

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI CIVIL DIVISION
CIVIL APPEAL NO. E1149 OF 2023

KENYA SCHOOL OF LAW.....
APPELLANT

VERSUS

ALEX GIKANDI MUNENE.....
RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION..... INTERESTED
PARTY

(Being an appeal from the judgement and order delivered on 13th October, 2023, by the Legal Education Appeals Tribunal in LEAA/E017/2023)

JUDGEMENT

- 1.** This appeal emanates from the judgement and order by the Legal Education Tribunal wherein the said tribunal, ordered the appellant, *Kenya School of Law*, to admit the respondent, *Alex Gikandi Munene*, to the Advocate Training Programme.

- 2.** A brief background to the appeal is that the respondent completed his Kenya Certificate of Secondary Education (KCSE) in the year 2012 and obtained a mean grade of C plain, with a C plus (C+) in English and C plain in Kiswahili. The respondent thereafter in the year 2013 enrolled to Mount Kenya University and undertook his Diploma in Law

and in the year 2015, he was awarded a credit 1 Diploma in Law upon completion of his studies.

- 3.**The respondent then applied for and was granted admission to Mount Kenya University for a Bachelor of Laws degree programme and on the 9th of December 2022, the respondent graduated with a Bachelors of Law degree from the said university. The respondent thereafter submitted his application to the appellant for admission into the Advocates Training Programme for the year 2023/2024.
- 4.**His application was however rejected by the appellant on grounds that he had not met the minimum threshold for KCSE grades. The respondent on two occasions appealed the decision by the appellant not to admit him to the Advocates Training Programme and he relied on the second schedule of the Kenya School of Law Act and the Third Schedule of the Legal Education (Accreditation and Quality Assurance) Regulation. The appellant, in these two occasions again rejected his application on similar grounds, being that the respondent had not met the threshold for KCSE grades.
- 5.**This then prompted the respondent to appeal the decision of the appellant to the Legal Education Appeals Tribunal. On 19th May 2023, the said tribunal set aside the appellant's decision to deny the respondent admission to the Advocates Training Programme and instead ordered the appellant to reconsider the respondent's application for admission to the said programme. Following the said decision, the respondent once again submitted his application to the appellant for admission into the Advocate Training Programme.

6. After reviewing the respondent's application again, the appellant in its decision of 3rd August, 2023, notified the respondent that he was not qualified for admission to the programme. Subsequently, the respondent again made an application to the Legal Education Appeals Tribunal to set aside the decision of the appellant as it was in blatant disregard of its judgement delivered on 19th May, 2023.
7. After hearing the application, the Legal Education Appeals Tribunal sided with the respondent and set aside and quashed the decision of the appellant dated 3rd August 2023, and ordered the appellant to admit the respondent to the Advocate Training Programme.
8. Aggrieved by the said decision, the appellant proffered an appeal to this court vide a Memorandum of Appeal dated 30th October, 2023, citing five (5) grounds of appeal, which I hereunder reproduce as follows:
- i. That the honourable Tribunal erred in law and in fact in failing to find that it lacked the jurisdiction to hear and determine the appeal;***
 - ii. That the honourable Tribunal erred in law and in fact by exceeding its mandate;***
 - iii. That the honourable Tribunal erred in law and in fact by addressing itself on matters outside its jurisdiction;***
 - iv. That the honourable Tribunal erred in law and in fact by failing to properly apply the law on eligibility for admission to the Advocates Training Programme; and***
 - v. That the whole judgement and order of the Tribunal is against the law and fatally flawed.***

On the above grounds, the appellant urged this court to dismiss and/or strike out the entire appeal in *LEAT no. E017 of 2023* for being nullity ab initio.

- 9.** The appeal was canvassed by way of written submissions. The appellant's submissions dated 9th May 2024, was filed by its learned counsel Dr. Henry K Mutai; while the respondent's submissions dated 17th May 2024, was filed by its learned counsel Maureen Wangechi Mugo.
- 10.** In its written submissions, the appellant alleged that the question of the criteria for admission into the Advocate Training Programme was settled by the Court of Appeal in Civil Appeal no. E472 of 2021, wherein the said court stated that the interpretation of the Academic qualification must be taken into account regardless of the university.
- 11.** It was the appellant's submission that the Legal Education Appeals Tribunal ought to have found that the most important decision was whether under the Kenya School of Law Act, secondary school qualifications was necessary for applicants seeking to join the Advocate Training Programme, which it did not; and that the tribunal instead found that secondary school education was not necessary for applicants seeking to join the Advocates Training Programme.
- 12.** The appellant submitted that the interpretation of the provisions of the second schedule of the Kenya School of Law Act, 2012, more so the word 'or' as used between paragraphs 1 (a) and (b) ought not to result in an absurdity. It was the appellant's submission, that the decision by the tribunal was wrong in law and fact and the same ought to be dismissed.

- 13.** The respondent on the other hand submitted that the Legal Education Appeals Tribunal, has the jurisdiction to inquire into the appeal, as the same involved the question of qualification of entry to an education programme offered by a legal education provider, being the appellant.
- 14.** The respondent further submitted that the council of legal education and the appellant are institutions established by law for legal education purposes, as such, the two institutions are interdependent and the appellant should therefore not act in isolation of the council of legal education and the provisions of its establishing law.
- 15.** The respondent submitted that he met the admission criteria set out in the applicable law at the time that he secured his admission to undertake his diploma in law and Bachelor of Laws, as such, he had a legitimate expectation that upon obtaining the afore stated qualifications, he would qualify for admission into the Advocates Training Programme, pursuant to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016. The appellant further submitted that whereas academic progression is not provided for in the Kenya School of Law Act, the Legal Education expressly provides for it; and that his diploma in law and degree in law showed progression in legal education as per section 8 (3) of the Legal Education Act.
- 16.** It was the respondent's submission that he enrolled for his bachelor of laws degree programme before 30th January, 2018, as such, he should be admitted into the Advocates Training Programme.

17. I have carefully considered the grounds of the appeal together with the rival written submissions by the parties, and having done so, I find that the two main issues for determination in this appeal are twofold as follows:

- i. Whether the Legal Education Appeals Tribunal had the jurisdiction to determine the appeal; and
- ii. Whether the respondent is qualified to join the Advocate Training Programme offered by the appellant.

18. Turning now to the first issue for determination, I have noted that whereas the appellant in its Memorandum of Appeal had challenged the jurisdiction of the Legal Education Appeals Tribunal to hear and determine the appeal by the respondent, the appellant did not submit on the same in its written submissions; I will however proceed to determine the said issue.

19. As stated herein above, the appellant had alleged that the Legal Education Appeals Tribunal, lacked the requisite jurisdiction to hear and determine the appeal by the respondent. The respondent on the other hand was of the view that the Legal Education Appeals Tribunal has the jurisdiction to inquire into the appeal, as the same involved the question of qualification of entry to an education programme offered by a legal education provider, being the appellant.

20. Section 31 (1) of the Legal Education Act, which provides for the jurisdiction of the Legal Education Appeals Tribunal stipulates as follows: ***“The Tribunal shall, upon an appeal made to it in writing by any party or a reference made to it by the Council or by any***

committee or officer of the Council, on any matter relating to this Act, inquire into the matter and make a finding thereupon, and notify the parties concerned.”

- 21.** From the above it is clear that the Legal Appeals Tribunal has the jurisdiction to hear and determine any matter relating to the Legal Education Act. The preamble to the Legal Education Act stipulates that ***it is an Act of Parliament to provide for the establishment of the Council of Legal Education; the establishment of the Legal Education Appeals Tribunal; the regulation and licensing of legal education providers and for connected purposes.***
- 22. Section 3** of the **Legal Education Act** further provides that the objective of the Act is to promote legal education and the maintenance of the highest possible standards in legal education, as well as to provide a system to guarantee the quality of legal education and legal education providers.
- 23.** Given that the Legal Education Appeals Tribunal has the jurisdiction to hear and determine any matter relating to the Legal Education Act, which includes matters relating to legal education in Kenya, it is evident that the Tribunal has the jurisdiction to hear and determine an appeal from the decision of the Kenya School of Law, given that under **section 4 (1)** of the **Kenya School of Law Act**, the appellant, has been described as ***a public legal education provider responsible for the provision of professional legal training as an agent of the Government.***

24. The court in **Kenya School of Law v Gachoki & 2 others; Council of Legal Education (Interested Party) [2024] KEHC 528 (KLR)**; stated as follows, regarding the Tribunal's jurisdiction to hear appeals from the decision made by the appellant:

“On my part, I do not see any reason to depart from the settled position on jurisdiction. Section 31(1) of Legal Education Act grants the Tribunal jurisdiction to inquire into, “... any matter relating to this Act,” which is an all-encompassing clause that affirms the Tribunal’s jurisdiction to deal with matters concerning legal education arising not only within the Act itself but also from the Kenya School of Law Act under which the KSL is guided by and applies the provisions of the Legal Education Act. This ground of appeal by KSL therefore fails.”

25. Based on the above, I am of the view that the Legal Education Appeals Tribunal has the jurisdiction to hear and determine appeals from the decisions made by the appellant, as it has the jurisdiction to hear appeals on any matters relating to legal education, not only those from the Legal Education Act, but also the Kenya School of Law Act, which establishes the Kenya School of Law, a public legal education provider. This ground of appeal therefore fails.

26. Turning now to the second issue for determination, the appellant had argued that the respondent was not qualified to join its Advocate Training Programme, as he had not met the minimum threshold for KCSE grades required for admission into the said programme. The respondent on the other hand, was of the view that he had met the admission criteria set out in the applicable law at

the time that he secured his admission to undertake his diploma in law and Bachelor of Laws, as such, he had a legitimate expectation that upon obtaining the afore stated qualifications, he would qualify for admission into the Advocates Training Programme, pursuant to the **Legal Education (Accreditation and Quality Assurance) Regulations, 2016.**

27. I have noted that the Tribunal in its decision of 13th October, 2023, relied on the decision in **Javan Kiche Otieno & Another versus Council of Legal Education (2021) eKLR**; wherein the court had stated that the invalidation of the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 would not apply to actions that were already crystallised while the law was still in force.

28. However, the court of appeal in **Kenya School of Law v Akomo & 41 others (Civil Appeal E472 of 2021) [2022] KECA 1132 (KLR)** clarified the issue on the admission criteria to the Advocates Training Programme, as follows:

“We are alive to the fact that the parties relied on the said regulations as they were then in force before the Court of Appeal declared the same to be invalid for want of compliance with the Statutory Instruments Act, 2013 on December 21, 2021 in the case of Javan Kiche Otieno & another v Council of Legal Education [2021] eKLR.

But we hasten to add that such invalidation could not apply retrospectively. On the issue of progressive academic qualifications, it is the appellant’s stand

that the person who hinges on this aspect of qualification must have obtained a diploma in law and not just any other course. Progression ideally is the process of developing or moving gradually towards a more advanced state. The respondents urge that they have been progressing towards studying law and should be seen as having qualified through this medium of qualification. The appellant's statutory mandate under section 8(3) (a) of the Legal Education Act, 2012 is to make regulations in respect of persons wishing to enroll in Legal Education Programmes. The same provides as follows: "Functions of the Council: 1) 2) In carrying out its functions under subsection (2), the Council shall a. c) 48 make Regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes; formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels."

The wording in Part C above is clear as it is, that prior learning and experience in law is what ought to be considered in formulating a system that would see the progression in legal education. We do not think a degree in aeronautics or a diploma in interior design for instance, can be termed as progression towards studying law. Indeed, the only closer aspect contemplated is experience and learning in law culminating in a diploma in law or related course in law. We therefore hold that such degree and diploma are not to be categorized as a progression in law of whatsoever kind and even if they were, the appellant had to consider the primary requirements in the Act

first before reverting to the regulations and which is the requirement of grades in KCSE.

We refuse to be swayed by the respondents' argument that even having obtained a mean grade D Plain, one can still proceed and pursue law and only wave the diploma in other disciplines as a condition for admission to the ATP. It is our considered view that the conjunction 'or' in sections 1(a) and 1 to the second schedule of the KSL Act, should be read disjunctively as requiring both applicants from recognized Universities in Kenya and those from foreign Universities to hold similar qualifications. It was submitted that section 1(a) of the second schedule to the Act, is clear that upon being eligible for an award of a Bachelor of Laws degree from a Kenyan University an applicant would be eligible for admission to the ATP.

Further, sections 1(a) and (b) of the second schedule to the KSL Act, distinguishes applicants who hold a Bachelor of Laws degree from a Kenyan University and those from a foreign University. We are of the view that with the use of semi-colon between 1(a) and (b) of the Act then the conditions follow which to us means that you are eligible, firstly, based on your LLB degree either from a Kenyan University or as in (b) from a foreign university but in all situations, the conditions are same and are enlisted therein which are mandatory to all irrespective of whether you have a degree from within or without Kenya. On whether the decision declining to admit the respondents was illegal and unreasonable, the respondents all recite the provisions of article 47(1) of the Constitution.

We are aware of the fact that the appellant should be shown to have acted beyond what the law required of

it to do as it is the body bestowed with the mandate of ensuring that the legal profession is conducted in a manner that uplifts and upholds the law and standards. We see nothing wrong, illegal, unreasonable, discriminatory or unconstitutional in the conduct of the appellant in the whole process. The respondents were well aware that after completing KCSE, there were cluster points for one pursuing a degree in law and the mandatory subjects. We agree with the proposition in Kenya Revenue Authority v Menginya Salim Murgani Civil Appeal No 108 of 2009, that: "There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed." We, therefore, find that the decision by the appellant was in line with the law and cannot, therefore, be faulted."

29. From the above decision of the court of appeal, it is clear that for any person seeking admission to the Kenya School of Law, for the Advocate Training Programme, they are required to meet the basic requirement of KCSE as provided for under the Kenya School of Law Act in order to be admitted into the Advocate Training Programme issued by the appellant.

30. Applying the reasoning by the Court of Appeal in the aforementioned case to the present circumstances, this court is of the view that while it is evident that the Appellant pursued a Diploma in Law, followed by an LLB Degree from an accredited University, being Mount Kenya

University, pursuant to **Paragraph 1(a) of the Kenya School of Law Act**, the respondent did not attain the minimum KCSE and language grade requirements under **Paragraph 1(b)** of the said Act, in order to make her eligible to join the ATP; as such, the appellant was right in its decision declining to admit the respondent into the said programme.

31. Flowing from the foregoing, and whereas this court sympathises with the unfortunate situation that the respondent finds himself in, I am of the view that the appeal has merit and the same is hereby allowed.

32. *I hereby determine that the decision by the Tribunal compelling the appellant to admit the respondent into its programme is hereby set aside.*

33. *Given the nature of the appeal, I am of the view that each party should bear their own costs.*

34. Thirty (30) days stay of execution to apply.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 2ND OCTOBER, 2025.

**HON. T. W. Ouya
JUDGE**