

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HCCA NO. E588 OF 2022

KENYA SCHOOL OF

LAW.....APPELLANT

VERSUS

JOHN GUTHEKA

KARIUKI.....RESPONDENT

AND

**COUNCIL OF LEGAL EDUCATION..... INTERESTED
PARTY**

***(Being an Appeal from the judgement dated 15th July 2022
delivered in the Legal Education Appeals Tribunal No.
E024 of 2022)***

BETWEEN

JOHN GUTHEKA KARIUKI.....APPLICANT

VERSUS

KENYA SCHOOL OF LAW.....

RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION.....INTERESTED PARTY

JUDGEMENT

A. INTRODUCTION

- 1.** This appeal is filed against the judgement and order of the Legal Education Appeals Tribunal delivered on 15th July 2022 in ***LEAA Appeal No. E024 of 2022***, which allowed the respondents appeal, and quashed the decision contained in the respondents letter dated 2nd March 2022, where the director of kenya school of law, communicated their decision denying the respondent admission to the Advocates Training programme. The tribunal further directed that the respondent be admitted forthwith to the said programme and that each party was to bear their own costs of the said proceedings.
- 2.** The appellant being wholly dissatisfied with the entire judgement and decree of the said tribunal did file their memorandum of Appeal dated 21st July 2022 raising the following grounds of appeal that: -

- i. That the Honorable Tribunal erred in law and in fact in failing to find that it lacked jurisdiction to hear and determine the appeal;***
- ii. That the Honorable Tribunal erred in law and in fact by exceeding its mandate;***
- iii. That the Honorable Tribunal erred in law and in fact by addressing itself on matters outside its jurisdiction.***
- iv. That the Honorable Tribunal erred in law and in fact by failing to properly apply the law on eligibility for admission to the Advocates Training Programme;***
- v. That the whole judgement and order of the Tribunal is against the law and fatally flawed.***

B. Pleadings

3. The respondent herein sat for his Kenya Certificate of secondary Education (KCSE) and obtained a C+ grade in English and Kiswahili, but on average got C mean grade. In 2014 he joined Kenya school of law where he undertook a diploma course in law and successful completed the said course in 2017, after which he applied to join Kenyatta university to study for a law degree. As a precautionary measure, the university Vice chancellor did write to the Council of legal education vide his letter dated 30th August, 2017 seeking clarification, if the respondent and other students who had successfully completed their diploma

cause in law qualified to be admitted to Kenyatta University, law school.

4. In response thereto, the executive director of the said council did confirm that

***“A review of the high school and diploma qualifications for the persons listed below reveal that they all obtained diploma in law qualifications from Kenya school of law with at least a credit pass. They therefore meet the LL. B requirements prescribed in paragraph 5 of the 3rd schedule of the legal education (Accreditation and quality Assurance) Regulations.*”**

5. Pursuant to the aforestated consent the respondent proceeded to undertake his LLB degree at Kenyatta University and successfully completed the same in December 2021. He thereafter applied to join the appellant institution to undertake the Advocates Training programme 2022/2023, but unfortunately, received a rejection letter dated 2nd March 2022, where it was explained that he did not qualify to study LLB studies in 2017, (after the 2014 cutoff date) as he had scored a mean grade of C plain; English C+; Kiswahili C+.
6. He posited that the said decision was completely unfair and irrational as he had been given assurance and had a legitimate expectation that he would be allowed to complete the advocates training programme under **paragraph 1(a)**

of the Schedule 2 of the Kenya School of law Act,2012

considering the fact that he had completed his para-legal diploma studies undertaken at Kenya school of law, which qualified him to undertake his LLB degree programme. He thus urged the tribunal to allow his prayers as a lodged before them.

7. In response, the respondent opposed the said application through their replying affidavit dated 6th May 2022 sworn by one Mr.Fredrick Muhia, the Principal Officer Academic services, who deponed that the respondent was a state corporation established under **Section 3 of the kenya School of law Act, 2012 (hereinafter referred to as the KSL Act,2012)** a successor of the Kenya School of law previously established under the council of legal Education Act 1995 (now repealed) which had the sole mandate to admit qualified persons to the Advocates training programme as exclusively provided under Section 16 of the said Act.
8. The respondent did apply for admission to their esteemed institution, to undertake the Advocates training programme and after evaluation was found to be ineligible for admission under **Section 16 as read together Paragraph 1(a),(b) of the second schedule of the KSL Act, 2012**, on the basis that he was relying on academic progression to be admitted to the said programme, yet the said KSL Act, 2012 did not have a provision to accommodate the same. Their

hands were thus tied by the law and to admit the respondent to the said programme would run contrary to the said provisions, which had been litigated upon and had been settled by the courts of law.

9. The Appellant thus reiterated that the Respondent herein was not qualified for admission to ATP and they were right in declining to admit to the said programme.

C. The Evidence & Judgement at the Legal Education Appeals Tribunal

10. The respondent appeal was heard by way of written submissions and on the question of application of academic progression as a consideration to admission, the tribunal noted that the respondent had relied on the ***Legal Education (Accreditation and Quality Assurance) Regulations, 2016*** that were in force to secure his admission to the undergraduate degree programme and as such should not have been denied admission to the ATP as his action had crystalized prior to the declaration of its invalidity by the Court of Appeal on 21st December 2021 in the decision of **Javan akaiche Otieno & Another v Council of Legal education(2021) Eklr.** The said decision could not be applied retrospectively.
11. The Tribunal also noted that the Appellant herein by virtue of the provisions of the ***Fair Administrative Action Act 2015*** was not empowered to take the decision or undertake the exercise it did of inquiring into minimum undergraduate LLB

degree entry requirements as it was a function of the interested party as a regulator.

- 12.** Further, the Tribunal found that the Respondent herein being a graduate from a recognized university in Kenya was only to be subjected to the **provision of section 1(a) of the KSL Act, 2012** and in so finding was guided by **Maxwell on Interpretation of Statutes** and the citation, **Warburton v Loveland, (1831) 2 Dow & Cl. (H.L.)** at page 489 in which Tindal LJ held; ***“Where the language of an Act is clear and explicit, we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature.”***
- 13.** The Tribunal further adopted the interpretation of the 2nd Schedule to the KSL Act 2012 as espoused in **Republic v Kenya School of Law & Another ex - parte Kithinji Maseka Semo & Another, 2019 eKLR** by Justice Mativo as follows; ***“.....it is clear that the word “or” is ordinarily used to introduce another possibility or alternative, that is either or. Depending on context, it can also be used interchangeably with the word “and”***” and therefore decreed that the decision to deny the Respondent herein admission to the Kenya School of Law was illegal and proceeded to quash the same and directed the Appellant herein do admit the Respondent to the Advocates Training Programme.

D. The Appeal

- 14.** The Appellant being dissatisfied by the said decision filed this Appeal based on the grounds of appeal enumerated in paragraph (2) above and upon directions being taken, filed their submission in support thereof.
- 15.** The appellant submitted that the question of admission criteria into KSL had been conclusively determined by the **Court of Appeal in NRB Civil Appeal No. E472 of 2021 Kenya School of Law v Richard Otene Okomo and 41 others** which determined that the secondary academic qualifications(KCSE) must be taken into account regardless of the applicants university qualifications, which principal was ignored by the learned tribunal. The principal of stare decisis had to apply and therefore the Tribunal's finding that secondary school qualifications was not a necessary consideration, when an applicant seeks to join the ATP, having undergone academic progression, could not hold.
- 16.** Further emphasizing this point, the Appellant averred that the question of the interpretation of the 2nd Schedule of the KSL Act, 2012, specifically the word OR as used between paragraphs 1 (a) and (b) ought not to result in absurdity and to uphold the Learned Tribunal finding would promote discrimination, between two applicants to the ATP having the exact same qualifications, by subjecting them to two different standards and measures, which would result in differential treatment. That without doubt would be illegal in law and had to be discouraged.

17. Finally reliance was placed in the case of **Republic Vs Public Procurement Administrative Review Board; Kenya Ports Authority & 7 others 9 Interested Party); Liason Group (Insurance Brokers) Limited & 3 Others (Exparte)**, where the principal of stare decisis was emphasized and that consequently meant that the tribunal could not overturn, review or otherwise interfere with the decision of the superior court. Their holding therefore was a nullity in law and had to be overturned by this court.
18. The respondent did not file any submissions in opposition to this Appeal.

E. Analysis and Determination

19. This being a first appeal, this court is obliged to reassess, reevaluate and reexamine the evidence and extracts adduced before the trial court and arrive at its own independent conclusion as stipulated in **Section 78 of the Civil Procedure Act** and as expounded in the **Sielle Vs Associated Motor Boat Company Ltd [1968] E.A 123**, bearing in mind the fact that it neither heard nor saw the witnesses as they testified and therefore giving an allowance to that.
20. A first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for rehearing both on the question of fact and law. The judgment of the appellate court must therefore reflect its

conscious application of mind and record the findings supported by reasons, on all issues arising along with the contentions put forth and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the appellate court had discharged the duty expected of it. **See Santosh Hazari Vs Purushottam Tiwari (Deceased) by L.Rs (2001) 3 SCC 179.**

21. The Appellant challenged the mandate/jurisdiction of the learned tribunal to determine the respondents claim and secondly also challenged the said tribunals holding that the respondent was eligible for admission into the Advocates training program.
22. In their submissions filed before this court, the Appellant only dealt on the second ground of Appeal placing heavy reliance in **Nairobi Civil Appeal No E472 of 2021 Kenya School of law Vs Richard Otene Okomo & 41 Others,** which conclusively determined the question relating to interpretation of **Section 1(a) & (b) of the 2nd schedule of the KSL Act, 2012,** which statutory provision outlines the admission requirements into the advocates training programme. Based on the principle of stare decisis, they urged the court to uphold the said finding.

23. On the first issue raised regarding jurisdiction, the Appellant failed to make any submissions touching on the same. It implies concurrence with the learned tribunal findings, and therefore grounds 1 to 3 of the grounds of Appeal are deemed to be abandoned.
24. The core issue in this Appeal concerns the **interpretation of Section 16 of the KSL Act, 2012 as read with part 1(a) & (b) of the 2nd schedule** to the said Act. In **Kenya School of Law v Akomo & 41 others (Civil Appeal E472 of 2021) [2022] KECA 1132 (KLR) (21 October 2022) (Judgment)**, the court of Appeal relying on **Reserve Bank of India v Peerless General Finance and Investment Co Ltd, 1987 SCR (2) 1 the Supreme Court of India** stated that in interpreting Statutes, it was also a requirement that the court looks at both the text and context in order to ascertain the true legislative intent. In the said case of **Reserve Bank (Supra)** it was stated thus:

“Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important... A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its

enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

(39)On the same principle, Ngcobo, J of the Constitutional Court of South Africa stated in [Bato Staff Fishing \(PTY\) Ltd v Minister of Environmental Affairs and Tourism and others](#) [2004] ZACC 15; 2004 (4) SA 490(CC): 2004 (7) BCLR 687 (CC) that:

“The technique of paying attention to context in statutory construction is now required by the [Constitution](#) section 39(2). As pointed above, that provision introduces a mandatory requirement to construe every piece of legislation in a manner that promotes the spirit, purport and objects of the Bill of rights.”

(40) It is our view that there is also the need to give a Statute a holistic reading and interpretation in order to ascertain the true

legislative intent. This was stated by this court in the case of The Engineers Board of Kenya v Jesse Waweru Wahome & others Civil Appeal No 240 of 2013 thus:

“One of the canons of statutory interpretation is a holistic approach... no provision of any legislation should be treated as ‘stand -alone’ An Act of parliament should be read as a whole, the essence being that a proposition in one part of the Act is by implication modified by another proposition elsewhere in the Act.”

25. Further in the said decisions of Otene Richard Akomo & 41 Others (Supra) at paragraph 37 the court of appeal did find that;

“The contention between the two parties is the interpretation of the above provision as to whether given the two scenarios of joining KSL, Whether the first one 1(a) does not require one to have the KESC mandatory requirements of a mean grade C+ (plus) and a grade B (plain) in English or Kiswhili. That the said KCSE requirements only applies to those making applications under 1(b) of the said Section. To us, the interpretation we discern from the above section is that the section should be read as a whole. The text is that paragraph 1(a) and (b) is separated by a semicolon, then there are the two key elements after the colon on 1(b) which means that both 1(a)(b) must meet the conditions precedent in roman I and ii. In essence, the basic requirement is the score in one’s KCSE results

which should correspond to those cited in the act.

.....

(43) we have averted to several authorities that the high court has grappled with the interpretation of the said section. We have no difficulty in interpreting the same as the context is very clear and the wording is that there are conditions which affect both qualifications and this is the KCSE grades which are captured at the end of the paragraph.”

(44)..... we find that the trial courts interpretation that the respondents were eligible for admission on the mere fact that they had completed LLB studies without having regard to their KCSC grades to be erroneous.

26. The interpretation of **Section 16 of the KSL Act as read together with paragraph 1(a), (b) of the 2nd schedule** of the said Act, with regard to whether the basic requirements for KCSE should be considered is thus settled and this court is bound by the same based on the principal of stare decisis. The tribunal therefore erred in finding that respondent application was only subject to **paragraph 1(a) of the KSL Act, 2012** or that the conjunction (OR) can only be read as connoting an election of the route an applicant to the ATP chooses in perusing his/her LLB qualification.

C. Disposition

27. This Appeal therefore has merit and is allowed. The judgment of the **legal Education Appeals Tribunal delivered in Nairobi LEA No E024 of 2022** dated 15th July 2022 is hereby set aside in its entirety and the Appeal lodged by the respondent before the said tribunal challenging the decision of Dr H.K Mutai- Director of Kenya School of Law dated 2nd March 2022 is hereby dismissed .

28. Each party will bear their own costs of the proceedings before the tribunal and before this court.

29. It is so ordered.

Dated, signed, and delivered in open court at **MARSABIT** this **20th** day of **FEBRUARY , 2026.**

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Team this **20th** day of **FEBRUARY, 2026.**

In the presence of: -

N/A.....Appellant

N/A..... Respondent

Mr. Jarso..... Court Assistant

ORIGINAL