



**Nganga v Law Society of Kenya & 2 others (Civil Appeal
371 of 2019) [2025] KECA 1384 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1384 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 371 OF 2019
SG KAIRU, P NYAMWEYA & JW LESSIT, JJA
JULY 25, 2025**

BETWEEN

EUNICE NGANGA APPELLANT

AND

LAW SOCIETY OF KENYA 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

CHIEF REGISTRAR OF THE JUDICIARY 3RD RESPONDENT

(An appeal against the Judgment of the High Court of Kenya at Nairobi (E. C. Mwita J.) delivered on 14th March 2019 in Constitutional Petition Number 235 of 2017)

JUDGMENT

1. The High Court of Kenya at Nairobi (E. C. Mwita J.) delivered a judgment on 14th March 2019 dismissing a petition dated 22nd May 2017 filed in Constitutional Petition No. 235 of 2017 by Eunice Nganga, the Appellant herein, who was one of the petitioners. The said petitioners had challenged the constitutional validity of sections 22 (1)(b), (c) and 23 of the Advocates Act, Section 7 of the Law Society of Kenya Act, and regulations 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004. The learned Judge of the High Court held that the petitioners had failed to demonstrate the constitutional invalidity of the impugned provisions or how they violated any of the rights in the Bill of rights.
2. The Appellant being aggrieved, lodged an appeal, which is the subject of this judgment. By way of background to the appeal, the Appellant's claim in the High Court was that section 22 (1) (b) (c) of the Advocates Act compelled all advocates to become members of the Law Society of Kenya so as to be able to practice law in Kenya, and thereby violated Article 36 of the Constitution which guaranteed freedom of association. Further, section 23 of the Advocates Act and 7(1) of the Law Society of Kenya Act made advocates automatic members of the Law Society of Kenya and the Advocates Benevolent Association



upon admission to the Bar, whether or not they wish to be members and were thus inconsistent with Article 27 (2) of the Constitution which provides for equality under the law. Lastly, that rules 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004 which make continuing professional development courses a prerequisite to getting annual practicing certificates, contravened Article 33(1) of the Constitution which guarantees the right and freedom to seek, receive or impart information or ideas and academic freedom.

3. The Appellant therefore sought the following reliefs in the High Court:

- a. That the court declares Section 22 (1) (b) and (c) of the Advocates Act, Section 23 of the Advocates Act, Section 7 of the Law of Kenya Society Act, and Rules 10 and 11 of the Advocates (Continuing Legal Education) Regulations, 2004 unconstitutional and therefore invalid.
- b. That the court orders the creation of a regulatory body/commission/authority independent of the Law Society of Kenya or any other society for that matter, whose powers and functions shall include certifying advocates, handling all complaints and disciplinary matters, certify various entities to offer continued professional development courses but that the regulatory body should not impose continued personal development points as a prerequisite to renewal of the practicing certificate.
- c. That the court prohibits the regulatory board/commission/authority from requiring advocates to be members of the Law Society of Kenya or any other society for that matter before granting or renewing their practicing certificates.
- d. That the court declares advocates free to join any legal professional society and free not to join any.
- e. That costs of the petition be borne by the Respondents.

1. In response, the Law Society of Kenya, the 1st Respondent herein (hereinafter “The LSK”), averred that the Appellant did not have locus standi, as she was not a member of the Law Society of Kenya nor demonstrated that she was qualified to be admitted to the membership, nor had she indicated that she was acting in public interest. The LSK asserted that lawyers are professionals endowed with public trust for inter alia the purpose of defending the rule of law, which necessitated committal of the members of the bar to a standard of conduct that was higher than that of other professionals. Additionally, it was the norm for any profession to establish for itself exacting standards of entry, operation and advancement, and the LSK is the established Bar association for all practicing advocates in Kenya in accordance with the Law Society of Kenya Act, whose core mandate is to regulate the conduct of its members and ensure continuous professional development with a view to enhancing competence and service delivery to the public.

5. LSK contended that the institutional framework mechanism under the Advocates Act, the LSK Act and the attendant regulations was meant to create conducive environment for the development of professionally competent advocates with clear channels of responsibility, thus engendering transparency and accountability. Further, that associations such as the LSK are nonprofit making organizations which concern themselves with public interest and are a means by which members of a specialized profession can meaningfully realize the right to associate as provided for under Article 36 of the Constitution. In addition, the requirement for continuing legal education assists advocates receive and impart information that is necessary for their professional development. In the 1st Respondent’s view, membership to LSK forms the basis for jurisdiction of the Advocates Complaints Committee and the Disciplinary Tribunal over errant members; that it is proper practice that advocates are regulated



under a unitary Bar association; and that the regulation of other professions is also modelled in a similar fashion.

6. Therefore, contrary to the Appellant's allegations, such associations help to meaningfully realize the aspiration of Article 36 by ensuring that practising advocates became members of a professional society, and the rationale for the establishment of a single body corporate to manage the affairs of advocates is to maintain the standards of the profession, and to this extent there was no violation of Article 27. In any event, membership to the LSK is entirely voluntary and the Appellant was not obliged to join the society. Additionally, the reason why the LSK had been granted the mandate of rolling out continuing professional development programmes for its members was to ensure there were uniform standards for better delivery of services as required by Article 46, which is essential for the realization of other rights such as the right to a fair hearing provided for under Article 50 of the [Constitution](#).
7. On the allegation of infringement of the freedom to seek and impart information, LSK stated that a calendar for the whole year was normally circulated, and members given an opportunity to choose the courses of their choice. The LSK also informed that the rules relied upon by the Appellant were repealed by the Advocates (Continuous Professional Development) Rules, 2014. In conclusion, LSK averred that the impugned provisions of the LSK Act, [Advocates Act](#) and the Advocates (Continuing Legal Education) Regulations fall within the confines of limitations that are properly circumscribed under Article 24 of the [Constitution](#) and therefore constitutional. The said limitations are for greater good of the public and the relevant community of professionals, and are to this extent reasonable and in line with the law.
8. The learned trial Judge, after considering the parties arguments, found that the issue of locus was raised without any basis, since Article 258 of the [Constitution](#) resolved the issue when it allowed every person to institute proceedings contending that the [Constitution](#) is being violated, infringed or threatened, and such proceedings can be instituted on behalf of the person or others. On the main issue as to whether the impugned provisions are unconstitutional, the learned Judge, after setting out the principles that apply in determining constitutionality of a statute, and the purposes of the Advocates and [Law Society of Kenya Acts](#), noted as follows:

“42. The legal profession is a unique one, for it deals with issues that are dissimilar to those of other professions. It would therefore be difficult to argue, as the petitioners do, that advocates can join any other profession and still practice the profession. This is because advocates deal with clients and are accountable to the clients and the court. The obligations of members of the profession, including holding client funds in the Advocate-client accounts regulated by rules contained in the [Advocates Act](#) is unique to the profession. It is, therefore, not clear from the petitioners' point of view, how one who is not a member of the 1st respondent can be subjected to regulation by the professional body responsible for the wellbeing of the profession body of Advocates.”

9. The learned Judge accordingly found that the [Advocates Act](#) is intended to regulate the conduct of the advocates, while the LSK has the responsibility to protect and assist members of the public in Kenya in matters relating to or incidental to the law, and to set, maintain and continuously improve the standards of learning, professional competence and professional conduct for the provision of legal services in Kenya. Therefore, that section 7(1) of the [Law Society of Kenya Act](#) and section 22(1) (b) and (c) and section 23 of the [Advocates Act](#) regulate the legal profession in a manner that may, in a way, be seen as limiting rights and fundamental freedoms of members. However, that rights under Article 36 are not absolute and are capable of limitation in terms of Article 24(1) of the [Constitution](#), so long as the



limitation is reasonable and justifiable in an open and democratic society. In that respect, the impugned sections are meant to weed out those who are not qualified members of the legal profession; which is not inconsistent with the *Constitution*. Doing away with this provision as the petitioners craved, would cause confusion in the legal profession because it will be infiltrated by quacks which would ultimately damage the affairs of the society, including issues of discipline of its members. Lastly, that the law keeps changing so do practice matters and members of LSK must keep themselves abreast with new developments through regular training. Attending programmes initiated and developed by their society for their benefit cannot be deemed unconstitutional, as they are meant to enhance members' knowledge and skills.

10. The Appellant has raised thirteen (13) grounds of appeal against these findings in a Memorandum of Appeal dated 16th July 2019 and lodged on 9th August 2019 in this Court. The appeal mainly challenges the findings by the learned Judge of the High Court on the interrelated issues of the legal import of and justification for the regulation of the legal profession, and the limitation of constitutional rights on this account. We heard the appeal on this Court's virtual platform on 29th July 2024, and learned counsel, Ms. Eunice Nganga appeared in person as the Appellant; learned Senior Counsel Mr. Charles Kanjama appeared together with learned counsel Ms. Violet Obure for the LSK, while learned counsel, Mrs B. Mwasao, appeared for the Attorney General, the 2nd Respondent herein.

There was no appearance for the Chief Registrar of the Judiciary, the 3rd Respondent herein, despite its counsel being duly served with the hearing notice. Learned counsel Ms. Nganga and Mr. Kanjama SC highlighted their submissions dated 20th May 2024 and 26th July 2024 respectively. Ms. Mwasao did not file written submissions and indicated that she would rely on the submissions filed by the LSK.

11. In commencing the determination of this appeal, we are mindful of our duty as the first appellate Court, as reiterated and set out in the decision of *Selle and Another vs Associated Motor Boat Co. Ltd & Others* (1968) EA 123, which is to reconsider the evidence, evaluate it, and draw conclusion of facts and Law, and we will only depart from the finding by the trial Court if they were not based on evidence on record; where the said Court is shown to have acted on the wrong principles of law as was held in *Jabane vs Olenja* (1986) KLR 661, or where its discretion was exercised injudiciously as was held in *Mbogo & Another vs Shah* (1968) EA 93.
12. On the legal import of and justification for regulation of the legal profession, Ms Nganga submitted that while she was not averse to the regulation of advocates, the said regulation is possible without compelling them to belong to an association. She stated that other professions such as doctors, pilots and engineers did not have statutory requirements to belong to an association to be regulated and made reference to the various laws regulating these and provided for voluntary membership not a statutory body. The counsel also listed examples of regulated bars without mandatory membership to any association such as the Bars of Delaware, Colorado, New York, Connecticut, Illinois, Vermont. She asserted that further developments in regulation of the profession were tilting towards involuntary Bar membership, and gave the example of California which split its State Bar regulatory functions from associational functions in 2017, and that California attorneys are now free to join or abstain from joining any bar association but are regulated nevertheless.
13. Counsel challenged the findings by the trial Court that mandatory membership to the LSK is necessary and the consequent limitation of rights is justifiable because the legal profession was unique and offered critical services to the society. Further, that while opponents of mandatory Bar associations invite the courts to determine whether the use of the fees paid is for activities germane to their establishment and purpose as was the case in *Kiplagat vs Law Society of Kenya* [2000] eKLR, her case was hinged on the very notion of personal liberty founded on constitutionally guaranteed freedoms and rights,



and counsel cited various comparative decisions in which the right not to be compelled to join any association was affirmed.

14. According to counsel, there are state agencies and non-state entities whose functions were relevant, similar and complimentary to the LSK and which have gained influence in public interest litigation, legal aid, legal civic education, and law reform. Examples given by counsel included the Commission on Administrative Justice (CAJ), the Kenya National Commission on Human Rights and Equality Commission (KNCHR), the Council of Legal Education (CLE), the Independent Police Oversight Authority (IPOA), Judicial Service Commission (JSC), Competition Authority of Kenya, Kenya Consumer Protection Advisory Committee, the Katiba Institute, ICJ, KHRC, FIDA, Kituo Cha Sheria. Therefore, that there are alternative means of achieving the objectives in section 4 of the [Law Society of Kenya Act](#), and there was no justification for mandatory membership to the Law Society of Kenya or for discrimination between advocates and other professions or within the profession.
15. Consequently, that it is not contested that the mandatory membership to the Law Society of Kenya is a limitation on advocates' freedom of association and right to non-discrimination, and the issue is whether legislation limiting these rights is justifiable under Article 24 (2). Counsel submitted that the trial Judge disregarded the high threshold set in Article 24 (2) of the [Constitution](#) for limiting rights by firstly, failing to find that sections 22 and 23 of the [Advocates Act](#), section 7 of the [Law Society of Kenya Act](#), and Regulations 10 and 11 of the [Advocates \(CPD\) Regulations](#) do not expressly state the intention to limit the right and fundamental freedom to associate and the nature and extent of the limitation, as required by the decision in [SDV Transami Kenya Limited and 19 others vs Attorney General & 2 Others](#) [2016] eKLR. Secondly, and while citing the decision by the South African Constitutional Court in [Moise vs Greater Germiston Transition Local Council](#) (2001) ZACC 21, that it was the duty of the party relying on legislation to bring evidence to support justification of the limitation, counsel submitted that the trial Court disregarded the failure of the LSK to tender empirical evidence to justify the limitation.
16. }Mr. Kanjama SC on his part submitted that the trial Judge made a correct determination by placing reliance on key constitutional principles which govern the constitutionality of statutory provisions, and correctly considered the purpose and language of the [Constitution](#), non-legal factors such as technological advancement, historical , economic , social , cultural and political content, and adopted an holistic approach in explicating the context of Article 259 (1)(d) of the [Constitution](#) of Kenya alongside the impugned provisions of section 22 and 23 of the [Advocates Act](#). He placed reliance on the decisions by the Supreme Court of Kenya in [Judges & Magistrates Vetting Board & 2 others vs Centre for Human Rights & Democracy & 11 others](#) (2014) eKLR, [The Matter of the Kenya National Commission on Human Rights](#), Supreme Court Advisory Opinion Reference No 1 of 2012; [2014] eKLR and [Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others](#) [2014] eKLR; and by this Court in [Speaker of the National Assembly of the Republic of Kenya & another vs Senate of the Republic of Kenya & 12 others](#) [2021] KECA 282 (KLR).
17. Senior Counsel submitted that the regulation by section 22 of the [Advocates Act](#) imposing a mandate for a practicing certificate limited to qualified members of the legal profession, while section 23 of the [Advocates Act](#) serves to establish threshold for those who can join the profession by mandating that membership to the LSK is reserved to those members who are qualified and whose names are on the Roll of Advocates, and seek to uphold integrity and good governance which are divined under Article 10 of the [Constitution](#). Further, that the impugned sections thus contribute to good governance as envisaged under Article 259 (1) (d) of the [Constitution](#) of Kenya by protecting the legal profession from intrusion by quacks and non-qualified members masquerading to offer legal services without a



- practicing certificate, by disregarding the guiding standard of professional practice and ethical conduct which amounts to threatening the rule of law.
18. Additionally, the purpose of sections 22 and 23 of the [Advocates Act](#) is to protect the economic interests of members of the public who are the largest consumers of legal services against non-qualified members practicing law without a valid practicing certificate, in line with Article 46 of the [Constitution](#) of Kenya which provides for consumer protection. Further, the impugned provisions of the [Advocates Act](#) are aimed at safeguarding an accused person's right to choose and be represented by a qualified advocate, and the removal of the said statutory provisions would subvert an accused person's right to a fair hearing, which is against the rule of law and the spirit of Article 259 (1) (d) of the [Constitution](#). Lastly, that the only way to ensure that professional members of the LSK keep themselves abreast with the recent developments in the practice of law was through attending programmes provided under Regulations 10 and 11 of the [Advocates \(Continuing Professional Development\) Regulations 2014](#) aimed at imparting knowledge and acquiring professional skills, and the allegations by the appellant that it was not necessary to compel advocates to undertake continuous development courses will compromise the quality of legal services which was not in line with Article 259 (1)(d) as read with Article 46 of the [Constitution](#).
 19. In conclusion, Mr. Kanjama SC submitted that the limitation of constitutional rights and freedom is allowed under Article 19(3)(c) of the [Constitution](#), provided that the legislation meets the constitutional threshold codified under Article 24 of the [Constitution](#) of Kenya. Thus, the freedom of association which is guaranteed under Article 36 of the [Constitution](#) of Kenya is not absolute, and in any event the [Advocates Act](#) and the [Law Society of Kenya Act](#) are presumed to be in tandem with the [Constitution](#) of Kenya, and consequently, the burden is on the appellant who contends otherwise to prove the contrary and adduce evidence rebutting this principle. However, that the appellant has failed to demonstrate the manner in which the said constitutional rights have been infringed save for making reference to the Articles of the [Constitution](#) which are said to have been allegedly breached, limited, violated and/or threatened to be violated. In particular, that the impugned Section 22(b) of the [Advocates Act](#) requires an advocate to adduce satisfactory evidence of payment of fees to the LSK and the appellant has failed to demonstrate with reasonable precision which rights stand to be infringed through imposing payment of fees. Furthermore, the Appellant is not under any statutory obligation to submit fees to the LSK since she is not a qualified member.
 20. We have considered the submissions made by the appellant and the LSK, and we need at the outset to clarify what the impugned provisions of the [Advocates Act](#), [Law Society Act](#) and the [Advocates \(Continuing Legal Education\) Regulations, 2004](#) state. Section sections 22 and 23 of the [Advocates Act](#) provide for application for, and issue of practicing certificates by the Chief Registrar of the Judiciary, and require that persons who qualify as advocates of the High Court of Kenya and are admitted to the Roll of Advocates pay to the LSK the fee prescribed for a practising certificate and annual subscriptions in order to be issued with a practising certificate, and after the LSK has indicated it has no objection. Further, after issue of a practicing certificate, the advocate becomes a member of, and subject to the laws and rules the LSK and the Advocates Benevolent Association, and shall remain such a member until after expiration of his or her practising certificate or upon his or her name is removed from or struck off the Roll of Advocates. section 7 of the Law Society of Kenya on the other hand provides for the membership of the LSK.
 21. The [Advocates \(Continuing Legal Education\) Regulations of 2004](#) on the other hand have since been repealed, as noted by the trial Court. We also note that despite this development and fact being pointed by the LSK in its replying affidavit and submissions it filed in the trial Court, the appellant never amended its petition to replace the said regulations with the current regulations



on advocates' professional development. The petition therefore still contained the prayer that the *Advocates (Continuing Legal Education) Regulations, 2004* be declared unconstitutional, which was clearly not available as it had been overtaken by events, We are also perplexed that the appellant has gone to great lengths in the instant appeal to submit on Regulation 10 and 11 of the *Advocates (Continuing Professional Development) Regulations 2014*, which provisions were never cited in the subject petition filed in the trial Court, nor was any prayer sought in the said petition with respect to the said regulations. It is in this respect trite that a party is bound by their pleadings (see the decisions in *Gandy vs Caspar Air Charters Ltd* [1956] 23 EACA, 139, *Galaxy Paints Co Ltd vs Falcon Guards Ltd* [2000] 2 EA 385, and *David Sironga Ole Tukai vs Francis Arap Muge & 2 Others* [2014] eKLR) and cannot introduce a new cause of action on appeal. We accordingly decline to enter into any consideration of, or make any finding on the unconstitutionality or other wise of the Regulation 10 and 11 of the *Advocates (Continuing Professional Development) Regulations 2014* as invited by the parties to do, for these reasons.

22. The appellant's outstanding case therefore as we understand it, is that the legal requirement that qualified advocates who are issued with a practicing certificate be members of LSK and to also undertake continuing professional development is unconstitutional for being discriminatory and or infringing on the rights to association and information. Further, that there is no reasonable justification for limitation of these rights; that there is no justification for discrimination between Advocates and other professions or within the profession. As regards discrimination between advocates and other professions, the appellant's arguments were that it is not mandatory for other professions to be members of a regulatory body and it was therefore discriminatory to make it mandatory for advocates. As amongst advocates themselves, the argument by the appellant was that it was discriminatory and contrary to Article 27(2) of the *Constitution* to force them to join the LSK whether or not they wish to be members. The appellant urged that membership of LSK should be voluntary and there is no justification for making it mandatory, and referred to other Bar associations where membership by advocates is voluntary. The LSK on the other hand posits that the appellant has not proved any discrimination or any rights that have been infringed, and in any event, there is a reasonable justification for any limitation of rights.
23. On the allegations that the impugned provisions are discriminatory, the requirements under Article 27 of the *Constitution* are that every person is equal before the law and has the right to equal protection and equal benefit of the law, including the full and equal enjoyment of all rights and fundamental freedoms, equal opportunities to all rights and freedom from discrimination. *Black's Law Dictionary*, Ninth Edition in this respect defines discrimination as "differential treatment; a failure to treat all persons equally when no reasonable distinction between those favoured and those not favoured." Discrimination, can be direct or indirect. Direct discrimination arises from the unfavourable treatment of a person arising from some characteristic possessed by that person, and the protected characteristics include those listed in Article 27 of the *Constitution*, namely race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Indirect discrimination arises where an apparently neutral practice has a disproportionate impact on a protected group.
24. The first question that we accordingly need to answer is whether the impugned provisions of the *Advocates Act* and *Law Society Act* introduce differential treatment as between advocates and other professions, and secondly as between advocates themselves. We find no such differential treatment for two reasons. Firstly, it is notable that the different professions are not similarly situated to require uniformity in treatment, as urged by the appellant. They have dissimilar situations in terms of qualifications, training, practice, standards and duties, which leads them to require different types of regulation. In the circumstances, we cannot adopt an interpretation of equality that requires all



professions to be simply treated alike, and must of necessity interpret equality in the context of the constitutionally permitted differences on account of the legitimate and reasonable tests provided by Article 24 of the Constitution. In other words, it is not every differentiation that amounts to unequal treatment and is discriminatory.

25. Secondly, the appellant did not point out any aspects of the impugned provisions that leads to different treatment of advocates on account of any attribute, or that disproportionately impact on some advocates and not others, and on the contrary, her argument is that the provisions are mandatory and therefore apply uniformly to all advocates. We therefore do not find sections 22 and 23 of the Advocates Act and section 7 of the Law Society of Kenya Act to be discriminatory.
26. Similarly, we note that from a plain reading and interpretation of section 7 of the Law Society Kenya Act, it is not mandatory for advocates to be members of the LSK. The section provides as follows:

- “(1) The membership of the Society shall consist of—
- a. any person who has been admitted as an advocate and whose name has been entered into the Roll of Advocates kept under section 16 of the Advocates Act (Cap. 16);
 - b. any person admitted to membership under section 8 of this Act; and
 - c. any person elected as an honorary member of the Society under section 9 of this Act.

Section 8 of the Law Society of Kenya Act in this respect provides for special membership of persons who are entitled in connection with the duties of their office to act as an advocate as listed in section 10 of the Advocates Act, such as officers in the Attorney General’s office; while section 9 provides that the Council of the LSK may elect any person whom it considers fit for honorary membership. It is notable that in this respect section 41 of the Act provides that the Council of the LSK may make regulations that govern the manner of application for membership of the Society. Put differently, the section does not state or require that every person admitted as an advocate must be a member of the LSK, and there is no such provision in the Law Society of Kenya Act. To this extent we find that section 7 of the Law Society of Kenya Act does not infringe Article 36 of the Constitution on the right to association.

27. As regards the constitutionality of sections 22 and 23 of the Advocates Act, it is notable that the said provisions do indeed compel advocates to be members of the LSK, and to this extent would appear to be at cross purposes with Article 36(2) of the Constitution, which provides that a person shall not be compelled to join an association of any kind. The second question that presents itself for our determination in this appeal is whether this limitation of the right to association of advocates applying for practicing certificates is reasonable and justifiable in an open and democratic society, and taking into account all relevant factors set out in Article 24(1) of the Constitution including the purpose of the limitation, and its nature and extent.
28. We shall therefore proceed to interpret sections 22 and 23 in the context of the purpose of Advocates Act, which regulates a continuum of activities involving advocates, including setting the standards of qualification, their education and training, admission to the profession and issue of practising certificates, and keeping the roll of Advocates and other registers, among other regulatory rules. There are accordingly regulating authorities under the Advocates Act in addition to the LSK. The unique elements of the regulation of the legal profession were explained in a response by the Senior Judiciary



of Scotland in June 2019 to the “[*Fit for the Future- Report of the Independent Review of Legal Services in Scotland*](#)” as follows:

“The concept of regulation encompasses many different elements. These include entry to the profession, continuing education and training, conduct and practice, finance and complaints and discipline. Whilst that may be so in relation to all professions, the legal profession differs from others because of the particular role performed by lawyers in a democratic society, protecting the citizen from the arbitrary abuse of power by the state. That role requires that, in determining how best to regulate the legal profession, the independence of the profession must be the paramount consideration. This is true in respect of each individual component of the regulatory system, from education and training to complaints and discipline”.

29. In this regard, the compulsion to join the LSK under sections 22 and 23 of the [*Act*](#) is a condition for the issue of practicing certificates to advocates, which under section 21 are issued by the Chief Registrar of the Judiciary. Practicing certificates essentially authorise advocates to practise in the courts of law, and it is important to acknowledge that advocates thereby become officers of the courts and play an important societal role, hence the need for them to exercise independence and impartiality when carrying out their functions and responsibilities, to be able to protect the fundamental rights and freedoms of individual citizens, without fear of interference or persecution. The system of regulation imposed upon advocates’ legal professional practice, conduct and discipline under the [*Advocates Act*](#) is therefore in recognition of the need for an advocate to uphold the ethical standards required of officers of Court, and by the rule of law.
30. There are therefore various built-in safeguards meant to ensure the independence of the legal profession and the rule of law, which are found in the various powers and duties conferred upon the Chief Justice, the Chief Registrar of the Judiciary and the LSK among other regulators, and it is in this context that the provisions of section 22 and 23 of the [*Advocates Act*](#) require to be appreciated and interpreted. The proposal by the appellant that other bodies other than the LSK can perform the required roles therefore presents an inherent risk not only to the independence of the legal profession and judiciary, but also to the rule of law, as it opens the door for the inclusion in the regulatory system of individuals and players who are not subject to the same ethical obligations and responsibilities as advocates, and who may be at risk of influence by political or other interests or ideals.
31. The appellant also appears to have relied on the fact that there are jurisdictions which allow voluntary bar associations, and primarily the United States of America, to urge that being compelled to join a bar association is a violation of the right to association. It is notable that the position in the United States of America is that the majority of the states namely 31 out of 50 provide for mandatory bar associations, as noted in the article by Everett Stanley on “[*A Peace Treaty for the Bar Wars: An Updated Framework to Determine Permissibility of Mandatory Bar Association Activity*](#)”, 72 Emory L. J. 165 (2022), which also explains the reason for and against such mandatory membership as follows:

“Thirty-one states and the District of Columbia mandate attorneys to join the state bar association as a condition of practicing law. Mandatory membership comes with benefits, such as increased capacity to improve access to legal services and the enforcement of disciplinary measures against unethical attorneys, as well as detriments, namely dues or associated fees. These dues and bar association activities have been the subject of several controversies in the Supreme Court and appellate courts—challenges asserting violations of both the freedom of association and the freedom of speech...”



- 32. The leading decisions by the United States Supreme Court on the constitutionality of compelled membership of bar associations are *Lathrop vs Donohue*, 367 U.S. 820, 820, 822–23 (1961) and *Keller v. State Bar of California.*, 496 U.S. 1, 4 (1990). In *Lathrop vs Donohue*, the Supreme Court held that state action compelling a lawyer to join a bar did not violate the lawyer's right to freedom of association, and lawyers may constitutionally be mandated to join a bar association that solely regulates the legal profession and improves the quality of legal services which functions are sufficiently important to justify any incursion on lawyers' individual freedoms., In *Keller v. State Bar of California*, the Supreme Court, in an opinion by Chief Justice Rehnquist, found that states could require lawyers to join and pay dues to bar associations, and that a bar can use compulsory dues to regulate the legal profession or to improve legal services in the state. Further, that the justifications for compelled association, namely the state's interests in regulating lawyers and improving the legal system, limit the permissible extent of that compulsion. Lastly, that it is the compelling of lawyers to join a bar association that engages in non-germane activities that are outside the association's stated purposes that would violates their freedom of association.
- 33. Therefore, the United States Supreme Court promulgated a threshold by which the constitutionality of the compulsion to join a bar association and to pay the dues to it is how germane the bar association's activities are to the legal profession , quality of legal services and the goals of the association. In our view, this is a permissible and reasonable limitation within the meaning of Article 24 of our Constitution, in light of the purposes and reasons stated hereinabove for regulation of the legal profession. In addition, the appellant did not in this respect identify or demonstrate any activities that were being undertaken by the LSK that are outside the permissible extent of regulation of advocates, improvement of legal services or achievement of its statutory objectives.
- 34. Lastly, it is also notable that the current Law Society of Kenya Act came into force on 30th October, 1992 while the Advocates Act came into force in 15th December 1989 before the enactment of the Constitution of Kenya 2010. The provisions in Article 24 (2) that require that legislation enacted after commencement of the Constitution of 2010 specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation are therefore inapplicable.
- 35. We accordingly find no merit in the instant appeal for the foregoing reasons. The appeal is hereby dismissed with no order as to costs, given its public interest nature.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

P. NYAMWEYA

JUDGE OF APPEAL

J. LESIIT

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed



DEPUTY REGISTRAR.

