



I K (Minor suing through his friend MLK) v Kenya Wildlife Service (Civil Appeal E001 of 2024) [2025] KEHC 11139 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL APPEAL E001 OF 2024
SC CHIRCHIR, J
JULY 24, 2025**

BETWEEN

I K (MINOR SUING THROUGH HIS FRIEND MLK)) APPELLANT

AND

KENYA WILDLIFE SERVICE RESPONDENT

*(An appeal from the Judgment of Hon. M.A.Odhiambo (SRM)
delivered on 28/6/2024 in Isiolo CMCC No.E012 of 2023)*

JUDGMENT

1. The appellant filed a memorandum of appeal dated 2nd July, 2024 challenging the above the above stated decision of the trial court and seeking orders as follows:
 1. This appeal be allowed
 2. The judgment of the Principal Magistrate’s Court be set aside and the orders disallowing the Appellant’s claim and not awarding her damages against the Respondent be substituted with an order allowing the said suit with costs against the Respondent.
2. The appeal is premised on the grounds that:
 1. That the Trial Court erred in law and in fact in failing to appreciate the clear evidence that was placed before her in reaching her decision.
 2. That the learned magistrate erred in law and in fact in considering totally irrelevant factors which were never pleaded by the parties.
 3. The learned magistrate proceeded on demonstrably wrong principles in reaching her decision on dismissing the Appellants suit.



3. Through a plaint dated 24th February, 2023, the appellant sought for general and special damages, costs of the entire suit and interest at court rates. She averred that on 30th June 2015 at Ntalabany area he was viciously attacked by an elephant occasioning him serious injuries, as a result of the respondent negligence and or breach of statutory duty. She blamed the respondent and particularized the extent of the respondent breach of duties under paragraph 5 of the plaint.
4. The respondent filed a statement of defense in which it pleaded inter alia, that the trial court had no jurisdiction to try the suit. After a full the hearing, the trial court determined that it did not have jurisdiction to determine the suit, and dismissed it.
5. Aggrieved by the outcome, he proffered this appeal. On 17th February, 2025 this court directed that the appeal be canvassed by way of written submissions and both parties complied.

Submissions

6. The lower court suit was dismissed on only one ground, namely ;-that the court did not have jurisdiction to entertain the suit. The court did not address itself therefore to any other issues.
7. I have perused both the memorandum of Appeal and Appellant's submissions, and oddly, the Appellant has not raised this issue on the Appeal, nor submissions. Instead he has dwelt on the merits of the case, yet the case was not heard on merit. The Appellant's submissions are therefore misplaced. The respondent on the other hand has addressed, inter alia the question of jurisdiction. Consequently, for purposes of this Appeal, this court will only consider the respondent's submissions.

Respondent's Submissions

8. The respondent's Advocate has submitted that ,while the trial court generally has jurisdiction to hear and determine tortious claims, it lacked jurisdiction to hear and determine the suit as it arose from loss and bodily injury caused by wild life ; that the original jurisdiction to determine claims caused by wildlife belongs to county conservation and compensation committee established under section 18 of the *wildlife conservation and management Act*, 2013(The Act) .
9. The respondent further submits that the procedure for compensating claimants is set out under section 25 of the Act; that where a statute provides a mechanism for resolving disputes other than the court process, then a party is bound to exhaust the said alternative dispute resolution mechanism before approaching court; that in this circumstances the suit violated the doctrine of exhaustion; In this regard the Respondent has relied on a number of decisions, which I have considered.
10. It is the Respondent's further submission that having filed a claim before the compensation committee under the Act , the Appellant ceased to have an option to file this suit and that the institution of the two claims amounted to an abuse of the court process. Reliance was placed in the case of *Peter Muturi Njuguna v Kenya Wildlife Service*(2017) KECA 42 (KLR)

Analysis and determination

11. Having considered the evidence on record, the exhibits produced and the submissions, the only issue that arises for determination is whether the trial court had the jurisdiction to try the suit.
12. On the facts, the Appellant was attacked by an Elephant at Ntalabany Area , causing him serious injuries. He sued the respondent for negligence , accusing it of failing in its statutory duty set out under the Act, which failure resulted on him being attacked by the Elephant.



13. Prior to filing suit however , the Appellant had filed his claim with the Isiolo county wildlife conservation and compensation committee, being a committee established under to section 18 of the Act. The committee is charged with the responsibility of receiving, reviewing and making recommendations on payment of claims for injuries or loss arising from attacks by wildlife. One of the documents produced by the Appellant was a letter written by the respondent (PExb 6) . In the letter, the Director -General of the Respondent was informing the Appellant that the claim had been deferred , pending medical re- examination of the Appellant. When the Appellant was referred to the said letter during cross- examination, stated that there had been a delay by the respondent. The specific delay was not stated.
14. What is evident therefore, is that there was already a claim filed with the respondent pursuant to the provisions of section 25 of the Act, and as correctly pointed out by the Respondent , the section prescribes the process the claim goes through.
15. Section 25 of the Act provides , in part:
 - “(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.
 - (3) The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows
16. The question of whether the *Wildlife conservation and management Act* ousts the jurisdiction of the magistrate’s courts and high court from determining claims arising from injuries or loss inflicted by wildlife in my view is yet to be settled as I have so far seen two divergent views from the court of Appeal, on this issue. (see: *Kenya wildlife services v Kanini* [2024] KECA 1127 (KLR) and *Kenya wildlife service v Joseph Musyoki* k(Nairobi CA NO. 36 OF 2015)
17. However the issue in this case is different in that the Appellant had already submitted himself to the process of settlement under the Act. There is evidence for instance that the claim was already under consideration by the compensation committee and that is why he was being told that a medical re-examination was required. There was no evidence or suggestion that that claim had withdrawn from the compensation committee. The claim before the compensation committee is therefore live.
18. Consequently, to the extent that the Appellant had subjected himself to the jurisdiction of the compensation committee, then save for any constitutional issues that may arise ,or issues requiring the intervention of the high court by way of judicial review, neither the high court nor the Magistrate’ court has any jurisdiction , on matters under the Act. As correctly held by the trial Magistrate , decisions emanating from the compensation committee are appealable to the Environmental and Land Tribunal, and to the Environment and Land court on a second Appeal.
19. In other words , to the extent that the Applicant had submitted himself to the procedure provided under the Act, he must abide by the process provided under the Act. I agree with the Appellant that



he does not have the liberty of opting out as long as the other process was on. It amounts to having two parallel processes in respect to the same claim. It is not tenable . It amounts to an abuse of the court process.

20. Am therefore in agreement with the trial court that in the circumstances of this case , the trial court had no jurisdiction. However the suit ought to have been struck off , not dismissed.
21. In conclusion, let me remind the lower courts and the counsels that an issue of jurisdiction , by its very nature must be dealt with by way of preliminary. It saves all parties the time and related costs of unnecessary litigation, if it turns out that the court had no jurisdiction in the first place.
22. In the present case , even though in its pleadings the respondent had denied the jurisdiction of the court , they did not alert the court about this plea and thus the court had to do what turned out to be unnecessary trial. It bears repeating that the trite law, that : “Jurisdiction is everything without it a court has no power to make one more step...” (see *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR))
23. In conclusion, I find no merit in the Appeal. it is hereby dismissed and the order of the trial court is only varied to the extent that the plaintiff suit is struck off, with costs to the respondent, both in the trial court and on this Appeal

DATED, SIGNED AND DELIVERED AT ISIOLO ,THIS 24TH DAY OF JULY 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Roba Katelo- Court Assistant

Mr. Amule for the Appellant.

