



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Wildlife Service v M’Ndiene (Civil Appeal E158 of 2024)
[2025] KEHC 2478 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E158 OF 2024
HM NYAGA, J
FEBRUARY 13, 2025**

BETWEEN

KENYA WILDLIFE SERVICE APPELLANT

AND

STEPHEN MUCHUI M’NDIENE RESPONDENT

(Being an Appeal from the Ruling of Hon. L. W. Maina, Adjudicator/Resident Magistrate in SCCC No. E 681 of 2024 delivered on the 12th September, 2024)

JUDGMENT

Preliminaries

1. During the directions on this appeal, the court was notified that there are several other matters of similar nature pending in this court and other subordinate courts under the supervision of this court. On 17th December 2024, the appellant filed a list of 159 matters which were all placed under this file, which was designated as the lead file on the issue at hand. The advocates in the other matters were invited to make their submissions in this file.
2. This appeal will thus affect the files listed in the appellant’s list.

Background

3. The respondent lodged a claim against the appellant in the said court seeking payment of Kshs. 636,250/- as compensation for loss suffered following the destruction of his crops by elephants on or about the 11th day of January 2023.
4. In response thereto, the appellant filed a response to the claim and a preliminary objection dated 9th September 2024. The court rendered a ruling on 12th September 2024 and dismissed the preliminary objection.



5. It is that ruling that the appellant has appealed against.

The Appeal

6. In its memorandum of Appeal dated 12th September 2024, the Appellant laid the following grounds:-
- i. The Learned Adjudicator erred in law and in fact by dismissing the Appellant's Preliminary Objection dated 9th September, 2024 challenging jurisdiction of the small Claims Court to hear and determine the Respondent's claim.
 - ii. The Learned Adjudicator erred in law and in fact in finding that it has jurisdiction to hear and determine the Respondent's claim under section 12(c) of the Small Claims Act failing to appreciate that the claim is a preserve of the County Conservation and Compensation Committee under Section 25(4) of the *Wildlife Conservation and Management Act*.
 - iii. The Learned Adjudicator erred in law and fact in the findings she arrived at in the Ruling, delivered on 12th September, 2024 so as to amount to an egregious misinterpretation of the law.
 - iv. The Learned Adjudicator erred in fact and in law in failing to consider the written and oral submissions made by the Appellant's counsel and in failing to consider the legal authorities tendered therewith.

Appellant's submissions

7. The Appellant's case is that while the Small Claims court has jurisdiction to hear a claim in tort in respect of loss or damage caused to any property or for delivery of movable property under section 12 of the Small Claims Act, it lacks original jurisdiction to entertain a claim resulting from loss or damage to crops, livestock and other property, caused by wildlife.
8. It is the Appellant's submission that such original jurisdiction is vested in the County Wildlife Conservation and Compensation Committee (Committee), established under section 18 of the *Wildlife Conservation and Management Act*(Act). That section 25 of the Act provides the mechanism for person who suffer loss, bodily injury as death caused by wildlife and in respect to destruction of crops or property, the mechanism is provided under section 25(4) of the Act.
9. It was further submitted that while Section 25(4) of the Act uses the word 'may', its use is important to consider the context in which it is used. That the use of the word is meant to outline the procedure compensation. That a person may choose to follow the Statutory procedure or opt not to pursue compensation.
10. It was further submitted that where an alternative mechanism is provided by statute, which ranks as higher than common law, a party is required to exhaust that Statutory mechanism laid by statute, cited was the case of Kenya Wildlife Service vs Kanini [2024] KECA 1127 (KLR). Also cited was the case of Peter Muturi Njuguna vs Kenya Wildlife Service vs Kenya Wildlife Service 2017 KECA 42 KLR.
11. It was thus the Appellants submissions that the claim before the trial court offends the doctrine of exhaustion, which was well stated in Albert Chaurembo Mumba & 7 others vs Maurice Munyaa and 148 Others [2019] eKLR.
12. Still on the question of exhaustion, the Appellant cited NEC Co-ordination Board vs E.G and 4 others; Katiba Institute (Amicus Currie) 2023 KESC 17(KLR) and Peter Muturi Njuguna vs Kenya Wildlife Service (Supra) and Kimani Wanyoike vs Electoral Commission and Another (1995/KECA 128 (KLR).



13. The Appellant argues that it is by law the body charged with conservation and management of Wildlife and it may be held liable in negligence at common law for the negligent exercise of its statutory duty or powers as was held by the supreme court in the case of Kenya Wildlife Service vs Rift Valley Agricultural Contractors Ltd [2018] KESC 48(KLR).
14. The Appellant further argues that a denial of jurisdiction of the court does not impede the right to access to justice as the person affected has the right to approach this court to seek a remedy under its jurisdiction of Judicial Review to compel the Committee to hear his/her claims. The Appellant cited the decision in Kenya Wildlife Services vs Kanini (Supra). To further buttress this point, the Appellant also cited the cases of;
 - a. Kenya Wildlife Service vs Abraham mungai M’Itumutu [2021] KEHC 7105 (KLR).
 - b. Kenya Wildlife Service vs Awuor [2023] KEHC 3721 (KLR).
15. On the above grounds the Appellant urged the court to allow the Appeal with costs.

Respondents submissions

16. The Respondent argued that under section 12 of the *Small Claims Court Act*, the court has jurisdiction to hear and determine a claim based on the tort of negligence.
17. In reference to section 25 of the Act, the Respondent argues that the drafters were deliberate in the use of the work ‘may’ and not ‘shall’ leaving a victim of human wildlife conflict with more option rather than lodging a claim with the Committee. The Respondent relied on the decision of the Supreme court in Kenya wildlife service vs Rift valley Agricultural Contractors Ltd (supra).
18. To further buttress their point, counsel for the Respondent also cited the decision in Kenya Wildlife vs Musyoki Kilonzo (2017) eKLR.
19. The Respondent argues that Article 48 of *the Constitution* gives a right to justice and that the use of the word ‘may’ in the Act meant that one can opt to make a claim before the Committee or lodge a claim for the tort of negligence in court. The Respondent further cited Jediel Murithi Njeru vs Kenya Wildlife (2020) eKLR. Also cited was the case of Kenya Wildlife Service vs Mukiira (2022)KEHC 3181 (KLR) and Anne Ngugi Njiru vs Kenya Wildlife Service (2021) eKLR.
20. It is further argued that the Appellant does not claim to have paid the Respondent, and having waited for over a year, the Respondent rightly exercised his option to go to court.
21. In respect to the use of the word ‘may’ and not “shall” under section 25 of the Act the Respondent referred to the decision of the court in Republic vs Kenya Revenue Authority Ex-parte style Industries Ltd (2019)(eKLR). Also cited was Commission for Human Rights and Justice and anor vs Chief Officer, Medical Services County Government of Mombasa (2022) KEHC 12994 (KLR).
22. The Respondent urged the court to adopt the interpretation made by the court in Kilonzo case (supra)as it was the most sound and was adopted by the trial court.
23. The Respondent also addressed the court on the maxim of maxim lex posterior derogat priori and its application in judicial decision from courts of equal jurisdiction.
24. It is pointed out that the claim herein is for crop damage and not personal injury as in Purity Karimi case (supra). That the claimant in that case had lodged a claim with the Committee and failed to follow up the same. That the court did not seek to distinguish the decision in Joseph Musyoki Kitanga case



- (supra) and indicate it as a bad law. That as such the court is entitled to follow the decision in Kilanga case (supra).
25. It is argued that the above notwithstanding, courts of equal jurisdiction are not bound to follow decision of the other court. That the said maxim is only applicable to legislation and not Judicial decisions.
 26. It is thus argued that under section 25(4) of the Act the court ought to rely on the decision of the Supreme Court in finding that a claim can be lodged under the common law.
 27. Counsel sought to distinguish this case from that of Purity Kanini (Supra) in that the latter dealt with a snake bite which is addressed by section 25(1)(2) of the Act and where under schedule 7, a snake bite is not among the animals listed where compensation should be paid.
 28. In conclusion the Respondent urged the court to find that the trial court had jurisdiction to entertain the claim and dismiss the Appeal with costs.
 29. As I had stated earlier, the court had found that the determination of this Appeal would affect other similar matters pending before this court.
 30. In recognition of this fact, I asked other affected parties to file a response to the Appeal herein. In compliance with these directions, the firm of Mbogo Muriuki & Co. Advocates filed submissions dated 15th December 2024. They chose to rely on the submissions filed by the respondent herein. The counsel also relied on the decision in Kenya Wildlife services vs Rift Valley Agricultural Contractor (supra).

Analysis and determination

31. This Appeal revolves around only one issue-whether the trial court and by extension the subordinate courts have jurisdiction to entertain a claim in tort seeking compensation for damage to crops or property and for personal injury arising from wildlife.
32. The crux of the matter is the interpretation of section 25 of the Act which provides as follows:-
25
 - (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 personal representative or 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.
33. From the authorities cited hereinabove, it is clear that there has no unanimity on the question of matter the subordinate courts have jurisdiction to handle claims of death, injury or loss of property caused by wildlife. This is clear from the divergent views expressed by the Court of Appeal in the decisions in Kilonzo and Kanini cases(supra).
34. The Appellant has relied on the doctrine of exhaustion. It is argued that the respondent ought to have exhausted the laid down mechanism first. That the use of the word ‘may’ is in relation to the option that a claimant has, to either to seek compensation under the Act or opt not to do so entirely. The Appellant disputes the argument that the use of the word may would be interpreted that a claimant has an option to go to the committee or to court.



35. The doctrine of exhaustion was comprehensively dealt with by a 5-Judge Bench in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* (2020) eKLR. The Court stated as follows: -

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in *R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:

This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words:

Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.

While this case was decided before *the Constitution* of Kenya 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine.

This is *Geoffrey Muthiga Kabiru & 2 others – vs- Samuel Munga Henry & 1756 others* [2015] eKLR, where the Court of Appeal stated that:

It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

36. The Court also dealt with the exceptions to the doctrine of exhaustion. It expressed itself as follows: -

“However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others ex parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest



involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)

60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.

In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.

37. Likewise, in *Republic vs. National Environment Management Authority (NEMA)* [2011] eKLR the Court of Appeal restated this principle thus after reviewing the authorities on the point:

"The principle running through these cases is where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers,



was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it - see for example *R vs. BIRMINGHAM CITY COUNCIL, ex parte FERRERO LTD.* Case. The learned trial judge, in our respectful view, considered these strictures and came to the conclusion that the Appellant had failed to demonstrate to her what exceptional circumstances existed in its case which would remove it from the appeal process set out in the statute. With respect we agree with the Judge."

38. From the above decisions, it is clear that before the Respondent can plead the doctrine of exhaustion it has to satisfy the court that:-
- a. The alternative remedy is available and can be pursued without impediment.
 - b. The Alternative mechanism is accessible, affordable, timely and effective.
 - c. The alternative addressing the complaints in totality.
39. If I get the Appellant clearly, their argument is that the claim herein ought to have been filed with the existing committee and not in the subordinate court in any event.
40. That particular question is not novel as it has previously been answered by other superior courts. It appears like there is a general consensus that the use of the word 'may' gives a claimant the option to move to the committee or to court.
41. I would choose to look at the matter from the reasoning in *Joseph Munyoki Case (supra)* where it was held that;

In our view, even from a literal interpretation, this provision does not oust the jurisdiction of the High Court to hear any matters raised under that Act. If the Act meant to remove those matters from the realm of the High Court or the other courts, then it would have expressly stated so. It gives an aggrieved party an option to go to the committee as a first option. This in our view was meant to ease matters for the poor people whose crops and domestic animals are ravaged by wild animals occasionally, and which people may be far removed from the structured judicial systems. We do note that most of the areas that are prone to wildlife/human conflict are in areas that are outside urban areas where courts are situated.

The Act in our view meant to make it easier for such people to access justice that is more easily accessible in terms of not traveling long distances and also in terms of simplicity in lodging their claims. It could not have been meant to shut out everybody else who would prefer to pursue their claims before the conventional courts. That would explain the use of the word 'MAY' and the absence of any provision expressly limiting or ousting the jurisdiction of the High Court.

Learned counsel for the appellant sought to distinguish the authorities cited to us on the ground that they were determined under the repealed Cap 376. It is true that Section 62(1) of the Cap 376 used the word 'MAY' which is permissive and not mandatory. However, Section 25 of the current Act is couched in exactly the same words. This inevitably means that those decisions made before the Wildlife and Conservation Management Act 2013 came into force are relevant today as they were prior to 2013. Neither the repealed Act (Cap 376) nor the current Act ousts the jurisdiction of the court to hear and determine the said matter.

16. In other words, there is no ouster clause in the Wildlife and Conservation Management Act, that bars a party from seeking relief outside the process provided for under that Act. An ouster,



or privative clause specifically divests the court of jurisdiction to hear or entertain any matters arising from the specific statute. In this case, Section 25 of the Act only gives an aggrieved party an option to pursue its claim either through the process stipulated under the Act, or through the court.

17. The respondent could either lodge his claim through the Act, which he did but no remedy was forthcoming, or pursue the remedy under common law through the courts. Every person has a right to pursue a remedy under common law, for a wrong or injury suffered.
42. Of course this decision must be contrasted with the one made in Purity Kanini case(supra) where it was held that;

“In our considered view, the intention of the framers of section 25 of the Act was to cause claimants who had been injured, or those persons whose relatives had died, by actions of wildlife, to benefit from the dispute resolution mechanism under the Act; a mechanism that was less cumbersome and which would benefit from the specialized knowledge on matters human wildlife interaction. The respondent, instead, opted for the court which, quite unfortunately, did not have the original jurisdiction to hear and determine the dispute...the learned Judge fell into error when he dismissed the appellant’s appeal by holding that the Chief Magistrate’s Court had jurisdiction to hear and determine the claim”

43. With such a situation arising, I think that the court is open to adopt the interpretation that advances the course of justice rather than one that restricts it.
44. The court is aware that Peter Muturi Njuguna case was determiner under the previous Wildlife Act. Nevertheless, the court exhaustively dealt with the use of the word ‘may’ and its context under the Act.
45. What I gather from the authorities that followed Joseph Musyoki Kilonzo case is that a claimant is at liberty to choose to pursue his claim under the Act, or pursue the remedy at common law. To quote Justice Limo in Jediel Murithi case (supra) there can be no wrong without a remedy and that courts must always protect the litigant right to access to justice. It was held thus;

“In my view courts must always protect the litigants right to access justice. It matters not which channel or door a party uses to gain access to justice. The overriding consideration should be the access to justice.

The Appellant in my considered view like most litigants (Wanjiku) only come to court as last resort. In his pleadings at the trial he pleaded that he had filled requisite forms and had made demands to the Respondent in vain. So if the Appellant had made attempts to get compensation and none was forthcoming what was he expected to do? If the Respondent really was kin to compensate him as provided by the law it should have done it in 2017 or early 2018 after establishing the veracity or legitimacy of the claim and had it done so the proceedings in the lower court and this subsequent appeal would not have been necessary.”

46. I am also inclined to agree with the decisions of the court in Anne Ngugi Njiru vs Kenya Wildlife Service (supra) and Kenya Wildlife service vs Mukiira (supra) which followed the decision in Joseph Munyoki Kilonzo and held that section 25 of the Act does not oust the jurisdiction of the courts to hear and determine the matter.
47. Although Purity Kanini Case was decided recently, the Court of Appeal did not state that its decision in Joseph Kilonzo was bad law. If I get the reasoning of the court in Purity Kanini case what it stated



was that having opted to pursue a claim under the Act, if there was a delay, then the option was to pursue Judicial review.

48. Thus I am of the view that whereas the enactment of a clause like section 25 of the Act is meant to provide an easier and efficient avenue for dispute resolution, that mechanism should not be equated to an ouster clause barring the claimant from seeking compensation in a court of law.
49. Therefore, to answer the first question, I find that a claimant who suffers any loss occasioned by wildlife has the option to present his case to the committee or to a court of law seized of the jurisdiction to handle the matter.
50. Can a claimant who has already lodged a claim before the Committee be allowed to pursue a claim before the court over the same matter?
51. Section 6 of the *Civil Procedure Act* which provides:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

52. In Republic v Registrar of Societies - Kenya & 2 Others Ex-Parte Moses Kirima & 2 Others [2017] eKLR the court dealt with principle of sub judice. It held that:

“...Therefore for the principle to apply certain conditions precedent must be shown to exist: First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed...”

53. Similarly, in the case of David Ndii & others versus Attorney General & Others 2021 eKLR, a bench of five Judges inter alia stated;

“The rationale behind this provision (Section 6 of the *Civil Procedure Act*) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts,....”

54. Also, in the case of Kenya Bankers Association versus Kenya Revenue Authority, 2019 eKLR the court had this to say on the issue of sub judice;

“in addition, it is clear that the matters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The ex parte applicant herein, is litigating on behalf of its 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relief claimed.

A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principle of sub judice does not talk about the “prayers sought” but rather “the matter in issue” I find that the matters in issue in the suits are substantially the



same. In *Re the matter of the Interim Independent Electoral Commission*, the Supreme Court cited with approval the Australian decision where it was held: -

“... we do not think that the word “matter” ...means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our opinion there can be no matter...unless there is some right, duty or liability to be established by the determination of the court...”

55. In my view, the Committee under the Act is deemed to be equivalent to a court of competent jurisdiction since it is empowered by the Act to receive claims under the Act.
56. Accordingly, I find that the two processes cannot be undertaken simultaneously. A claimant who has exercised the option of going before the Committee cannot subsequently file a claim in tort over the same cause of action. Doing so would be contrary to the sub-judice rule. There is a possibility of there being two different awards to the same claimant over the same cause of action, hence the said rule.
57. For any claimant who has a pending claim before the committee and who has not been compensated, he/she ought to move the High Court for orders of Judicial Review for orders of Mandamus and not file a suit in the subordinate courts.
58. I think that the main reason why the claimants have moved to court is due to the fact that their claims were not processed as required. That situation will be properly addressed by the court in judicial review proceedings.
59. Having dealt with the first issue, I will now deal with this specific appeal.
60. Did the small claims court have jurisdiction to entertain the matter?
61. The trial court extensively dealt with that question.
62. There is no dispute that said court has jurisdiction to hear and determine a claim based on tort. In arriving at its decision the trial court held that had it found that the claimant had already lodged such a claim before the committee, then it would have downed its tools. In particular the court held that:-

“None of the Claimants have opted to pursue the CWCCC mode of compensation and if they had such claims before the committee, the court would automatically down its tools pursuant to the same section 25 of the WCMA.”
63. From what I have already stated, I am of the view that this is a correct interpretation of the law. A party who chooses to pursue a claim under the Act, and proceeds to do so, cannot come before court of law seeking compensation from the same facts.
64. In the instant appeal, the respondent had admitted in his pleadings/statement that he had already lodged a claim with the committee and filled the requisite forms under several number 14413. His farm was subsequently visited by the Sub-County Agricultural Officer and the loss to his crops was assessed at Ksh 611,250/-.
65. On the basis of this averment in his own pleadings, I hold the view that the filing of the suit in the lower court was an abuse of the court process. The Respondent could not pursue double compensation over the same cause of action. If the Committee did not act as required then the right course was to pursue a remedy in Judicial Review for orders of mandamus.
66. Looking at the ruling of the Learned Magistrate, I find that she erred when she found that the claimant respondent had not opted to pursue compensation under the Act.



67. Having found that the Respondent herein had lodged a claim and action was taken, then he could not move to the subordinate court to hear the same dispute.
68. Accordingly, I find that the Learned Magistrate erred when she found that she had the jurisdiction to hear the case and dismissed the preliminary objection.
69. Consequently, I allow the appeal and make the following orders:-
- a. The Small Claims Court did not have jurisdiction to hear the dispute as the same is sub-judice by virtue of a claim already filed with the Committee.
 - b. The decision to dismiss to preliminary objection is hereby set aside and substituted with an order that the preliminary objection is upheld and the suit is struck out for being sub judice.
 - c. Costs to the Appellant.

Application of this Ruling to other matters.

70. It is acknowledged that this ruling affects many other claims before the subordinate courts. Some are already concluded while some are pending determination.
71. In order to avoid different results in the said files, the court gives the following guidelines;
- a. For those suits pending determination of the preliminary objections, the same will be determined by the respective trial courts guided by the findings herein.
 - b. For those matters that are concluded, the same shall be mentioned separately before this court for further directions.
 - c. In each case above the Appellant shall in each file provide the following:-
 - i. Information and details of any claim lodged by each Respondent in the committee.
 - ii. The status of each of such claims before the committee.The same be given 30 days.
 - d. For the avoidance of any doubt there shall be a stay of all the hearing of the proceedings save for the determination of the preliminary objection in each file affected by this judgment and execution of each concluded file pending further directions of the court.

H. M. NYAGA

JUDGE

DATED, SIGNED & DELIVERED AT MERU THIS 13TH DAY OF FEBRUARY, 2025.

H. M. NYAGA

JUDGE

