



Republic v Kenya Wildlife Service & 2 others; Nuobongoi (Suing as Legal Representative of the Estate of Kichuchu Ngarawae - Deceased) (Ex parte Applicant) (Judicial Review E001 of 2025) [2025] KEHC 13228 (KLR) (Judicial Review) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
JUDICIAL REVIEW
JUDICIAL REVIEW E001 OF 2025
SC CHIRCHIR, J
SEPTEMBER 18, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

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

**MINISTERIAL WILDLIFE COMPENSATION COMMITTEE 3RD
RESPONDENT**

AND

**ETURI NUOBONGOI (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE
OF KICHUCHU NGARAWAE - DECEASED) EX PARTE APPLICANT**

JUDGMENT

1. Through the Notice of Motion dated 28th January 2025 the Ex-parte Applicant herein (The Applicant) Seeks orders as follows;
 - a). That an order of Mandamus to compel the Respondents to consider the Applicant’s claim and immediately ksh. 5,000,000 to the Applicant’s Advocate .
 - b). The costs of this Application to be provided for.
2. The Notice of Motion was filed pursuant to leave granted on 14th January 2025.



The Applicant's case

3. The Motion is supported by a statutory statement dated 2nd December 2024 and the verifying Affidavit sworn on 3rd December 2024. It is the applicant's case that on 11/06/2022, the deceased was fatally injured by a herd of Elephants at Almoroti Morulan Area, while he was out in search of his donkeys. He blames the 1st respondent for negligence and breach of statutory duty as set out under the *Wildlife conservation and management Act* No. 47 of 2013(The Act).
4. He reported the incident to the police and later to the 1st respondent by filling and submitting a claim form; that it has been 2 years since the claim was submitted; that he has followed up the matter, but the respondents are yet to consider his claim.. He therefore seeks an order compelling the respondents to verify the claim and compensate him.

The 1st Respondent's case

5. The 1st respondent responded through its legal officer, one Christine Wanjiru. It is stated that to the extent that the Application seeks to compel the 1st respondent to carry out a duty does not belong to it, then it is defective. It is stated that it is not the statutory mandate of the 1st respondent to consider and compensate the Applicant's claim; that pursuant to the provisions of section 19(1) and 25(2) of the Act, the duty to direct the said committee to verify the claims is the work of the cabinet secretary in charge of Tourism and wildlife; and finally that, it is the duty of the said cabinet secretary to make payments to the claimants.
6. The 1st respondent further states that it merely sits in the compensation committee as a secretary of the said committee.
7. The other two respondents did not file any response.

Appellant's submissions

8. The Appellant has addressed four issues in his submissions.
9. The 1st issue is whether the 1st respondent is statutorily bound to manage National parks and Reserves. The appellant submits that the functions of the 1st respondent as set out under section 7(a) of the Act includes the management of National parks, wildlife conservancies and sanctuaries under its jurisdiction; that this function is broad enough to include facilitating and handling of claims, which culminates with the payment of the same claims. In this regard the Applicant has relied on the case of Kenya wildlife services vs Rift valley Agricultural contractors (2018) e KLR in which the court held that the management and conservation functions of the 1st respondent extends to handling of claims against it, and settling them.
10. The next issue addressed by the Appellant is whether it is within the mandate of the 1st respondent to consider, approve and compensate the Applicant. In this regard, it is the Appellant's submissions that, in terms of sections 7, 18 and 19 of the Act, the buck stops with the 1st respondent. And that the respondents' inaction constitutes a violation of the said regulations the rules of natural justice and that of fairness.
11. On whether there are prescribed timelines for consideration and payment of claims, it is the Appellant's submissions that the timelines are set out under section 27 of the Act.
12. It is the Applicant's final submissions that he is entitled to an order of mandamus as such an order is the only remedy available when Authorities have failed to carry out their duty as mandated by statute.



1st Respondent's submissions

13. It is the 1st respondent submissions that it no statutory mandate to either consider the Applicant's claim or effect payment in respect thereof. That the mandate belongs to the compensation Committee established under section 18 of the Act and that it merely offers secretarial services to the 2nd respondent in terms of section 18 The Act)
14. It is further submitted that, it is the Cabinet Secretary who can direct the 2nd respondent to verify claims, and that no such direction has been given to the committee. It is further stated that it is the same Cabinet Secretary who compensates the claimant, after the 2nd respondent has verified and made recommendations on the claim.
15. On the plea of payment of Kshs. 5,000,000/= as compensation, it is submitted that the claim is premature and unwarranted as the same contravenes the provisions of section 9(2) of the *Fair Administrative Action Act* (FAAA) and Rule 11(1) of the regulations thereunder.
16. The parties have relied on other various Authorities which I have considered.

Analysis and determination

17. 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 respondents have statutory obligation to verify and compensate the Applicant.
 2. Whether an order of mandamus should issue.

Respondents' statutory obligations to the applicant

18. . The Deceased was attacked by a herd of elephants as he went about looking for his donkeys. He sustained fatal injuries as a result. A claim was filed with the respondents. By the 1st respondent's own admission the claim is yet to be deliberated by the 2nd respondent
19. 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.
20. The 1st respondent has argued that it neither has the mandate to vet the claim nor to compensate the Applicant, and that the two responsibilities is the work of the 2nd respondent and the minister in charge of Tourism and wildlife , respectively.
21. The imperative question is, who or whose, is the Compensation Committee established under Section 18 of the Act? Is it 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?
22. 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 respect of each county. (see Section 7 (c) of the Act). It is the therefore evident that the committee established under section 18 is a creature of the 1st respondent, established pursuant to the provisions of 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 particular committee of a particular county or whenever a vacancy arises.

23. From the above two provisions it is evident that the 2nd respondent was established by the 1st respondent as a vehicle of carrying out certain functions. In other words, the 2nd respondent is a creature of the 1st respondent. The structure establishing the 2nd respondent makes it legally untenable for the 1st respondent to run away from the actions or inactions of the 2nd respondent.
24. In regard to the relationship between the 1st 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 1st Respondent.
25. I have further considered the decision in the case of *Kenya wildlife service vs Rift valley Agricultural contractors Ltd* (2018) e KLR where the court of Appeal expressed the view that the mandate of managing wildlife, and collecting revenue from the services offered, could not be separated from the duty to compensate those who are injured or suffer loss caused by wild Animals. It is my finding therefore that in as far as the applicant's claim has not vetted and recommendations made to the minister, the 1st respondent has failed in its statutory duty.

Whether an order of mandamus should issue.

26. The Respondent has argued, correctly, that an order of mandamus can only issue where the Applicant has demonstrated that the respondent has a statutory duty, and which duty it has failed to discharge. This court has already found that the 1st respondent as the principal of the 2nd respondent is under a statutory duty to vet the Applicant's claim and recommend to the minister. The Applicant is therefore entitled to an order of mandamus.
27. However the order of mandamus can only issue in part. The Applicant has asked the court to not only direct the respondents to vet the claim, but also to direct them to pay ksh. 5,000,000. For reasons that I will delve into shortly, this court does not have the jurisdiction to grant the 2nd limb of the Applicant's prayer.
28. In accordance with the Act, any payment to be made is subject to vetting and assessment by the Compensation Committee. It is the work of the committee to inter alia vet the documents and claimants for instance, before approving the claim. If this court was to order payment, it will be usurping the role of the respondents.
29. Further the procedure of compensation is set out in the Act and pursuant to the doctrine of exhaustion, and indeed section 9(1) and (2) of the FAAA, the remedies provided in the Act must first be exhausted before the Applicant seeks the intervention of the court. And the first court of call, in terms of section 25(6) of the Act is the National Environmental tribunal and the 2nd, and final, would be the Environment and Land court.
30. In other words, save for judicial review reliefs, the high court has no other role to play in a claim such as this.
31. However, contrary to the respondent's submission the doctrine of exhaustion or the provisions of section 9(1) and (2) of FAAA can not be a valid defence to the first limb of the Applicant's prayer. The respondents had failed to initiate the process of compensation, and the Applicant are rightly entitled to an order of mandamus to compel the respondents to set the said process in Motion.



32. In conclusion 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 as per claim form issued on 20th June 2022 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 this Application assessed at ksh. 30,000 is awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 18TH DAY OF SEPTEMBER 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Roba Katelo- Court Assistant.

