



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

SUCCESSION CAUSE NO 12 OF 2015

IN THE MATTER OF ESTATE OF KIPKIROR CHEMEITOI (DECEASED)

JAMES KIPKORIR.....PETITIONER/RESPONDENT

VERSUS

KIRAREI ARAP CHUMO.....OBJECTOR/APPLICANT

JUDGEMENT

Pursuant to section 76 as read with section 37 and 47 of the Law of Succession Act (Cap 160) and Rules 44 and 73 of the Probate and Administration Rules and all other enabling provisions of the law, the objector has applied for the following orders.

1. Spent
2. An order to revoke or annul the grant of letters of administration intestate made in favour of the petitioner/respondent.
3. An order to make provision for costs.

The application is based on seven grounds that are set out on the face of the notice of motion dated 23rd August 2018; with the major grounds being the following. The court was misled to grant the letters of administration intestate to the petitioner. The proceedings to obtain the grant were defective in substance. The grant was obtained fraudulently by the deliberate making of false statements and concealment from the court facts material to the cause. The petitioner is not the right person to file the petition in respect of the estate of the deceased, since he is a total stranger. The whole process of obtaining the grant was an abuse of the court process. The petitioner knowingly and maliciously excluded the real beneficial owner in the entire process of obtaining the grant and unlawfully inherited the entire property of the deceased.

The objector called three witnesses in support of his application for the revocation of the grant.

The petitioner testified in his own behalf and called no witnesses.

The case for the objector/applicant

Kiralel Arap Chumo is the objector (Pw 1), who has applied for the revocation of the grant issued in favour of the petitioner (Dw 1). The basis for the revocation is that the petitioner conducted the succession proceedings without informing him.

Pw 1 testified that the suit land is in Siyo district in West Pokot; from where he moved out due to trouble. The daughter of Pw 1 still lives in that land.

Furthermore, Pw 1 testified that he came to know about the case when he went to the shamba and found someone had taken his title deed.

Pw 1 further testified that he filed a case against the father of the petitioner in Kitale; which he won. The father of the petitioner (Chemeitoi) was convicted and was sentenced to prison; because he had stolen his title deed. Pw 1 produced the court proceedings as exhibit Pexh 1 being Kitale Senior Resident Magistrate's Court, Criminal Case No. 1316 of 1993, Republic v Kipkiror Chemeitoi).

Pw 1 also testified that the father of the deceased was a business man and that he had sold him ten (10) acres of the suit land, in respect of which he only paid for eight acres (8). Pw 1 then remained with 18 acres out of the 30 acres. The suit land reference number is 702 and that it is in the name of the deceased father of the petitioner.

Pw 1 further testified that the court ordered the suit land returned to him, which order was in the possession of his son (Pw 2). Pw 1 also

testified that he is not related to the father of the petitioner as he himself is Nandi and the father of the petitioner is Marakwet.

Pw 1 called his son namely Josphat Chumo Kipkeeter (Pw 2). Pw 2 testified as follows. He lives in Nandi North and that Pw 1 is his father. He also knows the petitioner as the son of the deceased Kipiro Chemeitoi. He testified that the suit land belongs to his father by virtue of the judgement in exhibit Pexh 1(Kitale Senior Resident Magistrate's Court, Criminal Case No. 1316 of 1993, Republic v Kipkirir Chemeitoi). He continued to testify that the father of the deceased was found guilty of three counts and was sentenced to six months imprisonment. The father of the deceased appealed to the High Court in Eldoret Criminal Appeal No. 14 of 1996, which he produced as exhibit Pexh 2 being Eldoret High Court Criminal Appeal No. 14 of 1996, Kipkorir Chemetoi v Republic).

Pw 2 also testified that he was not aware of any further appeal in that appeal in respect of the suit land reference No. 702. Land reference No. 702 is currently occupied by Musa Tumko. Pw 2 moved out of the suit land because of attacks which included guns attacks.

Pw 2 further testified that he agrees with his father (Pw 1) that the grant be revoked, because the chief who wrote the letter was from Uasin Gishu and not from West Pokot.

In cross examination, Pw 2 testified that they have no blood relationships with the family of the petitioner. The petitioner's family are Marakwet and the objector's family are Nandi.

After the criminal case in 1993, Pw 2 did not take up any civil case in respect of the suit land reference No. 702. Pw 1 further testified that he was aware of ELC case No 25 of 2018 before the court in Kitale. Pw 2 testified that he has not filed any response to that case. He also testified that the petitioner's father bought only 10 acres but he registered himself as the owner of the whole 22 acres in his name.

The objector also called Sammy Kosgei (Pw 3), who was the assistance chief of Kiplombe sub-location in Turbo. Pw 3 testified that he had never worked in West Pokot. Pw 3 recalls that on 10/9/2015 he wrote a letter concerning the petitioner. The petitioner told him that his late father Kipkirir Chemeitoi had six wives.

He produced in evidence the said letter as exhibit Pexh 3 dated 6/8/2018. Pw 3 also testified that had he known the truth he would not have written the said letter. Pw 3 later learned that land reference No. 702 had a dispute.

Pw 3 testified that if his subject had land in another county he would write a letter for him.

The submissions of the counsel for the objector/applicant.

Messrs Cheluget & Company Advocates for the objector submitted that this application should be allowed with costs to the objector.

They further submitted as follows. The petitioner applied for letters of administration intestate in respect of the property being land reference number WestPokot/Siyoi/ 702, as the only property to be succeeded in the proceedings herein. The said parcel of land has a long ownership dispute pitting the deceased against the objector.

Furthermore, the deceased who was the father of the petitioner was charged and convicted in Kitale Senior Resident Magistrate's Court, Criminal Case No. 1316 of 1993, Republic v Kipkirir Chemeitoi, as follows.

Count 1

Making a document without authority in respect of West Pokot/Siyoi/ 702.

Count 2

Obtaining registration of title, in respect of West Pokot/Siyoi/ 702 by false pretences.

Count 3

Forcible detainer, in respect of West Pokot/Siyoi/ 702.

The deceased had purchased part of the objector's suit land but went ahead and registered himself as the sole proprietor of the entire parcel of the suit land. Following his prosecution in respect of the above charges, the deceased was convicted on all the three charges; a matter in respect of which the objector produced the judgement and proceeding as exhibit Pexh. 1. The deceased appealed to the High Court at Eldoret in Criminal Appeal No. 14 of 1996, a matter in respect of which he produced the judgement as exhibit Pexh 2. However, the conviction in count 1 was quashed but the convictions in counts 2 and 3 were confirmed.

Based on the above two judgements, counsel submitted the petitioner could not have succeeded to property whose obtainment was fraudulent. The petitioner admitted that he was aware of the above two cases and that the original title deed for the subject suit land was kept in court as an exhibit in the criminal proceedings.

Counsel further submitted based on the following conduct of the petitioner that he hid from the court material facts. First, as per the two criminal judgements the petitioner was only entitled to 10 acres which his deceased father had bought. Second, since the petitioner confirmed having more than 20 siblings as listed in form P and A 5, 9, 37, 38 and all other documents the petitioner never filed any sworn any affidavit by any of his siblings to confirm that he had been given authority to inherit the suit land as against all the other siblings who are from

different mothers.

The chief who wrote the letter was from Uasin Gishu and could not have known the status of the estate of the deceased in West Pokot.

Third, the petitioner failed to disclose to the land registrar that the original title deed was an exhibit in the lower court at Kitale. Fourth, the issue that the petitioner was chased from the suit land and later that even the objector was also chased from that land is an afterthought.

On the other hand, the evidence of the objector and his two witnesses was credible. He credibly testified that he is the owner of the suit land although it is not registered in his name. He also testified that he has been in occupation of the suit land since the 1950s and has been leasing it to third parties.

Counsel cited *In re Estate of Julius Ndubi Javan (Deceased)* [2018] e-KLR, Meru High Court Succession Cause No. 720 of 2013, in which that court (Gikonyo, J) held that under section 76 of the Law of Succession Act revocation of a grant of representation, whether confirmed or not, may at any time be revoked or annulled if the court decides, either on application by an interested party or on its own motion, if the following is proved.

1. That the proceedings to obtain the grant were defective in substance;
2. That the grant was obtained fraudulently by the making of a false statement or by concealing from the court of something material to the case;
3. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
4. That the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court may order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to provide to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
5. That the grant has become useless and inoperative through subsequent circumstances.

Counsel has therefore urged the court to allow the application with costs to the objector.

The case for the petitioner/respondent.

The evidence of the petitioner in this court.

James Kipkorir (Dw 1) testified in his own behalf and called no witnesses. Dw 1 testified that the deceased was his father who died in 1999 and that he was his first born.

Dw 1 continued to testify that the objector is a stranger to him as they are not related. Dw 1 then adopted his replying affidavit as his evidence and then proceeded to produce it as exhibit Dexh.1.

In respect of the suit land reference No. West Pokot/Siyoi A/702, Dw 1 testified that the land belonged to his late father which he inherited through the succession process. He also testified that there is a land court case in Kitale being ELC case No. 25 of 2018, in which the petitioner has sought eviction against the objector and one Tumkou. Tumkou has leased the suit land from the objector. The objector is their neighbour and that during the clashes in 1992; the objector took over the suit land.

Furthermore, Dw 1 testified that the dispute between the objector and the petitioner is a land dispute and not a succession cause.

In cross examination, Dw 1 testified that his deceased father bought the suit land. He also testified that his deceased father had many shambas but he had not done succession for those other properties. He also testified that he had brothers and sisters as shown in form P. and A 38, 5 and 9.

Dw 1 further testified that it is the chief of Uasin Gishu who wrote the letter dated 10/9/2015 in respect of this succession cause. The petitioner used the chief in Uasin Gishu to write the said letter because he was threatened in West Pokot.

Dw 1 further testified that he heard the chief testify and he saw him produce the said letter as exhibit Pexh. 3. Dw 1 further testified that he knew that his late father had a case against the objector in respect of the suit land. The court of elders ruled against the objector.

Furthermore, Dw 1 also testified that his late father was charged and convicted of forcible detainer and related charges. His late father

appealed to the High Court in Eldoret, in respect of which it was produced in this court exhibit Pexh. 2. Dw 1 testified that he did not read the judgement of the High Court. Dw 1 further testified that when he filed the succession cause the title deed was lost. He also testified that the lost title deed was his exhibit in Kitale magistrates court.

Dw 1 further testified that their buildings on the suit land were demolished after they were chased away during the clashes in 1992. The objector stayed on the suit land after the petitioner was chased away. After that the objector was also chased away.

The petitioner also testified that according to Judge Nambuye, his late father was only entitled to 10 acres. The objector did not go to court to have the 12 acres transferred to himself. Those now residing on the suit land are Pokots from Kacheliba who are watchmen. Finally, the petitioner testified that the suit land is 23 acres and wants the court to dismiss the application of the objector.

The deposition (evidence) of the petitioner

The respondent adopted his 13 paragraphs relying affidavit together with the annexures as his evidence.

He deposed as follows. He is the administrator of the estate of his deceased father. He is the first born of the deceased and based on the advice of his advocate which he believes to be true, he was entitled to take out a grant of letters of administration by virtue of section 66 of the Law of Succession Act.

He has further deposed that the objector is neither a relative of his deceased father nor his creditor. The objector has no locus standi to object to the petitioner's appointment as an administrator.

The objector is the defendant in Kitale Environment and Land Court case No. 25 of 2018 with the petitioner being the plaintiff in which he has sought an order of eviction and payment of mesne profits in respect of the acts of trespass to land title number West Pokot/Siyoi "A"/702, which is registered in the name of the petitioner as administrator. He has annexed a copy of the said title deed marked herein as "JK1".

The petitioner has deposed that the issues raised in the supporting affidavit of the objector in respect of the land dispute are beyond the jurisdiction of this court.

Furthermore, the petitioner has deposed that the deceased was the rightful owner of the suit land and the correct forum for adjudication of the dispute is the Environment and Land Court at Kitale, wherein the case is still pending. The petitioner's father was convicted in Kitale SRM Criminal Case No. 1316 of 1993 which he challenged vide Eldoret High Court Criminal Appeal No. 14 of 1996 and that he was informed that his conviction was quashed, but the title deed to the suit land was not revoked because the quashing of the conviction was not an order of a civil court.

The petitioner has also deposed that: "That the matter had also been handled by a panel of elders and their decision ultimately became a judgement of the court in Kitale SRM Land Case No. 34 of 1986 in favour of the deceased and no appeal has ever been preferred by the Applicant. Annexed "JK5".

The petitioner has deposed that the objection has no legal basis and should be dismissed.

He has also deposed that the application is incompetent as it has been brought under the wrong procedure and should be dismissed with costs.

The submissions of the petitioner.

Messrs Samba & Company advocates for the petitioner have submitted that the Probate and Administration Rules provide that all applications shall be made by way of summons. The objector's application, which is by way of notice of motion is not only misconceived but is also incompetent.

Furthermore, the application is expressed to be brought under section sections 37 and 47 of the Law of Succession Act and Rules 4 and 73 of the Probate and Administration Rules. Counsel has submitted that the application ought to have been brought under section 76 Law of Succession Act.

Counsel has further submitted that the objector has not tendered evidence that he was the original owner of the suit land; since the suit land has remained registered in the name of the deceased for about 30 years. Counsel has therefore submitted that the law of limitation may have caught up with him. Counsel has further submitted that the allegations of fraud allegedly committed by the petitioner are not supported by evidence.

After the determination of Eldoret High Court Criminal Appeal No. 14 of 1996 the objector did not move the court for orders to have the 12 acres excised from the deceased's title West Pokot/Siyoi "A" 720. The succession proceedings were started in 2015 which is a period of 18 years since the determination of the criminal appeal.

Counsel has also submitted that the objector has had a land dispute with the petitioner and therefore this court lacks jurisdiction to determine this issue.

And since there is a pending case before the ELC court at Kitale which is filed by the petitioner seeking the eviction of the objector, counsel

has submitted that that is the right forum for the parties to ventilate their rival claims.

Counsel has submitted that the cited case of *In re Estate of Julius Ndubi Javan*, deceased, *supra*, is distinguishable from the instant case in the following ways. First, in that case the applicant was the purchaser of part of the land which he had paid for in full; whereas in the instant case the petitioner is claiming the whole parcel of land measuring 22 acres; notwithstanding that the judgement of the court (Nambuye, J, as then was) in Eldoret High Court Criminal Appeal No. 14 of 1996, recognized that the deceased was entitled to 10 acres of the suit land.

In view of the foregoing, counsel has urged the court to dismiss the application with costs for lacking in merit.

Issues for determination.

I have considered the entire evidence, the submissions of the parties and the authorities cited by their counsel. I find the following to be the issues for determination.

1. Whether I have jurisdiction to entertain and determine this application.
2. Whether the objector has made out a case for the revocation of the instant grant.
3. Whether the petitioner is entitled to any share of property in the suit land
4. Who pays the costs of this application?

Issue 1

The instant application by the objector challenges the obtainment of the grant of letters of administration intestate by the petitioner, which he seeks to be revoked. The basis of the revocation is that the petitioner obtained the grant fraudulently by the deliberate making of false statements and concealment from the court facts material to the cause; which are as follows. First, the petitioner did not inform the court that his late father under whom he is claiming to be a successor of the suit land had been convicted by the trial court in Kitale SRM Criminal Case No. 1316 of 1993 in respect of the following counts.

Count 1

Making a document without authority in respect of the suit land, namely West Pokot/Siyoi/ 702.

Count 2

Obtaining registration of the title in respect of the suit land namely West Pokot/Siyoi/ 702 by false pretences.

Count 3

Forcible detainer, in respect of the suit land namely West Pokot/Siyoi/ 702.

Furthermore, the petitioner did not tell the court, among other matters, that his late father had appealed to the High Court in Eldoret in Criminal Appeal No. 14 of 1996, which dismissed his father's appeal in respect of counts 2 and 3 and only allowed count 1. He also did not inform the court that the High Court (Nambuye, J, as then was) went further and pointed that:

“As for the offence of forcible detainer it was on record that appellant had refused to move from the disputed portion to which he was entitled as the consistent evidence on record was that appellant was entitled to 10 acres and he therefore forcibly detained the remainder of the 12 acres.”

Furthermore, the other grounds for revocation include the following, among others. The court was misled to grant the letters of administration intestate to the petitioner. The proceedings to obtain the grant were defective in substance.

It is clear that the revocation of the grant is based on the illegal obtainment of title to the suit land by the petitioner's father. It is equally clear that the connection between the instant application and the land court case that is pending hearing determination in Kitale is that the petitioner is claiming to be the owner of the suit land by virtue of the transmission of the suit land which his late father purchased from the objector. The petitioner's claim for eviction and mesne profits against the objector that is pending hearing and determination before the ELC court in Kitale being Environment and Land Court Case No. 25 of 2018, in which the petitioner is the plaintiff with the objector and another person being the defendants; is not before this court.

This court is also not called upon to determine the propriety of the arbitral award proceedings in Kitale SRM Land Case No. 34 of 1986, from which the objector did not prefer an appeal.

I find that both the Kitale Environment and Land Court Case No. 25 of 2018 and Kitale SRM Land Case No. 34 of 1986 are not before this court. They are therefore irrelevant to the hearing and determination of the instant application.

In the premises, I find and hold that this court has the jurisdiction to hear and determine this matter.

Issue 2

Having found and held that this court has jurisdiction to hear and determine this application, I now proceed to consider whether the objector has made out a case for the grant of an order for the revocation of the grant.

After considering the whole evidence tendered in this court, I find as credible the evidence of the objector that the petitioner concealed from this court the following matters. First, the petitioner did not inform the court that his late father under whom he is claiming to be a successor of the suit land had been convicted by the trial court in Kitale SRM Criminal Case No. 1316 of 1993 in respect of three counts of making a document without authority, forcible detainer and obtaining registration by false pretences in respect of the suit land. Second, he also did not disclose to the court that his father had appealed to the High Court in Eldoret in Criminal Appeal No. 14 of 1996, which dismissed the appeal in counts 2 and 3 but only quashed the conviction in count 1. He also did not disclose to the court the High Court therein recognized that his deceased father was only entitled to 10 acres of the suit land. In this regard, that court pronounced itself as follows:

“As for the offence of forcible detainer it was on record that appellant had refused to move from the disputed portion to which he was entitled as the consistent evidence on record was that appellant was entitled to 10 acres and he therefore forcibly detained the remainder of the 12 acres.”

Furthermore, the petitioner also failed to disclose to the court that the original title deed of the suit land was held as an exhibit in Kitale SRM Criminal Case No. 1316 of 1993; although he admitted in his evidence that he was aware that the said exhibit was in that court.

I find that these were material facts that were concealed from the court.

Additionally, the petitioner testified that he held the suit land as a trustee on behalf of his 20 siblings; but no affidavit was sworn by any one of them to confirm him being given the authority to succeed the suit property as a trustee and none of those 20 siblings were called by the petitioner as his witness.

Furthermore, the assistant chief (Pw 3), who wrote the letter (exhibit Pexh. 3) was from Uasin Gishu county and not from West Pokot. I find as credible the evidence of Pw 3 that he was misled by the petitioner who gave him the wrong information. He further testified had he been given the correct information, he would not have written exhibit Pexh. 3. I find that the petitioner deliberately avoided a letter being written by a chief from West Pokot, because such a chief would likely have known that the information given to him is wrong. I find this to be another attempt of concealing material facts from the court.

I find as incredible the evidence of the petitioner that he did not go for a letter from the chief in West Pokot because he was threatened.

I further find as incredible that the objector was also chased from the suit land, which is now occupied by Pokots from Kacheliba; and has not filed any suit for their eviction and mesne profits. Instead, he has only sought mesne profits and eviction of the objector and one Musa Tomkou from the suit land.

I further find as incredible the contradictory evidence of the petitioner that he was aware that the title deed to the suit land was lost on the one hand, and that he was equally aware it was an exhibit in the lower court at Kitale; on the other hand, if he truly believed that it was lost, he should have had the same gazetted as is the practice.

Additionally, I also find that the immediate foregoing made the succession proceedings irregular and defective in substance within the meaning of section 76 of the Law of Succession Act.

It is equally important to point out that the petitioner could not in law be entitled to succeed to property that was obtained fraudulently by his deceased father. The deceased father was a convicted felon and as such he was permanently excluded from inheriting the entire suit land. The law in this regard is that no court is allowed to enforce orders or obligations that have been declared to be illegal and no person is allowed to benefit from his wrong doing. This principle in a contractual context is ably expressed in the Court of Appeal decision in *Scott v Brown* (1892) 2 QBD 724 at page 728 in the judgement of Lindley LJ in the following terms:

“Ex turpi causa non oritur actio. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal if illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has paraded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality, the court ought not to assist him.”

This is the position in the instant cause following the upholding of the conviction of the appellant of the offences of obtaining registration of the suit land by false pretences and forcible detainer of the same land by the court (Nambuye, J as she then was).

In view of the fact that the deceased father of the appellant was convicted of fraudulently holding on to the entire suit land, the issue of limitation does not arise for consideration. The submission of counsel for the petitioner in the instant case that the objector may have been caught with limitation is hereby dismissed for lacking in merit.

Although the application was brought by way of notice of motion as opposed to being brought by way of summons, it did not render the application fatally defective; as the defects were cured by the evidence of both parties in this court.

Furthermore, the petitioner could not in law be entitled to succeed to the whole property that had been obtained fraudulently by his deceased father.

Issue 3

The judgement of the High Court (Nambuye, J as she then was) in Eldoret in Criminal Appeal No. 14 of 1996, was delivered on 7th July 1997. That court went further and ordered restitution to both the petitioner's father and the objector in terms of section 178 (1), (2), (4) and (6) of the Criminal Procedure Code (Cap 75) Laws of Kenya; in respect of their rightful shares of the subject parcel of land. It therefore follows that that court had jurisdiction to find and order that the deceased father of the petitioner was only entitled to 10 acres which he had bought from the objector. The petitioner's father did not appeal against the judgement of that court with the result that the petitioner's father and his successors in title are bound by that judgement. The function of this court is to enforce that judgement; in which the shares of the objector and the father of the petitioner in the suit land had been ascertained and finally determined by way of restitution.

In passing, I note that the order of restitution by Nambuye, J (as she then was) was an order of superior court in relation to the arbitral award by the panel of elders in Kitale SRM Land Case No. 34 of 1986. And the petitioner as the successor in title of his father's estate is only entitled to 10 acres by way of transmission (succession) and no more. The petitioner implicitly admits this to be the position since his claim to the suit land is based on the process of transmission through his deceased father.

I find no merit in the submission of counsel for the petitioner that the right forum for the parties to ventilate their rival claims is the ELC court in Kitale; wherein there is pending a case in which the petitioner is seeking an order for eviction and mesne profits against the objector and another person; since the ownership rights to the subject parcel of land were finally determined by this Court (Nambuye, J as then was).

Furthermore, as a Probate and Administration court, I find that the petitioner is only entitled to 10 acres of the suit land in terms of the judgement of Nambuye, J with the remainder being the shares of the objector/applicant.

In the premises, I find that the petitioner/respondent concealed material facts from the court and further that the proceedings were irregular as I have pointed out in the foregoing paragraphs with the result that the application succeeds and the grant of letters of administration intestate are hereby revoked or annulled.

Issue 4

Costs of the application

The objector/applicant has succeeded in his application. He is therefore entitled to his costs.

The objector/applicant is hereby awarded the costs of this application.

JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE ON THIS 25TH DAY OF JANUARY 2022.

J. M. BWONWONG'A

JUDGE

IN THE PRESENCE OF: -

MR. KINYUA, COURT ASSISTANT.

MR. CHELUGET FOR THE OBJECTOR/APPLICANT.

MR. SAMBA FOR THE PETITIONER/RESPONDENT