



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 461 OF 2018

NGUGI GATHU DANIEL.....PETITIONER

VERSUS

COUNCIL OF LEGAL EDUCATION.....1ST RESPONDENT

THE KENYA SCHOOL OF LAW.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

1. The Petitioner, Ngugi Gathu Daniel, holds a bachelor of laws (LL.B.) degree from Uganda Pentecostal University (the University). Sometimes in the year 2017 he applied to the 1st Respondent, the Council of Legal Education, for the recognition and approval of his degree, the same having been obtained from a foreign legal education provider, for purposes of joining the Kenya School of Law (the 2nd Respondent). Through a letter dated 21st September, 2017 the 1st Respondent declined to recognize and approve his qualifications on the grounds that he had scored a mean grade of C Plain in his Kenya Certificate of Secondary Education and there was no evidence of progression such as a diploma in law or A – level certificate. Another reason given for the decision was that the letter from the Law Council of Uganda attached to his application did not confirm whether the University was accredited to offer LL.B. studies during the period he studied at the University.

2. It is the Petitioner's case that on 16th January, 2018 the 2nd Respondent acting on the judgments of this Court in **Republic v Kenya School of Law & another Ex parte Daniel Mwaura Morai [2017] eKLR** and **Kevin K. Mwiti & another v Kenya School of Law & others [2015] eKLR** invited applications from persons who were eligible for the Advocates Training Programme under Part II, 5(d) of the Council of Legal Education (Kenya School of Law) Regulations, 2009 (Legal Notice No. 169 of 2009). Acting on the invitation, the Petitioner applied and was allowed to sit for the pre-bar examination which he passed. Thereafter, the Petitioner, joined the Advocates Training Programme and completed 40 % of the bar examination comprising of orals and coursework.

3. On 18th September, 2018 the Petitioner applied to sit the remaining 60% of the bar examination. The 1st Respondent asked him to submit certain documents for purposes of determining his application. He complied with the request. On 15th October, 2018 the 1st Respondent wrote to the Petitioner as follows:-

“REVIEW: RECOGNITION AND APPROVAL OF FOREIGN QUALIFICATION – LL.B. UGANDA PENTECOSTAL UNIVERSITY

Reference is made to your letter dated 24th September, 2018 regarding the above mentioned matter. Further reference is also made to your application to register for the November 2018 Bar Examination.

Council notes as follows:-

(i) Although you sat and passed the Pre-Bar Examination, Council did not recognize or approve your Bachelor of Laws (LL.B.) qualification from the Uganda Pentecostal University for purposes of admission to the ATP. You should have obtained Council's clearance prior to admission to the ATP.

(ii) Although a substantial number of core units were covered at the University, the unit Commercial Law was not covered as envisaged in the Second Schedule, Part II of the Legal Education Act, 2012. This could not have been cured by the Pre-Bar. You were required to attend the remedial programme in Commercial Law for Council to recognize and approve the LL.B.

qualification for purposes of the ATP.

(iii) The omission to revert to Council upon passing the Pre-Bar and the omission to attend the remedial programme made you ineligible to join the ATP and consequently ineligible to register and sit the Bar Examination.

In view of the above, Council's decision is that you undertake the remedial programme in commercial law in order to regularize the above-stated omissions before you register for the Bar Examination."

4. It is the Petitioner's case that upon receipt of the said letter he wrote to the 1st Respondent on 17th October, 2018 asking for a review of the decision. On 19th October, 2018 the 1st Respondent wrote an email to the Petitioner indicating that the Council had reconsidered its decision as communicated through the letter dated 20th September, 2018 and approved his registration. He was informed that the email served as a confirmation that he was registered to sit the forthcoming bar examination. The Petitioner was also advised to check the 1st Respondent's website for updates on when to collect his examination card.

5. However, on 5th November, 2018 the Petitioner received a letter dated 2nd November, 2018 from the 1st Respondent cancelling his registration and reiterating the contents of a letter dated 15th October, 2018. The Petitioner's case is that the respondents' actions violates various provisions of the Constitution and international rights instruments. He therefore prays for the following reliefs:-

"a) A declaratory order do issue declaring that the Petitioner has been discriminated by the Respondents and thus violating, denying and breaching his 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 in the nature of *certiorari* do issue to bring before court for purpose of quashing the decision of the 1st Respondent contained [in] its letters dated 15th October 2018, 2nd November 2018 and 7th November 2018.

e) An order do issue in the nature of *mandamus* to compel the 1st and 2nd Respondents to unconditionally register and allow the petitioner to sit for bar examination of the year 2019.

f) An order of prohibition do issue prohibiting the 1st Respondent from subjecting the Petitioner to Section 8(1)(e) Legal Education Act (No. 27 of 2012) which section was enacted vide Statute Laws (Miscellaneous Amendment) Act, and came to force on 8th December 2014, three years after the Petitioner had completed his L.L.B. programme as the law cannot be applied retrospectively.

g) An order for refund of a sum of KES.10,000/- to the Petitioner.

h) An order for general damages as against the 1st Respondent for subjecting the Petitioner to psychological torture, anguish, suffering, mental torture and breach of the Petitioner's constitutional rights and fundamental freedoms and loss of opportunities.

i) An award of exemplary damages to the Petitioner for violation and breach of his constitutional rights and fundamental freedoms.

j) Cost of this Petition.

k) Any other such orders as this Honourable Court shall deem just to grant."

6. On the 9th October, 2019 when the petition came up for hearing the 3rd Respondent, the Attorney General, was, by consent of the parties, discharged from these proceedings. The 2nd Respondent did not file any pleadings. This was the correct thing to do as a perusal of the pleadings will indeed show that the dispute is between the Petitioner and the 1st Respondent. The 2nd Respondent did not participate in the matter.

7. The 1st Respondent filed grounds of opposition and skeletal arguments dated 27th September, 2019 in response to the petition. Its main defence is that the Petitioner did not qualify for admission to the Advocates Training Programme as per the requirements of Regulation 8 of the Council of Legal Education (Admission) Regulations, 2007.

8. It is also the 1st Respondent's position that the doctrine of legitimate expectation which the Petitioner seeks to rely on is not applicable since the doctrine cannot be applied so as to contravene the law. Cited in support of this assertion are the decisions in **Republic v Kenya Revenue Authority ex parte Shake Distributors Limited, High Court Misc. Civil Application No. 359 of 2012** and **Republic v Kenya Revenue Authority Ex parte Universal Corporation Ltd [2016] eKLR.**

9. Finally, the 1st Respondent submitted that the Petitioner did not establish his allegation that he was treated differently from others in a similar position with him. The decision in the case of **Susan Mungai v Council of Legal Education [2012] eKLR** was cited in support of this assertion.

10. Through the submissions dated 25th March, 2019 counsel for the Petitioner submitted that the 1st Respondent treated the Petitioner in a discriminatory manner by deregistering him from doing the November, 2018 bar examination while allowing students from the University to sit the same examination without any conditions. It is counsel's assertion that it amounts to discrimination to subject a person on whom a benefit has been conferred to a particular form of treatment different from the others who fall in the same class. Cited in support of this argument are the cases of **John Kabui Mwai & 3 others v Kenya National Examination Council & 2 others [2011] eKLR** and **Nyarangi & 3 others v Attorney General [2008] KLR 688**. Counsel cited the decision of **Jacques Chari Hoffmann v South African Airways, CCT 17 of 2000** as quoted in **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] eKLR** as establishing the test to be applied in determining whether an act is discriminatory.

11. Counsel for the Petitioner pointed out that the Petitioner had annexed affidavits sworn by law students from the University showing that they had been allowed to sit the bar examination without being referred to undertake remedial studies in commercial law as had been done to the Petitioner. Further, that one of the said students had been in the same class with the Petitioner and even graduated with him. Counsel also submitted that another student by the name Karanja Elizabeth Njeri had sat and passed the pre-bar examination at the same time with the Petitioner. According to counsel, this particular student was registered for the bar examination even though she had never applied for recognition of her law degree by the 1st Respondent. It is therefore counsel's contention that the treatment of the Petitioner was discriminatory,

12. Counsel for the Petitioner also submitted that as was held in **Lyomoki & others v Attorney General [2005] 2 EA 127**, since the Petitioner had established that he was subjected to different treatment, it was upon the 1st Respondent to show that the treatment was justified but this burden had not been discharged.

13. Turning to the Petitioner's claim that his legitimate expectation had been breached, counsel submitted that the Petitioner had legitimate expectation that he would be treated similarly with the other students of the University. Counsel cited the decisions in **Kevin K. Mwiti & others v Kenya School of Law & 2 others [2015] eKLR** and **R(Bibi) v Newham London Borough Council [2001] EWCA CIV 607** as highlighting the principle of legitimate expectation.

14. Counsel contended that the discriminatory action of the 1st Respondent not only violated Article 27 of the Constitution which protects equality and freedom from discrimination but also infringes Article 43 (1)(f) of the Constitution that protects the right to education.

15. Counsel for the Petitioner urged the court to grant the prayers sought. His case is that as per the decision in **Kevin K. Mwiti** (supra), the provisions of the Council of Legal Education Act, 2012 and in particular Section 8(1)(e) as amended by Statute Law (Miscellaneous Amendment) Act, 2014 which came into force on 8th December, 2014 is not applicable to the Petitioner.

16. A perusal of the pleadings filed in this case disclose that the only issue for the determination of the court is whether the treatment of the Petitioner by the 1st Respondent violated the Constitution.

17. In **James Nyasora Nyarangi & 3 others v Attorney General [2008] eKLR**, it was held that:-

“The law does not prohibit discrimination but rather unfair discrimination. The said Handbook defines unfair discrimination as treating people differently in a way which impairs their fundamental dignity as human beings, who are inherently equal in dignity. Unlawful or unfair discrimination may be direct or subtle. Direct discrimination involves treating someone less favourably because of their possession of an attribute such as race, sex or religion compared with someone without that attribute in the same circumstances. Indirect or subtle discrimination involves setting a condition or requirement which a smaller proportion of those with the attribute are able to comply with, without reasonable justification. The U.S case of *GRIGGS v DUKE POWER COMPANY 1971 401 US 424 91* is a good example of indirect discrimination, where an aptitude test used in job applications was found “to disqualify Negroes at a substantially higher rate than white applicants.”

18. The Supreme Court discussed the law on the subject of discrimination in its recent case of **Law Society of Kenya v the Attorney General & another, Supreme Court Petition No. 4 of 2019** and held that:-

“[79] According to Black's Law Dictionary, 8th ed. (Bryan A. Garner, ed.) (St. Paul, MN: West Group, 2004), page 500, discrimination is “the effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap.” Further, in *Willis vs The United Kingdom (2002) 34 EHRR 547* the European Court of Human Rights defined discrimination as: “....a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available members of society”. (See *Andrews vs Law Society of British Columbia [1989] I SCR 143*, as per McIntyre J.) In our own jurisdiction, the Court of Appeal in *Barclays Bank of Kenya LTD & Another vs Gladys Muthoni & 20 Others [2018] eKLR* held as follows; “.....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 are 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.”

[80] Discrimination therefore entails the unjust or prejudicial treatment of different categories of people in the same circumstances...”

19. The Petitioner placed before the court two affidavits. One was sworn by Elizabeth Njeri Karanja and the other by Nuwagaba Alex Singahache. Elizabeth Njeri Karanja averred that she graduated from the University in 2013, one year after the Petitioner had graduated. She also averred that she sat the pre-bar examination with the Petitioner in January, 2018. They both joined the Advocates Training Programme for the academic year 2018/2019 and did 40% of the bar examination composing of oral and coursework. When they applied for registration for the remaining 60% of the bar examination her application was approved and that of the Petitioner was rejected by the 1st Respondent. Elizabeth Njeri Karanja further averred that she never applied for recognition and approval of her law degree from the 1st Respondent.

20. On his part Nuwagaba Alex Singahache averred that he is an advocate of the High Court of Kenya having been admitted as such on 31st March, 2016. His deposition was that he was in the same law class with the Petitioner at the University and he graduated with him on 17th February, 2012. Further, that among those who graduated with them were Samwel Ayieko, Adera Imelda and Anne Bichachi who have since been admitted as advocates of the High Court of Kenya. He further averred that graduates from the University were registered for the bar examination without being referred for remedial studies in commercial law.

21. In his supplementary affidavit sworn on 25th March, 2019 the Petitioner averred that in 2019 the 2nd Respondent admitted Owour Vincent Omondi and Ndegwa Keziah Wairimu who are law graduates of the University to the Advocates Training Programme without requiring them to do remedial studies in commercial law.

22. The 1st Respondent did not bother to respond to the Petitioner’s evidence. Instead the court was referred to the decision in the case of **Susan Mungai v Council of Legal Education [2012] eKLR** where it was held that:-

“25. The petitioner applied by letter dated 25th September 2006 for admission to the Kenya School of Law. The respondents, after considering the petitioner’s qualifications against the regulations for admission to the Kenya School of Law, rejected her application on the basis that she did not have the requisite qualifications. The respondents assessed the petitioner’s qualifications against the requirements of the Council of Legal Education (Kenya School of Law) Regulations, 1997. Under these regulations, the petitioner did not qualify for admission to the Kenya School of Law. From the pleadings of the parties, it is clear that the respondents applied exactly the same criteria to measure the petitioner’s application and qualifications as they did for all other applicants. The criteria was then set out in the Council of Legal Education (Kenya School of Law) Regulations, 1997.

26. The petitioner tacitly concedes this when she submits that the 1st respondent did not have jurisdiction under the provisions of section 14 of the Council of Legal Education Act to enact the Council of Legal Education (Kenya School of Law) Regulations, 1997; that it acted *ultra-vires* its powers and in violation of the Advocates Act by purporting to amend it through subsidiary legislation; that the only qualifications required for admission to the Kenya School of Law were those set out in Section 13 of the Advocates Act, and that neither section 14 of the Council of Legal Education Act nor any other provision in that Act donates power to the Council to make rules for admission of Advocates outside the statutory qualifications set out under the Advocates Act.

27. From the above matters, it is clear that, rather than the respondents having acted in a manner that was discriminatory against the petitioner, it was the petitioner who was seeking what can only be viewed as preferential treatment from the respondents. The Admission Regulations applicable to all those seeking admission to the Kenya School of Law in 2006 when the petitioner made her application were the Council of Legal Education (Kenya School of Law) Regulations, 1997. There is nothing before this Court to show that all other applicants were not required to meet these qualifications. What the petitioner was asking was for the 1st respondent to waive these requirements with regard to her; and what she is asking this Court to do is to find that even if she was not qualified under those regulations, they were against the requirements of the Advocates Act anyway, and she should not have been required to meet them.”

23. Relying on the cited case, counsel for the 1st Respondent submitted that the Petitioner is seeking preferential treatment as he does not qualify under the law to be admitted to the Advocates Training Programme. Further, that allowing the petition will be discriminatory against other applicants who the 1st Respondent has denied admission for being unqualified. With respect to counsel, I must state that the decision in **Susan Mungai** (supra) is not helpful to the 1st Respondent’s case. In that case, the respondents had **“applied exactly the same criteria to measure the petitioner’s application and qualifications as they did for all other applicants.”** That is why the Court concluded that **“rather than the respondents having acted in a manner that was discriminatory against the petitioner, it was the petitioner who was seeking what can only be viewed as preferential treatment from the respondents.”**

24. The facts in the case at hand are different. The Petitioner has established through evidence that those who graduated from the same university with him have been treated differently. They have been allowed to complete their training without being asked to meet the requirements that the Petitioner has been subjected to.

25. In the letter dated 15th October, 2018 rejecting the Petitioner’s appeal, the Petitioner was told that commercial law which was a core unit was not covered at the University. He was informed that this contravened the Second Schedule, Part II of the Legal Education Act, 2012. A perusal of the Act shows that it was assented to on 21st September, 2012 and came into force on 28th September, 2012. A copy of the degree certificate attached to the Petitioner’s affidavit sworn on 17th December, 2018 in support of the petition shows that the Petitioner was awarded his LL.B. degree **“at a congregation of the Uganda Pentecostal University held on 17th of February in the year of our Lord Two Thousand and Twelve.”** The Act therefore came into force seven months after the Petitioner had graduated.

26. The law on retrospectivity of legislation was discussed by the Supreme Court in the case of **Samuel Kamau Macharia & another v Kenya Commercial bank Ltd & 2 others, Supreme Court Civil Application No. 2 of 2011** where it was held that:-

“(61) 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. (Halsbury’s Laws of England, 4th Edition Vol. 44 at p.570). A retroactive law is not unconstitutional unless it:

- (i) is in the nature of a bill of attainder;**
- (ii) impairs the obligation under contracts;**
- (iii) divests vested rights; or**
- (iv) is constitutionally forbidden.”**

27. A statutory provision cannot act retrospectively to take away the rights already legally conferred on a person. From the evidence placed on record by the 1st Respondent, there is nothing to show that commercial law was a core unit prior to 2012. The requirement came into force in late 2012 several months after the Petitioner had graduated. That may explain why Elizabeth Njeri Karanja and Nuwagaba Alex Singahache were allowed to sit the bar examination.

28. The fact that there was no such requirement can also be explained by the 1st Respondent’s flip-flopping on the issue of the Petitioner’s qualifications. As rightly pointed out by the Petitioner, there was no mention of the need for commercial law remedial studies when he first contacted the 1st Respondent. In that regard it is important to reproduce the letter dated 21st September, 2017 which reads:-

“RECOGNITION AND APPROVAL OF FOREIGN QUALIFICATIONS – LL.B. UGANDA PENTECOSTAL UNIVERSITY

Reference is made to your application for recognition and approval of the LL.B. Degree of Uganda Pentecostal University, Uganda, for purposes of the Advocates Training Programme at the Kenya School of Law.

A review of your application reveals that you did not meet the minimum prescribed entry requirements for admission to the LL.B. Degree Programme. The law requires at least a mean grade of C+(plus) with at least B(plain) in English or Kiswahili in the Kenya Certificate of Secondary Education (KCSE). You attained a mean grade of C(plain) and C+(plus) in English and B+(plus) in Kiswahili. Furthermore, no evidence of progression such as from Diploma in Law or “A” level or IB, or an undergraduate degree obtained before undertaking the LL.B. was shown.

Further, your application is incomplete. You did not submit a written statement of accreditation from the competent accrediting agency in Uganda i.e the Law Council of Uganda confirming when the Bachelor of Law (LL.B.) Programme of Uganda Pentecostal University was accredited to offer Law in Uganda and whether the said programme was recognized, qualified and approved as such throughout the period of study.”

29. The letter does not mention any inadequacy in the Petitioner’s law degree. It is the Petitioner’s case that he addressed the other issues raised in the letter by sitting for pre-bar examinations and obtaining a letter from the Law Council of Uganda confirming that the University was accredited to offer degrees in law at the time of his study. The 1st Respondent never rebutted this evidence.

30. It is not disputed that in 2007 a person could be admitted to the 2nd Respondent if, he/she had among other qualifications a grade B plain in English language and a mean grade C plus in the Kenya Certificate of Secondary Examination. The Petitioner did not meet the qualifications as he had a mean grade of C plain and C plus in English.

31. It is the Petitioner’s case that having sat and passed the pre-bar examination set by the 2nd Respondent he was qualified to join the Advocates Training Programme. The Petitioner’s assertion was not contested by the 1st Respondent and it could not be contested because it is a correct statement. I find support for the Petitioner’s position in the decision in the case of **Kevin K. Mwiti** (supra) where it was stated at paragraph 57 that:-

“The School clarified that before the enactment of the Kenya School of Law Act, the pre-bar examination was taken by applicants who had attained lower grades than those required to entitle them to a direct admission to the School. This particular pre-bar entailed sitting and passing six (6) examination papers. Before enactment of the Act, admission to the School was open to persons who:

(I) Having passed the relevant examinations of any recognized university in Kenya holds, or have become eligible for the conferment of Bachelor of Laws degree (LL.B.) of that university; or

(II) Having passed the relevant examinations of a university, university college or other institutions prescribed by the Council, holds or have become eligible for the conferment of the Bachelor of Laws degree (LL.B.) in the grant of that university, university college or other institution, and had prior to enrolling at that university, university college or other institution:

(i) attained a minimum entry requirements for admission to a university in Kenya; and

(ii) obtained a minimum grade B (plain) in English language or Kiswahili and a minimum grade of C+ (plus) in the Kenya Certificate of Secondary Examination or its equivalent

(III) Having passed the Bachelor of Laws (LL.B.) examinations of a recognized university and having attained minimum of a C+ (plus) in English and a minimum of an aggregate C (plain) in the Kenya Certificate of Secondary Examination and hold a higher qualification e.g. "A" levels, "IB", relevant "Diploma", other "undergraduate degree" or having attained a higher degree in law after the undergraduate studies in Bachelor of Laws (LL.B) programme.

(IV) Having passed the relevant Bachelor of Laws (LL.B) examinations of a recognized university and having attained a minimum of C – (minus) in English and a minimum of an aggregate grade of C – (minus) in the Kenya Certificate of Secondary Examination sit and pass the pre-bar examination set by the Kenya School of Law.

[Emphasis supplied]

32. It is clear that the Kenya School of Law, the 2nd Respondent herein, had admitted in that case that a person who had a C minus in English and an aggregate grade of C minus could be admitted by the 2nd Respondent to train as an advocate so long as the person had sat and passed the pre-bar examination. The Petitioner had obtained a bachelor of laws degree from a recognized university and though he had an aggregate grade of C plain in the Kenya Certificate of Secondary Examination and a C plus in English he had sat and passed the 2nd Respondent's pre-bar examination. He was therefore qualified to be trained by the 2nd Respondent as an advocate.

33. There was an averment by the Petitioner's college mates that they did not pass their certificates through the 1st Respondent for recognition and approval. It is not disputed that the 1st Respondent is legally mandated to recognize and approve law qualifications from foreign education institutions. If it is true that the degrees of the Petitioner's classmates were not approved by the 1st Respondent, then someone must have slept on the job. The Petitioner, however, subjected his documents to the scrutiny of the 1st Respondent. The Petitioner therefore complied with the law.

34. In the circumstances of this case, I therefore agree with the Petitioner that the 1st Respondent kept on shifting goal posts and blowing hot and cold over his eligibility to train as an advocate. From an analysis of the evidence placed before the court it is quite clear that there was no legal reason why the Petitioner was denied an opportunity to complete his studies with the 2nd Respondent. The only conclusion I can reach is that the 1st Respondent abused its powers by discriminating against the Petitioner hence violating Article 27 of the Constitution. By doing so, the 1st Respondent also violated the Petitioner's right to education as guaranteed by Article 43(1)(f) of the Constitution

35. Having reached the conclusion that there was violation of the Petitioner's constitutional rights, I do not find it necessary to consider his allegation that his legitimate expectation was breached by the 1st Respondent.

36. Counsel for the Petitioner submitted that the decision to charge the Petitioner Kshs.10,000 for recognition and equation of his LL.B. degree was informed by retrospective application of Section 8(1)(e) of the Legal Education Act, 2012. He therefore urged that the Kshs.10,000/- paid to the 1st Respondent should be refunded to the Petitioner. The 1st Respondent did not make any submission on the issue. Although I have found that the Petitioner graduated prior to the coming into force of the Legal Education Act, 2012, the application for recognition and approval of his degree was made after the Act had come into force. This was a procedural aspect of the act which applied retrospectively and the Petitioner was therefore expected to comply with the requirements of the Act. The only thing that could not be done was to apply the substantive provisions of the Act to his degree. In the circumstances, the prayer for the refund of Kshs.10,000 therefore fails.

37. The Petitioner's counsel urged the court to award the Petitioner general damages for psychological and mental torture, anguish and suffering, and exemplary damages for violation of his constitutional rights and fundamental freedoms and loss of earnings. He cited the case of **Donglas Moturi Nyairo v University of Nairobi [2018] eKLR** where Kshs.400,000 was awarded to a university student for violation of constitutional rights and fundamental freedoms under Articles 35 and 47 of the Constitution. Also cited was the decision in **Al Yusra Restaurant Ltd v Kenya Conference of Catholic Bishops & another [2017] eKLR** where an award of Kshs.3 million was made as compensation for discrimination. Counsel urged that the petitioner be awarded Kshs.3 million as general damages.

38. I have considered the cited authorities. It is noted that the Petitioner lost the opportunity of completing his training in 2018. The earliest time he can sit the bar examination is in November 2020. His right to education has been put in limbo owing to the 1st Respondent's discriminatory action. On the other hand, it is noted that the 1st Respondent is a public entity and a high award will translate into a greater tax burden for the citizens of Kenya. Balancing all these interests, I come to the conclusion that an award of Kshs.500,000/= is sufficient to assuage the Petitioner's injury. That is the award I make as general damages in this case.

39. In summary, I find that the Petitioner's case succeeds and orders shall issues as follows:-

a. A declaration is hereby issued that the 1st Respondent's acts discriminated the Petitioner hence violated his right under Article 27 of the Constitution;

b. A declaration is hereby issued that the 1st Respondent's acts violated the Petitioner's right to education as guaranteed by Article 43(1)(f) of the Constitution;

c. An order of mandamus is hereby issued compelling the 1st and 2nd respondents to unconditionally register the Petitioner for the bar examination in the next cycle subject to his complying with the rules governing registration for the bar examination;

d. The Petitioner is awarded Kshs.500,000/= as general damages for violation of his constitutional rights and fundamental freedoms. This award is made against the 1st Respondent and shall attract interest at court rates from the date of the delivery of this judgment until payment in full.

e. The Petitioner shall have costs of the petition from the 1st Respondent.

Dated, Signed and delivered at Nairobi this 5th day of December, 2019

W. Korir,

Judge of the High Court