



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Wildlife Service v Sabdow (Civil Appeal E023 of 2024)
[2025] KEHC 6354 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL APPEAL E023 OF 2024**

**JN ONYIEGO, J
MAY 21, 2025**

BETWEEN

KENYA WILDLIFE SERVICE APPELLANT

AND

ABDIKADIR KHEIR SABDOW RESPONDENT

*(Being an appeal from the judgement and decree of Hon. R. Aganyo
delivered on 29.11.2024 in Civil Case E001 of 2023 at PM's Court at Wajir)*

JUDGMENT

1. The respondent via a plaint dated 07.06.2023 moved the trial court seeking for orders that:
 - i. A declaration that the plaintiff is entitled to compensation under the [Wildlife Conservation and Management Act](#), 2013.
 - ii. An order for payment of special damages of Kes. 16,300 as pleaded in paragraph 8.
 - iii. An order for compensation as per section 25 of the [Wildlife Conservation and Management Act](#), 2013.
 - iv. Costs and interests on all monetary awards of this suit.
 - v. Other and further relief as this Honourable Court may deem fit to grant.
2. As can be gleaned from the plaint, the plaintiff averred that on 24.04.2023, while at his parent's home at Makoror area within Wajir County, due to the negligence, carelessness and/or recklessness of the appellant or its agents/servants/employees, he was attacked by a poisonous snake thus occasioning him grievous harm and consequently causing him severe injuries.



3. The respondent particularized the alleged negligence on the part of the appellant inter alia; failing to keep wildlife in control, failing to keep the snake under any designated area, allowing a snake while knowing it to be a dangerous animal to roam outside its designated area, failing to keep proper look out of the wildlife and failing to warn the public of the presence of the poisonous snake and dangers of wildlife.
4. The appellant entered appearance and filed statement of defence together with a notice of preliminary objection all dated 29.06.2023. It denied any liability while urging that snakes are not among the wildlife species under Schedule 3A of the *Wildlife Conservation and Management Act, 2013* in which compensation may be paid. It decried that the trial court lacked the requisite jurisdiction to entertain the suit herein and therefore, this court ought to allow this appeal.
5. The preliminary objection was canvassed through written submissions which the trial court dismissed via a ruling delivered on 06.03.2024.
6. The trial court upon considering the facts and the law as presented before it, delivered its judgment on 29.11.2024 thus awarding Kes 2000,000/= as general damages plus costs and interest at court rates with effect from the date the suit was filed: However, the court declined to award special damages.
7. Aggrieved by the said judgment and decree of the trial court, the appellant filed a memorandum of appeal dated 09.12.2024 citing the following grounds.
 - i. That the learned trial magistrate erred in law and fact in proceeding to adjudicate upon a matter in which the said court lacked the requisite jurisdiction to hear and determine.
 - ii. That the learned trial magistrate misapplied and misapprehended the law in failing to appreciate that snakes are not among the wildlife species under Part II of the Third Schedule of the Wildlife Conservation and Compensation Act, 2013 in which compensation may be paid.
 - iii. That the learned trial magistrate misapplied and misapprehended the law in usurping the powers of the cabinet secretary ministry of wildlife by proceeding to make an award of Kes. 2,000,00/- as general damages to the respondent under the Wildlife Conservation and Compensation Act, 2013 while the respondent's claim as presented before court was purely a common law claim.
 - iv. That the learned trial magistrate erred in law and in fact by issuing a judgment that is contrary to established case law and precedent which had been cited before her.
 - v. That the learned trial magistrate erred in law and fact in ignoring and failing to consider the issues raised by the appellant in its statement of defence, written submissions and authorities filed thereon.
8. The appellant sought for the following prayers:
 - a. That the appeal be allowed.
 - b. The judgment of the lower court be set aside and substituted with an order striking out the suit.
 - c. Costs of the appeal.
9. The court directed that the appeal be canvassed by way of written submissions.
10. The appellant via his submissions dated 26.02.2025 urged that the trial court generally has jurisdiction to hear and determine any claim relating to liability in tort in respect of loss or damage caused to any



- property or for the delivery or recovery of movable property but the same notwithstanding, it lacked original jurisdiction to hear and determine claims resulting from injury or death caused by wildlife.
11. That the original jurisdiction to hear and determine such claims vests in the County Wildlife Conservation and Compensation Committee established under section 18 of the *Wildlife Conservation and Management Act*, 2013 hereinafter, the Act and mandated to verify and review claims for compensation and recommend payment of compensation on claims resulting from injury or death caused by wildlife.
 12. The appellant reiterated that while the provision of section 25(1) of the Act uses the permissive modal verb ‘may’ its use is important to consider the context in which it is used. That where there is an alternative mechanism provided for in a statute, which statute notably ranks above common law, a party is required to exhaust the alternative mechanism provided by the statute by lodging their claims before a body created to undertake the alternative mechanism, prior to approaching court which bodies have original jurisdiction. To that end, reliance was placed in the case of *Kenya Wildlife Service vs Kanini* (suing as the *next friend to Edward Koome*) *Civil Appeal 30 of 2020* [2024] KECA 1127 KLR where the court held that...the respondent instead, opted for the court which, quite unfortunately did not have the original jurisdiction to hear and determine the dispute...
 13. That by bringing the suit before the court, the respondent failed in exhausting the available dispute resolution mechanism. To that end, the appellant relied on the case of *Albert Chaurembo Mumba & 7 others vs Maurice Munyao & 148 Others* [2019] eKLR where the Supreme Court held that, even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi - judicial authorities and organs to deal with a dispute as provided for in the relevant parent statute. In the end, the appellant urged this court to allow the appeal as prayed.
 14. The respondent in opposition of the appeal filed submissions dated 10.03.2025 raising the following issues for determination:
 - i. Whether the appellant has led a case that warrants this court to interfere with the judgment of the trial court.
 - ii. Whether the trial court had jurisdiction to hear and determine the matter.
 - iii. Whether the trial court awarded excessive damages.
 - iv. Whether the appeal is merited.
 15. The respondent urged that by consent, parties agreed to produce all witness statements and documents without calling the makers. That the respondent produced various documents in support of his case while the appellant did not produce any document. It was argued that the trial court considered the facts and the law before arriving at the impugned judgment. That in regards to the issue of jurisdiction, section 25 of the *Wildlife Conservation and Management Act*, 2013, gives a leeway to an aggrieved person in pursuit of a claim upon injury or death of a human being. That the net effect is that there is no limitation as to the listed opinion of lodging a claim with the established committee. In supporting the forgoing, the respondent relied on the cases of *Kenya Wildlife Service vs Joseph Musyoki Kalonzo* [2017] eKLR where the court held that section 25 does not oust the jurisdiction of a court.
 16. Further reference was made in respect to the case of *Kenya Wildlife Service vs Farah Rashid Abdi* (suing as the legal administrator of the estate of Aden Rashid Abdi (deceased)) *Garissa High Court Civil Appeal No. 5 of 2019*, where Lady Justice Ali Aroni stated that; “the 1st authority is more explicit that



courts have jurisdiction in that section 25 has given an option to a claimant either to pursue a claim through the committee or move the court...”.

17. It was argued that in the two decisions where the court of appeal has found that a victim must go through the committee first, including in the recent Court of Appeal decision in *KWS vs Kanini*, which the appellant heavily relies on, the victims therein had pending complaints before the committee and also proceeded to file the matter in court, that is to say, they had two claims. That in this case, the respondent chose to file his suit in court and therefore, the doctrine of exhaustion of remedies cannot be invoked where the statute is not express.
18. On whether the court awarded excessive damages, it was argued that section 25 of the *Wildlife Conservation and Management Act*, 2013, provides a compensation scheme which the trial court correctly followed in coming up with its determination. That all the claimant ought to have done was to prove its case and to that end, the same was proven. In supporting the foregoing, the respondent placed reliance on the case of *Susan Njoki (suing as the administrator of the estate of Francis Mwaniki Theuri vs Joseph Kiiri & Another [2017] eKLR*. That it was not denied that the plaintiff was attacked by a snake while at his parent’s home. To that end, this court was urged to dismiss the appeal and uphold the decision by the trial court.
19. Having reviewed the evidence adduced before the trial court and the respective pleadings filed thereof, submissions, authorities cited and the applicable law, it is my view that this appeal revolves around two issues; Firstly, whether the trial court had jurisdiction to entertain the claim that was presented before it; Secondly, whether a snake falls under the category of wildlife in respect of which compensation can be awarded.
20. There is no dispute that the respondent was bitten by a snake. 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”.
21. The appellant heavily relied on the doctrine of exhaustion to advance the position that the respondent ought to have exhausted the laid down dispute resolution mechanism first. That the use of the word ‘may’ is in relation to the option that a claimant has, to either 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.
22. The doctrine of exhaustion was comprehensively dealt with in the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) Eklr* where 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...*“

23. As already noted, the question that demands an answer is whether the trial court was possessed of the requisite jurisdiction to entertain the matter. Without any doubt, this question is not new and I say so for the reason that other superior courts while faced with such question unanimously agreed that the word ‘may’ gives a claimant the option to move to the committee or the court.
24. In the case of *Kenya Wildlife Service vs Joseph Musyoki Kalonzo* [2017] eKLR the Court of Appeal pronounced itself as follows: -
 - “ 14. 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.
 6. 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.”
25. From the above guidance, it is clear that the respondent had a leeway either to pursue his claim through the Act or pursue the same remedy under common law through the courts. It is trite that under common law and equity there is no wrong without a remedy. [See the case of *Jediel Murithi vs Kenya Wildlife Services* [2021] KEHC 8878 (KLR)]. The foregoing is buttressed by the fact that if the appellant really was keen to compensate the respondent as provided by the law it should have done so when the demand letter dated 18.05.2023 and received by the appellant on 22.05.2023 was served upon it.
26. In a nutshell, it is my considered view that the trial magistrate was possessed of the requisite jurisdiction to entertain the matter herein.
27. The next issue is whether the trial magistrate misapplied and misapprehended the law in failing to appreciate that snakes are not among the wildlife species under Part II of the Third Schedule of the Wildlife Conservation and Compensation Act, 2013 in which compensation may be paid. A perusal of the said Third schedule of the Act as amended via *Legal Notice 221 of 2023* on 31.12.2022, the



following wildlife species in respect to which compensation may be paid in cases of death and injury are: Elephant, Lion, Leopard, Rhino, Hyena, Crocodile, Cheetah, Buffalo, Hippo and Wild dog. Of importance to note is the fact that snake bites are omitted from the list. Considering that this suit as filed is hinged on the Wildlife Conservation and Compensation Act, it was incumbent upon the trial court to use the same in determining the outcome of the suit.

28. From the pleadings, it was averred that the respondent was bitten by a snake on 24.04.2023 while the amendment to the Act which the respondent relied on in prosecuting his case was done on 31.12.2023 as already mentioned. From the foregoing, it is clear that the respondent's claim was not supported by the Act in which he relied on to prosecute his case. To that end, it is my view that the respondent did not deserve any compensation in as much as it was proved that indeed he was bitten by a snake which does not fall in the category of wild life that attracts compensation.
29. As a consequence of the above, it is my finding that the appeal herein is merited and therefore orders as hereunder:
 - i. The appeal herein succeeds.
 - ii. The finding of the trial court is hereby set aside with an order dismissing the respondent's claim.
 - iii. Each party to bear its costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

