



**Mang’oka v Kenya School of Law (Constitutional Petition E019 of 2022)
[2023] KEHC 22380 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E019 OF 2022**

AC MRIMA, J

SEPTEMBER 21, 2023

BETWEEN

NEEMA NZILANI MANG’OKA PETITIONER

AND

KENYA SCHOOL OF LAW RESPONDENT

JUDGMENT

1. Neema Nzilani Mang’oka, the Petitioner herein, attained a Mean grade of C Pain in Kenya Certificate of Secondary Education (KCSE) in 2014. Desirous of furthering her studies, she undertook a Diploma programme in Criminology and Social Order (hereinafter referred to as ‘the Diploma course’) at the University of Nairobi (hereinafter referred to as ‘the University’). She graduated on 2nd December, 2016.
2. Upon successfully completing the Diploma course, the Petitioner attained the admission criteria for Bachelor’s Degree in Law. Accordingly, she pursued the Degree programme at the University and graduated on 11th December, 2020.
3. Subsequently, the Petitioner applied to the Kenya School of Law, the Respondent herein, for Advocates Training Programme (hereinafter referred to as ‘the ATP’).
4. Through the letter dated 23rd April, 2021, the Respondent informed the Petitioner that her application was unsuccessful for having not attained the requisite mean grade of C+ in her KCSE.
5. Disgruntled, the Petitioner appealed the Respondent’s decision. The Respondent dismissed her appeal on 10th May, 2021.
6. The foregoing sequence of events yielded the instant Petition.



7. The Respondent opposed the Petition.

The Petition:

8. Through the Petition dated 18th January 2021 supported by the Affidavit of Neema Nzilani Mang’oka deposited to on a similar date, the Petitioner sought redress for violation of her constitutional rights.
9. The Petitioner pleaded that having complied with statutory requirements set out under Section 16 and paragraph 1(a) of the Second Schedule to the Kenya School of Law Act (hereinafter referred to as ‘theKSL Act’), as appreciated alongside Section 8(3)(a) and (c) of Legal Education Act, she had the legitimate expectation to be admitted to the Respondent.
10. It was her case that Article 43(1)(f) of the Constitution entitles every person to the right to education and such right can only be limited under Article 24 of the Constitution.
11. She pleaded that the Respondent’s denial of admission for not attaining a mean grade of C+ was an irrelevant consideration, unconscionable, irrational, unreasonable, unjust and ultra-vires its statutory mandate under KSL Act, and the Fair Administrative Actions as required under the Constitution.
12. The Petitioner further pleaded that under Article 27 of the Constitution, she was entitled to equal benefit and protection of the Law having met the requirements under Section 16 of the KSL Act.
13. She averred that her right to dignity under Article 28 of the Constitution had been violated by the refusal to admit her and subjected her to psychological torture in contravention of Article 29(d) of the Constitution.
14. The Petitioner further asserted that the Respondent’s decision was in violation of Article 55 of the Constitution which requires the State to take measures including affirmative action to ensure Youth have access to relevant training and access employment.
15. On the foregoing factual and legal background, the Petitioner prayed for the following reliefs: -
 1. A declaration that the Petitioner’s denial of admission to the Advocates Training Programme was unfair and unreasonable.
 2. A declaration that the Respondent violated the Constitutional rights of the Petitioner as provided under Article 27, 28, 29, 43(1)(f), 47 and 55 of the Constitution of Kenya.
 3. A declaration that the Respondent has violated the Petitioner’s right to education and right to fair administrative action as provided under the Constitution of Kenya and Fair administrative Actions Act.
 4. An Order of Certiorari be and is hereby issued quashing the decision by the Respondent vide its letters dated 23rd April 2021 and 10th May 2021 declining the Petitioner’s application for admission in to the advocates Training Programme (ATP) fo the 2021/2022 academic year and or for any other academic period.
 5. An order of Mandamus be and is hereby issued compelling the Kenya School of Law to admit the Petitioner into the advocates Training Programme (ATP) at the Kenya School of Law.



16. The Petitioner also prayed for the following Orders: -
- a. General damages against the Respondent for infringement of his Constitutional rights.
 - b. Costs consequent upon this Petition be borne by the Respondent; and
 - c. The Honourable Court do make any such Orders as it may deem just and expedient in the circumstances in enforcing violation of fundamental rights of the Petitioner.

The Submissions:

17. In its written submissions dated 22nd April 2022, the Petitioner identified the issues for determination as; whether she met the admission requirements; whether her constitutional rights were violated and who should bear the costs of the Petition.
18. In submitting on the first issue of qualification, the Petitioner asserted that according to Paragraph 1 of the Second schedule, there are two categories for admission to the KSL by use of the disjunctive word ‘or’.
19. It was submitted that the Supreme Court in *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 4 Others* [2017] eKLR spoke of the use of the word ‘or’ in the following manner: -
- The use of the word ‘or’ clearly makes the two limbs disjunctive under our law. It is, therefore, important that, while interpreting section 83 of our *elections act*, this distinction is borne in mind.
20. Based on the foregoing, it was submitted that the Petitioner falls under Section 16 of the KSL Act as read with Paragraph 1(a) of the Schedule to the KSL Act.
21. To further buttress her case, the Petitioner referred to *Republic -vs- Kenya School of Law ex parte Victor Mbeve Musinga* where it was inter alia observed: -
- ...It is my view that the use of the word ‘or’ immediately after paragraph 1(a) introduces another possibility, the first being the category referred to in paragraph (a). the second possibility is the category provided in paragraph 1(b).
22. The Petitioner invited this Court to find persuasion in the above decisions and to find that the Petitioner falls within Paragraph 1(a) of the Second Schedule and thus qualified for admission.
23. The Petitioner further submitted that he met the requirements for legitimate expectation as set out in *Paul Kipsang Kosgei -vs- National Industrial Training Authority & Another; Cabinet Secretary Ministry of Labour & Social Services (Interested Party)* (2020) eKLR where it was observed: -
- i. There is representation which is clear, unambiguous and devoid of relevant qualification.
 - ii. That the expectation must be reasonable in the sense that a reasonable person would act upon it.
 - iii. That the expectation must have been induced by a decision maker and



iv. That it must have been lawful for the decision maker to make such representation.

if such an expectation exists, it will be incumbent on the administrator to respect it and afford the individual holding that expectation due procedure before the expectation is disappointed.

24. The Petitioner submitted that closely related to the foregoing was violation of his right to fair administrative action which, in the case of Geoffrey Oduor Sijeny -vs- Kenyatta University, was observed, is not only an integral part of the Bill of Rights but also an essential feature of *the Constitution* and the soul of a democratic society without which democracy and the rule of law cannot be maintained.
25. In praying for costs, the Petitioner submitted that the Respondent's failure to correctly apply the law resulted in the instant dispute and as a result should shoulder costs of the petition.

The Respondent's case:

26. Kenya School of Law opposed the Petition through the Replying Affidavit of Fredrick Muhia, the Principal Officer, Academic Services deposed to on 11th March 2022.
27. He deposed that the Respondent published an advertisement inviting applicants to apply for admission to the ATP and therein, set out the eligibility criteria.
28. He deposed that the Petitioner did not meet the requirements provided for under Section 16 as read with paragraph 1 of the Second Schedule of the KSL Act.
29. It was his case that the Respondent is strictly bound by the provisions of the KSL Act in determining eligibility criteria for the ATP as such the assertion of violation of constitutional rights does not arise.
30. He deposed further that it could not be the intention of the legislators to allow Kenyan Universities offering studies to set their own admission qualifications but the ones from foreign universities to be set by law.
31. It was his deposition that the academic requirements for admission to the ATP in foreign institutions are equally applicable to local universities.
32. He stated that allowing people to join the ATP on the basis that they had a degree prior to joining LLB degree programme would be to circumvent clear provisions of a statute and would result in discrimination and application of double standards.
33. In conclusion, it was his deposition that the High Court has on more than one occasion supported the Respondent's interpretation and application criteria and cannot claim that it has misinterpreted or disregarded the law or acted in bad faith.

The submissions:

34. The Respondent further urged its case through written submissions dated 5th May 2022. It identified issues for determination as; whether KCSE grades matter for purposes of admission to the KSL; whether academic progression is provided for in the KSL Act; and, whether the Petitioner had legitimate expectation which was violated by the Respondent.
35. The Respondent submitted that it is settled practice, as was held in Kevin Mwiti & Others v Kenya School of Law & Others [2015] eKLR, that all applications to the to the ATP are evaluated according



to the applicable law at the time when the Petitioner commenced their Bachelor's Degree in Law at their respective Universities.

36. The Respondent elaborated the decision in *Kevin Mwiti & Others v Kenya School of Law & Others* by submitting those students who were admitted to the LLB programme after the [Kenya School of Law Act 2012](#) came into force were to comply with the provisions of the Act and those who commenced their LLB studies before enactment of the KSL Act 2012, could join the KSL on the basis of admission criteria in force before enactment of the Act.
37. On the foregoing, the Respondent submitted on the first issue by stating that the interpretation of the word 'or' in the Second Schedule of the KSL Act is either conjunctive or disjunctive.
38. In reference to *Victor Mbeve Musinga v Kenya School of Law [2019] eKLR*, it was its case that where there is a defect or an omission in the words used by legislature, the Court cannot go to its aid to correct or make up the deficiency.
39. The Respondent stated that the use of the word 'or' and 'and' have specific intention as proposed by its maker and their meaning shall depend on the factual background under which such conjunction was used.
40. The Respondent urged this Court to adopt an interpretation that will not only make the statutory provisions on admission operative and workable, but also make them operative in a just and reasonable manner.
41. It was submitted that the plain meaning of Paragraph 1(a) and (b) are identical. It stated that recognition of universities is by Commission of University Education while legal education service providers are subjects of further prescription by the Council of Legal Education.
42. The Respondent submitted that if Paragraph 1(a) were to be interpreted disjunctively it would mean that all students who join any Kenyan University irrespective of the grades they hold would be allowed to join ATP and as such Secondary school qualifications would not matter at all.
43. The Respondent submitted that applied disjunctively, Paragraph 1(b) would subject applications to rigorous enforcement of not only the requirement of Bachelor's Degree in Law but also their secondary school certificates which must meet B (Plain in English or Kiswahili and a Mean grade of C (plus) then subject them to Pre-Bar examinations.
44. It was its case that the scenario would yield a discriminative situation where applicants who attend Kenyan Universities have lower qualifications than those who attend foreign universities. To buttress its case reference was made to *Victor Juma -vs- Kenya School of Law* where it was observed: -

....it cannot be that Kenya Universities offering studies leading to the award of a degree in law are allowed to set their individual admission qualifications but the qualifications for admission for foreign universities is set by law. such a law would in my view be discriminatory.

In my view, the requirements of paragraph 1(b)(i) and (ii) as to the qualification for admission for law studies in foreign institutions are equally applicable to admission to local universities.
45. To further reiterate its position, the Respondent submitted that the decision in *Peter Githaiga Munyeki -vs- Kenya School of Law (2017) eKLR* is illustrative. In the case it was observed: -

According to the schedule, there are two categories of persons who can be admitted to the ATP. First are those who attended local universities who fall under paragraph 1(a). The other is persons who attended universities outside Kenya who fall under paragraph 1(b) of the Schedule.



Paragraph 1(a) does not specifically state the KCSE grades one should have. But reading of paragraph 1(b) shows that persons who obtained LLB degrees from outside Kenya should have KCSE grades that would have enabled them to join LLB programmes in Universities in Kenya, and goes ahead to state those grades of C+ (plus), in KCSE, with B plain either in English or Kiswahili languages.

In that regard, therefore, applying the principle of a holistic reading of a statute persons falling under paragraph 1(a) of the schedule to KSL Act, must have obtained a mean grade of C+ (plus) with B plain in English or Kiswahili languages to have qualified to join LLB programme in local universities. That is why there is reference of this requirement in paragraph 1(b)(ii) of the schedule.

46. The Respondent submitted that to avert unfair discrimination and double standards in admission to the ATP, this Honourable Court is invited to give a purposive interpretation of this provision.
47. On the issue of academic progression, the Respondent submitted that the Petitioner does not qualify to be admitted since the applicable law, the KSL Act, as amended by Statute Law Miscellaneous Amendment Act (No. 18 of 2014) does not provide for academic progression.
48. In the end the Respondent submitted that the Petitioner's claim of legitimate expectation must fail since the Respondent cannot be faulted for enforcing the law and neither can the doctrine come to her aid in the circumstances.
49. The Respondent urged the Court to dismiss the Petition and in view of the public interest nature of the matter, to have each party bear its own costs.

Analysis:

50. The criterion for joining the Respondent herein to undertake an ATP programme has been a long journey in the Kenyan judicial circles.
51. The High Court has, in equal measure, rendered itself differently on the matter thereby resulting in different interpretation of the KSL Act on the eligibility criterion. Conflicting decisions have been generated by the High Court over time.
52. Thankfully, the matter was rested by the Court of Appeal. That was Civil Appeal No. E472 of 2021 at Nairobi Kenya School of Law v Akomo & 41 others [2022] KECA 1132 (KLR) which decision was delivered on 21st October, 2022.
53. The Appellate superior Court, after a detailed analysis of *the Constitution*, the law and judicial decisions, arrived at the following conclusion: -
 57. For the avoidance of doubt, the basic requirements for KCSE under section 16 and the Second Schedule of the KSL Act are for both applicants who studied in or out of Kenyan universities. The section should be read as a whole and not in bits and pieces and the three conditions which are precedent must be met before admission to KSL. Failure to meet the basic requirements of the qualifications in KCSE as envisaged in the above section renders one's application incompetent and hence ripe for rejection by the appellant. The regulations cannot override the provisions of an Act of Parliament.



54. The Petitioner herein attained a grade C in her KCSE in 2014. By then the [*Kenya School of Law Act*](#) had been enacted way back in 2012. The Petitioner was, therefore, caught up in the legal web. She was not eligible for admission at the School.

55. With such a finding, the Petition lacks any legal to stand on, and, is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 21ST DAY OF SEPTEMBER, 2023.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

N/A for the Petitioner.

N/A for the Respondent.

Regina/Chemutai – Court Assistants.

