REPUBLIC OF KENYA

IN THE LEGAL EDUCATION APPEALS TRIBUNAL AT NAIROBI

APPEAL NO. 1 OF 2020

CORAM: Rose Njoroge – Mbanya (Mrs.) – Chair Person; Members - Eunice Arwa (Mrs.) and Raphael Wambua Kigamwa (Mr.)

NYAMIWA ACHIENG BETHSHEBA ………………………… APPELLANT

VERSUS

KENYA SCHOOL OF LAW …………………………………RESPONDENT

COUNCIL OF LEGAL EDUCATION ……………. INTERESTED PARTY

(Being an appeal against the decision of the Director/Chief Executive Officer of the Kenya School of Law dated 17th February, 2020 revoking admission into the Advocates Training Programme – 2020/2021 academic year)

JUDGMENT OF THE TRIBUNAL.

1. **Introduction and background**.

The appellant **NYAMIWA ACHIENG BETHSHEBA** lodged an appeal with the Tribunal against the **KENYA SCHOOL OF LAW** as a respondent and the **COUNCIL OF LEGAL EDUCATION** as an interested party on the 28th February, 2020. The appeal as instituted seeks for relief as follows:-

a) The appeal be certified as urgent and be fixed for inter parties hearing on priority basis.

b) The Tribunal does set aside the decision of the Kenya School of Law revoking the admission of the Appellant to the Advocate Training Programme (ATP).

c) The making of any necessary orders.

The appeal is based on the grounds:-

a) The respondent's action is a violation of the appellant's right to fair administrative action as the same is unreasonable and thwarts her legitimate expectations based on the representations of the respondent.
b) The appellant wrote to the interested party prior to joining the Diploma Programme at Inoorero University for a 2 year Diploma in Law and she was informed that Inoorero University was accredited to offer the Diploma in Law and that upon graduation she would be admissible to the Advocate Training Programme (ATP) subject to joining a recognized University for LLB degree and sitting and passing the pre-bar examination.
c) The appellant successfully completed and graduated with a Diploma in Law from Inoorero University.
d) The appellant applied and was admitted to the LLB programme at Catholic University of Eastern Africa where she successfully completed graduated with an LLB Degree in 2019.
e) The appellant sat and passed the pre-bar examination offered by the respondent the Kenya School of Law.
f) The appellant was issued with an admission letter to the Advocate Training Programme (ATP) for the Academic year 2020/2021.
g) The Respondent revoked the Appellant's admission to the ATP Programme for no apparent reason.
h) It is in the interest of justice that this appeal be allowed.

The grounds of appeal are buttressed by the appellant's depositions as contained in her affidavits in support and supplemental thereto.

The respondent and the interested party were served, however, only the respondent filed a replying affidavit through Mr. Fredrick Muhia its Principal Officer – Academic Services on the 11th March, 2020. The appeal having been admitted to urgency by the Tribunal and considering the COVID – 19 (Corona Virus) pandemic it was directed that it be disposed of by way of written submissions with the appellant and the respondent attending a video conference session to confirm that the pleadings and submissions were duly lodged and on record. The interested party despite service and knowledge of the matter being in existence did not respond or participate in the proceedings.

2. **The appeal and response thereto**.

The appellant deposes and with documentary evidence annexed thereto that she sat for the Kenya Certificate of Primary Education (KCPE) in the year 2007 and attained 345/500. She sat for the Kenya Certificate of Secondary Education (KCSE) in 2012 and attained a mean grade of C Plain. From the certificate she attained grades C + in English, D + in Kiswahili, C plain in Mathematics, D + in Biology, C – in Chemistry, C + in History and Government, B plain in Christian Religious Education and C plain in Agriculture. She was admitted to the Inoorero University for a 2 year Diploma Programme in Law and graduated with a Diploma in Law on the 21st November, 2015 of which she attained a grade of Credit.

By a letter dated 8th July, 2015 the appellant through her father John Jacob Okong'o wrote to the interested party intimating that

she had secured admission at the Catholic University of Eastern Africa for a 4 year course leading to the award of an LLB degree. He indicated that the appellant had obtained a Diploma in Law from the Inoorero University an institution accredited by the interested party with a grade of Credit and she had obtained a mean grade of C plain with a C + in English/Kiswahili in the Kenya Certificate of Secondary Education (KCSE). He sought clarification from it as a regulatory institution on the twin issues of:-

a) Whether upon graduating with a degree in law from the said University, she would qualify for admission to the respondent to pursue a Diploma in Law under its Advocate Training Programme?
b) Whether there were exams and or pre – bar exams at the respondent institution that the appellant will have to do inorder to qualify for the Advocates Training Programme (ATP) Diploma at the respondent?

He sought concrete answers that would clear the issues as raised. The letter was copied to the Director of the respondent. The interested party through Prof. W. Kulundu – Bitonye, EBS its erstwhile Secretary and Chief Executive Officer by a letter dated 21st July, 2015 informed the father of the appellant that she would be eligible for admission to the respondent's Advocates Training Programme (ATP) on attaining the LLB Degree subject to passing the Pre - Bar Examinations administered by the Kenya School of Law (KSL). Acting on the assurance from the Council of Legal

Education, she undertook the four year LLB Degree Programme at the Catholic University of Eastern Africa (CUEA).

To the appeal, the appellant attached a letter indicating that she was admitted to the Catholic University for East Africa (CUEA) in its Faculty of Law for a Four - year Bachelor of Laws (LL.B) Degree on 9th July, 2015 of which she successfully graduated on the 25th October, 2019 having completed on the 31st August, 2019 attaining a Second Class Honours – Lower Division. The appellant upon graduation from the Catholic University of Eastern Africa (CUEA) wrote to the respondent inquiring whether she was eligible for admission to the School on 15th September, 2019 and in response to the letter, the Director/Chief Executive Officer of the respondent indicated that she needed to forward a complete Advocates Training Programme admission application to the school for consideration on or before 31st October, 2019.

The appellant applied for admission to the Kenya School of Law and by a letter dated 6th January, 2020, the Respondent advised her that her application for admission to the School was not successful as she had a mean grade of C Plain in the Kenya Certificate of Secondary Education (KCSE) and C+ (Plus) in the English language which were below the stipulated grades of C + (Plus) and B (Plain) respectively. The appellant seemingly indefatigable upon an advertisement being placed in the daily newspaper notifying the general public of registration of the Pre-Bar Examination and acting on the previous representation of the interested party applied to sit

the Pre - Bar Examination. She paid sh. 30,000 to the respondent which was accepted and an official receipt no. 8125 was issued. The appellant sat the Pre - Bar examination and passed all the papers and the Director/Chief Executive Officer of the respondent on 31st January, 2020 issued to her a letter of confirmation of the results. The said officer issued to the appellant a letter of admission on 7th February, 2020 indicating that she had been offered a provisional place in the programme for the academic year 2020/2021 which was subject to verification of relevant documents and compliance with the conditions contained in the letter.

The appellant proceeded to deposit the sum of Ksh. 110,000 which was 75 percent of the required school fees in the bank account of the respondent and was issued with receipt numbers 11401 and 11402 on 14th February, 2020. Her student number is indicated therein as 20201990. She thereafter presented herself for registration on the same day. Upon presentation of her documents, she was informed that she was not eligible for admission to the Advocates Training Programme and by a letter dated 17th February, 2020 the Respondent revoked her admission to the Kenya School Law Advocates Training Programme (ATP).

The appellant being aggrieved moved the Tribunal and it is her contention that the decision of the Respondent to revoke the admission was not well founded in law given that she enrolled in the LLB programme after making necessary inquiries from the regulator who is the interested party at a time when there was a general uncertainty about the admission criteria at the Kenya

School of Law and the decision was not a fair administrative action as it was manifestly unreasonable and thwarted her legitimate expectations. She was not given a hearing before the admission was revoked.
The respondent's position on the appeal is that on the 4th September, 2019 it published a notice in the local newspapers inviting applications for admission to the Advocates Training Programme. The Appellant in pursuance of the invitation made an application to it for admission into the 2020/2021 academic year. Her application was not successful as she had a mean grade of C plain in the Kenya Certificate of Secondary Education (KCSE) and a C plus in English language which were below the stipulated mean grade of C plus and B plain in English as provided for in section 16 as read with paragraph 1 of the Second Schedule of the **Kenya School of Law Act**, 2012 as amended in 2014. The appellant having been admitted to the Catholic University of Eastern Africa (CUEA) to pursue the Bachelor of Laws degree on 14th August, 2015 she was subject to the said admission criteria.

The appellant's request to the Kenya National Qualifications Authority (KNQA) to verify her Diploma in Law certificate from Inoorero University was of no consequence as it had no mandate to verify the Diploma. The interested party was the body authorized to accredit institutions offering legal education. The appellant's Diploma in Law was irrelevant in relation to the admission criteria for the Advocates Training Programme. If the appellant wanted to claim any benefit under the second schedule of the **Kenya School**

of Law Act, 2012 she would be ineligible as the second schedule has no academic progression provisions.

The appellant is said to have sat for the Pre – Bar exam erroneously without following the due procedure in registering for the same as per the second schedule of the **Kenya School of Law Act**, 2012 as amended in 2014. Despite her attempting the Pre – Bar exam and passing the appellant was never eligible for the Advocates Training Programme from the beginning. The respondent had communicated to the appellant that her admission had been revoked by a letter dated 17th February, 2020. The respondent was bound by the provisions of the **Kenya School of Law Act**, 2012 in determining eligibility hence it could not admit a student based on any other criteria other than as provided for in the second schedule. By applying the eligibility criteria the rights and freedoms of the appellant were not infringed. The actions of the respondent were anchored on the law.

3. **The submissions by the parties**.

The appellant through her advocate Mr. C.B.G. Ouma commenced by submitting on the jurisdiction of the Tribunal. He submitted that the Tribunal had been moved pursuant to the provisions of section 31 of the **Legal Education Act**, 2012. Section 31 (1) of the Act, provided;

> ***"(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."

As regards the merits of the appeal it was submitted that the appellant was of the view that she qualified for admission to the Advocates Training Programme (ATP) run by the Respondent pursuant to section 1 (a) of the Second Schedule to the **Kenya School of Law Act**, 2012 as amended in 2014. The Respondent had initially admitted her but subsequently revoked her admission citing the qualifications under section 1 (b) (ii) of the Second Schedule to the Act. Her case is that her admission was governed by Section 1 (a) and not 1 (b) of Second Schedule. The appellant invited the Tribunal to take note of the decisions in **Republic v Kenya School of Law & another Ex Parte Kithinji Maseka Semo & Another**, Nairobi High Court Miscellaneous Application no. 120 of 2018 JR by Justice Mativo [2019] eKLR. In the said matter the respondent had revoked the admission of various students to the Advocates Training Programme on the request of the Interested Party. The High Court reversed the decisions and confirmed admission to the School. He also relied on the decision of **Kevin K. Mwiti & Others v Kenya School of Law & 2 Others**, (2015) eKLR. It was submitted that the candidate was to satisfy the Respondent that at the time of admission to University, the candidate possessed the minimum qualifications for admission to the University. Reliance was also placed on the decision in **Kihara Mercy Wairimu**

& 7 others v Kenya School of Law & 4 Others, (2019) eKLR). For candidates who joined University in 2016 after the coming into force of the **Legal Education (Accreditation and Quality Assurance) Regulations**, 2016 made pursuant to Third Schedule to the **Legal Education Act**, admissions to the University were covered by Regulation 5 of the regulations. For those, like the appellant who joined the University prior to the coming into force of the 2016 Regulations, the applicable law was section 18 of the repealed **Council of Legal Education Act**, Cap. 16A as read with Regulation 2 of the Second Schedule to the **Council of Legal Education (Accreditation of Legal Education Institutions) Regulations**, 2009. Regulation 2 of the Second Schedule to the 2009 Regulations provided as follows;

> ***"A student shall not be eligible for admission into an Undergraduate Degree Programme unless that student has***
>
> ***a) A degree from a recognized university;***
>
> ***b) At least two principal passes at an advanced level or an equivalent qualifications;***
>
> ***c) A mean grade of C+ (C plus) in the Kenya Certificate of Secondary Education (KCSE); or***
>
> ***d) A diploma of an institution recognized by the Commission for Higher Education and the applicant shall have obtained at least credit pass."***

It was clear that a diploma of an institution recognized by the Commission for Higher Education where the applicant had obtained at least a credit pass was considered as an alternative and, perhaps a superior qualification to KCSE for purposes of entry criteria to a Bachelor of Laws programme in a local university.

It was submitted that a citizen who seeks the advice of a regulator before she commits to taking a programme can hardly be faulted for relying on the legitimate expectation that the regulator knows better and such a citizen does not act unreasonably in seeking and relying on the advice of a regulator to make important decisions. The appellant being one such citizen could not be faulted for the action taken. It was also contended that though ignorance of the law was not a defence but where the law was so obscure as to create confusion amongst a regulator, a service provider, the Attorney General himself, and indeed Judges of extraordinary competence, then the maxim must be relaxed and a reasonable interpretation of the law aided by a regulator must prevail. The appellant prayed that the appeal be allowed.

The respondent submitted through its Advocate Pauline K. Mbuthu that the appellant applied for admission to the ATP program for the 2020/2021 academic year which application was declined and the decision communicated to her on 6th January, 2020. The appellant notwithstanding the communication took the Pre - Bar examination without following the due prescribed procedure in registering for the same as per the Second Schedule of the **Kenya School of Law Act**,

2012. The appellant failed to disclose that she had already received a letter from the school rejecting her application due to failure to meet the basic minimum Secondary School qualifications as stated in section 16 of the **Kenya School of Law Act**, 2012 as read together with the Second Schedule.

Based on the flawed registration for and taking of the Pre-bar exam, the appellant was granted a provisional admission which was revoked once scrutiny of her documents was done. She reiterated the position of the school that the appellant's provisional admission was fatally flawed based on an error occasioned by her withholding of material facts that would have had a bearing on whether the school would have made the provisional offer. The provisional offer letter was doomed to end in revocation given the manner in which it was obtained.

She contended that the respondent was established by its own Act the **Kenya School of Law Act**, no. 26 of 2012 with the objectives that include training persons to be advocates. To further this objective the Act in Section 17 gave the school the right to consider applications and admit applicants who meet the criteria. Section 17 therein provided that;

> ***(1) Any person who wishes to be admitted to any course of study at the School shall apply in the prescribed form and pay the prescribed application fees.***

(2) The School shall consider an application submitted under paragraph (1) and if it is satisfied that the applicant meets the admission criteria, admit the applicant to the School."

The respondent was guided by the admission criteria provided in the Second Schedule to the Act as read with section 16 of the Act and in exercise of the provisions of section 17, assessed the appellant's first application and she was found ineligible as she did not meet the required secondary school qualifications of B plain in English or Kiswahili and a mean grade of C plus. Further, the Respondent considered her application after the flawed Pre-bar and revoked the provisional admission that was granted subject to scrutiny of her documents for the same reason.

The respondent assailed the jurisdiction of the Honourable Tribunal by submitting that the Tribunal was established under the **Legal Education Act**, of 2012 to adjudicate on matters relating to the Legal Education Act. By section 31 it was provided 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."

The dispute on admission arose under the **Kenya School of Law Act**, 2012 as opposed to the **Legal Education Act**, 2012 and therefore the Tribunal was bereft of jurisdiction.

On the doctrine of 'legitimate expectation' it was submitted it imposes in essence a duty on a public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. The appellant was awarded a law degree from the Catholic University on 16th December, 2019. She then applied to the Kenya School of Law for admission to the Advocates Training Programme (ATP) following the award to undertake the programme for the 2020/2021 Academic year. The admission criteria were set out in the Second Schedule of the **Kenya School of Law Act**, 2012 which provided that:-

> ***"The Admission requirements will be as follows—***
>
> ***(a) Admission Requirements into the Advocates Training Programme***
>
> ***(1) A person shall be admitted to the School if—***
>
> ***(a) having passed the relevant examination of any recognized university in Kenya holds, or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) of that university; or***
>
> ***(b) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or***

has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—

(i) attained a minimum entry requirement for admission to a university in Kenya; and (ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and

2. has sat and passed the Pre-Bar examination set by the School."

The Appellant had purported to claim benefit under clause 1 (a) of the second schedule to the Act in order to be granted direct entry into the programme. If the Tribunal was to find that she can benefit from clause 1 (a) of the second schedule to the Act, it is submitted that she was still not eligible as she did not meet the minimum KCSE mean grade requirement of a C+ (plus). The said position was upheld in **Peter Githaiga Munyeki v Kenya School of Law**, [2017] eKLR where Justice Mwita addressed the issue that according to the Schedule, there were two categories of persons who could be admitted to the ATP. First are those who attended local universities who fall under paragraph 1 (a); the other ones are persons who attended universities outside Kenya who fall under paragraph 1 (b) of the Schedule. Paragraph 1 (a) of the Schedule did not specifically state the KCSE grades one should have, however, a reading of paragraph 1 (b) shows that persons who obtained LLB degrees from

outside Kenya should have KCSE grades that would have enabled them join LLB programmes in universities in Kenya, and went ahead to state those grades as a mean grade of C+ (plus) in KCSE, with a B (plain) in either English or Kiswahili languages.

In that regard therefore, applying the principle of a holistic reading of a statute, persons falling under paragraph 1 (a) of the Schedule to the **Kenya School of Law Act**, 2012 must have obtained a mean grade of C+ (plus) with B (plain) in English or Kiswahili languages to have qualified to join the LLB programme in local universities. That was why there was reference of this requirement in paragraph 1 (b) (ii) of the Schedule. She further sought reliance in the authority of **Adrian Kamotho Njenga v Kenya School of Law**, Nbi. High Court Petition No. 398 of 2017.

On legitimate expectation the respondent called into aid the decision in **Union of India v. Hindustan Development Corporation**, where, the Court noted that legitimate expectation was not the same thing as anticipation. It was different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequences. In the said judgement, the position was indicated that, the legitimacy of an expectation could be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such an expectation should be justifiably legitimate and protectable.

On whether the procedure to refuse her admission was illegal and unreasonable it was submitted, article 47 (1) of the **Constitution of Kenya**, 2010 provided that every person had the right to the administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair. The proceedings before the respondent duly complied with the constitutional provisions and that the appellant failed to exhaust the appeal procedures with the respondent before coming to the Tribunal.

Contrary to the appellant's allegations on procedural impropriety, it was submitted that the procedure used to arrive at the decision that she did not qualify for admission to the ATP on two separate occasions was fair and just. The appellant conveniently failed to inform the Honourable Tribunal that she presented herself on two separate occasions to the respondent for admission and the first time she was not successful and she attempted to circumvent the school process by relying on an exam she was not qualified to take and her failure to disclose the outcome of the application was telling. There was no unreasonable delay in informing her of the decision.

The procedure adopted by the respondent was fair as the fatally flawed offer letter provided to her was provisional and could be withdrawn at any point before registration. The respondent relied on the decision in **Kenya Revenue Authority v Menginya Salim Murgani**, Civil Appeal No.108 of 2009, in which the Court of Appeal rendered itself as follows;

"There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed."

Finally, the Respondent submitted that its hands were tied by statute and admitting a student who did not meet the most basic of qualifications for joining the ATP would have been procedurally unfair, unlawful, discriminatory and unconstitutional. The respondent prayed for the dismissal of the appeal with costs.

4. **Analysis and determination**.

a) **Jurisdiction of the Tribunal**.

The issue of the Legal Education Appeals Tribunal's jurisdiction has been brought into contest. The Tribunal in compliance with the dictate of Justice Nyarangi J.A as he then was in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd**, [1989] KLR 1, requiring that the said question be decided first and as early as possible will proceed to address it forthwith. The relevant edict from the authority is as follows;

"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."

The material placed before the Tribunal by the appellant and the respondent for consideration of the appeal and relevant to the issue of jurisdiction are a letter rejecting admission to the Kenya School of Law dated 19th September, 2019 issued by Dr. Henry K. Mutai the Director/Chief Executive Officer of the respondent to the appellant, the Pre – Bar examinations results notification issued to the appellant by the respondent's Director on the 31st January, 2020, an admission letter to the Advocates Training Programme for the 2020/2021 academic year issued by the respondent to the appellant, a letter revoking admission to the Advocates Training Programme issued by the Director of the respondent on 17th February, 2020, a letter dated the 21st July, 2015 written by the interested party to the father of the appellant confirming eligibility to the Kenya School of Law signed by the Secretary/ Chief Executive Officer of the Council of Legal Education, the replying affidavit by the respondent and an advertisement by the respondent inviting applications to the Kenya School of Law.

The Tribunal by its establishing law in section 31 of the **Legal Education Act**, 2012 is empowered as follows;

"(1) The Tribunal <u>shall</u>, upon an appeal made to it in <u>writing</u> by any party or a reference made to it by the council or any committee or officer of the council, <u>on any matter relating to this Act, inquire</u> into the matter and make a finding thereupon, and notify the parties concerned."

The provision empowers the Tribunal to deal with any matter relating to the **<u>Legal Education Act</u>**, 2012 and a reference to the Act includes the subsidiary legislation made there-under. In this appeal amongst the matters that have been brought forth to the Tribunal for its consideration is the letter issued to the appellant by the interested party confirming her eligibility to the Kenya School of Law dated 21st July, 2015. The letter is the subject of the core question of legitimate expectation which has been raised and a point of contention between the appellant and the respondent. The issuer of the said letter is a creature of the **<u>Legal Education Act</u>**, 2012 and an officer of the interested party Council. The eventual disposal of the appeal has a fundamental bearing on the letter and the Tribunal would be addressing a matter arising from its formative legislation.

The second document that is pertinent on the jurisdiction of the Tribunal is the advertisement by the respondent notifying the general public that the 2020/2012 academic year of the Advocates Training Programme will commence on the 3rd February, 2020 and indicating persons who would be admissible to the Programme in issue. The advertisement in part 1 (iii) therein clearly imports the

application of the **Legal Education Act**, 2012. The applicable qualifications for admission to the Kenya School of Law and the applicability of an array of subsidiary legislation arising from the repealed **Council of Legal Education Act**, Cap. 16 A and the **Legal Education Act**, 2012 are in contest before the Tribunal accordingly the Tribunal will be exercising its legal mandate in disposing of the appeal by wading through the said law to determine the appellant's eligibility to the Advocates Training Programme.

Indeed it will be myopic to adopt a sole reference to the **Kenya School of Law Act**, 2012 to deal with the issue of eligibility to the Advocates Training Programme in order to bar the Tribunal from scrutinizing the decision reached on the appellant's eligibility. The Tribunal is guided by the decision in **Republic v Kenya School of Law & Another Ex Parte: Ibrahim Maalim Abdullahi**, [2014] eKLR in which Justice Odunga held,

> ***"In the final analysis I agree that the provisions of the Second Schedule to Kenya School of Law do not repeal the Council of Legal Education (Kenya School of Law Regulations) 2009, but supplement them, and that the two instruments are to be read together since Section 29 (3) (a) of the Kenya School of Law Act, 2012 saved Regulation 5 of the Council of Legal Education (Kenya School of Law Regulations) 2009."***

The other documents that are pertinent on the issue of jurisdiction are those by the respondent's Director/ Chief Executive Officer

dated 17th February, 2020, 19th September, 2019, 6th January, 2020, 31st January, 2020, and 7th February, 2020 the letters relate to admission to the Advocates Training Programme, Pre – bar examination, the revocation of admission and the respondent's replying affidavit at paragraph 13 which raises the issue of want of academic progression provisions in the Second Schedule to the **Kenya School of Law Act**, 2012. In addressing the said matters, the genesis of the mandate on admission to the respondent school shall be for consideration.

The respondent cannot purport to operate in sole isolation of the **Kenya School of Law Act**, 2012 as the power to make regulations for persons wishing to enroll in legal education programmes and progression in the legal education sphere are a sole preserve of the interested party. The relevant provisions are in sections 8 (1) (a), 8 (2), 8 (3) (a) and (b) of the **Legal Education Act**, no. 27 of 2012 which provides;

> ***"(1) The functions of the council shall be to-***
>
> ***(a) Regulate legal education and training in Kenya offered by legal education providers;***
>
> ***(2) Without prejudice to the generality of subsection (1), the council shall, with respect to legal education providers, be responsible for setting and enforcing standards relating to the ....***
>
> ***(3) In carrying out its functions under subsection (2), the council shall:-***

a) Make regulations in respect of requirements for the admissions of persons seeking to enroll in legal education programmes;

b) …;

(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."

The Advocates Training Programme is one such legal education programme and the issue of whether with a Diploma in Law the appellant could enroll for the Bachelor of Laws degree then proceed to seek admission to the Advocates Training Programme is also an issue before the Tribunal in seeking to address the issue of progression in legal education. The matters in issue are in the **Legal Education Act**, 2012 and within the mandate of the Tribunal. The Tribunal derives guidance from the decision in **Nabulime Miriam & Others v Council of Legal Education & 5 Others**, [2016] eKLR in which Justice Odunga held;

"That the body with the legal mandate to determine the qualification for Admission, registration of Applicants to the Kenya School of Law is the Council but the actual admission of students to the School is to be undertaken by the School. That the body with the legal mandate as between Kenya School of Law, and the Council for Legal Education, to set, supervise or mark Advocate Training Programme examinations is the Council though in this

instance, that mandate was delegated to the School by the Council.”

Finally on the issue of jurisdiction, the Superior Court has already pronounced itself in no uncertain terms in a similar matter that the Tribunal is the one mandated to address matters such as the one involving decisions on admission to the School. The Tribunal is guided by the authority in <u>**Republic v Kenya School of Law & 2 others Exparte Kgaborone Tsholofelo Wekesa**</u> [2019] eKLR in which Justice Mativo held at paragraph 33 therein;

> ***“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; <u>the establishment of the Legal Education Appeals Tribunal</u>; the regulation and licensing of legal education providers <u>and for connected purposes.</u> 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 <u>any party</u> or a reference made to it by the Council or by any committee or officer of the Council, <u>on any matter relating to the Act</u>. The*** **ex parte** ***applicant's dispute distilled above in my view squarely falls within the Tribunal's jurisdiction.”***

The respondent in its submissions raised the issue that an appeal ought to have been made against the decision of the respondent

revoking admission to the School. The said submission was not elaborated further; however, the respondent may have implied that an appeal ought to have been lodged under regulation 40 of the **Kenya School of Law (Training Programmes) Regulations**, 2015 which provides for an appeal against an administrative decision to the Board of the respondent in the following terms;

> ***"(1) Where a student is dissatisfied with an administrative decision made under these regulations, that student may appeal in writing against the decision, within thirty days of being notified of the decision, to the Board.***
>
> ***(2) The Board shall hear and determine the appeal as expeditiously as is practicable and its decision shall be final."***

The finding of the Tribunal is that the notification of the decision by the respondent as communicated never quoted the **Kenya School of Law (Training Programmes) Regulations**, 2015 for one to say that a decision was made under the same. If the respondent had based its decision on the same it ought to have made it expressly clear in the letter that its decision was so predicated on the same. Further, a duty based on section 4 (3) (c) of the **Fair Administrative Action Act**, 2015 to inform the appellant of such a right of appeal where it exists is placed on the administrator in this case the Director of the respondent. The same provides;

"Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;"

Further, the reference by the Director of the respondent to '***… despite passing the "Old" Pre – Bar Examination***' in the letter revoking admission raises an insinuation of the respondent may have taken the decision under the repealed **Council of Legal Education (Kenya School of Law) Regulations**, 2009 made under the Legal Notice no. 169 of 2009 since in the said letter no enabling legal provision to make the decision has been invoked. The said Regulations were a creature of the interested party as established under the repealed **Council of Legal Education Act**, Cap. 16 A and as succeeded by the **Legal Education Act**, 2012. Thus, the only avenue of appeal as confirmed above would be the Legal Education Appeals Tribunal as duly established.

b) **The Appeal**.

The crux of the appeal is the decision by the respondent dated the 17th February, 2020 revoking admission of the appellant to the Advocates Training Programme during the 2020/2012 academic year. The extract of the letter pertinent are as follows;

> ***"Reference is made to our letter dated 7th February, 2020 offering you provisional admission into the Advocates Training Programme (ATP).***
>
> ***Upon further scrutiny of your documents, it is noted that you have grade C (plus) in English and D (Plus) in Kiswahili which is below the stipulated grade of B (Plain). Therefore, you do not qualify for admission under the KSL Act, 2012 despite passing the "Old" Pre – Bar Examination.***
>
> ***In light of the above, it is regretted that our admission letter dated 7th February, 2020 offering you provisional admission into the Advocates Training Programme was issued in error and is hereby revoked.***
>
> ***Thank you.***
>
> ***Yours Sincerely***
>
> ***Dr. Henry K. Mutai***
>
> ***Director/Chief Executive Officer."***

The said decision is preceded by an admission letter dated 7th February, 2020 issued by the respondent, the receipt of 75% school

fees in the sum of sh. 110,000 and allocation of a student number 20201990 to the appellant on 14th February, 2020, a confirmation of success by the appellant on the Pre – Bar Examination Results dated 31st January, 2020 is also in place and an intial rejection of admission by the appellant to the Advocates Training Programme on 6th January, 2020.

The appellant had through her father namely John Jacob Okong'o on 8th July, 2015 written to the interested party seeking clarification on her qualifications on eligibility to the Advocates Training Programme upon successful completion of the Bachelor of Laws degree from the Catholic University of Eastern Africa and copied to the respondent. The state of the appellant's O' level qualifications and her Diploma in Law with Credit pass were brought to the attention of the respondent and the interested party. The interested party in its communication of 31st July, 2015 confirmed the appellant's eligibility to the Advocates Training Programme subject to passing the Pre – Bar Examination. The pertinent extracts of the letter are as follows;

> ***"BETHSHEBA ACHIENG' NYAMIWA – ADMISSION TO THE KENYA SCHOOL OF LAW***
>
> ***Reference is made to your letter dated 8th July, 2015 on the admissibility of the above named person to the Advocates Training Programme (ATP) at the Kenya School of law on attainment of the LL.B Degree at Catholic University of Eastern Africa School of Law.***

Since your daughter met the minimum entry requirements into the Diploma in Law Programme at Inoorero University, an institution accredited by the Council of Legal Education to mount the Diploma in Law Programme and attained a Credit Pass which is the basic requirement, she is admissible to the Kenya School of law for the ATP on attainment of the LL.B qualification subject to passing the Pre – Bar Examination to be administered by the Kenya School of Law.

Thank you.

Yours Sincerely,

Prof. W. Kulundu – Bitonye, EBS

SECRETARY/CHIEF EXECUTIVE OFFICER

COUNCIL OF LEGAL EDUCATION."

The Second Schedule of the **Kenya School of Law Act**, 2012 as amended by **Statute Law (Miscellaneous Amendments) Act**, 2014 provides for admission requirements to the school as follows;

"A person shall be admitted to the School if—

(a) having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any other institution prescribed by the Council, holds or becomes eligible for the conferment

of the Bachelor of Laws (LLB) degree of that university, university college or institution; or

(b) having passed the relevant examinations of a university, university college or other institutions prescribed by the Council of Legal Education, holds or has become eligible for the conferment of the Bachelor of Laws Degree (LLB) in the grant of that university, university college or other institution—

(i) attained a minimum entry requirement for admission to a university in Kenya; and

(ii) obtained a minimum grade B (plain) in English Language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Secondary Education or its equivalent; and

(iii) has sat and passed the pre-Bar examination set by the school."

The appellant has submitted that she falls under category 1 (a) of the said Schedule. The appellant is a graduate of the Catholic University of Eastern Africa (CUEA) and has attained a Bachelor of Laws Degree. No dispute exists that the said university is amongst those recognized in Kenya by the Commission of University Education and also the interested party. Accordingly, the appellant fits well into category 1 (a).

The next issue is whether the appellant in consideration of her application to the Advocates Training Programme will be subjected also to the scrutiny in category (b) of the Second Schedule, it is clear within the paragraphs (a) and (b) the conjunction 'or' is used. The same means that one has to be from either a recognized university in category (a) and which the appellant is from and for (b) one has to be from a prescribed university, university college or institution by the interested party. The Catholic University of Eastern Africa (CUEA) does not fall within (b) being a recognized university in Kenya; it is under (a).

The respondent under category (a) has no mandate to demand or revert into a process of establishing compliance with the minimum admission requirements into a recognized university. The respondent and the interested party will be acting perverse their statutory mandate under the legal regime establishing them. Until and unless the Second Schedule above is amended by Parliament to subject applicants to the Advocates Training Programme from recognized universities in Kenya to an inquiry on the minimum qualifications by the respondent as to pre – admission pre requisites set in section 1 (b) of the Second Schedule to the **Kenya School of Law Act**, 2012 it will be reading too much and granting an extended mandate not contemplated and vested in legislation to the respondent.

It ought to be appreciated that no Legislature intends to give two simultaneous inconsistent commands. Parliament in its wisdom

never intended graduates of recognized universities in Kenya to be subjected into an investigation of the background admission on minimum pre – requisites for admission to the Bachelor of Laws Degree when they came to applying for the Advocates Training Programme.

On the interpretation of the Second Schedule to the **Kenya School of Law Act**, 2012, the Tribunal shall be guided by the erudite judgment of Justice Mativo in **Republic v Kenya School of Law & Another Ex Parte Kithinji Maseka Semo & Another**, [2019] eKLR and which decision is relied on by the appellant and the respondent in which he addresses the two routes as qualifications to the Advocates Training Programme as follows;

> ***"27. At the center of this issue is section 16 of the KSL Act. The section bears the short title "admission requirements." It provides that a person shall not qualify for admission to a course of study at the School, unless that person has met the admission requirements, set out in Section 1 of the Second Schedule to the KSL Act. The said section provides that a person shall be admitted to the School if—***
>
> ***a. having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any other institution prescribed by the Council, holds or becomes eligible for the conferment***

of the Bachelor of Laws (LLB) degree of that university, university college or institution; or…

48. Since no legislature ever intends to give two simultaneous inconsistent commands, every statute must if possible be reduced to a single, sensible meaning before it is applied to any case….

49. From the dictionary and judicial precedents discussed above, it is clear that the word "or" is ordinarily used to introduce another possibility or alternative, that is either or. Depending on context, it can also be used interchangeably with the word "and." It follows that in construing statutory provisions, the context is important so as to get the real intention of the legislature.

50. Guided by the authorities cited above and the ordinary meaning of the word "or" in the context of the provision under consideration, it is my view that the use of the word "or" immediately after the semi-colon at the end of the sentence in section 1 (a) of the second schedule introduces another possibility, the first possibility being the category referred to in paragraph (a), that is:-

> ***"having passed the relevant examination of any recognized university in Kenya, or of any university, university college or any other institution prescribed***

by the Council, holds or becomes eligible for the conferment of the Bachelor of Laws (LLB) degree of that university, university college or institution."

<u>51. The ex parte applicants hold Bachelor of Laws degrees from a recognized University in Kenya. By dint of the above provision, they qualified for admission to the ATP. To suggest otherwise, is in my view an insult to the above provision, which is framed in a simple and clear language. A contrary interpretation is misguided and unfaithful to the provision. It follows that any decision emanating from such a misguided interpretation cannot be read in a manner that is consistent with the enabling provision</u>."

The respondent ought to be reminded that no ambiguity arises from the two alternate routes provided for in the Second Schedule to admission to the Advocates Training Programme. The court in the authority in **<u>Kithinji Maseka Semo & Another</u>** *supra* at paragraph 54 therein observed;

"It is unfortunate that the Respondents have on countless occasions misconstrued and or confused the above two categories to the detriment of innocent applicants."

The Tribunal also derives guidance from the authority in **<u>Kihara Mercy Wairimu & 7 Others v Kenya School of Law & 4 Others</u>** [2019] eKLR in which Justice Makau held at paragraph 86;

"Having considered, that the petitioners have other qualifications such as IGCSE GSCE and GCE and have degree in law, I find the petitioners do qualify for admission for ATP Programme; under Section 1 (a) of the Second schedule to Kenya School of Law Act and the Regulation. One is supposed to qualify either under 1 (a) or (b) of the Second Schedule of Kenya School of Law Act but not under both as the provision clearly states 1(a) or 1 (b) and it cannot be both at any rate."

On the issue of progression in the legal profession, it is the respondent's case is that progression in the profession is not in existence in its establishing statute. The matter of progression has a rich history in the development and the shaping of the legal career in Kenya. The same is well captured in the **Advocates Act**, no. 34 of 1961 based on the Articled Clerkship. The same was repealed with the enactment of the **Advocates Act**, 1989. The **Legal Education Act**, 2012 came up with a progression mechanism in the profession from Certificate, Diploma and Degree level and to eventual admission as an Advocate of the High Court. By the Second Schedule to the said law various subjects to be taught for the said qualifications were provided for by Parliament.

The **Council of Legal Education (Accreditation of Legal Education Institutions) Regulations**, 2009 under Legal Notice no. 169 of 2009 by regulation 18 addresses the issue of eligibility for admission to the different Programmes in the career as follows;

"A student shall not be eligible for admission to a legal education training programme under these Regulations, unless that student has attained the required minimum qualifications set out in the Second Schedule."

In the second schedule thereto it is provided;

"MINIMUM QUALIFICATIONS FOR ENTRY INTO LEGAL EDUCATION TRAINING PROGRAMME

1. Admission into the Diploma in Law (Para-Legal Studies) Programme

A student shall not be eligible for admission into the Diploma in Law (Para-Legal Studies) Programme, unless that student has —

(a) a mean grade of C (C plain) in the Kenya Certificate of Secondary Education (KCSE) or its equivalent examination and a minimum grade C+ (C plus) in English;

(b) at least one principal pass at the Kenya Advanced Certificate of Education (KACE) examinations; or

(c) a distinction or credit pass in the Certificate in Law course conducted at the Kenya School of Law between the year 2000 to 2003 or any other Certificate or Diploma in a relevant field.

2. Admission into an Undergraduate Degree Programme

***A student shall not be eligible for admission into an Undergraduate Degree Programme unless that student has* —**

(a) a degree from a recognized university;

(b) at least two principal passes at an advanced level or an equivalent qualification;

(c) a mean grade of C+ (C plus) in Kenya Certificate of Secondary Education (KCSE); or

(d) a diploma of an institution recognized by the Commission for Higher Education and the applicant shall have obtained at least credit pass.”

The deposition by the respondent in the replying affidavit that progression in the legal profession is not considered by it in arriving at a decision to admit an applicant to the Advocates Training Programme flies against the afore-going provisions of the **Legal Education Act**, 2012. The Tribunal derives guidance from the decision in **Sydney Douglas Webuye v Kenya School of Law**, [2018] eKLR in which Justice Winfrida Okwany observed;

“23. The respondent’s argument was that the petitioner’s diploma did not qualify as a relevant diploma since it was not a diploma in law and that for that reason, the applicable provision under which the petitioner could gain admission to the Advocates Training Programme

was under paragraph 5 (d) of the 1st Schedule of the impugned legal notice No. 169 of 2009.

Black's Law Dictionary defines relevant as follows:

> ***'Logically connected and tending to prove or disprove a matter in issue, having applicable probable value that is, rationally tending to persuade people of the probability or possibility of some alleged fact.'***

24. Having regard to the above definition and the facts of this case coupled with the fact that the petitioner was admitted to the University of Nairobi for a degree course in Law on the basis of the Diploma the had obtained from the same university, I find that if the impugned rules intended that the term relevant diploma be construed to mean that a diploma in law, nothing would have been easier than for such a provision to be specifically expressed in the said legal notice. The same was not done even though the regulations are very specific of the specific subjects and the minimum entry grades required for the Advocates Training Programme.

25. I find that having been admitted to the University of Nairobi to study law on the basis of the diploma in his possession and Kenya Certificate of Secondary Education certificate, the said diploma certificate qualifies as a

'relevant diploma' within the meaning of paragraph 5 (c) of the impugned regulations, and is therefore eligible for direct entry to the Advocates Training Programme."

The Tribunal once again reiterates that the appellant had already qualified to join the Advocates Training Programme based on section 1 (a) of the Second Schedule to the **Kenya School of Law Act**, 2012 based on the Bachelor of Laws degree she held.

It is also appreciated that there has been confusion for a while as to the state of admission requirements to the school based on conflicting legislative enactments. The superior court has held that the applicants to the school cannot be blamed for the state of confusion occasioned by the legislative organ. Accordingly and as submitted on behalf of the appellant she cannot be blamed for the same. We do derive guidance from the decision in **Kihara Mercy Wairimu & 7 Others v Kenya School of Law & 4 Others**, [2019] eKLR in which Justice Makau at paragraphs 91 – 92 observed,

"91. I find by subjecting the petitioners to the requirements under the Regulations which are contrary to express provisions under Section 1 (a) of the Second Schedule under which the petitioners qualifications fall, the Respondents would be acting contrary and/or ignoring express provisions of Section 16 of the Kenya School of Law Act, and would also be wrong in elevating the Regulations above the provisions of the Act. I find the provisions of a subsidiary legislation cannot under any

circumstances override express provisions of an Act of Parliament or be inconsistent with any Act of Parliament under which they are made or otherwise. Section 37 (b) of the Interpretation and General Provisions Act, clearly provides that no subsidiary legislation shall be inconsistent with the provisions of the Act of Parliament. I therefore find and hold, that the provisions of Legal Education **(Accreditation and Quality Assurance)** ***Regulation 2016, cannot override the express provisions of Section 16 of the Kenya School of Law Act which prescribe the admission requirements to the ATP as those clearly stipulated in the second schedule of the Act. The Regulations cannot override the provisions of section 1(a) of the Second Schedule. I find had the Parliament intended any other qualifications to apply over and above the qualifications held by the petitioners, it would have expressly provided so.***

92. From the above I am satisfied that the petitioners and the interested parties are not to blame in any way. It is lack of Parliament to have made a legislation, that is not in variance. That failure has caused confusion in admission of students at Kenya School of Law for ATP Programme. I find no way, for which the petitioners are to blame and find that they have the requisite qualification for admission for ATP Programme."

As regards the public invitation of applications for the Kenya School of Law admission to the Advocates Training Programme (ATP) for the academic year 2020/2021 which was placed by the respondent in the daily newspaper, the same identifies two categories of applicants. They are those admitted to the LL.B programme after the 8th December, 2014 and those admitted to the same before 8th December, 2014. The date in the said advertisement becomes relevant because of the commencement date of the **Statute Law (Miscellaneous Amendments) Act**, 2014 which amended the Second Schedule of the **Kenya School of Law Act**, 2012 which introduced the current qualifications for admission to the School as already set out above. The advertisement seems to have gone well over board the provisions of the Second Schedule to the Act. The advertisement requires that graduates of Kenyan Universities admitted after 8th December, 2014 to the LL.B programme ought to have attained a minimum of grade B plain in English or Kiswahili and a mean grade of C plus in the Kenya Certificate of Secondary Education or its equivalent. The Second Schedule to the Act does not embody any such requirement. The same also offends section 16 of the **Kenya School of Law Act**, 2012 by prescribing qualifications not embodied in the said statute.

The respondent raised the issue of the appellant having been an unsuccessful applicant on the first application to the Advocates Training Programme and failure to disclose the rejection of the said application. The Tribunal arrives at a finding that the same would

not vitiate the subsequent admission. The Pre – Bar Examination that the appellant sat for was not necessary as she already was eligible for admission under section 1 (a) of the Second Schedule to the **Kenya School of Law Act**, 2012 as amended in 2014. The sitting of the said examination was superfluous. The appellant was already qualified for admission to the programme and the respondent's decision revoking admission was a nullity as it was based on no juridical foundation. We do rely on the decision in **Adrian Kamotho Njenga v Kenya School of Law**, [2017] eKLR in which Justice Chacha Mwita observed;

> ***"46. Secondly, if the legislature intended that all applicants sit for pre Bar examination, all it needed to do was retain paragraph 2, remove the disjunctive word "or" and in place thereof insert the ward "and" to read "and' has sat and passed the pre Bar examination set by the school, instead of introducing clause (iii) in paragraph 1(b) providing for pre Bar examination. In the absence of a clear provision in paragraph 1(a), this paragraph cannot be read otherwise than that applicants in this category do not have to sit and pass pre Bar examination for them to be admitted to ATP.***
>
> ***47. Mr. Mwaniki also referred to the decision in Kevin Mwiti & others v Kenya School of law and others (supra) to argue that Odunga, J had held that Pre Bar examination was now mandatory. With great respect to learned counsel, I am not persuaded by this submission.***

The learned Judge must have meant that pre Bar examination was now mandatory for those applicants in paragraph 1(b) following the 2014 amendments but not otherwise because such an interpretation is not discernible from paragraph 1(a).”

The Tribunal also had difficulty in deciphering the genesis and the intended meaning of the reference by the Director of the respondent to the appellant having sat the ‘OLD’ Pre – Bar Examination in the letter revoking the admission. The said words are not embodied in the law governing admission to the School.

The argument in the submissions by the respondent’s advocate that setting aside the subsequent decision revoking the admission of the appellant would be futile as the intial decision rejecting admissibility would still stand is unsound. The decision as taken was a nullity. We do derive guidance from the decision in **Macfoy v United Africa Co. Ltd**, (1961) 3 ALL ER. 1169 in which Lord Denning as he then was observed;

> ***“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on is incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”***

The respondent also did not substantiate the allegation of the rejected application before the Tribunal as the alleged application was not produced by the respondent to enable the Tribunal to look at it. The respondent was the one who had the onus to prove the same. The respondent also did not produce a copy of the application form to enable the Tribunal to check if a pre – condition of disclosure of a previous application existed on the part of an applicant. The respondent was so bound by section 109 of the **Evidence Act**, Cap. 80 which stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. The respondent also did not point out to the Tribunal any particular Regulation that made disclosure of a previous unsuccessful application as mandatory in a subsequent application and also no legal barrier was brought to the attention of the Tribunal discouraging subsequent applications. In the premises no offence can be taken against the appellant where no evidence has been placed before the Tribunal.

It must also be appreciated that the decision revoking the appellant's admission as contained in the respondent's letter was not informed by the fact that she had made a previous application to the Advocates Training Programme which was unsuccessful but however, by the fact that she had not met the minimum qualifications at the Kenya Certificate of Secondary Education (KCSE) for admission. The respondent cannot by way of submissions extrapolate the decision reached by it to include considerations not alluded to in the letter.

On the issue of legitimate expectation, the appellant contended that prior to proceeding further with her pursuit of the Bachelor of Laws Degree she made enquiries on her admissibility to the Advocates Training Programme and the interested party confirmed the same. An examination of the letter dated the 21st July, 2015 written by the Secretary/Chief Executive Officer of the interested party confirms admissibility of the appellant to the respondent's Advocates Training Programme subject to her passing the Pre – Bar Examination to be administered by the respondent. The letter in issue would not form a basis for legitimate expectation as admissibility to the Advocates Training Programme is process already provided for by law. Any assurance made on what the law already provides cannot be a basis of legitimate expectation as a presumption of knowledge of the law already exists and a proscription against its ignorance well ingrained in it.

The only bits of legitimate expectation that would be presumed in favour of the appellant would arise from the conduct of the respondent granting her admission, proceeding to assign her a student number and the acceptance of the 75% school fees which the respondent still has in its possession to date. The Tribunal is so guided on legitimate expectation from the decision in **Republic v Kenya School of Law & Another Ex Parte Kithinji Maseka Semo & Another**, [2019] eKLR by Justice Mativo in which he observed;

> ***'130. With regard to the first test, the ex parte applicants were admitted to the ATP, they paid school***

fees, they were issued with the KSL identification cards and they attended classes. First, they had a reasonable legitimate expectation that the Respondents will comply with the law and let them complete the training. Second, they had legitimate expectoration that they would at all material times be treated fairly, lawfully and in a procedurally fair manner. Third, they had a legitimate expectation that the Respondents will understand the law and correctly apply it. Fourth, they had a legitimate expectation that their rights would not be violated. Differently put, the applicant's expectations were legitimate...

132. The ex parte applicants hold Bachelors Law Degrees. As held above, they met the admission requirements to the ATP as provided under section 1 (a) of the second Schedule to the KSL Act. They had a legitimate expectation that their admission would not be revoked. Such a legitimate expectation cannot be taken away by a fiat grounded on misapprehension of the law and the Regulations. Even if I were to hold otherwise, the doctrine of implied repeal discussed earlier applies."

Finally on the issue of fair administrative action it is clear that the respondent acted in a spurious and summary manner in revoking the admission. The basic requirements as to a hearing were clearly breached. She had an admission which was revoked devoid any care being accorded to the requirements of fair administrative

action as provided for in article 47 of the **Constitution of Kenya**, 2010. The appellant ought to have had the specific circumstances that rendered her admission to be revocable presented to her and invited to demonstrate motivation as to why the action of revocation ought not to be visited upon her. Equally, it is apparent that the respondent has no power to revoke an admission leave alone issuing a provisional admission as the said powers are not provided for in the **Kenya School of Law Act**, 2012 and any subsidiary legislation made there-under.

The respondent's submission that the procedure adopted by it in arriving at the decision was fair as the fatally flawed offer letter provided to the appellant was provisional and could be withdrawn, at any point before registration is devoid of merit. Equally, the reliance on the decision in **Kenya Revenue Authority v Menginya Salim Murgani**, Civil Appeal No.108 of 2009, in which the Court of Appeal concluded that there was ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures, provided that they achieve the degree of fairness appropriate to their task and it is for them to decide how they will proceed cannot be called to aid the respondent to validate its impugned actions. The said judge made law was based on the position prevailing prior to the effective date of promulgation of the **Constitution of Kenya**, 2010 and it cannot be sustained considering the enactment of the **Fair Administrative Action Act**, 2015. Indeed the transitional spirit of the Constitution supports the position taken on the said matter by

the Tribunal by section 7 (1) of the **Transitional and Consequential Provisions in the Sixth Schedule to the Constitution of Kenya** 2010, by providing;

> ***"All law in force immediately before the effective date continues to be inforce and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it in conformity with this Constitution."***

5. **Disposition**.

The appeal is allowed and it is ordered:-

a) The decision revoking the admission of the appellant to the Advocates Training Programme – 2020/2021 academic year as communicated by Dr. Henry K. Mutai – Director/Chief Executive Officer of the respondent is hereby set-aside and the appellant's admission to the Kenya School of Law is reinstated forthwith.

b) The appellant to present herself to the respondent to complete the formalities of admission that were pending before the revocation of the admission to the Kenya School of Law by the respondent.

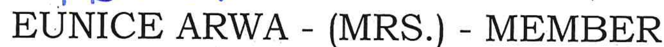
c) The respondent to meet the costs of the appeal to be agreed or taxed however, the issue of taxation or agreement shall not inhibit the execution of the judgment of the Tribunal.

d) Any party aggrieved has the liberty to appeal to the High Court under section 38 (1) of the **Legal Education Act**, 2012 on a point of law.

It is so ordered by the Legal Education Appeals Tribunal.

Dated at Nairobi this 29th of May, 2020.

ROSE NJOROGE – MBANYA - (MRS.) - CHAIRPERSON



EUNICE ARWA - (MRS.) - MEMBER

RAPHAEL WAMBUA KIGAMWA (MR.) – MEMBER

I Certify this is a true copy of the original judgment of the Tribunal.

GILBERT ONYANGO - REGISTRAR