

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

Civil Appeal 525 of 2005

JAMES MWARARI GATOME 1ST APPELLANT
PATRICK R. KIBUCHI 2ND APPELLANT
S. P. NJAGI 3RD APPELLANT
PATRICK M. LYNUS 4TH APPELLANT
L. M. M'MBWI 5TH APPELLANT
J. M. NDERITU 6TH APPELLANT
JASON KABURO 7TH APPELLANT
IBRAHIM ISAACK JARI T/A GATOME & ASSOCIATES ...8TH APPELLANT

VERSUS

LAND SURVEYOR'S BOARD RESPONDENT

(Appeal under Section 18 of The Survey Act, Chapter 299 of Laws of Kenya from the decision of the Land Surveyor's Board delivered on 18th July, 2005 under Section 17 of The Survey Act Chapter 299 of the Laws of Kenya Section 3, 3A, 5, 75(h), 78 of Civil Procedure Act, Chapter 21 of Laws of Kenya and Order XLI of Civil Procedure Rules, Section 77 of the Constitution and all other enabling provisions of Law)

RULING

This application, brought under Order 44 Rule 1 of the Civil Procedure Rules, seeks to review and set aside the Consent Order of 10th March, 2006 entered into between the two Counsels, on behalf of their clients, settling the Respondent's bill of costs in the sum of Kshs.400,000/=.

Now, that Consent was recorded before the Deputy Registrar who then issued the Certificate of Taxation. Why then is this Application before me?

Counsel for the Applicant submitted that the Deputy Registrar having issued the Certificate of Taxation was functus officio, and that this application must therefore be heard before the High Court. I would disagree with that proposition. What is before me is NOT a reference from the decision of the Taxing Officer, because if it were, it would not be brought under Order 44, and the Reasons for the Registrar's Ruling would be required before the application could be heard. There is no such thing here. This is pure and simple an application for review under Order 44 (1), and in accordance with Order 44 (4) it must be heard by the Deputy Registrar who made the Order, whether by Consent or otherwise.

Accordingly, this application is incompetently before this Court, and the same is struck out with costs.

Dated and delivered at Nairobi this 27th day of November, 2006.

ALNASHIR VISRAM

JUDGE