



**Republic v Kenya Wildlife Service & 2 others; Lekalmakar & another (Suing as the Legal Representatives of the Estate of Ltmuta Leshakweti - Deceased) (Ex parte Applicant) (Judicial Review E007 of 2025) [2025] KEHC 10819 (KLR) (Judicial Review) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
JUDICIAL REVIEW  
JUDICIAL REVIEW E007 OF 2025  
SC CHIRCHIR, J  
JULY 17, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

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

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

**AND**

**NKITEWAN LEKALMAKAR & NAJARU LECHAKWET (SUING AS THE  
LEGAL REPRESENTATIVES OF THE ESTATE OF LTMUTA LESHAKWETI -  
DECEASED) ..... EX PARTE APPLICANT**

**JUDGMENT**

1. The exparte applicant herein (the Applicant) Seeks orders as follows;
  - a) That the Honourable Court be pleased to grant an order of Judicial Review by way of Mandamus compelling the Respondents and specifically the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> respondent ( CMCC) to deliberate upon the exparte claim lodged on 29<sup>th</sup> July 2022 h within the next 30 days pursuant to Regulation 27(1) (2) of the Wildlife Conservation and Management Compensation Regulations 2017.



- b) That the respondent to report to this Honourable court its decision and/or deliberation under prayer (1) above on or before the expiry of 30 days from the date of issuance of this order.
- c) An order of Mandamus be issued to compel the respondents and specifically 1<sup>st</sup> respondent to pay the ex parte applicant the sum of Kshs. 5,000,000/= recommended, verified by the 2<sup>nd</sup> respondent and approved by the 3<sup>rd</sup> respondent as compensation for loss sustained by the ex parte applicant in compliance with Regulations 27(1) (2).
- d) That the 1<sup>st</sup> respondent be and is hereby ordered comply with by paying the ex parte applicant the said approved sum within 14 days from the date of issuance of the order of mandamus.
- e) Costs of and incidental to the application be provided for.
- f) Such further and/or other reliefs that this Honourable court may deem just and expedient to grant.

2. The Notice of Motion was filed pursuant to leave granted on 17<sup>th</sup> December, 2024

### **The Applicant's case**

- 3. The Application is supported by the Affidavit of Nkitemwan Lekalmakar, who states that her husband was attacked by an Elephant on 28/7/2022 while on his way home at Kinya Sereolipi Area causing him fatal injuries. She visited the offices of the 1<sup>st</sup> respondent and was given compensation form which she filed and returned to it to them.
- 4. He further states that pursuant to Regulation 27 (1) of the Wildlife Conservation and Management Compensation Regulations of 2017, the 2<sup>nd</sup> respondent is obligated to verify and recommend compensation for the applicant for the sum of Kshs. 5,000,000/= within 30 days of the submission of claim form.
- 5. That the 1<sup>st</sup> Respondent has been reluctant, and is uncooperative in compelling the 2<sup>nd</sup> respondent to do the verification and recommendation as aforesaid. That several visits to the office of the 1<sup>st</sup> respondent has not borne any fruits. He therefore seeks for an order of mandamus directed at the respondents and particularly the 1<sup>st</sup> respondent to verify the applicant's claim and effect payment of ksh. 5,000,000

### **The 1<sup>st</sup> Respondent's case**

- 6. It is the respondent's case that it should not be compelled to do that which it has not been mandated to do.; that it is the Isiolo County wildlife conservation committee ( The committee) that is mandated to review and make recommendation for such claims; that the said committee is yet to consider the Applicant's claim; that the responsibility to compensate the claimants belongs to the cabinet secretary in charge of Tourism and wildlife as represented by the 3<sup>rd</sup> respondent herein.; that the 1<sup>st</sup> respondent simply acts as the intermediary between the cabinet; that it is merely a secretary to the said committee and that it received the Applicant's claim in its capacity as such.
- 7. The other two respondents did not file any response.

### **Appellant's submissions**

- 8. It is the appellant submissions that it is the mandate of the 1<sup>st</sup> respondent to set up a County Wildlife Conservation Committee in respect to each county.



9. On the relationship between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, it is pointed out that the 2<sup>nd</sup> respondent is the Agent of the 1<sup>st</sup> respondent and therefore the court should compel the 1<sup>st</sup> respondent who is the principal, to order the 2<sup>nd</sup> respondent to verify his claim and make appropriate recommendations.
10. On whether the 1<sup>st</sup> respondent is a necessary party to the suit, the applicant has relied on the case of *K W S -Vs- Joseph Musyoki Kalonzo (2017) eKLR* where it was held inter alia that the “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.”

### **Respondent’s submission**

11. It is the 1<sup>st</sup> respondent submissions that it has got no statutory mandate to direct the 2<sup>nd</sup> respondent to sit and deliberate on claims arising from Human-wildlife conflict; That the mandate belongs to the Cabinet Secretary who for the time is in charge of wildlife; that the Cabinet secretary is the appointing authority of the majority members of the 2<sup>nd</sup> respondent; that it merely offers secretarial services to the 2<sup>nd</sup> respondent in terms of section 18 of the wildlife management and conservation Act( The Act)
12. It is further submitted that as per Section 18(3) of the Act ,it is the Cabinet Secretary who can direct the 2<sup>nd</sup> respondent to verify claims. It is submitted that in any event, it is the Cabinet Secretary who compensates the claimant, following recommendation of the 2<sup>nd</sup> respondent.
13. The 1<sup>st</sup> respondent further submits that the Applicant has not demonstrated that the 1<sup>st</sup> respondent has a statutory obligation to compensate him; That an order of mandamus can only issue where the applicant establishes a statutory duty on the part of the respondent. In this regard the decision in the case of *Republic – Vrs – Kenya Vision 2030 Delivery Board & Another Exparte. Eng. Judah Abekah (2015) 7078 ( KLR)*
14. On the plea of payment of Kshs. 5,000,000/= as compensation, it is submitted that the clam is premature as the applicant is yet to exhaust the procedural steps under Section 25 of the Act and Regulation 27(2); that consequently, the demand violates the exhaustion principle and in breach of the section 9 (1) (2) of the Fair Administrative Actions Act. Thus, it is argued, the applicant must first exhaust the available remedies provided under statute before resorting to the court. The case of *Peter Muturi Njuguna - Vs- Kenya Wildlife Service (2017) KECA 42 ( KLR)* has been relied on , in this regard.
15. The parties have relied on other various Authorities which I have considered.

### **Analysis and determination**

16. I have considered the pleadings as well as the rival submissions of the parties. In my view the following issues arise for determination
  1. Whether the respondent have statutory obligation to review and make appropriate recommendations.
  2. Whether an order for compensation should be made.
  3. What appropriate orders should issue.

### **Respondent’s statutory obligations to the applicant**

17. The facts and circumstances giving rise to the applicant’s claim are not in dispute. The applicant’s husband was attacked by an elephant on 28<sup>th</sup> July 2022 at Sereolipi Area causing him fatal injuries. She



- lodged a claim for compensation and submitted the claim form to the 1<sup>st</sup> respondent. She has attached a chief's letter, Death certificate for Ltumuta Leshakweti,, a post- mortem report and a compensation form.. The 1<sup>st</sup> respondent has admitted to receiving the documents.
18. The process of compensation is set out under section 25 of the Act. It begins with the claimant submitting the claim documents to the committee. The committee is supposed to consider the claim within 30 days of receipt of documents and make recommendation to the Cabinet Secretary in charge of Tourism and wildlife. The Cabinet Secretary is supposed to make payments within 30 days of receiving the advice from the committee.
  19. It is the applicant's case that despite having dully submitted his claim, the 2<sup>nd</sup> respondent has not verified or reviewed it so as to facilitate payment. That, it is the role of the 1<sup>st</sup> respondent to direct the 2<sup>nd</sup> respondent to initiate the verification process. On the other hand the 1<sup>st</sup> respondent insists that it has no mandate to direct the 2<sup>nd</sup> respondent to do its work.
  20. It is true that under Section 25 of the Act, the work of verifying the claims and making recommendation to the cabinet secretary, who for the time being responsible for matters relating to the wildlife, is the County compensation committee established under section 18 of the Act.
  21. The imperative question is, whether the Compensation Committee established under Section 18, is a body independent of the 1<sup>st</sup> respondent. In other words, does the 2<sup>nd</sup> respondent have a personality of his own aside that of the 1<sup>st</sup> Respondent?
  22. I have looked at Section 7 of the Act. It sets out the functions of the 1<sup>st</sup> Respondent. One of those functions is to set up County Wildlife Conservation Committee in respect of each county. ( see Section 7 ( c ).) Under Section 2 of the Act "County Wildlife Conservation Committee "means "the compensation committee established under section 18 of this Act". Section 18 establishes the Community Wildlife Conservation Committee and although the word "compensation" is missing in Section 18, I believe this was a drafting error, but it certainly refers to the same committee.
  23. It is the therefore evident that the committee established under section 18 is a creature of the 1<sup>st</sup> respondent, established pursuant to the provisions of section 7(c).Further pursuant to regulation 15 of the 2017, the 1<sup>st</sup> respondent is responsible for the declaration of vacancy in any of the committees established under section 18, either at the first establishment of a particular committee of a particular county or whenever a vacancy arises.
  24. It is therefore evident that the compensation committee is a creature of the 1<sup>st</sup> Respondent. It is its Agent bestowed with the function of vetting the compensation claims and making recommendation to the minister. The 1<sup>st</sup> respondent cannot set up an Agent then purports to keep its hands off from the performance or liability of the same Agent. Iam therefore in agreement with the Applicant's submissions that the 2<sup>nd</sup> respondent is an Agent of the 1<sup>st</sup> respondent. In my view, suing the committee is inconsequential as it does not have a legal personality of its own.
  25. In regard to the relationship between the 1<sup>st</sup> respondent, the committee and the Cabinet Secretary, I associate myself with the findings of the court in Joseph Boru & Ano vs KWS &Ano( 2014) e KLR as cited in Kenya Wildlife service vs Joseph Musyoki( supra) that courts should not be concerned with the internal arrangements between the respondents, as the business of wildlife whether the benefits derived therefrom or the liabilities attended to it, is primarily the work of the 1<sup>st</sup> Respondent. It is my finding therefore that in as far as the applicant claim has not been acted on, the 1<sup>st</sup> respondent had failed in its statutory duty. Prayer one of the Application is therefore warranted.



26. I have considered prayer 2 of the application. The applicant seeks that the 1<sup>st</sup> respondent be compelled to report to this court on compliance of the court's orders. I need to point out that Regulation 29 of the Regulations set out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1<sup>st</sup> respondent complies with the order to verify the claims, then process should take a life of its own. There is no need therefore for this court to issue what appears to me to be a structural interdict. In any case, in the event of default the usual remedies are available to the Applicant.

**whether an order for compensation for kshs. 5,000, 000 should be made.**

27. In accordance with the Act any payment to be made is subject to an assessment by the Compensation Committee. Even though the ksh. 5,000,000 is set by the Act (Section 25 (3) (a)), it is expected that verification would include the verification of the claimants and whether the incident actually took place. The work of such verification is the work of the respondents, not the courts.

28. Further, ordering the Respondent to pay the amount proposed by the Appellant, defeats the purpose of the prayer (a). This court cannot direct the respondents to carry out its statutory duty and at the same time, proceed to usurp their work by making an order of a specific amount to be paid.

29. Nevertheless, under the Act, the work of setting payment is not the work of the Court. To this extent, I agree with the 1<sup>st</sup> respondent that this prayer is premature.

30. The 1<sup>st</sup> respondent has brought up the issue of exhaustion principle, which principle is also embodied in Section 9(2) of the Fair Administration Actions Act. It is argued that the applicant ought to exhaust the alternative mechanism under the statute. Although the Respondent's counsel has not made specific reference to the relevant sections of the Act, he must have been referring to the procedure prescribed for under section 25(1) to (6) of the Act.

31. However, a reading of the entire section 25 shows that it presupposes that the respondents would have set in motion the process of compensation. Section 25 (6) of the Act provides "a person who is dissatisfied with award on compensation by cited County Wildlife Conservation Committee of the service may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and or second Appeal to the Environment and Land Court".

32. Thus it is evident that the "alternative remedy" the 1<sup>st</sup> respondent is referring to only applies once the award has been made. In this case the respondent are yet to commence the process. The applicant therefore is entitled to seek for an order of Mandamus to compel the respondents to set in motion the process of compensation.

33. In view of the all the foregoing, I hereby proceed to make orders as follows:

- a) An order of mandamus is hereby issued directing the Respondents to verify and make a determination of the ex-parte applicant's claim lodged on 12.4.24 within 30 days of this order and thereafter, make payment or convey the decision arrived at, to the ex-parte applicant, within 30 days following the said decision.
- b) The costs of the suit is awarded to the applicant.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 17<sup>TH</sup> JULY DAY OF JULY, 2025.**

**SOPHIE CHIRCHIR**

**JUDGE.**

In the presence of :



Roba Katelo- Court Assistant.

Mr. Amule for the Applicant.

