



**Republic v Kenya Wildlife Service & 2 others; Leseo & another (Ex parte Applicants) (Suing as the Next of Kin and Legal Representative of the Estate of Ali But Esimtoko) (Judicial Review Miscellaneous Application E001 of 2024) [2025] KEHC 10559 (KLR) (Judicial Review) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10559 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2024  
SC CHIRCHIR, J  
JULY 17, 2025  
IN THE MATTER FOR AN APPLICATION FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW (ORDERS OF MANDAMUS)  
AND  
IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010  
AND  
IN THE MATTER OF WILDLIFE CONSERVATION  
AND MANAGEMENT ACT NO. 47 OF 2013**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**COUNTY WILDLIFE SERVICE CONSERVATION & COMPENSATION  
COMMITTEE, ISIOLO ..... 2<sup>ND</sup> RESPONDENT**

**MINISTRIAL WILDLIFE CONSERVATION COMMITTEE .. 3<sup>RD</sup> RESPONDENT**

**AND**

**JONATHAN LESEO ..... EX PARTE APPLICANT**

**KHOBOSO SEYEE ..... EX PARTE APPLICANT**



## SUING AS THE NEXT OF KIN AND LEGAL REPRESENTATIVE OF THE ESTATE OF ALI BUT ESIMTOKO

### JUDGMENT

1. Pursuant to the leave granted on 20<sup>th</sup> September, 2024 the Ex-parte applicants ( The Applicants)herein have filed the Notice of Motion dated 23.9.2024 Seeking for :-
  - a). An order of *mandamus* to compel the Respondent to immediately release Kshs. 5,000,000/= to the applicant Advocate.
  - b). The costs of this application be provided for.
2. The motion is supported by a statutory statement made on 19.9.2024 and a verifying affidavit sworn on the same date.

#### The Applicants' case

3. The applicants state that their kin, one Ali Bute Esikimoto (deceased) was attacked and killed by an elephant at Ngare Mara area, Isiolo County on 09.7.2022 as a result of the respondents' negligence and breach of statutory duty as set out under the provisions of the [\*wildlife conservation and Management Act\*](#) No. 47 of 2013.( The Act) That the matter was reported to the police and later to the 1<sup>st</sup> respondent for compensation but the compensation has not been forthcoming for the last two years since the claim was submitted to the respondents; that the Applicants duly filled the claim form and submitted it to the 1<sup>st</sup> respondent as required and finally that several visits to the 1<sup>st</sup> respondents offices have not return and positive results. It is contended that the Respondents are in breach of statutory duty.

#### The Respondent's case

4. It is the respondent's case that the pursuant to the provisions of the Act ,it is the Cabinet Secretary in charge of the wildlife who is supposed to compensate the Applicants and not the 1<sup>st</sup> respondent. That had the applicant based their claim on common law, they would have compensated but having opted to pursue their claim under the Act, their claim should only be against the Cabinet Secretary. In the circumstances, the application is defective and bad in law.
5. The parties filed submissions which I have considered.

#### Determination

6. Section 25 of the [\*Act\*](#) sets out the procedure of lodging and processing claims under the [\*Act\*](#) in the following order:
  - 1). A claimant files the claim with the County Wildlife Conservation and Compensation Committee established under Section 18 of the [\*Act\*](#) (the Committee)
  - 2). The Committee then verifies the claim and submit to the Cabinet Secretary with its recommendation.
  - 3). The Cabinet Secretary makes payment, based on the nature of the claim



7. Any person who is not satisfied with the award by the Service ( 1<sup>st</sup> respondent ) or the committee may appeal to the National Environment Tribunal, and on a second appeal, to the Environment and Land Court.
8. The imperative question is ;whether this court has jurisdiction to intervene at this stage, in the light of the procedure set out under Section 25 of the Act. In other words, is the issue of payment of the claim ripe for determination by this court or it is premature? None of the parties has addressed this question , but I find it necessary to address it as it goes into the question of whether this court has jurisdiction to entertain this petition.
9. The doctrine of ripeness operates to bar Court from exercising jurisdiction over a matter until actual controversy arises involving a risk of breach or injury which has become real and immediate.
10. The doctrine has been a subject to several past decisions. In the case of *Republic v National Employment Authority & 3 others Ex-Parte Middle East Consultancy Services Limited* [2018] KEHC 9449 (KLR), Justice Mativo defined the doctrine as follows: Ripeness refers to the readiness of a case for litigation; "a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all ( *Texas v United states*,523,US 296 (1988)) ..... The goal of ripeness is to prevent premature adjudication; if a dispute is insufficiently developed, any potential injury or stake is too speculative to warrant judicial action."
11. In the same case, the court adopted the U.S Supreme Court Decision in *Abbott Laboratories - v- Gardner* 387.US 136(1967)148-149 where it was held as follows: "Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration."
12. In the present case the committee is yet to vet the applicant's claim to determine its validity as per section 25 (2) of the *Act*. In this case , the committee would have to look at the documents submitted to determine whether a fatal injury did occur for instance, the locus standi of the application to submit the claims and any other issue relating to the claims . In other words notwithstanding the fact that the payment of ksh. 5,000,000 is stipulated by the *Act*, the payment is not automatic, it is subject to the verification of the claim.
13. The Act has given the work of verifying the claim and recommending to the Cabinet Secretary to the committee established under section 18. It is not the mandate of this court. This court therefore has no basis upon which it can compel the respondents to pay the Kshs. 5,000,000 as the claim has not been ascertained as aforesaid.
14. The applicants have jumped the gun. An order to compel the respondents to pay is premature. The application offends the doctrine of ripeness. This court has no jurisdiction to compel the respondents to make payment for a claim that is yet to be determined.
15. On the question of jurisdiction ,I can do no more to cite "Justice Nyarangi in the *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR where he stated "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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."



16. This court has no jurisdiction to grant the orders being sought. Consequently, this Petition is struck off, with costs to the Respondents.

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

**S. CHIRCHIR**

**JUDGE**

In the presence of:

Roba Katelo- Court Assistant

Ms. Njoroge for Mr. Opondo for the Exparte Applicant

