



**Republic v Kenya Wildlife Service & 2 others; Ouma (Exparte Applicant) (Judicial Review Miscellaneous Application E006 of 2024) [2025] KEHC 5759 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5759 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E006 OF 2024**

**OA SEWE, J**

**MAY 9, 2025**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR  
JUDICIAL REVIEW ORDER OF MANDAMUS**

**ND**

**IN THE MATTER OF THE WILDLIFE CONSERVATION  
AND MANAGEMENT ACT, NO. 47 OF 2013**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**COUNTY WILDLIFE CONSERVATION AND COMPENSATION  
COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR, MINISTERIAL CONSERVATION AND COMPENSATION  
COMMITTEE ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**QUINTER ATIENO OUMA ..... EXPARTE APPLICANT**



## JUDGMENT

1. Before the Court for determination is the Notice of Motion dated 16<sup>th</sup> January 2024 August 2024. It was filed by the ex parte applicant, Quinter Atieno Ouma (suing as the legal representative and administrator of the estate of Richard Ouma Achieng, Deceased) pursuant to the leave granted herein on 3<sup>rd</sup> December 2024. The ex parte applicant thereby prayed for the following orders:
  - (a) An Order of Mandamus to compel the respondents to consider the applicant's claim and immediately release Kshs.5,000,000/= to the applicant's Advocate.
  - (b) An Order for costs of the application.
2. The application was premised on the grounds that the deceased was viciously attacked by a hippopotamus while fishing at Kasgunga Central, occasioning him fatal injuries. She further stated that the incident was reported to Mbita Police Post and to the offices of the 1<sup>st</sup> respondent. The ex parte applicant (hereinafter, the applicant) thereafter applied for compensation by completing statutory claim forms provided by the 1<sup>st</sup> respondent.
3. It was further the contention of the applicant that, on the 27<sup>th</sup> July 2020, the 1<sup>st</sup> respondent convened a meeting of the Community Wildlife Conservation and Compensation Committee (the 2<sup>nd</sup> respondent) and that the Minutes and resolutions of the 2<sup>nd</sup> respondent were forwarded to the Ministerial Wildlife Compensation Committee (the 3<sup>rd</sup> respondent) for approval and payment. The applicant averred that the estate of the deceased was accordingly awarded compensation in the sum of Kshs. 5,000,000/=; which payment was duly approved by the 3<sup>rd</sup> respondent.
4. The applicant complained that, in spite of the approval, the respondents are yet to pay the estate of the deceased the compensation sum aforesaid, five years down the line. She therefore posited that, unless this Court intervenes and compels the respondents to act on their decision and settle the claim, the respondents will continue to ignore the applicant's demands for compensation and erode her confidence and the confidence of the general public in the efficiency of the administrative processes of the Government of Kenya.
5. The Grounds aforesaid were amplified in the applicant's Verifying Affidavit sworn on 12<sup>th</sup> August 2024 to which the applicant annexed, inter alia, a copy of the Certificate of Death in respect of the deceased and a copy of the Compensation Claim Form duly filled by her.
6. The respondents filed a Replying Affidavit sworn by Amos Nyaoro, the 1<sup>st</sup> respondent's Assistant Warden III based in Kisumu. His assertion was that the application is fatally defective in so far as it seeks to compel the 1<sup>st</sup> respondent to do that which is not within its mandate. He explained that it is not the duty of the 1<sup>st</sup> respondent to review the applicant's claim or recommend payment of compensation; and that the 1<sup>st</sup> respondent only serves as the secretary of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Therefore, according to the 1<sup>st</sup> respondent, the application is requiring the Court to enforce an illegality as it is demanding that the 1<sup>st</sup> respondent perform an act outside its mandate in law.
7. It was further the averment of the 1<sup>st</sup> respondent that it had duly performed its duty and endeavoured to update the applicant on the status of her claim through phone calls and via an open door policy whereby the applicant would visit their office for information on the status of her claim. The 1<sup>st</sup> respondent confirmed that Homa Bay County Wildlife Conservation Committee (the 2<sup>nd</sup> respondent) held a meeting to deliberate on the claim; and that recommendations approving compensation were



then forwarded to the Ministerial Committee (the 3<sup>rd</sup> respondent) in accordance with Section 25(3) of the *Wildlife Conservation and Management Act*. The 1<sup>st</sup> respondent further confirmed that the claim has since been forwarded to the Treasury for payment.

8. The 1<sup>st</sup> respondent refuted the averment of the applicant that it has kept the applicant waiting in vain and deposed that it duly notified the applicant that approval had already been given for the disbursement of Kshs. 2,484,000/= being partial payment of the claim, leaving a balance of Kshs. 2,516,000/= to be paid in the subsequent phase. Accordingly, the 1<sup>st</sup> respondent averred that the application lacks merit and ought to be dismissed with costs.
9. The application was canvassed by way of written submissions, pursuant to the directions given herein on 24<sup>th</sup> February 2023. In her written submissions dated 5<sup>th</sup> February 2025, the applicant proposed the following issues for determination:
  - (a) Whether the 1<sup>st</sup> respondent is statutorily bound to manage national parks and reserves.
  - (b) Whether the 1<sup>st</sup> respondent is mandated to compensate the applicant.
  - (c) Whether the applicant is entitled to the orders sought.
10. The applicant made reference to Sections 6 and 7 of the *Wildlife Conservation and Management Act* (hereinafter “the Act”) which set out the 1<sup>st</sup> respondent’s duties as a statutory body. The applicant also relied on Section 25 of the Act to demonstrate that the 1<sup>st</sup> respondent is mandated to compensate the estate of the deceased through the applicant. The applicant relied on *Kenya Wildlife Service v Joseph Musyoki Kalonzo* [2017] eKLR and *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited*, Supreme Court Petition No. 11 of 2015 [2018] eKLR, among other authorities, to underscore the duty of the respondents to compensate the estate of the deceased herein; and therefore that the order of Mandamus sought by the applicant is merited.
11. The respondents neither filed their written submissions nor attended court on 10<sup>th</sup> March 2025 when final directions were to be given as to the readiness of the parties for a judgment date.
12. From the foregoing summary, there is no dispute that, on the 27<sup>th</sup> July 2020, the deceased was viciously attacked and fatally injured by a hippopotamus while fishing in Lake Victoria. The applicant, as the administrator of the estate of the deceased caused the incident to be reported, not only to the Police, but also to the 1<sup>st</sup> respondent. The parties are further in agreement that the respondents, as the relevant bodies charged with the duty of paying compensation in cases of human-wildlife conflict, duly processed the applicant’s claim for payment.
13. According to the 1<sup>st</sup> respondent, approval for part payment has already been given. That notwithstanding, no payment has been made, five years down the line. Other than a bold assertion that payment has been approved, there is nothing in the 1<sup>st</sup> respondent’s affidavit to explain why the delay. In the premises, there is no controversy as to whether or not the 1<sup>st</sup> respondent is statutorily bound to manage national parks and reserves. It is equally not in contention that the 1<sup>st</sup> respondent is mandated to compensate the applicant in consultation with the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The only issue for determination is whether the applicant is entitled to the orders sought.



14. The relief sought herein is an Order of Mandamus. Mandamus is a relief available to litigants under Article 23(3)(f) of *the Constitution* as well as Order 53 of the Civil Procedure Rules. Its scope was well explicated in Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 1 thus:

“The order of mandamus is of a most extensive remedial nature, and is, in form, 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 his 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...”

15. The applicant has no other way of enforcing payment of her claim because in Section 21(4) of the *Government Proceedings Act*, Chapter 40 of the Laws of Kenya it is stipulated that:

“(4) ...no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

16. Accordingly, in *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security, Ex Parte Fredrick Manoah Egunza* [2012] eKLR, Hon. Githua, J, aptly pointed out that:

“Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*.”

17. Similarly, in *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR, Hon. Mativo, J. (as he then was) held: -

29. Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)*, [23] and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. [24] The eight factors that must be present for the writ to issue are:-

- (i) There must be a public legal duty to act;
- (ii) The duty must be owed to the Applicants;
- (iii) There must be a clear right to the performance of that duty, meaning that:
  - a. The Applicants have satisfied all conditions precedent; and
  - b. There must have been:



- i. A prior demand for performance;
- ii. A reasonable time to comply with the demand, unless there was outright refusal; and
- iii. An express refusal, or an implied refusal through unreasonable delay;
- (iv) No other adequate remedy is available to the Applicants;
- (v) The Order sought must be of some practical value or effect;
- (vi) There is no equitable bar to the relief sought;
- (vii) On a balance of convenience, mandamus should lie.

18. The applicant has demonstrated that a prior demand for payment was made; that a reasonable time to comply with the demand was given, and that no payment has been made in respect of the subject claim. Therefore, the duty to pay has arisen in respect of which an order of Mandamus ought to issue. In *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* (supra), the Supreme Court held:

“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 outcome, including compensation for damage made by animal and wildlife...The Wildlife Act gives the responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damage occasioned by wild animals.”

19. The Court of Appeal was of the same posturing in *Kenya Wildlife Service v Joseph Musyoki Kalonzo* [2017] eKLR that:

“The appellant admits the duty to manage and conserve wildlife. That duty comes with attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty. The law on that point as succinctly pronounced in *Joseph Boru Ngera & another v Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* [2014] eKLR among others is still good law on this point. 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.”

20. In the premises, I find merit in the Notice of Motion dated 16<sup>th</sup> January 2025. The same is hereby allowed and orders granted as follows:

- (a) An Order of Mandamus be and is hereby made to compel the respondents for the payment of Kshs.5,000,000/= to the Ex Parte Applicant.
- (b) Costs of the application to be paid to the applicant by the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 9<sup>TH</sup> DAY OF MAY 2025.**

**OLGA SEWE**



**JUDGE**

