



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**  
**MISC. CIVIL.APPL. 250 OF 2003**

**REPUBLIC .....**  
**.....APPLICANT**

**VERSUS**

**SOY DIVISIONAL LAND DISPUTES TRIBUNAL.....**  
**RESPONDENT**

**AND**

**ISAAC RONO KURGAT.....**  
**INTERESTED PARTY**

**PHILIP CHEROP.....**  
**.....EX PARTE**

**RULING**

On 9/7/3003, Philip Cherop obtained leave to commence proceedings to apply for the prerogative orders of certiorari and prohibition against Soy Division Land Dispute Tribunal regarding parcel No. Eldoret Municipality / Block 21(KINGO’NGO’)/32. He complied with the terms under which he had obtained the said leave, and filed a substantive application within the indicated period of 21 days and seeks the following orders.

1. *“That the Honourable court do issue an order of certiorari to remove into this Court and quash for with the decision arrived of (sic) Soy Divisional Land Dispute Tribunal Land Arbitration case No. 71 of 2002 read and adopted as judgment of the Court on the 29th May 2003 vide Eldoret Chief Magistrate’s Court award No. 11 of 2003 awarding of an acre of land parcel No. Eldoret Municipality Block 21 ( KING’ONG’O ) / 32 to the interested party herein”.*
2. *“The Honourable Court do issue an order of prohibition to prohibit the Soy Division Land Dispute Tribunal from hearing and determining any dispute in respect of land parcel No. Eldoret Municipality / Block 21 ( KING’ONG’O ) 32”.*

Records availed to me would seem to indicate that the contentious decision was delivered on 27/1/2003.

Though this application is based on eight grounds, Mr. Omwenga, learned counsel for the applicant, who wanted the Court to take note of the fact that though the chairman of the Soy Divisional Land Dispute Tribunal, and the interested party had been served, they had not filed any pleadings in objection to the application, proceeded to urge only 3 of the grounds.

I have perused the statement by Cherop as well as the affidavits filed in support thereof and I am satisfied that the land in issue was Eldoret Municipality/Block 21(KING'ONG'O)/32, yet the application of the said Act is clear in that, section 3 (1) of the Land Disputes Act No 18 of 1990 (hereinafter referred to as 'the said Act') clearly stipulates that:

“(1) Subject to this Act, all cases of a civil nature involving a dispute as to -

(a) the division of, or the determination of boundaries to land, including land (underling mine) held in common;

(b) a claim to occupy or work land; or

(c) trespass to land,

shall be heard and determined by a Tribunal established under section 4..

For the purposes of the said Act, 'land' *'means Agricultural Land, which is defined, which is section 2 of the Land Contr ol Act, but does not include land situated within an adjudication section declared under the Land Adjudication Act or the Land Consolidation Act or Land which is the subject court under the Land Titles Act'* (section 2 of the said Act.)

It is important therefore that one falls back to the Land Control Act in order to establish what is Agricultural land.

A perusal of the Land Control Act shows that Agricultural Land is defined as:

“(a) land that is not within -

*i. a municipality or a township; or*

*ii. an area which was, on or at any time after the 1 st July, 1952, a township under the Townships Ordinance (now repealed); or*

*iii. an area which was, on or at any time after the 1 st July, 1952, a trading centre under the Trading Centres Ordinance (now repealed) ; or*

*iv. a market;*

*(b) land in the Nairobi Area or in any municipality, township or urban centre that is declared by the Minister, by notice in the*

*Gazette, to be agricultural land for the purposes of this Act, other than land which, by reason of any con dition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non -agricultural purpose;*

Yet, the Soy District Land Dispute Tribunal proceeded and reached a verdict on land which is within a Municipality and which is not governed by the Land Control Act. Such action was in direct contravention of the aforementioned sections of the Land Disputes Act. The Tribunal exceeded its jurisdiction and its findings were thus null and void.

I have also taken Mr. Omwenga's submissions into account and it would appear that no claim was laid before the Tribunal as is a required. It is also evident that despite the fact that Kennedy Opisa, who was the 2nd purchaser of the subject property was not invited to attend the proceedings or even accorded audience the Tribunal proceeded to determine the matter, and even then to his detriment.

I find that this was in total disregard of the mandatory requirement under section 3(2) and (4) of the said Act which clearly stipulates that

*(2) “ Every dispute referred to in subsection (1) shall be instituted by presenting a claim to the Tribunal for the land in which the land is situated, and shall contain, and contain only, a summary of the material facts on which the claimant intends to rely”*

*” (4) Every claim shall be served on the other party, or, where there are more than one, on each of the other parties to the dispute and the provisions of the Civil Procedure Act as regards service of summonses shall thereafter apply.”*

I am of the opinion that the Tribunal’s action was against the rules of natural justice which dictate that no man shall be condemned unheard, a principle that is also well envisaged in the aforementioned section 3 (4) of the said Act.

I do in the circumstance find that in application is meritorious and I do grant orders in terms of prayers 1 and 2 thereof.

The applicant shall also have the costs of the application.

Dated and delivered at Eldoret this 16th day of June 2004.

**JEANNE GACHECHE**

**JUDGE**

Delivered in the presence of:-