



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 800 of 1989

GEOMAPS.....PLAINTIFF/APPLICANT

versus

MAPSURVEYS LIMITED.....DEFENDANT

MAPSURVEYS (K) LIMITED.....PROPOSED SUBSTITUTED DEFENDANT/RESPONDENT

RULING

The Plaintiff has filed this Notice of Motion dated 4th November 2009 praying for orders

- “(i) THAT the court do be pleased to order that the veil of incorporation of the entity known as Map Surveys (K) Ltd., as a limited liability Company, be lifted and that entity, Map Surveys (K) Ltd., be substituted as the Defendant herein in place of the Original Defendant, Map Surveys Limited.**
- (ii) THAT pursuant to No. 1 above the court do be pleased to order and direct that the decree herein be satisfied by the substituted Defendant, Map Surveys (K) Ltd., and/or by its Directors or those of them as the court shall deem to have knowingly operated the Original Defendant’s affairs fraudulently, personally.”**

Further, the Applicant prays for costs of the application.

The Notice of Motion is brought under Order L Rule Civil Procedure Rules, Section 3 A Civil Procedure Act and Section 323 of the Companies Act. It is based on grounds seen on the face of the Notice of Motion and supported by the affidavit of Lenny Kivuti deponed on 5th November 2009.

The Notice of Motion is opposed by the proposed substituted Defendant who filed a replying affidavit.

Having carefully considered what was brought to my attention during the hearing of the Notice of Motion, I do hereby dismiss it with costs to the proposed Defendant for the following reasons:

First, since the evidence shows changes in the Defendant took place before the main suit herein was heard and decided, the application for substitution should have been made, latest, at the time the suit was being heard. It is too late now if such substitution must be done. Deregistration of the Defendant in Kenya was done on 30th August 1995 and the proposed Defendant registered on 4th May 1995. The judgment of the court the Applicant intends to execute is dated 8th November 2005 against the Defendant said to have been dissolved on 21st October 1994 in the United Kingdom, a dissolution which subsequently led to that Defendant’s deregistration in Kenya.

Secondly, the Applicant is not specifying in prayer (i) the person to lift the veil of incorporation of Map Survey (K) Ltd.

Those are the orders of this court.

Dated this 19th day of March 2010.

J.M. KHAMONI

JUDGE

Present:

Meenye & Kirima, Advocates for the Applicant
David Mutinda, Advocates for the Respondent