REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

PETITION NO. 192 OF 2020

CLAIRE NJOKI KIRERA..PETITIONER

VERSUS

COUNCIL FOR LEGAL EDUCATION............................1ST RESPONDENT

KENYA SCHOOL OF LAW...2ND RESPONDENT

HON. ATTORNEY GENERAL..3RD RESPONDENT

JUDGMENT

Introduction:

1. *Claire Njoki Kirera,* the Petitioner herein, is a Kenyan citizen. Upon completion of her secondary education in Kenya, she joined Busoga University in Uganda in 2006 and successfully pursued a Bachelor of Laws (LL. B.) degree. Since her graduation in 2011 the Petitioner has unsuccessfully attempted to join the Kenya School of Law, (hereinafter referred to as '***the School'*** or '***the second Respondent***').

2. The Petition subject of this judgment seeks to *inter alia* challenge the refusal by the School to admit the Petitioner for the Advocates Training Programme (hereinafter referred to as '***the ATP'***).

3. The Petition is opposed.

The Petition:

4. The Petition is dated 9th June, 2020. It is supported by four Affidavits. Two of them are sworn by the Petitioner. They are the Supporting Affidavit and a Further Affidavit. The rest are sworn by *Charles Mathuva Mwalimu* and *Brenda Ogada* who are both Advocates of the High Court of Kenya.

5. In further support to the Petition, the Petitioner filed written submissions dated 16th November, 2020 and evenly dated List and Bundle of Authorities.

6. In the main, the Petitioner prayed for the following orders: -

> *a) A declaratory order do issue declaring that the Petitioner has been discriminated by the Respondents and thus violating, denying and breaching her right not to be discriminated enshrined under Article 27 of the Constitution of Kenya, 2010.*
>
> *b) A declaratory order do issue declaring that the Petitioner's rights and fundamental freedoms enshrined under Articles 10, 25(a), 28, 27, 40, 43(1)(f), 47, 48 and 50 of the Constitution of Kenya have been denied and violated by the Respondents.*
>
> *c) A declaratory order do issue that the Respondents have violated the Petitioner's right to education, right to be heard and freedom from discrimination.*
>
> *d) An order do e in the nature of certiorari to bring before court for purpose of quashing the decision of the 1- Respondent*

contained its letter dated 4 March 2019.

e) An order do issue in the nature of mandamus to compel the 1 Respondent to issue & clearance certificate to the Petitioner to enable her join the ATP program for the academic year 2021 and the 2 Respondent to unconditionally admit the Petitioner for Advocates Training Programme for 2021 academic year

f) A Declaration that the Petitioner's qualifications for admission for ATP is only subject to the provisions of the law and Regulations which existed at the time of her admission and completion of her LLB program and for avoidance of doubt Council of Legal Education Act, Cap 16A and THE COUNCIL OF LEGAL EDUCATION (KENYA SCHOOL OF LAW) REGULATIONS, 2009 (Legal Notice No. 169 of 2009).

g) An order for General damages as against the 1 Respondent for losses and inconveniences suffered by the Petitioner owing to the 1st Respondent's action which have derailed the Petitioner's social and economic endeavours and further subjecting the Petitioner to psychological trauma, anguish, suffering, mental torture and beach of the Petitioner's constitutional rights and fundamental freedom

h) Special damages of Ten Thousand Kenya Shillings (Kshs 10,000/-) against the 1Respondent (Cost of this Petition Interest on (g), (h) and (i) as per the court rates

k) Any other such orders as this Honourable Court shall deem fair, just and expedient in the circumstances in enforcing violation of fundamental rights of the Petitioner.

The Response:

7. The Petition is opposed by the 2nd and 3rd Respondents. The 1st Respondent did not participate in the proceedings despite notice.

8. The 2nd Respondent filed a Replying Affidavit sworn by one *Fredrick Muhia*, the 2nd Respondent's Academic Services Manager. The 2nd Respondent also filed written submissions dated 26th January, 2021.

9. The 3rd Respondent filed Grounds of opposition and written submissions.

10. In the end, the 2nd and 3rd Respondents prayed for the dismissal of the Petition with costs.

Issues for Determination:

11. I have carefully considered the Petition, the responses thereto, the parties' submissions and the decisions referred to. I find the following issues are for determination: -

a) The applicable legal regime for the Petitioner's admission into the School;

b) Whether the Respondents variously violated the Petitioner's rights under the Constitution;

c) Whether the Petitioner is entitled to any remedies.

12. I will deal with the issues as under.

(i) The applicable legal regime for the Petitioner's admission into the School:

13. The Petitioner deponed that she attained a post O-Level qualification at St. Georges Secondary School in Kenya in 2005. She annexed a copy of the Kenya National Examinations Council's Certificate of Secondary Education (KCSE) in proof thereof.

14. The Petitioner further deponed that her O-Level grades enabled her to be admitted into Busoga University in Uganda in 2006 where she studied and was awarded Bachelor of Laws (LL. B) degree in 2011. She also annexed a copy of the Degree Certificate.

15. It is the Petitioner's position that having joined the university to undertake studies leading to the award of the Bachelor of Laws in 2006, then the applicable legal regime is the *Council of Legal Education Act*, Cap. 16A (hereinafter referred to as '***the CLE Act***') and *The Council of Legal Education (Kenya School of Law) Regulations, 2009* (hereinafter referred to as '***the Regulations***').

16. She contends that the legislations currently governing the 1st and 2nd Respondents herein, being *The Kenya School of Law Act No. 26 of 2012, The Legal Education Act No. 27 of 2012* and *The Legal Education (Accreditation and Quality Assurance) Regulation 2016* are not applicable to her on account of the doctrine of retrospectivity.

17. The 2nd and 3rd Respondents did not expressly address the issue. Nevertheless, this Court will render itself on the same.

18. To enable me fully address the issue, I will, in the first instance, briefly trace the history of regulation of legal education and training in Kenya.

19. On 27th December, 1995 the ***CLE Act*** was passed into law. The CLE Act was an Act of Parliament to provide for the establishment and incorporation of the Council of Legal Education and for connected purposes.

20. The enactment of the CLE Act repealed the then existing regulatory regime.

21. In 2009, through Legal Notice No. 169 of 2009, the Regulations were enacted pursuant to the CLE Act. Regulation 3 provided for the application of the Regulations as follows: -

> ***These Regulations shall apply to any person who wishes to be admitted to or is a student of the School at the time of the commencement of these Regulations.***

22. The CLE Act was repealed by the enactment of the *Legal Education Act*, No. 27 of 2012 (hereinafter referred to as '***the LEA Act'***). The LEA Act became operational on 28th September, 2012.

23. The 2nd Respondent and the Regulations were, however, retained by dint of Section 48 of the LEA Act.

24. On 15th January, 2013, the *Kenya School of Law Act*, No. 26 of 2012 (hereinafter referred to as '***the KSL Act'***) was enacted into law. It is an Act of Parliament to provide for the establishment, powers and functions of the School and for connected purposes.

25. Section 16 and the Second Schedule of the KSL Act provides for the requirements for admission into the School. The second schedule to the KSL Act was amended on 8th December, 2014. Subsequent subsidiary legislations were thereafter enacted.

26. Since the criteria for *inter alia* admission into the School was substantively provided for in the KSL Act, the *Kenya School of Law (Training Programmes) Regulations, 2015* enacted through Legal Notice No. 175 of 2015 under the KSL Act repealed the *Council of Legal Education (Kenya School of Law) Regulations, 2009*.

27. Given the nature of the Regulations which stood repealed by the enactment of the Kenya School of Law (Training Programmes) Regulations, 2015, there was need for transition from the regime created under the Regulations into the regime created under the KSL Act. Regulation 43 of the Kenya School of Law (Training Programmes) Regulations, 2015 took care of the necessity. The Regulation 43, which is on the transition, provides as follows: -

> *(1)* ***Despite the revocation of Council of Legal Education (Kenya School of Law) Regulations, 2009, any act, thing or decision pending under the Council of Legal Education (Kenya School of Law) Regulations, 2009, shall be continued or concluded as if the act or thing was done or decision made under these Regulations.***

(2) Despite paragraph (1), a person who immediately before the coming into force of these Regulations has sat but has not completed the Pre-Bar examination offered under the Council of Legal Education (Kenya School of Law) Regulations, 2009, the person shall be entitled to sit the examination in accordance with the provisions of the Council of Legal Education (Kenya School of Law) Regulations, 2009, within 12 months of the coming into force of these Regulations.

28. There is no doubt the enactment of the KSL Act changed the admission criterion then provided for under the Regulations. That being the case, some affected students who at the School challenged the change in ***Kevin K. Mwiti & Others vs. Kenya School of Law & 2 Others (2015) eKLR***. In its judgment the Court *inter alia* held that: -

> ***3. A declaration that the Petitioners who were already in the LL. B Class prior to the enactment of the Kenya School of Law Act are to be treated in the manner contemplated by the guidelines issued by the School prior to the enactment of the Amendment Act. For avoidance of doubt those who had not been admitted in the LL. B Class prior to the enactment of the Kenya School of Law Act are to comply with the provisions of the Act.***

29. A similar finding was reached by this Court in Nairobi High Court Petition No. 101 of 2020 ***Robert Uri Dabaly Jimma v. Kenya School of Law & Another (2021) eKLR***.

30. The above discussion, therefore, yields that the governing legal regime for admission into the School depends on when one was admitted into a University to pursue a degree leading to the award of Bachelor of Laws (LL. B) degree. For instance, the legal regime for those who were admitted to the University prior to the enactment of the KSL Act on 15th January, 2013 is the ***CLE Act*** and the ***Regulations*.** Those who were admitted into the University after the enactment of the KSL Act are governed by *inter alia* the ***KSL Act***.

31. In this case, this Court now finds that since the Petitioner was admitted into Busoga University in 2006, then the applicable legal regime is the *CLE Act* and the *Regulations* and not the KSL Act.

32. The criterion for admission under the CLE Act was provided for in the Regulations. Section 5 of Part A-II of the First Schedule of the Regulations provided as follows: -

> *PART II?ADMISSIONS REQUIREMENTS INTO THE ADVOCATES TRAINING PROGRAMME*
>
> *5. Admission requirements.*

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 a 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 grade of C+ (C plus) in English and a minimum aggregate grade of C (plain) in the Kenya Certificate of Secondary Examination, holds a higher qualification e.g. "A" levels, "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 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 pre-condition for admission.

33. The foregoing criterion, therefore, determined the manner in which the Petitioner's application for admission to the School would be considered.

(ii) Whether the Respondents variously violated the Petitioner's rights under the Constitution:

34. The Petitioner deponed that by virtue of the CLE Act and the Regulations, she is qualified for admission into the School to undertake the ATP. She further deponed that upon such application to the School after her graduation in Uganda, the 2nd Respondent declined and insisted that she had to undertake Pre-Bar examinations.

35. The Petitioner obliged. She immediately registered and sat for the examinations, but she was not successful on several attempts. The Petitioner annexed several correspondences the 2nd Respondent made to her on the examinations. She was, however, successful in the examinations she sat for in January, 2019.

36. Having passed the pre-bar examinations, the Petitioner applied to the School for admission. Her application was unsuccessful as she had not attached a clearance letter from the 1st Respondent. That was through the 2nd Respondent's letter dated 29th January, 2019.

37. The Petitioner then applied for the clearance letter from the 1st Respondent.

38. The 1st Respondent replied to the Petitioner's request *vide* its letter dated 4th March, 2019. It declined to recognize and approve of the Petitioner's LL. B qualification from Busoga University for two reasons. The first reason was that the Petitioner did not attain a mean grade of C+ (plus) and at least B (plain) in English or Kiswahili in her O-Level KCSE examinations. The second reason was that by the time the Petitioner obtained her LL. B degree from Busoga University, the said University was only conditionally accredited until 22nd January, 2015 when it attained full accreditation.

39. The Petitioner then filed the instant proceedings.

40. It is the Petitioner's case that the positions taken by the 1st and 2nd Respondents are contrary to the Constitution and the law. She decries that her rights as guaranteed in the Constitution to education, to fair administrative actions, to freedom from discrimination and to legitimate expectation were unreasonably flouted.

41. On the contention that the Petitioner is discriminated against, the Petitioner posits that she graduated from the Busoga University aforesaid with several other Kenyans. Her colleagues applied to the School and were admitted, sat for examinations, passed and were eventually admitted as Advocates of the High Court of Kenya.

42. The Petitioner annexed the Affidavits sworn by Charles Mathuva Mwalimu and Brenda Ogada in support of the averment. Charles Muthava Mwalimu is admitted as an Advocate of the High Court of Kenya under registration number P.105/10985/14 whereas Brenda Ogada's registration number is P105/9876/13

43. The Petitioner contends that she is unfairly discriminated against her colleagues who were not subjected to the conditions she is now subjected to without any lawful and reasonable justification. The Petitioner strenuously posits that her colleagues whom she graduated with at Busoga University have so far been admitted as Advocates of the High Court of Kenya for at least seven years now.

44. The decisions in *Nyarangi & 3Others v. Attorney General (2008) eKLR, John Kabui Mwai & 3 Others v. Kenya National Examinations*

Council & 2 Others (2011) eKLR, Centre for Rights Education and Awareness (CREAW) & 7 Others v. Attorney General (2011) eKLR, Lucy Nyaguthii Wachira v. Council of Legal Education & 3 Others and *Wollace Maina Gatundu v. Council of Legal Education & 2 Others (2020) eKLR* were cited in buttressing the submission that the differential treatment accorded to the Petitioner is not legally justifiable.

45. The Petitioner also submitted that the refusal to admit her to the School for the last 10 years amounts to infringement of her right to education.

46. The Petitioner further submits that she had legitimate expectation that she will be admitted into the School and eventually become an Advocate of the High Court of Kenya given the then existing legal regime when she joined Busoga University. She relied on *Kevin K. Mwiti's* case (supra) in expounding the submission.

47. The 2nd Respondent rejoinder is that it declined the Petitioner's application to join the School as she had not attached a clearance letter from the 1st Respondent. It contends that it is obligated to adhere to terms and conditions set by the 1st Respondent on admission to the School. The 2nd Respondent referred to the decision in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948) 1KB 223*, the *Kevin K. Mwiti's* case (supra) and *Daniel Ingida Aluvula & Another v. Council of Legal Education & Another* in affirming its position that it did not contravene the law.

48. The 2nd Respondent also referred to Regulation 18 of the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, L.N. 170/2009 on the role of the 1st Respondent in accrediting an institution and equating of qualifications.

49. The 3rd Respondent submitted that the 1st and 2nd Respondents acted within the law in declining to admit the Petitioner to the School.

50. This Court has already found that the applicable legal regime to the Petitioner herein is the CLE Act and the Regulations.

51. By juxtaposing Section 5 of Part A-II of the First Schedule of the Regulations and the Petitioner's academic progression, it comes out that the Petitioner falls within Section 5(d). The provision states as follows: -

> *5. A person shall not be eligible for admission for the Post Graduate Diploma (Advocate Training Programme) unless that person has –*
>
> ***(d) a Bachelor of Laws Degree (LL. B) from 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 pre-condition for admission.***

52. The Petitioner adduced evidence of her O-Level KCSE examination results. The results are contained in the Petitioner's KCSE Certificate No. 2842143. The results therein were not disputed. According to the Certificate, the Petitioner scored a Mean Grade of C (Plain) and B- (Minus) in English.

53. The Petitioner also sat for and passed the Pre-bar examinations. The position is confirmed by the 2nd Respondent's letter dated **29th January 2019** which the Petitioner exhibited in support of her case.

54. The Petitioner having been awarded a Bachelor of Laws (LL. B.) degree, having also passed the Pre-bar examinations and in view of her KCSE grades, it is apparent that the Petitioner had duly complied with the conditions in Section 5(d) above.

55. Having said so, perhaps it is of essence to trace the Petitioner's struggle to join the School. The Petitioner's journey began in 2010. On application, the 2nd Respondent *vide* its letter dated 25th November, 2010 declined to admit the Petitioner on account of the Pre-bar examinations. The 2nd Respondent's letter aforesaid partly stated as follows: -

> *…….. you do not qualify for admission into the Advocates Training Programme on account of the prosecutions of the Council of Legal Education (Kenya School of Law) Regulations, Legal Notice No. 169, Section 5(b), (c) (d).* ***To remedy this, you are advised to apply for and sit the Pre bar examinations*** *when next offered as a precondition for admission to the School.*

56. On 15th January, 2014, around 4 years later, the 2nd Respondent again wrote to the Petitioner again declining her application to join the School as follows:

> *It is regretted that your application was not successful for direct admission due to the reason that you have KCSE mean grade C (Plain).*
>
> ***You shall therefore be required to sit for the Pre-Bar examinations when it is next offered.***

57. Five years later, and after the Petitioner had sat for and passed the Pre-bar examinations, the 2nd Respondent again declined to admit the Petitioner into the School *vide* its letter dated 29th January, 2019 for the reason that:

> *….. you did not attach your clearance letter from the Council of Legal Education for consideration.*

58. Unrelenting, the Petitioner applied to the 1st Respondent for the clearance letter. In declining to approve of the Petitioner's qualifications, the 1st Respondent wrote to the Petitioner through its letter dated 4th March, 2019, partly, as follows: -

A review of the documentation availed reveals that you did not meet the threshold for entry into the LL. B. Programme. The law requires at least a mean grade of C+ (plus) and at least B (plain) in English or Kiswahili. You attained a mean grade of C (plain) with B- (minus) in English and B (plain) in Kiswahili.

In order to satisfy the requirements of the Law then applicable, you should show progression from Diploma in Law or have attained at least two (2) Principal passes at advanced "A" level or IB qualification, prior to undertaking the Bachelor of Laws (LL.B) Programme.

Furthermore, your LL.B. degree was obtained on 31st August, 2012 whereas the University was conditionally accredited on 28th June, 2012 as evidenced by the documents attached to your application.

59. On the basis of the above position, the Petitioner instituted the instant proceedings.

60. The letter dated 4th March, 2019 by the 1st Respondent (hereinafter referred to as '***the impugned letter'***) had two reasons for declining to approve of the Petitioner's qualifications. The first reason is that the Petitioner did not meet the threshold for entry into the LL. B programme.

61. The 1st Respondent did not, however, state the threshold it alleged the Petitioner did not meet. It, hence, remains unclear which law the 1st Respondent referred to and if that legal regime applied to the Petitioner given that, as discussed above, legal training in Kenya has undergone various changes over time. By failing to take part in these proceedings, the 1st Respondent denied the Petitioner and this Court the opportunity to scrutinize the 1st Respondent's position as contained in the impugned letter.

62. The second reason for declining the approval is that Busoga University was conditionally accredited on 28th June, 2012 and only attained full accreditation on 22nd January, 2015. The impugned letter did not disclose the conditions attached to the accreditation prior to the full accreditation. Again, the 1st Respondent by not appearing in this matter failed to disclose the conditions attached to the said accreditation and also failed to expose the legal implication of conditional accreditation as opposed to full accreditation.

63. The upshot is that the grounds given by the 1st Respondent in the impugned letter did not meet the reasonability test in law.

64. There is also the manner in which the decision in the impugned letter was arrived at. The Petitioner contends that the decision was arrived without being accorded an opportunity to be heard.

65. The foregoing contention centres on Article 47 of the Constitution.

66. Article 47(1), (2) and (3) of the Constitution states that: -

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

(a) provide for the review of administrative action by a Court or, if appropriate, an independent and impartial tribunal; and

(b) promote efficient administration

67. The legislation that was contemplated under Article 47(3) is the Fair Administrative Actions Act. No. 4 of 2015. Section 4 thereof provides that: -

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to-

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross-examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

68. Section 2 of the Fair Administrative Act defines an '*administrative action'* and an '*administrator*' as follows: -

'administrative action' includes -

(i) The powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(ii) Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

*'administrator' means 'a person who takes an administrative action or who makes an administrative decision'***.**

69. In ***Civil Appeal 52 of 2014 Judicial Service Commission vs. Mbalu Mutava & Another (2015) eKLR*** Court of Appeal addressed itself on the above. The Court held that: -

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

70. The South African Constitutional Court in ***President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others CCT16/98) 2000 (1) SA 1*** ring-fenced the importance of fair administrative action as a constitutional right. The Court while referring to Section 33 of the South African Constitution which is similar to Article 47 of the Kenyan Constitution stated as follows: -

Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades…

71. The right was further discussed in ***Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoiti [2018] eKLR***. The Court had the following to say:

25. *In John Wachiuri T/A Githakwa Graceland & Wandumbi Bar & 50 Others vs The County Government of Nyeri & Ano*[39] *the Court emphasized that there are three categories of public law wrongs which are commonly used in cases of this nature.*

These are: -

*a. **Illegality** - Decision makers must understand the law that regulates them. If they fail to follow the law properly, their decision, action or failure to act will be "illegal". Thus, an action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond it powers.*

*b. **Fairness** - Fairness demands that a public body should never act so unfairly that it amounts to abuse of power. This means that if there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them and it must not be in breach of the rules of natural justice. The body must act impartially, there must be fair hearing before a decision is reached.*

*c. **Irrationality and proportionality** - The Courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute 'irrationality" or 'perversity' on the part of the decision maker. The benchmark decision on this principle of judicial review was made as long ago as 1948 in the celebrated decision of Lord Green in **Associated Provincial Picture Houses Ltd vs Wednesbury Corporation**: -*

If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere...but to prove a case of that kind would require something overwhelming...

72. Emerging from the above, there is no doubt the 1st Respondent's decision to decline to approve of the Petitioner's LL. B qualifications was an administrative action. In sum, it was an administrative action because it affected the legal rights and interests of the Petitioner. As such, the decision had to pass the constitutional and statutory tests of lawfulness, reasonableness and procedural fairness.

73. The 1st Respondent did not accord the Petitioner any form of hearing before making the impugned decision. The decision was unilateral.

74. At a minimum, to meet the constitutional and statutory threshold, the 1st Respondent was supposed to: -

(i) Ensure that the necessary information, materials and evidence to be relied upon in making the decision or taking the administrative action are timeously forwarded to the Petitioner;

(ii) Inform the Petitioner of the procedure to be used during the proceedings;

(iii) Inform the Petitioner of her right to attend the proceedings, in person or in the company of an expert of his choice, if the proceedings were to be held in person or virtually;

(iv) Inform the Petitioner of her right to be heard and to make representations in that regard;

(v) Inform the Petitioner of the right to cross-examine the witnesses, if any;

(vi) Inform the Petitioner of her right to legal representation;

(vii) Inform the Petitioner of her right to where necessary to request for an adjournment of the proceedings;

(viii) Include in the notice the Petitioner's right to a review or internal appeal against an administrative decision;

(ix) Accord the Petitioner a statement of reasons for the decision.

75. As said, the 1st Respondent did not undertake any of the above actions prior to making the decision. The decision was, hence, procedurally unfair.

76. Further, and as held above, the 1st Respondent did not state the legal provisions it relied on in reaching at the decision. To that extent, the decision is unlawful and unreasonable.

77. The Respondent's impugned decision, therefore, infringed Article 47(1) of the Constitution as well as the Fair Administrative Actions Act.

78. The Petitioner also contends that she was discriminated against. It is not disputed that the Petitioner was admitted to Busoga University where she studied law and graduated with a Bachelor of Laws degree together with other Kenyan students including Charles Mathuva Mwalimu and Brenda Ogada. It is also not disputed that the said Charles Mathuva Mwalimu and Brenda Ogada were admitted into the School and on successful completion of the programme they were admitted as Advocates of the High Court of Kenya.

79. It is uncontroverted that in declining to approve the Petitioner's qualifications and by approving the qualifications of the other students who were in the same University with the Petitioner and during the same period, the 1st Respondent accorded the Petitioner differential treatment.

80. Holding it at that, I will now endeavour to determine whether the differential treatment accorded to the Petitioner was discriminatory.

81. The position in law that differential treatment is not necessarily discriminatory was discussed at length in a Multi-Judge bench in ***Petition***

56, 58 & 59 of 2019 (Consolidated), Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR.

82. In the case, the Court considered whether differential treatment amounts to violation of the right to equality and non-discrimination as guaranteed under Article 27 of the Constitution. The Learned Judges made reference to various decisions and finally observed as follows: -

> *983. The precise meaning and implication of the right to equality and non-discrimination has been the subject of numerous judicial decisions in this and other jurisdictions. In its decision in Jacqueline Okeyo Manani & 5 Others v. Attorney General & Another (supra) the High Court stated as follows with respect to what amounts to discrimination*:
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> > *26. Black's Law Dictionary, 9th Edition defines "discrimination" as (1)" the effect of a law or established practice that confers privileges on a certain class because of race, age sex, nationality, religion or hardship" (2) "Differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured".*
> >
> > *27. In the case of Peter K Waweru v Republic [2006] eKLR, the court stated of discrimination thus: -*
> >
> > > *Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions whereby persons of one such description are subjected to … restrictions to which persons of another description are not made subject or have accorded privileges or advantages which are not accorded to persons of another such description… Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age sex … a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured."(emphasis)*
> >
> > *28. From the above definition, discrimination, simply put, is any distinction, exclusion or preference made on the basis of differences to persons or group of persons based such considerations as race, colour, sex, religious beliefs political persuasion or any such attributes that has real or potential effect of nullifying or impairing equality of opportunity or treatment between two persons or groups. Article 27 of the Constitution prohibits any form of discrimination stating that. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law, and that (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.*
> >
> > *29. The Constitution advocates for non-discrimination as a fundamental right which guarantees that people in equal circumstances be treated or dealt with equally both in law and practice without unreasonable distinction or differentiation.* ***It must however be borne in mind that it is not every distinction or differentiation in treatment that amounts to discrimination.*** *Discrimination as seen from the definitions, will be deemed to arise where equal classes of people are subjected to different treatment, without objective or reasonable justification or proportionality between the aim sought and the means employed to achieve that aim.*
> >
> > 30. In this regard, the Court stated in the case of Nyarangi & 3 Others V Attorney General [2008] KLR 688 referring to the repealed constitution; "discrimination that is forbidden by the constitution involves an element of unfavourable bias. Thus, firstly unfavourable bias must be shown by the complainant; and secondly, the bias must be based on the grounds set in the constitutional definition of the word "discriminatory" in section 82 of the Constitution.
>
> *984.* ***It is thus recognised that it is lawful to accord different treatment to different categories of persons if the circumstances so dictate.*** *Such differentiation, however, does not amount to the discrimination that is prohibited by the Constitution. In John Harun Mwau v. Independent Electoral and Boundaries Commission & Another (supra), the court observed that:*
>
> > [i]t must be clear that a person alleging a violation of Article 27 of the Constitution must establish that because of the distinction made between the claimant and others, the claimant has been denied equal protection or benefit of the law. It does not necessarily mean that different treatment or inequality will per se amount to discrimination and a violation of the constitution.
>
> *985. When faced with a contention that there is a differentiation in legislation and that such differentiation is discriminatory, what the court has to consider is whether the law does indeed differentiate between different persons; if it does, whether such differentiation amounts to discrimination, and whether such discrimination is unfair. In EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & Another: Petition 150 & 234 of 2016 (Consolidated) the court held that:*
>
> 288. From the above definition, it is safe to state that the Constitution only prohibits unfair discrimination. In our view, unfair discrimination is differential treatment that is demeaning. This happens when a law or conduct, for no good reason, treats some people as inferior or less deserving of respect than others. It also occurs when a law or conduct perpetuates or does nothing to remedy existing disadvantages and marginalization."
>
> 986. *In Harksen v Lane NO and Others (supra) the Court observed that the test for determining whether a claim based on unfair discrimination should succeed was as follows:*
>
> > *(a) Does the provision differentiate between people or categories of people? If so, does the differentiation bear a rational connection to a legitimate purpose? If it does not, then there is a violation of the constitution. Even if it does bear a rational connection, it might nevertheless amount to discrimination.*
> >
> > *(b) Does the differentiation amount to unfair discrimination? This requires a two-stage analysis: -*

(i) Firstly, does the differentiation amount to 'discrimination'? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.

(ii) If the differentiation amounts to 'discrimination,' does it amount to 'unfair discrimination'? If it has been found to have been on a specified ground, then the unfairness will be presumed. If on an unspecified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of the discrimination on the complainant and others in his or her situation. If, at the end of this stage of the enquiry, the differentiation is found not to be unfair, then there will be no violation…

(c) If the discrimination is found to be unfair then a determination will have to be made as to whether the provision can be justified under the limitations clause.

988. It must also be noted, as observed by Mativo J in Mohammed Abduba Dida v Debate Media Limited & another (supra) that:

***It is not every differentiation that amounts to discrimination. Consequently, it is always necessary to identify the criteria that separate legitimate differentiation from constitutionally impermissible differentiation. Put differently, differentiation is permissible if it does not constitute unfair discrimination**. (emphasis added).*

83. In order to sustain the position that the differential treatment accorded to the Petitioner is not discriminatory, the Respondents were obligated to demonstrate to the Court the manner in which the qualifications of the other students differed from the Petitioner's. The Respondents did not do so.

84. It is not in dispute, therefore, that the Petitioner and her colleagues who were at Busoga University and graduated on the same day were within the same category. However, the Petitioner is treated differently from her colleagues. As said, the Respondents failed to justify the differential treatment.

85. Failing to justify the differentiation between persons within the same category raises a red flag. Such form of differentiation cannot stand in law. In the instant case, this Court is at pain trying to come to terms why the Respondents treated the Petitioner differently from her counterparts whom they studied and graduated together at the University.

86. In sum, the failure by the Respondents to justify the Petitioner's differential treatment infringes the Petitioner's right to equality before the law and the right to equal protection and equal benefit of the law as guaranteed in Article 27 of the Constitution.

186. There is as well the contention on legitimate expectation. **De Smith, Woolf & Jowell,** in ***"Judicial Review of Administrative Action"*** 6thEdtion, Sweet & Maxwell at page 609 state as follows on the doctrine of legitimate expectation: -

A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public.

87. The Court in ***Kevin K. Mwiti & Others vs. Kenya School of Law & 2 Others*** (supra) held that: -

188. In my view there is a legitimate expectation that public authorities will comply with the Constitution and the law. In our context it is expected that public authorities will adhere to the constitutional values and principles including those enumerated in Article 10. The Petitioners can therefore be said to have expected the Respondents to interpret the Amendment Act in a manner that upholds their rights and fundamental freedoms as long as the interpretation did not contradict the express language of the Act. In my view an interpretation that upholds the freedom of equality and non-discrimination cannot be said to be inimical to the Amendment Act just like it was not inimical to the prior enactment.

88. On departure from a legitimate expectation which has crystallized, the Court in ***R vs. Devon County Council Ex parte P Baker [1955] 1 All ER*** held that:

...expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognises that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision.

89. The Petitioner, therefore, had legitimate expectation that the Respondents will uphold the law then existing as at the time she enrolled for the LL. B degree programme. That expectation could only be expressly withdrawn in compliance with the conditions in ***R vs. Devon County Council*** (supra). (See also *Laura Makungu Lumbasio vs. Kenya School of Law (2018) eKLR*). In this case, there is no evidence that the expectation was withdrawn.

90. The upshot is that the Petitioner's right to legitimate expectation, in the circumstances of this case, was thwarted.

91. In the end, the Petitioner has satisfactorily demonstrated that her rights under Article 27, 47 and 50(1) of the Constitution, the Fair

Administrative Actions Act as well as the Petitioner's legitimate expectation were variously infringed.

(iii) Whether the Petitioner is entitled to any remedies.

92. The Petition has succeeded. The Petitioner has, *inter alia*, proved that her rights and fundamental freedoms under the Constitution were variously infringed by the Respondents. The Petitioner is, therefore, deserving of appropriate remedies.

93. It is also imperative to state that in considering the appropriateness of the remedies, the Court shall remain alive to the fact that it can only compel the Respondents or any of them to discharge their/its statutory functions, but the Court cannot, by itself, take over the conduct of such functions. (See *Court of Appeal at Kisumu in* ***Civil Appeal Nos. 89 and 90 of 2011 West Kenya Sugar Company Limited vs. Kenya Sugar Board & Butali Sugar Mills Limited (2014) eKLR).***

94. On the prayer for special and general damages for violation of the Petitioner's rights and freedoms, I will, reproduce the guidance by the Court of Appeal in ***Gitobu Imanyara & 2 Others v Attorney General [2016] eKLR.***

95. Although the extract is rather lengthy, it nevertheless expounds a comprehensive comparative analysis on how other jurisdictions have dealt with the issue. The decision has good jurisprudential content. The Learned Judges expressed themselves as follows: -

> *The challenge, in our view is not whether we should interfere with a discretionary award of damages by a trial judge but what appropriate remedies are available for damages arising out of the violation of Constitutional and fundamental rights of an individual, by a State. It is important to state from the outset that damages arising out of Constitutional violations also known as Constitutional Tort Actions are within public law remedies and different from the common law damages for tort under private law.*
>
> *It is convenient to consider first, the comparative jurisprudence and general principles applicable to awards and assessment of damages for the violation of the Constitutional rights of an individual by a State. We will do so very briefly and broadly because it is not in doubt under common law principles, that an injured party is entitled to damages for the loss and injury suffered under private law causes of action, such as tort, where compensation of personal loss is at issue. However, in this case and as we posited earlier, we would want to consider what appropriate remedies are available for damages arising out of the violation of Constitutional and fundamental rights of an individual by a State under public law.*
>
> *The relevant principles applicable to award of damages for constitutional violations under the Constitution was explained exhaustively by the Privy Council in the famous case of* ***Siewchand Ramanoop v The AG of T&T,*** *PC Appeal No 13 of 2004. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.*
>
> *Per Lord Nicholls at Paragraphs 18 & 19:*
>
>> When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.
>>
>> An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. (emphasis ours). All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award. (emphasis ours)
>
> *In the* ***Tamara Merson v Drexel Cartwright*** *and* ***Ag (Bahamas) Privy Council Appeal No. 61 of 2003*** *the Privy Council held that in some cases, a suitable declaration may suffice to vindicate the right which has been breached. The Court quoted the postulation by Lord Scott of Foscote in* ***Merson*** *(supra) in which, after citing a passage from* ***Ramanoop*** *(supra) including the paragraphs set out above, stated thus:*
>
>> "[[18]. These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course' (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and

> the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

*Taking que from the above decisions, the Privy Council in **<u>Alphie Subiah v The Attorney General of Trinidad and Tobago</u>** Privy Council Appeal No. 39 of 2007 pronounced itself on the same point stating that: -*

> "The Board's decisions in Ramanoop, paras 17-20, and Merson, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson's case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, and Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in Thompson v Commissioner of Police of the Metropolis [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whetheran additional award should be made to vindicate the victim's constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in Merson, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression."

*The position of the Privy Council is in no way altered by the South African Case of **<u>Dendy v University of Witwatersrand, Johannesburg & Others</u>** [2006] 1 LRC 291 where the Constitutional Court of South Africa held that:*

> "...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

> "…The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy."

*In **<u>Peters v. Marksman & Another</u>** [2001] 1 LRC the Eastern Caribbean Supreme Court quoted with approval the words of Patterson JA in **Fuller v A-G of Jamaica (Civil Appeal 91/1995**, unreported**)**, where the Court held that:*

> It is incumbent on the courts to develop appropriate principles and guidelines as to the quantum of awards of compensation where applicable… Where an award of monetary compensation is appropriate the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the state itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized. In like manner the award should not be so large as to be a windfall nor should it be so small as to be nugatory.

*The Supreme Court of Canada established a consideration on when a remedy in a Constitutional violation case is "just and appropriate" in **<u>Doucet-Boudreau v. Nova Scotia (Minister of Education)</u>**, <u>2003 SCC 62</u> to include, a remedy that will:*

(1) meaningfully vindicate the rights and freedoms of the claimants;

(2) employ means that are legitimate within the framework of our constitutional democracy;

(3) be a judicial remedy which vindicates the right while invoking the function and powers of a court; and

(4) be fair to the party against whom the order is made.

*Consistent with the above judicial experience and philosophy, it seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is "**appropriate and just** "according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the petitioner's interest, but the interests of society as a whole that ought as*

far as possible to be served when considering an appropriate remedy.

96. In this case the Petitioner's rights are certainly vindicated *vide* appropriate declarations and other orders.

97. In consideration of the circumstances of this matter I am well convinced that the grant of other remedies rather than damages will serve as adequate, just and appropriate remedies.

98. As I come to the end of this judgment, I must agree with the 3rd Respondent, The Honourable Attorney General, that the Petitioner has not pleaded any cause of action and no orders are sought against the 3rd Respondent.

99. The Supreme Court in ***Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR*** addressed itself to the manner of pleading a cause of action in a constitutional petition and the degree of proof required as follows: -

> *Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru vs. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.*

100. This Court, therefore, finds that since there is no cause of action and no remedies are sought against the 3rd Respondent, the continued participation of the 3rd Respondent in these proceedings is unnecessary.

Disposition:

101. Flowing from the findings and conclusions, the disposition of the Petition dated 9th June, 2020 is as follows:

> **a. A declaration hereby issues that the Petitioner's qualifications for admission to the Kenya School of Law to undertake the Advocates Training Programme is subject to, *inter alia*, the Council of Legal Education Act, Cap. 16A (repealed) and the Council of Legal Education (Kenya School of Law) Regulations, 2009 (repealed).**
>
> **b. A declaration hereby issues that the Petitioner having been admitted to Busoga University in 2006 to undertake studies leading to the conferment of a Bachelor of Laws (LL. B.) degree ought to be admitted to the Kenya School of Law upon proof that she was awarded a Bachelor of Laws (LL. B.) Degree, that she 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 and that she passed the Pre-Bar Examinations set by the Council of Legal Education.**
>
> **c. A declaration hereby issues that the Petitioner's rights and fundamental freedoms guaranteed under Articles 27, 47 and 50(1) of the Constitution, the Fair Administrative Actions Act as well as the Petitioner's legitimate expectation that she will be eligible to join the Kenya School of Law upon being awarded a Bachelor of Laws (LL. B.) degree from Busoga University were jointly and variously infringed by the 2nd and 3rd Respondents.**
>
> **d. An order of *Certiorari* hereby issues to remove into this Court and quash the decisions contained in the letter dated 4th March, 2019 by the Council of Legal Education to the Petitioner.**
>
> **e. An order of *Certiorari* hereby issues to remove into this Court and quash the decision contained in the letter dated 29th January, 2019 by the Kenya School of Law to the Petitioner.**
>
> **f. An order of *Mandamus* hereby issues directing the Kenya School of Law to, without any delay whatsoever, consider the Petitioner's application to join the School and in compliance with this judgment.**
>
> **g. An order hereby issues expunging the Hon. Attorney General who is sued as the 3rd Respondent from these proceedings.**
>
> **h. The 1st and 2nd Respondents shall jointly and severally bear the costs of the Petition.**

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF JULY, 2021

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Claire Njoki Kirera, the Petitioner in person.

Miss Pauline Mbusio, Counsel for the 2nd Respondent.

No appearance for the 1st Respondent.

Elizabeth Wambui – Court Assistant