



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**CIVIL APPEAL NO. 69 OF 2016**

**PIUS MWANZIA KIOKO** (Suing as the legal representative

Of the estate of **BRIAN MUSYOKI MWANZIA**).....**APPELLANT**

**VERSUS**

**KENYA WILDLIFE SERVICES**.....**RESPONDENT**

**J U D G M E N T**

**A. Introduction**

1. This appeal is against the ruling of Embu Senior Resident Magistrate in CMCC No. 330 of 2016 in which a preliminary objection based on want of jurisdiction was upheld.
2. The appellant's suit in the trial court was for compensation on behalf of the estate of the deceased who died after sustaining injuries following a crocodile attack. The respondent's preliminary objection under **Section 25 of the Wildlife Conservation and Management Act, 2013** was that the mode of seeking compensation in such claims was set out in the Act.
3. Being dissatisfied with the ruling of the magistrate delivered on 23/11/2016, the appellant filed the memorandum of appeal dated 25<sup>th</sup> November 2016 based on grounds that: -

**a) *That the trial magistrate erred in law and in fact in upholding the preliminary objection and thus infringed on the appellant's right to access justice.***

**B. The Submissions**

4. The appellant submits that the trial court erred when it dismissed the appellants suit on account of lacking jurisdiction thus denying the appellant access to justice. He relied on the case of **Civil Appeal No. 27 of 2017 KWS v Roise Bundi** where the court upheld the trial magistrate's decision that it had jurisdiction to deal with a similar case.
5. The appellant further relied on the case of **Joseph Musyoki Kilonzo v Kenya Wildlife Service [2015] eKLR** where the court held that section 25 (1) of the Wildlife Conservation and Management Act 2013 uses the word 'may' and does not say specifically that the ordinary courts have no jurisdiction in such claims.
6. On the other hand, the respondent submitted that the preliminary objection dated 27/10/16 was meritorious as it raised an issue of law being jurisdiction as the appellant failed to follow the mechanisms set out to claim compensation. They relied on the case of **Narok County Council v Trans Mara County Council & Another, Civil Appeal No. 25 of 2000** and that of **Nakuru Civil Appeal No. 260 of 2013 Peter Muturi Njuguna v Kenya Wildlife Service** where the Court of Appeal in both instances held that where the law provides for procedure to be followed, the parties are bound to follow the procedure provided by the law before the parties can resort to a court of law as the court would have no jurisdiction to entertain the dispute.
7. The respondent further argued that by upholding the preliminary objection the trial magistrate was complying with the precedent set out in the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited [1989] KLR1** which provided that matters of jurisdiction must be addressed at the earliest opportunity.

**C. Analysis & Determination**

8. The issue before this court is whether **Section 25 of the Wildlife Conservation and Management Act, 2013** ousts the jurisdiction of the Court? At the heart of this case is **Section 25 of WCMA** which provides as follows;

***“25(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 representative 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) Any person who suffers loss and damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.”***

9. It is clear from the provisions cited above that there is indeed an elaborate procedure prescribed for prescribing how claims for injuries caused by wildlife should be dealt with. However, the Court of Appeal in the case of **Joseph Musyoki Kilonzo (supra)** when confronted with whether the High Court had jurisdiction to entertain similar claims stated: -

***“In our view, even from a literal interpretation, this provision does not oust the jurisdiction of the High Court to hear any matters raised under that Act. If the Act meant to remove those matters from the realm of the High Court or the other courts, then it would have expressly stated so. It gives an aggrieved party an option to go to the committee as a first option. This in our view was meant to ease matters for the poor people whose crops and domestic animals are ravaged by wild animals occasionally, and which people may be far removed from the structured judicial systems. We do note that most of the areas that are prone to wildlife/human conflict are in areas that are outside urban areas where courts are situated. The Act in our view meant to make it easier for such people to access justice that is more easily accessible in terms of not traveling long distances and also in terms of simplicity in lodging their claims. It could not have been meant to shut out everybody else who would prefer to pursue their claims before the conventional courts. That would explain the use of the word ‘MAY’ and the absence of any provision expressly limiting or ousting the jurisdiction of the High Court.”***

10. In **Peter Muturi Njuguna v Kenya Wildlife Service NKU CA Civil Appeal No. 260 of 2013 [2017] eKLR** the court considered the import of section 62(1) of the Wildlife (Conservation and Management) Act (Repealed) which provided as follows;

***“62(1) Where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the date of his death may make application to a district committee established by this section, for the award of compensation for the injury or death.... ”***

11. The court concluded that “may” in the context of the statute was mandatory and thus it held that;

***“[18] From the foregoing, it is abundantly clear to us that where there is a specific procedure as to the redress of grievances, the same ought to be strictly followed. Having arrived at that conclusion, we are satisfied that the learned Judge of the High Court did not err by upholding the lower court's finding. Section 62 (1) of the Act is explicit on the procedure to be followed by any person who suffers bodily injury from or is killed by any animal. Such person, is required to make an application to the District Committee. It is good practice intended to foster public confidence and trust to let each organ perform its mandate. The appellant ought to have approached the District Committee first and followed the appellate system designed under the Act.”***

12. Regarding the decision in the case of **Peter Muturi Njuguna v Kenya Wildlife Service(Supra)** the Court in **John Kimathi Marete v Kenya Wildlife Services [2018] eKLR** stated,

***“That case though can be distinguished from Kenya Wildlife Service v Joseph Musyoki Kilonzo (Supra) on several grounds. Although both cases dealt with provisions that are similar, the former case was in respect of the repealed Wildlife (Conservation and Management) Act while the latter case dealt directly with section 25 of the WCMA. In the latter case the Court considered the issue of access to justice which is a fundamental right protected under Article 48 of the Constitution. Even though I would venture to say that the words of the statute may, in the context of the WCMA, support the application of the principle that where the Act provides the exclusive means to agitate cases of injury by wildlife that procedure should be followed, the interpretation given by the Court of Appeal on section 25 of the WCMA is binding on this court until the Court revisits the matter.”***

13. Accordingly, being bound by the decision of the Court of Appeal in **Joseph Munnyoki Kalonzo v Kenya Wildlife Services(Supra)** I therefore allow the appeal, set aside the ruling dated 23/11/2016 and substitute it with an order dismissing the preliminary objection with costs to the appellant.

14. The Court of Appeal in the above cases was categorical that Section 25 of the Act does not take away the jurisdiction of the court in hearing and determining wildlife compensation matters. However, the provision creates a forum where the County Wildlife Conservation Committee ought to hear all matters specified in that Section in the first instance. This specific procedure must be exhausted before a victim can approach the courts of law. The legislature aimed at decongesting courts by creating an alternative method of dispute resolution that is more informal and less expensive and serves to provide access to justice to victims, some of whom may not afford court fees and legal representation charges.

15. The ruling of the magistrate that the court had no jurisdiction was therefore a misdirection and it is hereby set aside.

16. An order is hereby made that this matter be remitted to the chief magistrate court for hearing and determination.

17. The appeal stands allowed.

18. Each party will meet its own costs of this appeal.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 23<sup>RD</sup> DAY OF JULY, 2019.**

**F. MUCHEMI**

**JUDGE**

**In the presence of: -**

**Mr. Mwanzia for Appellant**

**Ms. Muriuki for Kariuki for Respondent**