

**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT ISIOLO**  
**JUDICIAL REVIEW NO. E004 OF 2025**

**REPUBLIC .....**  
**.....APPLICANT**

**VERSUS**

**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**

**SIMON KAMESI LENTEIYE alias  
LEKAMESI LENTEIYE  
.....EXPARTE APPLICANT**

**JUDGMENT**

1. The Applicant's Notice of Motion Seeks orders as follows;

a). *That the Honourable Court be pleased to grant an order of Judicial Review by way of Mandamus compelling the 1<sup>st</sup> Respondents , through the 2<sup>nd</sup> respondent ( CMCC) to deliberate upon the exparte claim lodged on 25<sup>th</sup> August 2023 within the next 30 days pursuant to Regulation 27(1) (2) of the Wildlife Conservation*

*and Management Compensation Regulations 2017.*

*b). That the 1<sup>st</sup> 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. 2,000,000/= recommended, verified by the 2<sup>nd</sup> respondent and approved by the 3<sup>rd</sup> respondent as compensation for the injuries 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.*

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

2. It is the applicant's case that on 12/06/2022, he was attacked by an Elephant at his home in Oldonyiro at Lutoro Area, Isiolo county. He submitted his claim to the 1<sup>st</sup> Respondent.
3. The Applicant 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. 2,000,000/= within 30 days of the submission of claim form.

4. 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 he has made visits to the office of the 1<sup>st</sup> respondent's offices in Samburu, on diverse dates, but has been informed that he will be notified once the case has been attended to.
5. He seeks an order compelling the 1<sup>st</sup> respondent to verify the claim and to proceed to make payment

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

6. The Application is opposed through the Affidavit of the 1<sup>st</sup> respondent's legal officer, one Gideon Mutai.
7. It is the respondent's case that the Application is defective as it contravenes the provisions of section 9(2) of the Fair Administration Action Act( FAAA) as to the remedies available and Rule 11(1) of the regulations thereunder as to the form of Application; that it cannot be compelled to do that which it has no statutory duty to do; that to the contrary it is the duty of the 2<sup>nd</sup> respondent to review and recommend payment of compensation on claims resulting from loss or damage caused by wild life. It is further stated that the 1<sup>st</sup> respondent only offer secretarial services to the 2<sup>nd</sup> respondent, and that the duty to finally disburse payment , belongs to the Cabinet secretary in charge of Tourism and wildlife. It is finally stated that the 1<sup>st</sup> respondent has

performed its duty ,by receiving the Applicant's claim.

8. The other two respondents did not file any response.

### **Appellant's submissions**

9. It is the appellant's submissions that the court cannot be precluded from issuing judicial review orders, when it is evident that the Respondents have not given any considerations to the claim. That the essence of present Application is to compel the 2<sup>nd</sup> respondent, through the 1<sup>st</sup> respondent to deliberate upon his claim.
10. 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 act on it within the timelines set by the Act.
11. The Applicant further submits that the functions of the 1<sup>st</sup> respondent are clearly set out under section 7 of the Act, which include among others: the setting up of county wildlife conservation committees; collection of revenue due to National parks and develop mechanisms of sharing the revenue with communities living in wildlife area
12. The Appellant has further cited section 16 of the Act which provides, among others, that the 1<sup>st</sup> respondent is responsible for payment of allowances for the conservation committee members. It is stated that this is a demonstrates that the 2<sup>nd</sup> respondent is an Agent of the 1<sup>st</sup> Respondent.

13. On whether the 1<sup>st</sup> respondent is a necessary party to the suit; the applicant has relied on the case of ***KWS -Vs- Joseph Musyoki Kalonzo (2017) eKLR*** where it was held that the duty of the 1<sup>st</sup> respondent to manage wildlife, comes with the responsibility to shoulder any claims of loss or damage caused by the breach of that duty.

### **Respondent's submission**

14. It is the 1<sup>st</sup> respondent submissions that, pursuant to the provisions of section 18 of the Act, the statutory mandate to constitute and direct the 2<sup>nd</sup> respondent to sit and deliberate on claims arising from wildlife conflict is vested with the cabinet secretary ,. That this can be discerned from the fact that the majority of the committee members are appointees of the Cabinet secretary. It is further submitted that in terms of section 18(3) of the Act, the person to direct the 2<sup>nd</sup> respondent to sit and deliberate on claims is the cabinet secretary, and not the 1<sup>st</sup> respondent. And finally, that the person to make the pay-outs is the cabinet secretary.

15. 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 duty bearer. In this regard the decision in the case of ***Republic - Vs - Kenya Vision 2030 Delivery Board & Another Exparte. Eng. Judah Abekah (2015) 7078 ( KLR)*** has been relied on.

16. On the demand for payment of Kshs. 2,000,000/= as compensation, it is submitted that

the claim is premature and misplaced, as the applicant is yet to exhaust the procedural steps under Section 25 of the Act and Regulation 27(2) of the regulations. It is further submitted that the Application violates the *exhaustion principle* and further in breach of the section 9 (1) (2) of the FAAA. It is argued that the applicant must first exhaust the available remedies provided under statute before resorting to the court process. The case of ***Peter Muturi Njuguna - Vs- Kenya Wildlife Service (2017) KECA 42 ( KLR)*** has been relied on , in this regard.

17. The parties have relied on several other various Authorities which I have considered.

### **Analysis and determination**

18. I have considered the pleadings as well as the rival submissions. In my view the following issues arise for determination:
- a). Whether the respondents have statutory obligation to review and pay the Applicant's claim
  - b). Whether an order for compensation should be made.
  - c). What appropriate orders should issue.

### *Respondent's statutory obligations to the Applicant*

19. The facts and circumstances giving rise to the applicant's claim are not disputed. The applicant was attacked at his home in Loturo Area of Isiolo . The incident was reported to the chief, and the claim was submitted to the 1<sup>st</sup> respondent. The

respondent has acknowledged that it received the claim.

20. 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, established under section 18 of the Act. The committee is supposed to verify the claim 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.
21. It is the applicant's case that 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 1<sup>st</sup> respondent to direct the 2<sup>nd</sup> respondent to initiate the verification process.
22. On the other hand, the 1<sup>st</sup> respondent insists that it has no mandate to direct the 2<sup>nd</sup> respondent in the said exercise, and that, giving such a directive is the work of the cabinet secretary. That the cabinet secretary is the one to direct the committee to sit and do the deliberations. The 1<sup>st</sup> respondent has based its argument on section 18(3) of the Act and the fact that the cabinet is the appointee of most members of the committee.
23. I have considered the Respondent's submissions in this regard. Firstly, there is nowhere in the Act stating that the cabinet secretary directs the 2<sup>nd</sup> respondent to sit. Section 18, which the 1<sup>st</sup> Respondent is relying on provides for the setting up of county compensation committees, and prescribes the number of meetings that the committee should

hold in a year. Section 18(3) should be read with section 18(2). The relevant portions of section 18 are hereby reproduced:

### **18. Community Wildlife Conservation Committees**

*Each County shall have Wildlife Conservation Committee of—*

*(2)The Community Wildlife Conservation Committees may hold a maximum of four meetings every financial year*

*.(3)Despite subsection (2), additional meetings may be held with the prior consent of the Cabinet Secretary.*

24. Section 18(2) is a general prescription on the number of meetings that a committee of every county must hold in a given year and then any additional must be with the approval of the cabinet secretary as per section 18(3).To suggest that section 18(3) implies that the cabinet secretary is the one directing the sittings of the committee is an exaggerated interpretation of the section. In any case the functions of the committee as can be seen in section 19 is not just to deliberate on the claims. Apart from verifying the claims, the committees is also charged with, among others, development and implementation, in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict. It is also charged with bringing together relevant stakeholders to harness participation in conservation and management programmes of wildlife.

25. *These other functions could as well be the subject of the extra meeting requiring the approval of Cabinet secretary. The inference made by the respondent would only be valid, if the role of the committees set up under section 18 were limited to verification of claims and making recommendations only.*
26. *The 1<sup>st</sup> respondent has made a strenuous effort to distant itself from the 2<sup>nd</sup> respondent. However, it cannot, as demonstrated by the paragraphs which follow.*
27. *Firstly, it is evident from section 7 of the Act that the formation of the compensation committees is the work of the 1<sup>st</sup> respondent. The section sets out the functions of the 1<sup>st</sup> Respondent. One of those functions is to set up County Wildlife Conservation Committee in respects of each county. ( **see Section 7 ( c )** ). 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 section 7(c )*
28. *Secondly, pursuant to regulation 15 of the 2017, the 1<sup>st</sup> respondent is responsible for the declaration of vacancies 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.*
29. *Thirdly, I have considered the supreme court decision in the case of **Kenya Wildlife Service v Joseph Musyoki Kalonzo [2017] KECA 234 (KLR)** where the court of Appeal held : ‘The appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to*

*shoulder any claims of loss or damage caused by the breach of that duty”*

30. Finally as regards the various responsibilities of the respondents in the compensation process the court in Joseph Musyoki’s case( *supra*) went on to state : *“The law on this point as succinctly pronounced in **Joseph Boru Ngera & Another vs Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited [2014] eKLR** among others is still good law on this point. The cabinet secretary referred to in the Act pays the money on behalf of the appellant. 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”*. The Appellant in the case was the Respondent herein.

31. It is my finding therefore that in as far as the applicant’s claim has not been acted on, the 1<sup>st</sup> respondent has failed in its statutory duty. Prayer one of the Application is therefore warranted.

32. Under prayer 2 of the application, the Applicant prays that the 1<sup>st</sup> respondent be compelled to report to this court on compliance. I need to point out that Regulation 29 of the Act ,sets out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1<sup>st</sup> respondent complies with Order 1, then process should take a life of its own. In any case, in the event of default, the Applicant will have the liberty to seek the enforcement through the usual execution process. I do not therefore consider it necessary for this court to monitor the work of the respondents.

*whether an order for compensation should be made.*

33. The Applicant has asked this court to compel the respondent to make payment for a ksh. 2,000,000 set by the Act. That is not the work of the court, and as correctly submitted by the respondent it is premature. The process must run through the entire process provided under section 25 of the Act. Further, the ksh. 2 million is the maximum payable under the Act and it follows that once the assessment is done, the amount may fall below ksh. 2 million.
34. Nevertheless, any payment to be made is subject to an assessment by the Compensation Committee. This court cannot usurp the work of the respondents, laid out under the Act.
35. 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 FAAA. It is argued that the applicant ought to exhaust the alternative mechanism under the statute.
36. However, a reading of the entire section 25 shows that for the doctrine to become a defence it presupposes that the respondents would have set in motion the process of compensation. In this case the respondents 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.
37. 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 25<sup>th</sup> August 2023 , 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 Application, assessed at ksh. 30,000 is awarded to the Applicant.

Dated, signed and delivered at Isiolo this 24<sup>th</sup> day of September, 2025.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- Court Assistant.

Mr. Amule for the Applicant.