



Editorial Summary

1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of Subordinate Court case*

TORT

- 3.1 *Running down cause*
- 3.2 *Material loss damage*
- 3.3 *Suit in subordinate court case filed by*
M/s Havelock Muriuki & Raval
- 3.4 *Application to strike out original/1st defendant*
now appellant number one's name from suit
rejected 13th December 2007.
- 3.5 *Appeal to the High court by M/s Nderitu & Partners*
Advocates (11th January 2008)
- 3.6 *Admission of appeal*
12th march 2010 Okwengu J
- 3.7 *Directions Order 42 r 13(3) Civil Procedure Rules*
23rd April 2010
Okwengu J
- 3.8 *Hearing 19th December 2011*
Court informed "the firm of Havelock, Muriuki & Raval
has split. It is now J.B. Havelock & Associates, before
the advocate became an Hon. Judge."

4. *Court invites parties to submit on the issue of*
Representation

"Whether the firm of J B Havelock & Associates

Should be dissolved and as a result cease

Representing the respondent.”

5. *Advocate for respondent*

J.B. Havelock

5.1 *A new partner has now come in and
bought the good will.*

5.2 *The name can be retained.*

6. *Advocate for Appellant:*

6.1 *The name can be retained and it is
Perfectly in order to retain the same.*

7. *Held:*

*Firm of a sole practitioner upon appointment
as a Judge or Hon. Magistrate must dissolve.*

8. *Case Law:*

a) *Loise Njambi Njeri & 3 Others
Vs
Samwel Muro magu
2007 eKLR
HCC 1731/01
Reported Ang’awa J*

b) *Rebecca Wanjiku Mulu
Vs
Jogo Kimakia Bus Services
HCCC 4998/89
Unreported Ang’awa J*

c) *Daniel Ebulu
Vs
Daniel Muteti & Another
HCCC 47/01
Unreported Ang’awa J*

9. *Advocates :*

i) *E.N. Mwenda instructed by M/s Nderitu & Co Advocates for
appellant/original defendant*

ii) *N.K. Bhulla instructed by Havelock Muriuki & Raval & Co
Advocates for respondent/original plaintiff*

**REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Civil Appeal 10 of 2008**

ASHOK

MATHARU

**REENA KAUR MATHARU APPELLANTS/ ORIGINAL
DEFENDANTS**

VERSUS

**DAVID KIMANI KONGORESPONDENT/ORIGINAL
PLAINTIFF**

*(Being an appeal arising from the Ruling of Hon. J. Were Senior Resident Magistrate in Civil Case No.
6080 of 2006 dated 13th December 2007 at*

Milimani Commercial Courts)

RULING

Representation

I. INTRODUCTION

1. The subject of the subordinate court case concerned a Running down cause, on a material loss claim damage. This subordinate court case is still pending. It was originally filed on 16th May 2006 by M/s Havelock, Muriuki & Raval Advocates for the plaintiff.

2. The reason that it came on appeal to this High Court is that the original plaintiff applied to court to enjoin another defendant. This was granted and the trial magistrate, at a later stage declined to set her

orders aside due to the compliance of the rules.

3. The respondent filed appeal on 11th January 2008. The advocate acting for the original plaintiff respondent was M/s Havelock Muriuki & Raval Advocates.
4. The appeal was admitted to hearing on 12th March 2010 (Okwengu J). Directions under Order 42 r 13(3) Civil Procedure Rules was heard (Okwengu J). Parties came before the court for hearing on 19th December 2011.
5. On that day, the advocate for the respondent announced that the firm of M/s J B Havelock & Associates act and represent the respondent.
6. It was well known that J.B. Havelock had become a Judge of the High Court of Kenya.
7. This court invited the advocates to address it on the issue as to whether the firm of J.B. Havelock should be dissolved.

II ISSUE

8. Whereas the court on the 19th December 2011 raised the representation by the firm of J.B. Havelock & Associates to the office of Judge of the High Court, the following questions arises for settlement;

“whether the firm of J.B. Havelock & Associates should be dissolved and as a result cease representing the respondent herein.”

III SUBMISSIONS

9. The advocate, W. Nduati stated that the firm of J.B. Havelock was founded on the 1st May 2011 by Mr J.B. Havelock – advocate (as he then was). It was then registered as a sole proprietorship in the name of

J.B. Havelock & Associates Advocates.

10. On the 30th September 2011, M/s J.B. Havelock was appointed to the Judiciary as a serving Hon. Judge. He transferred the firm to

M/s Wanjuru Nduati who brought the firm. J.B. Havelock relinquished all the rights and interest in the firm. That following the sale of the sole partnership registered by J.B. Havelock as proprietor, the said proprietorship effectively dissolved, the accounts and , a new firm was then re-registered in the name of J.B. Havelock & Associates which exists to date.

11. The said new firm of J.B. Havelock & Associates is in compliance of the Advocates Practice Rules – Rule 12 and the Registration of Business Names Act.

12. W. Nduati had shown this court the certificate of a change of particulars under the Registration of Business Act dated the 7th April 2011

Certificate of a change of particulars from

J B Havelock & Associates to

Wanjiru Angela Nduati

Dated 30th September 2011.

13. That whereas this has now been registered then the same be in order.

14. Nonetheless, the advocate has applied to make a further change of the

J.B. Havelock & Associates to Havelock Nduati & Company Advocates – a name already approved by the Registrar of Business names.

15. The advocate for the respondent stated that there was nothing wrong with proceeding with the name of J.B. Havelock & Associates. For instance under the Registration of Business Names Act Cap 499 Laws of Kenya Section 4(b), it permits a registration of a business name.

16. The Law Society rules No. 31 permits a firm to

a) **Practice under any name than that of a past or present member or members.**

b) —

c) **When a partner in a firm has been appointed to the Judiciary there is no objection to the retention of the firm name by the remaining partnership.**

17. The arguments put forward by the advocate for the respondent that you cannot have the Law Society of Kenya and the High Court have “jurisdiction to control and manage how advocates run their business in all spheres.”

18. The jurisdiction of the court in the past has been “disciplinary in nature intended to ensure the honesty of its officers and to protect the public from conduct that is inimical to that of persons accredited as officers of the High Court.” He relied on the case law of

Kenya Commercial Bank –Vs - Adala

(1983) KLR 476

Hancox J

19. The name of J.B. Havelock should survive him. It is in order for the new advocate to use the said name.

20. Where an advocate becomes Hon. Judge of the High Court of Kenya and is a sole practitioner, the firm must wind up.

21. The advocate’s firm is a partnership as described under the Partnership Act Cap 29

“Persons must enter into partnership with one another are for the purpose of this act called collectively a firm and the name under which their business is carried on is called the firm name.”

22. Whereas as stated in the case law of **Loise Njambi Njeri & 3 Others – Vs – Samwel Muiro Maguru** 2007 eKLR, a partnership dissolves on death, or bankruptcy of any of the partner. Where the practice of a sole proprietor requests another firm under the registration of Business Name Cap 499.

“A firm is defined to mean an incorporated body of two or more individuals or of one or more corporations who or which have entered into a partnership with one another with a view of carrying on business for prosperity.”

23. In the above case, I did indeed rule that once a sole partner does, or as in this case becomes a Judge

the firm must be dissolved.

24. In this matter before me, the firm of J.B. Havelock came into being on

1st May 2011. The sole proprietor was appointed to be judge in

30th September 2011. The sole proprietorship was then sold to W. Nduati. The business required to be dissolved and a business name new partnership entered into. The new advocate re-registered the same business with the change of name of W. Nduati.

25. If per chance W. Nduati had been in partnership with J.B. Havelock and the name changed to Havelock & Nduati Advocates before the Judge was appointed on the bench, then the said advocate would have with the permission of the Judge retained the said name, Havelock Nduati.

26. At the moment, that name does not exist and may not be used after the appointment of the Hon. Judge.

27. I would add that there is a move to change the way the business of advocates operate from firms – unincorporated to a corporate name so that advocates would not be personally liable. Perhaps this may permit one to retain a name.

28. As it stands, I would hold that the firm of J.B. Havelock & Associates must dissolve.

29. As to this appeal, the firm who were on record were M/s Havelock Muriuki & Raval Advocates. There has been no notice of change of advocate and as such they are still on record.

DATED THIS 21ST DAY OF MARCH 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

i) *E.N. Mwenda instructed by M/s Nderitu & Co Advocates for
appellant/original defendant*

ii) *N.K. Bhulla instructed by Havelock Muriuki & Raval & Co Advocates for
respondent/original plaintiff*