



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO 482 OF 2013

(Consolidated with Petition No 483 of 2013)

WELDON KECHIE LANGAT.....1ST PETITIONER/APPLICANT

JOEL TEGERET2ND PETITIONER/APPLICANT

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC

PROSECUTIONS.....2ND RESPONDENT

THE DIRECTOR OF CRIMINAL

INVESTIGATION DEPARTMENT3RD RESPONDENT

THE CHIEF MAGISTRATES KIAMBU

LAW COURTS4TH RESPONDENT

JUDGMENT

Introduction

1. The petitioners, **Weldon Kechie Langat** and **Joel Tegeret**, have moved this court for orders stopping their prosecution in **Kiambu Chief Magistrate’s Court Criminal Case No. 2794 of 2011**.

2. The basis of the petition is that the proceedings before the said court violate their rights under Article 50 of the Constitution; that the prosecution is null and void for violating their rights to equal protection of the law under Article 27(1); and that they are malicious and in violation of an order of the court issued in Machakos High Court Civil Case No. 119 and 120 of 2009.

The Petitions

3. The petitioners filed separate petitions both dated 3rd October 2013 and seeking similar orders.

In the said petitions which were consolidated on 12th November 2013, the petitioners ask the court to grant the following orders:

1. *That this matter be certified as urgent and the service of the petition be dispensed with in the first instance*
2. *A DECLARATION that the proceedings before the Chief Magistrate Kiambu be STOPPED and DISMISSED forthwith as they are an abuse infringement, breach or otherwise contravention of the petitioner's right as enshrined in Article 50 of the Constitution of Kenya.*
3. *A DECLARATION that the allegation made by the 1st, 2nd, 3rd and 4th Respondents against the Petition in Criminal Case number 2794 of 2011 pending at the Chief magistrates Court at Kiambu be found to be null and void as the said prosecution denies the fundamental rights of the petitioner to equality before the law, equal protection and equal benefit of the law as enshrined in Article 27(1) of the Constitution.*
4. *A DECLARATION that the allegations contained in Criminal Case no 2794 of 2011 before the Chief Magistrate Court at Kiambu against the petitioner be found to be illegal, vexatious, oppressive malicious and in violation to the Machakos High Court orders given on the 28th November 2009.*
5. *AN ORDER of JUDICIAL REVIEW in form of PROHIBITION do issue PROHIBITING the 1st, 2nd, 3rd and 4th Respondents from thereafter harassing, intimidating and continuing with the prosecution and hearing of Criminal Case No 2794 of 2011 at the Chief Magistrates Court Kiambu*
6. *Costs of this petition be awarded to the petitioner.*

The Petitioners' Case

4. In their respective affidavits in support of the petitions sworn on 3rd October 2013, the petitioners allege that the respondents were breaching their rights by preferring criminal charges against them while there is a civil case at Machakos, being High Court Civil Case No 119 and 120 of 2009 in which the High Court had issued temporary orders. They contend that the charges are meant to harass them with respect to their land; and that the Magistrate's Court at Kiambu lacks jurisdiction to hear and determine a matter whose cause of action arose in Kajiado District.

5. The petitioners concede that the respondents are duly established statutory and appointed government officers with full and discretionary powers under the law. They allege, however, that the respondents have, at the behest of the interested party, been intimidating, harassing and threatening them. It is their contention that the petition raises weighty constitutional matters which they enumerate as including the breach of the order of the court issued on the 24th November 2009 in Machakos Civil Case No 119 and 120 of 2009; the challenge of the acquisition of title over their parcels of land known as L.R Ngong Township/Block 2/627 and Ngong Township/Block 2/268; and abuse of court process by the preferment of trumped up charges in Kiambu Chief Magistrate's Court instead of waiting for the hearing and determination of the civil case at Machakos High Court.

6. The petitioners then narrate various matters relating to a sale agreement between them and one **Simeon K Mutai** for the purchase of the said L.R Ngong Township/Block 2/627 and 2/268; payment of all the requisite fees and disbursements and the issuance of certificates of title to the properties; and the issuance of certificates of lease in respect of the properties on 29th August 2008 by the District Land Registrar Kajiado.

7. The petitioners allege that they took possession of the land and then the 2nd and 3rd respondent had them charged on trumped up charges in the criminal case giving rise to this petition. It is their case that at the time they were charged in court, they had already obtained interim orders in Machakos High Court Civil Case No 119 and 120 of 2009 against Kefa Mbarine, the interested party, and Erick Mbarine who had started disturbing and threatening them with respect to the land.

8. The petitioners allege violation of Article 27 in that the respondents have not charged the Town Clerk of the then Olkejuado County Council or its Chairman who had transferred the suit parcel in favour of Simeon Kipngetich Mutai; and that they had obtained a good title in respect of the said property from the said Mutai. They pray that the court issues the orders that they are seeking to stop the criminal prosecution from proceeding.

9. In her submissions on behalf of the petitioners, Ms. Macharia contended that although the law allows civil and criminal proceedings to proceed together under section 193A of the Criminal Procedure Code, where such proceedings are used to stop the civil proceedings from continuing, the High Court has jurisdiction to intervene.

10. She submitted that the interested party was using the criminal proceedings to intimidate the petitioners and to force the petitioners to abandon the civil suit and the suit properties; that the petitioners had filed the case in Machakos and an injunctions had been issued on 24th September 2009 against the interested party stopping him and his son from interfering with the suit property.

11. It was her contention that the case is still pending because the petitioners' focus has shifted to the criminal case. According to the petitioners, the interested party had lodged his complaint in 2011, and this demonstrated the ulterior motive on his part.

12. Ms. Macharia submitted further that the petitioners' rights under Articles 47 and 50 of the Constitution had been violated; that the 2nd respondent has amended the charges in the criminal case several times and in the uncertainty the petitioners find it hard to proceed with both the criminal and civil matters; that the petitioners' rights under Article 50 have been violated in that they have been charged alongside the vendor of the property, one Simeon Kipngetich Mutai, with conspiracy to obtain registration of the property, but the respondents have not charged anyone from Ol Kejuado County Council.

13. Ms. Macharia termed this as unfair prosecution on the part of the 2nd respondent and a violation of Article 50(2)(e) and (b); and that the constant amending of the charges facing the petitioners violates their right to have a trial commence and conclude expeditiously. Ms. Macharia relied on the decision in the **Commissioner of Police and Another vs Kenya Commercial Bank and Another (2013)eKLR** to emphasize that this matter should proceed through a civil process rather than the criminal prosecution.

The 1st, 2nd and 3rd Respondents Case

14. The respondents filed an affidavit sworn by **IP Joseph Wambua** on 14th January 2014. In the said affidavit, IP Wambua, the investigating officer stationed at CID Headquarters Investigations Branch, Nairobi, swears that a complaint was made by one Eunice Karimi M'barine, the wife of the interested party, on 23rd April 2009. Investigations conducted following the complaint led the respondents to conclude that offences had been committed and the petitioners, among others, were charged with several counts in Kiambu Chief Magistrate's Court Criminal Case No 2794 of 2011.

15. According to IP Wambua, the investigations revealed that the interested party acquired UNS residential plot no 159 by virtue of a letter of allotment from the Olkejuado County Council in 1999. Thereafter, in 2000, he purchased the adjacent UNS residential plot no. 160 for his son, Eric Mugendi M'barine, from the allotted holder, one Sheila Khatiavi.

16. He states that evidence on record shows that thereafter, in 2005, the petitioners and their co-

accused engaged the services of a surveyor to undertake a survey of UNS plot nos 159 and 160, which plots were said to have been acquired by virtue of letters of allotment in the name of an entity known as Atlantic Copiers Company. Subsequent to the survey, fresh plot numbers were given in 2006 to the said plots, namely parcel numbers 627 and 628 respectively, by the Director of Surveys, Ruaraka.

17. IP Wambua states that the letters of allotment issued to the interested party and Sheila Khatiavi in respect of plot nos 159 and 160 respectively are authentic, but that the Olkejuado County Council could not trace a letter of allotment issued to Atlantic Copiers Company. Further, documents to ascertain how Simeon Kipngetch Mutai acquired title deeds from the issuing authority, the Olkejuado County Council, could also not be traced. He depones that the acquisition of title deeds by Simeon Kipngetch Mutai and the involvement of the petitioners prior to the issuance of the said title and their subsequent purchase of the titles constituted elements of a criminal offence within the laws of Kenya.

18. Learned Counsel for the 1st - 3rd respondents, Ms. Ngalyuka, submitted that the criminal charges against the petitioners have been framed on the sufficiency of the evidence gathered in the investigation; that the 2nd respondent had occasion to review the evidence and his decision to charge the petitioners was not influenced by any external factors, nor was it intended to cripple the civil process.

19. On the petitioners' complaint that the charges against them had been amended several times, it was the respondents' submission that the amendments were done in the normal process, in the presence of the petitioners, and they had an opportunity to object. They asked that the petition be dismissed as the petitioners had not demonstrated any violation of their constitutional rights, or that the 2nd respondent had acted in excess of his powers in preferring the charges.

The 4th Respondent's Submissions

20. The 4th respondent through its Counsel, Mr. Kamunya, also opposed the petition and relied on grounds of opposition and submissions in support of its case. Its case is that the petitioners are asking the court to unreasonably and unjustifiably interfere with the 2nd respondent's independent constitutional powers under Article 157(10), which the court should not do; that the petitioners' allegations are unfounded as no evidence of intimidation or harassment has been provided; and that the petitioners are attempting a pre-hearing of the criminal case by this court.

21. It is also its case that neither the arrest, indictment or prosecution of a person in relation to or with the commission of an offence amounts to violation of a constitutional right as these are part of the criminal justice system which is sanctioned by the Constitution.

22. To the petitioners' contention that the criminal court seized of Criminal Case No 2794 of 2011 has no jurisdiction to hear the case, it was the 4th respondent's submission that it is trite law that every court has jurisdiction to determine whether it has jurisdiction in a matter; that the petitioners have deliberately refused to bring the issue of jurisdiction before the trial court and have instead filed the present petition under the guise of constitutional violation; and that they have not exhausted all other forums available to them before coming to the constitutional court. Counsel relied on the decision in **Peter Ocharo Anam - & Others Vs CDF Board – Kisii High Court Petition No 3 of 2010** with regard to the need for a party to exhaust the options open to it before seeking constitutional relief.

23. With regard to the petitioners' contention that the trial court in Kiambu has no jurisdiction as the suit land is situated in Kajiado, the 4th respondent submitted that the charges against the petitioners, namely conspiracy to defraud contrary to section 317 and obtaining registration of grant by false pretences contrary to section 320 are contained in the Penal Code; that section 4 of the Criminal Procedure Code, Cap 75, provides for courts with jurisdiction to try cases for various offences; and that the offences that the petitioners are facing are triable in any subordinate court.

24. Counsel submitted that the geographical jurisdiction of the trial court is not sufficient to deprive the 4th respondent of jurisdiction to try the case against the petitioners, and that there were many variables

informing the decision to charge the petitioners in Kiambu, among them the fact that the offences were committed in Ardhi House, Nairobi and the charge sheet was drawn at Muthaiga Police Station where the petitioners were held after arrest.

25. Mr. Kamunya relied on the decision of Lenaola J in **Paul Nganga Nyaga vs Attorney General (2013)eKLR** in which he re-stated the case of **Peter George Anthony D'costa vs Attorney General, High Court Petition no 83 of 2010** on the proper use of the court process. It was the 4th respondent's submission that the petitioners had failed to show that there is any abuse or breach of their rights by the criminal case proceedings, and he asked that the petition be dismissed.

The Interested Party's Case

26. Mr. Ongegu for the interested party agreed with the respondents that the petition had no merit and should be dismissed. He relied on an affidavit sworn by the interested party on 22nd October 2013 and written submissions dated 19th February 2014.

27. In his affidavit, the interested party has made various averments with regard to his complaint leading to the arrest and prosecution of the petitioners. He avers that he was allocated unsurveyed residential plot number 159 Ngong Township by the Olkejuado County Council through the District Allocation Committee vide letter of allotment Ref: No 3731/V111 dated 30th March 1999 and also vide part Development Plan No KAJ 164.98.11 dated 22nd September 1998. He paid the requisite fees, including the survey fee, to the Director of Survey so that the title can be processed, and engaged the services of a private surveyor to survey the plot.

28. He states that he has been paying land rates to date; and that he took possession of the plot and started farming and planted trees on the plot. He also acquired plot no. 160 from the original allottee.

29. He avers that on or about Saturday 11th April 2009, he learnt that there were strangers fencing the two plots who said they had bought the plots. He met the two petitioners who claimed that they had bought the two plots from one Simeon Kipngetich Mutai, the 3rd accused in the criminal case. He states that he then filed Machakos High Court Civil Case No. 120 of 2009 which was later consolidated with the case filed by the petitioners namely HCCC No. 119 of 2009. In the said consolidated case, the court, in its ruling on the interlocutory application on 24th November 2009, gave conservatory orders but directed that the case be heard on a priority basis.

30. Following his complaint, investigations by officers of the 3rd respondent established that the titles obtained by the petitioners had been obtained by fraud.

31. In his submissions on behalf of the interested party, Mr. Ongegu pointed out that in his ruling, Justice Lenaola had directed the plaintiffs to prosecute their case on priority basis, but the petitioners abandoned the case. They had also been delaying their prosecution since they were first charged in 2011, and the present case is yet another attempt to delay the criminal case.

Determination

32. As I understand it from the pleadings and submissions, the petitioners' case is that their rights under Articles 27, 47 and 50 have been violated by their prosecution in **Kiambu Chief Magistrate's Court Criminal Case No. 2794 of 2011**. They are aggrieved by the fact that the prosecution is taking place in Kiambu; that the prosecution has amended the charge several times; that it has not charged an officer of the Olkejuado County Council; and that the issues in dispute are civil in nature and should be allowed to be determined in Machakos High Court Civil Case No. 120 of 2009.

33. Let me observe at the outset that the fact that criminal charges are preferred against a person is not a violation of constitutional rights. The criminal justice system is underpinned by the Constitution, with safeguards placed in the Constitution and statute to ensure protection of the rights of accused

persons. Further, the discretion on when and whether to bring criminal proceedings against a party is vested in the Director of Public Prosecutions, who under Article 157(10), must be independent and not subject to the direction or control of any party. Article 157(10) and (11) which are relevant for present purposes are in the following terms:

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

34. It is, I believe, settled that the court will not interfere with the exercise of powers by the Director of Public Prosecutions unless it is clearly demonstrated that he has acted without due regard to the public interest, has acted against the interests of the administration of justice, or has not taken account of the need to prevent and avoid abuse of the process of the Court. In the case of **Peter George Anthony D'Costa vs AG & Anor, Petition No. 83 of 2010**, the court (**Majanja J**) stated as follows:

“The process of the court must be used properly, honestly and in good faith, and must not be abused. This means that the court will not allow its function as a court of law to be misused and will summarily prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where there is an abuse of the court process, there is a breach of the petitioners’ fundamental rights as the petitioner will not receive a fair trial. It is the duty of court to stop such abuse of the justice system.”

35. In **Michael Monari & Another vs Commissioner of Police & 3 Others Miscellaneous Application No.68 of 2011**, Warsame, J. (as he then was) stated as follows;

"It is not the duty of the court to go into the merits and demerits of any intended charge to be preferred against any party. It is the function of the court before which the charge shall be placed and which shall conduct the intended trial to determine the veracity and merit of any evidence to be tendered against an accused person. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it. There is no evidence to show that the Respondents exceeded jurisdiction, breached rules of natural justice or considered extraneous matters or were actuated by malice in undertaking the investigations against the applicants. The purpose of criminal proceedings is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment."

36. I shall bear in mind these sentiments of the court, which I agree with, in considering the case now before me.

Violation of Article 47

37. The petitioners have alleged violation of their right to fair administrative action guaranteed under Article 47. It is not clear from their pleadings and submissions how violation of this right arises. The 2nd respondent has exercised his constitutional mandate under Article 157 by charging the petitioners with offences upon finding that the investigations by the 3rd respondent have unearthed sufficient evidence to justify a criminal charge. It is not for this court to inquire into the sufficiency or otherwise of evidence relied upon to commence a prosecution. That is the mandate of the Director of Public Prosecutions.

38. Further, as correctly argued by the respondents, the accuracy and correctness of the evidence or facts gathered in an investigation can only be assessed and tested by the trial court, which is best equipped to deal with the quality and sufficiency of evidence gathered and properly adduced in support of the charges.

Violation of Article 50

39. The petitioners allege violation of their rights under Article 50. The said Article contains, at sub-article (2), the guarantees to an accused person facing trial. However, as the Court of Appeal held in **Julius Kamau Mbugua -vs- Republic Criminal Appeal No. 50 of 2008**, the provisions of Article 50 are trial related. It is only if the petitioners are denied an opportunity to present their case in the course of their trial that they can rightly claim violation of their Article 50 rights. On the material before me, I can find no basis for alleging violation of the rights guaranteed under Article 50.

Amendment of Charges

40. The petitioners complain that the respondents have been amending the charges facing them frequently. This, I believe, is within the mandate of the trial court. It has the jurisdiction, under the provisions of section 214 of the Criminal Procedure Code, to authorize the amendment of charges at any time before the close of the prosecution case. The only caveat is that should the court require or authorize an amendment of charges, it must ask the accused to plead to the amended charge, and allow the recall, for purposes of cross examination, of any witnesses who may already have testified. On the material before me therefore, I am unable to see a basis for impugning the alleged amendment of charges facing the petitioners.

41. The petitioners also allege that the amendments to the charge sheet have led to the violation of their right to be tried within a reasonable time under Article 50(2)(e) which provides that:

“Every accused person has the right to a fair trial, which includes the right—

...

(e) to have the trial begin and conclude without unreasonable delay;”

42. I note that the case file for the petitioners opened in 2011, but they were presented in court, according to the charge sheet, in May 2013. According to the interested party, only one witness had testified. The contention by the respondents and the interested party is that the petitioners have been delaying the trial, while the petitioners allege that the amendments to the charge sheet have occasioned the delay.

43. It does not appear to me, from the material contained in the pleadings, that there has been a delay in proceeding with the prosecution; and even if there had been, in what way the amendments of the charges have occasioned the delay. The criminal case was instituted, from the date given in the charge sheet, in 2011, while the petitioners were charged in court in 2013, the same year that this petition was filed. It is therefore my view that aside from the lack of evidence to justify the allegation that there has been a failure to commence and conclude the trial within a reasonable time, the period between the preferment of charges against the petitioners and the commencement of the trial, and the filing of the present petition, is very short and does not justify the allegation of undue delay.

Place of Trial

44. The petitioners are also unhappy that their trial is being held in Kiambu. They contend that the Chief Magistrate’s Court in Kiambu has no jurisdiction to hear the matter as the land in dispute is in Ngong, within Kajiado District. Sections 69, 71, 72 and 74 of the Criminal Procedure Code deal with jurisdiction to try criminal offences and provide as follows:

69. The High Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings.

71. Subject to the provisions of section 69, and to the powers of transfer conferred by sections 79 and 81, every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence.

72. When a person is accused of the commission of an offence by reason of anything which has been done or of any consequence which has ensued, the offence may be tried by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.

73...

74. When -

(a) it is uncertain in which of several local areas an offence was committed; or

(b) an offence is committed partly in one local area and partly in another; or

(c) an offence is a continuing one, and continues to be committed in more than one local areas; or

(d) an offence consists of several acts done in different local areas, it may be tried by a court having jurisdiction over any of those local areas.

45. In the present case, the land title to which is the subject of the criminal investigation and charges is situated in Ngong within Kajiado. There is however, no requirement that the case should be tried within the local limits of the jurisdiction where the land or subject matter of the offence is situated. The place of trial is determined, by the place where the offence was committed, or where the accused was apprehended.

46. According to the respondents, the offences of conspiracy to defraud contrary to section 317 of the Penal Code and obtaining registration of grant by false pretences contrary to section 320 of the Penal Code were committed in Ardhi House, Nairobi. The complaint was also made in Nairobi, and was investigated by the Criminal Investigation Department in Nairobi. Consequently, in accordance with section 71 above, the petitioners should have been, charged in Nairobi. It is therefore not clear why the petitioner and his co-accused were charged in Kiambu.

47. This, however, does not amount to a violation of rights. The Criminal Procedure Code has clear provisions with regard to jurisdiction to try a case, some of which I have set out above. At section 76(1), the Criminal Procedure Code gives the High Court jurisdiction, where there is uncertainty as to the place of trial, to make an order with regard to where a matter should be tried. It provides as follows:

76. (1) Whenever a doubt arises as to the court by which an offence should be tried, the court entertaining the doubt may report the circumstances to the High Court, and the High Court shall decide by which court the offence shall be inquired into or tried.”

48. In the present case, and given the averments that the offences charged were committed on diverse

dates between 13th August 2007 and 23rd August 2007 in Nairobi at the Ministry of Lands, Ardhi House, the petitioners should have been tried before the Chief Magistrate's Court in Nairobi. I shall revert to this issue later in this judgment.

Discrimination

49. The petitioners also allege violation of their right to equal protection of the law guaranteed under Article 27. It is their contention that their prosecution is unfair as the respondents have not charged anyone from the Ol Kejuado County Council. I believe that this is an untenable argument. The respondents have preferred charges against the petitioners and another. The Director of Public Prosecutions has the mandate to prefer charges against the party in respect of whom he has sufficient evidence. It is not for the petitioners or anyone else to determine against whom charges should be brought.

Frustration of Civil Proceedings

50. Finally, the petitioners allege that the criminal prosecution against them was filed to frustrate the civil process, and that the issues in dispute in this matter should be allowed to be determined in Machakos High Court Civil Case No. 120 of 2009. Two observations can be made about this contention. First, the civil case was filed two years before the criminal prosecution was instituted. Consequently, had there been any desire on the part of the petitioners to proceed with the civil claim, it could have been done.

51. Secondly, I note that the court in that case, in issuing the interlocutory orders, directed that the matter be proceeded with on a priority basis. No evidence has been presented to show what steps were taken by the petitioners to prosecute the civil claim, the contention by their Counsel being that the criminal case had diverted their attention from the civil case.

52. More importantly, however, I believe that the provisions of section 193A of Criminal Procedure Code are clear, both in its wording and intent:

“Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings”

53. I believe the intention behind the enactment of this provision was to prevent the frustration of the criminal justice system by parties who would file civil cases in order to evade the criminal justice process in which they were facing criminal cases, with no intention of proceeding with either. It is a provision that in my view served to strengthen the criminal justice system.

54. In the circumstances, I can find no merit in the present petition. Save for the fact that the petitioners should have been charged in Nairobi where the offences were committed, which is not a constitutional issue, no other issue canvassed by the petitioners has any merit.

55. In the circumstances, the consolidated petitions are hereby dismissed with costs, and the trial of the petitioners may proceed.

56. With regard to the place of trial, I direct that the case facing the petitioners be transferred to the Chief Magistrate's Court in Nairobi.

Dated, Delivered and Signed at Nairobi this 14th day of October 2014

MUMBI NGUGI

JUDGE

Ms Macharia instructed by the firm of Machira & Co. Advocates for petitioners

Ms Kithiki instructed by the Director of Public Prosecutions for 1st, 2nd and 3rd respondents

Mr Kamunya instructed by the State Law Office for the 4th respondent

Mr Ongegu instructed by the firm of Njenga Mbugua & Nyanjua & Co. Advocates for interested party.