



**Republic v Kenya Wildlife Service & 2 others; Oguna (Suing as the Legal Representative of the Estate of Peter Ouma Ogola) (Exparte Applicant) (Judicial Review E002 of 2024) [2025] KEHC 2019 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2019 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
JUDICIAL REVIEW E002 OF 2024  
DK KEMEL, J  
FEBRUARY 7, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA WILDLIFE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY WILDLIFE COMPENSATION COMMITTEE, HOMABAY .... 2<sup>ND</sup> RESPONDENT**

**MINISTERIAL WILDLIFE COMPENSATION COMMITTEE .... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOYCE ATIENO OGUNA (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER OUMA OGOLA) ..... EXPARTE APPLICANT**

**RULING**

1. The Applicant herein filed the present Notice of Motion dated 4<sup>th</sup> September 2024 seeking for an order of Mandamus to compel the 1<sup>st</sup> Respondent to release Kshs 5,000,000/= recommended by the 2<sup>nd</sup> Respondent and approved by the 3<sup>rd</sup> Respondent as compensation for the death of her husband who was attacked by hippo while fishing near Ogambe Beach occasioning him fatal injuries.
2. The application is supported by an affidavit of the Applicant and grounds on the face thereof which are inter alia; that the Ex-parte Applicant is the legal representatives of the estate of Peter Ouma Ogola (deceased); that on 18<sup>th</sup> September, 2021, the deceased was viciously attacked by a crocodile while bathing at Kongonga beach occasioning him fatal injuries as a result of the 1<sup>st</sup> Respondent’s negligence and breach of statutory duty as governed by the provisions of [Wildlife Conservation](#)



and Management Act No. 47 of 2013; that the Ex-parte Applicant reported the matter at Aram Police Station and that the 1<sup>st</sup> Respondent's officers came and took the details and promised to compensate the ex-parte applicant for the death of their kin; that the applicant thereafter applied for compensation by filing the claim form provided by the 1<sup>st</sup> Respondent; that 1<sup>st</sup> Respondent convened a meeting of the Community Wildlife Conservation Committee as regards the claim for compensation which is a function that it is tasked with together with making recommendations to Ministerial Wildlife Compensation Committee (MWCC) that validates and approves payment of the award by the aforesaid committee; that on following up at the County Offices within this year, the Ex-parte Applicant learnt that the Ministerial Wildlife Compensation Committee had approved the award; that in spite of the foregoing, the Ex-parte Applicant are yet to receive the compensation on behalf of the estate of the deceased; that the Ex-parte Applicant on various occasions made a follow up on the compensation but the 1<sup>st</sup> Respondent has not been forthcoming with feedback and has been taking them in circles; that the Ex-parte Applicant have now waited for close to three years and that the Respondent are yet to make good the compensation even after requisite meetings and approvals of the claim by the committees; that the respondents continue to unjustifiably delay the compensation without any plausible explanation; that the Ex-parte Applicant are apprehensive that unless this court intervenes and compels the Respondent to act on their decision and settle the claim, the Respondents will continue ignoring the Applicant demands for compensation and thus erode the confidence of the Applicant and the general public in the efficiency of the administrative process of Kenya; that it is therefore important that this matter be heard as a matter of urgency for just and expeditious disposal.

3. The application was opposed by the 1<sup>st</sup> Respondent who filed a replying affidavit dated 2<sup>nd</sup> December, 2024 sworn by Amos Nyaoro and who deponed inter alia; that he was the 1<sup>st</sup> Respondent's Assistant Warden and was fully conversant with the facts of this case and with the authority to act on behalf of the 1<sup>st</sup> Respondent thus competent to swear it; that the application is fatally defective as it seeks to compel the 1<sup>st</sup> Respondent to pay compensation to strangers not listed as the next of kin of the estate of Peter Ouma Ogola according to records held by the 1<sup>st</sup> Respondent; that the process of identifying the beneficiaries for purposes of compensation is a meticulous one and that it settled on one Goret Akoth Apiyo as the next of kin; that Siaya County Wildlife Compensation Committee established under Section 18 of the Wild life Conservation and Management 2018 is mandated to review and recommend payment of compensation on claims relating to death or injury resulting from wildlife attacks in line with Section 19(1) and 25(2) of the Act; that the 1<sup>st</sup> Respondent is only a secretary of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents created under Section 18 of the Wildlife Management and Conservation Act 2013; that the import of the application results in requiring the court to enforce an illegality as it is demanding the 1<sup>st</sup> Respondent to perform an act outside its mandate according to the law; that the first Respondent has duly performed its duty and endeavored to update the claimants on the status of the claim through phone calls and an open door policy where any claimant can seek update by visiting the offices all over the country; that the Siaya County Wildlife Conservation Committee held a meeting to deliberate on the claim on 14<sup>th</sup> December 2021 at Siaya County IEBC board room; that the recommendations approving compensation were then forwarded to the Ministerial Committee in accordance with Section 25 (3) of the Act which has since forwarded to the treasury for payment; that the Applicant's averment that the Respondents have kept them waiting is untrue and misguided; that whatever legitimate expectation is not an expectation as against the 1<sup>st</sup> Respondent; that it is clear the Respondents duly performed their statutory duty under the prevailing relevant laws; that the applicant is at best fraudsters trying to cash in on the compensation scheme having not been duly identified as the bonafide next of kin; that the relief sought has already been rendered by a distinct entity; that the Applicant is not demonstrated how their constitutional rights have been violated by



the 1<sup>st</sup> Respondent; that the application is not merited as against the 1<sup>st</sup> Respondent or at all and should be dismissed with costs.

4. The Applicant filed a further affidavit sworn by Jackline Adhiambo Rakula on 20<sup>th</sup> December 2024 wherein she averred inter alia; that Goreti Akoth Apiyo is the widow of the deceased and who is one of the co-administrators of the estate as per the Letters of Administration Ad Litem; that the said widow has young children who could not team up with her; that she is a sister to the deceased; that the dependents of the deceased are many and that all could not file the present application; that their role is only to file suit while the distribution will be given to the dependents who have been identified.
5. The application was canvassed by way of written submissions. Both parties duly filed and exchanged submissions. The Applicant's submissions are dated 5<sup>th</sup> December, 2024 whereas the 1<sup>st</sup> Respondent's submissions are dated 20<sup>th</sup> December, 2024.
6. The Applicant's submissions are that; through his advocate filed an application dated 4<sup>th</sup> September, 2024 having been granted leave to do so by this court which seeks for an order of mandamus to compel the Respondents and especially the 1<sup>st</sup> Respondent to release the sum of Ksh5,000,000/= to the Exparte Applicant's Advocate as outlined on the grounds in support of the application.

The issues for determination are as follows: -

- a. Whether the 1<sup>st</sup> Respondent is statutorily bound to manage parks and reserves.
- b. Whether the 1<sup>st</sup> Respondent is mandated to compensate the Exparte applicant.
- c. What are the timelines within which the Applicant's claim should be settled
- d. Whether the Exparte Applicant is entitled to the orders of mandamus.

On the 1<sup>st</sup> issue, of whether the Respondent is statutorily bound to manage national parks and reserves, according to the [Wildlife Conservation and Management Act](#), 2013 Section 6 and 7.

“7, the function of the Service shall be to-

- a. Conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction;
- b. Provide security for wild life and visitors in national parks, wildlife conservation areas and sanctuaries;

The legal capacity and the mandate of the 1<sup>st</sup> Respondent with regards to this case is clear from the above provisions. Amongst them includes management of the National parks, Wildlife Conservation areas and sanctuaries under its jurisdiction. This would imply that he 1<sup>st</sup> Respondent has a statutory mandate to control wildlife.

It was further submitted that the 1<sup>st</sup> Respondent has the mandate to compensate the Exparte Applicant, it is worth noting that having established that the 1<sup>st</sup> Respondent has the mandate to control wild life under the Act with the attendant duty to compensate the Claimant within 60 days from the date of reporting, the next question would be whether they are charged with the responsibility of compensation for claims made under the Act. The learned counsel went on to outline the procedure to be followed for payment of damages by a Claimant who opts to pursue a claim under the Act as follows.

Section 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 representatives



or successor or assign, may launch a claim to the County Wild life 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 Section 18 shall verify a claim made under sub section (1) and upon verification, submit the claim t the cabinet secretary together with its recommendation.
3. The Cabinet Secretary shall considerthe recommendations made under sub section (2) and where appropriate pay compensation t the claimant as follows: -
  - a. In the case of death, five million shillings.
  - b. In the case of injury occasioning permanent disability, three million shillings.
  - c. In case of any other injury, a maximum of two million shillings, depending on the extent of the injury.

It was submitted that the Court of Appeal has stated and reinstated that the duty to manage the National parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage caused to property and human life by wildlife. The Court of Appeal in Kenya Wildlife Service vs. Joseph Musyoki Kalonzo [2017] eKLR, stipulated as follows on the issue: -

“The Appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty.

In the case of Joseph Boro Ngera & Supaduka Nakuru Vs. Kenya Wildlife Service Civil Appeal NO. 71 of 1997. The Appellate Court observed that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage to property and human life. Therefore, it is the duty of the 1<sup>st</sup> Respondent to compensate the Applicant. Reliance was further placed in the case of Joseph Boru Ngera & Another vs. Kenya Wildlife Service vs. Rift Valley Agricultural Contractors Limited (2014) eKLR where the Court stated: -

“The cabinet secretary referred to in the Act pays money on behalf of the appellant. Neither the court nor the parties should concern themselves with the internal arrangements of the appellant as to whether it is the CEO of the appellant or the Cabinet Secretary who should disburse the money.”

It was submitted that the duty to pay compensation has been positively determined by the Court of Appeal and the Supreme Court.

It was therefore submitted that the 1<sup>st</sup> Respondent is liable to compensate the ex parte Applicant; the applicant’s claim having been approved following the laid down procedures under Section 25 of the *Wildlife Conservation and Management Act* as stated above. The 1<sup>st</sup> Respondent therefore owes the applicant the amount of Ksh5,000,000/= as compensation for the fatal injury of her husband.

As to whether the Exparte Applicant is entitled to the order of mandamus, it was submitted that the Exparte Applicant has moved this Honourable Court to compel the Respondents, particularly 1<sup>st</sup> Respondent to satisfy a recommendation by the 2<sup>nd</sup> Respondent and approved by the 3<sup>rd</sup> Respondent as compensation for the death of the deceased in the sum of Ksh. 5,000,000/=. It was also submitted that it is not in dispute that the said claim was to be settled within 60 days as per the Regulations enacted under the *Wildlife Conservation and Management Act* of 2017. That the 1<sup>st</sup> Respondent has failed to satisfy the said recommendation despite several follow ups by the ex parte Applicant prompting



them to file the present application for mandamus. Reliance was placed in *Kenya Wildlife Service vs. Awuor (Civil Appeal E013 of 2022)* (2023) KEHC 3721 (KLR) (26 April 2023) (Judgment) and *Kenya Wildlife Service vs Abraham M'ngai M'tumitu* [2021] Eklr where it was held:

“clearly the appellant having awarded amount under the Act, further intervention in court could only have been by the appeal process following upon the provision of the section, that is to say through the mechanism of a first appeal court. the respondent may have opted to pursue its claim for compensation in negligence for damages for personal injury in the civil court as an alternative to the statutory compensation mechanism. Without deciding, I would consider that the respondent may also have pursued judicial review remedy in the High Court, if so advised by his advocates, for the award of the full award of compensation prescribed under the Act. The respondent may also, as he may be advised by his legal advisors, file an application for extension of time to pursue the appeal process set out in Section 25 (6) of the Act.”

Further reliance was placed in the case of *Republic v Kenya Wildlife Service & 2 Others, Muhia (Exparte Applicant)* (Judicial Review Application E003 of 20204) KEHC 8086 KLR where the High Court faced with a similar application as the present one in Court and relying on the above authorities held that the Ex parte Applicant was within her right to file the Judicial Review Application. The court went ahead and granted the Application for an order of mandamus compelling the 1<sup>st</sup> Respondent to pay the amount of Ksh 5,000,000/= as compensation for the death of the deceased. In light of the foregoing cases, and Regulations, it was submitted that the exparte applicant is within their right to file the instant judicial review to enforce the compensation. It is submitted that, the exparte Applicant have shown that the Wildlife Conservation and Management Committee recommended for compensation in the sum of Ksh5,000,000/= for the death the deceased as provided for under Section 25 of the Act. Having established that the 1<sup>st</sup> Respondent's duty to manage and conserve wildlife comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty, it is the ex parte Applicant's case that the 1<sup>st</sup> Respondent has failed to satisfy the recommendation for compensation within 60 days from reporting of the claim as per the Regulations. It was finally submitted that the ex parte Applicant is entitled to the order of mandamus as sought in the application before this court; that the cost of the application be awarded to the Exparte Applicant.

7. The Respondent's submissions are that; the fact of the present case relates to a human wildlife incident; that the liability of which the 1<sup>st</sup> Respondent herein deny in toto; that the basis of this denial is two pronged and will be addressed under two heads namely jurisdiction and agency.

Basing on Jurisdiction the Court of Appeal has in a recent decision effectively ousted the jurisdiction of the Magistrate's court from handling Human Wildlife Conflict cases. In *Nyeri Civil Appeal No. 30 of 2020 Kenya Wildlife Service vs Purity Kanini 2020* the court opined the claimants for compensation in line with the provisions of Section 25 of the Wildlife Act are to exhaust the mechanism prescribed by the Act; that the court further stressed that County Wildlife Conservation and Management Committee is equipped to hear and determine the said claims in a less bureaucratic manner compared to courts. In deed the process prescribed by the Act is free and offers an avenue to confirm the injury or loss of life in a more systematic fashion thereby weeding out masqueraders; that cases of unscrupulous persons keen on cashing in on funds specifically set aside for those who suffer as consequence in interaction with wild animals by virtue of living near wildlife habitats have been rampant given the amounts involved. Additionally, the process is free and the compensation awarded not subjected to



any form of tax. The County Compensation Committee is better placed to verify the claim and the claimant's next of kin to ensure no guess work is made in responding to wildlife claims.

Basing on Agency, a key contention here is the liability of the Defendant a parastatal created by law and acting distinct from the state by dint of Section 6 (a) of the WCM Act providing for it to inter alia sue and be sued in its own name. It is distinct from the state and runs its affairs independent of the state. As reiterated in Mombasa HC 87 of 2013, Thompson Dickens Ngobi vs. Kenya Ports Authority and others 2017... a statutory corporation, unless the creating statute says otherwise, is not an appendage or department of the Government ..Parliament in its wisdom would not have expended time to create regulations for a distinct entity if it desired that the entity remain a part of government.

That the Act is explicit on the role of the state through the ministry's state department which is to compensate any victims of Human Wildlife department which is to compensate any victims of Human Wildlife Conflict. The duty of the 1<sup>st</sup> Respondent is limited to that of an agent due to available structures throughout the country, to act as the secretariat to collect, verify, and forward all valid claims for compensation from all the County Conservation Committees throughout the country to the ministerial committee for approval and release of funds. The defendant herein is an agent of the state department of wildlife and therefore not directly answerable to the misdeeds or otherwise of the state department. It is trite law that the agent is not liable for the principal's liability and delegated responsibility cannot result in liability. The plaintiff is thus misguided to the extent that he claims that is the defendants' mandate to pay compensation monies.

That the responsibility of the county wildlife conservation committee to verify, review, assess and made recommendations for compensation of sums they deem fit and not necessarily the 5 million and 3 million maximum for death and injury respectively; that a mechanism to arrive at the degree of injury has been established; that the technical support offered by the 1<sup>st</sup> Respondent in visiting the scene, attending post mortems procedures, and liaising with local government authority as chiefs to ensure the right claimant is the one that receives compensation monies is exclusively by the committee. The 1<sup>st</sup> Respondent's role is therefore that of a secretariat of the committee and aids in ensuring the documentation namely compensation forms are issued and filed in satisfactorily, required attachments included, and the outcome of the committee is communicated to the claimants and their next kin; that the 1<sup>st</sup> Respondent has done diligently and in a timely fashion as evidenced by chief's letter dated 12<sup>th</sup> October, 2023; that in this case, it is evident that the defendant performed their duty by responding to the call when the tragedy occurred and visiting the home, advised the family of the procedure to follow; that the compensation form was also issued to the rightful next of kin; that the forms were duly returned and deliberations on the claim made; that the 1<sup>st</sup> Respondent performed its mandate under law and is therefore not at fault as the committee was constituted and a meeting held on the 14<sup>th</sup> December, 2021 wherein the claim was approved; that the applicant herein include persons that can safely be termed 3<sup>rd</sup> parties and total strangers to the claim having not been identified as 3<sup>rd</sup> parties in a rigorous exercise of next of kin verification; that they therefore have no right to seek court redress as they lack standing in so far as compensation for wildlife attacks are concerned as guidelines so provide.

As reiterated in KWS VS ABRAHAM MNGAI MUTUMITU 2021, the claimant having opted to pursue and accept compensation under statute they disentitled themselves from a claim in negligence as one may not claim under both.

Finally, the 1<sup>st</sup> Respondent prays that having performed their mandate to the letter, it ought to be released from further responsibility and that this application should be dismissed as against 1<sup>st</sup> Respondent. Reliance was placed in several authorities namely - *Kenya Wildlife Service vs. Purity Kanin Nyeri Civil Appeal No. 30 of 2020*, Civil Appeal No. 48A of 2020, KWS vs. Abraham M'ngai



M'tumitu (Suing as the representative of estate of Judy Gakii M'ngai) and Mombasa HC 87 2013 Bob Thompson Dickens Vs. Kenya Ports Authority & Others.

8. I have considered the application, rival affidavits as well as the rival submissions. It is not in dispute that the Applicant's request for compensation has already been vetted and approved by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the sum of Ksh 5,000,000/=. It is also not in dispute that the Applicant is the legal representative of the deceased who was killed by a crocodile while bathing at Kongonga beach and that the Applicant is already obtained the requisite Limited Letters of Administration Ad Litem vide Siaya Chief Magistrate's court Succession Cause No. E050 OF 2024 issued on 15<sup>th</sup> May 2024. I find the issue for determination is whether the application has merit.
9. It is noted that the 1<sup>st</sup> Respondent has given a wide berth to the applicant's claim and has maintained that it is not its duty to compensate the Applicant and has sought for dismissal of the suit with costs. A perusal of the relevant *Wildlife Conservation and Management Act*, 2013 reveals that the 1<sup>st</sup> Respondent is actually knee deep with responsibilities therein. Under sections 6 and 7 of the said Act, the functions are indicated as follows:
  - c. Conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction;
  - d. Provide security for wild life and visitors in national parks, wildlife conservation areas and sanctuaries;

It is thus clear that the 1<sup>st</sup> Respondent has obligations under the Act and it cannot therefore run away from them. The duties have been allocated by statute. In the same vein, the duty to compensate victims arising from human wildlife conflicts is squarely on its shoulders to discharge. Section 25 of the Act provides as follow:

10. 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 representatives or successor or assign, may launch a claim to the County Wild life Conservation and Compensation Committee within the jurisdiction established under this Act.
11. The County Wildlife Conservation and Compensation Committee established under Section 18 shall verify a claim made under Section 18 shall verify a claim made under sub section (1) and upon verification, submit the claim t the cabinet secretary together with its recommendation.
12. The Cabinet Secretary shall consider the recommendations made under sub section (2) and where appropriate pay compensation to the claimant as follows: -
  - d. In the case of death, five million shillings.
  - e. In the case of injury occasioning permanent disability, three million shillings.
  - f. In case of any other injury, a maximum of two million shillings, depending on the extent of the injury.

The Court of Appeal has stated and reinstated that the duty to manage the National parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage caused



to property and human life by wildlife. The Court of Appeal in *Kenya Wildlife Service vs. Joseph Musyoki Kalonzo* [2017] eKLR, stipulated as follows on the issue: -

“The Appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty.

In the case of *Joseph Boro Ngera & Supaduka Nakuru Vs. Kenya Wildlife Service Civil Appeal NO. 71 of 1997*. The Appellate Court observed that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage to property and human life. Therefore, it is the duty of the 1<sup>st</sup> Respondent to compensate the Applicant.

The law on this point was succinctly pronounced in *Joseph Boru Ngera & Another vs. Kenya Wildlife Service vs. Rift Valley Agricultural Contractors Limited* (2014) eKLR where the Court stated: -

“The cabinet secretary referred to in the Act pays money on behalf of the appellant. Neither the court nor the parties should concern themselves with the internal arrangements of the appellant as to whether it is the CEO of the appellant or the Cabinet Secretary who should disburse the money.”

The Supreme Court in *Kenya Wildlife Service Vs. Rift Valley Agricultural Contractors Limited*, Supreme Court Petition No. 11 of 2015 (2018) eKLR stated as follows at paragraph 66:

“A global comparison of laws and jurisprudence relating to animal and wildlife management normally provide that an entity charged with such a management task also collects the revenues generated from activities relating to the same. The rationale being that such revenue supports the costs of management and any related outcomes, including compensation for damage made by animals and wildlife... The Wild life Act gives responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damages occasioned by wild animals.

In view of the foregoing, it is evident that the duty to pay compensation has been positively determined by the Court of Appeal and the Supreme Court.

It is therefore, incumbent upon the 1<sup>st</sup> Respondent to compensate the ex parte Applicant since the applicant’s claim had been approved following the laid down procedures under Section 25 of the *Wildlife Conservation and Management Act* as stated above. The 1<sup>st</sup> Respondent therefore owes the applicant the amount of Ksh5,000,000/= as compensation for the fatal injury the deceased.

The Applicant has been compelled to approach the court for redress following failure of the 1<sup>st</sup> Respondent to compensate them despite the clear provisions under the relevant Act. Under Section 25 (7) of the *Wildlife Conservation and Management Act* No. 47 of 2013, the Minister for Tourism and Wildlife is mandated to enact regulations that govern the claim handling process.

Under the Kenya Subsidiary Legislation, 2017, Legal Notice No. 245 published in September, 2017, the Minister published the said regulations. Under Part IV Section 27 (1) and (2) the Applicant’s claim was to be settled within 60days of reporting. (The relevant part have been highlighted in the list of authorities). It is now 8 years since the Claimant reported her claim. Despite the Respondents approving the same for payment of Ksh5,000,000/= four (4) years ago as has been admitted by the 1<sup>st</sup> Respondent, the same remains outstanding to date despite the suffering that the Claimant and



her children are going through. This is way beyond the regulatory 60days as provided for under the regulations.

As to whether the Exparte Applicant is entitled to the order of mandamus, it is noted that the Exparte Applicant have moved this Honourable Court to compel the Respondents, particularly 1<sup>st</sup> Respondent to satisfy a recommendation by the 2<sup>nd</sup> Respondent and approved by the 3<sup>rd</sup> Respondent as compensation for the death of the deceased in the sum of Ksh. 5,000,000/=. It is not disputed that the said claim was to be settled within specific days as per the Regulations enacted under the [Wildlife Conservation and Management Act](#) of 2017. It is clear that the 1<sup>st</sup> Respondent has failed to comply with the said recommendation despite several follow ups by the ex parte Applicant prompting them to file the present application for mandamus. In the cases of [Kenya Wildlife Service vs. Awuor \(Civil Appeal E013 of 2022\)](#) (2023) KEHC 3721 (KLR) (26 April 2023) (Judgment) and [Kenya Wildlife Service vs Abraham M'ngai M'tumitu \[2021\] Eklr](#) the courts held as follows:

“Clearly the appellant having awarded amount under the Act, further intervention in court could only have been by the appeal process following upon the provision of the section, that is to say through the mechanism of a first appeal court. the respondent may have opted to pursue its claim for compensation in negligence for damages for personal injury in the civil court as an alternative to the statutory compensation mechanism. Without deciding, I would consider that the respondent may also have pursued judicial review remedy in the High Court, if so advised by his advocates, for the award of the full award of compensation prescribed under the Act. The respondent may also, as he may be advised by his legal advisors, file an application for extension of time to pursue the appeal process set out in Section 25 (6) of the Act.”

Again, in the case of [Republic v Kenya Wildlife Service & 2 Others, Muhia \(Exparte Applicant\) \(Judicial Review Application E003 of 20204\) KEHC 8086 KLR](#) the court held that he Ex parte Applicant was within her right to file the Judicial Review Application. The court went ahead and granted the Application for an order of mandamus compelling the 1<sup>st</sup> Respondent to pay the amount of Ksh 5,000,000/= as compensation for the death of the deceased.

13. In light of the foregoing cases, and Regulations, it is my view that the exparte applicant are within their rights to file the instant judicial review to enforce the compensation since they have shown that the Wildlife Conservation and Management Committee recommended for compensation in the sum of Ksh5,000,000/= for the death of the deceased as provided for under Section 25 of the Act.
14. Having established that the 1<sup>st</sup> Respondent's duty to manage and conserve wildlife comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty, I find that the 1<sup>st</sup> Respondent has failed to satisfy the recommendation for compensation within 60 days from reporting of the claim as per the Regulations. I find that the ex parte Applicant is entitled to the order of mandamus as sought in the application.
15. In view of the foregoing, it is evident that the duty to pay compensation has been positively determined by the Court of Appeal and the Supreme Court. It is therefore, clear that the 1<sup>st</sup> Respondent is liable to compensate the ex parte Applicant since the applicant's claim has been approved following the laid down procedures under Section 25 of the [Wildlife Conservation and Management Act](#) as stated above. The approval was done by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and that the 1<sup>st</sup> Respondent is the last entity in the chain of compensation approval. Since the amounts had been scrutinized by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent and found to be legitimate, the 1<sup>st</sup> Respondent is under obligation to pay the same.



16. The 1<sup>st</sup> Respondent has claimed that the Exparte Applicant are strangers or 3<sup>rd</sup> parties and who are out to cash in on the compensation and who should not be allowed to do so. However, the vetting of the claims has already been undertaken by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on behalf of the 1<sup>st</sup> Respondent. In deed the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents perform duties on behalf of the 1<sup>st</sup> Respondents and that they are the ones who are on the ground to check and verify all the claims. I find that the Exparte Applicant is entitled to the order of mandamus as presented. The order of mandamus is necessary to compel the Respondents, particularly 1<sup>st</sup> Respondent to satisfy a recommendation by the 2<sup>nd</sup> Respondent and approved by the 3<sup>rd</sup> Respondent as compensation for the death of the Exparte Applicant's husband in the sum of Ksh. 5,000,000/=. It is not disputed that the said claim was to be settled within 60 days as per the Regulations enacted under the *Wildlife Conservation and Management Act* of 2017 which has not been complied by the 1<sup>st</sup> Respondent. It is noted that it is over 4 years since the compensation was approved and that the that the 1<sup>st</sup> Respondent has failed to comply with the said recommendation despite several follow ups by the ex parte Applicant prompting the present application for mandamus. In the case of *Kenya Wildlife Service vs. Awuor (Civil Appeal E013 of 2022)* (2023) KEHC 3721 (KLR) (26 April 2023) (Judgment) and *Kenya Wildlife Service vs Abraham M'ngai M'tumitu* [2021] Eklr the court held as follows:

“clearly the appellant having awarded amount under the Act, further intervention in court could only have been by the appeal process following upon the provision of the section, that is to say through the mechanism of a first appeal court. The Respondent may have opted to pursue its claim for compensation in negligence for damages for personal injury in the civil court as an alternative to the statutory compensation mechanism. Without deciding, I would consider that the Respondent may also have pursued judicial review remedy in the High Court, if so advised by his advocates, for the award of the full award of compensation prescribed under the Act. The respondent may also, as he may be advised by his legal advisors, file an application for extension of time to pursue the appeal process set out in Section 25 (6) of the Act.”

Again, in the case of *Republic v Kenya Wildlife Service & 2 Others, Muhia* (Exparte Applicant) (Judicial Review Application E003 of 2024) KEHC 8086 KLR where the High Court held that the Ex parte Applicant was within her right to file the Judicial Review Application and that the court went ahead and granted the Application for an order of mandamus compelling the 1<sup>st</sup> Respondent to pay the amount of Ksh 5,000,000/= as compensation for the death of the deceased.

17. In light of the foregoing cases, and Regulations, it is my considered view that the exparte applicant is within her right to file the instant judicial review to enforce the compensation. The Exparte Applicant has clearly shown that the Wildlife Conservation and Management Committee recommended for compensation in the sum of Ksh5,000,000/= for the death of the deceased as provided for under Section 25 of the Act.
18. Having established that the 1<sup>st</sup> Respondent's duty to manage and conserve wildlife comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty, it is now clear that the 1<sup>st</sup> Respondent has failed to satisfy the recommendation for compensation within 60 days from reporting of the claim as per the Regulations. There is merit in the Applicant's application for an order of mandamus to compel the 1<sup>st</sup> Respondent to perform its duty.
19. It is noted that the 1<sup>st</sup> Respondent has made a raft of accusations against the Exparte Applicant whom they have referred to as strangers and fraudsters and persons who are out to enrich themselves to the detriment of the genuine beneficiaries of the estate. The Exparte Applicant have presented copies of



letters of Grant of Administration Ad Litem which they obtained for the purposes of filing suit and that once the suit is concluded, the administrators of the estate will then proceed and lodge the requisite succession cause and thereafter handle the issue of the distribution of the estate. Hence, the fears of the 1<sup>st</sup> Respondent that the compensation monies will be lost should not arise.

20. In view of the foregoing observations, it is my finding that the application dated 4<sup>th</sup> September, 2024 has merit. The same is allowed as prayed.

**DATED AND DELIVERED AT SIAYA THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025**

**D. KEMEI**

**JUDGE**

In the presence of:

Opando.....for Exparte Applicant

N/A Walubengo .....for 1<sup>st</sup> Respondent

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

N/A.....for 3<sup>rd</sup> Respondent

Ogendo.....Court Assistant

