

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KILGORIS

JUDICIAL REVIEW NO. E006 OF 2024 AS HERAD TOGETHER WITH

E007 OF 2024,E005 OF 2024,E004 OF 2024,E003 OF 2024,E002 OF 2024 AND E001 OF

2024

(CORAM: HON. CHARLES M. KARIUKI – J)

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN MATTER OF THE CONSTITUTION OF KENYA ARTICLES 165(3)(a), 2010

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT

NO. 47 OF 2013 LAWS OF KENYA SECTIN 25(1) (2)(3)

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT

COMPENSATION REGULATIONS 2017 REGULATION (1)(2)

AND

IN THE MATTER OF THE LAW REFORM ACT CAP 26 SECTION 8 & 9

BETWEEN

REPUBLIC.....APPLICANT

AND

KENYA WILDLIFE SERVICE.....1ST RESPONDENT

COUNTY WILDLIFE CONSERVATION &

COMPENSATION COMMITTEE NAROK.....2ND RESPONDENT

DIRECTOR, MINISTERIAL CONSERVATION

COMPENSATION COMMITTEE.....3RD RESPONDENT

**ELIZABETH TITO MOSOMPE & JOHN MOSOMPE (Suing as legal representative of
the estate of DANCAN MOSOMBE-.... Deceased.....APPLICANT**

RULING

03/10/2025

- 1) On December 11, 2024, the court granted the *ex parte* applicant leave to apply for an order of mandamus to compel the respondents to release a sum of Kshs. 5,000,000/= recommended, verified by the 2nd respondent and approved by the 3rd respondent as compensation for death of their son after being attacked by a crocodile through the *ex parte* applicant's advocate.
- 2) The *ex parte* applicant filed a substantive motion on December 21, 2024, seeking the following orders.

- i. THAT the honorable court be pleased to grant an order of judicial review by way of mandamus compelling the respondents, and specifically the 1st respondent, to pay & release to the applicants the sum or amount of Kshs. 5,000,000/= recommended, verified by the 2nd respondent and approved by the 3rd respondent as compensation for death of their son after being attacked by a crocodile through the ex-parte applicant's advocate.*
- ii. THAT the 1st respondent be and is hereby ordered to comply by paying and releasing to the ex parte applicant the said approved sum within 14 days from the date of issuance of the order of mandamus.*
- iii. Costs of and incidental to the judicial review proceedings be provided for.*
- iv. Such further and other reliefs that this honourable court may deem just and expedient to grant.*

3) The application is grounded on the statement dated December 20, 2024, the affidavit verifying statement of facts sworn by Elizabeth Tito Mosombe, the ex parte applicant herein, on December 20, 2024. The ex parte applicants averred that the deceased was attacked by an elephant while going home to Pusanki area thereby occasioning him fatal injuries. The applicants visited the 1st respondent's offices, who issued him with compensation forms to be filled out, which he filled and returned to the 1st respondent. On 14/12.2021, the 2nd respondent deliberated, verified, and recommended compensation for the applicant's sum of Kshs. 5,000,000/= as prescribed under section 25 of the Wildlife Conservation and Management Act No. 47 of 2013. the 3rd respondent approved the same on 21/11/2022. The 1st respondent has failed to release the said amount. The ex parte

applicants have therefore sought intervention by this court to compel the respondents by an order of mandamus for payment of the said sum.

The response.

- 4) The 1st respondent opposed the application vide replying affidavit sworn by Silvester Nyaga on 28/02/2025.
- 5) The 1st respondent contends that the application 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.
- 6) The 1st respondent contends that it is only a secretary to the county wildlife conservation committee established under section 18 of the wildlife conservation and management act, 2013.
- 7) The 1st respondent contends that Narok county wildlife conservation committee considered the applicant's claim for compensation on 14/12/20210, recommended the same for compensation to the Cabinet Secretary, Ministry of Tourism and Wildlife in accordance with section 25(2) of the WCMA.
- 8) On 21/11/2022, the cabinet secretary, Ministry of Tourism and Wildlife, through the 3rd respondent, considered and approved the ex parte applicant's claim for compensation in accordance with section 25(3) of WCMA.
- 9) The 1st respondent contends that the role of payment of compensation squarely lies on the cabinet secretary, ministry of tourism and wildlife.

10) The 1st respondent contends that it is not the duty of the respondent to compensate the applicant, and this court cannot issue any orders to such effect as the same would amount to illegality.

Further affidavit

11) The applicant filed a further affidavit, sworn by Elizabeth Tito Mosompe, on 06/03/2025.

12) The applicant averred that by virtue of sections 6,7,8, 9, and 16 of the Wildlife Conservation and Management Act, the 1st respondent is fully mandated to set up and control the management of the affairs of the 2nd respondent. The 1st respondent, therefore, is a necessary party.

13) The applicant contends that he is not concerned with the internal management of the affairs of the 1st respondent, as the law mandates the 1st respondent to be in charge of wildlife within the territory of Kenya to compensate all victims.

Directions of the court

14) The application was canvassed by way of written submissions.

The ex-parte applicant's Submissions

15) The ex parte applicant submitted that the 1st respondent's authority, functions, and capacity to sue and be sued are set out in sections 6 and 7 of the Wildlife Conservation and Management Act.

16) The ex parte applicant submitted that the 2nd respondent is an agent of the 1st respondent. The ex parte applicant relied on Sections 8,9,16 of the Wildlife Conservation and Management Act in the judicial review application No. E054 of 2024 in the matter

republic vs Kenya wildlife & county wildlife conservation & compensation committee, Kiambu & director, ministerial conservation compensation committee and Joyce Wangui Muhia.

17) The ex parte applicant submitted that the 1st respondent is a necessary party to the proceedings. The ex parte applicant relied on *in judicial review application no. e054 of 2024 in the matter Republic vs Kenya Wildlife & County Wildlife Conservation & Compensation Committee, Kiambu & director, ministerial conservation compensation committee and Joyce Wangui Muhia, Kenya wildlife service vs Rift Valley Agricultural Contractors Limited [2018] eKLR, Kenya wildlife service vs Joseph Musyoki Kalonzo [2017] eKLR, Joseph Boru Ngera & another vs Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited [2014] eKLR.*

18) The ex parte applicant submitted that this court can grant the orders sought in the application. The ex parte applicant relied on in republic vs Kenya wildlife service & director general, Kenya wildlife service & chief magistrate, Maua law courts & Abraham m'ngai m'itimitu (suing as legal representative of the estate of Judy gakii m'ngai, **HALSBURY'S LAW of England, 4th edition, volume 1 at page 111.**

The 1st respondent's submissions.

19) The 1st respondent submitted that the Cabinet Secretary, Ministry of Tourism and Wildlife through the 3rd Respondent is mandated by the act to consider the recommendation made and where appropriate pay compensation. an order of mandamus can only be issued to compel one to perform a statutory duty owed. The 1st respondent is improperly joined in these proceedings. The 1st respondent relied on Section 6,7,18, 19(1), 25 (2) and (3) of the

Wildlife Conservation and Management Act, 2013, **republic v county government of Nairobi & 2 others ex parte kingpost limited [2021] eklr, republic v Kenya vision 2030 delivery board & another ex parte Eng. Judah abekah [2015] eklr, Kenya national examination council vs republic ex parte Geoffrey gathenji njoroge**, paragraph 90 Halsbury's law of England 4th edition volume 1 at 111.

ANALYSIS AND DETERMINATION.

20) I have considered all the pleadings filed and respective submissions filed by both parties.

The issues which arise for determination are whether the 1st respondent is wrongly sued, and secondly, if the mandamus order sought should be issued and to what extent.

Issues

(i) Liability of the 1st Respondent and whether they are a Necessary party to these proceedings.

21) The 1st respondent's role and duties are well defined under Section 7(c), 7(m), 18, 19 and 25 of the wildlife conservation and Management Act, 2013 and since the import of judicial review application is to scrutinize the decision-making process or dispute resolution process, statutorily undertaken by the 1st respondent, they then become a necessary party to these proceedings.

22) Secondly, the 1st respondent's contention that the statutory obligation to settle the Ex parte Applicant's claim lay with the Cabinet Secretary for Tourism and Wildlife also holds no water, and is an issue which has been settled by the Court of Appeal in *Kenya wildlife service Vrs Joseph Musyoka Kalonzo (2017) eKLR* where they held that;

“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 this point was succinctly pronounced in Joseph Boru Ngera & Another v Kenya Wildlife Service & Rift Valley Agricultural Contractors Limited (2014) eKLR amongst 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 arrangement of the appellant as to whether it is the CEO of the appellant or the cabinet secretary who should disburse the money.

ii. Whether Orders of Mandamus should issue as sought herein

23) In Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others, [1997] eKLR. The said Court held as follows in this regard:

“The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again, we turn to Halsbury’s Law of England, 4th Edition Volume 1 at page 111 from paragraph 89. That learned treatise says: -

“The order of mandamus is of a 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 legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

24) At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of mandamus will compel 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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”

25) The requirements for an order of mandamus to issue were further explained by Mativo J. in *Republic vs Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another [2018] eKLR* as follows:

*“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty, and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. vs. Canada (Attorney General)* and was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*). The eight factors that must be present for the writ to issue are: -*

(i) There must be a public legal duty to act.

(ii) The duty must be owed to the Applicants.

(iii) There must be a clear right to the performance of that duty, meaning that:

a. The Applicants have satisfied all conditions precedent; and

b. There must have been:

i. A prior demand for performance.

ii. A reasonable time to comply with the demand, unless there was outright refusal; and

iii. An express refusal, or an implied refusal through unreasonable delay.

iv. No other adequate remedy is available to the Applicants.

v. The Order sought must be of some practical value or effect.

vi. There is no equitable bar to the relief sought.

vii. On a balance of convenience, mandamus should lie

26) The 1st and 2nd respondents have a statutory duty imposed by sections 18 and 25 of the Wildlife Conservation & Management Act, 2013, to receive, verify, and recommend appropriate payment for persons who have suffered bodily injury or are killed by wildlife. The applicant was attacked by a hyena on 28/06/2020 at Kawai sublocation area, thereby occasioning serious injuries. and subsequently, the Ex parte Applicants officially lodged his claim with the respondents. On 30/07/2020, the 2nd respondent deliberated, verified, and recommended compensation for the applicant's sum of Kshs. 250,000/= as prescribed under section 25 of the Wildlife Conservation and Management Act No. 47 of 2013

27) At the time of filing this claim, about 4 years later, the said claim had not yet been acted upon, yet regulation 27(1) of the Wildlife Conservation and Management Compensation Regulations 2017 provides that the same must be determined within a period of 30 days from the date the incident was reported to the respondents.

28) The Ex parte Applicants have a right under Articles 47 and 50 of the Constitution of Kenya to have their claim expeditiously dealt with, and also to have their dispute resolved in a fair manner. The respondents have failed to do so and further have not offered any explanation as to why there has been a delay in undertaking their statutory duty. To the extent that the Ex parte Applicants have proved that there has been a dereliction of duty on the part of the 1st and 2nd respondents and are entitled to be granted the prayers sought under prayers (1) and (2) of their application under consideration.

29) The Ex parte Applicants also sought for an order of mandamus be issue compelling the 1st respondent to pay them the sum of Kshs 5,000,000/= as verified and recommended by the 3rd respondent based on the provisions of Regulations 27(1)(2) & 30(1) of the Wildlife Conservation and Management Compensation Regulations 2017.

30) The Court of Appeal discussed the nature of the remedy of mandamus in *Republic vs Kenya National Examinations Council ex parte Githinji & 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.

31) In the instant case, the ex parte applicant has moved this honorable 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 husband 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.

32) 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.

33) 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 favor of, or transferred to Narok County Government. Without belaboring 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.

34) 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.

35) 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' the case of injury occasioning permanent disability, three million shillings' the case of any other injury, a maximum of two million shillings, depending on the extent of the injury.

36) A person who is dissatisfied with the compensation award, be either the County Wildlife Conservation and Compensation Committee or the Service, who may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and a second appeal to the Environment and Land Court.

37) 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 provisions 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.

38) 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.

39) 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. Consequently, I find this application successful and allow it accordingly in the following terms: The finding and results are to apply to other matters as indicated below in accordance *with amounts approved by the 3rd Respondent within 30 days.*

40) **FOR this file E006 OF 2024.**

- 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 Applicants.*

41) **E007 OF 2024-**

- 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 Applicants.*

42) For E005 OF 2024

- 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 Applicants.*

43) For E004 OF 2024

- 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 Applicants.*

44) For E003 of 2024

- 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 Applicants.*

45) For E002 OOF 2024

a. That the 1st Respondent is hereby compelled by an order of Mandamus to pay KSh.250,000/= 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 Applicants.

46) For E001 OF 2024

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 Applicants.

47) Orders accordingly

DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS

APPLICATION, THIS3RD .DAY OF OCTOBER.....2025

CHARLES KARIUKI

JUDGE