



Republic v Kenya Wildlife Service & 2 others; Ngado (Ex parte Applicant) (Judicial Review E002 of 2025) [2025] KEHC 10796 (KLR) (Judicial Review) (17 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
JUDICIAL REVIEW
JUDICIAL REVIEW E002 OF 2025
SC CHIRCHIR, J
JULY 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE
SAMBURU 2ND RESPONDENT**

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

AND

NTEIYON NGADO 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 1st Respondent through the 2nd respondent [CMCC] to deliberate upon the exparte claim lodged on 30th November 2022 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 1st respondent to pay the ex parte applicant the sum of Kshs. 2,000,000/= recommended, verified by the 2nd respondent and approved by the 3rd respondent as compensation for the loss sustained by the ex-parte applicant in compliance with Regulations 27[1] [2].
 - d]. That the 1st 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 17th December, 2024

The Applicant's case

- 3. It is the applicant's case that his seven [7] camels were attacked and killed by a lion on 10th November 2022. The attack took place at his home at Leparua location, Isiolo county. He reported the incident to the Area chief and to the police. He obtained a compensation and a verification form from the 1st Respondent which he filled and returned to the respondents. He further states that pursuant to Regulation 27 [1] of the Wildlife Conservation and Management Compensation Regulations of 2017, the 2nd respondent is obligated to verify and recommend compensation for the applicant for the sum of Kshs. 2,000,000/= within 30 days of the submission of claim form.
- 4. That the 1st Respondent has been reluctant, and is uncooperative in compelling the 2nd respondent to do the verification and recommendation as aforesaid. That several visits to the office of the 1st respondent has not borne any fruits. He therefore seeks for an order of mandamus directed at the respondents and particularly the 1st respondent to verify the applicant's claim and effect payment of ksh. 2,000,000

The 1st Respondent's case

- 5. It is the respondent's case that it should not be compelled to do that which it has got no mandate to do; that it is the Isiolo County wildlife conservation committee [The committee] that the 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 3rd respondent herein.; that the 1st respondent simply acts as the intermediary between the cabinet secretary and the claimant established under section 18 of the *wildlife conservation and management Act* [The Act] which is mandated to review and recommend payment of compensation for claims arising from injury or loss caused by wild life; that it is merely a secretary to the said committee; that it received the Applicant's claim in its capacity as the secretary to the committee.
- 6. The other two respondents did not file any response.

Appellant's submissions

- 7. It is the appellant submissions that it is the mandate of the 1st respondent to set up a County Wildlife Conservation Committee in respect to each county.
- 8. On the relationship between the 1st , 2nd and 3rd respondents, it is pointed out that the 2nd respondent is the Agent of the 1st respondent and therefore the court should compel the 1st respondent who is the principal to order the 2nd respondent to verify his claim.



9. On whether the 1st respondent is a necessary party to the suit, the applicant has relied on the case of *K W S -v 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

10. It is the 1st respondent submissions that it has got no statutory mandate to direct the 2nd 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 2nd respondent; that it merely offers secretarial services to the 2nd respondent in terms of section 18 of the Act.
11. It is further submitted that as per Section 18[3] of the Act ,it is the Cabinet Secretary who can direct the 2nd respondent to verify claims. It is submitted that in any event, it is the Cabinet Secretary who compensates the claimants following recommendation of the 2nd respondent.
12. The 1st respondent further submits that the Applicant has not demonstrated that the 1st 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]
13. On the plea of payment of Kshs. 2,000,000/= 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 v Kenya Wildlife Service* [2017] KECA 42 [KLR] has been relied on , in this regard.
14. The parties have relied on other various Authorities which I have considered.

Analysis and determination

15. I have considered the pleadings as well as the rival submissions. In my view the following issues arise for determination
1. Whether the respondent have statutory obligation to the applicants claim.
 2. Whether an order for compensation should be made.
 3. What appropriate orders should issue.
- Respondent’s statutory obligations to the applicant
16. The facts and circumstances giving rise to the applicant’s claim are not in dispute. The applicant’s 7 camels were attacked within his compound by a lion on 10/11/2022 at leparua Area, Isiolo county. He lodged a claim for compensation and submitted the claim form to the 1st respondent. Accompanying the claim form was a letter from the chief confirming the incident , compensation claim form for livestock, a verification form filed by the District livestock production officer and photographs of the dead Animals. There is no dispute as to whether the documents were received.
17. The process of compensation is set out under section 25 of the Act. It begins with the claimant submitting the above mentioned documents to the committee. The committee is supposed to consider



it within 30 days of receipt of documents and make recommendation to the Cabinet Secretary; The Cabinet Secretary is supposed to make payments within 30 days of receiving the advice of the committee.

18. It is the applicant's case despite having dully submitted his claim , the committee has not verified or reviewed it so as to facilitate payment. That it is the role of the 1st respondent to direct the 2nd respondent to initiate the verification process. On the other hand the 1st respondent insists that it has no mandate to direct the 2nd respondent to verify or pay the claims.
19. 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 compensation committee.
20. The imperative question is whether the Compensation Committee established under Section 18, is a body independent of the 1st respondent. In other words, does the 2nd respondent have a personality of his own aside that of the 1st Respondent?
21. I have looked at Section 7 of the Act. It sets out the functions of the 1st Respondent. One of those functions is to set up County Wildlife Conservation Committee in respects 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.
22. It is the therefore evident that the committee established under section 18 is a creature of the 1st respondent, established pursuant to section 7[c].Further pursuant to regulation 15 of the 2017, the 1st respondent is responsible for the declaration of vacancy in any of the committees established under section 18, either at the first establishment of a committee of a particular county or whenever a vacancy arises.
23. In the circumstances, I agree with the Applicant that the 2nd respondent is an Agent of the 1st respondent. The compensation committee is a creature of the 1st Respondent. The 1st respondent cannot set up an Agent then purports to keep its hands off from the performance or liability of the same Agent. In this regard 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 1st Respondent. It is my finding therefore that in as far as the applicant claim has not been acted for as pleaded, the 1st respondent had failed in its statutory duty. Prayer one of the application is therefore warranted.
24. I have considered prayer 2 of the application. The applicant seeks that the 1st respondent be compelled to report to this court on compliance. I need to point out that Regulation 29 set out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1st respondent complies with Order 1, then process should take a life of its own. There is no need therefore for this court to issue what sounds appears to me to be a structural interdict. In any case, in the event of default of the court orders, the usual remedies are available to the Applicant.

Whether an order for compensation for kshs. 2,000, 000 should be made.

25. Any payment to be made is subject to an assessment by the Compensation Committee. This court therefore does not have jurisdiction to compel payment of a particular amount. Further, the Applicant



has not laid a basis for the claim of ksh. 2,000,000. In terms of section 25[5] the assessment of the loss and hence compensation is based on the market rates. Before the assessment is done therefore the Applicant has no basis for seeking enforcement of the payment of ksh. 2,000,000. Further, ordering the Respondent to pay the amount proposed, 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 the work of the respondents by making an order of specific payment.

26. Nevertheless, under the Act, the work of setting payment is not the work of the Court. To this extent, I agree with the 1st respondent that this prayer is premature.
27. The 1st 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 required to exhaust the alternative mechanism under the statute. Although the applicant's counsel has not made specific references 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.
28. 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".
29. Thus it is evident that the "alternative remedy" the 1st 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.
30. 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 1st respondent 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 exparte 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 17TH JULY DAY OF JULY, 2025.

SOPHIE CHIRCHIR

JUDGE.

In the presence of :

Roba Katelo- Court Assistant.

Mr. Amule for the Applicant.

