

# The Case of Legal Literacy for Teacher Education in Kenya

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## ABSTRACT

*Legal literacy refers to an indispensable knowledge on legal matters that have a direct bearing on an individual's responsibilities which enable them to function well in circumstances where relevant laws apply. In a true sense, legal issues that teachers encounter are the same ones bedeviling the society at large. The need to include legal literacy in teacher education is informed by the fact that cases involving school laws seldom address simple school related disagreements or right against wrong, but somewhat intricate issues surrounding the differing interests of students, parents, teachers the state and administrators within the school set up. Teachers are placed at a precarious position since they are entrusted with tremendous responsibilities of making resolutions that affect the civil liberties of students, parents and colleagues for those in administrative positions. For that reason, educators cannot afford to be ignorant of the edict since lack of legal understanding can lead to a superfluous risk exposure. The study employed cross-sectional survey design that made it possible for the researchers to collect data at a given point in time and allow for an investigation of the present level of legal literacy among Kenyan educators. The design also allowed for a comparison of the level of legal literacy between new and experienced teachers*

**Keywords:** Legal literacy, Educational Law, Litigation, plaintiff, defendant

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## 1. INTRODUCTION

Legal literacy refers to an indispensable knowledge on legal matters that have a direct bearing on an individual's responsibilities which enable them to function well in circumstances where relevant laws apply. In a very real sense, legal issues that educators encounter are the same ones bedeviling the society at large. Tie (2014) observed that as society transforms so must the edict to accommodate newer morals and to safeguard the liberty of individual members. In addition, as the way of life of our population varies over time, so does the approach to cogent interpretation of personal rights, freedom, and liberty. The need to include legal literacy in teacher education is informed by the fact that cases involving school laws seldom speak to simple conflicts or right against wrong, but somewhat intricate concerns entailing inconsistent interests of parents, students, teachers the state and administrators within the school set up.

Ordinarily, educators are placed at a precarious position by the law since they are entrusted with tremendous responsibilities of making resolutions that affect constitutional liberty of learners, parents and colleagues for those in administrative positions. For that reason, teachers cannot afford to be uninformed on matters educational law because ignorance of the law excuses no one (*ignorantia juris non excusat*) thereby leading to unnecessary risk exposure in their line of duty. Apart from having sound knowledge of the directives and regulations of the Ministry of Education, teachers are also required to comprehend the legal principles and how school related jurisprudence influences the

management and interaction in institutions of learning. Tie, (2014) postulates that teachers are able to function more efficiently in a litigious society if they comprehend complex school related laws that has been introduced by policy makers to enhance their decision making abilities.

In the United Kingdom for example, knowledge of laws governing the educational sphere are pivotal. This explains the reason why Training and Development Agency for Schools (TDA) dictates that for a student teacher to qualify for a teacher's status and certification he or she must undertake studies in Educational Law (Hunter-Jones, 2006). In Canada for example, the Canadian Association for the Practical Study of Law in Education (CAPSLE) provides a forum for studying legal issues that pertain to education. Its American equivalent National Organization of Legal Problems of Education (NOLPE) has deliberated the issue of legal education curriculum for teachers.

In the Kenyan case, Wesonga (2023) observes that while other professional academic disciplines like as business, journalism and medicine offer compulsory courses in law for their trainees, educational law is noticeably missing in majority of pre-service programs for teachers in Kenyan universities and colleges. Nevertheless, Troy (2009) alludes to the fact that it would be better if tutors could learn the law by foresight, rather than hindsight.

Even though various studies have shown that educators yearn for more information on educational law, a crucial facet in the realm of education, most of the teacher training colleges in

Kenya have not responded to the need of introducing legal education as a course in the pre-service training. Some of the noticeable obstacles to provision of educational law courses cited by stakeholders in teacher training include an already compact curriculum, inadequate faculty members who are knowledgeable in Educational Law, inadequate budgetary resources and old attitude of university administrators who are not ready for change (Mui, 2014).

## 2. LITERATURE REVIEW

An analysis of literature related to educational law world over by Mui (2014) revealed a prevalence of studies that are more than a decade old, pointing at a need for more recent studies to be carried out in this area. In Kenya for example, there is scanty literature on educational law therefore, one must argue with content generated in other countries. The dearth of current literature in legal literacy is further supported by Moswela (2008) who notes that studies on teachers from Botswana and Australia imply the same general lack of knowledge that is found in the U.S.A. from which the sizable number of research on educational law emanates.

### 2.1 Evolution of school related litigations

School related litigations are not new neither should they be judged disapprovingly. Scores of jurisprudential societal and educational reforms have emanated from school related law suits. For instance Duff (1999) observed that school related litigations played a crucial role in ending racial segregation in the U.S.A. In 1954, the American Supreme Court unanimously made a milestone decision in *Brown v. Board of Education of Topeka, Kansas* (Duff, 1999). The Court made a ruling that, even if the segregated schools are otherwise equal in quality, state -authorized segregation of public schools in the United States was a contravention of the 14<sup>th</sup> amendment and for that reason deemed unconstitutional. This landmark decision partially overruled the Court's 1896 legacy of *Plessy v. Ferguson*, which had earlier held that racial segregation legislations did not breach the American Constitution in any way as long as the school facilities for each race were of the same quality, a dogma that had come to be known as "Separate but equal." The Court's ruling in *Brown* paved the way for assimilation in schools hence a major triumph of the civil rights movement and a model for many future impactful school related litigation cases and children rights. Through these rulings, the constitutionality of segregated schools for both white and black children was considered *void ab initio* (invalid).

According to Gordon (1996), *Tinker v. Des Moines Independent Community School District*, is another significant school related ruling that affirmed the freedom of students in American schools. Here, the American Court held that learners do not renounce their constitutional liberties like freedom of speech while they are within the school precinct. The court gave an explicit order that held that learners were entitled to wear black armbands in school to protest the Vietnam War, notwithstanding the opposition from the schools authorities. The abovementioned judicial precedence exemplifies that as societal values change, so do the philosophical course of the legal justice system. The new jurisprudence on children liberties often reflects an accommodation of the new way of doing things in the society. Amongst the new rule that has changed in recent decades is the unquestioned authority of the teachers and the school heads. Presently, their authority demands a rationale and their decisions require explanations.

This point is affirmed by the zeal with which parents and students litigate unpopular school decisions. For instance in 2019, a Kenyan parent in the case of *J W M (alias P) v. Board of Management O High School & 2 others* filed a suit against the Board of Management of Olympic Secondary School in Kibra, the Ministry of Education and the Attorney General as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively challenging the school's action of sending home her newly admitted Form One daughter because she wears dreadlocks due to their Rastafarian religious belief. The school administration had ordered the student to shave her dreadlocks to be accepted in the school. The petitioner (parent) felt that this was prejudice and an infringement of her child's constitutional right to education due to her religious beliefs converse to Articles 27, 32, 43 and 41(1) of the Constitution of Kenya. Consequently, the court made a ruling that the school violated the constitutional rights of the minor by denying her access to education. An order was issued for the school to admit the student unconditionally (Kenya Law, 2019).

In the current educational dispensation where the population is well informed about their liberties, legal knowledge among educators is becoming increasingly prominent. Besides, teachers must be cognizant that their actions in school can lead to litigation thus compromising their mandate on the teaching profession. This is because in the recent past, legal activism has often been preferred by the society at the expense of a more expanded alternative of lobbying for a change in legislation. Nowadays, the all-pervading credo of accountability in which the litigious society draws its philosophical roots continues to expand and comes with an amplified mantra that someone somewhere must be held liable whenever something goes wrong (Wagner, 2007).

The focal point of this study is to bring to the fore the imperative need for including Educational Law in teacher training curriculum regardless of desired certification. Fundamentally, educational law will empower teachers to be conscious of legal consequences associated with their professional conduct and responsibilities. This is because tutors can only reason reflectively on legal concerns if they have a prior exposure on what to base their thoughts. Legal topics such as *loco parentis*, the concept of a teacher as state agent, fairness, children rights, labor law, and torts, law of contract and leadership and integrity are central in professional practice to teachers.

### 2.2 Research questions

- (i) What is the current level of legal literacy among classroom teachers?
- (ii) Is there a statistical and practical difference in the level of legal literacy between new and experienced teachers?

## 3. RESEARCH DESIGN AND METHODOLOGY

### 3.1 Research Design

The study employed cross-sectional survey design that enabled the researcher to collect data at a given point in time and allow for an investigation of the current level of legal literacy among Kenyan classroom teachers. The design also allowed for a comparison of the level of legal literacy between new and experienced teachers (Creswell, 2014).

### 3.2 Target Population

The population target of the study was 110,000 teachers employed by Teachers Service Commission in 8,000 public secondary schools in Kenya.

### 3.3 Sampling Techniques & Sample Size

The research employed stratified random sampling in which the target population was divided into subgroups (strata) namely: school level, gender, and teaching experience. A sample was then randomly selected from each stratum. The researchers used this technique to ensure that the sample is representative of the target population and that the number of participants in each stratum is proportional to their representation in the target population (Kothari, 2014).

The sample size for the study was determined by a number of factors, including sampling technique, desired level of precision, and the expected response rate. Because the researchers used stratified random sampling, the sample size was big enough to ensure that there were enough participants from each stratum to generate valid estimates of population parameters. According to Kothari (2014), the sample size should be at least 5% of the target population. For this study, a sample size of 5,500 teachers (5% of 110,000) was adequate.

### 3.4 Data Collections Instruments

The study used semi-structured interviews and self-administered questionnaires to collect quantitative and qualitative data respectively. According to Creswell (2014), a combination of semi-structured interviews and self-administered questionnaires would be appropriate for gathering data on classroom teachers' current level of legal literacy and determining whether there are statistical and practical differences in the level of legal literacy between new and experienced teachers. Self-administered questionnaires, according to Dörnyei (2007), may quickly collect data from a large number of participants and should include both open-ended and closed-ended questions to allow for thorough responses from participants. According to Polit and Beck (2017), semi-structured interviews are effective for gathering thorough information about participants' experiences and can be used to clarify any issues or concerns raised by self-administered surveys.

### 3.5 Validity and Reliability

The content validity is guaranteed by ensuring that the items and questions used in the semi-structured interviews and self-administered questionnaires are relevant and representative of the study objectives. Subsequently, the researchers did a thorough review of relevant literature and input from experts in the field (Polit & Beck, 2017). To ensure face validity of the instruments, the researchers pilot-tested the questionnaires and interviews with a small sample of teachers to ensure that the questions are easily understandable, clear, and relevant to the study objectives (Creswell, 2014). As regards construct validity, the researchers established measures and scales to assess legal literacy and compare the results with those obtained from the study (DeVellis, 2017). The reliability of the instruments was established through measures of internal consistency using Cronbach's alpha coefficient, which measures internal consistency of a set of items. An alpha coefficient of 0.7 or above indicates that the questionnaires are reliable (Polit & Beck, 2017).

### 3.6 Data Analysis & Presentation

Descriptive statistics was used to summarize and present the data collected from the semi-structured interviews and self-administered questionnaires (Field, 2013). Inferential statistics, such as t-tests and regression analysis, were used to answer the research questions and identify any factors associated with legal literacy (Girden, 2016). The descriptive statistics results was presented in tables, graphs, and charts. The inferential statistics results were presented in tables and graphs showing the t-test results and regression analysis. The qualitative findings were reported in narrative form, emphasizing major findings and drawing inferences based on the study objectives.

### 3.7 Ethical Considerations

The researchers ensured that there was informed consent, anonymity, and confidentiality (American Psychological Association, 2017). The researchers also respected the participants' autonomy and dignity, identified and minimized the potential risks of harm, and obtained ethical approval before conducting the study (World Medical Association, 2013).

## 4. RESEARCH FINDINGS

Key findings for the research include the following: a wide spread fear of litigations that is coupled with inadequate legal knowledge thus leading to a state of affairs in which defensive teaching is becoming more common; the society is becoming more litigious and this has implications for educators; coursework on legal education is noticeably missing from the curriculum of teacher preparation programmes and lack of comprehension of the law is prevalent. Finally, the introduction of legal literacy course in pre-service teacher preparation will be a timely intervention to remedy the problems of ignorance of the law among Bachelor of Education graduates.

Inadequate conception of the law among teachers is compounded by a general lack of familiarity with quasi-legal documents such as professional code of conduct. Also, one might assume that by virtue of their administrative positions, school heads fare better than ordinary teachers on matters Educational Law nonetheless, research highlights the inaccuracy of this assumption. Furthermore, the study found out that longevity in the service is presupposed especially for senior teachers confers upon them an instant legal expertise by mere virtue of the position they newly occupy (Troy, 2009). The study also observed no noteworthy differences between the legal knowledge base of experienced teachers, newly employed teachers. In fact, it discovered a high rate of incorrect answers provided school administrators on a wide range of legal questions and scenarios.

## 5. RECOMMENDATIONS

Teachers just like other Kenyan citizens are expected to know and abide by the law. Courts will not accept ignorance of the law as an excuse or a defense. This is not because all citizens already know the law, but rather because there is no way to refute such a claim. In light of the above, the study recommends that a compulsory course on educational law should be taught to teacher trainees to equip them with the necessary information that will enable them to effectively discharge their duties as educators. Secondly, periodic professional development workshops and in service

programmes on legal literacy need to be designed. Such initiatives are pivotal because they provide both the new and experienced teachers with up to date literature on the current educational law due to large amount of new legislation presently being enacted and increasing court decisions (Gullatt & Tollett, 1995).

Likewise, it should be noted that the need to include Educational Law in teacher preparation is not for teacher trainees to obtain law degrees, but somewhat become educators with sufficient legal skills, knowledge and training to perform their tasks well, given the significant influence teachers have over their students.

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