



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, AZANGALALA & KANTAI, JJ.A)

CIVIL APPEAL NO. 18 OF 2014

BETWEEN

MUAMAR NABEEL ONYANGO KHAN..... APPELLANT

AND

THE COUNCIL OF LEGAL EDUCATION 1ST RESPONDENT

THE KENYA SCHOOL OF LAW.....2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

(An Appeal from a Judgment of the High Court of Kenya at Kisumu (Muchelule, J.) dated 31st January, 2014

in

PETITION NO. 10 OF 2013)

JUDGMENT OF THE COURT

This is an appeal against the judgment of the High Court (Muchelule, J) dated 31st January 2014 in which the learned Judge dismissed the appellant's petition. In that petition, the appellant had sought, inter alia, a declaration that he possessed the requisite academic qualification for admission to the Advocates' Training Programme (ATP) at the Kenya School of Law (the School of Law) for the year 2012; a declaration that the decision of the Council of Legal Education (the Council) and the School of Law (both hereinafter referred to as "the respondents") rejecting the appellant's application for admission to the ATP on the ground that he did not meet the threshold for admission to that programme violated his constitutional rights; an order of certiorari to quash the respondents' said decision; and an order of mandamus to compel the respondents to admit the appellant to that programme.

1. The petition was premised on the grounds that being a holder of a Bachelor of Arts degree in Politics and Law from the University of Bradford in the United Kingdom which, in the appellant's view, is equivalent to an LLB degree that is the minimum qualification for entry to the ATP and in addition a Master of Laws degree (LLM) from the University of London (the School of Oriental and African Studies), the appellant was more than qualified for admission to the ATP. In his petition of appeal, the appellant therefore faulted the learned Judge for upholding the respondents'

- decision that he did not meet the threshold for admission to the ATP and dismissing his petition.
2. Expounding on the grounds of appeal, Mr. Kirenga, learned counsel for the appellant, submitted that for admission to the ATP, Section 13(1)(a) and (b) of the Advocates Act prescribes “a degree in law” as the minimum qualification. In this case the English Solicitors Regulatory Authority, the counterpart of the Kenyan Council of Legal Education, having equated the appellant’s degree in politics and law to an LLB, the respondents were, under Section 8 of the Kenyan Council of Legal Education Act, under legal obligation to do likewise. If the respondents were in doubt about the Kenyan equivalent of the appellant’s degree in politics and law, they should have sought the advise of the Commission of Higher Education. Counsel termed the respondent’s dismissal of the appellant’s application as a violation of the appellant’s social justice rights under Article 10 of the Constitution; the right to education under Article 43; the right to fair administrative action under Article 47; and the right to access relevant training and employment under Article 55. He also found it to be discrimination against the appellant contrary to Article 27. Finally, counsel faulted the learned Judge for awarding costs against the appellant who is a student without any source of income.
 3. Opposing the appeal, Mr. Bwire, learned counsel for the Council and the School of Law and Ms Langat for the Attorney General submitted that the appellant did not have the minimum academic qualification for admission to the ATP. With regard to degrees from foreign universities, counsel submitted that under the Council of Legal Education Regulations, it is the Council which is mandated to assess and determine if those degrees are equivalent to LLB degrees from Kenyan universities. In this case the Council did that assessment and reached the conclusion that the appellant’s degree in politics and law is not equivalent to an LLB. Counsel dismissed the appellant’s contention that with an LLM, she was more than qualified for admission to the ATP and asserted that besides any other qualification, LLB is the irreducible minimum for admission to the ATP. They therefore urged us to dismiss this appeal but left the issue of costs to us.
 4. We have considered these rival submissions along with the record of appeal and the relevant provisions of the law. It is not in dispute that an LLB degree is the minimum academic qualification requisite for admission to the ATP. As is clear from **Section 13(1)(a) and (b)** of the Advocates Act, that was the case even before the enactment of the Council of Legal Education Act, 1995. We reject the appellant’s claim that the expression “degree in law” in **Section 13(1)(a) and (b)** of the Advocates Act includes his degree in “politics and law” for the simple reason that that section read together with paragraph 5 of the First Schedule to the Council of Legal Education (Kenya School of Law) Regulations, 2009, LN No. 169 of 2009, made on 20th November, 2009 under **Section 14** of the Council of Legal Education Act 1995 clearly refers to an LLB degree and not any other. Those provisions were there long before the appellant submitted her application for admission to the ATP.
 5. It is also not in dispute that the appellant is not a holder of an LLB degree. She herself readily admits that but contends that the respondents should be compelled to equate her degree in politics and law to an LLB degree. The respondents think otherwise. The cardinal issue for our determination in this appeal therefore is whether or not the learned Judge erred in failing to find and declare that the appellant’s degree in politics and law is equivalent to an LLB degree and to compel the respondents to so equate it.
 6. The legal profession, like all other professions, has a body that regulates it and sets its professional standards. That body is the Council of Legal Education (the Council) established by Section 4 of the Legal Education Act, 2012. As is clear from Section 8 of that Act, besides the regulation of legal education and training in Kenya, the Council is also charged with the responsibility of establishing “*criteria for the recognition and equation of academic qualifications in legal education*” and “*a system of equivalencies of legal educational qualifications and credit transfers*”- Section 8(3)(b) and (d) of that Act. It is clearly under this authority that the Council, when called upon, assesses and equates academic qualifications from foreign universities to the local legal professional qualifications and standards as it did in this case.
 7. This is a statutory authority conferred on no other body than the Council. Apart from the fact that the court does not have the resources and/or the expertise to set the criteria and determine the “equivalencies” of foreign legal education to the local standards, it has not been given that authority. The court is only authorized to review decisions of bodies like the Council in this case. That jurisdiction, as all lawyers know or ought to know, is limited to reviewing, not the merits but

the legality, rationality and procedural propriety of any challenged decision. In that regard, the court cannot substitute such body's decision with its own. See **Democratic Alliance v. The President of the Republic of South Africa & 3 Others: CCT 122/11 [2012] ZACC 24**. We endorse, as the learned Judge did, the decision in the Indian case of **Maharashtra State Board v. Kurmarsheth & Others [1985] CLR 1083** that:

“So long as the body entrusted with ... [a] task ... acts within the scope of the authority conferred on it in the sense that ... [its act(s)] have a rational nexus with the object of the statute, the court should not concern itself with the wisdom or efficaciousness of ... [the act].”

9. In this case the appellant did not allege or demonstrate that the Council overstepped its statutory mandate. She also did not challenge the Council's authority to assess and equate her academic qualifications with the local standards. To the contrary, her plea to the Council was to do exactly that. Her only beef was that the Council did not agree with her that her degree in politics and law is equivalent to a local LLB. The Council did not have to agree with her and we find that its decision was not irrational or unreasonable at all. The appellant did not adduce any evidence to support her claim that the respondents gave preferential treatment to other applicants for admission to the ATP. As the learned Judge quite correctly found, to agree with the appellant would amount to discrimination in her favour, an act that she herself condemned. We reiterate this Court's statements in the cases **Eunice Cecilia Mwikali Maema v. The Council of Legal Education & 2 Others, Nairobi CA No. 121 of 2013** and **Susan Mungai v. The Council of Legal Education & Others, Nairobi HC Petition No. 152 of 2011** that for purposes of admission to the ATP, there should not be “*different or double standards for local and foreign degree holders.*” Both should be subject to the same standards. We therefore find that by requiring the appellant, like all other applicants, to meet the threshold for admission to the ATP, the respondents did not in any way violate her constitutional rights to fair administrative action and/or education and training.
10. For these reasons, we find no merit in this appeal and we accordingly dismiss it. Since the appellant is, admittedly, a student we order that each party bears its own costs of this appeal and those of the petition in the High Court.

DATED and delivered this 23rd day of April, 2014.

D.K. MARAGA

JUDGE OF APPEAL

F. AZANGALALA

JUDGE OF APPEAL

S. ole KANTAI

JUDGE OF APPEAL

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

DEPUTY REGISTRAR