



Republic v Kenya Wildlife Service & 2 others (Judicial Review Miscellaneous Application E005 of 2025) [2025] KEHC 8079 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E005 OF 2025**

A MABEYA, J

JUNE 5, 2025

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE,
KISUMU 2ND RESPONDENT**

**DIRECTOR, MINISTERIAL CONSERVATION COMPENSATION
COMMITTEE 3RD RESPONDENT**

RULING

1. This ruling determines the Chamber Summons dated 23/2/2025. The same was brought under Order 53 Rule 1 of the *Civil Procedure Rules* and Section 31 of the *Civil Procedure Act*. The Ex-Parte applicant sought an order of *mandamus* compelling the 1st respondent to pay him compensation for the grievous injuries suffered following a wildlife attack.
2. The application was based on the grounds set out on the face thereof and the supporting affidavit thereto. It was averred that the applicant was attacked by a crocodile on the 6/2/2014 and suffered grievous injuries after which he applied for compensation by filing the claim form provided by the 1st respondent. The 1st respondent then convened a meeting of the Community Wildlife Conservation Committee in 2016 for purposes of determining compensation.
3. Subsequently, the applicant was informed that the Ministerial Wildlife Compensation Committee approved his award but that close to 10 years later, he was yet to receive the compensation and is thus apprehensive that unless the order sought is granted the respondents will continue to ignore his demands for compensation.



4. The 1st respondent filed its response vide the replying affidavit sworn by Amos Nyoro on the 28/3/2025 in which he termed the application as being fatally defective as it was the duty of the 2nd & 3rd respondents to settle the claim in accordance with the provisions of sections 18, 19 (1) & 25 (2) of the [Wildlife Conservation & Management Act](#) 2018.
5. It was further deposed that contrary to the Ex-Parte Applicant's claim for Kshs. 3 million, the Kisumu County Wildlife Conservation Committee in 2021 managed to have approved payment of Kshs. 1,200,000/= as compensation to the Ex-Parte Applicant however the payment was deferred due to incomplete documentation presented by the Ex-Parte Applicant.
6. The 1st respondent deposed that it had duly performed its statutory duty under the prevailing law and that in the instant case, the applicant had not demonstrated how it had violated his constitutional right.
7. I have considered the record in its totality including both the written submissions and their oral highlights. As a preliminary point, though not raised by either of the parties, I am inclined to consider whether this court is clothed with the requisite jurisdiction to entertain the claim before it.
8. Jurisdiction is so central in judicial proceedings, in that acting without jurisdiction would be in vain. In [Owners of Motor Vessel 'Lillian S' vs Caltex Oil \(Kenya\) Limited](#) [1989] KLR 1, the Court of Appeal held: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...”
9. In [Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others](#) (2012) eKLR, the Supreme Court of Kenya held: -

“A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
10. In [Orange Democratic Movement vs Yusuf Ali Mohamed & 5 others](#) [2018] eKLR, the Court of Appeal further stated: -

“(44)... a party cannot through its pleadings confer jurisdiction to a court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an election petition into a constitutional petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and relief sought that determines the jurisdictional competence of a court ...”
11. In light of the above, it is imperative that a court first satisfies itself that it has the requisite jurisdiction, derived either from the [Constitution](#), an Act of Parliament or both.
12. The Ex-Parte applicant's claim arises out of an issue of human-wildlife conflict and the subsequent compensation. In this case, compensation has already been approved. However, the same is conditional upon the applicant producing additional documents as guided.
13. Section 25 (6) of the [Wildlife Conservation and Management Act](#) 2013 provides that: -

“A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the Service may within thirty days after



being notified of the decision and award, file an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.”

14. My understanding of the foregoing is that, the first point of call in a wildlife-human conflict is the County Wildlife Conservation and Compensation Committee or the Service. The Court’s intervention is secondary. It only comes in the appellate as per that section. In any event, in that process, the first appeal is to the Tribunal and thereafter a second appeal to the Environment and Land Court.
15. In the present case, the applicant has come to this Court seeking a prerogative order in the nature of a judicial review order of mandamus compelling the 1st respondent to settle his compensation.
16. As per section 13(3) of the *ELC Act*, the other jurisdiction of the Environment and Land Court (ELC) is to deal with issues relating to constitutional interpretation and enforcement of constitutional remedies in respect to matters which fall within the ambit of the Environment and Land Court and under Section 7(b).
17. Section 13 (7) (b) of the *Environment and Court Act* provides that: -
 - (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) ...
 - (b) prerogative orders;
 - (c) ...”
18. In *Republic v Chief Land Registrar & Another* [2019] eKLR, the court was faced with a similar situation. It held as follows;

“The jurisdiction of the Environment and Land Court is limited to the disputes contemplated under Article 162(2)(b) of the [Constitution](#) and Section 13 of the [Environment and Land Court Act](#).

 - (14) In this regard, my view is that the intention of the Constitution is that if an issue arises touching on land in respect of its use, possession, control, title, compulsory acquisition or any other dispute touching on land, then this Court has no jurisdiction. My strong view is that this suit ought to have been transferred to the proper court the moment the Constitution of Kenya 2010 divested this court the jurisdiction to hear the case. Buttressed by the provisions of the Constitution and section 13 of the *Environment and Land Court Act*,
 - (15) I am clear in my mind that this court cannot properly entertain the application before me.”
19. Having considered the application, I find that the crux of the applicant's case is that behind the Judicial Review application is an alleged claim for compensation under the [Wildlife Conservation and Management Act](#). The applicant claims that he has been granted compensation but the 1st respondent has declined to pay out the same.
20. From the foregoing, it is my opinion that the issue brought forth in the application falls squarely under the Jurisdiction of the ELC. This court will be acting in excess of its jurisdiction if it were to proceed to



entertain the instant application. That is the Court to which appeals on matters compensation from wildlife-human conflict should land.

21. In view of the foregoing, the irresistible conclusion is that the Chamber Summons dated 23/2/2025 is in the wrong forum and is therefore struck out. I make no order as to costs as the issue of jurisdiction was raised suo motto.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

