



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 498 OF 2019**

SEINA LEKISAAT.....APPELLANT

VERSUS

ALPHONCE MBINDA MUSYOKI.....1<sup>ST</sup> RESPONDENT

MWAJUMA RAJAB.....2<sup>ND</sup> RESPONDENT

AGNES KADII TOYA.....3<sup>RD</sup> RESPONDENT

REGISTRAR OF POLITICAL PARTIES.....4<sup>TH</sup> RESPONDENT

PARTY OF NATIONAL UNITY (PNU).....5<sup>TH</sup> RESPONDENT

*(An appeal from the Ruling and Order of the Political Parties Disputes Tribunal (PPDT) sitting at Nairobi (Hon. Ms. Milly Lwanga, Dr. Adelaide Mbithi & Mr. Paul Ngotho) delivered on 16<sup>th</sup> of August, 2019 in PPDT Appeal No. 3 of 2019)*

BETWEEN

ALPHONCE MBINDA MUSYOKI.....1<sup>ST</sup> APPELLANT

MWAJUMA RAJAB.....2<sup>ND</sup> APPELLANT

AGNES KADII TOYA.....3<sup>RD</sup> APPELLANT

VERSUS

REGISTRAR OF POLITICAL PARTIES.....RESPONDENT

AND

PARTY OF NATIONAL UNITY.....1<sup>ST</sup> INTERESTED PARTY

SEINA LEKISAAT.....2<sup>ND</sup> INTERESTED PARTY

**JUDGMENT**

1. This appeal emanates from a dispute which arose out of the decision of the Office of the Registrar of Political Parties to issue a Gazette Notice in the Kenya Gazette of 14<sup>th</sup> June, 2019 listing the officials of the 1<sup>st</sup> Interested Party. In that dispute, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein vide a notice dated 8<sup>th</sup> August, 2019 raised a preliminary objection against the representation of the 2<sup>nd</sup> Interested Party by the firm of Ochieng' Walukwe & Associates. They sought to have the Appellant's Counsel excluded from such a representative role in the matter stating that his appearance was in contravention of **rule 9** of the **Advocates (Practice) Rules**.

2. The Appellant is the Chairperson of the National Elections Board of the Party of National Unity (PNU), the 5<sup>th</sup> Respondent herein and 1<sup>st</sup> Interested Party in PPDT Appeal No. 3 of 2019 in which the Appellant was the 2<sup>nd</sup> Interested Party.

3. The preliminary objection was premised on **rule 9** of the **Advocates (Practice) Rules** and grounded on the fact that Mr. Walukwe Advocate was adversely mentioned in the substantive Statement of Appeal and thus, according to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, could realistically be summoned as a potential witness in the substantive appeal matter before the PPDT.

4. The Appellant's case as an Interested Party was that the right to representation is a fundamental right that must not be curtailed lightly. That **rule 9** of the **Advocates (Practice) Rules** is specific to instances where an Advocate has been summoned as a witness. The Interested Parties therein argued that the tribunal should base its decision on the matters currently presenting in the appeal and not on future probabilities. That the possibility that Mr. Walukwe may be summoned as a witness is remote at best and in any event, whatever evidence he is likely to present is unlikely to be privileged information.

5. PPDT allowed the preliminary objection on 16<sup>th</sup> August, 2019 and later issued a ruling dated 20<sup>th</sup> August, 2019. In its decision, the PPDT held that the Advocate in question had been substantively mentioned and linked to an alleged action subject to the proceedings. They noted that from the content in the statement of appeal, the crux of contention was in regard to a meeting deemed to have been un-procedurally called and constituted in which Mr. Walukwe was named as one of the participants.

6. The Tribunal further noted that since the issue giving rise to the appeal was the alleged irregularities in the process of carrying out an order and directive of the Tribunal, and Mr. Walukwe having been an Advocate in PPDT No. 13 of 2018 in which the directive was issued, he could potentially present as a witness. The preliminary objection was allowed, barring the Appellant's Advocates on record from acting as such and granting the Appellant the liberty to appoint another lawyer to act for him.

7. Aggrieved by the decision of the PPDT, the Appellant preferred an appeal before this court by way of a memorandum of appeal dated 26<sup>th</sup> August, 2019 brought pursuant to **Order 42, rule 1** of the **Civil Procedure Rules, 2010** before this court. The Appellant seeks that the appeal be allowed and the ruling and order of PPDT delivered on 16<sup>th</sup> August, 2019 be set aside in its entirety.

8. The Appellant advanced fifteen (15) grounds of appeal the gist of which are that the learned members of the Tribunal erred in law and in fact by failing to :

1. Recognize that the right to representation by legal counsel of choice is a constitutional right that can only be limited by law to the extent espoused under **Article 24** of the **Constitution**.

2. Interpret the mischief behind the enactment of **rule 9** of the **Advocates (Practice) Rules**, which is to protect a client against breach of confidentiality by an advocate and not for the benefit of the opposing litigant.

3. Consider that the tribunal has never taken *viva voce* evidence from witnesses in the course of its proceedings and no application whatsoever had been made for the Appellant's Counsel on record to testify as a witness and as such, the potential of Counsel appearing as a witness was always a non-issue.

4. Appreciate that the issue for determination before the Tribunal was an appeal against a decision of the Registrar of Political Parties and it was unlikely that the Appellant's counsel on record would be a material witness to a decision made by a public officer. That the Constitution of PNU elucidates the various officials of the Party with the power to swear affidavits on behalf of the party, none of them being the Appellant's Counsel on record.

5. Conclude that the Appellant's Advocates on record had instructed Senior Counsel Paul Muite as lead counsel.

6. Offer substantive justice instead misapplying and misinterpreting the law and misconstruing that M/s Ochieng' Walukwe and Associates was by all legal implications Frank Walukwe Advocate.

9. On 3<sup>rd</sup> September, 2019 Thurairaja J ordered a stay of the proceedings before the Political Parties' Dispute Tribunal sitting at Nairobi in PPDT Appeal No. 3 of 2019 pending the hearing and determination of the instant appeal.

10. Learned Counsel Mr. Walukwe filed written submissions dated 9<sup>th</sup> September, 2019 on behalf of the Appellant in which he asked the court to set aside the decision of the PPDT made on 16<sup>th</sup> August, 2019 in its entirety. Counsel submitted that the PPDT misinterpreted the provisions of **rule 9** of the **Advocates (Practice) Rules**, by failing to take into consideration the mischief behind the provision. That as such, PPDT enabled a violation of the Appellant's constitutional right to representation by an advocate of his choice as provided by **Article 50(2)(g)** of the **Constitution**.

11. Mr. Walukwe drew attention to paragraphs 18 and 19 of the PPDT ruling dated 20<sup>th</sup> August, 2019 in which the Tribunal observed thus:

*"18. To begin with we have noted the substantive appeal that lies before us. We note that the key issue in contention in the substantive appeal matter before this Tribunal, is a process undertaken under the guidance and authority of the Office of the Registrar of Political Parties (The Respondent herein). We have further noted that several named persons, Mr. Walukwe Advocate included, are alleged to have un-procedurally participated in the process. We posit, does this present a potential conflict?"*

*19. In Delphis Bank Limited v Chatt & 6 Others (2005) 1KLR, the court held that the right to the preferred legal representation is not absolute as the right can in some cases, particularly in civil cases, be put to test where conflict of interest arises. Our concern then is, does this present a potential conflict?"*

12. It is Mr. Walukwe's submission that in its ruling, the PPDT failed to consider that the mischief behind **rule 9** of the **Advocates (Practice) Rules** is to protect an Advocate's client against breach of confidentiality that would occasion prejudice if an Advocate were to be called upon to give testimony, and not merely for the benefit of the opposing litigant to choose and pick who can represent their opponent. To buttress his argument, Counsel cited the persuasive case of **Naomi Kanyua Musyoki vs. Silvanus Musyoki Muli & Another, Civil Appeal No. 21 of 2015 [2016] eKLR**.

13. Counsel contended that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein had not made any application whatsoever, whether formal or informal, before the tribunal to the effect that they required Frank Walukwe Advocate to give sworn evidence as such. He referred to the case of **Republic vs. Silas Mutuma Marimi & 2 others Criminal Case No. 5 of 2016 [2016] eKLR** in which Justice Maureen Odero stated that **rule 9** of the **Advocates (Practice) Rules** was inapplicable because the Advocate had not recorded any statement with the police nor had the prosecution given any indication that they intended to summon him as a witness during the trial.

14. Counsel argued that the mere mention of an Advocate in pleadings, irrespective of the probative value therein, cannot be grounds for the derogation of a Constitutional right. He urged that the mischief and prejudice to be suffered by the person relying on **rule 9** of the **Advocates (Practice) Rules** must be real and not perceived. To buttress his argument, Counsel cited the case of **Cooperative Bank of Kenya Limited vs. Charter House Bank Limited, Nairobi Civil Suit No. 121 of 2005 [2015]** in which Gikonyo J while deliberating on the issue of disqualification of an advocate opined thus:

**“This kind of application should be made on concrete things; not abstract beliefs or fear, because they may result into a denial of right to representation by legal counsel of choice. And, therefore, courts should be careful not to grant orders which will impinge on right to representation by legal counsel of choice unless it is satisfied that real mischief or prejudice will result if the advocates in question continue to act for the particular party in a proceeding; the contrary will only bring its holocaust on the right to legal representation.”**

15. It was Counsel's contention that PPDT's ruling was ambiguous as to whether it was Frank Walukwe Advocate who had been barred from continuing to represent the Appellant or whether it was M/s Ochieng' Walukwe & Associates who could not continue being on record. That the PPDT thus failed to distinguish between M/s Ochieng' Walukwe the firm and Frank Walukwe the Advocate. Further that the PPDT failed to appreciate that only M/s Ochieng' Walukwe was on record and had appointed Senior Counsel Paul Muite to be lead Counsel.

16. Both the 4<sup>th</sup> and 5<sup>th</sup> Respondent support the appeal. The 4<sup>th</sup> Respondent is a statutory office holder established under **section 33** of the **Political Parties Act No. 11 of 2011** and is charged with the mandate of registration, deregistration and administration of all political parties. The 5<sup>th</sup> Respondent is a political party duly registered under the **Political Parties Act**.

17. Learned counsel Mr. Benson Makolwa filed written submissions dated 6<sup>th</sup> September, 2019 on behalf of the 4<sup>th</sup> Respondent in support of the appeal in which he submitted that the appeal has legal basis and should therefore be allowed. He identified two sole issues for determination before this court:

a. Whether the counsel and or a person who does not work in the Office of the Registrar of Political Parties would be a material witness in an Appeal filed against the decision of the Registrar under **section 40(f)** of the **Political Parties Act** considering that the said office is established as an independent office.

b. Whether the underlying circumstances fall within the two trite conditions/principles under which a litigant can be denied the constitutional right of a legal representative of his or her choice.

18. Mr. Makolwa submitted that whereas **section 40** of the **Political Parties Act** grants the PPDT jurisdiction to hear and determine appeals from the decisions made by the Registrar under the Act, such decisions are made solely by the Registrar as a public officer or by any member of staff working in that office. Counsel contended that Mr. Walukwe is neither a staff member of the Registrar's office nor an official of the PNU the 5<sup>th</sup> Respondent and was therefore not part of the 4<sup>th</sup> Respondent's decision making process. That as such, there is no possibility that Mr. Walukwe will be called as a witness at the hearing of the appeal before PPDT.

19. To buttress his arguments, Mr. Makolwa cited the case of **Imana vs. Ethuro & 2 others [2008] 3 KLR** and **Kenya Pipeline Co. Ltd vs. Corporate Business Forms Ltd [2012] eKLR**. Counsel urged that the Applicant did not demonstrate before the PPDT that there was a real possibility that Mr. Walukwe Advocate would be called as a witness, and there was therefore no justification for denying the Appellant his right to representation by a legal counsel of his choice.

20. Learned Counsel Mr. Omogeni filed written submissions dated 17<sup>th</sup> September, 2019 on behalf of the 5<sup>th</sup> Respondents in which he submitted that the PPDT misinterpreted the law and arrived at a finding that violates the Appellant's constitutional right to be represented by an Advocate of his choice.

21. Mr. Omogeni stated that the allegations brought forth by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents before the PPDT that Mr. Walukwe was a potential witness were bare allegations devoid of merit. That the Respondents had failed to demonstrate circumstances or raise issues that would require Mr. Walukwe to be summoned as a witness in the matter and neither did they bring out substantial issues that would result in a conflict of interest. Counsel argued that in the absence of real mischief or prejudice, there was no basis for which the PPDT disqualified Mr. Walukwe under **rule 9** of the **Advocates (Practice) Rules**.

22. It was Mr. Omogeni's contention that the appeal before the PPDT is against a decision from the Office of the Registrar of Political Parties which is an independent office. Counsel asserted that since Mr. Walukwe is neither a staff nor was he involved in the decision making process in the office of the Registrar, the possibility that he may be called as a witness on a decision emanating therefrom is highly remote. Further that Mr. Walukwe is not an official of PNU to warrant claims that he may be called upon as a witness to the case. That in any event,

the Constitution of PNU spells out the officials that can testify on behalf of the party none of whom include Mr. Walukwe.

23. To buttress his arguments, Mr. Omogeni cited the case of **Yusuf Abdalla Ibrahim Abdi vs. Ibrahim Noor Hillowly Civil Case No. 39 of 2017 [2017] eKLR** in which the court cited and applied the decision in **Dorothy Seyanoi Moschioni vs. Andrew Stuart & Another [2014] eKLR**. Counsel asserted that to successfully bar an Advocate from acting for a client, an Applicant must demonstrate to the Court that real mischief and prejudice will in all human probability result if the solicitor is allowed to act. He urged that as a general rule, the court will not interfere unless there be a case where mischief is rightly anticipated.

24. Mr. Omogeni contended that the ruling of the PPDT was not specific as to whether it was only Mr. Walukwe who was barred from representing the Appellant or the entire firm of M/s Ochieng' Walukwe. Counsel stated that from the record it is evident Mr. Walukwe was not the only Advocate from M/s Ochieng' Walukwe representing the Appellant, and he was in fact being led by Senior Counsel Paul Muite who was instructed by the firm to be its lead Counsel. Mr. Omogeni urged that if the ruling is interpreted to bar the firm of M/s Ochieng' Walukwe from representing the Appellant, it would go against the dictates of **rule 9 of the Advocates (Practice) Rules** which is limited to an individual advocate. He referred to the case of **National Bank of Kenya Ltd vs. Peter Kipkoech Korat [2005] eKLR** to support his case.

25. In opposition to the appeal, Mr. Nyamu filed written submissions dated 16<sup>th</sup> September, 2019 on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in which he submitted that it is in the interest of justice and fairness that the appeal herein be struck out with costs. Counsel stated that the sole issue for determination herein is whether the PPDT rightly held that in representing the Appellant herein in PPDT Appeal No. 3 of 2019, Mr. Walukwe Advocate was in contravention of **rule 9 of the Advocates (Practice) Rules**.

26. Mr. Nyamu contended that contrary to the arguments advanced by the Appellant in his pleadings and submissions filed hereto, the right to legal representation is not an absolute right. Counsel however went on to cite the case of **Maina Njenga vs. Republic Criminal Appeal No. 189 of 2013** in which the court cited and applied the case of **William Audi Odode & Another vs. John Yier & Another, Court of Appeal Civil Application No. 360 of 2004 (unreported)**. In this case, the Court observed thus:

**“I must state on (sic) the outset that it is not the business of the courts to tell litigants which advocate should and should not act in a particular matter. Indeed, each party to a litigation has the right to choose his or her own advocate and unless it is shown to a court of law that the interest of justice would not be served if a particular advocate were allowed to act in the matter, the parties must be allowed to choose their own counsel.”**

27. It is Mr. Nyamu's statement that there is pending an appeal in PPDT Appeal No. 3 of 2019 in which Frank Walukwe has been mentioned severally and adversely as a person who unprocedurally participated in processes which are the subject matter of the appeal. That as an active participant in the process appealed against, Mr. Walukwe has vital information which is key evidence that can be used by the PPDT to determine the matter.

28. Mr. Nyamu contended that the wording of **rule 9 of the Advocates (Practice) Rules** is clear and unambiguous and the court is therefore under no duty whatsoever to discern the intentions of parliament. That as such, the appeal is misconceived and the Appellant has failed to set out reasonable grounds to warrant the setting aside of the ruling of the PPDT.

29. The legal position regarding the dispute herein is found in **rule 8 of the Advocates (Practice) Rules** which was previously **rule 9** as adverted by the Counsels on record. The rule states thus:

**“No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:**

**Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears.”**

30. In **Delphis Bank Ltd vs. Channan Singh Chatthe & 6 others Civil Application No. 136 of 2005 [2005] eKLR**, the Court of Appeal (O'Kubasu, Waki & Deverell, JJ.A) observed thus:

**“The starting point is, of course, to reiterate that most valued constitutional right to a litigant; the right to a legal representative or advocate of his choice. In some cases however, particularly civil, the right may be put to serious test if there is a conflict of interests which may endanger the equally hallowed principle of confidentiality in advocate/client fiduciary relationships or where the advocate would double up as a witness...”**

**In the Uhuru Highway development case the court stated that the bar to the counsel appearing as a possible witness was not subjective. Mr. Menezes here does not believe he would be a useful witness, but that is not the point because the indication is that he would be summoned. We remain uneducated however on the nature of the evidence that he is required to tender before the superior court. If it is merely formal and non-contentious, then of course the proviso to the rule would bail him out. The only certainty is that Mr. Menezes would not be required, and we have not been told so, to testify as a witness before us in the pending application. On that consideration we find it unnecessary to issue orders barring him from participating in the application either as the advocate directly instructed to do so or as lead counsel for such advocate.”**

31. The court is alive to the provisions of **Article 50(2)(g)** of the **Constitution** under which every person has a constitutional right to have legal representation of their choice. Whereas a party has a fundamental and constitutional right to have an advocate of his choice, this right is

to be balanced against the hallowed principle of confidentiality in an advocate-client relationship and more so, where an advocate will double up as a witness. The nature of the confidential or privileged information imported to the Advocate which may be prejudicial should be disclosed to the court. The test is whether real mischief or prejudice will, in all probability result if an Advocate is allowed to act.

32. For a court to deprive a litigant of his right to legal representation of his choice, there MUST be a clear and valid reason for so doing and finally that each must turn on its own facts to establish whether real mischief or real prejudice will result. This was aptly elucidated in **Guardian Bank Limited vs. Sonal Holdings (K) Limited & 2 others [2014] eKLR** where the court opined thus:

**“What I need to state is that, in applications for disqualification of a legal counsel, a court of law is not to engage a cursory look at the argument that “these advocates participated in the drawing and attestation of the Deeds in dispute;” as that kind of approach may create false feelings and dilemmas; for it looks very powerful in appearance and quite attractive that those advocates should be disqualified from acting in the proceedings. It is even more intuitively convincing when the applicant says “I intend to call them as witnesses.” What the court is supposed to do is thrust the essential core of the grounds advanced for disqualification, look at the real issues in dispute, the facts of the case and place all that on the scale of the threshold of the law applicable. In the process, courts of law must invariably eliminate any possibility that the arguments for disqualification may have subordinated important factual and legal vitalities in the transactions in question while inflating generalized individual desires to prevent a party from benefiting from a counsel who supposedly should be “their counsel” in the conveyancing transaction. I say these things because that kind of feeling is associated with ordinary human sense where both parties in the suit were involved in the same transaction which was handled by the advocate who now is acting for one of the parties in a law suit based on the very transaction; and the feeling is normally expressed in an application for disqualification of the counsel concerned in the hope it will pass for a serious restriction to legal representation. But the law has set standards and benchmarks which must be applied in denying a person of legal representation of choice; the decision must not be oblivious of the centrality of the right to legal representation in the Constitution as the over-arching hanger; equally, it should not be removed from reach to the sensitive fiduciary relation between an advocate and his clients, which in transactions such as these, would prevent the advocate from using the privileged information he received in the employ of the parties, to the detriment of one party or to the advantage of the other; it must realize that the advocate has a duty not only to himself or his client in the suit, but to the opponent and the cause of justice; but in all these, it must be convinced that real mischief and real prejudice would result unless the advocate is prevented from acting in the matter for the opponent. The real questions then become: Is the testimony of the advocate relevant, material or necessary to the issues in controversy, or is there other evidence which will serve the same purpose as the evidence by counsel. Eventually, each case must be decided on its own merits, to see if real mischief and real prejudice will result in the circumstances of the case. And in applying the test, if the argument on disqualification becomes feeble and inconsistent with causing real mischief and prejudice, then a disqualification of counsel will not be ordered.**

33. From the pleadings filed hereto, the court gathers that the issue which is the subject of the appeal before the PPDT is a gazette notice published by the 4<sup>th</sup> Respondent the Registrar of Political Parties. The issue in controversy is a gazette notice and there is no evidence to show that Mr. Walukwe’s testimony is relevant, material or necessary in the appeal. All the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have done is state that Mr. Walukwe could potentially be summoned as a witness. They however failed to demonstrate what purpose Mr. Walukwe’s testimony, if summoned, would serve in the determination of the appeal; the nature of the evidence he is required to tender; or the prejudice that would result from Mr. Walukwe’s continued representation of the Appellant.

34. Whereas the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents alluded to Mr. Walukwe having been present at a meeting in which a decision to change the national officials of PNU was made, a cursory glance at the Statement of Appeal dated 1<sup>st</sup> July, 2019 reveals that the appeal before the PPDT is against the decision of the Registrar of Political Parties. In this respect, the Respondents ought to have demonstrated a nexus between Mr. Walukwe and the Registrar to the effect that Mr. Walukwe was part of the decision making process of the Office of the Registrar or that the evidence he would be required to tender would shed light on that process. This is bearing in mind that Mr. Walukwe is neither an official or staff member of the Office of the Registrar of Political Parties. Alternatively, the Respondents should have demonstrated that there is no other evidence which will serve the same purpose as the evidence which Mr. Walukwe would be likely to tender, and this they failed to do.

35. This being the first appeal, I am tasked with the duty of reevaluating the entire evidence, and coming up with my own findings. I have carefully considered the various authorities to which I was referred by the Counsels on record, together with their rival arguments advanced hereto. Applying the principles of law applicable to applications such as the present one, I am not satisfied that there is a likelihood of mischief or real prejudice resulting if the firm of M/S Ochieng’ Walukwe & Co. Advocates act for the Appellant in the matter before the PPDT. It has not been demonstrated that Mr. Walukwe will be summoned as a witness. This is bearing in mind that the appeal before the PPDT is against a decision made by the Registrar of Political Parties which is an independent body. In any event, the Appellant’s Advocates on record is the firm of M/S Ochieng’ Walukwe & Co. Advocates led by Senior Counsel Paul Muite.

Accordingly, I find that the appeal is meritorious and I hereby allow it. The ruling of the PPDT dated 20<sup>th</sup> August, 2019 is hereby set aside in its entirety. Costs shall be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. It is so ordered.

**SIGNED DATED AND DELIVERED IN OPEN COURT THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2019.**

**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Appellant.**

**In the presence of .....Advocate for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.**

**In the presence of .....Advocate for the 4<sup>th</sup> Respondent.**

**In the presence of .....Advocate for the 5<sup>th</sup> Respondent.**