



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 55 OF 2012 (formerly 63 of 2009)

MANCHESTER OUTFITTERS LIMITED:.....:PLAINTIFF

-VERSUS-

PRAVIN GALOT:.....:1ST DEFENDANT

RAJESH GALOT:.....:2ND DEFENDANT

GANESH GALOT:.....:3RD DEFENDANT

KEVIN GALOT:.....:4TH DEFENDANT

MANCHESTER OUTFITTERS (EAST AFRICA) LTD:.....:5TH DEFENDANT

RULING

1. It is important to note, firstly, that the representation of the Plaintiff herein is contested, with various law firms claiming to appear for the Plaintiff in this matter.
2. On 4th May 2015 when the hearing of the suit herein was due to proceed, Mr. Kago counsel for the Plaintiff informed the court that he had filed a Preliminary Objection on points of law which he asked the court to determine before the matter could proceed.

The court allowed the said preliminary objection to be canvassed through written submission which have now been filed, and hence this Ruling.

3. The said Preliminary Objection is dated and filed herein on 29th April 2015, and raises a Preliminary Objection to the entire proceedings, on the following grounds:-

1. *That the issue of Representation of the Plaintiff has been fully settled vide the ruling delivered by the Honourable Justice Muga Apondi in this matter on 27th May 2011, which ruling has neither been set aside, appealed against and/or otherwise discharged and to that extent the same is Res judicata.*
2. *That moreover, the firm of Messrs Havi & Company Advocates (having taken over from the firm of Messrs Rachier & Amollo Advocates, which was declared by this Honourable Court vide the said ruling of 27th May 2011 to have ceased being on record in this matter on 15th July 2009 by virtue of the Notice of Change filed by the firm of Majanja Luseno Advocates) have no*

- authority to have acted in any manner and/or continue to act for the Plaintiff in this matter.*
3. *That the conduct and/or representation by the said firm of Messrs Havi & Company Advocates on behalf of the Plaintiff herein is illegal, in breach of the said ruling and directions by this Honourable Court of 27th May 2011, contemptuous and a nullity.*
 4. *That all the pleadings, proceedings, submissions, consents including resultant consent orders and other orders and/or directions in this matter made by and/or with the participation of the firm of Messrs Havi & Company Advocates and/or the firm of Messrs Rachier & Amollo Advocates on behalf of the Plaintiff subsequent to the ruling of Mr. Justice Muga Apondi made on the 27th May 2011 are a nullity and of no legal consequence and should be expunged from the record.*
4. The Preliminary Objection is opposed by all the law firms coalasing around M/s Havi & Company Advocates. All the Defendants support the Preliminary Objection and have filed submissions in support thereof.
 5. On 4th May 2015. the court directed that the Preliminary Objection would be canvassed through brief written submissions, limited to four (4) pages which the parties have filed.

ISSUES EMERGING FROM SUBMISSIONS

6. Mr. Kago submitted that the Plaintiff's Notice of Preliminary Objection is predicated on the Ruling delivered by the Honourable Justice Muga Apondi on 27th May 2011 in this very suit on the issue of representation as regards the plaintiff. Relying on the record, Mr. Kago submitted that the firm of M/s Rachier & Amollo Advocates had purportedly, on behalf of the Plaintiff, filed a Notice to discontinue this entire suit. The Notice was dated 16th February 2010. On the strength of the said notice, the Deputy Registrar of this Honourable Court, on 26th February 2010, entered an order wholly discontinuing this suit. The discontinuance was done after the firm of M/s Majanja Luseno & Company had filed a Notice of Change of Advocates to take over the conduct of this matter on behalf of the Plaintiff from M/s Rachier & Amollo Advocates way back on 15th July 2009. The Notice of Change had never been challenged by the said firm of M/s Rachier & Amollo or at all. In view thereof, Justice Muga Apondi while determining the Application dated 10th March 2010 challenging the said order for discontinuance of this entire suit as aforesaid, found that the discontinuance was irregular because the firm of M/s Rachier & Amollo no longer represented the Plaintiff by virtue of the said Notice of Change dated 15th July 2009. In his own words, the learned judge in part rendered himself as follows:-

“The effect of the change of the advocate means that it is only the advocate on record who can now conduct the case on behalf of the plaintiff. That means that the firm of Rachier & Amollo Advocates did not have authority to file the notice of discontinuance in this case.”

7. Mr. Kago submitted that in so finding and in particular that the firm of M/s Rachier & Amollo Advocates did not have the conduct of this matter on behalf of the Plaintiff, this Court breathed life back into this case, which had been strangled by the said Advocates. The said firm of M/s Rachier & Amollo Advocates was obviously aggrieved by the said Ruling, and they instantly applied for leave to appeal, which the court granted. However, despite the said Leave, no appeal was filed and to date, the said ruling, findings and/or orders of the Honourable Justice Muga Apondi of 27th May 2011 have neither been impeached, appealed against, set aside, varied and/or discharged. As such, and for the purposes herein, the said ruling remains good, as is evidenced by the continued existence of this suit. Mr. Kago submitted that the above notwithstanding, Mr. Arwa from the firm M/s Rachier & Amollo Advocates on subsequent days after the said ruling appeared and attended this Court holding himself out as representing the Plaintiff, despite the above orders. In particular, on 15th December 2011, 31st January 2012, 14th February 2012 as well as 24th February 2012 the lawyers attended court, and even signed a consent in this matter on 24th of February 2012.

8. To complicate the matter, the firm of M/s Havi & Company Advocates, by Notice of Change of Advocates dated 28th of March, 2012 purported to take over the conduct hereof on behalf of the Plaintiff from the firm of M/s Rachier & Amollo Advocates and have since participated in all the proceedings herein to date, in that capacity. Significantly, the firm of M/s Majanja Luseno & Company Advocates, which was vindicated by this Honourable Court vide the said ruling of 27th May 2011 as having the conduct of this matter on behalf of the Plaintiff has, as the record will bear out, since been replaced by the firm of M/s Sagana, Biriq & Company Advocates and lately by the firm of M/s H. Kago & Company Advocates who have moved the instant Preliminary Objection on behalf of the Plaintiff. Mr. Kago submitted that in this case, the issues of representation raised do not require factual underpinning; they are apparent from the pleadings as well as from the court record.
9. Counsel submitted further, that the said issues raised in the Preliminary Objection are of a legal nature, which go into the fundamentals of a trial process as well as the integrity and legitimacy of these proceedings. In view thereof, the same warrant to be determined *in limine*. To that end, counsel submitted that, it was not in doubt that a Ruling was made by this Court as to which Advocate had the conduct of this matter on behalf of the Plaintiff to wit M/s Majanja Luseno & Company Advocates and by extension M/s Sagana, Biriq & Company Advocates who took over from M/s Majanja Luseno aforesaid and now M/s H. Kago Company Advocates who have taken over from M/s Sagana, Biriq & Company Advocates. Similarly, there is no doubt that this Court has found that the firm of M/s Rachier & Amollo Advocates has no conduct of this matter on behalf of the Plaintiff. By necessary inference therefore, the firm of M/s Havi & Company Advocates has no standing herein for the Plaintiff having replaced the said firm of M/s Rachier & Amollo, which had been impeached by this Court. Invariably, the said firm of M/s Havi & Company cannot replace an entity that is not there, otherwise it is akin to locking the stable door after the horse has bolted. Counsel submitted that without a doubt, therefore, the said Notice of Change dated 28th March 2012 by M/s Havi & Company Advocate to take over the conduct of this matter from M/s Rachier & Amollo Advocates and the continued actions by the said firm of M/s Havi & Company in view of the foregoing are irregular, illegal, incompetent, misleading, contemptuous and in blatant disregard of this Court's findings.
10. Counsel submitted that the Preliminary Objection is not geared at pre-empting the substantive findings of this Court as to Shareholding and Directorship of the Plaintiff but for good order, sound trial practice, integrity and legitimacy of Court orders and Judicial processes as well as to alleviate absurdity and embarrassment herein. He further submitted that the record should be very clear that for purposes of this case, the firm of M/s Havi & Company Advocates are not properly on record for the Plaintiff in light of the foregoing. Mr. Kago submitted that the fact that the said firm of M/s Rachier & Amollo Advocates and subsequently M/s Havi & Company Advocate has continually been entered in the Coram as being for the Plaintiff and have continually held themselves out as such cannot salvage the illegality and irregularity thereof given that there can be no acquiescence to an illegality whether by the Court or the litigants as was held in **Patrick Kiseki Mutisya (Suing As The Personal Representative To The Estate Of Nzomo Mutisya (Deceased) V K.B Shaghani & Sons Limited & Another [2012] eKLR**. Counsel submitted that instructively, the question of representation of the Plaintiff having been determined in this very suit as aforesaid, the same is *Res Judicata* within the meaning of Section 7 of the Civil procedure Act in so far as it relates to representation herein, and that this Court, irrespective of it being constituted as a three Judge bench, cannot sit on appeal against its own orders as was held in **National Bank Of Kenya Ltd V. Ndungu Njau** Nairobi C.A. Civil Appeal No. 211 Of 1996.
11. Mr. Kaka Kamau for the 1st, 3rd, 4th and 5th Defendant also supported the Preliminary Objection, and submitted that M/s Havi & Company Advocates have no authority to act for the Plaintiff in the case because it purported to replace M/s Rachier & Amollo Advocates who had ceased to act. Mr. Kamau submitted that the firm of M/s Majanja Luseno & Company Advocates had by a Notice of Change of Advocate replaced M/s Rachier & Amollo Advocates. Justice Muga Apondi ruled:-

“From the proceedings in the file that notice has not been changed by anybody...The effect of the change of advocate means that it is only the advocate on record (read

Majanja Luseno & Company) who can now conduct the case on behalf of the Plaintiff. This means that the firm of Rachier & Amollo Advocates did not have authority to file the Notice of Discontinuance in this case.”

Counsel submitted that M/s Rachier & Amollo Advocates were therefore effectively out of the record. It was therefore an erroneous exercise for M/s Havi & Company Advocates to file a Notice of Change purporting to replace and remove an entity that was no longer there. The conduct of Havi & Company Advocates on behalf of the Plaintiff is illegal and a nullity.

12. On his part Mr. Ambani for the 2nd Defendant also supported the Preliminary Objection, submitting that the issue of the representation of party to a suit goes to the root of such matter. Once it is established that an Advocate has no instructions to appear for a party, then the Court is enjoined to stop any further proceedings. The Court in this Case is enjoined to adhere to its own order of 27th May, 2011 and uphold the Preliminary Objection as raised, otherwise it will deprive itself of jurisdiction to entertain the suit if the firm of M/s Havi & Company continues to appear in the matter. Counsel cited the case of **KENYA HOTEL PROPERTIES LIMITED V WILLISDEN INVESTMENTS LIMITED & 4 OTHERS [2013] eKLR** where the Court of Appeal stated that;-

“. . . In this instance we would recall that advocates of Utilitarianism, like the famous philosopher John Stuart Mill, contend that in evaluating the rightness or wrongness of an action, we should be primarily concerned with the consequences of our action and if we are comparing the ethical quality of two ways of acting, then we should choose the alternative which tends to produce the greatest happiness for the greatest number of people and produces the most goods. Though we are not dealing with ethical issues, this doctrine in our view is aptly applicable.”

From the 2nd Defendant's point of view it is so confusing to have 2 sets of rival and highly contentious submissions all emanating from the Plaintiff. It thus follows that this Court in evaluating how wrong or right it was to allow the firm of M/s Havi & Company Advocates to continue appearing for the Plaintiff, it should be primarily concerned with the consequences of its action and if it is to compare the ethical quality of two ways of acting, then it should choose the alternative which tends to produce the greatest happiness for the greatest number of litigants in the suit and produces the most desired result.

13. Miss Munyaka, counsel for the 1st and 2nd Interested Parties, also submitted that the issue of representation is a pure point of law, and that this court has previously ruled on the issue. Counsel submitted that the proceedings of 27th May 2011, which this Court is privy to, will bear witness that a Ruling and Order of the Court was indeed issued and is still valid up to date. It is trite law that a court order must be obeyed, and if any party is dissatisfied with it must apply to either set it aside or stay its operation. This has not been done and therefore the said Order remains valid as a court order. As such, the Court having made a determination on the matter cannot be taken back to the merits of the matter. Counsel cited Section 7 of the Civil Procedure Act which provides that:-

“no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by that Court.”

Sections 1A, 1B, 3 and 3A of the Civil Procedure Act provide that the overriding objective of the Court to do justice. It follows therefore that the Court shall have control of proceedings and shall at all times ensure the ends of justice are met. Justice, being a double edged sword shall be applied and parties shall not be allowed to by-pass the Orders of the Court. Submitting that it is the duty of an advocate to abide by the orders of court, Miss Munyaka urged the court to allow the

Preliminary Objection and to send M/s Havi & Company Advocates parking from these proceedings.

14. Responding to the Preliminary Objection, Mr. Havi for the Plaintiff submitted that the issue of representation was not *res judicata*, it was not a preliminary issue, and that it was an issue for trial.
15. Mr. Havi submitted that representation as an issue is not *res judicata*. The issue was first raised in the yet to be determined Motion dated 24th July, 2009 by M/s Rachier & Amollo, and that it is the subject matter of hearing by the three judge bench. Counsel submitted that Ruling of 27th May, 2011 was limited to review of the order of discontinuance of the suit made on 26th February, 2010. It resulted from an application made by the 2nd Defendant on 10th March, 2010. The statement in the Ruling, that the change of representation from M/s Rachier & Amollo to Majanja Luseno had not been challenged, was made without reference to the Motion dated 24th July, 2009 by Rachier & Amollo and the Consent Order of 31st July, 2009. It did not determine the issue on merit. Citing the case of **Wanguhu –vs- Kania (1985) eKLR**, counsel submitted that an issue is not *res judicata*, if the same has not been determined on merit. The 2nd Defendant, the beneficiary of the Ruling of 27th May, 2011 has filed a Notice of Motion dated 22nd September, 2014 on the same issue that is yet to be determined. On 3rd October, 2014, the Court reiterated that the issue be determined in the hearing. The issue may be determined by the 3 bench either as preliminary or as a trial issue.

REPRESENTATION AS A PRELIMINARY ISSUE

16. Mr. Havi submitted that the effect of the notice of 15th July, 2009 by M/s Majanja Luseno & Company Advocates was an appointment and not a change of advocate as required by Order III. Rule 6 of the CPR, 1998. The notice was invalid, as M/s Rachier & Amollo could only be replaced by a notice of change duly authorised under Order III. Rule 2 (c) of the CPR, 1998 and not by a notice of appointment, the Plaintiff being represented at the time of the purported change. M/s Sagana Biriq & Company Advocates took over on 5th August, 2012 and H. Kago & Company Advocates on 29th April, 2015. They inherited the irregularity in the purported change of representation. In the circumstances, Mr. Havi submitted Mr. H. Kago is not authorized to act for the Plaintiff.
17. Counsel submitted that Mr. Kago and his predecessors derive instructions to act for the Plaintiff, from the 1st, 2nd and 3rd Defendants. The application preceding the Ruling of 27th May, 2011 though filed by the 2nd Defendant, was curiously prosecuted by M/s Majanja Luseno & Company Advocates. All this is being done when the Defendants have responded to the suit by filing a Defence and Counterclaim supported by their Verifying Affidavits. They have not filed any Witness Statements as Defendants. Instead, the 1st Defendant has filed a Statement sworn on 15th August, 2012 purportedly, on behalf of the Plaintiff and the Defendants. On 4th October, 2012, the 1st Defendant swore the Affidavit in support of the request for joinder of Galot Limited and the estate of M/s Lalchand Galot as Interested Parties. Counsel submitted that Pravin Galot, Rajesh Galot and Ganesh Galot cannot be Defendants, Plaintiffs and Interest Parties in one suit. Counsel called it a circus, and observed that it is not permissible for the Defendants to purport to appoint advocates for the Plaintiff as they have sought to do. In **Republic –vs- The Registrar of Companies, Misc. CC. No. 1115 of 2007 (UR)**, the Court held that an interested party should defend the claim, and could not purport to instruct an advocate to take over the claim. In **Kuri Tea –vs- KTDA Ltd & 4 others (2014) eKLR**, the Court held that a defendant cannot mutate itself to be a plaintiff and interfere with the prosecution of the claim.
18. Counsel submitted that this suit was filed by M/s Rachier & Amollo. Havi & Company Advocates succeeded them on 28th March, 2012 and filed the Witnesses Statement of Mohan Galot and a Bundle of Documents on behalf of the Plaintiff on 22nd June, 2012, in terms of the directions made by Consent on 25th May, 2012. Attached to the Statement is a Written Authority dated 29th January, 2009 under the seal of the Plaintiff, authorising the filing of the suit and Mohan Galot to

act and swear on behalf of the Plaintiff in terms of Order III. Rule 2 (c) of the CPR, 1998. Counsel submitted that any change of representation from M/s Rachier & Amollo to M/s Majanja Luseno could only be effected by Mohan Galot as the director authorised to act in the matter. Mr. Kago's appearance is unlawful for want of authority on his part and his predecessors. See the holding in **Trade Bank –vs- LZ Engineering (1995–1998) EA 312 (CAK)**, at pages 28 and 29 of the Respondent's Bundle.

REPRESENTATION AS AN ISSUE FOR TRIAL

19. Submitting that representation was an issue for trial, counsel submitted that the Consent Orders of 31st July, 2009 and 24th February, 2012 framed the factual and legal issue of representation for determination by a three (3) judge bench. The directions given on 23rd July, 2012 confirmed as much. The 1st, 2nd and 3rd Defendants have challenged the institution of this suit for want of authority of the Board of Directors, which they claim to be members. The authority of M/s Rachier & Amollo and subsequently Mr/ Havi to act, is challenged for the same reasons. In such a case, it was held in **Buikie & 2 others –vs- Lutabi & another (1962) E.A. 328** (at pages 31 and 32 of the Bundle), that the issue awaits the determination of who the lawful directors of the plaintiff are. That should be the same case here.
20. Mr. Havi concluded by submitting that a preliminary legal inquiry of who is the advocate of the Plaintiff confirms his firm was properly on record, having succeeded M/s Rachier & Amollo. The parallel chain of advocates purporting to act, resting with Mr. Kago are in actual fact, advocates of the Defendants, who cannot preclude Mr. Havi from acting but must defend the claim as Defendants. Even if the argument that M/s Sagana Biriq & Company Advocates were the advocates on record at the time of Mr. Havi's claimed irregular entry, striking out the pleadings filed would not resolve the issues framed for determination by the three (3) judge bench. Such an outcome would only prompt the filing of a notice of change of advocates from M/s H. Kago & Company Advocates and escalate the dispute further. It is a course that the Court should not adopt, as stated in **Kamlesh –vs- Ali & 2 others (2005) eKLR**, (at pages 40, 41 and 44 of the Bundle). Counsel submitted that a factual inquiry on the issue of representation, which is pending before the three (3) judge bench, removes the issue from the purview of a preliminary objection, as known in **Mukisa Biscuit –vs- West End (1969) 696**, where it was stated at page 51 of the Bundle, that a preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. Striking out of pleadings is an exercise of judicial discretion under Order 2, Rule 15 of the CPR, 2010. It cannot be sought in the manner intended by Mr. Kago. Counsel urged that the Preliminary Objection be dismissed with costs.

ANALYSIS

21. From the foregoing submissions of the parties, the issues which we consider are necessary for the determination of the Preliminary Objection are as follows:-
1. ***Whether the issue of representation of the Plaintiff is settled in the light of Justice Muga Apondi's Ruling on 27th May 2011, and has become res judicata.***
 2. ***Whether representation is an issue for trial.***
 3. ***Whether M/s Havi & Co. Advocates have no authority to act for the Plaintiff in the case because it purported to replace M/s Rachier & Amollo advocates who had ceased to act.***
22. All parties appear to agree that there was a Ruling of 27th May 2011 by Hon. Justice Muga Apondi, on the issue of Plaintiff's representation by the firm of M/s Rachier & Amollo & Co. Advocates, who have been succeeded herein by M/s Havi & Company Advocates. We have seen that Ruling. At the middle of page 12 therefore the Judge said:-

“The effect of the change of the advocate means that it is only the advocate on record who can now conduct the case on behalf of the Plaintiff. That means that the firm of Rachier & Amollo Advocates did not have authority to file their notice of discontinuance of this case . . .”

23. Now the proponents of the Preliminary Objection want M/s Havi & Company Advocates

restrained from representing the Plaintiff on the basis that M/s Havi & Company Advocates had taken over the Plaintiff's suit from the said M/s Rachier & Amollo & Co. Advocates. While the said Ruling was not appealed, there are on record at least two (2) applications related to the matter. Those applications are still pending in this court. The first application is a Notice of Motion dated 24th July 2009 by M/s Rachier & Amollo & Company Advocates, which sought to restrain M/s Majanja Luseno from acting for the Plaintiff. The second one is a Notice of Motion dated 22nd October 2014 by the 2nd Defendant who also, like in the Preliminary Objection herein, seeks to have M/s Havi & Co. Advocates struck out from representing the Plaintiff. This application is also yet to be heard.

24. What is not clear, however, is how all the parties in this matter have proceeded in this matter despite the Ruling of Justice Muga Apondi aforesaid. Clearly, there was an element of acquiescence by all the parties, on the issue. It is however, noted that M/s Havi & Co. Advocates have disputed the alleged illegality on their part, and have insisted that they are properly on record for the Plaintiff. It is not the firm of M/s Havi & Company Advocates that was found at fault by Justice Muga Apondi's Ruling. It was M/s Rachier & Amollo Advocates. Indeed M/s Havi & Company Advocates have submitted that on 15th July 2009, M/s Majanja Luseno & Company Advocates filed a document titled "**Notice of Change of Advocates**". Mr. Havi submitted that the document indicated that the said advocates had been appointed to act for the Plaintiff. It did not state that they were replacing M/s Rachier & Amollo Advocates. We would not wish to comment further, at this stage, on Mr. Havi's submission in this regard since his position is yet to be determined. However, with that kind of submissions Mr. Havi has placed his firm in a position where this court cannot strike it out from representing the Plaintiff, without hearing his firm on the matter. Perhaps that is why on 14th February 2012 there was a consent on how the proceedings were to take place. On that day, Mr. Arwa, from the firm of M/s Rachier & Amollo Advocates, was on record for the Plaintiff. On that day also, parties consented to a three (3) judge bench to be appointed by the Chief Justice to determine the issue of directorship.
25. However, on 24th May 2012 Mr. Havi appeared for the Plaintiff alongside M/s Majanja & Luseno Advocates. There were again directions issued based on the consent of the parties. None of the parties appeared to have been uncomfortable with Mr. Havi's appearance for the Plaintiff.
26. On 23rd July 2012 Mr. Havi appeared again for the Plaintiff alongside M/s Arwa, Osundwa, Kibe and Miss Ng'ania. On that day the court issued directions on issues to be dealt with, being the issues of directorship and shareholding of Manchester Outfitters Limited. On the issue of representation of the Plaintiff the court said as follows:-

“regarding the issue of representation, we shall deal with the same in the course of the hearing because it is intertwined with the issue of shareholding and directorship.”

27. With the above order or direction of this court on the issue of representation, the court has clearly expressed itself. That order was an order of the three (3) Judge bench. It was an order arrived at after careful consideration by the bench.
28. It must be noted, however, that there is no order of this court which has barred M/s Havi & Company Advocates from representing the Plaintiff. However, what may appear to be valid issues have been raised against M/s Havi & Company Advocates continued appearance herein for the Plaintiff. Those issues require a proper hearing, and it is the wisdom of this court, as recorded on 23rd July 2012, that the issue will be determined in the cause of the hearing.
29. Finally, this bench hastens to note that in a matter such as before the court, if a decision is made today on representation of a party, and depending on the decision reached, the case may already have been decided by default, because one of the lawyers for the Plaintiff appears to be in complete agreement with the Defendant's lawyers on virtually all the issues framed to be determined by the court. In our considered view, justice would not be served in the matter if a decision were made on the issue of representation at this stage.
30. Therefore, in a nutshell, to answer the three (3) issues we raised herein, we return the verdict that the Ruling on 27th May 2011 by Justice Muga Apondi did not operate, as at now, to bar M/s Havi & Company Advocates from representing the Plaintiff in the cause of this hearing pending the determination of shareholding and directorship of the Plaintiff Company.
31. On the second issue, we return the verdict that indeed the issue of representation by M/s Havi &

- Company Advocates is an issue for trial.
32. On the third issue we return the verdict that M/s Havi & Company Advocates have the authority to act for the Plaintiff in this case pending further orders from this court.
33. The upshot is that the Preliminary Objection on points of law dated and filed in court on 29th April 2014 fails with costs in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 12th DAY OF JUNE 2015

F.A. OCHIENG

JUDGE

E. K. O. OGOLA

JUDGE

J. KAMAU

JUDGE

PRESENT:

Havi and Kago for the Plaintiff

No appearance for the 2nd Defendant

Kaka Kamau for 1st, 3rd, 4th, 5th, 6th and 7th Defendants

Miss Munyoka for the 1st and 2nd Interested Parties

Teresia – Court Clerk