



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya School of Law v Kibegwa & 10 others (Civil Appeal E692 of 2021 & E063 of 2022 (Consolidated)) [2025] KEHC 11787 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11787 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E692 OF 2021 & E063 OF 2022 (CONSOLIDATED)**

**LP KASSAN, J**

**JULY 31, 2025**

**BETWEEN**

**KENYA SCHOOL OF LAW ..... APPELLANT**

**AND**

**JOHN KIBEGWA ..... 1<sup>ST</sup> RESPONDENT**

**KIBORE WANGUI LUCIA ..... 2<sup>ND</sup> RESPONDENT**

**NELLY GATIE JARA ..... 3<sup>RD</sup> RESPONDENT**

**MURABULA EMILLY AKWANYI ..... 4<sup>TH</sup> RESPONDENT**

**JACOB ODANGA ODHIAMBO ..... 5<sup>TH</sup> RESPONDENT**

**MBOTE NELLY MWIKALI ..... 6<sup>TH</sup> RESPONDENT**

**GELATIUS MWANGANGI MWEND ..... 7<sup>TH</sup> RESPONDENT**

**OBOTE MICHEL SAVAI ..... 8<sup>TH</sup> RESPONDENT**

**BRENDA KARIMI ..... 9<sup>TH</sup> RESPONDENT**

**AS CONSOLIDATED WITH  
CIVIL APPEAL E063 OF 2022**

**BETWEEN**

**KENYA SCHOOL OF LAW ..... APPELLANT**

**AND**

**MACLINE ASINGWA GANIRA ..... 1<sup>ST</sup> RESPONDENT**



*(Being an appeal from the Judgment and Decree of the Legal Education Appeals Tribunal at Nairobi delivered on 15th October, 2021 in LEAT Appeal No. E008 of 2021, LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021 and Being an appeal from the Judgment and Decree of the Legal Education Appeals Tribunal at Nairobi delivered on 31st January 2022 in LEAT Appeal No. E004 of 2021)*

## JUDGMENT

1. For determination is Nairobi Milimani HCCA No. E692 of 2021 emanating from the judgment of the Legal Education Appeals Tribunal in LEAT Appeal No. E008 of 2021, LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021 delivered on 15.10.2021 and Nairobi Milimani HCCA No. E063 of 2022 emanating from the judgment of the Legal Education Appeals Tribunal in LEAT Appeal No. E004 of 2021 delivered on 31.01.2022. The proceedings before the Tribunal were commenced by way of respective appeals filed by John Kibegwa, Kibore Wangui Lucia, Nelly Gatie Jara, Murabula Emily Akwanyi, Jacob Odanga Odhiambo, Mbote Nelly Mwikali, Gelatius Mwangangi Mwendwa, Obote Michel Savai, Brenda Karimi and Macline Asingwa Ganira the respective appellants before the Tribunal, for ease of reference, (hereafter the 1<sup>st</sup> to 10<sup>th</sup> 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 in Nairobi Milimani HCCA No. E063 of 2022.
2. The 1<sup>st</sup> to 10<sup>th</sup> Respondent 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 Paragraph 1(a) of the Second Schedule of the [Kenya School of Law Act](#); that an order be issued compelling the Appellant to admit the Respondent(s) to the Advocates Training Programme (ATP); 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 denied to admit the Respondent(s) into the ATP in violation of the Respondent(s) rights to fair administrative action which was unreasonable and thwarted their legitimate expectation based on unambiguous provision of the law. That the Appellant's determination of the admission criteria to the ATP was based on an unfounded misinterpretation of the law on the admission criteria therefore it was in the interest of justice that the appeals be allowed.
3. The Appellant filed a response to the respective appeals and at the outset challenged the Tribunal's jurisdiction to being limited to matters that relate to the [Legal Education Act](#). It went on to contend 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 together with Paragraph 1(a) of the Second Schedule of Act which required of the Respondent(s) to have attained a mean grade of C+ (plus) in Kenya Certificate of Secondary Education (KCSE) with a B (plain) in English or Kiswahili whereas the Act does not provide for Academic Progression as a condition towards admission to the Advocates Training Programme (ATP). It went on to state that the Appellant did not infringe on the Respondent(s) rights or freedoms and went on to cite the decision in *Victor Juma v Kenya School of Law; Council of Legal*



Education (Interested Party) [2020] KEHC 4709 (KLR) to assert that the High Court had in more than one decision supported the Appellant's interpretation of the law.

4. The Interested Party in its response to appeals in LEAT Appeal No. E008 of 2021, LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021 stated that based on the respective Respondent(s) academic qualifications, they met the requirements prescribed under Rule 5 of Part II of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016 for admission to the undergraduate Bachelors of Laws Degree Programme. That the respective Respondent(s) having been conferred the degree of Bachelors of Laws by a recognized and licensed university in Kenya are eligible for admission to the ATP having satisfied the requirements prescribed by Paragraph 1(a) of the Second Schedule of the *Kenya School of Law Act* as well as Rule 6 Part II of the Third Schedule to the Legal Education (Accreditation and Quality Assurance) Regulations, 2016
5. LEAT Appeal No. E008 of 2021, LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021 were consolidated and disposed of by way of written submissions as well as LEAT Appeal No. E004 of 2021. In its judgment, the Tribunal found in favour of the Respondent(s) by allowing the respective appeals as lodged and ordered that the Respondent(s) qualify towards admission to the ATP as provided for in Paragraph 1(a) of the Second Schedule of the *Kenya School of Law Act*, an order compelling the Appellant to admit all the Respondent(s) to the Advocates Training Programme (ATP), with each party bearing their own costs.
6. Aggrieved with the outcome in LEAT Appeal No. E008 of 2021, LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021, the Appellant preferred Nairobi Milimani HCCA No. E692 of 2021 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.
  2. That the honorable Tribunal erred in law and in fact by exceeding its mandate.
  3. That the honorable Tribunal erred in law and in fact by addressing itself on matters outside its jurisdiction.
  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)
7. Equally, aggrieved with the outcome in LEAT Appeal No. E004 of 2021 the Appellant preferred Nairobi Milimani HCCA No. E063 of 2022 challenging the Tribunal's decision on identical grounds as itemized in Nairobi Milimani HCCA No. E692 of 2021. The latter appeals were both consolidated for disposal before this Court, by way of written submissions. Only the Appellant and 10<sup>th</sup> Respondent complied. That said, the Court has duly considered the said submission alongside the authorities cited in support thereof.



8. These is a first appeals. 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)

9. 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 vs Duncan Mwangi Wambugu* (1982 – 1988) 1 KAR 278. Nevertheless, by dint of Section 38(1) of the [Legal Education Act](#) the appeals are no ordinary first appeals and the Court must first satisfy itself that the appeals 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] KECA 498 (KLR), 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.”

10. The Court of Appeal in its subsequent decision in *Bashir Haji Abdullahi v Adan Mohamed Nooru & 3 others* [2014] KECA 621 (KLR), 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 ex facie appear the appeals herein challenge the jurisdiction of the Tribunal to entertain the respective appeals and exceeding its mandate thereof and the Tribunal’s failure to properly apply the law on eligibility for admission to the Advocates Training Programme (ATP). Nevertheless, this Court is at loss why the Appellant in presenting its appeals opted to 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](#).

11. That said, it is trite that parties are bound by their pleadings whereas a purposeful examination of the Appellant’s grounds in the respective appeals undoubtedly reveals the Appellant’s intent. 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 inclined to entertain the same, on accord of the intended challenge, notwithstanding the usage of the words “in fact” given that the appeals primarily present a jurisdictional challenge of the Tribunal’s mandate and its failure to properly apply the law on eligibility for admission to the Advocates Training Programme (ATP).

12. Moving on the gravamen of the appeals, at the risk of repetition, the Appellant’s challenged in limine both before the Tribunal and 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.”

13. 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.”

14. Whereas, Section 35 on powers of the Tribunal on appeal, provides that: -

Upon hearing an appeal the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (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
- (c) make any other order, including an order, for costs, as it may consider just.

15. 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.

16. It is undisputed, and by the Appellant’s own admission in its responses before the Tribunal that it is a state corporation established under Section 3 of the *Kenya School of Law Act* with its objective espoused in Section 4(1) 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 adjunct to the Respondent(s) grievance before the Tribunal as against the Appellant, this



Court can decisively conclude that the Respondent(s) grievances were within the purview of the Tribunal's jurisdiction as provided for in Section 31 (1) of the [Legal Education Act](#).

17. This position was recently fortified by the late Majanja, J. in *Kenya School of Law v Gachoki & 2 others; Council of Legal Education (Interested Party)* [2024] KEHC 528 (KLR), 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.
  15. ....
  16. The Tribunal further relied on the court's decision in *Republic v Kenya School of Law & 2 others Ex parte Kgaborone Tsholofelo Wekesa (Supra)* where Mativo J., (as he was then) held as follows:
    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.
  17. ....
  18. On my part, I do not see any reason to depart from the settled position on jurisdiction. Section 31(1) of [Legal Education Act](#) grants the Tribunal jurisdiction to inquire into, "... any matter relating to this Act," which is an all-encompassing clause 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)
18. Likewise, to the above decision, in the instant matters 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 10<sup>th</sup> Respondent 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 Ex parte Kgaborone Tsholofelo Wekesa* [2019] KEHC 11107 (KLR), to wit, it cannot be faulted on accord of the principle of stare decisis. That said, as rightly argued by the 10<sup>th</sup> Respondent whereas this Court 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 in reserved determination that the Appellant's jurisdictional challenge cannot sustain and must fall in the circumstance.
19. 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 in LEAT Appeal No. E008 of 2021,



LEAT Appeal No. E009 of 2021; LEAT Appeal No. E010 of 2021; LEAT Appeal No. E011 of 2021; LEAT Appeal No. E012 of 2021; LEAT Appeal No. E013 of 2021; LEAT Appeal No. E014 of 2021; LEAT Appeal No. E015 of 2021; and LEAT Appeal No. E016 of 2021 proceeded to address itself on the fore stated as follows; -

“The qualifications for eligibility to the Advocates Training Programme are provided for in Section 1 of the Second Schedule of the Kenya School of Law Act, 2012 as amended by Statute Law (Miscellaneous Amendments) Act 2014 which provides for admission requirements to the school as follows:.....

The contention of the appellants that they fell into Section 1(a) of the Second Schedule of the Act is proper. The 1<sup>st</sup> Appellant holds an LLB degree from the University of Nairobi while the 2<sup>nd</sup> -7<sup>th</sup> appellants hold LLB degrees from Catholic University of Eastern Africa which are recognized universities in Kenya and which fact is well confirmed by the Interested Party in its response to the appeal filed herein. The Respondent has sought to extend the application of Section 1(b) of the Second Schedule to the Appellants it is the finding of the Tribunal that the same would be improper. The conjunction “or” between (a) and (b) means that only one is applicable to the applicant. If the applicant is from a recognized university the category applicable is (a) without resort and reference to (b). The authority in Republic v Kenya School of Law & Another Ex parte Kithinji Maseka Semo & Another [2019] eKLR clearly settles the matter.....

The tribunal also derives guidance from the decision by Justice Chacha Mwita in Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority [2021] eKLR at paragraph 110.....

.....

...An act of differentiation can never amount to discrimination. The tribunal derives guidance from the authority in Federation of Women Lawyers Fida Kenya & 5 Other v Attorney General & Another [2011] eKLR.....

The tribunal further derives guidance from the authority in Mohammed Abduba Dida v Debate Media Limited & Another [2018] eKLR.....

The differentiation set in the two routes is well premised on the existence of quality assurance and monitoring on Kenya institutions by a number of players such as the Interested Party for the Schools of Law offering undergraduate LLB degree qualifications together with the Commission for University Education. Indeed the point of checking for minimum LLB degree entry qualifications is at the time of an applicant seeking admission to the course at the undergraduate entry point as opposed to waiting for the applicant to present the degree for purposes of admission to the Respondent for Post-Graduate Diploma Law. ....

The tribunal also finds that the Respondent breached the provisions on fair administrative action in taking the decision. For instance in respect of the 2<sup>nd</sup> appellant it concluded that her Kenya Secondary Education mean grade of C (plain) as per the Kenya National Qualification Authority equation was below the stipulated grade of C+ (plus). The respondent upon being prompted by the Tribunal to address the issue it conceded that it fell in error and sought an opportunity that the matter be remitted to it for reconsideration. It is our finding that remission of the matter is inconsequential as the said appellant was already eligible to admission to the programme based on Paragraph 1(a) of the Second Schedule to



the Kenya School of Law Act. This clearly connotes that the respondent was not entitled to conclude as it did and also it has not pointed out the empowering law.....

...The tribunal also notes that the respondent in arriving at its decision in respect of the 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> appellants of whom it had awarded diplomas in law before they proceeded to enroll and undertake LLB degree courses indicated that they were not entitled to direct admission which was different from the decision taken in respect of the other appellants.....” (sic)

20. The Tribunal in LEAT Appeal No. E004 of 2021 on its part proceeded to address itself on the eligibility for admission to Advocates Training Programme as follows;

“On the decision of the 1<sup>st</sup> Respondent on appeal to it, the Tribunal finds that while the Director of the School affirmed the erroneous decision that has been made as regards the appellant having allegedly undertaken the Diploma and Degree courses concurrently, it gave an additional reason that the appellant did not meet the minimum qualifications for admission to the Advocates Training Programme due to want of the required Kenya Certificate of Secondary Education qualifications. The path taken by the director on the appeal was not only a detour from the initial position adopted on the matter being considered on the basis of concurrent undertaking of the two qualifications but was also a breach of the provisions on fair administrative action. The director was bound by Section 4 of the Fair Administrative Action Act, 2015 to have accorded the Appellant the guarantees provided for therein.....

The 1<sup>st</sup> Respondent in its initial decision had made a representation to the Appellant that the only issue it has as regards her eligibility to the Advocates Training Programme was only the issue of having undertaken the two qualifications of a degree and diploma concurrently, it was thus estopped from creating a new state of affairs on appeal by now alluding to the fact that she had allegedly not met the minimum qualifications. The tribunal is guided by Section 120 of the Evidence Act...

Finally as regards the qualifications for admission to the Advocates Training Programme, the Tribunal finds that the conjunction ‘or’ appearing in Paragraph 1(a) and (b) of the Second Schedule to the Kenya School of Law Act cannot be read in the disjunctive as sought by the 1<sup>st</sup> Respondent. The Parliamentary intention of the enactment was well addressed in Republic v Kenya School of Law & Another Ex parte Kithinji Maseka Semo & Another [2019] eKLR” (sic)

21. The Appellant has summarily argued before this Court that the question of the interpretation of Section 1(a) & (b) 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 10<sup>th</sup> Respondent on the first hand argued that the Appellant gave contrary reasons for declining her admission whereas in her appeal to the Appellant’s she demonstrated the pursuit of her law diploma and degree were not concurrent but successive. It was argued that the 10<sup>th</sup> Respondent had satisfied



the criteria provided under Paragraphs 1(a) of Schedule 2 to the [Kenya School of Law Act](#) therefore the standards set out in Paragraphs 1(b) did not apply to her thus making her eligible for admissions.

22. Having considered the above, here, and as rightly argued by the Appellant, the Court is of the view that it need not belabor on the issue concerning eligibility for admission to the ATP pursuant to Paragraphs 1(a) and (b) of Schedule 2 to the [Kenya School of Law Act](#) and the application of progression towards eligibility for admission to the ATP given that, as is, the position is now settled. As at presentation of the instant appeal, the Court of Appeal had since not pronounced itself on the issue, whereas decisions from Courts of equal status, on the issue, were replete with varied interpretations of the said provision. This is to say, there was no dearth of authorities concerning the said provision, which 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 & Another Ex parte Kithinji Maseka Semo & Another [2019] eKLR, Mohammed Abduba Dida v Debate Media Limited & Another [2018] eKLR and Republic v Kenya School of Law & Another Ex parte Kithinji Maseka Semo & Another [2019] eKLR while arriving at the determination it did, on the issue it had framed, by dint on the doctrine of stare decisis.
23. 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: -

“29. ...

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.

.....

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.

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 enroll 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.
46. We are alive to the fact that the parties relied on the said regulations as they were then in force before the Court of Appeal declared the same to be invalid for want of compliance with the *Statutory Instruments Act*, 2013 on December 21, 2021 in the case of *Javan Kiche Otieno & another v Council of Legal Education* [2021] eKLR. But we hasten to add that such invalidation could not apply retrospectively.
47. On the issue of progressive academic qualifications, it is the appellant's stand that the person who hinges on this aspect of qualification must have obtained a diploma in law and not just any other course. Progression ideally is the process of developing or moving gradually towards a more advanced state. The respondents urge that they have been progressing towards studying law and should be seen as having qualified through this medium of qualification. The appellant's statutory mandate under section 8(3)(a) of the *Legal Education Act*, 2012 is to make regulations in respect of persons wishing to enroll in Legal Education Programmes. The same provides as follows:

“Functions of the Council:



- 1) .....
- 2) .....
- 3) In carrying out its functions under subsection (2), the Council shall –
  - a. make Regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes;
  - ....
  - c) formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels.”

48. The wording in Part C above is clear as it is, that prior learning and experience in law is what ought to be considered in formulating a system that would see the progression in legal education. We do not think a degree in aeronautics or a diploma in interior design for instance, can be termed as progression towards studying law. Indeed, the only closer aspect contemplated is experience and learning in law culminating in a diploma in law or related course in law. We therefore hold that such degree and diploma are not to be categorized as a progression in law of whatsoever kind and even if they were, the appellant had to consider the primary requirements in the Act first before reverting to the regulations and which is the requirement of grades in KCSE. We refuse to be swayed by the respondents’ argument that even having obtained a mean grade D Plain, one can still proceed and pursue law and only wave the diploma in other disciplines as a condition for admission to the ATP.
49. It is our considered view that the conjunction ‘or’ in sections 1(a) and 1 to the second schedule of the KSL Act, should be read disjunctively as requiring both applicants from recognized Universities in Kenya and those from foreign Universities to hold similar qualifications.
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)
24. Having reviewed the material canvassed in respect of the appeals, it is not in dispute that neither of the Respondent(s) attained the minimum qualifications in Paragraphs 1(b) (ii) of Schedule 2 to the [Kenya School of Law Act](#) that the Court of Appeal in *Kenya School of Law v Akomo & 41 others* (supra) considered pertinent towards eligibility to the Advocates Training Programme (ATP) despite all having attained degrees in law. Further, notwithstanding, the flippant communication from the Appellant in respect of the 10<sup>th</sup> Respondent’s, it was still incumbent on her to demonstrate her eligibility, by complying with Paragraphs 1(a) as read with Paragraphs 1(b) of Schedule 2 to the [Kenya School of Law Act](#). She did not, to wit, the Appellant was within its power to decline her application. That said, the Court of Appeal having succinctly addressed itself the importance of the minimum KCSE examination qualifications as provided for in the Act, I need not belabor much on the same.
25. 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 end, 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 appeals as lodged whereas in light of the issues in question, order that each party bears its own costs.

Order Accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**LINUS P. KASSAN**

**JUDGE**

In the presence of:-

Mbuthu for Appellant

Museve for Respondents

Carol - Court Assistant

