



**Situma v Kenya School of Law; Education (Interested Party) (Civil Appeal E285 of 2023) [2024] KEHC 11780 (KLR) (Civ) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11780 (KLR)

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

**CIVIL**

**CIVIL APPEAL E285 OF 2023**

**JM NANG'EA, J**

**OCTOBER 3, 2024**

**BETWEEN**

**ELIUD KUBWA SITUMA ..... APPELLANT**

**AND**

**KENYA SCHOOL OF LAW ..... RESPONDENT**

**AND**

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

*(Being an appeal from the judgement and decree of the Legal Education Appeals Tribunal ( Hon. Rose Waitibera Njoroge ,Chair of the Tribunal ) delivered on 24/3/2023 in Kiambu LEAT/E012 of 2023)*

**JUDGMENT**

**Grounds of Appeal and reliefs sought.**

1. By Notice of Appeal dated 11/04/2023, the appellant faults the above Tribunal’s judgment on grounds that may be summarized as hereunder:
  - i. That Learned Chair of the said Appeals Tribunal erred in law and fact by failing to consider relevant legal principles guiding admission of students to the respondent school.  
and
  - (ii) That the learned Chair of the Tribunal erred in law and fact by arriving at its decision to dismiss the appellant’s application for enrolment with the respondent against the weight of the evidence.



2. The appellant therefore seeks the following orders:
  - a. That the appeal be allowed and the impugned judgement set aside and substituted with an order directing the respondent to admit the appellant into the Advocates Training Programme ( ATP ) for the 2024-2025 Academic year.
  - b. That the costs of the appeal be borne by the respondent.
  - c. That the court does grant any other relief(s) deemed just and expedient.

### **Background to the appeal**

3. The appellant holds various degree and other certificates including a Master's degree in Communication Studies, a Bachelors degree in English, a Bachelor of Laws degree and the Kenya Certificate of Secondary Education ( "KCSE"), all obtained from Kenyan Education institutions. By letter dated 14/1/2023 the respondent, following the appellant's application for admission to the respondent's Advocates Training Programme ( hereinafter referred to as "the ATP") to study for a Diploma in law which is a pre-requisite for the practice of law, rejected the application for the reason that he had " not met KCSE requirements". The appellant appealed the decision to the Legal Education Appeals Tribunal ( hereinafter referred to as " the Tribunal") vide Notice of Motion application dated 25/1/2023 arguing inter alia that he qualifies for admission to the ATP by dint of section 1(a) of Schedule 2 to the *Kenya School of Law Act*, 2012. The Tribunal sided with the respondent and dismissed the appeal , thus provoking this appeal.
4. It is trite law that the appellate court has the duty of re-assessing the evidence and reaching its own conclusions on matters of fact and law. The court will only interfere with the trial Court's/Tribunal's findings if relevant factors were not taken into account or irrelevant factors were considered or the trial court otherwise misdirected itself. (see case law in *Selle v Associated Boat Company* [1968] EA 123 and *Ocean Freight Shipping Co. Ltd v Oakdale Commodities Ltd* [1997] eKLR. The Court of Appeal for East Africa in *Peters v Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:"
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time."

### **Analysis and determination.**

5. All the parties except the interested Party filed written submissions through their advocates which I have perused together with the trial court's record. The relevant facts of this matter as set out hereinabove are not in dispute . In dismissing the appeal, the Tribunal held guided by the Court of Appeal decision in Nairobi Civil Appeal No. E472 of 2021 (*Kenya School of Law v Otene Richard Akomo & 41 Others*) eKLR that the superior court adopted a conjunctive rather than disjunctive interpretation of section 1(a) and 1 (b) of the Schedule to the *Kenya School of Law Act*, 2012 because of "the use of a semi- colon between 1 (a) and 1(b) of the Act". For clarity, I will set out the statutory



provisions verbatim. Section 1 of the Schedule to the Act provides that: “ A person shall be admitted to the school (read the respondent) if –

- a. having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any or any other institution prescribed by the Council ( read the Interested Party) , 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 ( read the Interested Party), holds or becomes 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. and
    - iii. obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and
    - iv. has sat and passed the pre-Bar examination set by the school ( read the respondent).”
6. The Court of Appeal observed in the above cited case while interpreting the stated enactments that one is eligible for admission to the ATP “, firstly, based on your LLB degree either from a Kenyan University or as in (b) from a foreign university but in all situations, the conditions are the same and are listed therein which are mandatory to all irrespective of whether you have a degree from within or without Kenya.” The superior court’s dictum , therefore , is that an applicant for the ATP must satisfy the provisions of both section 1 (a) and 1 (b) of the [Kenya School of Law Act](#), 2012. This means that the appellant herein would then have to show that in addition to his graduate qualifications he must have attained at least a B (plain) in English or Kiswahili in his KCSE. The appellant , however, obtained a B ( minus) in both languages and therefore does not meet the criteria for eligibility to enrol for th ATP according to this case law. This decision of the Court of Appeal is the basis of the Tribunal’s ruling dismissing the appeal preferred to it by the appellant.
7. The duty placed upon me in this appeal is to determine whether the Court of Appeal judgement in the case of Kenya School of Law v Richard Otene Okumu supra is applicable to the instant appeal or is distinguishable in the circumstances attending hereto.
8. The appellant in his submissions insists that he meets the set criteria and further underscored his degree certificates in English and Communication Studies as creating no doubt about his language proficiency relevant for undergoing the ATP. He laments that failure to give credit to his attainment of advanced proficiency in the English language amounts to discrimination against him on the ground of language contrary to Article 27 of [the Constitution](#) of Kenya 2010 which he says prohibits discrimination on various grounds including language.
9. On its part, the respondent fully agrees with the Tribunal’s reasoning . In line with the principle of stare decisis , I am urged to be guided by the Court of Appeal decision cited supra and uphold the Tribunal’s determination.

### **Determination**

10. The decision in Kenya School of Law v. Richard Otene Okumu & 41 Others supra is on all fours with this appeal in that what was for interpretation therein , as in this appeal, is section 1 (a) and 1(b) of the [Kenya School of Law Act](#), 2012 since the dispute is the same to wit; a complaint about refusal by the



respondent herein to admit the petitioners in the two cases for the ATP. Article 27 (4) of the constitution the appellant refers to indeed bars the state and any person in sub Article (4) from perpetrating any form of discrimination including on the basis of language. My understanding , however, is that the discrimination on language alluded to in this constitutional provision is the language spoken by the person complaining and not one he /she trained for as in this appeal. The appellant's complaint of alleged discrimination does not therefore have a basis in law.

11. Both grounds of appeal as set out thus fail. Accordingly, the appeal is dismissed and the parties will bear their own costs of the appeal.
12. Judgement accordingly.

**JUDGEMENT DELIVERED VIRTUALLY THIS 3RD DAY OF OCTOBER 2024 IN THE PRESENCE OF :**

The appellant,

The respondent's advocate,

The Interested Party,

The Court Assistant,

**J.M NANG'EA , JUDGE.**

