

Enhancing Legal Education in East Africa: Contextualizing the Role of the Legislature, Council of Legal Education and the Judiciary in Kenya.

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Abstract

Some of the poignant challenges the legal education sector is grappling with in East Africa are traceable to the history of the legal profession. The sector is labouring under the weight of burgeoning numbers, declining standards and inadequate human and financial resources necessary to keep abreast with market dynamics and international best practices. Admittedly, neither the Colonial Government nor the Government of independent Kenya sufficiently invested in legal education to anchor it on a growth trajectory. Legal education in East Africa generally and Kenya in particular has a long and chequered history. It has gone through various phases inherent in which has been the disproportionateness of interests of stakeholders. Significantly, the legislature and the judiciary have been inextricably entwined in the legal education matrix and have become critical actors in the dynamics of modelling the future of the profession. This paper chronicles the evolutionary pattern of the legal framework on legal education accentuating how litigants have unwittingly catapulted the judiciary to the forefront in the promotion of legal education. Drawing from leading judicial pronouncements, the discussion provides useful perspectives and insights on how courts have progressively fortified legislative prescriptions and decisions of the Council of Legal Education as the Council endeavours to operationalize and enforce statutory instruments. Preponderantly, the judiciary has been impenitent in enforcing the quality standards prescribed by the legislature. Judicial authority is unambiguous that the legal education and training regulatory framework is not only progressive but robust and dynamic. The emerging jurisprudence constitutes a veritable foundation for the enrichment of legal education and training in the region. Unpredictably, incessant actions challenging Council decisions on licensing and admission to the Kenya School of Law have reinvigorated debate on the quality of University education in Kenya.

Introduction

Commentators on legal education are unanimous that the subject has continuously attracted academic inquiry.¹ A salient justification for this is that quality legal education² is the cornerstone of the legal profession. Its relatively nascent character has also contributed to the anxiety by scholars. Undoubtedly, the profession is grounded and sustained by the skills, precepts and quality standards imparted on trainees during their instruction and acquired in practise. The sagacious aphorism that the proof of pudding is in the eating becomes the mantra of legal education and training. As a country develops, its commercial, financial, agricultural and other sectors become increasingly sophisticated and the demand for specialized and quality services manifests itself. Consequently, the demand for versatile legal minds with the necessary skills and attitudes is exerted on legal education and training institutions. However, since the well-established principles of supply and demand cannot single-handedly guarantee quality legal education and training, the need for a facilitative legislative framework cannot be exaggerated.

¹ See, S. D. Ross, A comparative study of legal education in East Africa, J.A.L. 279-299(1973), K. Bentsi-Enchill, The lawyers calling in Africa, 3&4 ZAMBIA L. J. 5-15 (1971&2), P.A. Thomas, The legal education in Africa with reference to Zambia, 22 N.I.L.Q. 3-37 (1971), J. B. Ojwang & D.R Salter, Legal Education in Kenya, 33 J.A.L. 78(1989).

² "Legal education refers to the experiences and training which help different kinds of people to understand the use of law in society." For a detailed explanation of the concept, see, International Legal Centre *Education in a changing World* (Report of the Committee on Legal Education in Developing Countries) New York 18 (1975)

Relatedly, to ensure that the statutory prescriptions are not only operationalized but vigorously enforced, an institutional framework is imperative. Finally, to ensure that the law is applied fervently, impartially and in conformity with the principles of natural justice, the judiciary becomes an indispensable pillar of the matrix.

Consequently, the paper progresses as follows: Part I chronicles the evolution of legal education and training in Kenya illuminating the interface between legislative provisions, regulator and the judiciary. It underscores the different phases accentuating the various interventions made by the legislature and the Government to streamline legal education. Part II interrogates the regulatory architecture from its genesis in the late 1940s to the present highlighting how the absence of a clear mandate enormously undermined the supervisory role of the regulator in assuring quality legal education in Kenya. The analysis demonstrates that progress has been slow but incremental. Part III exemplifies the role of the judiciary in the enhancement of legal education and training. Drawing from leading judicial articulations, the analysis provides valuable lessons on how judicial construction of the legislative framework has embellished the role of the Council of Legal Education. The paper concludes that although the legal and regulatory framework on legal education and training in Kenya is robust and expansible, the need to consolidate and safeguard the achievements from incessant threats cannot be over-emphasized.

Historical development of Legal Education

Legal education and training in Kenya has undergone tremendous transformation over the last five decades. Interestingly, for many years, legal education and training was under the superintendence of no clearly discernible regulatory agency.³ As exquisitely observed, “In the 70 years of colonial rule in Kenya, no facility for legal education was set up.”⁴ This was perhaps because other professionals, such as engineers, doctors and agriculturalists were considered more important than lawyers. One commentator contends that during the colonial era, lawyers were assigned relatively minor roles.⁵ Admittedly, University, Diploma and Continuous Professional Development had not been recognized as integral parts of legal education.

Regulation of the legal profession in East Africa is traceable to the East Africa Legal Practitioners’ Rules, promulgated in 1901. The Rules permitted Barristers, and Solicitors from England and pleaders from Indian Courts to practice law in East Africa. However, the Legal Practitioners Act, 1906 restricted practice by pleaders and notaries public.⁶ A more encompassing version of East Africa Legal Practitioners’ Rules promulgated in 1911 outlawed the licensing of non-lawyers but continued the licensing of *Vakeels*. In addition, the Rules gave advocates from self-governing dominions right to practice.⁷ Regulatory dynamics changed when the Law Society of Kenya joined the scene in the 1920s. Its representations to the colonial administration culminated in the Law Society and Advocates Acts, 1949.⁸

The first meaningful attempt to institutionalize legal education came with the Advocates’ Ordinance,⁹ promulgated in 1961. The legislation was intended to implement the recommendations of the Denning Committee on Legal Education for students from Africa.¹⁰ The Committee was appointed by Lord Kilmuir, the Lord Chancellor, to investigate the question of legal education in Africa and make recommendations for reforms. The Denning Committee was the first structured attempt to address the challenges which the legal education in East Africa was grappling with. The Report became an important policy document on legal education for the region. It advocated for *inter alia* the opening of legal practice to persons trained in local law. Although the Committee recommended that legal training be university based, it retained the articulated clerkship programme. However, the local politics was not enthusiastic about the recommendation on university teaching of law. The Report envisioned that one Faculty of Law was adequate for the East African region.

³ See, W. Twining, Legal Education within East Africa, BIICL, East Africa Today, 116 (1966).

⁴ J. B. Ojwang & D. R. Salter, Legal Education in Kenya, 33J. A. L. 79 (1989).

⁵ See Twining, *supra* note 3 p. 116

⁶ See Y. Ghai & P. Mac Auslan, *infra* note, 11 p.384. The Act prohibited pleaders who had not been enrolled before an Indian High Court to practice law in the East African Protectorate.

⁷ *Id*, p. 384

⁸ No. 10 and No.55 of 1949 respectively.

⁹ No. 34 of 1961, Cap. 16.

¹⁰ Cmnd.1255 London HMSO 1961

One of the direct consequences of the Denning Report was the establishment of a Faculty of Law at the University of Dar-es-salaam in 1961. Similar faculties were subsequently established at Makerere University and the University of Nairobi in Uganda and Kenya respectively.¹¹

The Advocates Ordinance established the Council of Legal Education, the harbinger of the current regulator of legal education and training. It was an administrative body with an exceedingly circumscribed mandate.¹²The Colonial Government intended to use the body to streamline admission to the Bar through the dual streams of qualification operational at the time. The Ordinance mandated Council to “exercise of general supervision and control over legal education in Kenya for purposes of the Advocates Act and to advise the Government in relation to all aspects thereof.”¹³Significantly, the Council could make Regulations with approval of the Chief Justice. Notably, except for a few matters, the Advocates Ordinance, 1961 was exclusively a product of the Law Society. The Council of Legal Education was constituted by nominees of the Chief Justice, the Attorney General and the Law Society of Kenya.¹⁴

The Government had proposed that the Council be constituted by two judges, the Attorney General or a representative, three advocates nominated by the Law Society of Kenya and a University law lecturer appointed by the Attorney General.¹⁵ Although the Law Society was well represented in the Council of Legal Education, the Society was vehemently opposed to university legal education and any member of the Council being appointed by the Attorney General. Nominees of the Law Society bulldozed their way by boycotting meetings of the Council until the Government acquiesced to their demands. An amendment to the Advocates Ordinance in 1962 empowered the Council to appoint a University law lecturer to the Council.¹⁶The Ordinance gave the Chief Justice discretion to admit to practice as an advocate for any specified suit or matter, any person who had been called to or within the Bar in the United Kingdom.¹⁷ Apart from vetting candidates for admission to the Roll of Advocates, the Council of Legal Education had no other “regulatory” role. It had no oversight over legal education and training.

Although the Law Society dominated the membership of Council and was instrumental to the institutionalization of the Clerkship Programme in the Ordinance,¹⁸ it had no wherewithal to consolidate its gains. It was unable to establish a training institution for clerks. The Government sourced for funding and constructed the Kenya School of Law. The institution became a Department under the Office of the Attorney General. Relatedly, the mode of appointment of members of the Council of Legal Education changed and the power to appoint the University law lecturer reverted to the Attorney General.¹⁹ By 1967, the Attorney General was solely responsible for managing the Kenya School of Law. To the chagrin of the Law Society, the advent of the Faculty of Law at the University of Nairobi in 1970 became the bellwether for a legal profession without articulated clerkships. Subsequently, Kenya School of Law became a Post-graduate institution for law graduates from the University.

¹¹ See, Y. Ghai & P. MacAuslan, Public law and political change in Kenya: A study of the legal framework of Government from colonial times to the present, 399-400(2002).

¹²“general oversight powers over persons who became admissible to practise law as advocates”, See, Republic of Kenya, Report of the Ministerial Task Force on the Development of a Policy and Legal Frame work for Legal Education in Kenya, 6 (2005), (Muigai Report), Government Press.

¹³ Supra note 8 Section 3

¹⁴ *Id.*

¹⁵ The Law Society was unhappy with this arrangement since it would wrestle control of the Council of Legal Education from it. They boycotted its meetings until the Government acceded to their demand by giving the Council power to elect the Law lecturer. This was intended to ensure that the person elected was independent of the Government of the day. See, Statute Law (Miscellaneous Amendment No.2) Act No. 36 of 1962.

¹⁶ See, Statute Law (Miscellaneous Amendment No. 2) Act, No. 36 Of 1962.

¹⁷ Supra note 8, Section 10.

¹⁸ This method of joining the legal profession subsisted until the 1989 when the current Advocates Act was enacted. According to Ross, when the Denning Report was made public, Kenya had 300 Advocates and only 10 were Africans. By 1965, the country had 80 articulated clerks in training compared to 50 students studying law at the University of Dar-es-salaam. In 1968, out of 292 Advocates who took out practicing certificates in Kenya, 11 were African, 224, Asians and 57 Europeans. Even as late as 1974, with over 440 Advocates, only 144 were Africans.

¹⁹ See, Statute Law (Miscellaneous Amendments) Act No. 21 of 1966.

The first principal of the school was appointed without reference to the Council of Legal Education. However, for many years the two institutions shared premises and staff and were to all intents and purposes operationally indistinguishable. Before the 1990s, the status, composition and mandate of Council of Legal Education did not undergo any significant changes. The Advocates Act 1989²⁰ increased the membership of the Council to include, the Solicitor General or a person deputed by the Attorney General. The Act retained the omnibus function of the Council as ordained by the Advocates Ordinance 1961.²¹ The Secretary to the Council, who had to be a public officer, was made an appointee of the Attorney General.²² Council's legislative power was restricted to the engagement and training of pupils by advocates, their conduct, duties and responsibilities.²³ Although the "functions of the Council" under this legislation appeared amorphous, the provision, arguably gave Council supervisory powers over legal education in Kenya. It is difficult to hypothesize why the Council interpreted its mandate so unenthusiastically. Possibly it had no wherewithal to undertake the humongous responsibility and may have opted to operationalize it restrictively.

Entrenchment of the Council of Legal Education

Perhaps the most comprehensive attempt to streamline the status and mandate of the Council of Legal Education in the legal education and training matrix in Kenya was the Akiwumi Report.²⁴ The Report led to the passage of the (now repealed) Council of Legal Education Act, 1995.²⁵ The Act came into operation on December 27th, 1995. The legislation bestowed upon the Council of Legal Education corporate personality with perpetual succession and capacity to contract, sue and be sued, borrow and lend money and do such other things or acts in furtherance of its mandate.²⁶ Remarkably, the Act enhanced the composition of the Council to include: judges of the Court of Appeal and High Court, Dean of a School of Law, head of the Kenya School of Law, Senior Counsel appointed by the Attorney General, Permanent Secretary in charge of Higher Education or a representative and five (5) advocates nominated by the Law Society of Kenya.

Although the Act retained the omnibus mandate embodied in earlier statutes, it particularized the legal education functions of the Council. Importantly, Council had a more specific education and training mandate. The legislation mandated Council to:

- Establish, manage and control training institutions for purposes of:
- Organize and conduct courses for the acquisition of knowledge and skills for admission as advocates
- Organize and conduct courses in legislative drafting
- Conduct induction courses for magistrates and other legal professionals.
- Conduct courses for Government personnel on the general understanding of the law.
- Introduce courses and programmes an Continuing Education, and
- Conduct seminars and courses on topical legal issues.
- Conduct examinations for the grant of academic awards, and
- Award certificates, fellowships, scholarships and bursaries.²⁷

Inopportunately, these functions were restricted to the operations of the Kenya School of Law. As exquisitely observed, "The seeds of institutional dualism in the regulation and provision of legal education in Kenya and the obfuscation of the roles and functions of the Council of Legal Education and the Kenya School of Law were firmly implanted."²⁸ This institutional dichotomy undermined Council's supervisory role.

²⁰ Act No. 18 of 1989.

²¹ *Id.* Section 5

²² *Id.* Section 6

²³ *Id.* Section 7

²⁴ The Report detailed the structural, organizational and operational challenges of both the Council of Legal Education and the Kenya School of Law and suggested fundamental but feasible corrective action. However, the Report failed to appreciate the dichotomy between the Council and the School and thus gave the Council a training mandate which obfuscated its oversight or supervisory role. See, *Supra* note 9 at p. 6.

²⁵ Act No. 12 of 1995 Cap. 16 A (Now repealed).

²⁶ *Id.* Section 3 (2).

²⁷ *Id.* Section 6

²⁸ *Supra* note 12 at p. 7.

Unmistakeably, the overall mandate of Council as encapsulated by the legislation extended its regulatory role beyond the Kenya School of Law. Section 6 empowered Council "...to exercise general supervision and control over legal education in Kenya and to advise the Government in relation to all aspects thereof." Inexplicably, Council shied away from asserting itself as the regulator of legal education. Similarly, no meaningful effort was expended to collaborate with other legal education providers which the legislation envisioned would be supervised by Council. Inevitably, this had a "chilling effect" on Council's supervisory role.

Section 14 of the Council of Legal Education Act empowered the Council to make Regulations which required ministerial approval. In exercise of this mandate, Council promulgated the Advocates (Admission) Regulations 1997.²⁹

Somewhat, towards the end of the first decade of the 21st Century, Council appeared to have internalized its all-encompassing statutory mandate. To institutionalize and domesticate the mandate, Council promulgated the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009.³⁰ The Regulations made provision for accreditation of legal education providers,³¹ application for accreditation,³² timelines,³³ inspection and re-inspection of institutions,³⁴ institutional standards on the library, curriculum and physical structures,³⁵ revocation of accreditation,³⁶ institutional reporting,³⁷ discontinuation of law programmes,³⁸ forms³⁹ and fees and charges.⁴⁰ More importantly, the Regulations prescribed the core units for the Diploma in Law, Under-Graduate and the Post-Graduate Diploma (Advocates Training Programme).⁴¹ These Regulations were an indispensable addition to the Council's toolkit. Although Council has approved new Regulations,⁴² which are being reviewed by relevant Governmental agencies before approval by the National Assembly and publication in the Gazette, the foregoing Regulations constitute the Council's bulwark in its mission to infuse quality in legal education and training in Kenya.

Current legal Framework

The Muigai Report is credited for having positioned legal education and training in Kenya on a platform and trajectory for growth, particularly in quality. The Report culminated in the promulgation of the Legal Education and the Kenya School of Law Acts of 2012. The Acts heralded a new epoch in legal education and training in Kenya.

Legal Education Act

The entrenched symbiotic relationship between the Council of Legal Education and the Kenya School of Law had a debilitating effect on the capacity of the former to discharge its regulatory function. Opportunely, history presented an impeccable opportunity to bring to a close this indefensible operational matrix of the two bodies.

²⁹ Legal Notice 357 of 1997. Regulation 9 of Part IV of the Regulations prescribed the number of attempts and the duration within which a student had to pass all courses at the Kenya School of Law. The Regulations permitted candidates to re-sit failed papers for up to four (4) times within a period of two years. *A candidate who failed the examination at the fourth sitting was not entitled to any further attempts.* This Regulation was applied in *Republic v. Council of Legal Education Ex parte, James Njuguna & Others*, Miscellaneous Civil Case 137 of 2004.

³⁰ Legal Notice No. 170 of 2009. These Regulations are saved by section 48(2) and 49 (1) (a) of the Legal Education Act, 2012.

³¹ *Id.* Part II

³² *Id.* Reg. 4-9.

³³ *Id.*

³⁴ *Id.* Reg. 7 & 15

³⁵ Part I, II & III of the Third Schedule to the Regulations.

³⁶ *Supra* note 26, Reg. 10.

³⁷ *Id.* Reg. 13.

³⁸ *Id.* Reg. 16 & 17.

³⁹ First Schedule to the Regulations.

⁴⁰ Fourth schedule.

⁴¹ *Supra* note 31, Part III

⁴² The Legal Education (Accreditation & Quality Assurance) Regulations, 2015.

Consequently, the Muigai Report was unambiguous that the two institutions had to be divorced and their corresponding roles unmistakably articulated by legislation.⁴³ The rough logic was that distinct and independent bodies would be more efficacious in discharging their mandates. The Report became the unshakable foundation for the statutory framework. Significantly, the Report provided a working draft of the current statute.⁴⁴ The Legal Education Act⁴⁵ comprises fifty (50) provisions and two schedules. The Act re-established the Council of Legal Education established by the Council of Legal Education Act, (now repealed) as a body corporate with the general attributes of incorporated associations.⁴⁶ Most importantly, the legislation streamlined and enhanced the functions of the Council of Legal Education. Section 8 (1) is emphatic that the functions of the Council shall be to:

- Regulate legal education and training in Kenya,
- Licence legal education providers,
- Supervise legal education providers,
- Advise the Government on matters relating to legal education and training.

The Statute Law (Miscellaneous Amendment) Act 2014 introduced a hodgepodge of amendments to the Legal Education Act including: membership of Council, law making powers and functions. The mandate of Council was extended to encompass, recognition and approval of qualifications obtained outside Kenya for purposes of the Roll of Advocates and to administer such professional examinations as may be prescribed under section 13 of the Advocates Act.

Arguably, Council enjoys a very specific and expanded mandate including the humongous but reputable responsibility of conducting the Bar Examinations. The Act empowers Council to *inter alia* set and enforce standards in accreditation, curriculum, mode of instructions, examinations, and monitoring and evaluation of legal education providers.⁴⁷ Ingeniously, the statute provides for recognition of prior learning and experience for purposes of progression in legal education.⁴⁸ In addition, the Act empowers Council to require any person to furnish it with returns or information relating to legal education⁴⁹, act independently,⁵⁰ co-operate with other organization,⁵¹ invite experts to attend and participate in its proceedings whenever necessary,⁵² delegate functions to committees, member, officer, employee or agent,⁵³ suspend or revoke licences.⁵⁴ To promote resourcefulness in legal education, apart from the core courses prescribed by Part II of the Second Schedule to the Act, legal education providers are at liberty to offer such other courses as they may consider appropriate.⁵⁵ Further, the Act makes provision for, annual estimates,⁵⁶ accounts and audit,⁵⁷ financial year⁵⁸ and the legal Education Fund.⁵⁹ Significantly, the Act establishes the Legal Education Appeals Tribunal⁶⁰ with jurisdiction to hear appeals from persons aggrieved by decisions of Council regarding:

- Refusal to grant a license,
- Imposition of conditions on a license
- Suspending or revocation of license.⁶¹

⁴³ Supra note 12 at p. 14

⁴⁴ Supra note 12, Appendix III at p. 81

⁴⁵ Act No. 26 of 2012

⁴⁶ Section 4

⁴⁷ Section 8(2)

⁴⁸ Section 8(3)

⁴⁹ Section 9(2)

⁵⁰ Section 12

⁵¹ Section 13

⁵² Section 14

⁵³ Section 15

⁵⁴ Section 21

⁵⁵ Section 23(1)

⁵⁶ Section 27

⁵⁷ Section 28

⁵⁸ Section 26

⁵⁹ Section 24

⁶⁰ Section 29

⁶¹ Section 31&32

Appeals lie in the High Court.⁶² Noteworthy, although members of the tribunal have been appointed, the tribunal has not been inaugurated. This is perhaps because its jurisdiction has not been invoked by any institution. The preceding powers of the Council of Legal Education are augmented by the Council of Legal Education (Accreditation of Legal Education Institution) Regulations, 2009. To keep pace with the dynamism of the sector, Council has originated draft Regulations,⁶³ which were scrutinized at a stakeholder's forum in January 2015, and thereafter redrafted by the Attorney General's office. The draft Regulations are going through the approval process in the National Assembly before publication in the Gazette for commencement. These Regulations are a comprehensive package intended to place legal education and training in Kenya on a more progressive and sustainable platform. The Regulations make detailed provisions on licensing,⁶⁴ recognition and approval of foreign qualifications,⁶⁵ direct admission to the Bar⁶⁶, reciprocal recognition of foreign advocates,⁶⁷ recognition of experiential learning,⁶⁸ quality standards,⁶⁹ termination, suspension and revocation of licenses,⁷⁰ detailed forms,⁷¹ charges,⁷² admission requirements for all legal programmes and quality standards on all aspects of legal education and training.⁷³ With these Regulations as part of its toolkit, Council is sanguine about the future of legal education in Kenya. In sum, the Legal Education Act and applicable Regulations constitute the Council of Legal Education a veritable regulator with enveloping powers over legal education providers and programmes. Implausibly, the Council of Legal Education complements the Commission for University Education in regulating university education.

Kenya School of Law Act⁷⁴

The Muigai Task Force was unqualified that the unperturbed relationship between Council and the Kenya School of Law was the antithesis of the Council's inability to be a standard setter in legal education and training.⁷⁵ "The special relationship which the CLE has cultivated with the KSL...is not in consonant with its status as a regulator."⁷⁶ Consequently, the Task Force laid the foundation for a permanent separation between the two bodies by anchoring it in a draft Bill, the predecessor to the Kenya School of Law Act. The Kenya School of Law Act, 2012, established the Kenya School of Law as a body corporate with perpetual succession and other attributes of incorporated associations.⁷⁷ The legislation makes provision for, the objects, functions and powers of the School,⁷⁸ board of the school and its functions,⁷⁹ term of office of board members, remuneration, vacation of office and conduct of business and affairs of the board.⁸⁰

⁶² Section 38

⁶³ See The Legal Education (Accreditation and Quality Assurance) Regulations, 2015.

⁶⁴ *Id.*, Reg. 4

⁶⁵ *Id.*, Reg. 7

⁶⁶ *Id.*, Regs. 8 & 9

⁶⁷ *Id.*, Reg. 10

⁶⁸ *Id.*, Reg. 11

⁶⁹ *Id.*, Reg. 13

⁷⁰ *Id.*, Regs. 14 & 15

⁷¹ *Id.*, First Schedule to the Regulations

⁷² *Id.*, Second Schedule

⁷³ *Id.*, Third Schedule.

⁷⁴ Act No. 26 of 2012. The Act came into operation on January 15th, 2013.

⁷⁵ *Supra* note 9 at p. 15. See also, Appendix IV at p. 115.

⁷⁶ *Id.*

⁷⁷ Section 3(2)

⁷⁸ Section 4

⁷⁹ Sections 6 & 7

⁸⁰ Sections 8, 9 & 10

In addition, it makes provision for, annual estimates,⁸¹ accounts and audit,⁸² academic programmes of the School,⁸³ delegation by the board director,⁸⁴ and staff of the school.⁸⁵ Conspicuously, the Act prescribes the admission requirements for the Bar programme (Advocates Training Programme).⁸⁶

Because of the significance of admission to the Bar Programme in Kenya, it is imperative to reproduce the admission requirements in their entirety. Importantly, the provision has repeatedly been the subject of judicial proceedings against the Kenya School of Law and the Council of Legal Education by applicants who have been denied admission to the School. The requirements were modified by the Statute Law (Miscellaneous Amendment) Act, 2014. The Second Schedule to the Kenya School of Law Act provides that a person shall be admitted to the school if:

- *Having passed the relevant examination of any recognized university in Kenya, or of any university, university College or any other institution prescribed by Council, holds or becomes eligible for the conferment of the Bachelors of Laws (LLB) Degree of that University, university College or institution; or*
- *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 Bachelors of Laws Degree (LLB) in the grant of that university college or other institution-*
 - *Attain a minimum entry requirement for admission to university in Kenya and*
 - *Obtained a minimum grade B (plain) in English language or Kiswahili and a mean grade of C (plus) in the Kenya Certificate of Education or its equivalent and has sat and passed the Pre-Bar examination set by the School.*

In an unprecedented move, the legislature made the Pre-Bar Examination an additional admission requirement. All persons seeking to join the Advocates Training Program must pass the Pre-Bar Examination. In a nutshell, the amendment constituted the Pre- Bar Examination an entrance examination. Although it is difficult to hypothesize what motivated the thinking, preponderantly, the idea was commendable. However, its promoters do not appear to have accorded the idea the profound thinking it warranted. Bequeathing the mandate to administer the Pre-Bar Examination to the Kenya School of Law and simultaneously opening up bar training and concomitantly transferring Bar Examinations to the Council of Legal Education was undoubtedly discreditable. This arrangement would have worked harmoniously if the Kenya School of Law remained the singular trainer for the Bar Examinations. It would be tenuous for the School to guarantee impartiality in an examination in which it would be competing for candidates. It is not implausible to surmise that since the Council of Legal Education is responsible for the Bar Examinations, the Kenya School of Law Act should be amended to transfer the mandate to Council before a more sustainable structure is institutionalized.

Since 2012, the Council of Legal Education has been laying the building blocks to ensure prompt, sustainable and effective execution of its mandate. It has developed a rigorous licensing process with scalable and verifiable thresholds. All legal education providers are required to attain the requisite threshold for full accreditation. Importantly, the Quality Assurance, Compliance & Licensing Department of the Council is responsible for handholding institutions through the licensing process. The Department carries out routine and adhoc audits of programmes and facilities to highlight areas that require corrective action before a final inspection is undertaken by Council. To ensure that Council resources are applied parsimoniously, the Department is required to ascertain whether a legal education provider is indeed ready for inspection. Unprecedentedly, some institutions have been inspected at their instigation. More importantly, Council has, in its magnanimity, not infrequently re-inspected institutions to assess their compliance status for purposes of licensing.

Disturbingly, more than half of the legal education providers are yet to attain the threshold for licensing. The provisional licenses they have been operating on have since lapsed and a final determination of their licensing status is inescapable.

⁸¹ Section 22

⁸² Section 23

⁸³ Sections 18, 19 & 21

⁸⁴ Section 12

⁸⁵ Section 15

⁸⁶ Section 16 & the Second Schedule to the Act.

Optimistically, all unlicensed legal education providers have applied for licensing and are working vociferously to attain the quality standards and threshold for licensing. The fact that several institutions have been working on the licensing process since 2009 is emblematic of the deficiencies inherent in self-regulation.

Construction of the legislative framework: An analysis

It is not hyperbolic to surmise that the High Court and Court of Appeal have played a conspicuous role in enforcing the statutory framework on legal education. Unexpectedly, this has energized the Council of Legal Education and given it the necessary gravitas to discharge its mandate.

Unsurprisingly, provisions on the minimum admission requirements for the Advocates Training Programme (Bar Programme) have been the basis for incessant litigation against the Council of Legal Education, the Kenya School of Law and the Attorney General's office. The unflinching enforcement of these provisions has been the body blow for many applications to the Kenya School of Law.

One of the earliest decisions with significant implications on the decision making processes of the Council of Legal Education was *Ritta Biwott v. Council of Legal Education*⁸⁷. The High Court was called upon to determine whether the Council had acted judiciously or capriciously in rejecting the applicant's application to join the Bar Programme at the Kenya School of Law on the ground that she had obtained her LLB Degree in two years as opposed to the traditional three. The court ruled in favour of the applicant on the ground that she had not been accorded a fair hearing before her application was rejected. There had been an infringement of the principles of natural justice. *Mandamus* was issued against the Council and the Kenya School of Law. The Principal of the school was ordered to admit the applicant to pursue the course she had applied for. Disconcertingly, the High Court made perfunctory reference to the importance of maintaining quality in legal education. Fundamentally, the critical question of content of the applicant's law degree was disregarded. The Court of Appeal was more emphatic. "... *The Council had no power to go behind the degree to inquire into the standard of that degree...*"⁸⁸ The court ignored the quality aspects of the qualification for the benefit of the applicant as opposed to the legal profession. Troublingly, the court relied exclusively on the evidence adduced by the University of Edinburgh that a degree awarded by an attendance of three years and one awarded after an attendance of two years were indistinguishable in quality since a similar number of subjects were covered. The decision received a cold reception in the legal fraternity because it was perceived to have diluted the quality of in legal education in Kenya.

The High Court was unequivocal that:

"...the Council of Legal Education has cast upon itself a task which (amongst other matters) could affect the livelihood of a Kenyan. If such task or responsibility is not properly carried out or is disregarded. Council of Legal Education cannot lay down a rule of thumb and say "we are not going to admit candidates who have completed the LLB degree in a lesser period." That would be capricious exercise of discretion and not judicial exercise of discretion...I am unable to accept the argument that the applicant seeks what she wants by a plea of sympathy. She seeks her right as I see it of being admitted an advocate in Kenya. *She is Kenyan citizen, to deprive a qualified Kenyan citizen of the right to follow his then chosen career is not fair, it is not just. That is where Council of Legal Education went totally wrong.*" (Emphasis added).

The upshot of this passage is that each application would be assessed on its own merits and circumstances. Although Council had acted judiciously, it had contravened the precepts of natural justice. It had made an adverse decision against the applicant without observing *audi arteram partem*.

Belatedly, Council and the Principal of the Kenya School of Law applied to the Court of Appeal for a stay of execution of the order of *mandamus* pending determination of the appeal. However the application was dismissed. The court reasoned that although the Applicants had an arguable appeal, "...the loss that would be suffered by the respondent would be immeasurable and irreplaceable." According to A. M. Cockar, J. A. (as he then was), "Loss of about 3 to 4 years in the career of a young woman cannot be replaced by anything tangible."⁸⁹ Surprisingly, the Court held that the Council of Legal Education had acted *ultra vires*.

⁸⁷ High Court Misc. Appl1122 of 1994 & CACA 238 of 1994

⁸⁸ Council of Legal Education & Principal, Kenya School of Law v. Rita Biwott, Civil App. No: 238 of 19194, per A. M. Cockar J. A. (as he then was) at 6

⁸⁹Supra note 84, at 7

“The Council had no power to go behind the degree and enquire into the standard of that degree.” The Council had gone outside the scope of its jurisdiction...” Arguably, this decision undermined Council’s effort to promote quality legal education in Kenya.

Hypothetically, if a similar matter was litigated today when a typical Law Degree Programme takes a minimum of four (4) years and the law prescribes core units, a conservative prognosis is that it would be unsuccessful. The Council of Legal Education found itself in a similar situation in *Republic v. Council of Legal, Education & Another, Ex-parte Uganda Pentecostal University*,⁹⁰ where the court invoked procedural justice and quashed the decision of Council on the ground that it had been arrived at in violation of the principles of natural justice. Similarly, in *Republic v. Kenya School of Law & 3 Others, Exparte Juliet Wanjiru Njoroge & Others*,⁹¹ the applicants demonstrated that they had been admitted into the Advocates Training Programme at the Kenya School of Law, but the school subsequently withdrew the admission letters without notice. The High Court granted *certiorari* quashing the withdrawal of the admission letters. The order constituted the applicants *bona fide* students of the Kenya School of Law. Perplexingly, both the Kenya School of Law and the Council of Legal Education misinterpreted the order and failed to restore the applicant’s status *ante*. The applicants instituted contempt proceedings against the heads of the two institutions and the High Court found them impeachable. Odunga J. was categorical that:

“Where it has been brought to the courts attention that its orders are being abrogated or abridged by brazen or subtle schemes and manoeuvres ... this court cannot turn a blind eye to the same. The court having made a decision which decision has not been stayed, to contend that the decision cannot be implemented of the alleged statutory provisions *is in my view the highest height of invisibility coming from persons in charge of institutions tasked with the training of lawyers in the country.*”⁹²

In *Republic v. The Council of Legal Education, Exparte James Njuguna & Others*,⁹³ the court was unequivocal that parliament had entrusted Council with the mandate to uphold the best training and educational standards. The court affirmed that Council was the best judge of merit pertaining to academic standards. “Parliament clearly vests the power of formulating the policy of training and examining of Advocates of the Council of Legal Education” and it would be wrong for courts to interfere with the merits of a decision by the Council of Legal Education. “Council of Legal Education is Parliament’s delegate.” It behooves the Council of Legal Education to insist on the highest professional standards for those who wish to qualify as advocates. In conclusion, Nyamu J. (as he then was) observed that: “It is for the Council of Legal Education to set educational standards for those to be admitted as advocates.

⁹⁰ JR. Ca. No: 105 of 2014. [2014] eKLR at <http://www.kenyalaw.org>. Council had by a letter dated 18th, September 2013 suspended recognition of the Uganda Pentecostal University Faculty of Law Degree Programme on account of acute shortage of human and other resources necessary to the delivery of a law programme. The High Court granted *certiorari* to quash the respondent’s decision on the ground of non-observance of the precepts of natural justice. Council had adduced cogent evidence that it had found the Faculty of Law at the University deficient in virtually all respects. The High Court took the easier option by invoking procedural justice sacrificing quality legal education at the altar of procedure. The Court ignored the fact that Council had visited the University and inspected its facilities before making the decision. Significantly, the law programme at the Faculty of Law had not been accredited by the Uganda Law Council. Weldon Korir, J. even doubted whether Council had authority to inspect the facilities at the University notwithstanding the fact that the verification visit had been planned with knowledge and acquiescence of the Government of Uganda. Failure by the Council of Legal Education to prove that the verification report had been served upon the Vice-chancellor of the Uganda Pentecostal University was the *coup de grace* of its case.

⁹¹ J.R. App. No: 58 of 2014eKLR

⁹² Misc. App. No. 58 of 2015eKLR

⁹³ Misc. Civ. Case 137 of 2004eKLR at <http://www.kenyalaw.org>. The applicants were law students who had obtained Bachelor of Laws from various universities outside Kenya and as required by the Council of Legal Education enrolled at the Kenya School of Law to sit certain specified subjects. The applicants passed all papers except one or two subjects each. In January 2004, Council informed the applicants that by virtue of Regulation 9(4) of the Advocates (Admission) Regulations, 1997, they were barred from sitting any further examinations. The applicants sought an order of *certiorari* to quash the decision of Council and *mandamus* to compel Council to allow them to sit and/ or do further examinations at the Kenya School of Law. The application was dismissed with costs to the respondent.

In this, the law has given the Council of Legal Education discretion to set those standards. No other body has that function including the court...”This decision has been quoted with approval by the High Court and indirectly by the Court of Appeal in subsequent cases.

In *Susan Mungai v. The Council of Legal Education & 3 Others*,⁹⁴ the petitioners application for admission to the Kenya School of Law was rejected on the ground that she did not meet the criteria prescribed by the Council of Legal Education. The petitioner sought *certiorari* to quash the decision. The court dismissed the petition on the ground that the petitioners’ rights had not been violated. Mumbi Ngugi, J. was emphatic that, “Ultimately, the decision whether or not a person is qualified for admission to the Kenya School of Law remains the preserve of the 1st respondent and the court will only interfere in the circumstances enumerated above...”

Relatedly, in *Maumar Nabeel Onyango Khan v. The Council of Legal Education & 2 Others*,⁹⁵ a holder of a BA in Politics and Law and the LLM qualification applied to join the Kenya School of Law but the application was rejected. The High Court upheld Council’s decision that the applicant did not meet the threshold for admission to the Advocates Training Programme. Significantly, the court under scored Council’s mandate to regulate legal education and training in Kenya.

“The decision to admit or not to admit to the Kenya School of Law belongs to the respondents...Once they showed that they were acting within the law, doing so fairly and they were subjecting the petitioner to the same standards they were subjecting other candidates, the court cannot interfere. The respondents must be left with the power to insist on the highest possible professional standards for those who wish to qualify as advocates.”

The Court of Appeal emblazoned Council’s mandate to guarantee quality legal education in *Eunice Cecilia Mwikali Maema v. Council of Legal Education & 2 others*.⁹⁶ The Court was unapologetic that:

“We are unable to appreciate the argument that the Council may on the one hand determine certain subjects to be core for purposes of accrediting an institution and at the same time not consider them as core for purposes of qualifying for admission to the Advocates Training Programme at the school.” On the mandate of the Council of Legal Education over legal education and training, the Court of Appeal was authoritative that:

⁹⁴ Petition 152 of 2011 eKLR at <http://www.kenyalaw.org>.

⁹⁵ Petition No 10 of 2013. The petitioner who had obtained a Bachelor’s degree in Politics and Law from the University of Bradford, United Kingdom and a Masters of Law of the University of London applied for admission into the advocates training programme, but the application was rejected on the ground that he did not have the requisite LLB qualification. The petitioner averred *inter alia* that the BA in Politics and Law coupled with the LLM met the threshold prescribed by the Regulations. He also contended that the BA in Politics and Law was equivalent to the LLB. The court dismissed the petition with costs for want of merit.

⁹⁶ Civ. App. No. 121 of 2013Eklr. Sometime in 2012, the Council of Legal Education published notice in the press entitled “Admission for 2013/2014 Academic Year Advocates Training Programme” (ATP). The notice invited applications from candidates wishing to join the Kenya School of Law for ATP. The notice stipulated that in order to be considered for admission, “the LLB must comprise all the ... 16 core subjects as per legal notice 169 of 2009.” The 16 core subjects were spelt out in the notice. The appellant who had studied for the LLB and LLM degrees in the United Kingdom submitted her application on September 20th, 2012 and paid the requisite fee. On January 30th, 2013 the appellant received a letter from the School intimating to her that her application had been rejected because her LLB degree did not meet the threshold of legal notice 169 of 2009. The appellant had not taken eight (8) of the sixteen (16) core units and the letter of rejection of her application dated January 10th, 2013 was emphatic. The appellant sought a declaration that she had complied with all requirements for admission to the ATP under Legal Notice 169 of 2009. She also sought an order of *certiorari* to quash the decision contained in the letter dated January 10th, 2013. The High Court dismissed the petition on the ground that Legal Notice 169 of 2009 had not been complied with. Aggrieved by the decision, the petitioner appealed to the Court of Appeal to set aside the judgement of the High Court and allow the petition. Issue was whether Council had acted within the law by reason of Legal Notices 169 and 170 of 2009 in rejecting the appellant’s application for admission to the Kenya School of Law. Put differently, were the sixteen (16) core units part of the law governing admission to the Kenya School of Law at the time? The court was emphatic that since section 14 of the repealed Council of Legal Education Act empowered Council to make Regulations and Council it had in exercise of the power made the 2009 Regulations, Legal Notice 169 of 2009 applied to the appellant’s admission to the Advocates Training Programme. The appeal was dismissed.

“We are of the view that the learned judge applied the principle in the decision in *Susan Mungai v. The Council of Legal Education* to the effect that the Council has power to set standards to ensure the highest professional standards are maintained in the profession and it is not for the court to be concerned with the efficaciousness of the decisions made pursuant to the Regulations.” These decisions were recently cited with approval by Odunga J. in *Kevin Mwiti & Others v. Kenya School of Law & Others*,⁹⁷ where he was unequivocal that “I associate myself with the decision of the Court of Appeal in *Eunice Cecilia Maema*....I also associate myself with the decision in *Susan Mungai*...” Uncharacteristic of judgements, in *Republic v. The Council of Legal Education Ex-parte Keniz Otieno Agira & 23 Others*,⁹⁸ although the application was found incompetent and dismissed for being time-barred, the court examined the issues raised and overwhelmingly vindicated the Council of Legal Education. The learned judge was definitive that:

“The respondent has outlined the steps it took before it arrived at the decision not to admit the applicants. Even after that it still gave the University an opportunity to remedy the deficiency which included the fact that the students at Busoga University were being taught by first degree holders (LLB) which is against the requirement that they must be taught by persons with the Master’s Degree and above...the respondent took the necessary steps to inform the University of the steps it intended to take. The University has not alleged that the respondent breached the due process in arriving at its decision...At the time the said decision was taken...the applicants had not graduated from the University...it was the duty of the University to take the necessary steps to inform the applicants of the development...even if these proceedings had been instituted within the time limited under section 9 of the Law Reform Act, I would still have found no merits in the notice of motion...”

⁹⁷ Constitutional Petition No. 377 of 2015 Consolidated with Petition No. 395 of 2015 and Judicial Review No. 295 of 2015. The petitioners and applicants case was that they were already undertaking their LLB Programmes when the Kenya School of Law Act came into force and were therefore subject to the transitional admission guidelines sanctioned by the Kenya School of Law and the Council of Legal Education. These arrangements were operational for three (3) years from January 15th, 2013. . The School had by a newspaper advertisement invited applications for registration for the Pre- Bar Examination. The main argument was that the transitional guidelines created a legitimate expectation that the interest of the applicants would be preserved in relation to their eligibility to the Advocates Training Programme. The court was satisfied that the transitional admission guidelines created a legitimate expectation on the part of the applicants and the Kenya School of Law had no good reason to depart from the earlier position. The other bone of contention were the contents of the notice inviting applications for the Pre-Bar Examination. The court found the notice unlawful, *ultra vires* and unreasonable and set it aside. The court declared that petitioners who were already undertaking the LLB Programme prior to the enactment of the Kenya School of Law Act be treated in the manner contemplated by the transitional arrangements.

⁹⁸ [2013] eKLR at <http://www.kenyalaw.org>. The applicants who were law graduates of Busoga University, Uganda were denied admission into the Advocates Training Programme by the Respondent on the ground that they had obtained their LLB qualifications in an unaccredited institution. As early as May 23rd, 2011 the Respondent had intimated to Busoga University its intention to stop admitting law graduates of the university until the University was accredited by the Kaw Council of Uganda. An assessment of the facilities and resources at the university by the respondent on September 28th, 2012 revealed that the institution had no capacity to mount a credible LLB Programme. The respondent wrote to Busoga University on October 11th, 2012 informing it that it would no longer be recognized for purposes of legal training for the Kenyan Bar. The respondent argued that the application for certiorari and mandamus was made after the six (6) months permitted by law. The High Court held that the application was time-barred and dismissed it. Interestingly, the court addressed the substantive issues raised by the application and came to the conclusion that the applicants would still have been unsuccessful even if they had made their application on time.

In *Moi University v. The Council of Legal Education*⁹⁹, the petitioner sought a declaration that Council's Inspection Report dated September 23rd, 2015 and the letter forwarding it to the petitioner were actuated by malice, irrationality and arbitrariness. It further sought an order of *certiorari* to quash the Report and letter. The High Court granted the orders sought. Unexpectedly, the court declared that the Council of Legal Education had no jurisdiction on its own motion to accredit or withdraw accreditation of universities in Kenya. Council has appealed the decision and the matter is pending before the Court of Appeal. A similar holding was made in *Mount Kenya University v. Council of Legal Education*.¹⁰⁰ Interestingly, the role of sector specific quality assurers was explained by the Court of Appeal in the *Engineers Board of Kenya v. Jesse Wahome & Others*.¹⁰¹ The court had *inter alia* to interpret the word "recognize" used in section 11 (1) (b) of the now repealed Engineers Registration Board.¹⁰² The Court of Appeal was emphatic that as used in the Act, the term "recognize" embraced accreditation. The learned judge argued that "*In my respective view, the term "recognition" used in the Act, embraced "accreditation "and vice versa..."*"

Recognition and approval of foreign qualifications

Among the far reaching powers bestowed upon the Council of Legal Education by the Statute Law (Miscellaneous Amendment) Act, 2014 was to "recognize and approve qualifications obtained outside Kenya for purposes of admission to the Roll."¹⁰³ Although the power to recognize foreign academic awards in legal education and equate foreign qualifications was part of the legal framework from 2009, the Regulations were unclear on the scope.¹⁰⁴

In *Keniz Otieno Agira & 23 Others*, the High Court found that Council had no express power to recognize awards by foreign universities. "It is my view and I so hold that the Council's power is limited to making the said recommendations to the authorities empowered to recognize that said awards."¹⁰⁵ The amendment suppressed the apparent mischief by giving the Council express power to recognize and approve foreign qualifications.

⁹⁹ Petition No. 425 of 2015. An on-the-site- inspection of the facilities at Moi University School of Law in Eldoret on September 20th, 2015 by the Quality Assurance and Compliance Committee of Council found that the facilities were inadequate and the commitments made by the institution had been made before to no avail. Because the provisional accreditation of the institution had expired, the Committee recommended that the institution should submit a closure plan to Council within three (3) months of receipt of the Inspection Report. The institution applied to the High Court seeking an order of *certiorari* to quash Council's Inspection Report and its covering letter dated September 23rd, 2015 which communicated the decision. The court ordered that the *status quo* be observed by the parties. The order meant that the Moi University School of Law could not admit Module II Students or any other cohort of students to its LLB Programme nor could it continue with its LLM Programme which Council had previously suspended. The matters is pending before the High Court.

¹⁰⁰ Judicial Review, Misc. App. No. 16 of 2016.

¹⁰¹ CA. App No. 240 of 2013.

¹⁰² Chapter 530, Laws of Kenya.

¹⁰³ *Supra* note 42, Section 8(1)(e)

¹⁰⁴ Regulation 19(1) provided that "The Council may recognize academic awards, in legal education, of foreign institutions that are recognized by the Commission for Higher Education (CHE), currently the Commission for University Education (CUE) or other authority with the mandate under any written law to recognize foreign qualifications." Regulation 19(20) was emphatic that "Notwithstanding the generality of paragraph (1), the Council shall equate every qualification from a foreign institution against its standards and make such recommendations as it may consider necessary."

¹⁰⁵ Odunga J. *Supra* note 95

In *Ng'etich Kiprono Timothy & another v. Council of Legal Education & 3 Others*¹⁰⁶, the petitioners were denied registration to write the Bar Examination on the ground that their Law degrees did not meet the threshold prescribed by Part 11 of the Second Schedule to the Legal Education Act, 2012.¹⁰⁷ The petitioners, who were citizens of Kenya and Uganda, had obtained their qualifications outside Kenya. The High Court is expected to determine whether the celebrated doctrines of equitable estoppel and legitimate expectations can, in certain circumstances override statutory provisions.

Conclusion

This paper sought to exemplify how the legal framework on legal education and training has evolved in Kenya with specific emphasis on the contribution of the legislature, Council of Legal Education and courts of Law. The analysis establish while a scalable legislative framework has been institutionalized and the Council of Legal Education has been exceedingly enthusiastic in implementing and enforcing the framework, courts of law have variously affirmed Council as the paramount regulator of legal education and training in Kenya. Although Disconcertingly, Council has lost court cases on the ground of non-observance of *audi arteram partem* as well as the principle of legitimate expectations. Needless to emphasize, Council has not only internalized its mandate but has endeavoured to discharge it in conformity with the necessary safeguards. Arguably, judicial pronouncements have emboldened and streamlined Council's decision making processes.

Worrisomely, it is uncertain whether the Council will retain the extensive mandate over legal education and training which is being contested by institutions, some of which have consistently demonstrated antipathy to the maintenance quality standards. Sustained efforts by Council to institutionalize quality standards in legal education has provoked objectionable reaction from some legal education providers. Ominously, these institutions appear unperturbed by the *status quo* which treasures commercialism over other imperatives in university education. Maintenance of quality standards has for all intents and purposes taken a back-burner.

The boiler plate argument is that because Government funding for university education is diminishing, survival becomes the quintessential mantra. Finally, although Council complements the Commission for University Education (CUE) and keeps it informed of developments germane to legal education and training, most universities are inexplicably comfortable with the Commission. Fortunately, previous attempts to modify the Universities Act, 2012, to constitute the Commission the exclusive regulator of university education and licensing of programmes have been fruitless.¹⁰⁸ Such a development would render over sixteen (16) sector-specific quality assurance agencies moribund. It is perturbing to envision a development where the Commission for University Education had exclusive jurisdiction to regulate the training of doctors, lawyers, pharmacists, nurses, engineers and other professionals. The contribution of sector specific quality assurers cannot be contradicted. Undoubtedly, the current framework which accommodates sector-specific quality assurers with the Commission at the pinnacle is appropriate for Kenya in the medium and long term.

¹⁰⁶ Petition No. 472 Of 2015. The petitioners had been admitted to the Kenya School of Law without having their Law degrees equated as required by law. When they applied for registration for the November 2015 Bar Examinations, Council was discovered that they had done some of the core units prescribed by Part 11 of the Second Schedule to the Legal Education Act, 2012 and denied them registration. Their main argument was that having been bona fide students at the Kenya School of Law and having paid the requisite examination fees and even done 40 % of the Bar Examination, Council could not bar them from sitting the written examination. They had a legitimate expectation that they would sit the examination. High Court allowed them to sit the examination, but results would not be released to them until judgement was delivered. NB: Judgement in the case is outstanding.

¹⁰⁷ The Second Schedule prescribes the sixteen (16) core units which every applicant seeking to join the Advocates Training Programme at the Kenya School of Law must have covered at the Under-graduate level.

¹⁰⁸ In late 2014, Parliament amended the Universities Act, 2012 making the Commission for University Education the sole regulator of university education, but the amendment did not materialize as law. Another attempt in 2015 is yet to materialize. See, Wilfred Ayaga, New Bill seeks to reign in bogus universities, THE STANDARD, Jan, 25th, 2016 at 8, explaining that the Universities Act (Amendment) Bill 20125 constitutes the Commission the sole accrediting agency for universities and any academic programme offered. Only time will tell who between unbridled commercialism and adherence to principles will triumph.