Kenya School of Law v Kiboi & 5 others; Council of Legal Education (Interested Party) (Civil Appeal E470 of 2022) [2025] KEHC 623 (KLR) (Civ) (30 January 2025) (Judgment)

Neutral citation: [2025] KEHC 623 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E470 OF 2022

LP KASSAN, J

JANUARY 30, 2025

BETWEEN

KENYA SCHOOL OF LAW ..... APPELLANT

AND

MICHAEL KARIUKI KIBOI ..... 1ST RESPONDENT

SALOME WANJIKU KARAU ..... 2ND RESPONDENT

WILKISTA CLAIRE OOGA ..... 3RD RESPONDENT

MARTIN OMONDI ACHOLA ..... 4TH RESPONDENT

TERESIA NJERI WANJIKU ..... 5TH RESPONDENT

TEDDY MUNGAI KIRAGU ..... 6TH RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION ..... INTERESTED PARTY

(Being an appeal from the Judgment and Decree of the Legal Education Appeals Tribunal at Nairobi delivered on 17th June 2022 in LEAT Appeal No. E018 of 2022 (as consolidated with) LEAT Appeal No. E019 of 2022; LEAT Appeal No. E020 of 2022; LEAT Appeal No. E021 of 2022; LEAT Appeal No. E022 of 2022; and LEAT Appeal No. E023 of 2022)

JUDGMENT

1. Before this Court for consideration is Nairobi Milimani HCCA No. E470 of 2022 emanating from the judgment of the Legal Education Appeals Tribunal in LEAT Appeal No. E018 of 2022 (as consolidated with) LEAT Appeal No. E019 of 2022; LEAT Appeal No. E020 of 2022; LEAT Appeal No. E021

of 2022; LEAT Appeal No. E022 of 2022; and LEAT Appeal No. E020 of 2022 (hereinafter the Tribunal Appeals) delivered on 17.06.2022. The proceedings before the Tribunal were commenced by way of respective appeals filed by Michael Kariuki Kiboi, Salome Wanjiku Karau, Wilkista Claire Ooga, Martin Omondi Achola, Teresia Njeri Wanjiku and Teddy Mungai Kiragu the respective appellants before the Tribunal (hereafter the 1st to 6th Respondent/Respondent(s) as against Kenya School of Law, the respondent before Tribunal (hereafter Appellant) with the Council of Legal Education cited as an Interested Party before the Tribunal and this Court.

2. The 1st to 6th Respondent similarly sought in their respective appeals an order as against the Appellant to the effect that a declaration be issued that the Respondent(s) qualify for admission to the Advocates Training Programme (ATP) as provided by Section 1(a) of the Second Schedule of the *Kenya School of Law Act* as amended by the Statute Law Miscellaneous (Amendment) Act 2014; that an order be issued compelling the Appellant to admit the Respondent(s) to the Advocates Training Programme (ATP); that the Tribunal be pleased to grant costs of the appeals to the Respondent(s); and any other relief that the Tribunal deems fit and just in the circumstance. The kernel of the appeals was inter alia premised on the fact that the Appellant had erred in law and in fact by denying the Respondent(s) admission to the Advocates Training Programme (ATP) based on their respective Kenya Certificate of Secondary Education (KCSE) results despite being qualified for admission pursuant to Section 1(a) of Schedule 2 of the *Kenya School of Law Act*.

3. The Appellant filed a response to the respective Tribunal Appeals, at the outset challenging the Tribunal's jurisdiction on being limited to matters that relate to the Legal Education Act. Meanwhile, contended that the Respondent(s) were not eligible for admission to the Advocates Training Programme (ATP) as per Section 16 of the *Kenya School of Law Act* as read with Paragraph 1 of the Second Schedule of Act whereas the Act does not have a provision for Academic Progression in order for admission to the Advocates Training Programme (ATP) therefore the Appellant was right in declining to admit.

4. The Tribunal Appeals were consolidated and disposed of by way of written submissions of which the parties had an opportunity to highlight. In its judgment, the Tribunal found in favour of the Respondent(s) by allowing the respective appeals as lodged; it further ordered that the decision as communicated by the Appellant's director to the respective Respondent(s) declining their admission to the Advocates Training Programme (ATP) was quashed; it equally directed the Appellant to forthwith admit the Respondent(s) to the Advocates Training Programme (ATP); with each party bearing its own costs.

5. Aggrieved with the outcome, the Appellant preferred the instant appeal challenging the Tribunal's decision on the following grounds: -

> " 1. That the honorable Tribunal erred in law and in fact in failing to find that it lacked jurisdiction to hear and determine the appeal.
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> 2. That the honorable Tribunal erred in law and in fact by exceeding its mandate.
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> 3. That the honorable Tribunal erred in law and in fact by addressing itself on matters outside its jurisdiction.
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> 4. That the honorable Tribunal erred in law and in fact by failing to properly apply the law on eligibility for admission to the Advocates Training Programme.

5. That the whole judgment and order of Tribunal is against the law and fatally flawed." (sic)

6. The instant appeal was similarly canvassed by way of written submissions of which the Court has duly considered alongside the authorities cited in support of the submissions. This is a first appeal. Section 38(1) of the *Legal Education Act* prescribes the nature of appeals that lie from the Tribunal to the High Court by providing that; -

> " 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." (sic)

7. In ordinary appeals, the first appellate Court will interfere with a finding of fact made by a trial Court when such finding was based on no evidence, or if it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* (1982 – 1988) 1 KAR 278. Nevertheless, by dint of Section 38(1) of the *Legal Education Act* this is no ordinary first appeal and the Court must first satisfy itself that the appeal before it, meets the prescription of Section 38(1) of the *Legal Education Act*. In considering its mandate on a second appeal, that is on points of law only, the Court of Appeal in *Kenya Breweries Ltd v Godfrey Odoyo* [2010] eKLR, elaborately distinguished between matters of law vis-à-vis matters of fact. That said, *Black's Law Dictionary* distinguishes the above as follows; -

> " Matter of fact as: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law."

8. The Court of Appeal in its subsequent decision in *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR, in addressing the question whether the memorandum of appeal, though on a second appeal, raised factual issues, recognized that an appellate Court when faced with a situation where a memorandum of appeal raises factual issues it is at liberty to strike out the offending ground(s) while retaining those that are compliant. Therefore, applying the decision in Bashir Haji Abdullahi (*supra*), which was an appeal arising from an election dispute, to the grounds of appeal herein, it would appear ex facie the appeal herein challenge the jurisdiction of the Tribunal to entertain the respective appeals and exceeding its mandate thereof a pertains its final orders. Nevertheless, this Court is at odds why the Appellant in presenting its appeal would opt to specifically plead and or apply the use of the trouble-inviting pair of words, so to speak, "in law and in fact" in the face of a plain and straight-forward statutory exclusion of matters of fact pursuant to Section 38(1) of the *Legal Education Act.*

9. It is trite that parties are bound by their pleadings whereas a purposeful examination of the grounds undoubtedly reveals the Appellant's intent, as earlier noted. As held in *Bashir Haji Abdullahi* (*supra*) an appellate Court faced with a situation where factual issues are canvassed on an appeal limited to issues of law is at liberty to strike out any grounds of appeal that offend the enabling provisions of appeal, while retaining those that are compliant. In this case, having conscientiously reviewed each of the Appellant's grounds of appeal, the Court is constrained and inclined to entertain the same, on accord of the intended challenge, notwithstanding the usage of the words in fact. Given that the appeal primarily presents a jurisdictional challenge of the Tribunal's mandate as juxtapose alongside the Respondents respective appeals before it.

10. At the risk of repetition, the Appellant's challenge in limine before the Tribunal and equally before this Court concerned the former's jurisdiction to entertain the appeals. In a proper case such an objection constitutes a pure point of law. The locus classicus on the question of jurisdiction is the case of *Owners*

of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1 where Nyarangi. JA (as he then was) famously stated:

> "I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

11. It was succinctly observed in *Macharia & Another v Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR), that a Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. A Court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. With the above in reserve, the Legal Education Appeal Tribunal is a creation of Section 29 of the Legal Education Act whereas its jurisdiction is conferred upon it by dint of Section 31(1) of the Act, which provides that; -

> "(1) The Tribunal shall, upon an appeal made to it in writing by any party or a reference made to it by the Council or by any committee or officer of the Council, on any matter relating to this Act, inquire into the matter and make a finding thereupon, and notify the parties concerned.".
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> 1. Whereas, Section 35 on power of the Tribunal on appeal, provides that: -
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> Upon hearing an appeal the Tribunal may—
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> (a) confirm, set aside or vary the order or decision in question;
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> (b) exercise any of the powers which would have been exercised by the Council, in the proceedings in connection with which the appeal is brought; or
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> (c) make any other order, including an order, for costs, as it may consider just.

12. To contextualize the Appellant's contestation, the *Legal Education Act* must be read holistically in order to recognize the scope of the Tribunal's jurisdiction. The Court of Appeal in *Kenya School of Law v Akomo & 41 others (*Civil Appeal E472 of 2021) [2022] KECA 1132 (KLR) while citing with approval the decision in *Engineers Boards of Kenya v Jesse Waweru Wahome & others & 5 others* [2015] eKLR, laconically acknowledged that....."It is our view that there is also the need to give a Statute a holistic reading and interpretation in order to ascertain the true legislative intent." The scope of *Legal Education Act* is captured as an Act of Parliament to provide for the establishment of the Council of Legal Education; the establishment of the Legal Education Appeals Tribunal; the regulation and licensing of legal education providers and for connected purpose whereas Section 3 of the Act goes on to state objective of the Act as to – (a) promote legal education and the maintenance of the highest possible standards in legal education; and (b) provide a system to guarantee the quality of legal education and legal education providers.

13. It is undisputed, and by the Appellant's own admission in its responses before the Tribunal that it is a body corporate with its objective espoused in Section 4(1) of the *Kenya School of Law Act* as being a public legal education provider responsible for the provision of professional legal training as an agent of the Government. Therefore, a conjunctive reading of the aforecaptioned provisions and concentration of the Respondent(s) grievance before the Tribunal as against the Appellant, this Court can purposefully conclude that the Respondent(s) grievances were right up the alley of the Tribunal's jurisdiction as provided for in Section 31 (1) of the *Legal Education Act*.

14. This position was fortified and recently observed by the Majanja, J. in *Kenya School of Law v Gachoki & 2 others; Council of Legal Education (Interested Party)* [2024] KEHC 528 (KLR), of which this Court concurs with, wherein he stated that; -

> 14. The thrust of the appeal, which raises 6 grounds, can be condensed to two grounds; whether the Tribunal has jurisdiction to determine the appeals and whether the Respondents qualified to be admitted to the ATP.
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> 15. .....
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> 16. The Tribunal further relied on the court's decision in *Republic v Kenya School of Law & 2 others Exparte Kgaborone Tsholofelo Wekesa* (Supra) where Mativo J., (as he was then) held as follows:
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> 33. The preamble to the *Legal Education Act* provides that it is an Act of Parliament to provide for the establishment of the Council of Legal Education; the establishment of the Legal Education Appeals Tribunal; the regulation and licensing of legal education providers and for connected purposes. Section 31 of the act provides for the jurisdiction of the Tribunal. A reading of the section leaves me with no doubt that the Tribunal's jurisdiction is to determine an appeal made to it in writing by any party or a reference made to it by the Council or by any committee or officer of the Council, on any matter relating to the Act. The ex parte applicant's dispute distilled above in my view squarely falls within the Tribunal's jurisdiction.
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> 17. .....
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> 18. On my part, I do not see any reason to depart from the settled position on jurisdiction. Section 31(1) of *Legal Education Ac*t grants the Tribunal jurisdiction to inquire into, "... any matter relating to this Act," which is an all-encompassing clause that that affirms the Tribunal's jurisdiction to deal with matters concerning legal education arising not only within the Act itself but also from the *Kenya School of Law Act* under which the KSL is guided by and applies the provisions of the *Legal Education Act*. This ground of appeal by KSL therefore fails." (sic)

15. Likewise, to the above decision, in the instant matter the Respondent(s) challenge before the Tribunal concerned the Appellant's rejection towards their admission to the Advocates Training Programme (ATP) for reasons earlier highlighted in this judgment. Interestingly, the Appellant did not address the jurisdiction question in its submissions before this Court whereas the Respondents summarily relied on Section 31 of the Legal Education Act to contend that the Tribunal was well endowed with jurisdiction to entertain the proceedings. While addressing itself to the issue the Tribunal was appropriately bound by the decision in *Republic v Kenya School of Law & 2 others Exparte Kgaborone Tsholofelo Wekesa* [2019] eKLR, to wit, it cannot be faulted on accord of the principle of stare decisis. That said, as rightly argued by the Respondent(s) meanwhile this Court though reasonably applying itself to the provisions concerning the Appellant's role as legal education provider and the Tribunal's mandate on an appeal by any party on any matter relating to the Legal Education Act, it is this Court unconcealed determination that the Appellant's jurisdictional challenge cannot sustain and must fall in the circumstance.

16. Concerning whether the Tribunal erred in law by failing to properly apply the law on eligibility for admission to Advocates Training Programme (ATP). Upon considering the material, relevant statute and authorities in respect of the matter before it, the Tribunal proceeded to address itself on the forestated as follows; -

> " 25 ....
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> 26. The Tribunal finds that the appropriate time if an issue existed as to qualifications to undertake the LLB degree was at the point of admission to the said programme as opposed to at the moment the appellants sought admission to the Advocates Training Programme. The Tribunal is well guided by the authority in *Robert Uri Dabaly Jimma v Kenya School of Law & Another*, (2020) eKLR .....
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> 27. The respondent by virtue of the Fair Administrative Action Act, 2015 was not empowered to take the decision or undertake the exercise it did by inquiring into minimum undergraduate LL.B degree entry requirements as it was a function of the interested party as a regulator.
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> 28. .....
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> 29. The Tribunal finds that the appellants being from recognized University in Kenya were only to be subjected to section 1 (a) considerations for eligibility to the Advocates Training Programme of the Second Schedule to the *Kenya School of Law Act*, 2012 as opposed to 1 (b) of the said Schedule. The provisions in issue provide; -.....
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> 30. The conjunction 'or' can only be read as connoting an election of the route an applicant to the Advocates Training Programme choose in pursuing his/her LLB Degree qualification. The wisdom of Parliament in the enactment can only be left to it and it is not for the Tribunal to make a finding which is inconsistent with the express text of the law in seeking to allegedly remedy what the respondent refers to as the application of double standards or perceived discrimination that has not been substantiated before the Tribunal. The Tribunal adopts the interpretation of the second schedule to the *Kenya School of Law Act*, 2012 as done in *Republic v Kenya School of Law & Another ex – parte Kithinji Maseka Semo & Another,* (2019) eKLR by Justice Mativo....." (sic)

17. The Appellant has submitted before this Court that the question of the interpretation of Section 1(a) of Schedule 2 of the *Kenya School of Law Act* specifically the word "or" as used between Paragraphs 1(a) and (b) of Schedule 2 to the Act, ought not result in an absurdity. That the interpretation by the Tribunal that KCSE qualifications are not necessary, in light of academic progression for an applicant seeking to join the Advocates Training Programme (ATP) was conclusively addressed by the Court of Appeal in Kenya School of Law v Akomo (Civil Appeal E472 of 2021) (supra) wherein it was observed that progression through diplomas including diplomas in law still did not qualify an applicant for admissions where minimum KCSE qualifications were not met. Therefore, the Appellant urged this Court to be bound by the said decision in the instant matter. In rebuttal, the Respondent(s) cited the provisions of Article 43(1)(f) & 47 of the *Constitution*, Section 16 of the *Kenya School of Law Act* as read with Section 1(a) of the Second Schedule of the Act and the decision in *Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority* [2021] KEHC 3924 (KLR) to argue

that the Appellant cannot deny the Respondent(s) admission to the Advocates Training Programme (ATP) as their admissions were a crystalized action prior to the declaration of the invalidity.

18. Having considered the above, here, the Court is of the view that it need not belabor on the issue given that, as is, the position is now settled concerning Section 16 of the *Kenya School of Law Act* as read with Section 1(a) of the Second Schedule of the Act. As at presentation of the instant appeal, the Court of Appeal had since not pronounced itself on the issue, whereas decision from Courts of equal status, on the issue, were replete with varied interpretations of the said provision. This is to say, there was no deficiency of authorities litigating on the said provision, that more or less created an aura of uncertainty as to its interpretation. That said, the Tribunal was, rightfully so, bound by decisions of this Court in *Robert Uri Dabaly Jimma* (*supra*), *Republic v Kenya School of Law & Attorney General Ex Parte Okoth Scarlet Susan* [2022] KEHC 814 (KLR), *Sabrina Jelani Badawi v Kenya School of Law* [2021] KEHC 306 (KLR) and *Stephen Kipkemei Rutto v Kenya School of Law & Council of Legal Education* [2022] KEHC 1655 (KLR) while it arrived at the determination it did, concerning disjunctive interpretation of the word "or" and academic progression of the Respondent(s) by dint of Section 1 of the Second Schedule of the Act.

19. However, as earlier noted the position has since been now settled by the Court of Appeal. In *Kenya School of Law v Akomo & 41 others* (supra), the Court of Appeal proceeded to rendered itself on the issue of which this Court will recapture in extenso as follows: -

> "
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> " 30. In dealing with this issue, we shall first consider various legislations and entities that have a bearing for one to be admitted to KSL as it is our considered view that for one to become a lawyer, it is a process that starts from a lower level of schooling to the time of admission and every such level of education is governed by a set of laws and regulations. The Constitution is the supreme law of the land and under article 43, it provides for the right to education. It provides that every person has the right to education. The right to education would make no sense if a person's academic qualifications are not recognized by the State on unreasonable grounds.
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> .....
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> 33. The Council has a duty to regulate how the universities admit students to pursue various cadres of legal education; that is at the certificate, diploma and degree levels. That duty must be discharged at the point of entry of the student at the institution offering such courses. A legal education provider, must, at the direction and supervision of the Council, be able to determine whether a student is qualified to pursue studies in law at the time the student applies to join the institution, be it a college or a university.
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> 34. It should be noted however that whereas the Council has powers to make regulations in respect of requirements for the admission of persons seeking to enrol in legal education programmes, it also has the duty to ensure compliance of such regulations at the very point of admission of such persons, at whatever level. Hence, it is upon the Council to ensure that all those enrolled to pursue legal education programmes are duly qualified in law to undertake such studies.
>
> .....

43. The respondents' main contention is that since they had obtained degrees from local Universities, they were not required to prove their entry grades at KCSE. A closer look at the provisions clearly shows that there are two parts which all are dependent on the qualifications after clause 1(b) of the Act.

44. We have adverted to several authorities that the High Court has grappled with in the interpretation of the said section. We have no difficulty in interpreting the same as the context is very clear and the wording is that there are conditions which affect both qualifications and this is the KCSE grades which are captured at the end of the paragraph.

45. Even in the provision for those who are categorized under paragraph 2 to the extent that they will be eligible for admission after they have passed the pre-bar examination, it follows that the intent of the legislator was that you have to meet the requirements of the law on admission and equally then after application and consideration, sit for the pre-bar exam. Before the amendment, it was a condition precedent to all applicants but after the amendment, it became optional and depending on the conditions set by the appellant. In the end, with respect, we find that the trial court's interpretation that the respondents were eligible for admission on the mere fact that they had completed LLB studies without having regard to their KCSE grades to be erroneous. The key entry point to any career course in the Kenyan education system is the KCSE examination results and thus it cannot be that just because one graduated from any Kenyan University, the grades obtained at KCSE do not matter or that the certificate itself is of no value at all. It would be discriminative of those who do not study from within the Country who then according to the respondents are the only persons who are required to have their KCSE results considered. We are satisfied that such stance and finding is unrealistic, unreasonable and was not the intention of the Legislature when drafting the said section.

.....

50. It was submitted that section 1(a) of the Second Schedule to the Act, is clear that upon being eligible for an award of a Bachelor of Laws degree from a Kenyan University an applicant would be eligible for admission to the ATP. Further, sections 1(a) and (b) of the Second Schedule to the KSL Act, distinguishes applicants who hold a Bachelor of Laws degree from a Kenyan University and those from a foreign University. We are of the view that with the use of semi-colon between 1(a) and (b) of the Act then the conditions follow which to us means that you are eligible, firstly, based on your LLB degree either from a Kenyan University or as in (b) from a foreign university but in all situations, the conditions are same and are enlisted therein which are mandatory to all irrespective of whether you have a degree from within or without Kenya.

.....

52. We, therefore, find that the decision by the appellant was in line with the law and cannot, therefore, be faulted." (sic)

20. Invariably, the Tribunal as at when it rendered its decision, did not have the benefit to the latter authority which has since conclusively settled the question of the Appellant's consideration of persons eligible for admission to Advocates Training Programme (ATP). To the foregoing, this Court would not wish to address itself further in light of the above finding by a superior Court. Consequently, the Court will proceed to allow the appeal as lodged whereas in light on the issues in question, order that each party bears its own costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JANUARY 2025.

HON. L. KASSAN

JUDGE

In the presence of:

No appearance for the Applicant

Waithera holding brief Wambui for Respondent

Guyo - Court Assistant