IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, MARAGA & GBM KARIUKI, JJA)

CIVIL APPEAL NO. 240 OF 2013

BETWEEN

THE ENGINEERS BOARDS OF KENYA................................APPELLANT

AND

JESSE WAWERU WAHOME & OTHERS.....................1ST RESPONDENT

MOI UNIVERSITY...2ND RESPONDENT

EGERTON UNIVERSITY.. 3RD RESPONDENT

MASINDE MULIRO UNIVERSITY OF

SCIENCE AND TECHNOLOGY..................................4TH RESPONDENT

COMMISSION OF HIGHER EDUCATION................5TH RESPONDENT

MINISTRY OF HIGHER EDUCATION

SCIENCE AND TECHNOLOGY................................6TH RESPONDENT

(An Appeal from the judgment of the High Court of Kenya at Milimani Law Courts (Majanja, J.) dated 15th October, 2012

in

Nairobi High court Petition Nos. 149 & 207 of 2011 (Consolidated))

****

JUDGMENT OF MARAGA, JA

1. This appeal, in my view, raises two main but fairly complex issues. The first one relates to the role and function of the Engineers Board of Kenya (the appellant) in its *"recognition"* of degrees awarded by various universities for purposes of registration, under the now repealed Engineers Registration Act[1] (the Act), of holders thereof as graduate engineers. The bone of contention in this issue is whether or not the Act vested the appellant with authority to go behind the degree certificates presented to it and examine the academic programmes and course outlines of the institutions awarding them in order to satisfy itself that the holders thereof met the minimum academic qualifications for registration as graduate engineers. The second issue is whether or not the appellant's refusal to register the holders of those degrees as graduate engineers violated their constitutional rights and if so what remedies were they entitled to?

2. To put these issues into context, an outline of the facts of the case is imperative.

3. JESSE WAWERU WAHOME & 105 others, who are in this appeal listed as the 1st respondent (whom I will hereafter refer to as "the respondents") graduated as engineers in various engineering disciplines from Egerton University and Masinde Muliro University of Science and Technology (Masinde Muliro University) between 2004 and 2010. Some of them applied to the appellant for registration as graduate

engineers under the Act but the appellant declined to register them on the ground that they had not met *"the minimum requirements as stipulated under the ….Act."* In respect of graduates from Masinde Muliro University who had sought clarification from the appellant about their applications, the appellant, in its letter dated 27thSeptember, 2011, advised them that *"the undergraduate degree programmes from Masinde Muliro University … have not been recognized by the Board. Therefore the graduates of the said programmes are not registrable with the Board pursuant to* ***Section 11(2)*** *of the Engineers Registration Act."*

4. Aggrieved by that decision, the respondents filed two constitutional petitions in the High Court at Nairobi being Petition Nos. 149 and 207 both of 2011 against the appellant; Masinde Muliro University; Egerton University; Moi University; the Permanent Secretary Ministry of Higher Education Science and Technology (the Ministry of Education); and the Commission of Higher Education (the Commission). Against the appellants the respondents sought, in the main, a declaration that they were duly qualified engineers and that the engineering degrees they held were proper and valid and entitled them to be registered as graduate engineers; a declaration that the appellant's refusal to register them violated their constitutional rights; an order of certiorari to quash the appellant's said decision; an order of mandamus to compel the appellant to register them as graduate engineers; damages for lost opportunities and for the suffering the appellant had caused them; and the costs of the petitions. The High Court (Majanja, J.) consolidated the two petitions. After hearing them, the learned Judge dismissed the claims against Moi University, the Ministry Education and the Commission and, save for special damages, granted all the other claims (including the one for general damages) against the appellant thus provoking this appeal.

5. Besides expressing its grievances against the entire decision, in its memorandum of appeal, the appellant also faults the learned Judge for granting unsought reliefs to even people who were not petitioners in the two petitions.

6. Presenting the appeal before us, Mr. Nowrojee SC, assisted by Mr. Kerongo, adopted their written submissions and argued that the learned Judge misapprehended the appellant's mandate under the Act and as a result reduced the appellant's role of registration of graduate engineers to clerical duties. They submitted that the appellant is a professional body which had been mandated by **Sections 3** and **11** of the Act to regulate the profession of engineers. That regulation entailed, *inter alia*, setting the requisite professional standards for the profession.

7. Counsel further submitted that while the learned Judge, quite correctly, appreciated that a holistic approach should always be adopted in statutory interpretation, he fell into grave error by isolating the term *"recognize"* from its context in **Section 11(1) (b)** of the Act and relying only on its dictionary meaning which meaning the learned Judge also got wrong.

8. In counsel's view, to *"recognize"* entailed rigorous scrutiny of the academic programmes of the institution granting the degree presented to it in order to satisfy itself that the applicant seeking registration had had *"adequate academic training in engineering."* They said that was akin to accreditation although the Act did not expressly authorize the appellant to accredit universities whose degrees it recognizes.

9. Counsel faulted the learned Judge for granting an order of certiorari and awarding damages on the basis of the respondents allegedly being innocent victims. They referred us to the accreditation criteria which the appellant had set out and published (which other universities like the University of Nairobi and Jomo Kenyatta University of Agriculture and Technology (JKUAT) complied with) and the minutes of the Senate meeting of Masinde Muliro University held on 25th June 2008 and attended by the respondents' representatives, which discussed the appellant's concern about the deficient training programmes in some universities. So the issue of the respondents' ignorance of the appellant's accreditation criteria did not arise. Counsel also accused the learned Judge of ignoring evidence placed before him that Egerton and Masinde Muliro universities employed unqualified staff to teach certain core subjects. On the authority of **Mbogo v. Shah,[2] t**hey said, that alone is sufficient reason for us to interfere with the learned Judge's exercise of discretion.

10. Counsel also faulted the learned Judge for granting reliefs to even petitioners who had not applied for registration and people who were not parties to the petitions before him. Given that the appellant had considered applications that had been made to it and rejected them, counsel cited to us this Court's decision in **Kenya National Examination Council v. Republic[3]** and urged us to find that the Judge had no basis for granting the order of mandamus. They found it contradictory for the learned Judge to hold that the appellant's role was clerical and in the same vein direct it to consider the respondents' applications.

11. Counsel were emphatic that the court is ill suited to determine professional standards in various disciplines. They cited the Indian Supreme Court decision in **Maharastra State Board v. Kurmarsheth & Others[4]** in support of that submission. On those submissions they urged us to allow this appeal with costs.

12. The appeal was strongly opposed by the respondents as well as Egerton and Masinde Muliro universities. The respondents (students from Masinde Muliro University) were represented by the firms of Muganda Mucheru & Co. Advocates and those from Moi University were represented by M/s Katwa & Kemboy Advocates.

13. In their written and oral submissions, M/s Muganda Mucheru & Advocates for the respondents (students from Masinde Muliro University), argued that Egerton and Masinde Muliro universities, like other public universities, are established by Acts of Parliament. Those Acts authorize the Senates of those universities to determine the courses they offer, the contents of those courses as well as the examinations they administer and the threshold they set to be met in order to qualify for the award of the degrees in those courses. In that regard, the Senates are not to be supervised by any other body. The appellant cannot therefore purport to accredit and supervise the Senates on the course contents they should offer. Until the enactment of the Engineers Act in 2011, which does not apply in this case, the appellant had no accreditation authority even over private universities akin to the one vested in the Commission by **Section 5(1) (j)** of the Universities Act, 2010[5]. In counsel's view, the appellant should not have gone behind the university degree certificates presented to it for registration of holders thereof as graduate engineers to examine the university programmes and the course contents of the universities which awarded those degrees. Instead, they should have accepted graduates certified by the Senates as having qualified as engineers in their respective areas of specialization and automatically registered them.

14. By denying the respondents registration and going as far as writing to Kenya Pipeline Co. Ltd that one of the respondents did not meet

the threshold for registration while registering engineering graduates from other local universities, counsel said the appellant discriminated against the respondents and violated their constitutional rights under **Articles 27**, **47** and **55** of the Constitution and thereby denied them a livelihood.

15. Counsel referred us to the prayers in one of the petitions and dismissed the appellant's contention that the learned Judge granted reliefs that had not been sought. Even if the order of certiorari and damages were not sought, which is not the case, counsel submitted that on the authority of **Article 23(2)** of the Constitution and the case of **Rita Biwott v. Council of Legal Education Nairobi,**[6] the court has wide powers to frame appropriate reliefs in accordance with its decision. In this case the respondents have and continue to suffer damage as they have not been employed as engineers courtesy of the appellant's refusal to register them. So the learned Judge was right in awarding them damages. They urged us to dismiss this appeal with costs.

16. M/S Katwa & Kemboy, counsel for the respondents (students) from Moi University, argued that their clients were taught in some subjects by lecturers who also taught in Moi and JKUAT universities whose graduates the appellant has recognized and registered. They wondered why the appellant discriminated against the respondents. They dismissed the appellant's argument that some of the respondents had not applied for registration. They said in its advocates' submissions, the appellant conceded that the respondents actually applied but having blacklisted graduates from Masinde Muliro University, the appellants simply refused to issue them with application forms. That is what prompted the respondents to seek clarification and the appellant in response thereto told them that they were not qualified for registration.

17. On qualification, counsel submitted that the appellant had no authority to question any degree awarded by a public university established by statute. The degree itself was *"sufficient evidence of … [adequate] academic training in engineering."* They argued that given its natural meaning, the term *"recognize"* in **Section 11** of the Act did not, even in the remotest sense, encompass accreditation which is what would authorize the appellant to approve the universities' courses. While conceding that the appellant's role was not clerical but regulation of the conduct of qualified engineers, counsel argued that the entire architecture of Cap 530 did not contemplate accreditation. Accreditation, as is clear from **Section 5** of the Universities Act 2011, is a substantial legal obligation which cannot be implied in the term *"recognize."* At any rate, they said, the appellant purported to publish its accreditation criteria in 2007 and 2011 when most of the respondents had either completed their courses or gone to advanced stages.

18. further argued that by denying the respondents registration, the appellant humiliated and literally dehumanized them thus violating their said constitutional rights. The respondents were therefore entitled to the reliefs the learned Judge granted them. They dismissed as incorrect the contention that the Judge granted prayers that were not sought and submitted that even if that were true, that was a technicality which, under **Article 159(2)** of the Constitution, the learned Judge was right to ignore. And on the authority of **Article 23(3)** of our Constitution and the South African case of **Fose v. Minister of Safety & Security,**[7] they said the learned Judge was right in fashioning as he did reliefs in accordance with his decision. With those submissions, counsel urged us to dismiss this appeal with costs.

19. Counsel for Moi University submitted that since the appellant does not challenge the dismissal of the petitions against it, Moi University is wrongly made a party in this appeal. It should therefore be awarded costs of the appeal.

20. Counsel for Egerton University, the 3rd respondent did not file written submissions. However, Ms Mumia, learned counsel holding brief for Mr. Ouma for the 3rd respondent also argued that the appellant had no powers of accreditation and supported the Judge's findings and the award of damages he made in favour of even people who are not parties to the two petitions.

21. For Masinde Muliro University, the 4th respondent, M/S Wekesa & Simiyu Advocates submitted that the learned Judge, having absolved it of all liability and dismissed the petitions as against it and in its memorandum of appeal the appellant having not challenged those findings, there was no reason for dragging Masinde Muliro University into this appeal. They also prayed for dismissal of this appeal with costs.

22. That submission notwithstanding, however, counsel submitted that Masinde Muliro University having participated in the High Court proceedings, it is interested in the outcome of this appeal. In the circumstances, counsel argued that it is entitled to be heard in this appeal and submitted that as is clear from the preamble to Cap 530, the operative words in the Act, in as far as this appeal is concerned, are *"registration"* and *"recognition"*. **Black's Law Dictionary** defines *"registration"* as *"the act of recording or enrolling"* and *"recognition"* as *"…confirmation that an act done by another person is authorized…"* The same dictionary defines *"accreditation"* as *"… giving official authorization or status or recognize a school as having sufficient academic standards …"*

23. On these definitions, counsel argued that, under Cap 530, the appellant's role was simply to *"register i.e record and or enroll graduate engineers"* after confirming that they had degrees from public universities. In counsel's view, until the enactment of the Engineers Act of 2011, the appellant had no powers, mandate or jurisdiction at all to go behind those degrees and examine the course programmes or outlines of the public universities issuing them. That is the power vested in the accreditation bodies.

24. On reliefs, counsel submitted that by refusing to register the respondents, the appellant obviously violated the respondents' right to enjoy a dignified life contrary to **Article 28** of the Constitution, the right to fair administrative action under **Article 47(1)** and the right to access education and means of livelihood under **Article 55(a),** and **(e)**. In the circumstances, counsel said the learned Judge cannot be faulted for so finding. That finding without a commensurate award of damages would be a pyrrhic victory. Even without a specific prayer, under **Article 23(3)** of our Constitution and the South African case of **Fose v. Minister of Safety & Security**[8]**,** the court has jurisdiction to fashion remedies and award damages in accordance with its decision. The award of Kshs.200,000/= to engineers refused registration for at least 3 years prior to the enactment of the Engineers Act 2011 was therefore reasonable for crushed legitimate expectations. They said to forestall a flood gate of suits, the Judge was right to grant reliefs to even non parties who, like the respondents, the appellant has subjected to great suffering. Moreover, the damages were confined to a particular class within a specified period.

25. In conclusion, counsel argued that in purporting to accredit the university courses, the appellant usurped powers it did not have and acted

arbitrarily and oppressively in denying the respondents registration. It maligned, disparaged and defamed the respondents thus dehumanizing them. They also urged us to dismiss this appeal with costs.

26. For the Commission of Higher Education, the 5th respondent, it was submitted that the learned Judge held that the petitions in the High Court disclosed no cause of action against it. Having not challenged that finding, the appellants have needlessly dragged the 5th respondent into this appeal. The 5th respondent therefore prayed for costs of this appeal.

27. The Ministry of Education on its part supported this appeal. On its behalf, Mr. Paul Ojwang, a Litigation Counsel in the Attorney General's Chambers, submitted that under the Act the appellant was entitled to go behind the university degrees and satisfy itself that the academic training in the universities whose degrees it was called upon to *"recognize"* actually met the required standard. Although the course syllabi is prepared by the universities and approved by their respective Senates, in the case of engineering, they were supposed to be passed on to the appellant for approval and recognition before being launched. Counsel argued that that is akin to accreditation and further submitted that, as is clear from the materials on record, attention was drawn to the universities of the shortcomings in their training. Egerton and Masinde Muliro Universities, unlike others, ignored the advice to take remedial action. They are therefore entirely to blame for the respondents' plight. Contrary to their contention, registering the respondents in spite of their unsatisfactory training would have amounted to giving them preferential treatment which is clear discrimination outlawed by **Article 27** of the Constitution. With those submissions, counsel urged us to allow this appeal and set aside the High Court judgment.

28. I have carefully read the record of appeal and considered the rival submissions presented to court by counsel for the parties. As I have stated in paragraph 1 of this judgment, the bone of contention in this appeal is the scope of the role of the appellant in the registration of graduate engineers under the now repealed Engineers Registration Act Cap 530 of the Laws of Kenya. The dispute giving rise to this appeal having arisen before the enactment of the Engineers Act of 2011, it is the repealed Engineers Registration Act (the Act) which applies to this appeal. The issues raised in this appeal therefore call for interpretation of the provisions of the Act that set out the role and the functions of the appellant. Before I examine those provisions, it is important to bear in mind the main principle generally applicable in statutory interpretation.

29. One of the cannons of statutory interpretation is a holistic approach. As stated in **Halsbury's Laws of England,[9]** no provision of any legislation should be treated as *"standing 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.[10]*

30. With this principle in mind, what do we make of **Section 11(1) (b)** of the Act which set out the role of the appellant? The provision declared that *"subject to this Act, a person shall be entitled … to be registered … as ... [an] engineer if he is … the holder of a degree … of a university … which may be recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training in engineering."*

31. Counsel for the parties made heavy weather of the meaning of the term *"recognized"* in this provision mainly referring us to its dictionary meaning. Whereas I agree that it is the operative word in this provision, I think we shall fall into grave error if we rely on the dictionary meaning alone and do not seek to ascertain its meaning from the context of not only **Section 11** but the entire Act as well.

32. Even without calling into aid the above stated principle of statutory interpretation, **Section 11** started with the phrase *"subject to this Act"* meaning we should read the section in the context of the entire Act. The preamble to the Act gave the object of the Act as *"[a]n Act of Parliament to provide for the registration of engineers <u>and for connected purposes</u>."*[Emphasis supplied].

Section 3(1) of the Act which established the appellant read:

> **"… there is hereby established a Board to be known as the Engineers Registration Board, which shall have responsibility for regulating the activities and conduct of registered engineers <u>in accordance with the functions and powers conferred upon it by this Act.</u>"** [Emphasis supplied].

33. have already alluded to one of the functions of the Board (the appellant) as that of approving applications for registration of engineers. After giving the law dictionary meaning of the term *"recognized,"* the learned Judge saw the role of the appellant as no more than that of confirming that an applicant was a holder of a degree *"lawfully"* and *"properly issued"* by a public university. M/S Wekesa & Simiyu Advocates, learned counsel for Masinde Muliro University, concurred with that view and further submitted that *"the mandate of the appellant … [was] to **register i.e record or enroll gradate (sic) engineers."*** Counsel for the respondents (the students) in principle also concurred with that view.

34. With due respect I do not think that the role of the appellant was simply *"to register i.e record or enroll graduate engineers."* In my humble view, that is the role of the Registrar appointed by the Minister under **Section 5** of the Act. **Sections 6** to **10** of the Act made that quite clear. In the circumstances, I agree with counsel for the appellant that to limit the role of the appellant to confirming that an applicant who sought registration as a graduate engineer was a holder of a degree lawfully and properly issued by a public university would have been tantamount to reducing the appellant's role to clerical duties. If that were the intension of Parliament, it would not have established the appellant Board. As I have said, the Registrar would have satisfactorily performed those duties. In my humble view the Act vested the appellant with authority to set up the professional standards of engineers and ensure that the people it registered qualified for registration and lived up to those standards. That being my view, I now wish to interrogate the import of the term *"recognized"* in **Section 11(1)** of the Act.

35. The meaning of the term *"recognized"* should be ascertained from both the object of the Act and the functions of the appellant. I have already quoted **Section 3(1)** of the Act which established the appellant and charged it with the responsibility of *"regulating the activities and conduct of registered engineers in accordance with the functions and powers conferred upon it by this Act."* I have also quoted the relevant

part of **Section 11(1) (b)** of the Act which set out one of the functions of the appellant as approving for registration applications of holders of degrees which it *"recognized … as furnishing sufficient evidence of an academic training in engineering."*

36. What is to be recognized in this provision; is it the certificate or the institution issuing it? In my humble view, it does not matter whichever answer one gives to this question. What matters is that for it to recognize either the degree certificate or the institution issuing it, the appellant was supposed to be furnished with sufficient evidence of an adequate academic training in engineering. In other words the appellant was supposed to be satisfied, upon being furnished with sufficient evidence, that the applicant was *"academically qualified for registration as a registered engineer."****[11]***

37. I have said that sufficient evidence can relate to the degree an applicant held or to the institution issuing such degree. The bottom line is that the evidence had to demonstrate that one was academically qualified for the registration as a graduate engineer. In the circumstances, I find that "sufficient evidence" could not have been "furnished" by flashing the degree certificate alone. More was clearly required. The question which then follows is, what was the nature of the further evidence that was to be furnished to the appellant?

38. The Act made further provisions on the kind of evidence that the appellant was supposed to be furnished with. For applicants who sought registration as graduate technician engineers, **subsection (4)** of **Section 11** of the Act required the appellant to be satisfied that they were holders of higher diplomas or *"equivalent qualification in engineering obtained from an engineering polytechnic or college recognized for the time being as furnishing evidence of adequate academic training."*

39. For an applicant who sought to be registered as a consulting engineer, **subsection (6)** of **Section 11** of the Act required him to satisfy *"the Board as to his having achieved a standard of competence to enable him to practice as a consulting engineer in a particular specialization or grade."* (Emphasis supplied).

40. These provisions in my view clearly demonstrated that before being registered as a graduate technician engineer, graduate engineer or consulting engineer, one needed to satisfy the appellant that one had had adequate training in engineering in the area of one's specialization and was therefore academically qualified for the particular registration one sought. And how was one to demonstrate one's qualification? The Act did not leave to conjecture the answer to that question. One had to furnish *"sufficient evidence."* As already stated, sufficient evidence could not be furnished by the degree certificate alone. The appellant required evidence that the training offered by the universities whose degrees it was called upon to recognize met the threshold depth and breath of adequate training in engineering. That is why it came up with, in my view quite properly, what it termed "*accreditation criteria."*

41. The respondents and the two universities were up in arms at the mention of the term "accreditation". They argued that the Act did not vest the appellant with the power to accredit universities that offered engineering courses. The learned Judge agreed with them. With profound respect I do not think that they were entirely correct. In my respective view, the term "recognition" used in the Act, embraced "accreditation" and vice versa. I will demonstrate.

42. As stated, counsel for Masinde Muliro University relied on Black's Law Dictionary's definition of *"accreditation"* as the act of *"… giving official authorization or status or recognize a school as having sufficient academic standards."* Even on this definition alone, it is clear to me that "accreditation" embraces the term "recognition." This definition is, however, not exhaustive.

43. Accreditation is also defined by the European Consortium for Accreditation as *"a formal and independent decision, indicating that an institution of higher education and/or programmes offered meet certain standards*."[12] Lazar Viasceanu, et-al, 2007 also defined accreditation as the process by which a governmental or non-governmental body evaluates the quality of training given by a higher education institution as a whole or of a specific educational programme in order to formally recognize it as having met certain pre-determined minimal criteria or standard.[13]

44. Accreditation is therefore a formalized process carried out by an appropriately recognized authority as to whether an institution of higher education or a programme conforms to certain standards.

45. Besides serving to enhance the transparency and the quality of study programmes offered in institutions and to assure and develop quality, accreditation also facilitates international recognition of study programmes and degrees; facilitates recognition of credit transfers from one institution to another in order to promote mobility; informs the labour market on the value of degrees; protects consumers of given services against false information and low quality university degrees and other qualifications; and provides mechanisms to ensure that higher education institutions are accountable for the effective use of public funds.[14]

46. Accreditation takes various forms including assessment; audit; benchmarking; evaluation; and recognition. In this case we are concerned with recognition which falls into two main categories: academic and professional recognition. Academic recognition is the *"approval of courses [and] qualifications … from a higher education institution … for purposes of … [inter alia] access"* to the labour market. Professional recognition on the other hand refers the professional status accorded to a holder of a qualification to practice in that profession. Recognition of an individual's qualifications is therefore done with a view to facilitating access of holders to educational and/or employment activities.[15]

47. These definitions can be applied at two levels. The first level is where an institution seeks authorization from the Government or any authorized body to be registered to offer a given training or a given service. This is important because the Government is, in general, the custodian of the standards that should be maintained by all professions. The government can, by itself or its designated bodies, grant such authorization to permit, by way of registration, institutions or firms to offer given academic trainings or given services. Examples include the Commission of Higher Education, which, under the Universities Act, authorizes private universities to offer degree courses and the Kenya Medical Practitioners & Dentists Board which, under the Medical Practitioners and Dentist Act authorizes hospitals or clinics to offer medical services.

48. The second level of accreditation is not governmental in the sense that it is not required for purposes of authorization or registration to offer an academic training or a given professional service. It is the quality assurance accreditation for the purposes of recognition, call it approval if you like, that a given institution or firm offers an academic course or service that meets the required standards of a given profession. This is the level in which the Council of Legal Education, the Medical Practitioners and Dentist Board, the Accountants Board and the appellant Board, to mention but a few, fall. The way I understand it is that these bodies do not, as such, permit or authorize institutions to offer given courses or trainings. However, in the regulation of the conduct of their respective professions they demand evidence of appropriate academic qualification or competence before registering applicants to practice as professionals in their respective professions. The best example I can think of is the Council of Legal Education which does not admit advocates to the advocates training programme on the basis of the university degrees flashed by applicants for admission into that programme but demands evidence of having adequately covered the core subjects.

49. For me you can call the process of ascertaining that one is qualified to practice a given profession *"accreditation"* or *"recognition."* The bottom line, as I have observed, is to be satisfied that one has the requisite academic qualification or professional competence.

50. From the above definitions, I am satisfied that the term *"recognize"* in **Section 11(1)** of the now repealed Engineers Registration Act embraced "accreditation" and vice versa. The appellant was not to accredit public universities to offer whatever courses they desired but it had to accredit them as offering adequate training in engineering in order to recognize and register their graduates to practice the engineering profession.

Having found that the term *"recognition"* in **Section 11(1)** of the Act embraced "accreditation" I hold that the learned Judge erred in finding that the appellant did not require to go behind the degree certificates issued by Egerton and Masinde Muliro universities. To get sufficient evidence of adequate training the appellant was obliged to go, as it did, into the details of the engineering courses offered by not only the two universities but all those of others whose degrees it was called upon to recognize.

51. The appellant claimed that upon examination, it found the course programmes offered at Egerton and Masinde Muliro universities deficient and refused to register graduates from those universities. Was the appellant justified in so finding? I think it was.

52 As I have said, in refusing to register the respondents, the appellant argued that its examination of the teaching of the various engineering courses at both Egerton and Masinde Muliro Universities was deficient in many respects. In his letter dated 26thJune, 2009, addressed to Egerton University for instance, the appellant's Registrar advised that university that the appellant had refused to approve the programmes it had submitted for approval on the grounds that the university lacked adequate staff and some of the lecturers it had employed were unqualified. In this regard the Registrar added that *"most of the staff are trained in Agricultural Engineering and related disciplines and are therefore not qualified to teach the proposed degree programs"* in telecommunications; industrial technology; manufacturing engineering and technology; civil engineering and technology; civil engineering; electrical and control engineering; instrumentation and control engineering; mechanical engineering; and water and environmental engineering.

54. In the June 2011 response to Ministry of Education's report on recognition of engineering programmes in Kenyan universities, the appellant noted that seven lecturers proposed to teach four programmes in an engineering department at Egerton University were not registered engineers. In his further letter dated 19th October 2009, the Registrar pointed out that Egerton University lacked *"adequate infrastructure,"* as it was using facilities meant for *"lower level institutions to train degree students."* He advised that the appellant could approve the university's programmes if it acquired proper infrastructure and employed registered engineers to teach the courses it proposed to offer.

55. With regard to the programmes, the Registrar advised that the curriculum content must meet the *"appropriate depth and breath of technical content, with emphasis on fundamentals and inclusion of relevant mathematics and science."* This is what the appellant had stated in its accreditation criteria.

56. To Masinde Muliro University, the Registrar had, following the meeting the appellant had had on 28th September 2009 with officials of that university, which was also attended by officials from the Ministry, written on 19thOctober, 2009 and advised that the University's programmes could be approved only if it employed qualified staff and provided proper infrastructure. On infrastructure, the Registrar in particular pointed out that the University had to provide proper laboratories for high voltage; power systems; electrical machines; telecommunications; control engineering; electronics; and microwaves.

57. In the said June 2011 response to Ministry of Education's report on recognition of engineering programmes in Kenyan universities, the appellant also stated that a home science graduate was assigned to teach a public health engineering course unit at Masinde Muliro University while a geologist was engaged to teach geotechnical engineering at the same university. A Mr W. Murage was engaged to teach welding technology but was not qualified as per the ERD guidelines.

58. During the same period, the appellant raised more or less the same concerns to other universities and polytechnics including Moi University; Kenyatta University; University of Eastern Africa Barton; Kimathi University College of Technology; Jomo Kenyatta University of Agriculture and Technology; and even the University of Nairobi. Those universities addressed their shortcomings. For instance Moi and JKUAT recalled their engineering graduates to cover gaps in their programmes that the appellant had pointed out. Egerton and Masinde Muliro Universities promised to do that but did not.

59. In an advertisement placed in the Daily Nation newspaper of 10th May 2007, the appellant had warned the public that some universities were offering deficient engineering programmes. The minutes of the Senate meeting of Masinde Muliro University held on 25th June 2008 and attended by the respondents' representatives, also discussed the appellant's concern about the deficient training programmes in some universities. In their November 2011 petition to the Speaker of the National Assembly, the students from Egerton and Masinde Muliro universities prayed that the universities be compelled to employ qualified staff and equip the laboratories. So the respondents were aware of

and acknowledged the appellant's concerns but ignored them. They cannot therefore blame the appellant for their plight.

60. In refusing to register the respondents, did the appellant violate the respondents' constitutional rights? I think not.

61. I have already found that the appellants did what the law required them to do: to recognize by the process of professional accreditation that the degrees granted by Egerton and Masinde Muliro Universities met the requisite threshold to practice the profession of engineering. The record shows that this requirement was demanded of applicants from all universities across the board. The question of discriminating against the appellants or denial of fair administrative action does not therefore arise.

62. I also find that the appellant did not violate the respondents' right of access to relevant education and training or employment. I do not understand **Article 55** of the Constitution to suggest that high or requisite academic standards should not be demanded in the education and training of our youth. The appellant in this case did not refuse to register the respondents. All it required, as is clear from the replying affidavit of Eng. G.M. Arasa sworn on 18th January 2012 and counsel's submissions before us, is sufficient evidence of the adequate training of the respondents. And as I have said, the appellant made this demand across the board.

63. In the circumstances, I must find, as I do, that the learned Judge erred in holding that the appellant violated the respondents' constitutional rights under **Articles 27, 28, 47** and **55** of the Constitution. As a matter of fact the appellant never violated any of the respondents' constitutional rights. It follows then that the respondents were not entitled to any damages, special or general at all from the appellant. If they were entitled to any relief, then it was certainly not against the appellant.

64. For these reasons, I allow this appeal with costs to the appellants against Egerton and Masinde Muliro universities. The other respondents shall bear their own costs.

DATED and delivered at Nairobi this 12th day of June, 2015

D.K. MARAGA

…………………………….

JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR

JUDGMENT OF NAMBUYE, JA

I have had the honour and benefit of reading the lead judgment of ***Maraga, JA*** in its draft form.

I agree entirely with the learned Judge's identification of issues, analysis, presentation and the conclusion reached on all the issues in controversy herein. I do concur that the appeal has merit and that it be allowed on terms suggested in the said judgment.

Dated and delivered at Nairobi this 12th day of June, 2015.

R.N. NAMBUYE

....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR

JUDGMENT OF G.B.M. KARIUKI, JA

I have read in draft the judgment of my learned brother, The Hon. Mr. Justice Maraga. I am of the same opinion. Although we are differing from the judgment of the High Court, I do not find it necessary to express my judgment in different words or to add anything to the judgment of my brother with which I concur.

Dated and made at Nairobi this 12th *day of June 2015*.

G.B.M. KARIUKI SC

....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR

---

[1] Cap 530 of the Laws of Kenya.

[2] [1968] EA 94.

[3] C.A. No. 266 of 1996.

[4] (1985) CLR 1083.

[5] Act No. 42 of 2012

[6] HC Misc. Application No. 1122 of 1994.

[7] 1977 (3) SA. 786 (CC).

[8] 1977 (3) SA. 786 (CC).

[9] Paragraph1484 of 44 Halsbury's Laws of England,9 4th Edition, Bufferworths 1995.

[10] Ibid.

[11] See Section 11(3) of the Act.

[12] Theanne Walters, etl, Standards for Professional Accreditation Process, Professions Australia Accreditation Forum, June 2008, www.professions.com.au

[13] Lazar Viasceanu, Laura Grunberg and Dan Parlea –Quality Assurance and Accreditation: A Glossary of Basic Terms and Definitions, UNESCO-CEPES, Bucharest, 2007

[14] Theanne Walters, et-al, ibid.

[15] Lazar Viasceau, etl, supra.