



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT KERUGOYA
SUCCESSION CAUSE NO. 144 OF 2014
IN THE MATTER OF THE ESTATE OF MWANGI KINYUA (DECEASED)

WILSON KINYUA MWANGI.....1ST ADMINISTRATOR/APPLICANT

VERSUS

GRACE NJERI MWANGI2ND ADMINIATRATOR/1ST RESPONDENT

**ROSE WANJIRU MWANGIBENEFICIARY/2ND
RESPONDENT**

GLADYS NJOKI MURAGURI.....BENEFICIARY/3RD RESPONDENT

HELINA NJERI WAMBUA.....BENEFICIARY/4TH RESPONDENT

RULING

[1] The only question before the Court in the application dated 11/3/2024 is whether the assets in the informal settlements being alleged four rooms at Mariguini village South B and 6 rooms Mlango Kubwa- Mathare or the rental income therefrom should be distributed to the beneficiaries of the Deceased herein according to the rules of intestacy.

[2] There being no contest on the distribution of the estate assets as set out in the Will, the Court on 23/4/2024 gave directions of the hearing of the contested inclusion of 6rooms at Mlango Kubwa and 4 rooms at South B Nairobi by oral evidence if necessary as follows:

“Court:

1. *A confirmed grant to issue to included properties in:*
 - a. *Applicants list dated 20th April 2024 (items 1-20)*
 - b. *Applicants list of assets Nos. 1-5 dated 20th March 2024.*
2. *The parties to file factual Affidavits and submissions on the two contested assets, namely:*

- a. 6 rooms in Mlango Kubwa.
- b. 4 rooms in Mariguini.
3. If need be a viva voce hearing to be held.
4.”

[3] The Respondent relied on the Affidavit of Rose Wanjiru Mwangi of 1/7/2024 and its annexures and the Applicant a supporting affidavit of 26/7/2024.

[4] The Court subsequently directed a viva voce hearing and the parties lead evidence as follows: “*Hearing viva voce for the intestate property on 9th October 2024.*” The applicant had filed an Affidavit dated 26th July 2024. Annexures WKM 1 – 3. Annexure WKM 4 was expunged with leave of Court. The Respondent relied on affidavit of Rose Wanjiru Mwangi deponed 1st July 2024 with 3 annexures RWM 1 – 3.

[5] The Court has considered the evidence presented by the parties before the Court by oral testimony and affidavits in support and opposition to the application.

[6] **AW1 WILSON KINYUA MWANGI** relied on his Affidavit with annexures WKM 1, 2 & 3 and the Affidavit and annexures were adopted as his evidence in chief. On Cross-examination by Mwaura he said: _

*“Paragraph 3 of the Affidavit – **there are 4 rooms in Mariguini South B. I know the rooms belonged to deceased. I have no document to prove ownership. There are 4 rooms there. There is no document showing the rooms. The rooms are built in mabati. There is no place which indicates my father’s name. Shown WKM3. This one refers to 6 Rooms in Mathare Area. There is a letter from Chief for South B. It is not in the documents provided. There are 6 Rooms in Mathare that belonged to deceased. Shown RWM 2. This is a letter from Chief. The Chief is Kithinji. He is the one that wrote WKM3. It is not true that any houses/rooms caught fire. There are about 50 houses that burnt. The Mathare houses were built by my father. Shown paragraph 6 Affidavit Rose has been collecting rent. I used to collect rent for Mlango Kubwa and Rose collected for Mathare. I did not attach bank statement to show collection of rent. [Shown paragraph 9.] I got a Sale Agreement from the Chairman of Nyumba Kumi Chair. We took sale Agreement with my***

sister. WKM 2 is the sale Agreement. The Chair of Nyumba Kumi is not here.

[Shown paragraph 11] says my father bought the rooms in Mlango Kubwa. My father built the rooms. I don't have receipts. I went to the house. It is there. I was with the Chief when we went Mlango Kubwa. Tenants said they pay Mpesa. I went to the plot with the Chief. If the Court wants other witnesses can be called. I have no evidence of a caretaker. I have no photos to show we went with the Chief.

[7] On Re-examination by Wandia, he said: *"It is true I said I don't have documents to show. The houses have numbers. I don't have titles or documents to show the plot. The Mlango Kubwa houses I built then with my father. In 1978 I left to Kisumu. I collected rent for a few years. I know the houses and can identify. The Chief wrote WKM 3. I went with him to the site. I was given the Sale Agreement for South B by the Nyumba Kumi Chair i.e WKM2. The Chief gave me document for Mariguini South B. South B plots. I also spoke to tenants and they confirmed the rent was 4,000/=. I have no statements of bank. The South B houses were bought by my father – 4 rooms. Mlango Kubwa houses he built and 6 rooms. Rose Wanjiru takes the rent for them.*

[8] For the respondents RW1 SOLOMON MURAGURI WANGARI, Assistant County Commissioner for Dagoretti Sub County, a Civil Servant presently in Dagoretti Sub County testified as follows:

*"[Shown letter dated 15.3.2024.] At the time I was in South B Ward. I wrote this letter and signed. It can be produced as an Exhibit 2. I know Rose Wanjiru Mwangi. Having been an Assistant Chief of South B from 2008 up to 2010. Later I began Ag. Chief for the Location. I then was promoted Assistant County Commissioner. I became Chief in 2014. I was confirmed as Assistant County Commissioner in 2021. I was transferred then later brought back to South. I have been in Provincial Administration for 16 years. **Rose Wanjiru is an owner of a structure in Mariguini in South B.** The structures have no ownership document. An owner owns only the materials they build with. The land is owned by the Government. Rose has 4 Rooms in Mariguini. The rooms are built of iron sheets and rafters – temporary building. The structures are on the land*

was owned by a Politician. There used to be fierce fires there. In 2004 a fire destroyed everyone. After the fire the owner built the house. **Rose built the 4 rooms after a fire. The property is owned by the Government. Roses structures were owned by her since 2004.**

[9] On Cross examination by Wandia he said:

*“I wrote the letter on Rose’s Wanjiru’s behalf. Rose came to me with other family members who I did not know. I wrote the letter in South B where she came to see me. I was in the office of Assistant County Commissioner South B. I was transferred this year in May. I relied on a Register from Ministry of Lands State Department of Housing. The Register only operates in South B Division. I don’t have it with me (the original). I did not attach the Register. I assist merely telling stories. There is an ID of the person. I did not attach the ID of the person. I did not attach the ID of Rose. I have not attached a document of ownership of that house. Paragraph 1 shows the land is under Social Affordable Housing. I did not attach any document to show this land is under Social Affordable Housing. There was a fire in 2004. We took photos of the fire. I did not attach the photos. The Register occurred after Social Housing Project started. **The persons who occupied the houses in 1987 I cannot tell. When Rose came to my office I wrote the letter. I can show and identify the rooms as I worked there for long. I can’t tell who occupied the rooms in 1987.***

[10] **Re-examination by Mwaura**

“I wrote the letter in my official capacity as Assistant County Commissioner. I relied on sources in Ministry of Lands on a Register in Affordable Housing. The land is Government Land public property. At the time of the fire in 2004 I was not employed by then. The 2004 was a large fire – Everyone knows of it. I also relied on the Settlement Executive Committee jointly with village elders. Section Ex Com is for Mariguini slums. It acts as liaison with Ministry of Land Affordable Housing. I did not write the letter to favour any person. I wrote the truth. Rose asked us to confirm she is the owner.

[11] **RW2 Rose Wanjiru Mwangi**, the deceased's daughter and brother to the applicant Wilson Kinyua Mwangi testified that –

“[Shown paragraph 4 of her Affidavit.]

6 Rooms in Mathare Mlango Kubwa – 1 don't know them. *I stand by the Chiefs letter of 2024. Mariguini South B I have 4 rooms. There is no time these rooms belonged to someone else. I built the rooms after there was a fire. The rooms are built on Government Land.*

[12] On Cross-examination by Wandia she said:

“I was there when Wilson testified on 4 Rooms South B and 6 Rooms Mlango Kubwa. I built the 4 Rooms in South B in 2004. In 1987 I don't know who owned this. In 2003 I don't know who owned them. I built in 2004. At the time I found the site had been burned in 2004. I went to the Chief. People went to Chief and if the plot had no owner you were told to build. Shown Exhibit 3. These show the 4 rooms.

Shown Wilsons Affidavit. Exhibit 1 this is an Equity Bank Account. It has 3 names. We were to “change” for raising money. We did not open the account to enable rent to be paid in. Each house is 4 rooms. I built them in 2004. There is nothing attached to show the ownership of the rooms. On Mariguini Room Exhibit 3 of Applicants Affidavit. This Chiefs letter says there is rent. I have no objection to those rooms being distributed to the estate of deceased.

[13] On Re-examination by Mr. Mwaura she said:

“In 2004 I built the South B houses. They are mine. There is no map showing the rooms shown by Respondent 2 are same as mine. There was ... Where I have built is Government land. In my Affidavit I said there was no map to show whose they were. There is no witness who has shown the Room were under deceased.

[14] **RW3 GLADYS NJOKI MURAGURI**, Deceased's daughter testified that -

*“On South B houses deceased was called to take houses. He told me and we went with him. He bought the land. I saw tenants in the houses and I said I can't keep up with rent. I returned the houses to deceased. **When Rose Wanjiry got a job in Nairobi she asked if she could collect rent.***

When deceased died Rose took over the house. The houses were there when the deceased bought the land.

[15] On Cross examination by Wandia she said

“[Shown photos at exhibit 3 of Rose Wanjiru Affidavit. These are the houses we went to see with Deceased. He bought them. They were built by the person who sold them to deceased. They were bought in January 6 1987. I heard of a fire I recall where the plot was. Therese was fire there. I don’t know if the houses burnt. Shown exhibit B. I heard they were burnt but I don’t know if they were. I was told by one old lady Wairimu who I lived with in Nairobi.

[16] On Cross-examination by Mwaura

“Deceased bought the houses. They were sold to deceased by Elijah who died. This was in January 6 1987. I later heard that the place was burned in a fire. I don’t live there so I don’t know how big the fire was. Houses burned but the plot remained. The person who took rent is the one who built. The plot that remained belonged to deceased. This picture is it the same as what you saw in 1987? Yes, the houses are as they were in 1987. I don’t know – there are 3 pictures. The picture at the bottom in Rose Wanjiru Affidavit is the one which was deceased house. Nothing was put in writing at the time of purchase. There is no document to show which plot. Rose built in deceased’s shamba. I have no document to verify with. Whoever built after the fire built on the deceased’s plot.

[17] **RW4 HELIMA NJERI**, 4th Respondent testified that-

“[Two] (2) Properties not indicated in the will. One of the property has (6) houses at Mlango Kubwa Nairobi. So far as I know the plot of which the (5) houses are constructed does not have a parcel number. The (6) are single rooms with toilet. There was an issue about the plots whereby the matters was to the Chief Kibirigwi location. Family member met before Chief including my mother’s sisters and brother and our mother. My sister Gladys was also present. The dispute was as in (2) properties are not indicated in the will, it was for the family to decide on their distribution. The claimant Rose Wanjiru was directed to give my mother

one property of the (2) so that my mother could get money for upkeep. She declined and said that deceased had given her plot with (6) houses at Mlango Kubwa to her. The South B plot I do not know the parcel number. It has (4) single rooms and plot near church. My auntie Rose Wanjiru claims she bought the houses yet I have a letter when the house was bought by my grandfather, the deceased. The letter is dated 6.1.1987. It was written by Mbuthia Kanyango to Mwangi Kinyua.

[18] On Cross-examination by Ms. Wandia she said:

“I have a certificate of Translation dated 1987. I have copy. Why is the name of Bank Account No. Equity – 0040184802968? Why is your name in the bank Account. Last year we had an order from mediation concerning the two houses. We agreed to open (1) Bank Account at Equity – Bank. This was agreement at mediation so that the house rent could be deposited. Subsequently, they changed their mind. It was Rose Wanjiru. It was agreed for collection of rent from the two (2) properties. [Photographs at page (12) of Affidavit of Rose Wanjiru] Are you able to identify the (4) rooms in dispute. Yes, those are the (4) rooms in dispute.

[19] On Cross-examination by Mr. Mwaura she said:

“[19.1.2025 you said you raised an issue with Chief Kibirigwi] Yes. Is it true the properties are in Mathare and South B Nairobi? Yes. It is true but Kibirigwi is in Kirinyaga. Chief of Kibirigwi does not have jurisdiction for property in Nairobi? Chief was trying to help us as a family. The Chief is not coming to Court as a witness. The structures in dispute are in Government land. It does not matter where they are situated. The land belong to the deceased. Any search that they belong to the Deceased? I do not have. The structures have tenants? Yes. There are tenants. Are there witnesses to any payment on the structures? The tenants were advised to pay through care-taker. Any proof of payment on other alleged structures? I do not have any proof of payment. [Agreement dated 6.1.1987] it is my aunt who made this document but she cant communicate. I am communicating on her behalf. Does this document

indicate the parcel of land? In Mathare or South B? This is South B. Any where on the document indicating South B? No.

[Rental Income in Equity Bank Account] Is it true that there were shares allocated to the beneficiaries jointly in respect of (3) KCB Accounts? As per the Grant dated 16.9.2024?

I am not aware of the shares in KCB.

In the agreement to collect rent and put into Equity Bank Account. **There is no Written Agreement on the structures' rent being deposited at Equity.**

[20] On Re-examination she said -

“We met with advocates and we tried settle the dispute and we agreed but the rent for houses in Mlango Kubwa and South B to be deposited into the Equity Bank Account at Karatina branch. The account was opened by myself for my late mother, Rose Wanjiru. Wilson Kinyua my uncle, Gladys Njoki, and Grace, all the (5) siblings.

Submissions

[21] In brief, the substance of the competing submissions of the Counsel for the parties respectively dated 9/4/2025 and 15/4/2025, is set out below. For the Applicants, Counsel urged that:

“Your Honour, it is evident that the four rooms in Mariguini Village, South B, were part of the deceased's estate. Although a statement from the deputy commissioner suggested that the property is located on government land, no official documentation has been presented to substantiate this claim. The rental income generated from these rooms is undeniably part of the deceased's estate, as the deceased exercised possession, generated income, and maintained control over the property during his lifetime.

ISSUE 3: Whether the rental income generated from the 4rooms in Mariguni Village- South C and 6 rooms in Mlago Kubwa Mathare should be equally distributed as per the rules of intestacy

Section 35 of the Law of Succession Act mandates equal distribution of an intestate's estate among the lawful beneficiaries. This principle was

emphasized in Re Estate of John Musambayi Katumanga - Deceased [2014] eKLR where the Court held that:

"The spirit of Part V, especially section 35,38 and 40 is equal distribution of the intestate estate among the children of the deceased. Equal distribution is envisaged regardless of the ages, gender, and financial status of the children. "

The Applicant submits that the rental income derived from the suit properties having been established as part of the deceased's estate, must be distributed equitably among all beneficiaries. The joint account, established for the purpose of collecting rent, reflects an implicit agreement among the Respondents regarding the management of rental income. This account further evidences that the rental income was treated as part of the deceased's estate. Therefore, the income collected in this account, and any subsequent amounts collected by the 2nd Respondent independently, should be distributed equally among all beneficiaries as mandated by Section 35 of the Law of Succession Act.

Further, the purported sale of the 4 rooms in South B by the said 2nd respondent is invalid. The 2nd Respondent lacked the legal capacity to sell the property. Consequently, the sale agreement dated 3rd November 2019 is null and void. The Applicant prays for the property to revert to the deceased's estate for future collection of rent by the beneficiaries and equitable distribution. Your Lordship, it is evident that the rules of intestacy mandate equal distribution of the deceased's estate among the beneficiaries. In summary my lord, the Applicant, therefore, humbly submits that the rental income generated from the two properties be included in the intestate estate for equitable distribution among the beneficiaries and the two properties be managed and rent collected jointly by all beneficiaries. The Applicant therefore respectfully prays that this Honourable Court grant the prayers sought in the interest of justice and fairness."

[22] For the Respondents, it is submitted as follows:

“17. Your lordship, the 4th respondent /beneficiary claimed that they opened a joint account, for the reason that they had all agreed that rental income be put in that account. However, nothing was shown or exhibited over:

- a) The purpose of the said joint account by the beneficiaries.
- b) An agreement or minutes to confirm that the account was for rental income of the mabati structures or for the sale of shares in the will.

18. There does exist bank accounts in the written will adopted by the Honorable Court, in which the parties had agreed that once the shares were sold, they would have the same deposited in the joint account, since the shares in the bank accounts feature all beneficiaries herein. The 4th respondent was simply twisting issues in order to gain unlawfully and improperly”

Determination

[23] The issue for determination is whether the 10 rooms subject of the application for intestate distribution were property of the deceased from which he derived rental income and which as free property should be shared among his beneficiaries outside the Will.

[24] The law of evidence is clear of the burden of proof, incidence of the burden and proof of particular fact as set out at sections 107,108 and 109 of the Evidence Act as follows:

“107. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

[25] In this case, the burden of proof is squarely on the applicant, as the applicant bearing the burden and incidence of proof in terms of section 107 and 108 of the Evidence Act, who sought judgment as to the legal right to inherit the rooms and rents therefrom dependent upon the existence of facts which he asserted that the deceased was the owner of the rooms, having, as he alleged, constructed or bought the 6 rooms at Mlango Kubwa and bought the 4 rooms at South B Mariguini, Nairobi. The 4th Respondent also burden for proof particular fact, in terms of section 109 of the Evidence Act, that the deceased had bought the South B rooms from one Mbuthia Kanyango by an agreement dated 6/1/1987.

[26] The Respondent’s evidence by RW1 the Assistant County Commissioner confirming that the 2nd Respondent Rose Wanjiru is an owner of a structure in Mariguini in South B on government land having rebuilt the structures following a fire in 2004. RW3 agreed that here had been a fire and that the person who built the structures was entitled to rent but urged that they were houses sold to deceased by Elijah in January 6 1987 and *“I later heard that the places was burned in a fire. I don’t live there so I don’t know how big the fire was. Houses burned but the plot remained. The person who took rent is the one who built. The plot that remained belonged to deceased.”*

[27] No title to land was produced that the court must accept that the land was government land as testified by the Assistant County Commissioner RW1. There cannot be title to government land and all the person who built a structure on such land would be entitled to ius any rents for the time being accruing on the structures.

[28] The evidence by the 4th respondent of an account for the collection of rent does not aid her claim to the suit property because to her own admission it was a mechanism adopted by the parties when the matter was referred to family mediation. It is not evidence of an admission that the properties belonged to the deceased.

[29] The applicant did not attach bank statement to show collection of rent; the evidence of the Sale Agreement from the Chairman of Nyumba Kumi Chair was no corroborated by any testimony by the Chair of Nyumba Kumi and the evidence Mlango Kubwa rooms was not clear whether the deceased **bought** the rooms or he had built the

rooms and the applicant could not supply any receipts on the construction, and the Chief Mlango Kubwa or any Tenants who said they paid by Mpesa, were not called as witnesses. Nor of the alleged caretaker of the houses. The applicant's testimony was self contradictory when he asserted that *"It is not true that any houses/rooms caught fire. There are about 50 houses that burnt. The Mathare houses were built by my father."* This required cogent evidence to show that the deceased had constructed his rooms; that his rooms had not burned down as alleged by the respondents, or that if they had burned, he had constructed anew.

[30] The evidence of the 4th Respondent who supported the case of the applicant herein only pointed to the physical existence of the dispute rooms and of family dispute resolution attempts before the Chief at Kibirigwi, outside the local jurisdiction where the property are situate and before Mediation where it had been agreed that an account be opened, and one was opened at Equity Bank, for collection of rent from the properties. Indeed, on cross-examination the 4th Respondent confirmed that there had not been any agreement on the rent from the structures being deposited at Equity Bank.

[31] A purported agreement of sale dated 6/1/1987 could not be authenticated as the author Mbutia Kanyongo or any witness to the agreement were not called as witnesses. Apart from the noted failure to call the alleged seller of the house or any of the two witnesses shown in the alleged agreement for sale produced as exhibit by the 4th Respondent the terms of the alleged agreement dated 6/1/1987 is unclear as it appears to be a compensation for loss of a house of another person George Maina and not 4 rooms and the location of the house is not disclosed on the agreement as follows:

"Date :6/1/1987

I Mwangi Kinyua have given Kenya Shillings Twenty Five Thousand (25,000/-) to Mbutia Kanyago and Elija Nyaga for purpose of buying and paying for loss of the house of George Maina C-7 to be mine from today 6/1/1987.

- 1. Vendor – Mwangi Kinyua*
- 2. Receiver – Mbutia Kanyago*
- 3. Witness – Nyaga*

Now the house C-7 belongs to Mwangi Kinyua

- 4. Witness – Wairimu."*

[32] The document dated 6/1/1987 is really not an agreement between a seller and a buyer but rather a unilateral statement allegedly by the deceased indicating a payment for the house which is not acknowledged by the alleged seller, and it cannot be taken to be a valid agreement. The witnesses to the alleged agreement Nyaga and Wairimu were not availed. Neither were the area Chief who could testify of the nature of the transaction or the C-7 house owner George Maina. It was not clear whether the George Maina house C-7 was the same as the 4 rooms South B Mariguini the subject of this application.

[33] Curiously, on cross-examination, the witness RW4 said the document on the sale of the structure as written by her auntie who could not communicate and she was communicating on her behalf! She said ***“[Agreement dated 6.1.1987] it is my aunt who made this document but she cant communicate. I am communicating on her behalf.”*** The validity of the agreement of 6/1/1987 is in serious doubt but the 2nd Respondent claim relate to the period after the destruction by fire and here building of structures thereon in 2004.

[34] On the state of the evidence presented by the applicant with support from the 4th Respondent, it is not possible to validly challenge the 2nd respondents exercise of ownership rights by sale of the South B rooms.

[35] On the evidence, the ownership of the land upon which the rental rooms are situate is not in question. It is government or trust land not belonging to the deceased, and the land is not part of the estate of the deceased as his free property in accordance with the Law of Succession Act.

[36] The Court would, however, agree with the applicant, that the **rental income** for the rooms would as income to the deceased be part of the estate of the deceased. The only qualification here is that the **physical rooms**, not the land on which they stand being government land, and the rental **income** must be shown on evidence to have belonged to the deceased, to make an asset part of his free property, which may now be distributed intestate.

[37] On this count, the applicant has failed to demonstrate by cogent evidence, on a balance of probabilities, that the rooms subject of the application were property of the deceased. There was evidence of a fire destroying the rooms and the 2nd Respondent testifying that she constructed new rooms on the land which not being privately owned land could be constructed by who received the authorization by the allocating

government officials. The Assistant County Commissioner confirmed the fact of the fire in 2004 and the reconstruction of the structures by the 2nd Respondent. Although, the RW3 Gladys accepted the fact of the fire she contended that the person who built the structures built on the deceased's land. Against the evidence of RW1 that the land was government land, there should be produced cogent evidence by the applicant to support the 3rd Respondent's contention that the land belonged to the deceased. Significantly, the applicant has not claimed the land as an asset of the deceased but rather the rents accruing for the rooms at the two sites of South B and Mlango Kubwa Nairobi.

[38] The applicant did not call any evidence to show that the area Chiefs and the tenants had acknowledged the deceased as the owner of the rooms and their landlord and were paying rent to him or on his instructions.

[39] Most importantly, the Deceased had himself, as pointed out by the Counsel for 2nd Respondent, not included the two buildings as part of his estate of his Will, lending credence to the view that he acknowledged that the building were not part of his estate.

ORDERS

[40] Accordingly, for the reasons set out above, having found that on the evidence the applicant has not discharged his burden of proof on a balance of probabilities that the two buildings, namely 4 rooms at South B Mariguini Nairobi and 6 rooms at Mlango Kubwa Nairobi, are part of the assets of the estate of the deceased, the issue of distribution and mode thereof does not arise.

[41] The application dated 11/3/2024 is declined.

[42] There shall be no orders as to costs.

Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Wandia for Applicants.

1st, 3rd and 4th Respondents in Person.

Mr. Mwaura for the 2nd Respondent.