REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 492 OF 2016

IN THE MATTER OF ARTICLE 23, 25, 27, 43, 50, AND 165 OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF THE LEGAL EDUCATION ACT NO. 27 OF 2012

AND

IN THE MATTER OF THE KENYA SCHOOL OF LAW ACT 2012

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS

BETWEEN

JOYCE W. GICHOHI……...APPLICANT

VERSUS

COUNCIL OF LEGAL EDUCATION ……..RESPONDENT

KENYA SCHOOL OF LAW……..1ST INTERESTED PARTY

LAW SOCIETY OF KENYA…….....2ND INTERESTED PARTY

JUDGMENT

1. On 2nd November 2016 this court granted the exparte applicant leave to commence Judicial Review proceedings pursuant to the Chamber Summons dated 11th October 2016.

2. Vide a notice of motion dated 3rd November 2016, the exparte applicant Joyce W. Gichohi seeks from this court Judicial Review Orders of:

> a) Mandamus directing the respondent Council of Legal Education, its agents, employees and servants to approve, sign off and finalize the application made by the applicants as a foreign student applying to take the Advocates Training Programme(ATP)at the institution of the 1st interested party – Kenya School of Law with a view of being registered as a member of the 2nd interested party the Law Society of Kenya.
>
> b) Certiorari to remove and bring to this Honourable court for purpose of quashing the decision of the respondent to reject the application set out by the applicant.

3. As required under Order 53 of the Civil Procedure Rules, the Notice of Motion which was filed within the stipulated time on 2nd November 2016 was supported by the statutory statement and verifying affidavit sworn by the exparte applicant Joyce W. Gichohi on 11th October 2016 and annextures, all accompanying the chamber summons for leave to apply.

4. The exparte applicant's case as stipulated in the facts relied on in the statutory statement and the depositions in the verifying affidavit is that the applicant Joyce W. Gichohi is a 2012 Graduate of the Bachelor of Laws from the University of South Africa (UNISA) by way of distance learning and has been rejected by the Council of Legal Education as an applicant to study the Advocates Training programme (ATP) as a foreign student.

5. It is averred that the applicant studied and completed her KCSE in 1954 and passed with a mean grade of B- and fulfilled the minimum university entry requirements for the Bachelors of Laws at University level.

6. That she was admitted to the University of South Africa in 2003 and successfully completed the training and graduated in 2012 after doing all the required courses as shown by her transcripts.

7. That University of South Africa is duly accredited to the South Africa Council for Higher Education, which is the South African qualification Authority and the South Africa Department of Higher Education and has more than 350,000 students worldwide practicing e-learning.

8. That having so qualified from the University of South Africa, the applicant sought for admission to the Kenya School of Law on 15th September 2016 and paid shs 10,000 application fees but to her shock and dismay, the respondent by letter of 29th September 2016 rejected her application stating that it does not recognize nor approve law degrees obtained through distance learning for purpose of the ATP.

9. Further, that the distance learning programme of the University has not been submitted to the Council for Legal Education to ascertain whether it embodies the quality safeguards prescribed by law. The respondent therefore regrettably declined to recognize and approve the foreign application.

10. That upon receipt of the above response, the applicant searched from the Law Society of Kenya website and University of South Africa website and discovered the names of the following students who did an e-learning through University of South Africa and were admitted to the school of Law: Wanyoike Hannah Ngugi, Mulochi Edwin and several others.

11. In the premise, the applicant believed that the decision of the 1st respondent Council of Legal Education to reject her application is clearly contrary to the express provisions of the Kenya School of Law Act, 2012 and he Legal Education Act hence the decision is an abuse of power and malafides.

12. That she is being denied an opportunity to study and qualify to practice law which decision of the respondent is oppressive, vexatious and illegal.

13. The applicant annexed copies of her KCSE certificate, University of South Africa degree of 8th October 2012, transcripts, accreditation details of University of South Africa, receipt for payment of shs 10,000 to the Council of Legal Education and the letter of 29th September 2016 communicating the decision rejecting the application for recognition and approval of the LLB degree University of South Africa for purposes of ATP at the Kenya School of Law.

14. According to the applicant, the letter of rejection offends Article 43(1) of the Constitution on the right to education and that having previously admitted graduates from the same institution who went through the same mode of learning as her, it was prejudicial and bad faith on the part of the respondent to reject her application hence the court should intervene and stop the oppressive, vexatious and illegal rejection.

15. The respondent opposed the applicant's notice of motion and swore a replying affidavit through Professor W. Kulundu Bitonye, EBS the Secretary to the respondent on 8th November 2016, who acknowledges the decision taken by the respondent after learning, on the receipt of the applicant's application that she obtained her degree through distance learning.

16. That jurisdiction of the respondent to certify foreign qualifications before admission for Advocates Training programme flow from Section 8(1) (c) and (e) and (f) of the Legal Education Act, 2012, 2nd Schedule to the Kenya School of Law Act, 2013 Section 13 of the Advocates Act (Cap 16) and Legal Education (Accreditation and Quality Assurance) Regulations, 2016.

17. That Quality Assurance is critical to avoid applicants being barred from sitting the Bar Examinations.

18. That the applicant therefore receives applications from graduates of foreign Universities and measures the applications against the standards set in the law for compliance, then makes a suitable decision.

19. That the applicant's application was received and subjected to the same threshold of suitability.

20. That the respondent exercised its discretion measuring to its standards that are necessary to uphold the standards, under the Legal Education Act, 2012.

21. That it is in the public interest to ensure that those persons joining the Bar in Kenya have passes and properly qualified to execute the responsibility of an advocate of the High Court of Kenya.

22. That Parliament through various statutes has recognized the respondent's role to approve qualifications on scales and progresses measured *from time to time* in order to understand the dynamism in the progression of legal training but nonetheless holding this progress on the professionally measured standards.

23. That the respondent's role in determining and approving foreign qualifications is an expert enterprise, and therefore the court has no jurisdiction to substitute the respondent's expert opinion for its own.

24. That in declining to approve the exparte applicant's qualifications obtained by long distance learning, the respondent determined the essential training of an LLB degree; the necessity for a

student to have actual physical contract hours with the lecturers, the need for the student to have society of peers in college for seminars and broadening of perspectives to understanding legal issues and solving legal problems, the need for access to full and properly stocked library of the institution; most court training methodologies of instruction including clinical and practical judicial attachment, group discussions among other considerations necessitating actual physical contract between the student and the lecturers and the learning environment.

25. That long distance learning has been determined by the experts that comprise the respondent to fall grossly short of the minimum environment necessary for the proper learning leading to an award of a degree in law for purposes of the standards of the legal profession in Kenya. That it is for the above reason that the respondent periodically inspects physically the position of legal education providers in Kenya and approves for purposes of admission to the Advocates Training programme in Kenya applicants from foreign institution whose physical standards the respondent confirms to be at similar level.

26. That is it upon the students studying abroad to confirm the respondent's position about the Advocates Training Programme and the foreign institution before undertaking training out there and in default, the doctrine of *volenti-non fit injuria* applies.

27. That in recognition of the dynamism and strides in technology and the emergence of long distance learning, the Legal Education (Accreditation and Quality Assurance Regulations 2016) provide for long distance leaning but on a course, and not on the substance of core course (residential programmes) that would lead to an award for purposes of the Advocates Training Programme and that such long distance course must first be accredited/licenced by the respondent.

28. That the exparte applicant's LLB degree was not acquired within the context of the controls hence not compliant.

29. Further, that the exparte applicant can use her LLB degree to join the Bar in South Africa and join the Kenyan Bar under Section 13 of the Advocates Act (Cap 16 of the Laws of Kenya).

30. That the right to Socio-economic development are attained within the legal framework hence, the applicant can only join the Bar in Kenya within the framework of law laid down to regulate the sector which is the acceptable limitation within the tenor of Article 24 of the Constitution.

31. That qualification to the Bar is regulated world over and the insistence of the highest standards is reasonable and justifiable in an open society.

32. On the pleas that some members of the Bar exist from the same University via the same mode of instruction - distance learning, it was contended and deposed that no such members exit or within the knowledge of the 1st respondent and that there is no proof.

33. The respondent denied that its refusal to approve the applicant's LLB degree is malafides or intended to oppress but is regulating the legal education sector and seeking attainment of the objectives of the Legal Education Act, 2012 as stipulated in section 3 of the Act.

34. Further, that the respondent's decisions create a precedent accordingly, the1st respondent cannot bend the Rules to accommodate one party and deny others similar status the same treatment.

35. The respondent concluded, maintaining that it is in the public interest in maintaining highest the standards in legal education training in Kenya and prayed that the court does appreciate that need and gives it necessary deference.

36. The interested parties did not respond to the application

37. Parties canvassed the application orally, through their respective counsels.

38. Mr Omari counsel for the exparte applicant submitted relying on the statutory statement, verifying affidavit and annextures and statutory and constitutional provisions, giving the history of this matter and emphasizing that the applicant is being discriminated upon by the denial to approve her qualifications as she submitted names of other similar graduates through long distance learning as herself, who were admitted to the Advocates Training Programme and that there is no denial of that averment.

39. That the applicant's right to fair administrative action has been violated. That the respondent has not specified what modalities are in place to check on the long distance learning programme and that it is the duty of therespondent to check the programme and not on the student.

40. That in any event the respondent does not have a list of approved foreign universities which are accredited to offer distance learning.

41. That lack of information on what is accredited from "*time to time"* gives room for arbitrary decisions on who can be admitted and who cannot be admitted leading to impropriety and abuse of discretion.

42. That the respondent admits in paragraph 4 the dynamism of legal training and that we are now in a digital era not 50 years ago. That in this digital era, distance learning is a reality and any government entity that does not move with the times must be moved by the court to the globalised world.

43. That albeit the respondent claims to exercise expertise which should not be interfered with by the court, the applicant is before the court for protection from the respondent's impunity.

44. That physical contact can be through digital processes and that physical contact between student and teacher is not one of the vision 2030 aspirations for Kenyans for example, Standard 1 pupils in 2018 will be learning through digital format hence it cannot be said that university students must have physical contact which is not digital.

45. That there was no evidence of which "*experts"* had determined that long distance learning falls short of the minimum environment necessary for proper learning leading to an LLB degree, for purposes of the standards of the legal profession in Kenya.

46. Further, Mr Omari submitted that there is no public notice or charter positioned for the public to know that a student studying abroad should know the accredited universities hence *volenti not fit injuria* does not apply in this case and circumstances.

47. Mr Omari further submitted that Article 35 of the Constitution is relevant because the applicant could not get documents showing accredited mode of learning and that it is well known that the University of South Africa and Cambridge Universities' mode of learning is distance learning.

48. That the respondent has failed to produce evidence of what is the approved mode of learning.

49. On the new 2016 Regulations, it was submitted that the interpretation of *on course and core course* is mischievous and ambiguous as only lawyers who are qualified train in the Advocate Training Programme and that there is no noncore units since there are no electives in the Advocate Training Programme unlike at the university.

50. That there is admission by the respondent that the degree (LLB) as obtained by the applicant is recognized in Kenya hence it is a waste of foreign exchange resources to go to the South African Bar for admission then come to join the Advocates Training Programme at the Kenya School of Law.

51. That the only standards that the 1st respondent can put is on who qualifies as an advocate, pursuant to Section 13(1) of the Advocates Act Cap 16 Laws of Kenya and not create any other standard

extraneous the Act, so long as the person meets the minimum qualifications.

52. According to Mr Omari, there is no known policy on distance learning hence the applicant should be allowed to join the Advocate Training Programme. He urged the court to grant the prayers sought.

53. In response, Mr Bwire counsel for the respondent vehemently opposed the application by the exparte applicant relying on the replying affidavit.

54. Mr Bwire submitted that the judicial review application before the court is fatally defective and incompetent because Judicial Review proceedings are made in the name of the Republic unlike in the present case where the applicant is Joyce W. Gichohi.

55. It was also submitted that courts should not substitute their decisions for the decision of the public authorities. Counsel relied on the case of **Eunice Milkah Maema Vs CLE & Others CA121/2013 and Muamar Nabed Onyango Khan vs CLE CA 18/2014** wherein the Court of Appeal espoused the principle that the court in Judicial Review should not question the merits of the decision of the public body but the manner in which the decision was taken.

56. That the respondent has the statutory mandate to regulate legal education in Kenya and that from time to time it approves foreign qualifications for Advocate Training Programme, measuring those qualifications for Advocate Training programme, measuring those qualifications on standards of this country.

57. That in the authorities cited, the Council declined to approve the qualifications because the mode of instruction was not acceptable to the standards of Kenya as regulated by the Council of Legal Education.

58. That the Legal Education Act regulates Universities in Kenya, not outside Kenya yet students study in any University outside Kenya.

59. That is was upon those students studying outside Kenya to seek the 1st respondent's position on the accreditation and if they do not, then they have themselves to blame.

60. That Article 35(1) of the Constitution calls on parties to seek information but that the applicant herein has not sought that information on the accreditation of University of South Africa e-learning programme and the information refused.

61. That the applicant is seeking out to the court to wade into the merits of the Council's decision yet the court has no jurisdiction to decide on the merits but on the process.

62. That standards regulating Bar Examination are world over. That the bar has in the past denied admission to students. Counsel cited **JR 395/2013 Republic Vs Kenny Sagma & 45 Others** where the students from Busoga University were denied admission and the court upheld that denial of entry into Council of Legal Education. That it is upon students studying abroad to get information before proceeding to study.

63. That Section 13(7) of the Advocates Act gave conditional admission. That in this case, there is no violation of right to Socio–economic Development as that right is limited by statute.

64. That there is no evidence that the applicant has been discriminated upon as there is no evidence of persons who have been admitted with similar degrees and that it is the duty of the person alleging discrimination to prove it and not just allege. That there is no prejudice to the applicants but that it will be prejudicial if the court forced the respondent to open up Advocate Training Programme to distance learning which falls short of the instructions given to the student and that the integrity of the Bar in the Country will be affected.

65. That Regulations 45 and 10 are clear that the foreign programme must be accredited.

66. In brief rejoinder, Mr Omari submitted that the 2016 Regulations came into operation after the applicant had submitted her application for consideration hence those Regulations cannot operate retrogressively.

67. Further that the procedure applied in arriving at the decision, and the documentation on standards have not been availed, and that neither is there any framework hence the decision was arrived at arbitrarily.

68. Mr Omari maintained that there are no minutes to show the process through which the rejection was arrived at, and that the court must be satisfied that the decision was judicious and not arbitrary. That the applicant enjoined the Law Society of Kenya to these proceedings but there was no response on the advocates who are practicing and on qualifications based on online learning.

69. Counsel urged the court to exercise its inherent jurisdiction to call for the list of all students admitted in 2015 to the Kenya School of Law and their qualifications and their mode of instructions.

70. On the cited authorities it was submitted that they are distinguishable in that in **Onyango Khan vs CLE CA 18/2014** the applicant had done a Bachelors degree in BA and Politics, not law whereas in **Milkah Maema Vs CLE & Others and Muamar Nabed CA121/2013** the question was that the applicant had not done the core subjects prescribed by law.

71. On issue of physical contact and residential training, it was submitted that the Rules and Regulations in Section 45 of the CLE Act are clear.

72. On the protection of the integrity of the Bar, it was submitted that integrity does not come by clinging to old archaic practices; and that the dynamism of the legal training can only be protected by this court which must protest innovation and technological development.

73. Further, that Section 13 of the Advocates Act on admission has never changed and that this is an individual and not a group case. Mr Omari urged the court to allow the notice of motion.

Determination

74. I have carefully and anxiously considered the exparte applicant's notice of motion dated 3rd November 2016, the statutory statement, verifying affidavit and annextures as well as the replying affidavit. I have given equal consideration to the respective parties' advocates' able terse oral submissions.

75. The issue for determination can be summarized into:

1. Whether the Judicial Review application herein is competent before the court.

2. Whether the applicant is entitled to the Judicial Review orders sought.

3. What orders should the court make?

4. Who shall bear costs of the application?

76. On the first issue of whether the Judicial Review application is competent, the respondent contends that the Judicial Review proceedings ought to have been commenced in the name of the Republic, unlike in the present proceedings where the exparte applicant is the applicant. The exparte applicant did not respond to that issue as raised.

77. This court's rendition on that issue is that Judicial Review remedies and order as currently placed are predicated on the new constitutional order and not on the historically related prerogative orders which used to be issued in the name of the Republic in all cases and in England, in the name of the crown.

78. In addition, Article 23(3) of the Constitution of Kenya and Article 22 thereof guarantee every person the right to approach the court for Judicial Review remedy.

79. Article 47 (3) of the Constitution guarantees every person a right to fair administrative action.

80. The Fair Administrative Action No. 4 of 2015 which implements Article 47 of the constitution is clear that an administrator need not necessarily be a public body but any person making an administrative decision hence it cannot be true that in the modern dispensation, judicial review is issued against a public body.

81. Furthermore, under Article 159(2)(d)of the Constitution, justice shall be administered without undue regard to procedural technicalities.

82. In the view of this court, the mode of bringing Judicial Review proceedings is merely one of form and not substance. Form does not go to the jurisdiction of the court. The right to fair administrative action being a constitutionally guaranteed right under the Bill of rights cannot be subjected to procedural formal technicalities, and cannot, in my view be sacrificed at the altar of substantive justice.

83. In the old constitutional order, substance could be sacrificed at the altar of form. That has since changed with the enactment of Article 159(2) (d) of the Constitution.

84. Accordingly, I find the objection to the notice of motion on the ground that the proceedings were not instituted in the name of the Republic unmerited and decline to uphold that objection and dismiss it.

85. On the second and most important issue of whether the exparte applicant is entitled to the Judicial Review orders sought, Judicial Review is defined by the **Black's Law Dictionary** to mean ***1. A court's power to review the actions of other branches or levels of government; esp. the court's power to invalidate legislative and executive actions as being unconstitutional 2. The constitutional doctrine providing for this power 3. 3. A court's review of a lower court's or an administrative body's factual or legal findings.***

86. Judicial Review is the power exercised by the court to check on the excesses of executive or public authorities or other bodies or persons exercising judicial or quasi Judicial authority. Judicial Review is predicated on the rule of law and on the need to ensure that public bodies or other bodies act in accordance with the law, in the manner in which they exercise their mandate and make decisions that affect rights or interests of others.

87. In other words, judicial review is an accountability tool used to hold those who exercise public or administrative power or authority accountable for the manner in which they make their decisions.

88. Judicial Review is not an appeal forum for persons who are aggrieved with the merits of the decision maker. It is concerned with the process or manner in which a decision is made and not the merits or otherwise of the ultimate decision.(see **Chief Constable of the North Wales Police V Evans [1982] 3 ALL ER 141 at 154** per, Lord Brightman.

89. According to **Halsbury's Laws of England 4th Edition 2001 Re issue Volume 1(1),** courts have the inherent power to review the exercise by public bodies or officers of statutory powers impinging on legally recognized interests. Powers must be exercised fairly, and must not be exceeded or abused. Moreover, the repository of a statutory power or duty will be required genuinely to discharge its functions when the occasion for their performance has arisen.

90. The superior courts have a somewhat similar inherent jurisdiction over inferior courts and tribunals. If such a body has exceeded or acted without jurisdiction, or has failed to act fairly or in accordance with the rules of natural justice, or if it has committed an error of law in reaching a

decision, its decision may be set aside.

91. Alternatively, a tribunal may be prohibited from violating the conditions precedent to a valid adjudication before it has made a final determination. A tribunal wrongly refusing to carry out its duty to hear and determine a matter within its jurisdiction may be ordered to act according to law.

92. At paragraph 59 page 116 the authors of **Halsbury's Laws of England** cited above further expound on the nature of Judicial Review and make it succinctly clear that Judicial Review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. In the case of **Council of Civil Service Union V Minister for the Civil Service [1985] AC 374 at 408,** it was stated that Judicial Review provides the means by which judicial control of administrative action is exercised."

93. The purpose of Judicial Review remedy is to ensure that the individual is given fair treatment by the authority to which he has been subjected. It is not part of that purpose for the court to substitute the opinion of the judiciary or individual judges for that of the authority constituted by law to decide the matters in question (see **Chief Constable of the North Wales Police Vs Evans** (supra) and unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. That is so whether or not there is a right of appeal against the decision on merits.

94. The duty of the court is to confine itself to the question of legality. Its concern is whether the decision making authority exceeded its powers, committed an error of law, violated the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers.

95. The grounds upon which administrative action is subject to control by Judicial Review have been conveniently classified as threefold; illegality; the decision maker must understand correctly the law that regulates his decision making power and must give effect to it; Irrationality; namely ***Wednesbury unreasonableness***, procedural impropriety-and as to what procedure will satisfy the public law requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision maker (if the decision is not that of an administrative tribunal or body) and the particular circumstances in which the decision came to be made. Even where facts are jurisdictional, the court's investigation of them is a supervisory character and not by way of appeal.

96. The scope of Judicial Review was exemplifies in the **Kenya National Examinations Council(KNEC) vs Republic Exparte Geoffrey Gathenji Njoroge & Others CA 266/96 [1997] e KLR** where the Court of Appeal stated:

> ***" The order of mandamus is of a most extensive remedial nature, and is, in form of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right: and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.***
>
> ***The order must command no more than the party whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way…..These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body on whom the***

duty is imposed falls and refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what was already been done……only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.

Prohibition looks at the future so that if the tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash the decision which has already been made; it can only prevent the making of a contemplated decision…..prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of jurisdiction but also for a departure from the rules of natural justice. It does not however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings……

97. Applying the above established principles of law to the present case, the exparte applicant laments that having met the minimum KCSE academic qualifications to study law, and that having studied an LLB distance leaving programme, qualifying and graduating at the University of South Africa in 2012, her LLB degree of the University of South Africa for the purposes of Advocates Training Programme at the Kenya School of Law ought to be recognized, so as to enable her admitted to the 1st interested party Kenya School of Law and qualify as an advocate.

98. On the other hand, the respondent contends that it ***"neither recognizes nor approves law degrees obtained through distance learning for purposes of Advocates Training Programme***."

99. Further, that the distance learning programme of the university has not been submitted to the Council for evaluation to ascertain ***"whether it embodies the quality safeguards prescribed by law***" and the respondent therefore, by its letter/decision of 29th September 2016 Ref: CE/RA/04 VOL VII/(04)addressed to the exparte applicant declined to recognize and approve the foreign online qualification of LLB University of South Africa (UNISA).

100. Section 13(1) of the Advocates Act Chapter 16 Laws of Kenya stipulates that (1) A person shall be duly qualified if:-

a) Having passed the relevant examinations of any recognized University of Kenya he holds, or has become eligible for the enforcement of, a degree in law of that university; or

b) Having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds or has become eligible for the conferment of, a degree in law in the grant of that university, university college or institution which the council may in each particular case approve.

101. The above provisions are a kin to the second schedule to the Kenya School of Law Act, 2013 which stipulate:

a) Admission requirements into the Advocates Training Programme

(1) A person shall be admitted to the school if:-

a) Having passed the relevant examination of any recognized university in Kenya, or any university, university college or any other institution prescribed by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws(LLB) degree of that university college or institution, or

b) Having passed relevant examination of a university, university college or other institutions prescribed by the Council of Legal Education, holds or holds or has become eligible for the conferment of the Bachelor of Laws degree(LLB) in the grant of that university, university college or other institution.

102. The role of the respondent in the Advocates Training programme is as stipulated in Section 8(1) of the Legal Education Act, 2012 which includes:

a. regulation of legal education and training in Kenya offered by Legal Education providers;

b. supervising Legal Education providers;

c. …

d. …

e. recognition and approval of qualifications obtained outside Kenya for purposes of admission to the Roll;

f. administer such professional examinations as may be prescribed under Section 13 of the Advocates Act.

103. From the above provisions of the law, it is clear that the respondent is mandated by statute to recognize and approve Legal Education qualifications obtained abroad for individuals seeking admission to the Bar Programme (ATP) and or to practice Law in Kenya.

104. The information available from the respondent's official website is that recognition and approval services are offered on ***formal application by anyone seeking to have his/her qualifications <u>equated and approved</u>***.

105. Once the council has evaluated the qualification, it issues a recommendation on how the particular qualification compares with similar qualifications or set of qualifications in the Kenyan Legal Education system, labour market or the legal profession.

106. The form, **CLE/EQ/001–APPLICATION FOR RECOGNITION AND APPROVAL OF FOREIGN QUALIFICATIONS** is also available on the respondent's website and has the following details.

Part A: Applicant's details

Name …

Date of birth…..

Postal address…..

Mobile No……..

Email……..

Type of programme; certificate ( ) Diploma ( ) undergraduate

( ) post graduate ( )

B: Details of course to be <u>recognized/equated</u>

Course name : Institution completed yes/no

Unit code	Unit title	Year completed	CLE Equivalent	For official use only				

**The application may be delayed if the following attachments are missing

a) Original and certified copies of the academic qualifications.

b) Original and certified copies of transcript.

c) Evidence of the institutions accreditation status certified by the embassy where the institution is located.

d) A letter of recommendation of the applicant from the institution granting the academic award.

e) **<u>A copy of the curriculum being equated</u>**.

f) Payment of requisite fees"

107. Section 5(1) (g) of the Universities Act of 2012, the University Regulations, 2014 and the University Standards and Guidelines set by the commission for Higher Education (CHE) from time to time sets out the mandate of the Commission as **<u>recognition and Equation of Degrees, post - graduate Diplomas and Post graduate certificates conferred or awarded by Foreign Universities and Institutions.</u>**

108. For recognition of Bachelors Degree qualifications, the holder of the award must have attained:

- KCSE mean grade C+ and above or its equivalent or

- A diploma from an accredited and recognized Tertiary Institution with a minimum of a credit or,

- KCSE mean grade C (plain) or equivalent with a post secondary certificate and Diploma from a recognized institution or,

- KCE, EACE, 'O" level Division II or equivalent, plus a post Secondary certificate and a Diploma from a recognized institution or KACE 'A' level with 2 principal passes and a subsidiary or

- Pre University course as a qualification for university entrance.

Equation of qualifications is based on:

- Duration of study and credit hours for a given qualifications;

- Previous qualifications before enrolling for the given qualification;

- Content and duration of study (Academic transcript must be presented for this.

- In case of professional programme, registration to practice in the country of origin.

109. One must also pay a fee to the Commission for services rendered for recognition and equation of degrees and other academic awards conferred or awarded by foreign universities. It is therefore apparent that the respondent, just as the Commission of Higher Education, is given a statutory mandate of recognition and approval or equation of foreign qualifications and the criteria for such recognition and approval is set out in **CLE/EQ/001: FORM**.

110. From the criteria set out in the said Form, there is no indication as to the mode of instruction of the course at the foreign University. And the respondent in its decision of 29th September 2017 rejecting the applicant's application for recognition and approval of the LLB distance learning degree, from UNISA, did not attempt to quote or cite any provision of the Law or Regulation or even Policy Guideline whether from the respondent or Commission for Higher Education that bars one from pursuing an online or distance learning degree and or warning that such degree whether obtained from a university recognized in Kenya by CHE shall not be recognized/equated or approved by the Coincil-respondent herein.

111. The respondent has not claimed the university of South Africa is not a recognized university in Kenya to offer LLB degree qualifications. It only contends that the applicant's LLB degree was not acquired within the context of the controls pursuant to Legal Education(Accreditation and Quality Assurance) Regulations, 2016 and the quality standards set by the respondent, as stipulated in paragraph 16 of the replying affidavit sworn by Professor Kulundu Bitonye namely; *the necessity for a student to have actual physical contact hours with the lecturers; the need for the student to have society of peers in college for seminars and broadening of perspectives to understanding legal issues and solving legal problems; the need for access to full and properly stocked library of the institution; moot court training; methodologies of instruction including clinical and practical judicial attachment; group discussions; among other considerations necessitating actual physical contact between the student and the lecturers and the learning environment."*

112. Nonetheless, the respondent never produced before the court any instrument or document outlining or setting out the specific standards being the essential training of an LLB degree, and which the distance learning programme is not compatible with.

113. This court does acknowledge that online or distance learning has evolved into the dynamic and technology driven world of online education, allowing students to learn while in different locations to the course provider. As to the merits and demerits of online study is beyond the scope of these Judicial Review proceedings. However, for the respondent to determine that it does not recognize and approve online LLB degrees, it must have a legal basis. The idea of recognition and approval of qualifications on scales and progress measured from time to time is not any specific measurement scale capable of being understood by any person especially where even the 1st respondent recognizes the dynamism in the progression of legal training in Kenya.

114. Those professionally measured standards must be displayed to the court to appreciate.

115. In arriving at the decision to reject the applicant's application, it is expected that the respondent deliberated upon and based on the standards or criteria set under the relevant statute or regulation, they found the applicant's online degree wanting. However, as I have stated above, no such standards or criteria have been displayed before this court. There is also no evidence that the respondent ever undertook any evaluation or equation of the course undertaken by the applicant with the so called standards.

116. In the absence of any such set criteria or standard for equating of the applicant's qualifications from UNISA, the 1st respondent's decision could not have been objective. It was an arbitrary decision which resulted in unfairness. It was an unreasonable decision. In the USA case of **Dixon vs Alabama**

State Board of Education, 294 F 2(d) at 157, the court stated:

> ***" The precise nature of the private interest involved in this case is the right to remain at a public university or institution of higher learning in which the plaintiffs were students in good standing. It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society***".

117. The right to education in Kenya is expressly guaranteed by Article 43 (1) (f) of the Constitution. Albeit the respondent claimed that the right is limited by the quality Assurance Standards of the respondents pursuant to Article 24 of the Constitution, this court has not been shown those standards or criteria applicable enacted into any legislation or regulation approved by Parliament as at 29th September 2016 when the decision to reject the applicant's application for recognition and approval of her online LLB Degree was communicated to her.

118. Furthermore, Article 24 of the Constitution is clear that:

> 1. 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 any 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.
>
> 2. …….
>
> 3. The state or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied .

119. In the instant case, with regard to the right to education under Article 43(1) (f) of the Constitution, the respondent submitted that the right was not absolute and that it was therefore subject to the limitations under Article 24 of the Constitution, which limitations are the conditionalities on standards set by the 1st respondent with regard to recognition and approval of distant learning degrees. However, I reiterate that this court has not been shown any law limiting the right to education and neither was it shown any physical instrument, whether a statute or Rule, regulation or guideline as at 29th September 2016 when the rejection was made and neither were the set standards for purposes of Quality Assurance availed to this court for examination.

120. This court does acknowledge that the respondent is mandated by statute to regulate legal education and training in Kenya which is a specialized profession, and to make regulations in respect of the requirements for the admission of persons seeking to enroll in the Advocates Training programme and other Legal Education Programmes.

121. On the other hand, the Kenya School of Law who are parties hereto but who did not respond to this application are mandated to provide Legal Education and Training in Kenya, and admission to that School is regulated by regulations.

122. Albeit the respondent claims that the outline distance learning programme mode of instruction does not meet the quality standards set by the respondent for admission to the Advocates Training Programme and that the respondent's experts have so established, what this court was not shown was any scientific research report showing how such an averment was arrived at and what variables or assumptions or hypotheses were tested to determine the inadequacy of distance learning mode of instruction.

123. The burden of proof in all cases lies on he who alleges. In this case, it is the 1st respondent who claims to have experts who have allegedly determined the inadequacy of the distance learning mode of instruction. It was therefore upon them to avail to the applicant and the court that expert report showing the results of their investigations.

124. In the absence of evidence of how such expertise averment was arrived at, the respondent's averments remains a mere presumption or assumption which has not been tested. Therefore, in my humble view, the respondent exercised its discretion in rejecting the applicant's application for recognition and approval of the LLB degree from University of South Africa obtained through distance learning, by the measuring the discretion to standards which are not only non-existent but are also unknown in any legal or regulatory regime.

125. The respondent has not claimed that the applicant did not attain the minimum entry requirements for an LLB degree qualification. It has also not claimed that the applicant did not undertake the core course units required to qualify for LLB degree and therefore for admission to the school of law Advocates Training Programme. Neither has the respondent stated that it has or does monitor and measure progress of the student's learning while they are still in their respective universities, wherever they may be. Therefore to find the averment that long distance learning has shortcomings not based on untested assumptions is in my humble view, irrational as no reasonable person would reach such a decision.

126. In addition, albeit the respondent is or may be involved in the physical inspection of the position of Legal Education Service provides in Kenya, there is no denial that it admits foreign students who study outside Kenya and there is no averment that before it does so, it physically inspects the position of those foreign Universities to establish how they instruct their LLB students, to confirm that those foreign standards are at similar levels with Kenyan institutions offering Legal Education.

127. In addition, albeit the respondent approves foreign LLB degree qualifications on thresholds established from time to time, this court was not told what some of those periodic thresholds are.

128. The court was also not told of what controls were violated by the applicant in acquisition of her LLB degree as there is no caution or warning material supplied to members of the public by the respondent whether by way of gazetted guidelines or regulations to the effect that the council does not recognize or approve long distance learning mode of instruction for purposes of admission into the Advocate Training programme.

129. The applicant also provided names of students graduates of the same online programme who were admitted into the Advocates Training Programme and who are now practicing advocates. In response, the respondent simply denied that it admitted any such students. The respondent did not provide any roll of admitted students/graduates and their respective pre qualifications and or mode of instruction.

130. Section 112 of the Evidence Act Cap 80 Laws of Kenya Act is clear that when any fact is especially within the knowledge of any party to those proceedings, the burden of proofing or disproving that fact is upon him. It is the Kenya School of Law that admits students who have been cleared by the Council of Legal Education, into the Advocates Training Programme; while Law Society of Kenya is the Premier Bar Association that regulates the practice of advocates who are qualified as such and admitted to the Bar. The two bodies did not file any response to this case, denying the averments by the applicant which depositions therefore remain uncontroverted.

131. The applicant having supplied names of those persons she honestly believes had similar qualifications s as hers and went through similar mode of instruction as herself, the burden of disproving those depositions lay on the respondents and interested party which they failed to discharge. Accordingly, this court, pursuant to the provisions of Section 119 of the Evidence Act may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

132. In this case, the respondents do not disown the University of South Africa as a university recognized in Kenya. Neither do they dispute the core courses offered by University of South Africa in its LLB programme as per the transcripts supplied by the applicant. What they dispute is the mode of instructions of the students. Nonetheless, they have failed to demonstrate how that mode of instruction fails to meet the nonexistent local threshold or standards. Accordingly, this court is left with no option but to presume that the likely facts are that the online learning mode of instruction is not exempted from being recognized and approved by the respondent especially where there is no evidence that the respondent ever subjected the applicant's qualification through the process of equation and was found to be inadequate for purposes of and LLB qualifications.

133. I would therefore agree with the exparte applicant that she was unfairly and unreasonably treated by the respondent, who did not even subject her qualifications to an equation, or even subject her to an oral or written interview to determine whether her online training was effective or equipped her with the necessary capacity to join the Advocates Training programme.

134. Further, it was upon the respondent to demonstrate that it had received previous applications based on the same qualifications and rejected them on the basis of not meeting the threshold and or set standards.

135. In the absence of such, this court presumes that the respondent did accommodate the named graduates and denied the applicant herein similar treatment which is contrary to the provisions of Article 27 of the Constitution on non discrimination on any ground. This is so because, if there were any bars or standards or thresholds for admission to the Advocates Training Programme, as far as students from foreign universities with online acquired degrees are concerned, nothing prevented the respondent from overtly publishing those standards on its website or even gazetting them or placing them in the regulations or ensuring that they are enacted into legislation for all to see.

136. Although the respondent contends that the applicant should have sought for that information on the standards from the1st respondent by dint of Article 35 of the Constitution, as she has an unimpeded right to access information held by the state, nonetheless, the respondent has failed to demonstrate before this court that it had any such important information regarding the online learning mode of instruction hence it would not have served any useful purpose to seek to access information which was nonexistent in the first place.

137. Further, Article 35 of the Constitution places upon the state the responsibility of the state (read) respondent to publish and publicize any important information such as the one regarding the recognition or approval of online degree programmes for Advocates Training Programme.

138. Since recognition and approval of foreign degree programmes is a process and not an event, it follows that the respondent ought to have carried out an equation of those qualifications of the applicant to determine whether they meet the thresholds of domestic Universities Legal Education Programmes. In the absence of any evidence of such equation process, I am unable to find any basis upon which the respondent arbitrarily decided to reject the applicant's qualification.

139. Studying law, unlike engineering, natural sciences and medicine, does not require regular access to specialized equipment which one would require to fully achieve the objectives of the study. It would therefore be unfair and unjust to refuse to equate for purposes of recognition and approval, the applicant's long distance LLB degree, in the absence of any statutory, regulatory or guideline bar.

140. The duty to act fairly was stated by Lord Denning MR in **Selvava Jan V Race Relations Board [1976] 1 ALL ER 12** as follows, by the English Court of Appeal, deliberating on the matter in which boards and committee were urged to conduct investigations to satisfy the requirement of fairness:-

> ***"What the duty to act fairly requires depends on the nature of the investigation and the consequences which it may have on the person affected by it.***
>
> ***The fundamental rule is that, if a person may be adversely affected by the investigation and report, he should be informed of the substance of the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure."***

141. In the present case, the respondent in making the decision to reject the applicant's application never called upon her to any forum of hearing and even if that were not to be the case, there is no evidence that any investigations into her qualifications were undertaken by the respondent to determine their shortcomings.

142. In **Onyango Oloo V Attorney General [1986-89] EA 456** the Court of Appeal held:

> ***" The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard. There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice. A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at…Denial of the right to be heard renders any decision made null and void ab initio."***

143. The court/A further stated:

> ***" It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matter could have persuaded him to decide in the manner he decided."***
>
> ***In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officer, the conclusions of which are sent to the decision making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which he rules apply depends on the particular nature of the proceedings***.[emphasis added].
>
> ***It is not to be implied that the rules of natural justice are excluded unless parliament expressly so provides and that involves following the rules of natural justice to the degree indicated….courts are not to abdicate jurisdiction merely because the proceedings are of an internal disciplinary character. It is a loan, which the courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner which is fair to both sides, and is seen to be fair."***

144. Thus, in the absence of any statutory regulatory or even guideline bar to recognition and approval of the applicant's qualifications, I find that it was unfair for the respondent to mechanically reject the

applicant's application as if it was taking any form of judicial notice of the matter since there was no investigation carried out to determine the shortcomings of that LLB online qualification.

145. In **Dry Associates Ltd V Capital Markets Authority & Another [2012] e KLR** Majanja J stated and I agree that the element of procedural fairness in Article 47 of the Constitution must be balanced against reasonableness, expediency and efficiency in decision making process.

146. Furthermore, the wordings in Section 13 of the Advocates Act and Section 16 and Schedule 2 of the Kenya School of Law Act on the admission requirement to the Advocates Training programme(ATP), are clear that the applicant must have an LLB degree, and that:

(1) A person shall be admitted to the school if:-

- Having passed the relevant examination of any recognized University in Kenya holds, or has become eligible for the conferment of the Bachelors of Law Degree (LLB) of that university; or
- Having passed the relevant examinations of University college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelors of Law Degree(LLB) in the grant of the University, University College or other institution:
- Attained a minimum entry requirement for admission to a University in Kenya; and
- Obtained a minimum grade B (plain) in English or Kiswahili and mean grade C(plus) in the KCSE or its equivalent (C) A Bachelor of Laws (LLB) from a recognized university and attained a minimum grade C+ in English and a minimum aggregate grade C(plain) in the KCSE, holds a higher qualifications eg A levels, a relevant diploma, other undergraduate degree of has attained a higher degree in law after the undergraduate in the Bachelor of Laws programme.

147. This court would indeed be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formatted by professional men possessing technical expertise and rich experience of actual day today working of education and departments controlling them, so long as the body entrusted with the task of framing the rules and regulations acts within the scope of the authority conferred on it in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute; in which event, the court would not be concerned with the wisdom or efficaciousness of such rules or regulations…..(See **Maharashtra State Board vs Kumarmarsheth & Others [1985] CLR 1083.**

148. In the instant case, regrettably, and unlike in the case of the **Kenya National Examinations Council vs Republic, exparte Kemunto Regina Ouru CA 127/09**, there are no rules or regulations governing the mode of instruction of the LLB qualifications which the Council has shown to be adequate and fair and which this court would in the circumstances examine to establish whether they had been applied for many years or to other intending students of the Kenya School of law.

149. Indeed, the decision to admit or not to admit students to the Advocate Training programme is conferred on the Council of Legal Education and Kenya School of Law. That decision is discretionary and is guided by the relevant statutory provisions and regulations which I have cited in this judgment extensively. it follows that this court cannot direct the respondent on the manner of or how to exercise that discretion.

150. Moreso, completion of the necessary core subjects is critical to admission of any student. But in this case there is no question about completion of the core units. The question is the mode or instruction for LLB qualifications training which as I have stated, is not spelt out in any statutory or rule or regulatory provisions as at the time the decision was made to reject the applicant's application on 29thSeptembmer 2016.

151. Therefore, since the statute gives the mandate to the respondents to recognize and approve foreign qualifications and admit students who have qualified to be admitted to the Kenya School of Law; and as there is no contrary view that the applicant is qualified for admission to Kenya School of Law,

there is absolutely no reason why the respondents cannot be compelled to perform the duty of considering the foreign qualifications submitted by the applicant for purposes of determining whether or not to admit her to the Advocate Training Programme at the Kenya School of Law.

152. In the present case, I am satisfied that the decision to reject the applicant's application was irrational and not backed by any statutory or regulatory rule in force at the material time, distinguishing the modes of instruction for the LLB qualification. The respondents were under a duty in these proceedings, to show that they were acting within the law; that they were subjecting the applicant to the same standards that other candidates had been subjected to, in order to keep the court's intervention at bay.

153. This is because it is not within the province of this court to interfere with the respondent's statutory mandate to insist on the highest possible professional standards for those who wish to qualify as advocates.

154. The legal Education Act No. 27 of 2012 Section 47 thereof repealed the **Council of Legal Education Act Cap 16A Laws of Kenya[1995]** which had a first Schedule providing for programme, curriculum and Examinations for the (Advocate Training Programme), not even for the LLB degree program and Sections 2 & 13 of the First Schedule provided for the Training Methodologies which is not the case with the current Act and which the respondent attempted to reproduce in paragraph 16 of its replying affidavit.

155. The 2016 Regulations which the respondent attempted to invoke in these proceedings do not even bar recognition or approval of online learning qualifications.

156. As it clearly emerges from the material before the court that the respondent did not even attempt to equate the applicant's qualifications with the existing standards, and as there are no set standards for consideration for purposes of equation and recognition of the distance learning LLB degree submitted by the respondent, failure to recognize and approve the LLB qualifications submitted by the applicant was, in my humble view, abuse of discretion.

157. However, this court cannot compel the respondent to recognize and approve the foreign qualification. It can only compel the 1st respondent to consider the same and make a decision one way or the other, and in so doing, comply with the provisions of Article 47(2) of the Constitution and the elaborate provisions of the Fair Administrative Action Act No. 4 of 2015.

158. Any reasonable public body like the respondent would only have rejected the application for recognition and approval after carrying out an equation exercise and even subjecting the applicant to suitability test in line with any existing thresholds/standards. This was not done.

159. Consequently, I find that the decision as arrived at by the respondent was outrageous and in defiance of logic or acceptable moral standards that no sensible person applying his mind to the question to be decided would have arrived at it (see **Kevin Mwiti & Others Vs Council of Legal Education & Others JR 377; 395; 295 of 2015.**

160. In deciding on what action an authority should take, it ought to apply the principle of proportionality as was stated in the Indian case of **Borough of Newham V Khatun –zeb and Igbal [2004] EWA Gr 55** that:

> ***" Clearly, a public body may chose to deploy powers it enjoys under statute in so draconian a fashion that the hardship suffered by the affected individuals in consequence will justify the court in condemning the exercise as irrational or perverse…..***
>
> ***At all events it is plain; those oppressive decisions may be held to be repugnant to compulsory public law standards."*** (See Section 7(i) & (ii) of the Fair Administrative Action Act.

161. Section 5(1) of the Fair Administrative Action Act mandates the administrator to consider all views submitted in relation to the matter before it before taking administrative action particularly in cases where the proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public.

162. For all the above reasons, I find that the exparte applicant has satisfied this court that she deserves the Judicial Review orders sought in the substantive notice of motion dated 3rd November 2016.

163. Accordingly, I make the following orders:

1. Mandamus be and is hereby granted compelling the respondent Council of Legal Education to receive and consider the exparte applicant's application for recognition and equation of foreign qualifications for purposes of approval for admission to the Advocates Training Programme offered at the 1st interested party (Kenya School of Law, with a view to qualifying to be registered as a member of the 2nd interested party Law Society of Kenya.

2. An order of certiorari be and is hereby issued to remove and I hereby remove and bring into this court for purposes of quashing and I hereby quash the decision of the respondent made on 29th September 2016 Ref CLE/RA/04/VOLVII/(04) rejecting the exparte applicant's application for recognition and approval of the foreign qualifications of LLB University of South Africa(UNISA).

3. Each party to bear their own costs of these Judicial Review proceedings.

Dated, signed and delivered at Nairobi this 16th day of January 2017.

R.E ABURILI

JUDGE

In the open court as scheduled at 2.30 pm:

N/A for Mr Omari for the exparte applicant

N/A for Mr Bwire for the respondent

N /A for the interested parties

CA: George