**Hawkesworth v Attorney-General**

[1974] 1 EA 406 (CAN)

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 7 October 1974

**Case Number:** 30/1974 (114/74)

**Before:** Spry Ag P, Mustafa and Musoke JJA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Kenya – Nyarangi, J

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*[1] Civil Practice and Procedure – Res judicata – Claim in respect of different management orders –*

*Not res judicata.*

*[2] Tort – Compensation – Claim against government for compensation in respect of management order*

*is a tort – Agriculture Act* (*Cap.* 318)*, s.* 187 (*K.*)*.*

**Editor’s Summary**

In 1965 government made a management order over two farms belonging to the appellant’s husband.

This was revoked and a further order made over one farm in 1970. The appellant’s husband sued the

government for damages arising out of the second order, and a consent judgment was entered. In 1973

after the death of her husband the appellant sued for damages in respect of the earlier management order.

The judge struck out the plaint on the ground that the matter in the suit was res judicata as the claim

regarding the earlier order should have been raised in the first suit.

On appeal

**Held –**

(i) the two management orders related to different periods and formed distinct transactions and

therefore it was not necessary that they should be dealt with in the same suit;

( ii) a claim against government for compensation for loss arising out of a management order is a claim

in tort;

(iii) any claim in tort was statute-barred when the suit was filed.

Appeal allowed in part.

**Cases referred to Judgment:**

(1) *Greenhalgh v. Mallard*, [1947] 2 All E.R. 255.

(2) *Jadva Karsan v. Bhogal* (1953), 20 E.A.C.A. 74.

(3) *Kamunye v. Pioneer Assurance*, [1971] E.A. 263.

**Judgment**