



**J. M Tamata Advocates v Nzuki; Kenya Wildlife Services (Garnishee) (Miscellaneous Civil Application 142 of 2022) [2022] KEHC 18110 (KLR) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 18110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MISCELLANEOUS CIVIL APPLICATION 142 OF 2022**

**FR OLEL, J  
JUNE 27, 2022**

**BETWEEN**

**J. M TAMATA ADVOCATES ..... APPLICANT**

**AND**

**JOSEPH NZUKI ..... RESPONDENT**

**AND**

**KENYA WILDLIFE SERVICES ..... GARNISHEE**

**RULING**

1. Before court is the notice of motion application dated October 21, 2022. It is brought pursuant to Order 23 Rule 1 and 2 and Order 51 rule 1 and 3 of the *Civil Procedure Rules* 2010. The appellant seeks for orders that;
  - a. That the Garnishee do appear before the honourable court to show cause why it should not pay the decree holder Ksh.550,000/- plus costs from the total amount awarded by the Garnishee to the Respondent on 19/01/2022 (Ksh.3,000,000/).
  - b. That the Garnishee order nisi be made absolute.
2. The application is supported by the grounds on the face of the said application and the supporting affidavit of Joseph Muyale Tamata dated October 21, 2022. The applicant basically stated that he had represented the Respondent in a claim against the garnishee and the Respondent was awarded Ksh.3,000,000/= on 19.01.2022 as compensation. The applicant had taxed his advocate-client bill of costs by consent and the same was agreed at Ksh.550,000/=. They jointly wrote to the garnishee to release the money as agreed, but the garnishee refused to do so yet there is no dispute as to the debt that is owed. This application was thus merited and deserving of the orders sought.



3. The Respondent did file a Replying Affidavit through one Polycarp Okuku who works for the garnishee as the county warden Machakos station. He stated that the respondent/judgment debtor did report an alleged buffalo attack at Machakos station and it was recorded as OB No.04/26/06/2014. The said claim was deliberated upon by the county wildlife conservation and compensation committee (CWCCC) as prescribed under section 25 of the *Wildlife Conservation and Management Act* no.47 of 2013. Upon deliberation assessment and ascertainment of the claim the (CWCCC) recommended an appropriate award to Ministerial Wildlife Conservation and Compensation Committee (MWCCC) as prescribed under section 25(2) and (3) of the *Wildlife conservation and Management Act* 2013 and it is the (MWCCC) which had the final mandate to give a final award upon considering deliberating of the recommendation by the (CWCCC).
4. The Garnishee stated that the Respondent/judgment debtor lodged his compensation claim on December 28, 2020 and on December 15, 2021 the (CWCCC) recommended that the judgment debt be awarded Ksh.3,000,000/=. This award was not final and that it is a recommendation, awaiting endorsement by the (MWCCC) as provided for under section 25 of the *Wildlife Conservation and Management Act* 2013. The (CWCCC) recommendations are not final and therefore the debt is not due and garnishee proceedings are premature. The applicant and respondent could only claim compensation upon approval of this award by (MWCCC). The application was thus unmerited and should be dismissed with costs.
5. The Respondent too filed a replying affidavit and stated that he had been awarded Ksh.3,000,000/= on December 15, 2021 and had agreed with his advocate that he was entitled to be paid Ksh.550,000/=. They had further written to the garnishee to pay them but to no avail. He had no objection to the advocate being paid his money and they had waited for 8 years to be compensated, which was a long time.
6. In response to the replying affidavit of the garnishee filed, the applicant/advocate filed a further affidavit. He stated that in their pleadings in Civil suit no.256 of 2021 at Kilungu, the garnishee had clearly indicated that the award had been approved and the process of payment was ongoing. It was thus clear that payment had been approved and the garnishee ought to have fulfilled their obligations to the Respondent and applicant/advocate.

### **Applicant Submissions**

7. The appellant filed their submissions on 13<sup>th</sup> December 2022 and relied on pleadings filed. They pointed out the garnishee was not denying the debt of ksh.3,000,000/=. The award was settled and admitted by the garnishee in Kilungi PMCC no 256 of 2021 and therefore the garnishee lacked honesty and hence did not deserve any discretion of the court. Reliance was placed on *Pritchard Wetmisnstar Bank Ltd* (1969) I All ER 999(1969)/WLR 547 and *Rainbow v Moorgate Properties Ltd*(1975) 2ACC ER 821/WLR 788, *Choice Investment Ltd v Jeromnimon (Mildland Bank Limited, Garnishee* (1981) I Aker 225 pg 227

### **Garnishee Submissions**

8. The Garnishee submitted that the Respondent had filed a claim for compensation under Section 25 of the *Wildlife Conservation and Management Act* No.47 of 2013 and his claim was heard by (CWCCC) sitting in Machakos. The committee awarded the judgment debtor a sum of Ksh.3,000,000/=. That under Section 25 of the said Act, the (CWCCC) would verify a claim and thereafter submit it to the cabinet secretary together with its recommendations therein. The applicant had filed garnishee proceedings in the court proceeding at Kilungu court but the same had been struck out as the said suit could not be sustained, while the statutory compensation process was being undertaken.



9. The Garnishee submitted that they were not indebted to the judgment debtor for the simple reason that the compensation process as prescribed under section 25 of the *Wildlife Conservation and Management Act* had not come to its logical conclusion. The garnishee was still waiting for approval of the Cabinet Secretary of ministry of Tourism Wildlife and Heritage through the Ministerial Wildlife Conservation and Compensation Committee (MWCCC) as prescribed under section 25(3) of the Act. The (MWCCC) was to make the final award to the claimant. Payment was purely a preserve of the cabinet secretary ministry of Tourism Wildlife and Heritage and thus the proceedings against the garnishee were wrongly premised. The garnishee stated that the application was without merit and ought to be dismissed.

### **Analysis and Determination**

10. I have read through the application dated October 21, 2022, the affidavits filed in support thereof, the responses filed and also both submissions filed. The only issue for determination is whether the garnishee proceedings herein are premature, considering provision of section 25 (1), (2), (3) and (6) of the *Wildlife conservation and Management Act* No.47 of 2013.
11. Section 25 of the *Wildlife conservation and Management Act* No 47 of 2013 prescribes the compensation process as follows;
1. Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured or in the case of a deceased person the person representative of successor or assign, may launch a claim to the County Wildlife conservation and Compensation Committee within the jurisdiction established under this Act.
  2. The County Wildlife Conservation and Compensation Committee established under section 18 shall verify a claim made under subsection (1) and upon verification submit the claim to the Cabinet Secretary together with its recommendations thereon.
  3. The cabinet secretary shall consider the recommendations made under subsection (2) and where appropriate pay compensation to the claimant as follows;
    - i. In the case of death, five million shillings
    - ii. In the case of injury occasioning permanent disability, three million shillings
    - iii. In the case of other injury, a maximum of two million shillings depending on the extent of injury.
  4. Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County wildlife conservation and Compensation Committee who shall verify the claim and make recommendation as appropriate and submit it to the service for due consideration.
  5. The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates:

Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.



6. A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the service may within thirty days after being notified of the decision and award, file and appeal to the National Environment Tribunal and on a second appeal to the Environment and Land court.
7. The cabinet Secretary may, by notice in the gazette prescribe such regulations and guidelines as are necessary and appropriate to carry out the purpose of this section.
12. It is a common ground that the respondent has been awarded a sum of Kshs 3,000,000/= by the Machakos county wildlife conservation and compensation committee vide its recommendation dated 15<sup>th</sup> December 2021. The respondent herein has agreed to pay his advocate, the applicant herein a sum of KSHS 550,000/= as his legal fee, to be deducted therefrom.
13. The applicant and the respondent have taken the position that the amount is due and payable, while the garnishee insists that the garnishee process is premature as the final award is yet to be issued by the MWCCC as prescribed under section 25 of the [Wildlife Conservation and Management Act](#). Section 25(3) of the said act provides that; “The cabinet secretary shall consider the recommendation made under subsection (2) and where appropriate, pay compensation to the claimant....”. The said section 25(3) does not provide for a MWCCC as alleged by the garnishee and it only directs the cabinet secretary to consider the recommendations made under subsection 25(2) and where appropriate pay compensation of the claimant as provided for under section 25(3), (a-c).
14. In the pleading filed in Kilungu PMCC NO 256 of 2021, specifically the replying affidavit of Polycarp Okuku dated May 23, 2022 at paragraph 12 – 14 of the said affidavit, the garnishee’s deponent through the county wildlife manager, that the CWCCC had approved payment of Kshs 3,000,000/= to the claimant, which sum had been sent to MWCCC to process payment. That for all intent and purposes, the plaintiff/applicants claim is settled and is pending for payment....”.
15. The garnishee clearly admitted in their pleadings that they owe the respondent Kshs 3,000,000/=, and what was remaining was processing of payment and thus cannot run away from this position it had taken and hid behind a further approval of the award by a committee of MWCCC to avoid their obligation. The right position is that the CWCCC recommendation once made is approved by the cabinet secretary and payment made, which process is administrative.
16. The claim by the respondent was lodged vide OB NO 04/26/06/2014, following a Buffalo attack, which left the respondent with grievous injuries. After seven (7) years, the respondent was awarded Ksh.3,000,000/= by the CWCCC on 15th December, 2021, and as at 2023, nine (9) years after the incident, he has not been paid his dues, which looked at from any prism is grossly unfair. Provisions of article 10 of the [Constitution](#) of Kenya places an obligation on the Garnishee employees who are public officer’s to promote equity, social justice, equality, non-discrimination, good governance, integrity, transparency and accountability. Under article 74 of the said constitution, they are entitled to promote public confidence, integrity of the office they hold and promote fairness and honesty in execution of their duties.
17. To the foregoing I would add that the overriding objective stipulated in sections 1A and 1B of the [Civil Procedure Act](#). The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the [Civil Procedure Act](#) or in the interpretation of any of its provisions. According to section 1A(2) of the [Civil Procedure Act](#) “the court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective” while under section 1B some of the aims of the said objective are; the just determination of the proceedings; the efficient disposal of the business of the court; the efficient use of the available judicial and administrative



resources; and the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties.

18. The garnishee has not offered any explanation as to why, this claim has not been settled from December 2021, nor has the cabinet secretary appealed as against the said CWCCC recommendations. It therefore remains that the amount is due and owing and unless for good reasons to be shown, it ought to have been paid promptly.

**Disposition**

19. I do find that the amount owed to the applicant/advocate and by extension, the respondent is long overdue, is owing and should have been paid by now pursuant to provisions of section 25 (3),(a-c) of the Wildlife Conservation and Management Act 2013.
20. The garnishee’s county warden-Machakos station is hereby summoned to appear in court personally to show cause why the applicant/advocate should not be paid Kshs 550,000/= from the award granted to the respondent on 15<sup>th</sup> December 2021.
21. Further in order to safe guard the interest of the respondent and prevent the obvious continuation of abuse of his constitutional rights, I direct that the Director general of Kenya wildlife service to personally file a further affidavit in these proceedings detailing, why the respondent has not been paid and what steps has been taken to conclude the settlement of the CWCCC award dated December 15, 2021 and the same is to be filed with 14 days after delivery of this ruling.
22. The notice to show cause to be heard on July 19, 2023. The applicant/advocate to extract this order and serve, the garnishee advocate, the office of General Director General of Kenya wildlife service and Machakos county warden- Kenya wildlife service for compliance.
23. It is so ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF JUNE, 2023.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 27TH DAY OF JUNE, 2023.**

**In the presence of;**

.....for Appellant  
.....for Respondent  
.....Court Assistant

