



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL CASE NO. 61 OF 2018

KENYA WILDLIFE SERVICES.....APPELLANT

VS

STEPHANO MURURU MUKIIRA.....ACCUSED

RULING

Appeal herein arises out of ruling of Chief Magistrate H. M Ndung'u delivered on 23.5.2018 in Meru CMCCC No. 12 of 2017.

The grounds upon which appeal is filed are that:-

- a) The learned erred in law in dismissing the appellant's application dated 1.3.2018 which sought to strike out the suit.
- b) That the Learned Magistrate erred in relying on the cases which were decided on basis of S.3A of the repealed Wildlife Conservation and Management Act Cap 376.
- c) That the learned Magistrate erred in law in holding the respondent as obligated to support farmers and ranching communities to protect their crops and livestock from loss occasioned by wildlife when in fact there is no such obligation imposed upon the appellant under the Wildlife Management & Conservation Act 2013
- d) That S.25 (4) and 25(5) the Wildlife Management & Conservation Act 2013 provides for a statutory remedy in the form of compensation Committee.
- e) That the trial Magistrate erred in law in holding that S.25 of Act of 2013 did not out the jurisdiction of the court to determine the Respondents claim.
- f) That the Learned Magistrate erred in law by failing to consider the court of appeal decisions particularly in the case of Peter Muturi Njuguna vs KWS C.A No. 260 of 2013 and Speaker of National Assembly vs Karume (2018) I KLR EP for the proposition that a party ought to first exhaust statutory dispute resolution mechanisms before making a claim to court.

The appellant sought that ruling and order of 23.5.2018 be reviewed and/or set aside and be substituted with an order that the applicants/Defendants application dated 1.3.2018 be allowed as prayed and costs of appeal be awarded to the appellant.

Filed concurrently with the appeal was application dated 1.8.2018 seeking stay of proceedings in Meru C.M.C.C NO. 12 OF 2017 pending hearing and determination of appeal during vacation. The application was supported by both the affidavits of Queenton Ochieng Advocate and Doreen Mutunga sworn on 1st August 2018.

Directions were taken that application be disposed by way of written submissions which were filed by the Respondent on 15.10.18 and by appellant as 20th September 2018. The issue for determination is whether a good case for stay of proceedings in the lower court has been made by the appellant/applicant. Whether the applicant has satisfied the court that chief magistrates court does not have jurisdiction to entertain claim by the Respondent.

The cause of action herein arose on 15th February 2014 and a look at the Chief magistrates court file showed that pursuant to section 25(4) & (5) of Wildlife Conservation and Management Act 2013 the Respondent lodged a claim with county wildlife conservation and compensation committee upon verification and assessment by the chief of Rwanyange Location and Nyaki West Agricultural offices.

The Respondents counsel wrote a demand to Legal Affairs Director KWS (Appellant/Applicant) herein date 6.10.2016 but the applicant /appellants statement of Defence is not accompanied by anything to show they received or didn't not receive the claim and it doesn't have anything to show they accordingly instructed the County Wildlife Conservation and Compensation committal to act as claim.

The authority that the appellant/applicant relies on has since been overtaken by events and in any case is under a totally different regime and not under the Wildlife conservation and management Act and therefore distinguishable. The argument of the trial magistrate is concurrently with the finding of the court of appeal case (by **Visram, Karanja & Koome J. A**) in **KWS VS JOSEPH MUSYOKI KALONZO NAIROBI C.A NO. 306 OF 2015** which was relied on with approval by **JUSTICE MUCHEMI IN HIGH COURT AT EMBU C.A. NO. 73 OF 2016** as follows:-

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 others courts then it would have expressly stated so. It gives an aggrieved party an option to go to the committee as first option this in our view was meant to ease, matters for the poor people whose Crops and domestic animals are damaged by wild animals occasionally, and which people maybe 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 travelling long distances and also in terms of simplicity in lodging their claim. It could not have meant to shut out everybody else who would prefer to pursue their claims. It could not have meant to shut out everybody else who could 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.

In other words, there is no ouster clause in the wildlife and conservation management Act, that bars a party from seeking relief outside the process provided for under the Act...Section 25 of the Act only gives an aggrieved party an option to pursue its claim either through the process stipulated under the act or through the court.

The court further held that:-

The Respondent could either lodge his claim through the Act, which he did but no remedy was forth coming, or pursue the remedy under the common law through the courts. Every person has a right to pursue a remedy under the common law for a wrong or injury suffered.

The use of the word 'May' in section 25 of the Act is given the claimant an option of filing his/her claim in court. That is the court position and I do therefore uphold the ruling of the trial court in the lower court.

The application for stay is not warranted and application is dismissed with costs to Respondent.

HON. A. ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON THIS 15th DAY OF NOVEMBER 2018

IN THE PRESENCE OF

C/A:

APPELLANT:-Ms HH & Mathews Advocate for Appellant

RESPONDENT:- Mr Mwirigi Advocate for Respondent. Mrs Ntarangwi holding brief.

HON. A. ONG'INJO

JUDGE