



Khami (Suing as Legal Representative of the Estate of Musomi Rova Luma) v Kenya Wildlife Service (Civil Suit E005 of 2024) [2024] KEMC 181 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEMC 181 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CIVIL SUIT E005 OF 2024
FM MULAMA, RM
OCTOBER 30, 2024**

BETWEEN

**ESHA YUSUF KHAMI PLAINTIFF
SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF MUSOMI ROVA
LUMA**

AND

KENYA WILDLIFE SERVICE DEFENDANT

RULING

A. Background.

1. This court suo moto raised the issue of jurisdiction and invited parties to submit on that issue with the defendant making an undertaking to file a formal preliminary objection within 7 days. It did not do this.
2. Since the court raised the Preliminary Objection on its own motion and parties invited to submit and for reasons best known to them gave it a wild birth, the court has none the less considered the law and case law on this subject and hence this decision.
3. The preliminary objection is based on whether the court has jurisdiction to hear this matter in light of the provisions of Section 25 of the *Wildlife Conservation and management Act, 2013* as read with section 117 of the same Act and the judgment of the court of appeal in *KWS vs Purity Kanini* (suing as the next friend to Edward Koome Nyeri Ca No. 30 of 2020

B. Issues For Determination.

4. The following issue is for determination by the court
 - a. Whether the court has jurisdiction to hear and determine this matter.



- b. Whether costs should be awarded and to who.

C. Analysis And Determination.

Whether the court has jurisdiction to hear and determine this matter.

5. The case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection where their Lordships observed thus:

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.
6. In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.
7. An objection to the jurisdiction of the court has been cited as one of the preliminary objections that consists a point of law. Indeed, the locus classicus case on the question of jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S” vs Caltex oil(Kenya)Ltd (1989) eKLR where the Court held:

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
8. The court raised this preliminary objection after coming across a recent decision of the court of appeal in the case of KWS vs Purity Kanini(suing as the next friend tO Edward Koome Nyeri Ca No. 30 of 2020.
9. The Court of Appeal in that decision delivered sometimes in September this year interrogated among other issues the import of Section 25 of the [Wildlife Conservation and management Act,2013](#) as read with section 117 of the same Act.
10. The high court when tackling same issue found that the use of the word May instead of Shall in the said section gave a party an option to choose the court way or the committee way.
11. For our purposes as well section 25 provides as follows;
 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. 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 injury.
12. However, the court of appeal in the KWS vs Purity Kanini case was of the view that the intention of the framers of section 25 of the Act was to cause claimants who had been injured, or those persons whose relatives had died such as the plaintiff herein, by actions of wildlife, to benefit from the dispute resolution mechanism under the Act; a mechanism that was less cumbersome and which would benefit from the specialized knowledge on matters human wildlife interaction. I hold the same view as the learned judges of appeal.
13. The honourable judges further observed that a party may be allowed to by-pass the dispute resolution mechanism and approach the court at the first instance only if there exist exceptional circumstances and in cases where allowing parties to subject themselves to the dispute resolution mechanisms would not serve the ends of justice as per the values espoused by *the constitution*. I could not agree anymore.
14. The plaintiff has not indicated existence of exceptional circumstances in this matter to warrant her approach the court as a first port of call and as such this matter and/or claim belongs to the County Wildlife Conservation and Management Committee.

D. Conclusion And Disposition.

15. By virtue of the decision of the Court of Appeal in KWS vs Purity Kanini(suing as the next friend to Edward Koome Nyeri Ca No. 30 of 2020 having a binding effect on all courts below it, it is my finding that this court lacks the requisite jurisdiction to hear and determine this matter.
16. The suit is thus struck out for want of jurisdiction and since the issue of jurisdiction was raised suo moto by the court, let each party bear their own costs of the suit.
17. It is so ordered.

DATED, DELIVERED AND SIGNED AT LAMU LAW COURT THIS 30TH DAY OF OCTOBER 2024.

HON. FLAVIAN.M. MULAMA

RESIDENT MAGISTRATE

LAMU LAW COURTS

In the presence of;

Mr. Leon Kalisto for the defendant (Virtually)

Ms. Asuma for the plaintiff. (Virtually)

