



Mnyapara (Suing as the Legal Representative of the Estate of Gladys Kitaba Mwamburi) v Kenya Wildlife Service (Civil Appeal E061 of 2024) [2025] KEHC 5437 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E061 OF 2024
AN ONGERI, J
APRIL 24, 2025**

BETWEEN

**SHABANI MWACHAO MNYAPARA APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF GLADYS
KITABA MWAMBURI**

AND

KENYA WILDLIFE SERVICE RESPONDENT

(Being an appeal from the Ruling and Order of Hon. D. Wangeci (SPM) in Wundanyi SPMCC NO. E047 OF 2023 delivered on 4th November 2024)

JUDGMENT

1. The trial court struck out the Appellant's suit on 4th November 2024 for reasons that the Appellant ought to have filed his suit at the proper forum which is the committee to the National Environment Tribunal.
2. The trial court further said that by passing the quasi-judicial forum, the Appellant clearly failed to exhaust all the remedies that were available to him as stipulated under the [Wildlife Conservation and Management Act](#) (WCMA).
3. The Appellant has appealed against the said Ruling on the following grounds:-
 - i. That the learned trial Magistrate erred in law and fact by upholding the Respondent's Notice of Motion dated 6th June 2024 against the weight of evidence.
 - ii. That the learned trial Magistrate erred in law and fact by dismissing the Appellant's suit to wit, Wundanyi SPMCC No. E047 of 2023 for want of jurisdiction.



- iii. That the learned trial Magistrate erred in law and fact by failing to appreciate precedents set up by Superior Courts on the question of the jurisdiction of the courts under the *Wildlife Conservation and Management Act* No. 47 of 2023.
 - iv. That the learned trial Magistrate erred in fact by failing to correctly interpret and/or narrowly interpreting the provisions of the *Wildlife Conservation and Management Act* regarding jurisdiction of the court and thereby made an erroneous ruling and order.
 - v. That the learned trial Magistrate erred in law and fact by basing her ruling and order on irrelevant and/or extraneous precedents or matters.
 - vi. That the learned trial Magistrate erred in law and fact by failing to consider the Appellant's submissions and authorities cited and attached therewith.
 - vii. That the learned trial Magistrate erred in law and fact by failing to make a reasoned ruling and order.
4. The appellant submitted that the appeal challenges the ruling of the Trial court delivered on 4th November 2024, which struck out the Appellant's suit (Wundanyi SPMCC No. E047 of 2023) for lack of jurisdiction and failure to exhaust remedies under the *Wildlife Conservation and Management Act* (WCMA).
 5. That the trial magistrate erred in holding that the Appellant should have first appealed to the National Environment Tribunal before filing a civil suit.
 6. That Section 25(1) of WCMA uses the word "MAY" (permissive), not "SHALL" (mandatory), meaning a claimant can pursue compensation either through the WCMA mechanism or civil courts, or both.
 7. The appellant referred to binding precedents including the Court of Appeal in *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (2015) which confirm that civil courts have jurisdiction over such claims.
 8. Further, that the magistrate ignored these authorities, leading to an erroneous decision.
 9. The appellant also submitted that the trial court disregarded the doctrine of stare decisis by ignoring superior court decisions that settled the interpretation of Section 25(1) WCMA.
 10. Further, that a magistrate's court must follow decisions of the High Court, Court of Appeal, and Supreme Court.
 11. The appellant referred to cases like *John Kimathi Marete v Kenya Wildlife Service* and *Mwai Kibaki v Daniel Moi* where the courts emphasize that lower courts cannot depart from binding precedent.
 12. The cases relied on by the appellant include the following;
 - i. *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (Court of Appeal, 2015).
 - ii. *Mathew Otieno Onuko v Kenya Wildlife Service* (Kisumu HCCA, 2006).
 - iii. *John Kimathi Marete v Kenya Wildlife Service* (Meru HCCA, 2017).
 - iv. *Mwai Kibaki v Daniel Moi* (2008) – on precedent.
 13. The Appellant urged the court to allow the appeal (set aside the magistrate's ruling) and to hold that civil courts have jurisdiction over WCMA claims.



14. Further, that the trial court misinterpreted the law and ignored binding precedents, warranting reversal of its decision. The appeal should be allowed.
15. The Respondent (Kenya Wildlife Service) submitted that they applied to strike out the appellant's suit under Order 2 Rule 15 of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#),
16. Further, that the Appellant had already pursued a statutory claim under the [Wildlife Conservation and Management Act](#) before the County Wildlife Compensation Committee, which rejected it due to inconsistencies in the claim.
17. Instead of appealing to the National Environment Tribunal (as required by law), the Appellant filed a fresh suit in court, which was improper.
18. That the trial magistrate struck out the suit, holding that the court lacked jurisdiction.
19. The Appellant admitted lodging a claim before the County Wildlife Compensation Committee, which was rejected.
20. The law (Section 25(6) of the [Wildlife Conservation and Management Act](#)) mandates that any dissatisfaction with the Committee's decision to be appealed to the National Environment Tribunal, not a magistrate's court.
21. The Appellant ignored this statutory appeal process, making the magistrate's court suit frivolous, vexatious, and an abuse of court process.
22. The respondent cited the case of Kenya Wildlife Service v. Abraham M'gai M'itumi [2021] KEHC 7105 (KLR) where the court confirmed that once a claimant opts for statutory compensation, they cannot pursue a parallel common law claim.
23. The only remedies are to appeal to the National Environment Tribunal (and then to the Environment and Land Court).
24. That the Appellant should have appealed to the National Environment Tribunal, not filed a fresh suit.
25. Finally, that the trial magistrate correctly struck out the case for lack of jurisdiction.
26. The Respondent urged the court to uphold the magistrate's decision and to dismiss the appeal with costs.
27. The Respondent submitted that the Appellant's approach was procedurally flawed and that the magistrate's ruling aligns with established law. The proper recourse was an appeal to the Tribunal, not a civil suit.
28. The sole issue for determination in this appeal is whether the trial court was right in striking out the Appellant's suit for want of jurisdiction.
29. This appeal challenges the ruling of the Trial court delivered on 4th November 2024 in Wundanyi SPMCC No. E047 of 2023, wherein the trial court struck out the Appellant's suit for lack of jurisdiction, holding that the Appellant ought to have first pursued remedies before the National Environment Tribunal under the [Wildlife Conservation and Management Act](#) (WCMA).
30. The Appellant filed a civil suit in the Magistrate's Court seeking compensation for a wildlife-related incident.



31. The Respondent (Kenya Wildlife Service) moved to strike out the suit, arguing that the Appellant had already lodged a claim before the County Wildlife Compensation Committee, which was rejected, and that the proper appellate forum was the National Environment Tribunal, not the Magistrate's Court.
32. The trial court agreed with the Respondent and struck out the suit, prompting this appeal.

Issues for Determination

33. The Appellant submitted that Section 25(1) WCMA uses the word "may", meaning a claimant has the option to pursue compensation either through the statutory mechanism (Committee & Tribunal) or via a civil suit.
34. The Respondent contended that once a claimant opts for the statutory route, they must exhaust the appellate process (Committee → Tribunal → ELC) before approaching a civil court.
35. The use of "may" in Section 25(1) suggests that the statutory remedy is permissive, not mandatory.
36. However, Section 25(6) provides that "any person aggrieved by the decision of the Committee may appeal to the Tribunal."
37. The doctrine of exhaustion of remedies applies where a statute provides a specialized dispute resolution mechanism (see *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR).
38. Once the Appellant opted to lodge a claim before the County Wildlife Compensation Committee, he was bound by the statutory appeal process under Section 25(6) and could not bypass the Tribunal by filing a fresh suit in court.
39. The Appellant relied on *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (2015) and other cases to state that civil courts have jurisdiction.
40. However, these cases do not override the statutory framework under WCMA, which provides a specific appellate hierarchy (Committee → Tribunal → ELC).
41. The Magistrate's Court lacks jurisdiction to entertain a matter that should properly be before the Tribunal (see *Kenya Wildlife Service v Abraham M'gai M'itumi* [2021] KEHC 7105 (KLR)).
42. The Appellant contends that the trial court ignored superior court precedents.
43. However, the cases cited by the Appellant do not support bypassing the Tribunal where a claimant has already invoked the statutory process.
44. The doctrine of stare decisis requires lower courts to follow binding decisions, but the trial court correctly applied the WCMA's statutory framework.
45. I find that the trial court correctly held that the Appellant, having lodged a claim before the County Wildlife Compensation Committee, was bound to exhaust the statutory appeal mechanism (Tribunal) before approaching a civil court.
46. The Magistrate's Court lacked jurisdiction to entertain the suit in the circumstances.
47. Accordingly, this appeal lacks merit and is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 24TH APRIL 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI



JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

