REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 295 OF 2017

BRIAN OTIENO ASIN.....1ST PETITIONER/APPLICANT

SUZANNE IMBUHILA MAJANI.....2ND PETITIONER/APPLICANT

RUTH MAKENA MUGAA.....3RD PETITIONER/APPLICANT

VERSUS

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

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

THE HON, ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

THE PARTIES

1. The petitioners herein describe themselves as adults, holders of Bachelor's Degree on Law and candidates at the School of Law.

2. The respondent is a council established under the legal Education Act No. 27 of 2012 with the mandate to promote legal education and training and the supervision of Legal Education.

3. The 2nd respondent is established under the School of Law Act No. 26 of 2012 as a public legal education provider responsible for the provision of professional legal training as an agent of the Government with the mandate to promote legal education and training and the supervision of legal education providers.

4. The 3rd respondent is the Honourable Attorney General of the Republic of Kenya and is sued herein as the representative of the National Government in all litigation to which the governments is a party pursuant to Article 156 of the Constitution.

The Petitioner's case

5. Through the petition filed on 14th June 2017, the petitioners state that as holders of Bachelor of Law Degree and candidates at the 2nd respondent school of law (KSL) admitted under the Advocates Training programme (ATP) in the year 2009/2010 academic year, they applied to register for the Bar Examinations scheduled for July 2017, but that their application was rejected on the grounds that they had failed to complete the Advocates Training programme within a period of 5 years from 18th November 2011 contrary to the Regulation 9(5) of the Council of Legal Education (Kenya School of Law Regulations) 2009- (hereinafter **"the Regulations"**).

6. In this petition, therefore, the petitioners challenge the placement of a limitation (cap) on the number of years that a student can attend the Advocates Training programme, which cap, according to the petitioners, violates their right to education guaranteed under Article 43 of the Constitution.

7. The petitioners sought the following reliefs in the petition

a) A declaration that Regulations 9(5) Council of Legal Education (Kenya School of Law Regulations) 2009 is inconsistent

and in conflict with the Constitution and thus null and void.

b) A declaration that Regulations 9(5) Council of Legal Education (Kenya School of Law Regulations) 2009 denied, contravenes, violates, infringes and threatens the petitioners constitutionally protected rights to equality and freedom from discrimination, right to education as enshrined under Article 27 and 43(1) of the Constitution.

c) A declaration that Regulations 9(5) Council of Legal Education (Kenya School of Law Regulations) 2009 was enacted without following the mandatory provisions of the Statutory Instruments Act No. 23 of 2013.

d) A declaration that Regulations 9(5) Council of Legal Education (Kenya School of Law Regulations) 2009 was enacted without public participation in violation to Article 10(2) and 118 of the Constitution of Kenya.

e) A declaration that the decision of the 1st respondent of 27th March 2017 approving the licence of the 2nd interested party and revoking the licence of the 1st interested party denies, contravenes, violates, infringes and threatens the petitioner's constitutionally protected Freedom of Association, Right to Protection of Property and Right to Fair Administration Action as enshrined under Article 36, 40 and 47 of the Constitution.

f) A declaration that the decision of the 1st respondent of 27th March 2017 approving the Licence of the 2nd interested party and revoking the licence of the 1st interested party was ratified without Public Participation in Violation of Article 10(2) of the Constitution of Kenya.

g) In the alternative a declaration that the 1st petitioner has duly passed ATP 100 civil litigation of the Advocates Training program.

h) Costs of this petition.

8. This court is however not sure about the relevance of prayers e) and f) hereinabove as the said prayers do not seem to be related to the issues in the instant case.

9. The petitioner's case is that their right to education is threatened by the provisions of the impugned Regulation 9(5) that purports to limit their right to education as guaranteed under Article 43(1) (f) of the Constitution. They further challenge an undated notice referred to as No. 17 of 2016 that the respondents relied upon in holding that the petitioners were not eligible to sit for any supplementary examinations having failed to complete the curriculum within a period of 5 years from 18th November 2011.

The 1st respondent's grounds of objection

10. In opposition to the petition, the 1st respondent filed grounds of objection dated 25th July 2017 in which it listed the following grounds:

1. The 1st respondent's decision implemented the substance of Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009, applying through Section 29(3) (a) of the Kenya School of Law Act, 2012, as it is bound to do by the tenor and substance of the Legal Education Act, 2012.

2. Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009 is still law, and provided it remains law, the 1st respondent is enjoined to strictly adhere to it.

3. Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009 is a necessary instrument of law to facilitate legal education and training in Kenya and passes the constitutional threshold of valid statutory claw back at Article 24 of the Constitution.

4. The five (5) year tenure for applicants at the Kenya School of Law and sitting of the Bar examinations, is from the date of registration and is calendar years, not academic year; a student once admitted becomes admittee in an academic year, when such student re-sits the bar examinations, it is not counted as an academic year but a bar examination writing session. A student is admitted to one academic year with the right to write the bar examinations to a maximum of five (5) times, in a maximum period of five (5) calendar years.

5. The petitioners are outside the five (5) year tenure by Regulations 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009, the five (5) years expired in 2016.

6. Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009 is an enactment of 2009, and presently applies through invitation of Section 29(3) (a) of the Legal Education Act, 2012. All these processes were operational before enactment of the Statutory Instruments Act, which is an enactment of 2013. Accordingly the Statutory Instruments Act, could not be applied Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009

7. Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009 is an enactment of 2009, which predates the Constitution of Kenya 2010, accordingly Article 10(2) and 118 of the Constitution 2010, could not have been applied to Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009, because Article 10(2)

and 118 of the Constitution 2010 were nonexistent at the time of enactment of Regulation 9(5) of the Council of Legal Education (Kenya School of Law) Regulations 2009.

8. The petitioners have not demonstrated a justiciable violation of fundamental rights, under Article 27 and 43(1) of the Constitution.

9. The Honourable court has no jurisdiction to declare the 1st petitioner to have passed ATP 100/Civil Litigation that is the exclusive province of the 1st respondent under Section 8(1) (f) of the Legal Education Act, 2012, a decision on the merits. The law precludes the Honourable Court from substituting its decision in the place of the 2nd respondent's, if the court finds that the decision was made with jurisdiction.

This decision is protected by law: Court of Appeal in Eunice Cecilia Mwikali Maema v Council of Legal Education & 2 others [2013] e KLR

"We are also of the view that the learned judge correctly applied the principle in the decision in Susan Mungai vs The Council of Legal Education Petition No. 152/2011 to the effect that the council has the power to set standards to ensure that the highest professional standards are maintained in the profession and it is not or the court to be concerned with the efficaciousness of the decision made pursuant to the Regulations."

The Court of Appeal in Nabeel Onyango Khan Vs Council of Legal Education (2015) eKLR equally reiterates the position.

10. It is the public interest that the Honourable court respects the law, and enforces it to ensure consistency in implementation of legal education policy in Kenya, instead of holding otherwise and therefore opening a precedent of violation of the law.

The Petitioners' submissions

11. At the hearing of the petition Mr. Maloba, learned counsel for the petitioner submitted that the challenge on Regulation 9(5) was on the basis that it dictates the period within which the petitioners ought to have completed the Advocates Training Programme yet the said Regulation was made without adherence to the rules of public participation, fair administrative action and Articles 24(1) and 43 (1) (f) of the Constitution. Counsel maintained that the 1st petitioner had sat for and passed the examination on Civil Procedure and ought to have received marks for the said paper. It was further submitted that this court has unlimited jurisdiction to determine the issues rose in the petition.

1st respondent's submissions

12. Mr. Oduor, learned counsel for the 1st respondent submitted that the petitioners joined the Kenya School of Law in the 2009/2010 academic year and that in line with the impugned Regulation 9(5), time started to run in the year 2009 in which case, the time expired in the year 2013. Counsel argued that before the year 2011, students were required to complete their course at Kenya School of Law within 3 years but that the time was extended from 3 years to 5 years by a resolution passed in 2011. It was the 1st respondent's case that the said resolution to extend time has not been challenged in this petition.

13. It was further submitted that prior to the 2010 promulgation of Constitution there was no requirement for the public participation and that this court has dealt with similar cases relating to challenge of Regulation 9(5) and held that time starts to run from the point of registration.

14. It was the 1st respondent's case that the right to education is not an absolute right and can therefore be limited by law and thus, passes the statutory claw back under Article 24 of the Constitution.

Analysis and determination.

15. I have considered the pleadings filed herein, the parties' submissions and the authorities that they cited. I find that the main issues for determination are firstly; whether the petitioners have established that their rights under the constitution were violated and secondly; whether Regulation 9(5) of the Council of Legal Education (Kenya School of Law Regulations) 2009, which is the subject of challenge in these proceedings is unconstitutional.

16. In considering the constitutionality of the impugned regulation, one needs to look no further than the constitution itself and what it states on the interpretation of statutes. Article 2 (4) of the Constitution provides that any law, that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. Article 259 of the Constitution provides that the Constitution shall be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and human rights and fundamental freedoms in the Bill of Rights and permits the development of the law; and contributes to good governance. Where the constitutionality of legislation or Regulations is in issue, the court is under a duty to examine the objects and purport of an Act and to read the provisions of the legislation, so far as is possible, in conformity with the Constitution. (See **Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others [2000] ZACC 12**).

17. Apart from considering the objects and purport of the statutes, courts are also required to consider the context in which an Act or regulation was enacted in determining if the said Act is constitutionally compliant. This was the position taken by Schreiner JA in the oft cited dissenting judgment of **Schreiner JA** in the case of **University of Cape Town vs Cape Bar Council and Another 1986 (4) SA 903 (AD)** where he stated:-

"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background."

18. My take on the above decision is that courts are required to declare legislation unconstitutional where the wording is not capable of sustaining an interpretation that would render it constitutionally compliant. Applying the above principle to the instant case I will now turn to consider the constitutionality of Regulation 9 (5). The said regulation stipulates that; - ***"in respect of the Advocates Training Programme a candidate shall be allowed a maximum of five years within which to complete the course of study."***

19. Section **3** of the Legal Education Act stipulates the objective of the act which is to **(a)** promote legal education and maintenance of the highest possible standards in legal education; and **(b)** provide a system to guarantee the quality of legal education and legal education providers.

20. Section **4** of the Act establishes the Council of Legal Education whose functions are stipulated in section **8** of the act. The functions include regulating legal education and training in Kenya offered by legal education providers; administering such professional examinations as may be prescribed under section 13 of the Advocates Act and being responsible for setting and enforcing standards relating to the mode and quality of examinations.

21. Section **8 (3)** of the act empowers the Respondent in carrying out its functions to *inter alia* make Regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes. I find that the above provisions are a clear manifestation that the 1st respondent is statutorily mandated to regulate legal education and training in Kenya.

22. This court notes that the subject of regulation of education generally and more specifically the regulation of Legal education in Kenya has been the subject of numerous court decisions. In this regard, courts have taken the hands off approach of not intervening in the decisions made by academic institutions where the challenged decisions are grounded on the law. In the case of **Maharashtra State Board of Secondary and Higher Secondary Education and Another vs. Kumarstheth [1985] LRC** it was held:

"so long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it in the sense that the rules and regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom of the efficaciousness of such rules and regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provision of the statute can best be implemented and what measures substantive as well as procedural would have to be incorporated in the rules and regulations for the efficacious achievement of the object and purposes of the Act. It is not for the Court to examine the merits and demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulation falls within the scope of the regulation-making power conferred on the delegate by the statute. The responsible representative entrusted to make bylaws must ordinarily be presumed to know what is necessary, reasonable, just and fair."

23. The court explained the reasons for its reluctance to intervene in decisions of academic institutions in the case of **Republic vs Council of Legal Education [2007] eKLR** where it was held;

"The other reason why this court has declined to intervene is one of principle in that academic matters involving issues of policy the courts are not sufficiently equipped to handle and such matters are better handled by the Board entrusted by statute or regulations. Except where such bodies fail to directly and properly address the applicable law or are guilty of an illegality or a serious procedural impropriety the field of academia should be largely non-justiciable….."

24. The above position was also adopted by Mativo J. in the case of **Daniel Ingida Aluvala & Another vs Council of Legal Education & another Petition 254 of 2017,** when considering a similar case in which the constitutionality of the impugned regulation 9(5) was raised. In the above cited case, the learned judge held as follows:

"Public bodies, no matter how well-intentioned, may only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation, which is enshrined in our Constitution. It follows that for the impugned decisions to be allowed to stand, it must be demonstrated that the decision is grounded on law."

25. The holding in the above cited case simply implies that in the exercise of their functions, the respondents actions must conform to the laws and regulations governing their activities. The doctrine of legality, which is the foundation of the rule of law, requires that whenever public power is exercised, that power should have a source in law. In the South African case of **AAA Investments (Pty) Ltd vs Micro Finance Regulatory Council and another [2006] ZACC 9** the court held as follows:-

"(t) he doctrine of legality which requires that power should have a source in law is applicable whenever public power is exercised . . . . Public power . . . can be validly exercised only if it is clearly sourced in law"

26. In the instant case, it is not disputed that the 1st respondent has both statutory and moral duty to uphold the law and to ensure due compliance with the law and Regulations governing the examinations. It would therefore be inconceivable to envisage a scenario where the respondents turn a blind eye to the laws and regulations governing its operations as that would result in not only the abdication of the respondents' legal mandate but would also compromise the quality and integrity of the legal training offered by the 2nd respondent.

27. As I have already stated in this judgment, the 1st and 2nd respondents are statutory bodies created under the Legal Education Act and the Kenya School of Law Act respectively. It is my finding that the claim that the impugned regulation is unconstitutional was not proved by the petitioner.

Article 43 of the Constitution

28. It was not contested that as at July 2017 when the petitioners applied to register for Bar Examinations that are the subject of this petition, they had already exceeded the 5 years period, stipulated under the impugned regulation, within which they ought to have completed their Advocates Training Programme. The petitioners contend that the 5 year limitation period within which students can attend the Advocates Training Programme amounts to a violation of their right to education under Article 43 of the Constitution which provides that every person has the right to education. It is however trite law that the right to education is not absolute as Article 24(1) provides that:

> ***A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—***
>
> ***a. The nature of the right or fundamental freedom;***
>
> ***b. The importance of the purpose of the limitation;***
>
> ***c. The nature and extent of the limitation;***
>
> ***d. The need to ensure that the enjoyment of rights and fundamental freedoms by an individual does not prejudice the rights and fundamental freedoms of others; and***
>
> ***e. The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.***

29. In the instant case I find that the petitioners' right to education was subject to the rules and regulations governing standards of education in the 2nd respondent school. I find that the impugned regulations are reasonable and do not interfere with the right to education as alleged but are instead intended to regulate and facilitate the educational programmes of the 2nd respondent. My finding is that the Respondents acted in conformity with the laws and regulations governing the ATP and thus satisfied the requirements set out under article **24** of the Constitution.

30. I am in agreement with the findings of Mativo J. in the case of **Rachel Adhiambo Ogola & Another vs. Council of Legal Education & Another [2017] eKLR** where the constitutionality of the impugned regulations was raised and the learned judge held;-

> ***"It is my view that the impugned regulation is reasonable and valid. The regulation is logically related to the legitimate public concerns of maintaining high professional standards. Moreover, the regulation does not deprive the petitioners the opportunity to pursue their careers. It gives them a chance to register afresh for the programme. Nor is there an obvious, easy alternative to the regulation, since monitoring standards clearly is an important statutory obligation aimed at public good.***
>
> ***The petitioners have failed to demonstrate that the impugned Regulations are unconstitutional. It is also important to point out that the right under article 43 is not absolute. The Respondents acted in conformity with the cited provisions of the law. This satisfies the requirements set out under article 24 of the Constitution in that the limitation is provided under the law."***

Article 47(1) of the Constitution

31. The petitioners' further claim was that their right to fair administrative action in terms of Article 47 of the Constitution was violated. They further contended that Section 5 of the Fair Administrative Action Act was not adhered to by the 1st respondent when the 1st respondent made the decision to bar them from registering for the bar examinations slated for July 2017. Article 47(1) of the Constitution provides for the right to Fair Administrative Action as follows:

> ***"Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair."***

Section 5(1) of the Fair Administrative Action Act stipulates……..

> ***(1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall—***
>
> ***a) Issue a public notice of the proposed administrative action inviting public views in that regard;***
>
> ***b) Consider all view submitted in relation to the matter before taking the administrative action;***
>
> ***c) Consider all relevant and materials facts; and***
>
> ***d) Where the administrator proceeds to take the administrative action proposed in the notice-***

i. Give reasons for the decision of administrative action as taken;

ii. Issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and

iii. Specify the manner and period within which such appeal shall be lodged (1) in any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons of the general public, an administrator shall-

a) Issue a public notice of the proposed administrative action inviting public views in that regard;

b) Consider all views submitted in relation to the matter before taking the administrative action;

c) Consider all relevant and materials facts; and

d) Where the administrator proceeds to take the administrative action proposed in the notice-

i. Give reasons for the decision of administrative action as taken;

ii. Issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and

iii. Specify the manner and period within which such appeal shall be lodged.

32. As was aptly stated by Chacha Mwita J. in the case of **Geoffrey Oduor Sijeny v Kenyatta University [2018] eKLR,** the right to fair administrative action is not only an integral part of the Bill of Rights but also an essential feature of our Constitution and the soul of a democratic society without which democracy and the rule of law cannot be maintained. The provisions of Article 47 clearly attest to the fact that the Constitution now imposes a control on administrative bodies by requiring them to employ constitutional standards of legality, reasonableness and procedural fairness in any administrative actions. Under the said standards, the administrative bodies are also required to accord the person to be affected by such actions a hearing before taking the action. Where the actions would have adverse effects on the persons' right(s), the administrative body is required to give the persons written reasons for its actions. The right to fair administrative action is a right that must not be abrogated or compromised.

33. It is now trite law that even in cases where there is no express requirement that a person be heard before a decision is made; the tribunal or authority entrusted with the mandate of making the decision must act fairly. In **Judicial Service Commission vs. Mbalu Mutava & Another [2015] eKLR,** Civil Appeal 52 of 2014 in which the Court of Appeal 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."

34. The importance of fair administrative action as a Constitutional right was stated in the South African case of **President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1,** at paragraphs135 -136 where it was held as follows with regard to similar provisions on just administrative action in section 33 of the South African Constitution:

"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…"

35. Section 4 of the Fair Administrative Action Act, 2015 reiterates the importance of this right by amplifying the prominence of Article 47 and the process to be followed in conducting administrative actions. A party coming to this Court on the basis that his or her right to fair administrative action was violated, must show that the standards enumerated in Article 47(1) as amplified by section 4 of the Fair Administrative Act were nonexistent in that administrative action and or that they were violated, and only then should the Court summon its jurisdiction under Article 165 (3) (b) of the Constitution ***to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.***

36. The question which then arises in the instant petition is whether in the circumstances of this case, the petitioners can be said to have been denied their right to fair administrative action. The answer to the above question is to the negative, I find that there was no administrative action taken against the petitioners that would have necessitated recourse to the provisions of Article 47 of the Constitution. The petitioners' case involved their failure to complete the ATP within the stipulated period thereby necessitating the automatic discontinuation of their

course in line with the regulations governing the ATP, in which case one cannot say that there was any hearing in which a decision was made to discontinue their studies in which there were not heard.

37. I have perused the general notice No. 17 of 2016 that originated from the 1st respondent inviting candidates to seek clarification on the amendment of Regulation 9(5) from 1st respondent's examination unit. The said notice is worded as follows:-

> **COUNCIL LEGAL NOTICE NO. 17 OF 2016**
>
> **GENERAL NOTICE NO. 17 OF 2016**
>
> **NUMBER OF SITTINGS FOR BAR EXAMINATIONS**
>
> **Regulations 9(5) Council of Legal Education (Kenya School of Law Regulations) 2009**
>
> **All candidates' attention is drawn to council resolution dated 18th November 2011 and the amendment to Regulation 9(5) of the Council of Legal Education (Kenya School of Law Regulations) 2009, to the effect that:**
>
> **"In respect of the Advocates Training Programme a candidate shall be allowed a maximum of five years within which to complete the course of study"**
>
> **The effect of the amended regulations is THAT:-**
>
> **1) All candidates whether or not they had taken the Bar Examination as at 18th November 2011 were allowed five (5) years within which to qualify from the programme beginning 18th November 2011.**
>
> **2) The above implies that the five (5) year rule commences as at the November examination series of the year in which the candidate is registered for the Bar Examinations.**
>
> **Clarifications may be sought from the examination unit, Council of Legal Education Offices, Karen Office Park, Accacia Block 2nd Floor.**

38. I find that the above notice simply restated what is already provided for in the impugned regulations and did not amount to any adverse action being taken against any student. The petitioners have not demonstrated that they sought clarification or redress following the publication of the said notice and have further not highlighted how their right under the Fair Administrative Actions Act was infringed so as to justify the claim under Article 47.

39. In conclusion, I find that the petitioners have failed to prove that the impugned regulation is unconstitutional nor have they proved the alleged contravention of their constitutional rights.

40. Consequently, I find that the instant petition is not merited and decline to grant the reliefs sought. Accordingly, I dismiss it with no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 21st day of November 2018.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Mingo for the petitioners

Mr. Oduor for the respondents

Court Assistant – Kombo