



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE 93 OF 2009**

**DAVID LIVINGSTONE LIMITED.....PLAINTIFF/  
APPLICANT**

**VERSUS**

**MASAI MARA LEMEK LANDOWNERS**

**CONSERVANCY LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE CHAIRMAN-NANGARIS**

**CONSERVATION ASSOCIATION .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**THE CHAIRMAN-OLIOPA LANDOWNER &**

**WILDLIFE CONSERVATION ASSOCIATION.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**THE CHARIMAN ENKARE DAPASH ASSOCIATION.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE CHAIRMAN ODUPOI WILDLIFE COMPANY.....5<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**THE CHAIRMAN-OLIOPA MANAGEMENT ASSOCIATION..6<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**THE CHARIMAN-OLOSIRUA LANDOWNERS**

**WILDLIFE CONSERVATION ASSOCIATION.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

Mr. Kinyanjui for the defendants has complained to this court that the ex parte orders of injunction that I issued on 26<sup>th</sup> March 2007 are being abused by third parties specifically by Kenya Association of Tour Operations KATO as a basis for refusing to pay his clients monies it holds on their behalf. He has therefore requested that I clarify those orders and direct KATO to pay the amount it is holding to his

clients which they badly require for their children's school fees.

Whereas Mr. Oyomba is not opposed to the clarification sought he is however apprehensive that a direction to KATO to pay the amount it is holding will be tantamount to deciding the dispute between Lemek Conservancy and Masai Mara North Conservancy on the distribution of the amount held by KATO which is not before this court.

I have considered these contentions. I want to make it clear that except where it is specifically stated court orders do not affect none parties to the suits where they are made. The dispute in this case is that the defendants are demanding game viewing charges on the basis of bed occupancy in the hotels and lodges within their conservancy areas instead of basing the charges on the number of visitors viewing game in their respective conservancy areas. On that dispute I granted an ex-parte injunction on 26<sup>th</sup> March 2009 in the following terms:-

“1. THAT an Order of Injunction do hereby issue restraining the respondents/defendants by themselves, servants, workmen, members, representatives or agents, or otherwise howsoever from demanding compulsory payments from the applicant purportedly for game-viewing fees or park entry fees based solely on the round that its tourist lodge and airstrip is located in the area known as Lemek within the Masai Mara region of South Narok District or in any manner harassing, intimidating or coercing the applicant, its employees, agents servants or guests/tourists to make such payments for period of fourteen days;

2. THAT an order of injunction to hereby issue restraining the respondents/defendants herein whether by themselves, servants, workmen, members representatives or agents, or otherwise howsoever from trespassing into the applicant's leased parcels of land, being land reference number CIS MARA/LEMEK/189 wherein the applicant has set up an airstrip and land reference number CIS, MARA/LEMEK/190 wherein the applicant's lodge is located for a period of fourteen (14) days”

These orders speak for themselves. They restrain the defendants from demanding game viewing charges on the basis of bed occupancy instead of on the basis of game visits by visitors. They do not affect persons or entities which are not parties to this case. They do not even restrain the defendants from collecting game viewing charges on the basis of the visitors who go to their respective conservancies to view game as long as that is not done forcibly and in a disorderly manner. They should therefore not be used by anybody else to create or resolve disputes which are not in this case.

**DATED and delivered this 5<sup>th</sup> day of May, 2009.**

**D. K. MARAGA**

**JUDGE.**