**Wildlife Lodges Ltd v County Council of Narok and another**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 2 February 2004

**Case Number:** 1248/03

**Before:** Ojwang AJ

**Sourced by:** LawAfrica

*[1] Contempt proceedings – Priority of hearing* vis-à-vis *other proceedings in the same matter –*

*Applicable principles regarding procedure.*

**Editors Summary**

On 4 November 2003, the plaintiff commenced proceedings within the framework of High Court miscellaneous application number 1350 of 2003, for leave to institute proceedings of judicial review. The trial judge in the judicial review proceedings made orders to the effect that the leave so granted do operate as stay of all dealings in all that parcel of land known as Narok/Cis-Mara/Koyaki 3 in the Maasai Mara Game Reserve provided that the application for judicial review is filed within 21 days and served within 8 days from the date of filing. That order had been duly served upon the Narok County Council, the deputy land registrar and the Attorney-General. During the pendency of this order, the first defendant/respondent claimed that the second defendant/respondent was in legal possession of the suit land by virtue of an agreement dated 25 September 2003 and therefore, the first defendant could not hand over the possession of the premises.

It is this position taken by the defendants that culminated into the present proceedings.

**Held** – The whole purpose of litigation as a process of judicial administration is lost if court orders are not complied with.

*Hadkinson v Hadkinson* [1952] 2 All ER 575 is a landmark case on contempt which is eminently relevant in Kenya, which shares a common law heritage with England and other countries of the Commonwealth and the procedural law of which is intimately guided by the procedure governing the supreme law in England.

A party who knows of an order whether null or valid, regular or irregular, cannot be permitted to disobey it. It would be most dangerous to hold that suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular – *Chuck v Cremer* (1 Corp temp 342) adopted.

Narok County Council had a duty either to comply with the orders of 6 November 2003, or, if it thought it to be impossible or incorrect in law, to move the court to make a variation of the order.

An *ex parte* order by the court is a valid order like any other. To obey the orders of the court is to obey an order made both *ex parte* or *inter partes*. Where a party considers an *ex parte* order to cause him undue hardship, a simple application will create an opportunity for an appropriate variation to be effected and, therefore, there will be no excuse for a party to disobey a court order merely on the grounds that it had been made *ex parte*.

Committal proceedings cannot be challenged for want of form, such as want of leave to institute the proceedings – *Wanjohi and another v Macharia* High Court civil case number 450 of 1995 followed.

Issues touching on contempt must take precedence over any other case of invocation of the jurisdiction of court.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Laroya v Mityans Staple Cotton Co. Ltd and another,* [1958] EA 194

*Mawani v Mawani,* [1977] KLR 159

*Mutitika and others v Baharini Farm Limited,* (1982-88) 1 KAR 863

*Wanjohi and another v Macharia,* Civil case number 450 of 1995 – **F**

***United Kingdom***

*Chuck v Cremer,* (1 Corp Temp 342) – **A**

*Hadkinson v Hadkinson,* [1952] 2 All ER 575

*Re Maria Annie Davis* (1) [1888] 21 QBD