after it was found compliant with the requirement by the Law Council of Uganda. The Petitioner herein graduated in/about September 2016. And that prior to that, it had a temporary accreditation awarded by the Law Council of Uganda in June 2012. It is therefore



his case that since he holds a Bachelor of Laws and having been admitted to the University in August 2012, the applicable law when it comes to his admission to Advocates Training Program is Clause 5(c) L.N. No.169 of 2009.

6. The petitioner asserts that the respondents' actions with respect to his application are full of malice and mischief because the respondents have continued to admit other applicants with similar credentials as the petitioner into the ATP program but continue to reject his application. He also contends that the respondents are in breach of 10, 27(1), (2), (4), (5), 35, 43(1)(f), 47(1)(2)(3), 48 and 50 of *the Constitution* in the following instances. First, by failure to recognize the petitioner's LLB degree from Busoga University. Second, by refusing to admit the petitioner into ATP. Third, by refusing to recognize the petitioner's diploma certificate from Kenya School of Professional Studies.
7. The petitioner prays before this court are that; an order of mandamus be issued compelling the respondents to approve the petitioner's application into the ATP program; An order of certiorari to remove into this court for purposes of quashing the decisions of the respondents denying the petitioner admission into ATP; A declaration that the respondents have infringed upon the constitutional rights of the petitioner; and an award of special damages and general damages as well as the costs of this petition.
8. The respondents were opposed to the petition and filed a replying affidavit sworn by one Mary Mugure, Director Quality Compliance and Licensing with the 1<sup>st</sup> respondent. Ms Mugure contends that the petitioner attended Kenya School of Professional Studies where he obtained a pass in Diploma in Law prior to proceeding to Busoga University from which he obtained an undergraduate degree in law in 2016. She further posits that the petitioner applied to the Council for Legal Education for admission to the Advocates Training Programme on 15<sup>th</sup> November, 2018 and his application was subjected to the normal scrutiny after which he was found not to have met the set criteria under the *Kenya School of Law Act* and the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. She further stated that the 1<sup>st</sup> respondent also noted that Busoga University was not accredited to offer trainings for Bachelors of law degree as at the time when the petitioner acquired his degree.
9. She also stated that the petitioner had obtained a pass which was below the required credit pass in diploma studies under Regulation 5(1)(d) of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. Further, that under Regulation 5(1)(a) of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016, the petitioner did not attain the required qualifications for enrolment into a Bachelor of Law Programme. She also contended that the petitioner failed to meet the threshold set under the *Kenya School of Law Act* for admission into the Advocates Training Programme which Act she cited to be superior to the regulations. Finally, she stated that the reasons for the rejection of the application were communicated to the petitioner and that the petition herein ought to be dismissed.
10. This petition was heard by way of written submissions. For the petitioner, Counsel Maurice Angara identified five issues for determination. On the question about which law was applicable to the petitioner's application for admission, counsel submitted that Council of Legal Education (Kenya School of Law) Regulations 2009 (repealed) was applicable and not the *Kenya School of Law Act* or the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. Counsel argued that the *Kenya School of Law Act* or the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 came into effect after the petitioner had begun his studies. To buttress this line of argument, counsel referred the Court to the case of Sydney Webuye vs. Kenya School of Law (2018) eKLR and Claire Njoki Kirera vs. Council for Legal Education & 2 Others (2021) eKLR.



11. Counsel further submitted that the Council of Legal Education (Kenya School of Law) Regulations 2009 (repealed) created a legitimate expectation by the respondents, in that qualified persons under the regulations would be admitted into the Advocates Training Programme. Counsel relied on the case of Republic vs. Principle Secretary Ministry of Transport, Housing and Urban Development ex parte Soweto Residents Forum CBO (2019) eKLR to define what amounts to legitimate expectation and urged the court to find that the conduct of the respondents in line with the repealed regulations inferred a promise to prospective students that they would be admitted into the ATP under the regulations. It was also submitted that the fact that the petitioner, immediately after attaining his diploma in law enrolled for his LLB programme is sufficient proof that the petitioner acted on the said inferable promise.
12. Counsel proceeded to submit that Busoga University had a temporary accreditation, which in law is to be construed as accreditation. To this end, counsel urged the court to adopt the reasoning adopted by the High Court in Claire Njoki Kirera vs. Council for Legal Education & 2 Others (2021) eKLR where the same issue was addressed. It was further submitted for the petitioner that his rights under Articles 35(1), 27, 43(1)(f), 19, 29, 47 and 48 of *the Constitution* have been infringed by the respondent's actions. In this regard, the petitioner prays for award of Kshs. 6,000,000 as damages. Counsel placed reliance on the case of Leonard Kipkirui Sang vs. CLE & Another (2020) eKLR, Edward Okongo Oyugi & 2 Others vs. AG (2019) eKLR and Wallace Maina Gatundu vs CLE & 2 Others (2020) eKLR.
13. Lastly, counsel submitted that the petitioner is qualified for admission into the ATP programme under the provisions of 5(c) of Part II of the 1<sup>st</sup> Schedule to the Council of Legal Education (Kenya School of Law) Regulations 2009 (repealed). The petitioner therefore prays for an order to issue compelling the 2<sup>nd</sup> respondent to unconditionally admit the petitioner into the ATP programme immediately.
14. For the 1<sup>st</sup> respondent, M/S Miller & Co. Advocates identified three issues for determination in their submissions. Counsel reiterated the averments in their replying affidavit about why the petitioner was not qualified for admission into ATP. Counsel also pointed out that the applicable law is the *Kenya School of Law Act* which is superior to subsidiary legislations made thereunder or under any other law. To buttress this line of argument, counsel relied on the case of Republic vs. Kenya School of Law & CLE ex parte Daniel Mwaura Marai (2017) eKLR and the Supreme Court decision in Evans Odhiambo Kidero & 4 Others vs Ferdinand Ndungu Waititu & 4 Others (2014) eKLR. Counsel also submitted that the 1<sup>st</sup> respondent had not violated the petitioner's right to education but instead, it is the petitioner who has failed to comply with the required qualifications for admission into ATP. Counsel placed reliance on the case of Victor Juma vs. Kenya School of Law; Council for Legal Education (Interested Party) (2020) eKLR where the court pointed out that the right to education is only enjoyable within the dictates of the law regulating a specific field of study. Regarding the issue of legitimate expectation, counsel submitted that any expectation leading to a breach of the law cannot be legitimate. Counsel urged that statutory words override expectations and that in this case, the petitioner's alleged expectations cannot be invoked in breach of the explicit provisions sections 16 of the *Kenya School of Law Act* and paragraph 1 of the Second Schedule of the Act. Counsel cited the case of Communications Commission of Kenya & 5 Others vs. Royal Media Services Ltd & 5 Others (2014) eKLR and R. vs. DPP ex parte Kibilene as cited in Communications Commission of Kenya & 5 Others vs. Royal Media Services Ltd & 5 Others (op., cit.). In the end, counsel submitted that this petition is without merit and should be dismissed with costs.
15. Having considered the pleadings, the submissions and authorities from both parties, this petition turns on two main issues; first, whether the petitioner was qualified for admission into ATP programme; and second, whether the respondent's actions infringed on the petitioner's rights thereby being unconstitutional.



16. I start by answering the question as to whether the petitioner was qualified for admission into the ATP. At the centre of this issue is the question regarding which law was applicable to the petitioner's application to join the ATP? Whereas the petitioner argues that the Council of Legal Education (Kenya School of Law) Regulations 2009 (repealed) is applicable in his case, the respondents expressed the view that the applicable law is the *Kenya School of Law Act*, 2012. From the pleadings, it is not disputed that the petitioner was admitted to Busoga University in August 2012 and was subsequently awarded an LLB degree in September 2016. His application for admission into the ATP was in 2018 and 2019 respectively. The text of the qualifications in the Second Schedule to the *Kenya School of Law Act* on qualifications for admission into the ATP programme 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.”

17. On the other hand, Regulation 5 of Legal Notice No. 169 of 2009 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 (LL. B) 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 (LL. B) 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 B (plain) in English Language and a mean grade of C+ (plus) in the Kenya Certificate of Secondary Examination or its equivalent;
- c) A Bachelor of Laws Degree (LL. B) from a recognized university and attained a minimum aggregate grade of C (plain) in the Kenya Certificate of Secondary



Examination, holds a higher qualification e.g. “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; or

- d) A Bachelor of Laws Degree (LL. B) from a recognized university and attained a minimum grade of C- (C minus) in English and a minimum of an aggregate grade of C- (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.”

18. The journey to becoming an advocate in Kenya is a tedious one. It starts right from the moment one completes his Kenya Certificate of Secondary Education (KCSE). At the center of the two competing arguments by both sides lies the issue of academic progression, and the applicable grades for admission to the Advocates Training Programme. The *Kenya School of Law Act*, 2012, which the respondents sought to apply, came into force in January 2013. The petitioner on his part commenced his Bachelor of laws degree programme in August 2012. It is therefore his contention that he had a legitimate expectation that the 2009 Regulations would apply in his case because he enrolled into the degree programme prior to the enactment of the *Kenya School of Law Act*, 2012. He also argued that since he had undertaken a diploma in law prior to joining the University for his LLB programme, his progression was well within the provisions of the 2009 Regulations.
19. The petitioner having commenced his LLB degree programme in August 2012 and the *Kenya School of Law Act*, 2012 having come into operation in January 2013, there is no doubt that as at the time of joining University, the applicable law was Legal Notice No. 169 of 2009. The question then is whether the *Kenya School of Law Act*, 2012 ought to be or was applied retrospectively. This Court in *Republic v Vice Chancellor, Technical University of Kenya & 3 Others Ex-Parte Josphat Koilege & 32 Others* [2017] eKLR cited the Court of Appeal decision in *Said Hemed Said vs. Emmanuel Karisa Maitha & Another*, Mombasa HCEP No. 1 of 1998 where the Court of Appeal stated:

“The general rule is that when the law is altered during the pendency of an action or proceeding, the rights of the parties are to be decided according to the law as it existed when the action or proceeding was begun unless the new statute shows a clear intention to vary or affect such rights and such intention may be even by implication. But in the case of an enactment, which alters or affects only procedure or practice of the Court, the general principle is that it has a retrospective effect unless it has some very good reason against it.”

20. Similarly, in *Mistry Jadva Parbat & Company Ltd v Ameeri Kassim Lakha & 2 Others* [2008] eKLR, the Court of Appeal stated thus:

“It is also a rule of construction of statutes that, prima facie, if a provision of legislation affects procedure only it operates retrospectively. In *Municipality of Mombasa vs. Nyali Ltd.* [1963] EA 371 Newbod, J.A. said at page 374, paragraph G:

“Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation. In seeking to ascertain the intention behind the legislation, the courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights, it will not be construed to have retrospective effect unless a clear intention to that effect is manifested.



Whereas, if it affects procedure only, prima facie, it operates retrospectively unless there is good reason to the contrary. But in the last resort it is the intention behind the legislation which has to be ascertained and rule of construction is only one of the factors to which regard must be had in order to ascertain that intention”.

(See also *Patel vs. Republic* [1968] EA 97, *Patel vs. Benbros Motors Tanganyika Ltd* [1968] EA 460).”

21. From the foregoing authorities, this court must then answer the following questions; first, whether the *Kenya School of Law Act* affected any rights provided for under the 2009 Regulations; second, if rights were so affected, whether those were substantive or merely procedural rights; and third, if the rights were substantive, whether the enactment expressed a clear intention to operate retrospectively.
22. Under the *Kenya School of Law Act*, 2012, it is clear that any aspiring student for the Advocates Training Programme must have attained B (plain) in English language or Kiswahili and a mean grade C (plus) in the Kenya Certificate of Secondary Education. This is different from the provisions of the Regulation 5 of Legal Notice No. 169 of 2009. It is my view that State organs, State Officers, public officers and all persons, in interpreting legislative enactments must adopt an interpretation which promotes the values and principles of governance set out in Article 10 of *the Constitution* including that of non-discrimination. I find that Parliament did not set out to apply the enactment retrospectively or in a manner that is discriminatory. This view has been expressed by the Court in *Kenya Revenue Authority vs. Menginya Salim Murgani*, Civil Appeal No. 108 of 2009, as follows:

“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed.” (Emphasis mine)
23. The 1<sup>st</sup> respondent also argued that their decision was informed by the provisions of the existing statutory provisions and that they had no discretion in the matter but to implement the same, to the letter. In my view, and having found that Parliament did not specify that the implementation was to be done retrospectively, the respondents had an obligation to oversee an implementation of the statute in a manner that complies with the dictates of *the Constitution*. In fact, it would not be an overreach to hold, as I hereby do that Parliament indeed intended that the said provisions be implemented in a constitutionally compliant manner. But even if Parliament did not expressly make known such intention, the respondent had an obligation to act in conformity with constitutional norms.
24. My finding above is in tandem with the Supreme Court pronouncement in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR where the Court stated thus:

“As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.”



25. This then leads me to the question as to whether the petitioner had a legitimate expectation that he would be granted admission into the ATP programme. The answer to this issue turns in assessing whether a legitimate expectation can arise out of a repealed statute. A procedural legitimate expectation rests on the presumption that a public authority is bound to adopt a certain procedure in arriving at a decision. When called upon to adjudicate a legitimate expectation claim, courts often subject the claims to a two tier test. First, it asks whether the administrator's actions created a reasonable expectation in the mind of the aggrieved party; and second, if the answer to the first question is affirmative, the court asks whether that expectation is legitimate. If the answer to the second question is equally affirmative, then administrator will be held to the representation, and be required to enforce the legitimate expectation.
26. It is therefore a prerequisite that prior to being invoked, a party desirous of invoking the doctrine of legitimate expectation must first establish the basis upon which he acquires the expectation. The basis of such expectation must be legal or as is always said, "Not be ultra vires". From the foregoing, at least two principles emanate prominently and co-exist under the doctrine of legitimate expectation, namely, legal certainty and legality. While the former is more concerned with the procedural aspect of the doctrine, the latter deals more with the substantive aspect of it. Legality is therefore called to play to ensure administrators are not forced to act contra legem under the disguise of legitimate expectation. The principle of legality ensures that the expectation is one which the administrator can act on legally and on the flipside, no reasonable expectation can be said to exist where the representation is of unlawful conduct. Legality therefore takes precedence over legal certainty in law.
27. The petitioner's argument in this regard is that since he had been admitted in 2012, he had a legitimate expectation that he would qualify for admission under the 2009 regulations which were applicable as at the time. The [Kenya School of Law Act](#), 2012 was enacted in 2012 and came into force in 2013. The petitioner's application was first declined in 2018 and later 2019, which is about 5 years since the legal regime had changed. This is also roughly two years since he had graduated with his LLB. In my view, the law having changed in 2013, the petitioner cannot therefore lay a claim of having a legitimate expectation based on a repealed law. To this end, I refer to United Kingdom Court of Appeal decision in *Smita Kiritkumar Brahmhatt v. Chief Immigration Officer, Heathrow Airport, Terminal* [1984] Imm AR 202, where the Court stated as follows:
- “Nevertheless, as I have attempted to explain, the coming into force of the 1981 Act changed the law. It prevented her from ever enjoying this statutory right. The short answer to the husband's "legitimate expectation" point must be that citizens of this country are expected to know the laws embodied in our statutes. I can see no grounds upon which this point can afford the appellant or her husband any right or remedy in law.” (Emphasis mine)
28. It is also worth noting that the [Kenya School of Law Act](#), 2012 came into effect in 2013 when the petitioner was still in his first year of study. The petitioner therefore undertook his degree knowing quite well what the [Kenya School of Law Act](#), 2012 provided for the requirements contained therein. Furthermore, after graduating with his degree, the petitioner waited for two years before he could make his application for admission. During the 5 years when this law applied and the petitioner was aware of its existence, the petitioner took no step to seek a clarification from the respondents on the status of his future if he wanted to be an advocate.



29. Considering the duration between 2013 and 2018, and the fact that there was no legitimate expectation created by the respondents to the petitioner and the respondents being bound to implement the *Kenya School of Law Act*, 2012, I find that the respondents did not act in breach of any constitutional values and principles when it subjected the petitioner to the provisions of *Kenya School of Law Act*, 2012. The law was intended to be applied as from 2013 moving forward, even if the respondent applied certain exceptions to manage transition, there was bound to be a moment when exceptions would give way to the ultimate and proper implementation of the *Kenya School of Law Act*, 2012.
30. The next line of inquiry is whether the respondents' actions infringed the petitioner's rights, thereby being unconstitutional. The petitioner alleged infringement of his rights under Articles 35(1), 27, 43(1)(f), 47 and 48 of *the Constitution*. With regards to the right to information under Article 35(1) of *the Constitution*, I find no merit on the petitioner's allegations. In my view, the respondent communicated to the petitioner the reasons for declining his application for admission. This was done through letters which were produced by the petitioner. The petitioner has therefore failed to construct a convincing case for breach of the right to information on the part of the respondents.
31. The petitioner also alleges infringement of the rights under Article 47 and 48 of *the Constitution* on fair administrative action as well as access to justice. However, once the petitioner's application were declined, the reasons were communicated to him. I find that the petitioner has failed to demonstrate the infringement of his rights under these provisions.
32. Another complaint by the petitioner is that his rights under Article 27 was also infringed upon. In this regard, it is the petitioner's case that the respondents discriminately applied the *Kenya School of Law Act*, 2012 in his case while applying the 2009 Regulations for other students. In prosecuting this line of argument, counsel referred me to the advertisements by the 2<sup>nd</sup> respondent inviting prospective students for the academic year 2020/2021 and 2022/2023. Indeed, from these two advertisements, it is noted that the contents are similar to those contained in advertisements for the 2018/2019 and 2019/2020 academic years. The respondents' only explanation in declining the petitioner's application is that they were applying the law, being section 16 of the *Kenya School of Law Act*, 2012 (as amended 2016).
33. It is absurd that whereas in 2018 and 2019, the respondent declined admitting the petitioner citing strict compliance with the section 16 of the *Kenya School of Law Act*, 2012, the application criteria employed in subsequent years allows for admission of persons holding similar qualifications as the petitioner. However, even if this absurdity be the case, which we expressly frown upon, the same cannot be said to be amount to discrimination of the petitioner. Even though it was alleged by the petitioner that other students were admitted into the ATP class in the years subsequent to when he made his application while bearing the same qualifications, no evidence was adduced to support this notion. I am therefore unable of impugning discrimination against the petitioner, by the respondents purportedly arising out of separate advertisements. Consequently, I find that the respondents, in applying section 16 of the *Kenya School of Law Act*, 2012 did not discriminate against the petitioner.
34. I also find that the petitioner failed to demonstrate any ill motive or malice on the part of the respondents. I am cognizant of the fact that the issue of admissions into Kenya School of Law is one which has seen an increase in litigation since 2014. Even recently, the Court of Appeal rendered a decision in another matter concerning admission criteria (see *Kenya School of Law vs. Otiene Richard Akomo & 41 Others*, Civil Appeal No. E472 of 2021). The numerous



litigation on the aspect of admission into the advocates training programme signifies two issues, namely, the increase in the number of prospective students, and the need by the 2<sup>nd</sup> respondent to live up to its mandate in regulating the study of law. It is through the latter reason that the professionalism will be maintained in the field of advocacy. It is incumbent upon the respondents to simplify their communication concerning the applicable qualifications which are applicable.

35. I also believe that when the respondents state that a particular qualification from an institution is below the standards which are acceptable, they should do more, so that other students do not pursue studies which will thereafter lead them to a dead end.
36. Having considered the issues in this petition, I find this petition to lack merit and the orders sought cannot issue. The petition dated 29<sup>th</sup> September, 2020 is hereby dismissed. Each party shall bear their own costs.
37. It is so ordered

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MAY, 2023.**

**FRED A. OCHIENG**

**JUDGE**

I certify that this is a  
true copy of the original.

**DEPUTY REGISTRAR**

