



REPUBLIC OF KENYA



Kenya School of Law v Wamuyu; Council of Legal Education (Interested Party) (Civil Appeal E062 of 2022) [2024] KEHC 499 (KLR) (Civ) (31 January 2024) (Judgment)

Neutral citation: [2024] KEHC 499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E062 OF 2022

DAS MAJANJA, J

JANUARY 31, 2024

BETWEEN

KENYA SCHOOL OF LAW APPELLANT

AND

CHARITY WAMUYU RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION INTERESTED PARTY

(Being an appeal against the Judgment of the Legal Education Appeals Tribunal at Nairobi dated 28th January 2022 in LEAA Appeal No E005 of 2021)

JUDGMENT

Introduction and Background

1. The Appellant (“KSL”) is a State Corporation established under section 3 of the *Kenya School of Law Act*, 2012 and its mandate includes, *inter alia*, training persons for purposes of the *Advocates Act* (Chapter 16 of the Laws of Kenya) and in that regard offers the Advocates Training Programme (“ATP”). It is also required under the *Kenya School of Law Act* to consider applications for admission to the ATP and once an applicant is qualified, he or she is admitted.
2. Sometime in January 2021, the Respondent applied to KSL for admission into the ATP for the academic year 2021/2022. KSL, through its Director/Chief Executive Officer responded through a letter dated 26.04.2021 rejecting the application and declining the Respondent admission into the ATP for the reason that she had attained a secondary school grade of C rather than the stipulated C + (plus) in the Kenya Certificate of Secondary Education (“KCSE”). Aggrieved by the decision, she appealed to KSL to review its decision which appeal KSL rejected through its letters dated 26.04.2021,



- 13.05.2021 and 15.06.2021 as it maintained that the Respondent had not met the minimum High school grade requirement. These rejections precipitated the filing of an appeal to the Legal Education Appeals Tribunal (“the Tribunal”) where the Respondent stated that having obtained a Bachelor of Laws (LLB) degree from a duly recognized university, she was duly qualified to be enrolled into the ATP in line with section 1(a) of the Second Schedule of the [Kenya School of Law Act](#) and as such, KSL had no basis to disqualify her.
3. The Respondent contended that her right to education had been greatly infringed by KSL’s decision to reject her application for admission into the ATP. That the said decision was unreasonable, irrational, unlawful and illegal and infringed on her right of education under Article 43(1) of [the Constitution](#) and her right to legitimate expectation under Article 47 of [the Constitution](#) and the [Fair Administrative Act](#). As such, the Respondent sought that she be admitted into the ATP for the academic year 2021/2022 and that the decisions of KSL be quashed.
 4. KSL opposed the appeal and asserted that the Respondent did not meet the eligibility criteria as provided for under section 16, read together with Paragraph 1 of the Second Schedule of the [Kenya School of Law Act](#) which provides that the requirement for admission to the ATP is a mean grade of C+ (plus) in KCSE with B (plain) in English or Kiswahili languages which the Respondent did not have. That the Respondent was relying on a Diploma in Law qualification to be admitted for the ATP, yet the [Kenya School of Law Act](#) does not have a provision for academic progression. KSL averred that it is bound by the provisions of the [Kenya School of Law Act](#) in determining the eligibility of the ATP and thus it cannot admit a student based on any other criteria other than that provided for in the Second Schedule of the [Kenya School of Law Act](#). It stated that allowing people to join the ATP at KSL on the basis that they had a Diploma in Law prior to joining LLB degree programme would amount to circumventing clear statutory provisions and result into discrimination and application of double standards.
 5. KSL proffered that the High Court has in more than one decision, supported KSL’s interpretation of the law and therefore, the Respondent cannot claim that KSL has misinterpreted or disregarded the law. It thus insisted that the Respondent is not qualified for admission to the ATP and that KSL was right in declining to admit her.
 6. After considering the oral and written submissions, the Tribunal dealt with two issues. On the issue of jurisdiction, the Tribunal found that since the matter of progression formed the core issue for determination in the appeal before it, it had jurisdiction to address the appeal. The Tribunal stated that it was by the provisions of its jurisdiction as spelt out in section 31 of the [Legal Education Act](#) which entitles it to inquire into any matter brought before it in respect of the Act.
 7. On the issue of academic progression, the Tribunal found that the Legal Education (Accreditation and Quality Assurance) Regulations, Legal Notice No. 15 of 2016 was nullified by this court and this decision upheld by the Court of Appeal. That with this nullification, the applicable legal regime reverted to the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009. The Tribunal further found that the relevant time for consideration on checking for eligibility to the ATP would not have been when the Respondent enrolled for the Diploma in law qualification but when she was admitted to pursue her LLB degree at the University of Nairobi. It was also found that it would be acting ultra vires for KSL to undertake an exercise of inquiry on minimum University eligibility grades for applicants to the ATP who are from recognized Universities in Kenya and that it was good as usurping the authority reposed upon the Interested Party (CLE) and the Commission for University Education.



8. The Tribunal therefore held that the Respondent thus qualified for admission to the ATP based on the decision in *Robert Uri Dabaly Jimma v Kenya School of Law & Kenya National Qualifications Authority [2021]* eKLR and based on the fact that she obtained an LLB degree from the University of Nairobi and fit within paragraph 1(a) of the Second Schedule of the *Kenya School of Law Act*. It stated that it was improper for KSL to subject the Respondent to the qualification requirements in section 1(b). As regards the communication of the decisions as taken by KSL declining the Respondent's application and appeals, the Tribunal held that the Director was bound to comply with section 4 of the Fair Administrative Act, 2015 which it did not.
9. The Tribunal set aside the decisions of KSL declining to admit the Respondent to the ATP and issued an order compelling KSL to admit the Respondent to the ATP forthwith. KSL is aggrieved with this decision by the Tribunal and has now filed an appeal before this court through its Memorandum of Appeal dated 02.02.2022. The appeal has been canvassed by way of written submissions.

Analysis and Determination

10. This court derives its appellate jurisdiction from section 38(1) of the *Legal Education Act* which provides as follows:
 38. Appeals to the High Court
 - (1) 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.
11. An appeal limited to matters and points of law does not permit the appellate court to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. The court can only intervene where the decision on facts is not supported by the evidence or it otherwise perverse (see *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018]* eKLR and *Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others [2013]* eKLR). The matters in this appeal are essentially matter of law involving interpretation of statutory provisions.
12. Even though KSL's memorandum of appeal raises 5 grounds, it is mainly challenging the Tribunal's conclusions on its jurisdiction to determine the appeal and the Respondent's eligibility for admission to the ATP. I wish to point out that the issues raised herein are substantively similar those raised in *Kenya School of Law v James Muchiri & 2 Others & Council For Legal Education NRB HCCA NO. E166 of 2022* whose reasoning I adopt. In that case, I found the Tribunal had jurisdiction to hear and determine a dispute emanating from KSL as a result of KSL declining admission on the ground that the applicant lacked the requisite secondary school qualifications as was held by the court in *Republic v Kenya School of Law & 2 others Ex parte Kgaborone Tsholofelo Wekesa [2019]* eKLR. This ground of appeal by KSL therefore fails.
13. Turning to the conclusion by the Tribunal that the Respondent was eligible to be admitted to KSL for the ATP, I find that the Court of Appeal in *Kenya School of Law v Akomo & 41 others* (Civil Appeal E472 of 2021) [2022] KECA 1132 (KLR) has conclusively determined this issue that Paragraphs 1(a) and (b) of the Second Schedule of the *Kenya School of Law Act* should be read as a whole and that failure to meet the basic requirements of the qualifications in KCSE as envisaged in the above provisions renders one's application incompetent and hence ripe for rejection by KSL. Further, that the rejection of an applicant who did not meet the above requirement was not a violation of their constitutional rights or infringement of any of their rights to education provided for under Article 43(1)(f) of *the Constitution*.



14. On the retrospective application of the Court of Appeal decision, it was noted that the respondents in the previous case, just like the Respondent herein had already gone through the ATP and also sat for the Bar examinations. However, this was never brought to the court's attention until the applications dated 24.05.2022 and 27.11.2023 were filed in which KSL disowned the Respondent's admission. In any event, the court cannot just "wash its hands" as it has a constitutional duty to advance and assert the legal position settled by the Court of Appeal which is that the Respondent does not meet the the basic minimum requirements of the qualifications in KCSE for her to be admitted in KSL's ATP and KSL was right to reject her application for admission. The Respondent's ATP studies and subsequent bar examinations are of no consequence, are a nullity and ought to be redressed and set aside by KSL and CLE.

Disposition

15. For the reasons outlined above, I allow the appeal and set aside the judgment of the Tribunal dated 28.01.2022. The net effect of this judgment is that the decisions by the Appellant contained in the letters dated 26.04.2021, 13.05.2021 and 15.06.2021 addressed to the Respondents rejecting her application for admission to the Respondent stand.

16. Given the nature of the appeal and the manner in which it has been allowed, each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2024.

D. S. MAJANJA

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Mbuthu, Advocate instructed by Dr Henry K. Mutai for the Appellant.

Ms Wamaitha instructed by Muri, Mwaniki, Thige and Kageni LLP Advocates for the Respondent.

