

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO.204 OF 2017

KATUNGI TONY----- APPLICANT

VERSUS

ATTORNEY GENERAL----- RESPONDENT

CORAM: LADY JUSTICE H. WOLAYO
LADY JUSTICE MUGAMBE LYDIA
MR. JUSTICE SSEKAANA MUSA

RULING

Introduction

1. This application was brought under Sections 8(1), (2), (3), (4), (5) and (6) of the Advocates (Amendment) Act No. 27 of 2002, Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, and Order 52 rules 1 and 3 of the Civil Procedure Rules seeking the following orders:
 - i. That the decision of the Law Council to subject the Applicant to an additional year of supervised practice be reviewed and set aside for being unreasonable, unjust, unfair, illegal, irrational and made in bad faith.
 - ii. A declaration that the Applicant has satisfied all the statutory requirements for the issuance of a certificate of eligibility by the Law Council to enable him enrol as an advocate of the High Court of Uganda.

iii. That the Law Council be directed to immediately and unconditionally issue the applicant a certificate of eligibility to enrol as an advocate; and/or in the alternative a Declaration/order relieving the Applicant of the requirement of obtaining a certificate of eligibility from the Law Council for the submission to the Chief registrar for enrolment.

iv. General damages.

v. Costs of this application.

2. The application is supported by the affidavit of Katungi Tony which sets out the grounds in support as follows:

(a) That the Applicant is aggrieved by the decision of the Law Council to subject him to work under surveillance of and in chambers approved by the Law Council for a period of one year from date of assumption of duty.

(b) The Applicant studied his law degree in Uganda at Uganda Christian University where he graduated in October 2011. He proceeded to pursue his bar course at Kenya Law School in January 2012.

(c) That the Applicant successfully completed the bar course training at Kenya Law School in November 2013 and was admitted to the Kenyan Bar on 23rd January 2014 as an advocate of the High Court of Kenya having fulfilled all requirements for admission to the Bar of Advocates in Kenya where he worked as such in the year 2014.

(d) That the Applicant on 27th May 2015 after completion of his bar course requirement of Kenya applied to the Law Council of Uganda for a Certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda and all courts subordinate thereto.

(e) That on 9th May 2017, the Applicant received a letter from the Law council in which the Secretary of the Law Council communicated to him that in its sitting on 3rd day of May 2017, it had been decided by the Law Council that the Applicant re- does one year of supervised practice at M/s Justice Centres Uganda- Kampala office.

3. The Respondent opposed the application through the affidavit of Justice Remmy Kasule - the Chairperson of the Law Council and a supplementary affidavit of Margaret Apiny- the secretary Law Council. They contended that the Applicant was supposed to work in those chambers of advocates first approved by the Law Council and his working there had to be under the surveillance of the Law Council.
4. That it was the responsibility of the Applicant to avail himself to the Law Council with a request that he be placed to work. The Law Council after placing the Applicant with such chambers would be able to carry out the requisite surveillance of the performance of the Applicant with those Chambers.
5. That the Applicant himself on his own, and without involving the Law Council at all had just decide to work with Tareemwa & Co Advocates and the Applicant was only invited for face to face interaction with Justice Remmy Kasule and he advised him to work with approved chambers. That it would be through such surveillance that the Law Council would be able to determine whether the Applicant's work satisfied or did not satisfy the professional standards set by the Law Council.
6. That the Law Council took a decision on 3rd May, 2017, that the Applicant should do one year of supervised practice with Justice Centres which chambers the Law Council had approved for that specific purpose.
7. That advertising one's application for eligibility for enrolment in Uganda Gazette does not entitle one to enrol as this a process whose purpose is to alert the general public who may

have objections to make towards an Applicant's application and it enables the council to start vetting of the Applicant.

8. The Respondent also contended that the application was *res judicata*, according to them the questions for determination had been resolved in an earlier application High Court Miscellaneous Application No. 266 of 2016 Katungi Tony v. Attorney General.

Issues

9. The parties raised four issues for determination:

- a) Whether the present application is *res judicata*?
- b) Whether the decision of the Law Council to subject the applicant to one year of supervised practice was unreasonable, unjust, unfair, illegal, irrational and made in bad faith?
- c) Whether the Applicant has satisfied all statutory requirements for the issuance of a certificate of eligibility?
- d) Whether the Applicant is entitled to the remedies sought?

10. At the hearing of this application the court directed the parties to file written submissions which were duly filed and we have considered them in our Judgement.

Representations

11. The Applicant represented himself while the Respondent was represented by *Johnson Natuhwera*- State Attorney.

Jurisdiction

12. Any person aggrieved by the decision of the Law Council on enrolment, may within thirty days from the notification of the decision of the Law Council, apply to the High Court for a review. (see Section 8(4) of the Advocates Act). The review of the decision shall be heard by a panel of three judges. (Section 8(5) of the Advocates (Amendment) Act).

Issue one - Whether the present application is *res judicata*

13. The Respondent contended that Applicant filed Miscellaneous Cause No. 266 of 2016. The application was heard and finally decided on by *Justice Stephen Musota* (as he then was). According to the Respondent's counsel the orders sought in the current application are similar to the ones that had earlier been sought by the Applicant in Miscellaneous Cause No. 266 of 2016. Therefore, according to counsel the orders the Applicant was trying to seek from this Honourable Court were already adjudicated upon and the court pronounced itself on the same at page 15-17 of the ruling.
14. The Applicant contended that Miscellaneous Cause No. 266 of 2016 was for Judicial review wherein he sought to challenge the decision making process and the failure of the Respondent to determine the Applicant's application for eligibility that had been pending over a long time.
15. In Miscellaneous Cause No. 266 of 2016 there was no decision but rather failure to make a decision, while in Review Cause No. 204 of 2017 there is a decision made on the 3rd day of May 2017, which is being challenged before this Honourable court.
16. It appears that the procedures under which the different applications were brought to court are very different. Miscellaneous Cause No. 266 of 2016 was for judicial review under the Judicature Act and the same was determined under the said law and resulted in a writ of Mandamus.
17. Under section 8 of the Advocates (Amendment) Act 27 of 2002, a decision of the Law Council is challenged by way of review and is heard by a panel of three judges. It would appear the draftsman used the word review in this legislation purposely to mean an appeal under this special jurisdiction. The same cannot be strictly understood to mean judicial review as the Respondent's counsel would wish this court to believe. This reasoning is buttressed by the section 8(6) of the Advocates Act which provides that;

The High Court may, upon a review under this section, confirm or reverse or vary the decision of the Law Council and make such orders as the Court may think just.

18. The wording of this subsection connotes an appeal and not judicial review, since it involves confirming or reversing or varying the decision. These can only be applicable in case of an appeal. The court in Miscellaneous Cause No. 266 of 2016 issued an Order of Mandamus compelling the Law Council to communicate a decision within 14 days to the Applicant. The court declined to grant the rest of orders sought in the application. In the present, application the Applicant seeks to confirm, reverse or vary the decision of the law council on new grounds. For the above reasons, the present Miscellaneous Cause No. 204 of 2017 is not *res judicata*.

Issue two - Whether the decision of the Law Council to subject the applicant to one year of supervised practice was unreasonable, unjust, unfair, illegal, irrational and made in bad faith.

19. The major issue for determination according to court would be better formulated as; Whether section 8(8)(b)(ii) and 8(10) of the Advocates (Amendment) Act are applicable to the Applicant in determination of whether he qualifies to be issued with a certificate of eligibility. The Applicant submitted that the purpose of the Advocates (Amendment) Act 27 of 2002 was to make it easier to access the bar course as the long title to the Act provides;

An Act to amend the Advocates Act, to provide for easier access to the Uganda Bar in terms of required qualifications for entry and procedures, to create a committee for legal education and training, to supervise and control professional legal education; to revise sanctions and penalties; and to provide for other related matters.

20. The Respondent in its submissions stated that Section 8(10) of the Advocates Act as amended) only allowed the Applicant to have practiced as a legal practitioner for one year or more, but less than five years, unless he or she works under surveillance of and in chambers approved by the Law Council for that purpose or he or she serves as a State Attorney for at least one year.

21. According to the Affidavit of Justice Remmy Kasule and Margaret Apiny, the law enjoined the Applicant in mandatory terms to only work in those chambers approved for the purpose and his working there had also to be under the surveillance of the law council.
22. It was the evidence of Justice Remmy Kasule, that it was the only way the Respondent would be able to effectively carry out its statutory mandate. The Respondent in its affidavits in reply affirmed that the Applicant started work in chambers of M/s Taremwa and Co. Advocates as a legal assistant in January 2015 without any prior approval by the Law Council and that the Law Council never carried out any surveillance over the work the Applicant carried out while at M/s Taremwa to determine whether he is a fit and proper person for a certificate of eligibility. According to the Respondent, M/s Justice Centres Uganda- Kampala Office was the chamber chosen by the Law Council at its sitting held on 3rd May 2017 where the Applicant would work under surveillance of the Law Council for a period of one year from the date of assumption of duty.

Resolution of the Issue.

23. Section 8(8) of the Advocates (Amendment) Act provides as follows; **(8) This section applies to a person who- (a) is a holder of a degree in law granted by a University in Uganda; or (b) is a Uganda citizen and**
- (i) a holder of a degree in law obtained from a University or other institution recognized by the Law Council in a Country operating the common law system; or**
 - (ii) has been enrolled as a legal practitioner by whatever name called, in any country operating the common law system and designated by the Law Council by regulations; or**
 - (iii) holds a qualification that would qualify him or her to be enrolled in any country operating the common law system and designated by Law Council by regulations**
24. Section 8(10) of the Advocates (Amendment) Act provides that **in case of a person to whom paragraph(b)(ii) of subsection (8) of this section applies, being a person who has practiced as a legal practitioner for one year or more, but less than five years, that person is not eligible for enrolment under this section unless he or she works under the**

surveillance of and in chambers approved by the Law Council for that purpose or he or she serves as a State Attorney for at least one year.

25. The Applicant studied his law degree in Uganda at Uganda Christian University where he graduated in 2011 and later joined the Law School of Kenya where he qualified as an Advocate entitled to practice as such in 2013. He took out a practicing certificate in the year 2014 as a practicing advocate in the Law firm of *Oriaro & Company Advocates*.
26. When the Applicant returned to Uganda, in 2015 he applied and took on legal work with M/s Taremwa & Co Advocates and applied for a certificate of Eligibility for entry of his name on the Roll of Advocates. The Law Council without any question issued the Applicant with Notice of Application for a Certificate of Eligibility on 27th May 2015. The said Notice was published in the gazette on 3rd July 2015.
27. The Applicant wrote to the Law Council on 24th April 2016 inquiring about status of his application for a certificate of Eligibility and when he failed to receive any response to the same, he filed Miscellaneous Cause 266 of 2016 challenging the delay in communicating the decision and or refusal to take the decision. The High Court on 27th day of April 2017 ordered the Respondent to take the decision on the matter and communicate the same to the applicant within 14 days.
28. The said decision was made on 3rd May 2017 and was communicated to the Applicant on 9th May 2017. In the said decision the Secretary Law Council noted as follows; “ *As you may be aware, Section 8(8)(b)(ii) and 8(10) of the Advocates (Amendment), 2002 provides that a person who has been enrolled as a legal practitioner in a country operating the common law, designated by the Law Council and has practiced for one year or more but less than five years is not eligible for enrolment unless she/he has worked under the surveillance of and in chambers approved by the Law Council for that purpose or he/she serves as State Attorney for at least one year. In light of the above, the Law Council at its sitting held on 3rd May, 2017, assigned M/s Justice Centres Uganda-Kampala office as the chambers within which you are to work under surveillance of the Law Council for a period of one year from the date of assumption of duty. M/s Justice Centres Uganda is required to make a report for your*

performance every month. The purpose of this letter is to inform you of the Council's decision."

29. It can be seen from the above communication that the Law Council never considered the Applicant's work or training undertaken at Kenya Law School or the professional skills and experience in accordance with Section 8(9) of the Advocates (Amendment) Act 2002.
30. The Applicant challenges the decision of the Law Council for being illegal. Section 8 of the Advocates Act 27 of 2002 may appear to be wide but it must be read within the context of the whole amendment and what was intended to be achieved with the amendment Act in general. The long title to the Act states that it was intended *to provide for easier access to Uganda Bar in terms of required qualifications for entry and procedures.*
31. Where a public body like (the Law Council) is empowered by statute to issue guidance or advise or prescribe professional requirements for admission for eligibility for enrolment as an advocate, such power should not include the power to alter the main objectives of the Act. The courts attention is supposed to focus on the entire Act and the spirit for its enactment.
32. The Applicant had been awarded a Diploma in Legal Practice from Kenya School of Law and enrolled as an Advocate of the High Court of Kenya. This meant that section 8(9) of the Advocates (Amendment) Act would have been applicable in considering whether he had satisfied the requirements as to the acquisition of professional skill and experience.
33. Section 8(8)(b)(ii) and 8(10) of the *Advocates (Amendment), 2002* cited by the Law Council in their decision does not apply to the Applicant since he is a holder of a Degree in law granted in Uganda and it is section 8(8)(a) that applied to him.
34. This implies that a Ugandan who has obtained a law degree from Uganda but opts to study in another law school in a common law jurisdiction, and is enrolled in that jurisdiction, would be entitled to be enrolled on the same grounds as a Ugandan who obtained qualification from Uganda and qualified from Law Development Centre provided he complies with section 8(8) (a) of the Advocates (Amendment) Act 2002.

35. The provisions cited by the Law Council in their decision are with the greatest respect erroneously applied to the Applicant. The said provisions are only intended to give the categories of Applicants who can practice in Uganda by virtue of their legal training.
36. The category that falls in 8(8)(b)(ii) in our considered opinion are persons who are not qualified with law degrees but rather enrolled as legal practitioners by virtue of their legal related work experience such as clerks, para legals and police officers.
37. Section 8(8)(b)(ii) does not apply to persons who possess law degrees under 8(8)(a) or 8(8)(b)(i) or 8(8)(b)(iii). Their ability to practice should have been prescribed under Section 8(9) as persons who have not practiced for a minimum period of one year.
38. It can further be noted that the law envisaged making of regulations to prescribe the manner in which Applicants shall be deemed to have practiced for a minimum period of one year. We have not come across any regulations made under section 8(9) of the Advocates (Amendment) Act. In absence of any regulations by the same Law Council, they have arrogated to themselves powers to consider applications on a case by case basis which is very wrong and must stop.
39. The Law Council must publish regulations for all Ugandans who are eligible to practice law in Uganda and set out the manner of practicing or how they should be equated to have complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience.
40. The Applicant contends that because the secretary Law Council issued him with a notice of eligibility for publication in the gazette, she was satisfied that the Applicant qualified for eligibility for enrolment and the same process could not be revoked unless member of the public raise a satisfactory objection. We do not agree with this position. If the Law council issues a notice of eligibility in error, it can rightly recall the same. However, the Law Council needs to always carry out the necessary due diligence prior to such issue of notices to avoid confusion regarding the eligibility process

41. Obviously the Respondent's intentions are to protect the legal profession from quack lawyers or persons with quack qualifications. This is particularly important today where quacks are infiltrating the profession. This important duty of the Law Council cannot be underscored.
42. Having said that, the Law Council in its letter setting out the decision does not make any mention of the fact the Applicant had undertaken any training at Kenya Law School and or acquired the professional skill and experience therefrom. There is no demonstration that the Law Council took the Applicant's bar course qualification from Kenya, a common law jurisdiction like Uganda and East African State, into account when making its decision to subject him to an additional year of surveillance at Justice Centres.
43. We consider this to ride against the spirit of Article 126(2) of the East African Community Treaty which provides that ***“the Partner States shall through their appropriate national institutions take all necessary steps to; (a) establish a common syllabus for the training of lawyers and common standard to be attained in examination in order to qualify and to be licensed to practice as an advocate in their respective superior courts. “***
44. Uganda as a Partner State is enjoined to harmonize the national laws in respect of the legal profession. Uganda as a member country signed the East African Community Common Market Protocol (EAC CMP) and undertook to provide free legal practice by 2015. Although we may have some varied academic routes and professional qualification requirements and owing to quality assurance or protectionist reasons, access to a number of professions including law is regulated. Uganda is bound to open up the space for workers through the East African Integration or devise a better approach to allow Free Movement of Workers in order to be compliant with the EAC Common Market Protocol.
45. The ultimate solution is harmonization, which is, setting, through Community legislation, uniform academic curricular and professional qualification standards to remove disparities between Partner States, with quality assurance guaranteed by uniform procedures and standards for accreditation of training institutions, and leaving no room for protectionism. See

page 304-**Regional Integration Law in East African Community and European Union** by Emmanuel Sebijjo Ssemmanda Clep EAI: 2018.

46. Based on all the above, because the Law Council erroneously applied S.8(10) of the Advocates (Amendment) Act to the Applicant in its decision, the same was erroneous, unfair, illegal and unreasonable. Issue 2 is resolved in the affirmative.

Issue three - Whether the Applicant has satisfied all statutory requirements for issuance of a certificate of eligibility

47. As discussed in the earlier issue, the Applicant qualified from Uganda at Uganda Christian University with the Law degree and later he proceeded to Kenya Law School where he obtained a Diploma in Legal practice and he was duly admitted to the bar of Kenya. These are the same qualifications that can be attained by any Ugandan who attends any University in Kenya and returns to complete the Diploma in Legal Practice in Uganda.

48. This would imply that the reverse would be true for any student who qualified in Uganda and went to study at Kenya Law School or any bar course training by whatever name called as long as it satisfies Section 8(9) of the Advocates (Amendment) Act that provides for acquisition of professional skill and experience.

49. It is important to note that Section 8(10) of the Advocates Act strictly applies to non-law degree holders who have acquired legal skills through legal practice for example clerks or researchers e.t.c and are thus termed as legal practitioner. It is such persons who have to work under surveillance for at least one year before Law Council can satisfy itself that they can competently practice law in Uganda.

50. The Applicant having qualified and obtained a Law degree from Uganda Christian University in Uganda- in 2011 and later passed the Post Graduate Diploma in Law at Kenya School of Law- in 2013, his name was duly entered on the Roll of Advocates of the High Court of Kenya and he duly worked as an advocate for one year in the law firm of Oriari & Co Advocates from 1/1/2014 to 31st/12/2014 and was duly issued a certificate of Service, he was duly qualified to be entered on the Roll of Advocates of Uganda.

51. The above was also supported by the issuance of a notice of application for a Certificate of Eligibility issued by the Secretary of Law Council on 27th May 2015. There is no basis to deny the Applicant his right to practice his profession as envisaged under Article 40(2) of Constitution. The Applicant satisfied all statutory requirements for issuance of a certificate of eligibility.

52. It would also appear that the Law Council has failed in its statutory duty to make regulations as directed by section 8(9) of Advocates (Amendment) Act. They have opted to consider the individual applications without any regulations. This has prejudiced different Ugandans who have opted to acquire professional skill and experience from outside Uganda.

53. The Law Council has been misapplying section 8(8)(b)(ii) together with section 8(10) which we have already found does not apply to any Ugandan who holds a law degree from a University in Uganda or other University recognized by the Law Council.

54. Any Ugandan who holds a law degree from a University in Uganda or a University recognized by the Law Council should be considered for enrollment if they satisfy the requirements of Section 8(9) of the Advocates (Amendment) Act. This issue is also resolved in the affirmative.

Issue four - Whether the applicant is entitled to the remedies sought

55. On the basis of the findings on the above three issues, the application succeeds with the following orders;

i). This court under Section 8(6) of the Advocates Act, reverses the decision of the Law Council and orders the Law Council to issue the Applicant a certificate of eligibility within 30 days from the date of this ruling.

ii) We direct that the Law Council should make regulations by 15th December 2019 and report to court accordingly.

- iii) We decline to award any general damages and costs of this suit since this application is in the nature of public interest litigation affecting the different Ugandans who qualified to practice from outside Uganda.

Obiter dictum

56. Before we take leave of this case, we wish to emphasize that Sections 8(9) and 8(13) of the Advocates (Amendment) Act of 2002 require the Law Council to enact regulations for purposes of regularizing the qualification of Applicants to be entered on the Roll of Advocates. There are other sections that require the Law Council to make similar regulations. However, we note that the Law Council has not made any of these regulations to date. This has created a spiral of confusion and uncertainty, where Ugandans who obtain degrees outside Uganda or those who fail to be admitted for the Bar Course at LDC after obtaining degrees in Uganda are left languishing the streets without a chance of admissibility to be entered on the Roll of Advocates.

57. The Law Council in line with the requirements of the law must enact these regulations so that students make well informed decisions when choosing where to study, with a sense of future certainty of where they can practice their profession. It is irrational and irregular for the Law Council to deal with Ugandans like with a magic spell whose wand is uncertain. The legal profession cannot be subjected to such whims. Rather the regulations should create an objective medium within which Ugandans who wish to practice law are enabled in a space where due consideration is given to their different degrees whether from within or outside Uganda.

58. Such consideration would be in line with the objective of making easy access embedded in the long title of the Advocates Act and would serve to ensure complete applicability of the Act. In so doing, in today's world, the Law Council needs to be alive to the fact that many Ugandans study law degrees out of the country not because they're intellectually incompetent but simply because the numbers of students who qualify are too many for the Universities and

Law Development Centre to accommodate. There's therefore a need for Law Council not to unfairly discriminate these students in comparison to those who study in Uganda. It would be against the spirit and letter of the enactors of the relevant laws. Ultimately the Law Council should work to facilitate enrolment of lawyers on the Roll of Advocates and not impede such enrolment unnecessarily.

We so order.

DATED at Kampala this 25th day of January 2019.

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HON LADY JUSTICE H. WOLAYO

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HON. LADY JUSTICE LYDIA MUGAMBE

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HON. MR JUSTICE SSEKAANA MUSA