



**Republic v Kenya Wildlife Service & 2 others; Nyawara & another (Exparte Applicants)  
 (Suing as Administrators and the Legal Representative of the Estate of John Clinton)  
 (Judicial Review E001 of 2025) [2025] KEHC 6137 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6137 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT SIAYA  
 JUDICIAL REVIEW E001 OF 2025  
 DK KEMEL, J  
 MAY 16, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

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

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

**AND**

**JARED ODHIAMBO NYAWARA ..... EXPARTE APPLICANT**

**JOCINTER MARY ..... EXPARTE APPLICANT**

**SUING AS ADMINISTRATORS AND THE LEGAL REPRESENTATIVE OF THE  
 ESTATE OF JOHN CLINTON**

**RULING**

1. The Applicant herein filed the present Notice of Motion dated 29/11/2024 seeking for the following reliefs:
  1. An order of Mandamus to compel the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents to consider the Applicants' claim and the 1<sup>st</sup> Respondent to immediately release the amount approved by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the Applicant's advocate.
  2. That costs of the application be provided for.



2. The application is supported by an affidavit of the Ex Parte Applicants and grounds on the face thereof which are inter alia; that the Ex-parte Applicants are the legal representatives of the estate of John Clinton(deceased); that on 23<sup>rd</sup> February 2022, the deceased was viciously attacked by a crocodile while fishing in Lake Victoria 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 Applicants reported the matter at the police post and the chief's office and that the 1<sup>st</sup> Respondent's Officers came and took the details and promised to compensate the Ex parte applicants for the loss; upon reporting the matter, they applied for compensation by filing the claim form provided by the 1<sup>st</sup> Respondent; that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have failed to convene a meeting as regards the claim for compensation, a function which it is tasked with; that on following up at the County Offices within this year, the Ex parte Applicants were informed that the Ministerial Wildlife Compensation Committee was yet to consider their claim; that the Ex parte Applicants are yet to receive the compensation on behalf of the minor; that the Ex parte Applicants have now waited for close to two (2) years and the Respondent are yet to make good the compensation even after submission of claim forms and relevant documentation being presented to the relevant committees; that the Ex parte applicants thereafter applied for compensation by filing the claim form provided by the 1<sup>st</sup> Respondent; that the Ex parte Applicants have 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 him round in circles; that the Ex parte Applicants have now waited for close to two years and the Respondents are yet to make good the compensation even after submission of the claim forms and relevant documentation to the relevant committees; that the Respondents continue to unjustifiably delay in the compensation without any plausible explanation and are in violation of the Wildlife Conservation and Management Act Cap 376 and its Ministerial Regulations; that this application is meritorious and has been brought without unreasonable delay; that the Ex parte Applicants are apprehensive that unless this court intervenes and compels the Respondents to act by considering and settling the claim, the Respondents will continue to ignore the Applicants' demands for compensation and thus erode the confidence of the Applicants and the general public in the efficiency of the administrative process of Kenya; that it is important that his matter be heard as a matter of urgency for just and expeditious disposal; that it is just, fair and equitable that the orders sought herein be granted to the Applicants.
3. The application was strenuously opposed by the 1<sup>st</sup> Respondent who filed a replying affidavit sworn by its Legal Officer Diana Sigei who averred inter alia; that the application is fatally defective as it seeks to compel the 1<sup>st</sup> Respondent to do that which is not within its mandate; that it is not the duty of the 1<sup>st</sup> Respondent and within the statutory mandate to review the Applicant's claim and recommend payment of compensation; that Siaya County Wildlife Compensation Committee established under Section 18 of the Wildlife 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 Respondent is only a secretary of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent 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 that the 1<sup>st</sup> Respondent perform an act outside its mandate according to law; that the 1<sup>st</sup> Respondent has dully performed its duty and endeavoured 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 1<sup>st</sup> Respondent issues claim forms as required and that the same was returned for further action but due to backlog of cases there was a delay in deliberation of incidence that occurred from the year 2022 such as the one attached to her affidavit; that the delays were also occasioned by a decision to freeze allowances including sitting allowance payable to members of the



County Wildlife Management Committee who then ceased acting but have since resumed; that the Applicants' averments that the 1<sup>st</sup> Respondent has kept them waiting is untrue and misguided ; that whatever legitimate expectation is not a just expectation as against the 1<sup>st</sup> Respondent as the delay was not within their control; that from the foregoing it is clear that the Respondents duly performed their statutory duty under the prevailing relevant laws and the that Applicants' allegations remain spurious and that the suit herein is unmerited, an abuse of court process and that the relief sought has already been rendered by the distinct entity; that the Applicants have not demonstrated how their constitutional rights have been violated by the 1<sup>st</sup> Respondent; that she reiterates 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 application was canvassed by way of written submissions. However, it is only the Applicants who complied. It was submitted that the 1<sup>st</sup> Respondent is statutorily bound to manage national parks and reserves as well as to monitor and approve compensations to persons who have been injured, maimed or killed by wild animals under the care of the Respondents. It was also submitted that all the three Respondents are required to work in unison regarding the scrutiny of applications for compensation and eventual payment in accordance with the *Wildlife Conservation and Management Act* 2013. It was further submitted that the claim by the Applicants is genuine borne out of a tragic incident where the deceased was killed while fishing in Lake Victoria. It was further contended that it was the responsibility of the Respondent to ensure that wild animals under the care and control of the Respondents do not endanger lives of persons carrying out fishing activities in the lake. It was finally submitted that the Respondents had taken unduly long period to consider the Applicants' request for compensation and therefore the need for an order to compel them to perform their public duty as required by law. The Applicants also submitted that the Respondents should be compelled to pay the costs of the application.
5. I have considered the application lodged by the Applicants as well as the submissions filed. It is not in dispute that the Applicants have approached the Respondents for compensation following the death of the deceased which was caused by an attack by crocodiles while he was fishing in Lake Victoria. It is not in dispute that under the *Wildlife Conservation and Management Act* 2013, the duty to consider, approve and pay compensations arising from claims due to injuries occasioned by wild animals, is upon the Respondents herein. It is also not in dispute that the 1<sup>st</sup> Respondent through its legal officer has confirmed that they received the claim compensation forms duly signed but that they have not been attended to because of backlog of cases as well as a decision to freeze allowances including sitting allowances payable to members of the 2<sup>nd</sup> Respondent who then ceased action but have since returned to work. The issue for determination is whether the application has merit.
6. The responsibility of the Respondents to compensate persons injured as a result of attack by wild animals is provided for under the Wildlife Conservation Act 2013 is to manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction. The function also includes facilitating and handling the claims process which culminates with compensation of the claimants as was stated in the case of Kenya Wildlife Service vs. Rift Valley Agricultural Contractors Limited, Supreme Court Petition No. 11 of 2025 [2018] eKLR where the court stated as follows:

“ A global comparison of laws and jurisprudence relating to animal and wildlife management normally provide that an entity charged with such 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 damages made by animals and wildlife.... The Wildlife Act gives



responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damages occasioned by wild animals.”

7. Flowing from the above authority, it is within the Respondents mandate to consider, approve and compensate the Applicants. The 1<sup>st</sup> Respondent referred as the ‘the service’ in the Act, has the statutory duty to set up and instruct County Community Wildlife Committees to perform certain functions that are in line with its mandate pursuant to Sections 7,18 and 19 of the [Wildlife Conservation and Management Act](#), 2013. According to Section 7 of the Act the 1<sup>st</sup> Respondent is established to perform the underlisted functions;
- i. Conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction.
  - ii. To provide security for wildlife and visitors in national parks wildlife conservation areas and sanctuaries.
  - iii. To set up a County Wildlife Conservation Committee every county and assigning them specific duties including verifying the claims and making recommendations to the Cabinet Secretary for compensation purposes.

Under Section 19(d) of the Act, the County Wildlife Committees are to verify the claims and make recommendations to the Cabinet Secretary for purposes of compensation. The claims must be those arising from loss or damage caused by wild life.

8. The Applicants have contended that the Respondents have delayed in approving their claim for compensation since it has taken over two years and that the Respondents have been taking them round in circles without considering the same. Even though the 1<sup>st</sup> Respondent’s legal officer has maintained that they have had challenges on their part, she has now confirmed that the County Wildlife Committee members are now ready to commence operations since they now have funds for the same. It must be noted that the [Wildlife Conservation and Management Act](#) and Regulations thereunder provides for timelines within which the process of compensation can be carried out. According to the said Act, the stipulated period provided therein is 60 days from the date of reporting. As can be seen from the Applicants’ claim, a long period has since elapsed yet the Respondents have not acted on the claim. Under Section 27 of the Wildlife Conservation and Management (Compensation Regulations 2017), claims of bodily injury or death must be verified by the Committee and submitted to the Cabinet Secretary together with its recommendations and that upon receipt, the Cabinet Secretary shall consider the recommendation of the committee and make payments within thirty days of receipt of the claim.

The above provisions are couched in mandatory times and does not envisage any delays for whatever reason as has been advanced by the 1<sup>st</sup> Respondent in their replying affidavit. It is noted that the 1<sup>st</sup> Respondent has been collecting parking fees for the years that the Applicant’s claim together with others have been pending consideration by the committee. That being the position, it is evident that the 1<sup>st</sup> Respondent has been receiving money from fee collections and therefore the argument by its legal officer that the County Committee have never sat since 2022 because of lack of allowances is not believable. There is therefore a deliberate delay by the Respondents in addressing the Applicants’ claim. This warrants an order to compel them to perform their statutory duties.

9. The Applicants’ claim ought to have been addressed in the early stages of presenting it before the County Wildlife Committee. The delay has thereby violated their rights to justice. The delay running over three years is unacceptable yet the Respondents continue collecting park fees meant for the management and conservation of the wildlife. It is instructive that the [Wildlife Conservation](#)



and Management Act provides that claims should be settled within sixty (60) days. The lack of seriousness on the part of the Respondents is against Public Policy and confidence by the public in the Respondents.

10. Even though the 1<sup>st</sup> Respondent has vehemently opposed the application, the Wildlife Conservation and Management Act 2013 clearly provides that claims arising from injuries or death occasioned by wildlife ought to be handled by the Respondents within sixty (60) days. The delay of three years is unacceptable in the circumstances. Further, the failure of the Respondents to address the Applicants' claim despite being presented with the requisite documents for consideration, now warrants this court to allow the request for an order of mandamus to compel the Respondents to perform their statutory duties. The Respondents are public bodies and are expected to perform their functions and duties in accordance with the law and that in the event of failure to do so, the Applicants have recourse to the court for the judicial remedy of mandamus. I find that in the circumstances the Applicants are entitled to such an order. In the case of Republic v Kenya National Examination Council Ex Parte Gathenji & 8 Others Civil Appeal No. 234 of 1996, the Court of Appeal cited with approval, Halsbury Law of England, 4<sup>th</sup> Edition. Vol. 7 p. 111 para 89 thus:

“The order of mandamus is of most extensive remedial nature and is in form of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to him or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy yet that mode of redress is less convenient, beneficial and effectual. “ ..These principles means that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has legal right to expect the duty to be performed.

In this case, it is the Respondents public and statutory duty to receive and consider wildlife conflicts claims. This is a duty imposed by statute upon the Respondents herein, particularly, the 1<sup>st</sup> Respondent, who is charged with the duty to manage and conserve wildlife including constitution of the committee that receive, review and evaluate claims.

Further, the 1<sup>st</sup> Respondent herein is under obligation to constitute the County Wildlife Compensation Committee, who should sit to consider the Applicants' claim and forward for its recommendations to the 2<sup>nd</sup> Respondent all within 60 days as is envisaged under Section 27 of the Wildlife Conservation and Management (Compensation Regulations 2017. In the premises, the Ex Parte Applicants are entitled to the order of Mandamus as sought.

11. In view of the foregoing observations, the Exparte Applicants' application dated 29/11/2024 has merit. The same is allowed as prayed.

**DATED AND DELIVERED AT SIAYA THIS 16<sup>TH</sup> DAY OF MAY 2025.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

Opondo.....for Exparte Applicants



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

Okumu.....Court Assistant

