



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 113 OF 2000
IN THE MATTER OF THE ESTATE OF JOHN MATHIU IRWARE (DECEASED)
ANGELO MÍKIAO.....PETITIONER /RESPONDENT
VERSUS
JOHN M'RUKARIA M'MATHIU.....OBJECTOR/APPLICANT
RULING

1. By Summons dated 22/9/2020 brought under section 45 of the Law of Succession Act, and Rules 49 and 73 of the P&A Rules, the Objector/Applicant, now Administrator of the Estate herein, principally seeks an eviction order against the Respondent (who was the petitioner in this case, but whose grant was subsequently revoked), in specific reliefs as follows:

“2) That execution do issue against the Respondent by way of eviction from land title number NYAKI/THUURA/624.

3) That the OCS MERU police station do provide security for the eviction of the Respondent from parcel of land no. NYAKI/THUURA/624 and put the administrators of the estate of JOHN MATHIU IRWARE into possession of the suit land.

4) THAT the Honourable court be pleased to grant further order as may be expedited to meet the ends of justice.”

2. The application was supported by an Affidavit sworn by the applicant setting out the facts as follows:

“1. THAT I am the Objector! Applicant herein competent to make and swear this affidavit.

2. THAT I am the son of IMATHIU IRWARE (deceased) and also the administrator of his estate.

3. THAT the deceased was the owner of LR NO. NYAK1/THUURA/624 which land was family land.

4. THAT the Respondent herein fraudulently filed this Succession Cause and obtained the registration of the suit land though transmission.

5. THAT when I learnt about the said succession cause, I applied for the revocation of the grant which was allowed by this Honourable court on 17th December 2009.

6. THAT on 10th September 2010 I filed an application for confirmation of grant and 10th November the said grant was confirmed.

7. THAT the judgement delivered on 1th2009 by Honourable Lady Justice Kasango denied the Applicant any right over the suit land and having failed to appeal against that judgement the Applicant has no claim against the land. (Annexed and marked JMM-I is a copy of the said judgement)

8. THAT the Applicant's continued presence on the suit land is forceful and has prevented me from peacefully developing or even implementing the said grant issued by the Honourable Court

9. THAT the Respondent herein brought an Originating Summons no. 2 of 20 10 (Angelo M'IKiao vs. John M'Rukaria M'Imathiu)

against the Applicant herein on a claim of adverse possession which was dismissed by the Honourable Court on 6th July, 2018. (Annexed and marked JMM-2 is a copy of the said judgement in OS No. 2 of 2010)

10. THAT since the Respondent had already forcibly taken possession of the suit land, the Originating Summons was heard while he was in possession of the suit land as there was an order directing that the status quo be maintained pending the hearing and determination of the Summons. (Annexed and marked JMM-3 is a copy of the Order directing for the status quo to be maintained.)

11. THAT the beneficiaries to the estate of the deceased now desire to own and possess the estate of the deceased herein for their benefit and use.

12. THAT currently they are unable to take possession and use of their bequest occasioned by the continued possession of the deceased's estate by the Respondent herein.

13. THAT the Respondent has no intention to peaceably vacate from the parcel of land and continues with the unlawful occupation.

14. THAT unless the Respondent herein is evicted from the premises the beneficiaries to the estate of the deceased cannot implement the courts judgment and subsequent grant.

15. THAT it is imperative that security be provided to me to implement the said grant as the Respondent is a violent man and would use all manner of tactics to delay or derail the implementation of the confirmed grant herein.”

3. The Respondent filed a Replying Affidavit sworn on 12th October 2020 in which he deponed as follows:

“I, Angelo M'Ikiao of P.O Box Meru in the Republic of Kenya make oath and state as follows:-

1. That I am the petitioner/respondent herein hence competent to make and swear this affidavit and well versed on the facts of the following:- 2. That I have read and understood the objector/applicant herein. 3. That the objector application seeking eviction from my occupied developed land L.R. No. NYAKI/THUURA/ is contrary to section 7 of the limitation of action act cap.22 Law of Kenya and I have filed originating summons in the Environment and Court at Meru No.18 of 2019. 4. That I am in occupation of L.R. No. NYAKI/THUURA/624 from 1973 upto date 46 years without interference of anybody else by adverse possession. 5. That I purchased the land from Fredrick Kinoti in the year 1973 of which land was sold by objector/applicant father in his lifetime but the objector/applicant father Viz:- M'Imathiu M'Irware had not transferred the land L.R. No. NYAKI/ THUURA/624 to Fredrick Kinoti but later Fredrick Kinoti died.

6. That alternatively I purchased the land L.R. No. NYAKI/THUURA/624 from the 2nd party who had not been transferred the same by the objector applicant father Viz:-M'Imathuu M'Irware in his lifetime and thereafter the 2nd party Viz:-Fredrick Kinoti died. 7. That the objector/applicant has failed to file appearance memo and counter-claim after service of my originating summons to proof his allegations (annexed request to enter Judgement of interlocutory fixed date of hearing on 27/10/2020.

8. That after accruing a period of 47 years in occupation of land under section 7 of the limitation Act.Cap.22 Law of Kenya the objector/applicant cannot lay any claim to me and the objector/applicant application is taken over by events.

9. That there is a pending originating summons in the Environment and Land Court at Meru and the objector/applicant has never filed any response or counter claim and defence or at all.

10. That the action taken by the objector/applicant is motivated by malice and is a contravention of section 7 of Limitation Act. Cap. 22 Law of Kenya.

11. That I make and swear this affidavit the contents being true information and belief praying this Hon. Court to dismiss the objector/applicant application and substitute to that I am in occupation in L.R. No. NYAKI/THUURA/624 by adverse possession by virtue of section of Limitation Act, Cap.22 Law of Kenya.”

4. Counsel for the Respondent, Mr. Kaumbi, sought leave to file a further affidavit but despite grant of leave did not file the further affidavit, and counsel for the parties then filed Submissions, respectively on 22/9/2021 and 1/11/2021, and ruling was reserved.

5. In his Submissions, the applicant urged his case based on section 45 of the law of Succession Act as follows:

“BACKGROUND

Brief facts about this cause is that in the year 2000, the Respondent sought to succeed the Applicant father's estate by filing this Succession Cause and when the Applicant discovered the said issue, he filed an Application for revocation of the grant issue to the Respondent on 17th December 2009 which Application was allowed by this Honourable Court vide the Judgment dated 17th December 2009. The Respondent herein brought an Application by way of Originating Summons No. 2 of 2010 (ANCJIL(L) M'íkiao) VS JOHN M'RUKARIA V. M'IMATHIU)against the Applicant herein on a claim of adverse possession which was dismissed by the HLC Court on 6 th July 2018. During the hearing of the said (r)iginating Summons, the Respondent had already taken possession of the said parcel but the Court ordered for status quo to be maintained at that given moment. Due to the blatant refusal by the Respondent to vacate the suit land despite his application being dismissed, the Applicant herein has sought vide the application dated 22nd September, 2020 for orders inter alia eviction of the Respondent from the suit land. We rely on the following

pleadings:- 1. The grounds set out on the body of the application dated 22nd September 2020; 2. The supporting affidavit sworn by the Applicant on 22nd September, 2020 and filed in court on 25th September 2020 plus the exhibits annexed thereto; The Respondent has opposed the aforesaid application vide the Replying Affidavit dated 12th October, 2020. The allegation therein are not supported or at all and therefore they are mere averments and this Honourable Court cannot believe them.

We urge this Honourable Court to allow the application with costs to the Applicant.

ON LAW

Your Lordship, the Objector/Applicant's application is premised on inter alia; Section 45 of the Law of Succession Act, Rules 49 and 73 of the Probate and Administration Rules. Your Lordship, Considering the afore-cited legal provision, the orders for eviction sought is merited to forestall wastage, damage, alienation of the suit land before the property is distributed to the rightful beneficiaries. The Applicant's main complaint is that the Respondent has forcefully settled in the Deceased estate without the consent of the Administrator. In the matter of **In re Estate of David Lawrence Wangalachi (Deceased)** [2019] eKLR the Learned Judge held as follows in determining an application for eviction:-

"It is not clear how the Respondent gained access to the suit property but his actions amount to a criminal offence punishable under the Law of Succession Act. Section 45 of the Law of Succession Act states as follows:

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration

12. I find that the actions of the Respondent amount to intermeddling with the estate of the deceased and he is liable to be punished."

From the foregoing, we submit that the Respondent is in conflict with the stipulated law as he has forcefully settled and interfered with the deceased parcel of land whereas the Applicant is the legally appointed Administrator of the estate of the deceased. Your Lordship, on this issue whether the Applicant's application is merited, the balance of convenience tilts in favour of the Applicant because he has demonstrated through supporting affidavit that he is the Administrator of the deceased estate having been appointed by this Honourable Court. Further the Applicant has demonstrated that the issue of ownership between the Respondent and the Deceased was determined in MERU ELC NO. 2 OF 2010 (OS) where the suit was dismissed in favour of the Applicant herein.

Your Lordship, we submit that this Honourable Court has inherent powers to issue orders which will ensure administration of the estate is complete and to remove any impediment to the administration. Further, the Applicant is the Administrator of the estate herein and under Section 80 of the Law of Succession Act, he has a duty to sue on behalf of the estate. It is our submission that the applicant herein has the locus to seek for orders of eviction in execution of his duties as an Administrator of the estate. We rely on the case of **In re Estate of Javan Mwarari Gikunju Mugwe (Deceased)** {2021' eKLR where the Learned Judge allowed with costs an application for eviction."

6. For the Respondent, the application was opposed on the ground that the eviction ought to have been sought in a suit in that behalf to demonstrate that "the Respondent was in illegal occupation of the suit land", as follows:

"The applicant's application dated 22nd September 2020 primarily seeks an order for the respondent to be evicted from L.R. No. Nyaki/Thuura/624 which as rightly stated by the applicant, was the subject matter of this cause and Meru H.C.C.C. No. 2 of 2010 (O.S.).

We humbly submit that the orders sought herein ought to be granted only after the court is fully satisfied through credible evidence that the respondent's developments fall on the subject matter. Your Lordship, the procedure invoked by the applicant while seeking an eviction order ought to be through a different civil suit wherein the parties will have the opportunity to present the court with adequate evidence both oral and documents from their surveyor's confirming that indeed the place occupied by the respondent falls on the subject matter.

The nature of the applicant's application can be interpreted to be in execution of the judgment issued in Meru HCCC No. 2 of 2010 (O.S) as well as the grant confirmed in this cause. An eviction order without sufficient evidence of occupation would therefore be prone to abuse, and may result to unreasonable and reckless destruction of property.

I would urge the court to be persuaded by our submissions that for an order of eviction to be validly issued, the applicant has to provide sufficient evidence in form of trace maps, surveyor's reports, photographs of the developments and any other form of evidence which will satisfy the court that the respondent is in illegal occupation of the suit land.

The rules of natural justice however dictate that such evidence ought to be served upon the respondent to enable him challenge it or reply to its contents. This is the grounds for reasoning that the proper procedure for seeking an order for eviction would be to prefer

another suit before the appropriate forum with requisite jurisdiction.

We urge the court to hold that the application dated 22nd September 2020 is not merited as it seeks substantive orders which facts ought to be proved to the required standards, while observing the dictates of the rules of natural justice and the right to a fair trial.”

Issues for Determination

7. The court considers that the following issues arise for determination from the application, the supporting and replying affidavits and the submissions of counsel:

- i. Whether the rights of the parties have been finally determined by two previous proceedings;**
- ii. Whether the Succession Court may order eviction of an intermeddler of the estate of a deceased person;**
- iii. Whether the respondent is an intermeddler in occupation of the estate land; and**
- iv. Whether the relief sought shall be granted.**

DETERMINATION

Whether the rights of the parties have been finally determined

8. In its judgment of 17th December 2009, this Court (Kasango, J.) found upon an application for revocation of Grant to the respondent that the Respondent had fraudulently obtained the grant of representation herein as follows:

“In this case, I find that Angelo obtained the grant fraudulently by making false statement. He failed to state who were the beneficiaries of this estate, he failed to state his relationship if any to the deceased or his right of claim over the deceased property and more seriously annexed a death certificate which the children of the deceased now claim to be a forgery. Angelo did not explain to the court how he obtained the death certificate of the deceased which even stated the wrong date of death. **All in all, in my view, the grant issued to Angelo ought to be revoked. Evidence came up clearly that Angelo had transferred parcel number 624 into his name. In my view it can be traced.** This was the decision in two cases that have been decided previously Jane Gachoki Gatheca vs. Priscilla Nyawira Gitungu & Anor. Court of Appeal Civil Appeal No. 343 of 2002 [and] Rebecca Veronica Adela vs. Prisca Khatambi Kibukosya & Anor., Succession Cause No. 2853 of 2003.”

9. Upon a subsequent suit, *Angelo M’Ikiao v. John M’Rukaria M’Imathiu*, Meru Environment and Land Case No. 2 of 2010, the Environment and Land Court (E. K. Cheron, J.) in a Judgment delivered on 6th July 2018 and citing the decision of this Court on the revocation of grant (Kasango, J., mistakenly stated Lesiit, J.) of 17th December 2009 held:

“ANALYSIS AND DECISION

I have considered the viva voce evidence adduced by the plaintiff and his witness together with that of the defendant. The issue for determination in this case is whether the plaintiff has acquired the suit property registration No. Nyaki/Thuura/624 by adverse possession. The plaintiff in his evidence stated that he bought the suit property from one Fredrick Kinoti who himself had bought it from the late M’Imathiu M’Irware on 3/07/73.

The agreement between the plaintiff and the said Fredrick Kinoti has not been produced by the plaintiff. It is not clear why the plaintiff decide to refer to an agreement between Fredrick Kinoti and the defendant's late father M’Imathi M’irware and not his own agreement with the alleged Fredrick Kinoti. Evidence the plaintiff admitted that the defendant's late father M’Imathi M’Irware made a complaint against Fredrick Kinoti and his son in 1987 and lodged with the police who charged them in Criminal Case No. 3092 of 1987. For a right adverse possession to crystallize the plaintiff has to prove that he has used the land in question as of right, nec vic nec clam nec precario (no force no secrecy no persuasion). It is imperative for the plaintiff to show that the owner had knowledge (or the means of knowing actual or constructive) of the possession or occupation. The possession must be continuous. It must not be broken for any temporary purposes or any endeavours to interrupt it by way of recurrent consideration.

In this case the plaintiff was invited to the suit properly by a person other than the defendant or his late father M’Imathiu M’Irware. In the year 1987 the defendant's father made a report of trespass against Mr. Fredrick Kinoti and his son and all others who were living in that land for trespass. The mere complaint and subsequent charging of the two accused persons who invited the plaintiff to the suit land is a clear indication that the plaintiff was occupying the suit property by force which is contrary to the principles for acquisition of land by adverse possession.

I find the complaint by the defendant's late father M’imathiu M’irware to the police regarding the illegal trespass and occupation of the suit property by Fredrick Kinoti and his son including the plaintiff who had been invited by the two is a clear manifestation that their occupation has not been peaceful and uninterrupted. I also find and hold that the plaintiff's averment that he is entitled to adverse possession having been given occupation and possession as a purchaser for value is farfetched and without legal basis.

The plaintiff's purported sale agreement has not been produced and his remedy in my view lies elsewhere. I have also perused the ruling by Hon. Lady Justice Lesiit in Succession Cause No. 113 of 2000 (Meru) where the plaintiff had applied for letters of grant in the Estate of M’Imathiu M’Irware. In that ruling, the learned Judge observed the judgment which revoked the grant issued to the

plaintiff and stated as follows; "

In this case, I find Angelo (the Applicant herein) obtained the grant fraudulently by making false statements. He failed to state his relationship if any to the deceased or his right of claim over the deceased property and more seriously annexed a death certificate which the children of the deceased now claim to be a forgery. All in all, in my view the grant issued to Angelo ought to be revoked. He had no right to inherit the deceased land."

These damning evidence against the plaintiff in this case have not been reviewed. It is the same plaintiff, who was said to have presented forged documents who is now approaching this court when those allegations of forgery have not been set aside. I find and hold that the plaintiff has not proven his claim for adverse possession to the required standard. In the result, I dismiss this suit with no order as to costs."

Res judicata

10. The question of legal ownership of the suit property has already been determined by the Court (Kasango, J.) in this Cause when it revoked the grant of Representation to the Respondent and directed cancellation of the transfer of and reinstatement of the registration of the land in the name of the deceased herein. The claim in adverse possession regurgitated in the Respondent's Replying Affidavit has already been considered by the Environment and Land Court and dismissed in a suit between the same parties. No appeal was preferred from either decision of this court on revocation of Grant to the respondent or that of the Environment and Land Court on adverse possession claim. The two judgments stand in the absence of review or reversal by a higher court and this court must, therefore, find the questions of ownership of the land and right to occupation thereof to have been finally determined and *res judicata*.

Rights of an Administrator of an Estate of a deceased against Intermeddler

11. What are rights of an administrator against an intermeddler, and are they exercisable in the circumstances of this case? Section 83 of the Law of Succession Act set out the duties of and administrator as follows:

"83. Duties of personal representatives

Personal representatives shall have the following duties—

(a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;

(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;

(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);

(d) to ascertain and pay, out of the estate of the deceased, all his debts;

(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration. [Act No. 18 of 1986, Sch.]"

12. To be able to complete administration and distribute the estate herein to to the deceased's heirs the administrator applicant herein must take possession and get in all the asset of the deceased estate as provided for under section 83(b) of the Act. The suit property having been established to be art of the deceased's estate and an order for its registration in the name of the deceased granted in the court's judgment of 17th December 20009, the administrator is under a duty to get it in for purposes of administration and final distribution. In so doing, the administrator may request the assistance of the court to get in the property of the deceased person which is jealously protected by the Law of Succession Act. The general rule in Rule 49 of the P&A Rules provides for the procedure for such applications as may be necessary to give effect to the protection. This is without prejudice to the general provision on the inherent jurisdiction of the court the succession court to grant relief to avoid abuse of the process of the court under Rule 73 of the Rules.

13. Section 45 of the Law of Succession Act is in the following terms:

“Protection

45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, **no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.**

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration”

14. The Law of Succession Act is a complete legal regime with substantive and procedure rules for the governance of succession matters including their civil and criminal sanctions for dealings with the estate of deceased persons. Intermeddling with the estate will attract both civil and criminal sanction under section 45 of the Law of Succession Act. In its civil jurisdiction, a succession court may therefore grant civil remedies including the eviction of a trespassing intermeddler or injunction and other relief against a person who otherwise intermeddles, a term of art which means any dealing with estate property inconsistent with the Grant of Representation, in the estate of a deceased. The statutory injunction under section 45 that **“no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person”** is capable of protection and enforcement by an order for eviction of such a person. In addition, apart from the criminal penalty under section 45 (2), Section 46 of the Act obliges the police officers, administrative officers and chiefs to take steps to protect the estate of a deceased person.

15. As the duly appointed administrator to the estate and the suit property having been adjudged an estate asset, the applicant is under a duty to get it in by taking possession and evicting any person who is in illegal occupation thereof and the right of such administrator is capable of protection and enforcement by the court pursuant to the protection against intermeddling under section 45 of the Law of Succession Act.

16. The effect of the two decisions of the High Court and the Environment and Land Court is to declare that the respondent has no lawful right to ownership or possession or occupation of the suit land. He has not been appointed as administrator as his Grant has been revoked and the parcel of land subject of the suit or any part thereof has not been adjudicated for distribution to him. He is in possession and remains in possession contrary to law since the judgments of competent courts by the revocation of his Grant on 17/12/2009 and the dismissal of his claim to adverse possession on 6/7/ 2018. The Respondent is an intermeddler within the meaning of section 45 of the Law of Succession Act, for being in possession of a deceased person’s estate property without being *“expressly authorized by this Act, or by any other written law, or **by a grant of representation** under [the] Act”*.

Red herring argument in Submissions

17. The suggestion in the Respondent’s Submissions that the Applicant should sue for eviction in a separate suit for the applicant to prove that the respondent is on the suit land and to give the Respondent a fair opportunity to defend the claim on evidence is a red herring, a ruse to afford the respondent a forum to present his claim to the land for the third time and, most potently, to cure the default on his part to appeal the final judgments of the two superior courts - the High Court in this matter and the Environment and Land Court in the adverse possession suit. If the respondent were to be allowed to do so, he would have succeeded in gaming the judicial process by failing to follow the procedure of appeal or review from two related suits on the same question of his alleged ownership of the suit land and yet remain unmoved by such binding judgments of the Court by telling the successful applicant *“sue me to get me out of the land, the ownership to which has already been adjudged against me by two competent courts, so that I can defend myself from your suit.”* There must be an end to litigation; and finality of judicial decision is the essence of the principle of *res judicata*, which classically applies in this case. Using the law in this fashion of the Respondent herein is a clear abuse of the process of the court which the must not countenance!

Conclusion

18. The Applicant’s case as an administrator of the deceased’s estate herein for an of eviction of the Respondent for the suit property which is part of the estate of the Deceased is unanswerable in view of two decisions of the High Court and the Environment and land Court vesting the property in the Estate and dismissing the respondent’s claim in adverse possession thereof. Accordingly, the reliefs sought for the eviction of the respondent shall be granted, subject only to a limited time being granted for the respondent to move out of the property.

ORDERS

19. Accordingly, for the reasons set out above, the Court makes the following orders:

1. Subject to Order No. 2 hereinbelow, the Court grants the prayers for eviction of the respondent from the suit parcel of land Nyaki/Thuura/624 as sought by the applicant in Prayers Nos. 2 and 33 of the Summons dated 22nd September 2020.

2. The Respondent shall have fourteen (14) days to move out of the land parcel NO. Nyaki/Thuura/624. In default, the applicant Court bailiff of this court shall in accordance with the rules of the court evict the respondent and put the applicant in possession thereof.

3. The Applicant shall have the costs of this application to be paid by the Respondent, and the applicant has leave of court to execute the orders of the court before the taxation of costs.

Order accordingly.

DATED AND DELIVERED THIS 8TH DAY OF FEBRUARY, 2022

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Murithi and Mr. Kiruai instructed by Kiautha Arithi & CO. Advocates for Objector/Applicant.

M. Kaumbi instructed by Kaumbi & CO. Advocates for the Petitioner/Respondent.