



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**JUDICIAL REVIEW NO. 10 “B” OF 2009**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**CHAIRMAN SOY LTD. .... 1<sup>ST</sup> RESPONDENT**  
**THE CHIEF MAGISTRATE ELDORET ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DANIEL KIMELI LIMO ..... INTEREST PARTY**

**R U L I N G**

The notice of preliminary objection dated 18<sup>th</sup> January, 2011 is aimed at the application by the ex parte applicant dated 7<sup>th</sup> March, 2007 seeking an order of certiorari to remove into the High Court and quash the decision of the Moiben Division Land Disputes Tribunal dated 24<sup>th</sup> February, 2005 adopted as a decree of the court in Eldoret Chief Magistrate’s Court Award No. 11 of 2006.

The interested party is the objector and his contention is that firstly, the said application is not founded on the proceedings of the Moiben Division Land Disputes and secondly, the tribunal did not make the orders claimed to have been made and the application is in the premises not founded on any known proceedings and should therefore be struck out.

**Mr. Cheruiyot** learned counsel for the Interest Party argued that the proceedings of the tribunal dated 7<sup>th</sup> March, 2007 are not related to the material application as the title of the ex parte applicant was not cancelled and allocated to the interested party. Further ground two of the application is founded on quick sand.

It was also argued by Mr. Cheruiyot that the application read as a whole has nothing for determination as the “status quo” remained even after the end of the proceedings before the Tribunal.

On his part learned counsel **MR. LIMO** argued on behalf of the ex-parte applicant that the issues raised in the objection related to facts and merits rather than points of law. Further, the ex-parte applicant has a good case for judicial review as there is an award of the Land Tribunal adopted by the Magistrate’s Court. The ex-parte applicant is therefore proper before the court as he is challenging the Tribunal’s decision.

Having heard both counsels, this court is of the view that the preliminary objection is clearly unsustainable for the reasons that;

Firstly the arguments by Mr. Cheruiyot are contradictory. They indicate on the one hand that there was indeed proceeding of a Land Tribunal resulting in the challenged decision and on the other hand they indicated that there were no proceedings of the Tribunal leading to any decision.

Secondly, it is not disputed that the Moiben Division Land Disputes rendered a decision pertaining to Land Parcel No. **Moiben Block 2(Segero)1080** on the 21<sup>st</sup> March, 2005. The decision followed the proceedings conducted by the Tribunal on 24<sup>th</sup> February, 2005. It is those proceedings and that decision being challenged by the ex-parte applicant. An award was made and was adopted as a judgment of the Court on the 30<sup>th</sup> October, 2006.

Thirdly, there having been proceedings conducted by a public body and a decision having been rendered by the same public body, there was nothing to prevent the ex-parte applicant from instituting judicial review proceedings if he felt aggrieved by the decision and the manner it was arrived at.

It matters not whether or not the decision was in favour of the exparte applicant. Judicial review is not concerned with the merits or demerits of a decision but the process through which it was arrived at.

Consequently, the preliminary objection is unmerited. It must and is hereby dismissed with costs to the ex-parte applicant.

Ordered accordingly.

**J.R. KARANJA**

**JUDGE**

**(Read and signed this 16<sup>th</sup> day of February, 2011 in the presence of Mr. Mwinamo for Cheruiyot for interested party and Mr. Barasa holding brief for Mr. Limo for ex-parte applicant).**