



**Kimaru (Suing on Behalf of Kimaru Kiserem (Deceased)) v Kenya  
Wildlife Service & another (Environment and Land Appeal  
E041 of 2023) [2025] KEELC 1175 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1175 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E041 OF 2023**

**JG KEMEI, J  
MARCH 6, 2025**

**BETWEEN**

**COLLINS KIYAI KIMARU ..... APPELLANT  
SUING ON BEHALF OF KIMARU KISEREM (DECEASED)**

**AND**

**KENYA WILDLIFE SERVICE ..... 1<sup>ST</sup> RESPONDENT  
MINISTERIAL WILDLIFE CONSERVATION & COMPENSATION  
COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Appellant moved this court on appeal on the following grounds:
  - a. The Tribunal erred in law and fact by holding that the 2<sup>nd</sup> Respondent notified the Appellant of the decision of 20/10/21, yet there was no evidence corroborating this fact.
  - b. The Tribunal erred in law and fact in concluding that the 2<sup>nd</sup> Respondent had notified the Appellant of its decision yet the said letter of 20/10/21 had been addressed to a Miss Cheruto (a stranger). As such, time could not run for purposes of the appeal without there being a proper notification.
  - c. The learned Tribunal erred in law and fact by holding that the Appellant had collected the letter from the Respondent’s offices yet the entries in the delivery book did not support this averment.
  - d. The Tribunal erred in law and fact in concluding that the Appellant was out of time yet Order 52 Rule 4 of the Civil Procedure Rules excludes the 21<sup>st</sup> December to 13<sup>th</sup> January of every year (both days inclusive) in computing time for the purposes of filing pleadings.



- e. The Tribunal erred in law and fact in striking out the Notice of Appeal yet while computing time, and even if it were to be argued that the Appellant was notified of the 2<sup>nd</sup> Respondent's decision on 20/12/21 (a fact that is denied), the Tribunal erred in law and fact in striking out the Notice of Appeal yet the Appellant had until 11<sup>th</sup> February, 2022 within which he could have lodged the appeal.
2. The Appellant sought the following orders: -
    - a. The said judgment entered in Tribunal Appeal No.02 of 2022 on the 31/3/23 be set aside and;
    - b. The appeal be allowed with costs.
  3. On 12/11/2025 parties elected to canvass the appeal by way of written submission. The appellant's written submissions are dated 24/1/2025.
  4. As to whether the 1<sup>st</sup> respondent served the Appellant with letter dated 10/10/2021 the answer was in the negative.
  5. The Appellant relied on Section 25 (6) of the Wildlife Conservation and Management Act read together with the provisions of Order 5 of the Civil Procedure Rules which provides as follows: -
 

Issue of summons [Order 5, rule 1]

    - (1) When a suit has been filed a summons shall issue to the defendant ordering him to appear within the time specified therein.
    - (2) Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the court without delay, and in any event not more than thirty days from the date of filing suit.
    - (3) Every summons shall be accompanied by a copy of the plaint.
    - (4) The time for appearance shall be fixed with reference to the place of residence of the defendant so as to allow him sufficient time to appear:  
Provided that the time for appearance shall not be less than ten days.
    - (5) Every summons shall be prepared by the plaintiff or his advocate and filed with the plaint to be signed in accordance with sub rule (2) of this rule.
    - (6) Every summons, except where the court is to effect service, shall be collected for service within thirty days of issue, failing which the suit shall abate.
  6. It was argued that the notice from the 2<sup>nd</sup> Respondent dated 20/10/2021 was addressed to a Ms. Cheruto who is not known to the Appellant. That the delivery note referred to the 1<sup>st</sup> Respondent has a name Jackson that was cancelled and replaced by the name of James Kimaru and on this account the Appellant faults the Respondents for not proving effective service upon the Appellant in accordance with Order 5 of the Civil Procedure Rules.
  7. The Appellant concluded that there is no clear evidence that the Appellant was directly served being that the 1<sup>st</sup> Respondent addressed the letter dated 20/10/21 to a Ms. Cheruto, a stranger to the Appellant. That Ms. Cheruto was not an agent nor was she empowered to receive any documents on behalf of the Appellant.



8. The Tribunal was faulted for misdirecting itself on the issue of effective service and holding that there was proper and effective service and yet the absence of service in this case resulted in the violation of the Appellant's right to a hearing as enshrined in Article 25 read together with Article 48 of *the Constitution* of Kenya. The case of *Mulaty & Anor Vs Kyalo & Another (2022) KEHC 15365 KLR* was referred to the court.
9. As to whether the Tribunal should have applied the provisions of Order 50 Rule 4 of the Civil Procedure Rules, the Appellant contended that the Tribunal ought to have accorded the Appellant the benefits provided in Section 79 (G) of the *Civil Procedure Act* read together with the provisions of Order 50 Rule 4.
10. It was argued by the Appellant that the Tribunal failed to omit the period between 22/12/21 and 28/1/22 in computing time within which the Appellant was to file his appeal. The Court was urged to allow the appeal.
11. The 1<sup>st</sup> Respondent in its written submissions dated 7/2/25 stated that the effective and proper service upon the Appellant was made as if he had not received the notice, he would not have known about the decision of the 2<sup>nd</sup> Respondent.
12. On whether the decision to disown the appeal was justified, the 1<sup>st</sup> Respondent submitted that the Appellant was duly notified of the decision on 22/12/21 and that is why he filed his appeal at the Tribunal 8 days late which was outside the stipulated time hence the Tribunal was devoid of Jurisdiction.

### **Analysis and Determination**

13. As a first appellate court, this court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is enunciated by Section 78 of the *Civil Procedure Act* which espouses the role of a first appellate court which is to: '..... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.'
14. Besides, that duty has been affirmed in numerous decisions of the superior courts. Notably in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123*, this principle was pronounced thus:

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
15. The germane issue for determination therefore is whether the appeal is merited.
16. On the question of service of notification of the decision, the Tribunal has been faulted for failing to hold that the Appellant was notified yet the letter was addressed to a Ms. Cheron a stranger to the Appellant and that time could not run for the purposes of appeal without a proper notification. The Tribunal was further faulted for holding that the Appellant had collected the letter from the Respondent's office yet the entries on the delivery book did not support this averment.



17. The Respondent in its submission posits that the Appellant was duly notified of the decision and collected the letter on 22/12/21 and that in any event the Appellant did not challenge it in his evidence.
18. The background of appeal arises from an incident that occurred at Mochongoi Baringo North involving a Mr. Kimaru Kiserem, deceased, who is alleged to have been killed by a herd of elephants on 16/11/2014.
19. Following his death, his son the Appellant sought compensation from the Respondents on 3/3/15.
20. Vide a letter dated 20/10/21 the 1<sup>st</sup> Respondent notified the said Kimaru Kiserem as follows:

“ Kimaru Kiserem

Baringo County.

Thro’

The Warden

Baringo County.

Dear Ms. Cheruto.

**DEATH COMPENSATION CLAIM IN RESPECT OF KIMARU KISEREM**

The above subject refers.

The Ministerial Wildlife Conservation and Compensation Committee (MWCCC) concluded deliberations on the Human Wildlife Conflict claims in respect of human death occasioned by wildlife from various counties in September, 2020.

The purpose of this letter is to inform you that the death compensation claim in respect of Kimaru Kiserem was rejected by the committee because the victim was killed by an elephant in a protected area ( Ol Arebel Forest).

Yours sincerely,

SECRETARY MWCCC

FOR; DIRECTOR GENERAL.

CC: Principal Secretary

State Department for Wildlife.

Ministry of Tourism and Wildlife.

County Commissioner

Baringo County

Box 1-30400

BARINGO.”

21. The 1<sup>st</sup> Respondent has led evidence that the Appellant posted the letter on 22/12/21 as evidenced by the delivery book adduced showing that the Appellant signed for it.
22. The Appellant acknowledged receipt of the letter and there is no dispute on the same. Though the letter is addressed to the attention of a Ms. Cheruto, it is clearly addressed to Kimaru Kiserem. The Appellant has not challenged the notice and in my view, nothing turns on it.



23. Whether the filing of appeal on 28/1/2022 was statutory barred? Section 25 (6) of the *Wildlife Conservation and Management Act* states as follows: -

“(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 an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.”

24. Having found that the Appellant was notified on 22/12/2024, the thirty days expired on 22/1/22. The Appellant filed his appeal on the 28/1/22, a period of 8 days later.

25. Order 50 Rule 4 of the Civil Procedure Rules reads as follows: -

When time does not run [Order 50, rule 4]

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.”

26. That said, arising from the provision of Order 50 Rule 4 of the Civil Procedure Rules, I find that when the period between the 21<sup>st</sup> December and 13<sup>th</sup> January is discounted, the filing of the appeal by the Appellant on the 28/1/22 was within time of 30 days provided in law.

27. Final orders for disposal

a. The judgment entered in TRIBUNAL APPEAL NO.02 OF 2022 on the 31/3/23 be and is hereby set aside;

b. The appeal be and is hereby allowed with costs in favour of the Appellant

28. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. Oketch for Appellant

2. Ms. Sigei for 1<sup>st</sup> Respondent

3. N/A for the 2<sup>nd</sup> Respondent

4. CA – Ms Yvette

