



Republic v Kenya Wildlife Service & 2 others; Muhia (Exparte Applicant) (Judicial Review Application E003 of 2024) [2024] KEHC 8086 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW APPLICATION E003 OF 2024**

FN MUCHEMI, J

JULY 4, 2024

**IN THE MATTER OF AN APPLICATION FOR
THE JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF THE WILDLIFE CONSERVATION AND
MANAGEMENT ACT, NO. 47 OF 2013 LAWS OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE,
KIAMBU 2ND RESPONDENT**

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

AND

JOYCE WANGUI MUHIA EXPARTE APPLICANT

RULING

Brief Facts

1. By a Notice of Motion dated 22nd March 2024, the ex parte applicant seeks the following orders:-



- a. An order of mandamus be issued to compel the respondents and especially the 1st respondent to pay the ex parte applicant the sum of Kshs. 5 million recommended by the 2nd respondent and approved by the 3rd respondent as compensation for the death of their brother after being attacked by wildlife.
 - b. The respondents and especially the 1st respondent be and are hereby ordered to comply by paying the ex parte applicant the said approved sum within fourteen (14) days from the date of service of the order of mandamus.
2. The 1st respondent opposed the application and filed a Replying Affidavit dated 19th April 2024.

The Ex parte Applicant's Case

3. The ex parte applicant states that she is the legal representative of the Estate of Samuel Ng'ang'a (the deceased) having obtained a limited grant on 25th January 2023. It is deposed that on 3rd September 2009, the deceased was viciously attacked by a hyena while walking home occasioning him fatal injuries. The ex parte applicant further states that they reported the matter at Juja police station and the 1st respondent's officers went and took the details and promised to compensate them for the loss of their brother
4. The ex parte applicant states that the 2nd respondent which reviews all the lodged claims and makes appropriate recommendations to the Ministerial Wildlife Compensation Committee convened a meeting on 3/9/2020. The 3rd respondent then validates and approves payment of the awards by the aforesaid committee.
5. The ex parte applicant avers that the 3rd respondent had their meeting on 8/2/2021 and approved the claim for compensation for an amount of Kshs. 5 million.
6. The ex parte applicant states that she followed up with the 1st respondent to the extent of providing the 1st respondent with her bank account details which she filled on 11th October 2022 however she is yet to receive the compensation on behalf of her deceased brother. The ex parte applicant further states that she has now waited for over four (4) years and the respondents are yet to make good their promise. Furthermore, the ex parte applicant states that the respondents continue to delay the compensation without any plausible explanations.

The 1st Respondent's Case

7. The 1st respondent opposes the application on the premise that it is fatally defective and bad in law as it seeks to compel the 1st respondent to do that which is not within the 1st respondent's mandate. The 1st respondent argues that it is not its duty and not authority to compensate the ex parte applicant.
8. The 1st respondent states that pursuant to Section 18 of the *Wildlife Conservation and Management Act*, 2013, the 2nd respondent is mandated to review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife under Sections 19(1) and 25(2) of the *Act*. The 1st respondent further states that it is the secretary to the County Wildlife Conservation Committee.
9. The 1st respondent states that the 2nd respondent considered the ex parte applicant's claim for compensation and recommended that the claimant be paid Kshs. 5 million on 3rd September 2020. The claim and recommendation was then submitted to the Cabinet Secretary, Ministry of Tourism and Wildlife in accordance with Section 25(2) of the *Act* where the claim was considered and approved for compensation by the Ministerial County Wildlife Compensation Committee on 8th February 2021 in accordance with Section 25(3) of the *Act*.



10. The 1st respondent states that the responsibility to compensate for human wildlife conflict matters lies with the Cabinet Secretary Tourism and Wildlife. The 1st respondent further states that it is the go between, between the ex parte applicant and the Cabinet Secretary Tourism and Wildlife hence the request for the ex parte applicant's bank account details on behalf of the Cabinet Secretary. Further, the 1st respondent states that it transmits compensation funds provided by the Cabinet Secretary Tourism and Wildlife and the funds in this instant case have not been provided. Thus, the 1st respondent argues that it is unjust for the ex parte applicant to seek payment from them yet they are not mandated by law to compensate for human wildlife conflict matters.
11. The 1st respondent states that the proper party to compel to make the payment as approved is the Cabinet Secretary Tourism and Wildlife. Thus, the 1st respondent states that they have duly performed their statutory duty under the Act and the ex parte applicant's allegations remain spurious and thus the suit is unmerited, an abuse of the court process.
12. The ex parte applicant filed a Further Affidavit dated 26th April 2024 and states that Section 7 of the Wildlife Management and Conservation Act outlines the functions of the 1st respondent and therefore the 1st respondent is attempting to skirt responsibility under the Act. Further, the ex parte applicant states that the 1st respondent is allocated funds by the National Treasury to settle claims as part of Human Wildlife Conflict Management. The 1st respondent undertakes compensation as agent of the Minister under the Act in line with Section 25. Failure to effect payment of the approved claim is an express violation of the ex parte applicant's constitutional rights.
13. Parties agreed to dispose of the application by way of written submissions.

The Ex parte Applicant's Submissions.

14. The ex parte applicant submits that she is the legal representative of the estate of Samuel Ng'ang'a Kiarie who was killed by a hyena on 3rd September 2019. The ex parte applicant further states that she reported the incident to the 1st respondent who is mandated under Section 7 of the *Wildlife Conservation and Management Act* No. 47 of 2013 to manage national parks and national reserves where wild animals are confined. She further states that the 1st respondent promised to compensate her pursuant to Section 25 of the Act but it has failed to do so.
15. The ex parte applicant relies on Section 6 and 7 of the *Wildlife Conservation and Management Act* No. 47 of 2013 and submits that the 1st respondent is mandated to manage national parks and reserves and provide security to the animals and people in reserve areas. The ex parte applicant argues that the mandate would imply that the 1st respondent has a statutory mandate to ensure that wild animals do not cause harm to people.
16. The ex parte applicant further relies on the case of *Joseph Boro Ngera & Supaduka Nakuru Limited vs Kenya Wildlife Services*, Civil Appeal No. 71 of 1997 and submits that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage to property and human life and therefore the attempt by the 1st respondent to pass the buck to the Minister of Tourism is escapist.
17. The ex parte applicant submits that the 1st respondent is a public body with a clear mandate in the Act whereas the 2nd & 3rd respondents are administrative structures within the 1st respondent's body. The ex parte applicant further submits that the 1st respondent has breached its statutory duty, which includes compensation for the death of the deceased.



The 1st Respondent's Submissions.

18. The 1st respondent submits that it does not act for the 2nd & 3rd respondents. The 1st respondent submits that the [Wildlife Conservation and Management Act](#), 2013 establishes a mechanism for compensation for personal injury or death or damage to property caused by wildlife. The 1st respondent further submits that the ex parte applicant lodged her claim for compensation through the mechanism established by the Act and presented her claim before Kiambu County Wildlife Compensation Committee as provided for in Section 25(1) of the Act. Pursuant to Section 19(a) of the Act, the committee considered the claim and recommended the compensation of Kshs. 5 million and submitted the same to the Cabinet Secretary Ministry of Tourism and Wildlife as provided for in Section 25(2) of the Act.
19. The respondent further submits that Section 25(3) of the Act clearly states that the Cabinet Secretary is the one liable to pay compensation recommended by the County Wildlife Compensation Committee. In the instant case, the 1st respondent argues that the Cabinet Secretary through the Ministerial Wildlife Compensation Committee considered the recommendation of the Kiambu County Wildlife Compensation Committee and approved the payment of Kshs. 5 million on 8th February 2021. As such, the 1st respondent submits that the ex parte applicant having chosen to use the compensation mechanisms provided in the Act, she is bound to follow the channel as per the Act. To support its contentions, the 1st respondent relies on the case of Civil Appeal No. E013 of 2022 [Kenya Wildlife Service vs Quinter Awur](#) [2023] eKLR.
20. The main issue for determination is whether the 1st respondent is under a public duty and obligation to satisfy the compensation claim in favour of the ex parte applicant, and if so whether the ex parte applicant is entitled to the relief she seeks.

The Law

21. The Court of Appeal discussed the nature of the remedy of mandamus in [Republic vs Kenya National Examinations Council ex parte Gitinji & 8 Others](#) [1997] eKLR citing with approval Halsbury's Laws of England 4th Vol. 7 p. 111 para 89:-

The order of mandamus is the most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual..."These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons had failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.

22. In the instant case, the ex parte applicant has moved this honourable court to compel the respondents, particularly the 1st respondent to satisfy a recommendation by the 2nd respondent and approved by the 3rd respondent as compensation for the death of her brother in the sum of Kshs. 5 million. It is not disputed that the Wildlife Conservation and Management Committee recommended for compensation in the sum of Kshs. 5 million to the ex parte applicant.



23. Section 3A of the *Wildlife Conservation and Management Act* outlines the functions of the Kenya Wildlife Service as follows:-

The functions of the Service shall be to -

- (c) manage National Parks and National Reserves;
- (l) render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.

24. The Supreme Court in the case of *Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited* [2018] eKLR held that the appellant had the statutory duty to control wildlife by dint of Section 3A of the Wildlife Act and held as follows:-

The appellant's obligations under Section 3A(l) could not and were not abdicated in favour of, or transferred to Narok County Government. Without belabouring on this point any further we find that the breach of Section 3A(l) imposes a liability on the appellant to compensate for destruction of crops by wildlife.

25. Upon establishing that the 1st respondent is statutorily bound to control wildlife by dint of Section 3A of the *Act*, it is prudent to outline that the Act under Section 25 provides for the procedure to be followed for payment of damages by a claimant who opts to pursue her claim under the Act as was done by the ex parte applicant.

26. Section 25 of the *Wildlife Conservation and Management Act* provides:-

1. Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured, or in the case of a deceased person, the personal representatives or successor or assign, may launch a claim to the County Wildlife Conservation and Compensation Committee within the jurisdiction established under this Act.
2. The County Wildlife Conservation and Compensation Committee established under Section 18 shall verify a claim made under subsection (1) and upon verification, submit the claim to the Cabinet Secretary together with its recommendations thereon.
3. The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows:-
 - a. In the case of death, five million shillings;
 - b. In the case of injury occasioning permanent disability, three million shillings;
 - c. In the case of any other injury, a maximum of two million shillings, depending on the extent of the injury.
6. A person who is dissatisfied with the award of compensation be either the County Wildlife Conservation and Compensation Committee or the Service may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.



27. The courts in *Kenya Wildlife Service vs Awuor (Civil Appeal E013 of 2022)* [2023] KEHC 3721 (KLR) (26 April 2023) (Judgment) and *Kenya Wildlife Service vs Abraham M'ngai M'itumitu* [2021] eKLR where the courts held:-

Clearly, the appellant having awarded an amount under the Act, further intervention in court could only have been by the appeal process following upon the provision of the section, that is to say through the mechanism of a first appeal to the tribunal and thereafter a second appeal to the Environment and Land Court. The respondent may have opted to pursue its claim for compensation in negligence for damages for personal injury in the civil court as an alternative to the statutory compensation mechanism. Without deciding, I would consider that the respondent may also have pursued judicial review remedy in the High Court, if so advised by his advocates, for the award of the full award of compensation prescribed under the Act. The respondent may also, as he may be advised by his legal advisors, file an application for extension of time to pursue the appeal process set out in Section 25(6) of the Act.

28. Applying the above principles to the present case, it is evident that the ex parte applicant is within her right to file the instant judicial review to enforce the compensation. Consequently, the 1st respondent has failed to compensate the ex parte applicant and claims that it is the Cabinet Secretary who ought to make the payments and not themselves. The Court of Appeal in *Kenya Wildlife Service vs Joseph Musyoki Kalonzo* [2017] eKLR stipulated as follows on this issue:-

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. The law on that point was 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 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.

29. It is not in dispute that the 1st respondent is liable to compensate the ex parte applicant and it is not for her to concern herself with the internal arrangements of the 1st respondent as to whether the Cabinet Secretary should disburse the monies to the applicant. It is my considered view that the 1st respondent is liable to compensate the ex parte applicant and that the applicant's claim was approved following the laid down procedures under the *Wildlife Conservation and Management Act*. The applicant has satisfied this court that the 1st respondent owes her the amount of KSh.5,000,000 in form of compensation for injuries sustained.

30. Consequently, I find this application successful and allow it accordingly in the following terms:
- a. That the 1st Respondent is hereby compelled by an order of Mandamus to pay KSh.5,000,000/ = as compensation for the death of the deceased as approved by the 3rd Respondent within 30 days.
 - b. That the costs of this application are awarded to the Applicant.

31. It is hereby so ordered.

RULING DELIVERED, DATED AND SIGNED AT THIKA THIS 4TH DAY OF JULY 2024.

F. MUCHEMI



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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

