REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL APPEAL NO. E282 OF 2022

-between-

MIKE MUTICHILO……...APPELLANT

-versus-

COUNCIL OF LEGAL EDUCATION…….. RESPONDENT

[Being an appeal from the Ruling and Orders of the Legal Education Appeals Tribunal in Nairobi LEAT No. E001 of 2021 delivered on 8th April 2022]

JUDGMENT

Background:

1. The Appellant herein, *Mike Mutichilo*, is a holder of academic awards from the *Southern Federal University, Russia*, [hereinafter referred to as '***the SF University'***] having graduated in 2017 with a Bachelor's degree and subsequently a Master's degree in 2019.

2. The dispute, subject of this appeal, arose when the Appellant applied to the *Kenya School of Law* for admission to the *Advocates Training Programme* (hereinafter referred to as '**the *ATP'***) for the 2020/2021 academic year. A prerequisite for the application was obtaining a clearance letter from *Council of Legal Education,* the Respondent herein. The Respondent declined to grant the clearance. It based its refusal on the premise that the Appellant's degree was obtained in a jurisdiction outside the Commonwealth, and that his *Bachelor in Legal Studies* did not meet the specific requirement of a *Bachelor of Laws (LL.B.)* degree.

3. Aggrieved, the Appellant lodged an appeal at the *Legal Education Appeals Tribunal (*hereinafter referred to as *'**the Tribunal'**)*. In its substantive judgment delivered on 28th July 2021, the Tribunal struck down the Respondent's reliance on the Commonwealth jurisdiction requirement as *ultra vires*. However, it upheld the denial of clearance, finding that the Appellant's qualification in Legal Studies was not equivalent to the mandated LL.B. degree.

4. Following the judgment, *vide* a Notice of motion dated 18th January 2022, the Appellant sought a review before the Tribunal, seeking to introduce new correspondence from the *Commission for University Education* (**CUE**) regarding the translation of his academic qualifications. By a Ruling dated 8th April 2022, the Tribunal dismissed the review application, prompting the Appellant to institute the present appeal before this Court.

The Appeal:

5. Through an Amended Memorandum of Appeal dated 2nd January 2025 the Appellant urged that the Ruling be aside on the following grounds: -

    1. *The Learned Tribunal members erred in law and in fact by narrowly framing the issues before them thereby resulting to the wrong decision.*

    2. *The learned tribunal members erred in law and in fact in framing its own issues and holding that the appellant's qualification did not equate to an LL.B qualifications and therefore not eligible to clearance from the Council of Legal Education and for admission to the Kenya School of Law contrary to the evidence that was so adduced.*

    3. *The learned tribunal members erred in law and in fact in holding that the appellant evidence was incompetent whereas the same was public document where the same was legitimately obtained after the appellant submitted the relevant academic qualifications for equation and recognition to the Commission of University Education.*

4. *The Learned members of the tribunal erred in law and in fact in failing to hold that the error in translating the Appellant qualification that was made by the Commission of University Education was an honest mistake and the same should not be visited on the innocent appellant.*

5. *The learned members of the tribunal erred in fact and in law in holding that the grounds as raised by the appellant herein did not amount to sufficient grounds for review contrary to the evidence that was so produced.*

6. *The learned members of the tribunal erred in both law and facts by ignoring the report that was presented before them from the Commission of University Education and the one from the Head of Bilateral Department Embassy of Russia which was the one outlining the appellant's qualifications.*

7. *The Learned members of the tribunal erred in law and in fact by totally disregarding the submissions and evidence by the appellant to the effect that there was an error in the initial translation of his qualification from Russian language to English and that the said qualifications had been so properly translated and any confusion duly clarified.*

8. *That the learned tribunal members erred in both law and fact when it failed to summon the officer from the Commission of University Education if at all it was in doubt of the letter emanating from the said public office as provided by the provisions of Legal Education Act.*

9. *The Learned tribunal members erred in law and in fact by failing to take into consideration the points in law and facts set out in the appellant's submissions and failing to consider all submissions made by the counsel for the appellant.*

The Submissions:

6. Through written submissions dated 28th April 2025, the Appellant comprehensively submitted on the centrality of jurisdiction, arguing that a Court acting without jurisdiction acts in vain.

7. The Appellant further contended that his LL.B and LL.M degrees were properly awarded by the SF University and that the CUE legitimately recognized the qualifications. The Appellant drew support from *Robert Uri Dabaly Jimma -vs- Kenya School of Law*

& another [2020] eKLR and *Martin Wanderi & 9 Others -vs- The Engineers Registration Board,* Petition No. 19 of 2015, where it was observed that CUE has the exclusive statutory mandate to equate and recognize foreign degrees. The Appellant maintained that the Respondent lacked the authority to reject CUE's equation, and that the Tribunal erred by penalizing him for an honest translation error made by CUE.

The Respondent's case:

8. The Respondent challenged the appeal through the Replying Affidavit of *Prof. Jack Mwimali*, the Secretary/Chief Executive Officer, deposed to on 12th September 2025. It was his case that, as a State Corporation established under the Legal Education Act Cap. 16B, it has a specific statutory mandate under Section 8(e) to recognize and approve law qualifications obtained outside Kenya for the purposes of admission to the Roll of Advocates and the ATP. While acknowledging that CUE has a general mandate under the Universities Act to equate degrees, he deposed that Section 8(4) of the Legal Education Act expressly overrides the general provisions, cementing the Respondent's specific authority in the legal education sector.

9. Further, he asserted that the Appellant's degree was a Bachelor in Legal Studies and not the required Bachelor of Laws (LL.B.) degree. Therefore, the Appellant was rendered inadmissible under Section 1(b) of the Kenya School of Law Act. It was his position that restricting recognition to Commonwealth degrees serves as a legitimate standard-setting measure to ensure candidates have the requisite grounding in common law principles.

The Submissions

10. In its written submissions dated 8th December 2025, the Respondent urged its case around a preliminary issue of jurisdiction. It asserted that Section 38(1) of the Legal Education Act strictly limits appeals from the Tribunal to the High Court to points of law only. It was its case that the Appellant's Memorandum of Appeal fatally offended the

statutory circumscription by framing all nine grounds as *errors in law and in fact*.

11. To emphasize that the appeal is incompetent, the Respondent relied on various decisions among them, *Kenya School of Law -vs- Kiboi & 5 others; Council of Legal Education (Interested Party)* (Civil Appeal E470 of 2022) [2025] KEHC 623 (KLR) and *Bashir Haji Abdullahi -vs- Adan Mohammed Nooru & 3 others* [2014] KECA 707 (KLR). The Respondent also asserted that parties are bound by their pleadings and cannot invite the Court to rewrite their case. To that end, it cited the authority set in the case of *Independent Electoral and Boundaries Commission & Ano. -vs- Stephen Mutinda Mule & 3 others* (2014) eKLR.

12. Further to the foregoing, it was its case that the Appellant's concurrent or sequential pursuit of a review and an appeal against the same substantive decision of 28th July 2021 is legally untenable. It sought support from the case of *Chairman Board of Governors Highway Secondary School -vs- William Mmosi Moi* [2007] KECA 85 (KLR).

Issues for Determination

13. Upon a careful consideration of the pleadings, the record of appeal, and the rival submissions, the following two issues crystallize for determination: -

    i. *Whether the appeal is competent and properly placed before this Court.*

    ii. *Depending on (i) above, whether the Tribunal erred in law in dismissing the Appellant's review application.*

Analysis & Determination:

14. This Court will now consider the above issues.

[a] Whether the appeal is competent and properly <u>placed before this Court:</u>

15. The jurisdiction of this Court to entertain appeals from the Tribunal is anchored in *Section 38(1)* of the Legal Education Act as follows;

> ***38. Appeals to the High Court***
>
> *(1) Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.*

16. As to what pertains matters of law, the decision of the Court of Appeal in ***M'bagine -vs- Nyaga*** *(*Civil Appeal 172 of 2019) [2026] KECA 335 (KLR) is instructive. It was observed;

> *…. For second appeals, this Court has repeatedly stated the limiting principle in Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR and Stanley Maore v Geoffrey Mwenda* [2004] eKLR*: that interference with concurrent factual findings is not warranted unless the conclusions are plainly wrong in law on the recognized exceptions.*
>
> *The same approach is reflected in Karingo v Republic [1982] KLR 213 and M'Riungu v Republic [1983] KLR 455, where the Court emphasised that a second appeal must be confined to points of law, and that a complaint about facts only becomes a point of law if the findings are unsupported by evidence or disclose a misdirection in principle.*
>
> *The Supreme Court in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR restated that an issue may be one of law where there is a misapplication of legal principle or a conclusion not supported by the evidential record.*

17. In ***J N & 5 Others -vs- Board of Management, St. G School Nairobi & Another*** [2017] eKLR is further illustrative. It was observed;

> *….. In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is*

distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.

18. This Court has appraised itself of the grounds in the Memorandum of Appeal. All nine grounds revolve around the complaint that the Tribunal *erred in law and in fact*. Therefore, in order to decipher which of the grounds are matters of law, it is necessary to embark on the ardours task of going through each of the grounds. Grounds 2 and 6 challenge the Tribunal's finding that the Appellant's qualifications did not equate to an LL.B. The matter of law therein is whether, under the principles of statutory interpretation, the specific mandate of the Respondent under Section 8(1)(e) of the Legal Education Act overrides the general mandate of the Commission for University Education (CUE) to equate foreign degrees under the Universities Act. Grounds 3 and 7 allege that the Tribunal disregarded public documents and evidence of translation errors. The legal issue that arises for determination is that of admissibility. Specifically, whether a certificate of equation issued by CUE constitutes a public document within the meaning of the Evidence Act, and if so, whether the Tribunal is legally bound by a presumption of regularity regarding its contents. In the same breath, the grounds call for a reappraisal of the question whether the Tribunal erred in law by requiring primary proof of the Russian curriculum when a statutory body, CUE, had already issued a secondary recognition of that curriculum.

19. Whereas the foregoing grounds pass the threshold as matters of law under section 38 of the Legal Education Act, they however, do not challenge the findings in the Ruling of 8th April 2022. They predominantly challenge the findings of the substantive judgment of the Tribunal of 28th July 2021, which decision is not part of this appeal.

20. In the premises, the only matter of law regarding the Ruling of 8th April 2022, is as brought out in ground 5, namely, whether the Tribunal properly considered the principles for review.

[b] The propriety of the ruling of 8th April 2022:

21. *Section 80* of the *Civil Procedure Act* empowers the High Court to review its decree or orders as follows;

> ***80. Any person who considers himself aggrieved-***
>
> *(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*
>
> *(b) by a decree or order from which no appeal is allowed by this Act,*
>
> *May apply for a review of judgement to the Court, which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*

22. *Order 45 Rule 1* of the *Civil Procedure Rules* sets down the criteria for review applications as follows: -

> ***1. Application for review of decree or order:***
>
> *(1) Any person considering himself aggrieved—*
>
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
>
> *(b) by a decree or order from which no appeal is hereby allowed,*
>
> *and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.*

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

23. Courts have severally dealt with the issue of review. The Supreme Court in Application No. 8 of 2017, ***Parliamentary Service Commission -vs- Martin Nyaga Wambora & others*** [2018] eKLR, quoted with approval the findings of the East Africa Court of Appeal in *Mbogo and Another -vs- Shah* [1968] EA**,** upon establishing the following principles: -

[31] Consequently, drawing from the case law above, particularly Mbogo and Another v Shah, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:

i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.

ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;

iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.

iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.

v. During such review application, in focus is the decision of the Court and

not the merit of the substantive motion subject of the decision under review.

vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:

a) as a result, a wrong decision was arrived at; or
b) it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.

24. The Court of Appeal in Civil Appeal No. 2111 of 1996, ***National Bank of Kenya vs. Ndungu Njau*** observed as follows in respect of reviews applications: -

> *A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.*

25. The import of Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules was considered by the High Court in Miscellaneous Application 317 of 2018, ***Republic -vs- Advocates Disciplinary Tribunal Ex parte Apollo Mboya*** [2019] eKLR. Upon considering comparative jurisprudence, the Court crystallized the principles for consideration in reviewing its own decisions as follows:

i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.

ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.

iii. *An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.*

iv. *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*

v. *A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*

vi. *While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

vii. *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.*

viii. *A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.*

ix. *Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.*

x. *The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.*

26. Having set out the law and the guiding legal principles in review applications, this Court will now consider whether the Tribunal, rightly so, dismissed the application. For clarity, the application was couched in the following terms: -

> 1. *THAT this Honourable tribunal be pleased to review and vary the Judgment delivered on 28th day of July 2021 by this Honourable tribunal to the extent that the decision denying the appellant/applicant herein admission on the basis he does not hold a Bachelor of Laws (LL.B) Degree as taken by the Respondent is affirmed and the finding that the appellant is not entitled to a clearance letter by the Respondent.*

27. The reasons proffered by the Appellant in support of the review application were contained in 18 grounds on the body of the application. However, a keen consideration of the grounds translates to two main grounds being some mistake or error apparent on the face of the record and the discovery of new and important matter or evidence which after due diligence, was not within the knowledge of the Appellant and could not be produced by him at the time when the judgment was made. In support of the grounds the Appellant produced a letter by the Commission for University Education dated 30th September 2020 confirming that the Appellant holds a Bachelor's Degree in Law and a Master's Degree in International Private Law.

28. The Tribunal, as well as this Court, considered the above letter alongside an even dated letter by the CUE confirming that the Appellant holds a Bachelor in Legal Studies and a Masters in Legal studies. From the record, the Appellant initially produced the CUE's letter confirming that the Appellant holds a Bachelor in Legal Studies and a Masters in Legal studies in his application for clearance from the Respondent. It was on the basis and finding that the Appellant did not, instead, possess a Bachelor's degree in Law that he was denied clearance by the

Respondent. However, in the review application, the Appellant produced a letter by CUE bearing similar contents save that it now stated that the Appellant possessed a Bachelor's Degree in Law and a Master's Degree in International Private Law. As stated before, both letters bore the same date, reference and were allegedly signed by the same person.

29. In dismissing the ground discovery of new and important matter or evidence which after due diligence, was not within the knowledge of the Appellant and could not be produced by him at the time when the judgment was made, the Tribunal stated as follows: -

> *14. The Tribunal is least persuaded that the letter in the current motion meets the test of new and important matters set out in the law as it is evident that if the letter currently presented is authentic it must have been in possession of the appellant based on the date when he was lodging this appeal. If it was there, nothing would have prevented him from placing it before the Tribunal then and even presenting it to the respondent. The Tribunal finds that the motion for review Fails to meet the strictures...*

30. This Court agrees with the above reasoning and finding.

31. This Court will now consider the second ground as to whether there was an apparent error on the face of the record. Whereas the Appellant contended that the Respondent acknowledged that his degree amounted to an LLB, he was surprised that the Tribunal found otherwise. Whereas the Appellant's position is incorrect, it is imperative to note the Respondent initially declined the Appellant's application *vide* its letter dated 21st April 2021. The Appellant then lodged an appeal to the Respondent through his letter dated 4th May 2021. In his appeal, the Appellant did not allude to the fact that he had a letter from CUE to the effect that he possessed a Bachelor's Degree in Law and a Master's Degree in International Private Law. The Appellant only relied on case law in seeking the review before the Respondent. Through its letter dated 6th May 2021, the Respondent declined the appeal for review for

reasons of lack of new grounds to found a review. The Appellant instead produced the CUE's letter to the effect that he possessed a Bachelor's Degree in Law and a Master's Degree in International Private Law when he filed the review application before the Tribunal in January 2022.

32. To this Court, there was no error on the face of the record since the subsequent letter from CUE was only introduced much later in January 2022 and in circumstances that did not legally hold. Further, the existence of the twin, but contradictory, letters call for an in-depth investigation into their existence; issues which cannot be within the realm of review applications.

33. From the totality of the foregoing, it comes to the fore that the Tribunal properly considered the review application and accordingly dismissed it. As a result, the instant appeal is not merited.

Disposition:

34. As I come to the end of this ruling, I wish to apologize to the parties for the late delivery of this decision which was to be in February 2026. The delay was occasioned by my engagement at the Judicial Service Commission where I serve as a Commissioner given that the Commission has been running interviews since December 2025 to date. Once again, galore apologies.

35. Consequently, the following orders hereby issue: -

    [a] The appeal is hereby dismissed in its entirety.

    [b] Costs of the appeal are awarded to the Respondent.

It is so ordered.

DELIVERED, DATED and **SIGNED** at **NAIROBI** this **30th** day of **April, 2026.**

A.C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Ombuko, Learned Counsel for the Appellant.

Ms Wahu, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.