

REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT ISIOLO
JUDICIAL REVIEW NO. E004 OF 2024

REPUBLIC
.....APPLICANT

VERSUS

**KENYA WILDLIFE
SERVICE1ST RESPONDENT**

**COUNTY WILDLIFE CONSERVATION &
COMPENSATION COMMITTEE, SAMBURU.....2ND
RESPONDENT**

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

LAANYU KENKAKIPIANI& NASEKU LEKIRAPITI
(suing as the personal Representatives of the
Estate of GANU DAFARDA- Deceased)
.....EXPARTE APPLICANTS

JUDGMENT

1. The Applicant's Notice of Motion Seeks orders as follows;

a). *That the Honourable Court be pleased to grant an order of Judicial Review by way of Mandamus compelling the 1st Respondents , through the 2nd respondent (CMCC) to deliberate upon the exparte claim lodged on 29th October*

2021 within the next 30 days pursuant to Regulation 27(1) (2) of the Wildlife Conservation and Management Compensation Regulations 2017.

b). That the 1st respondent to report to this Honourable court its decision and/or deliberation under prayer (1) above on or before the expiry of 30 days from the date of issuance of this order.

c). An order of Mandamus be issued to compel the respondents and specifically 1st respondent to pay the ex parte applicant the sum of Kshs. 5,000,000/= recommended, verified by the 2nd respondent and approved by the 3rd respondent as compensation for the injuries sustained by the ex-parte applicant in compliance with Regulations 27(1) (2) ,30(1)

d). That the 1st respondent be and is hereby ordered comply with by paying the ex-parte applicant the said approved sum within 14 days from the date of issuance of the order of mandamus.

e). Costs of and incidental to the application be provided for.

f). Such further and/or other reliefs that this Honourable court may deem just and expedient to grant.

The Applicant's case

2. It is the Applicants' case is that on 29th of August 2023 the deceased was attacked and fatally wounded by an Elephant while grazing Goats at Sereolipi, Samburu county. They filed an Application

for compensation with the respondents by submitting the claim forms at the 1st respondent's offices in Samburu.

3. The Applicants state that pursuant to Regulation 27 (1) of the Wildlife Conservation and Management Compensation Regulations of 2017 (The Regulations), the 2nd respondent is obligated to verify and recommend compensation for the applicant in the sum of Kshs. 5,000,000/= within 30 days of the submission of claim.
4. It is stated that the 1st Respondent has been both reluctant and uncooperative, in compelling the 2nd respondent to do the verification and recommendation as aforesaid; that they have made visits to the office of the 1st respondent's offices on diverse dates, but no information has been forthcoming from the 1st respondent on the fate of his claim.
5. They seek an order compelling the respondents to deliberate on his claim and to proceed to make payment

The 1st Respondent's case

6. The Application is opposed through the Affidavit of the 1st respondent's legal officer, one Christine Wanjiru.
7. It is the respondent's case that the Application is bad in law, as it seeks to compel the 1st Respondent to undertake that which it has no statutory mandate to do. It is further stated that, it is the duty of the 2nd respondent, established under section 18 of the Act, to deliberate on and make recommendations on claims resulting from loss or damage, caused by wild life. It is further stated that the 1st respondent only

offers secretarial services to the 2nd respondent. That it is the duty of the Cabinet secretary in charge of Tourism and wildlife (The cabinet secretary) to direct the 2nd respondent to convene and deliberate on claims for compensation; and that the duty to finally disburse payment, belongs to the same Cabinet secretary . It is finally stated that the claim for payment of ksh. 5,000,000 contravenes the provisions of section 9(2) of the Fair Administrative Action Act (FAAA) as to the remedies available and Rule 11(1) of the rules thereunder as to the form of Application. The other two respondents did not file any response.

8. The Application proceeded by way of written submissions.

Appellant's submissions

9. It is the Applicant's submissions that the 1st respondent cannot invoke the provisions of section 9 of FAAA ,yet there is no evidence that the Applicant's claim as ever been deliberated upon by the respondents; that the Applicant is bound to follow the procedure laid down in the Act only after the Applicant's claim has been deliberated upon. That the essence of the present Application is to compel the respondent , who has authority over the 2nd respondent , to consider the claim as provided for under the regulations.
10. The Applicant submits that the 1st Respondent is clothed with authority over the 2nd Respondent and

in this regard , the decisions in the cases of :**Republic vs Kenya Wildlife Service & County Conservation & Compensation Committee, Kiambu & Director, Ministerial Conservation Compensation Committee and Joyce Wangui Muhia, Joseph Boru & Ano vs Kenya wildlife services & Rift valley Agricultural contractors ,** (citations not provided). among others

11. On the relationship between the 1st , 2nd and 3rd respondents, it is pointed out that the 2nd respondent is the Agent of the 1st respondent and therefore the court should compel the 1st respondent who is the principal, to order the 2nd respondent to verify his claim and make appropriate recommendations. The Applicant has relied on section 16 of the **wildlife conservation and management Act**(The Act), which provides that the Board of trustees of the 1st respondent is responsible for the payment of allowances for the committees set up under section 18 of the Act , which include the 2nd respondent herein.
12. On whether the 1st respondent is a necessary party to the suit, the applicant has relied on the case of **K W S -Vs- Joseph Musyoki Kalonzo (2017) eKLR** where it was held *inter alia* that the “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.”.
13. Finally on whether the orders sought should be granted the Applicant submits that an order of

mandamus is an appropriate remedy where a statutory body has failed to carry its duty under statute to the detriment of a party to whose the duty is owed.

Respondent's submission

14. It is the 1st respondent submissions that pursuant to the provisions of section 18 of the Act, the statutory mandate to constitute and direct the 2nd respondent to sit and deliberate on claims arising from wildlife conflict is vested with the cabinet secretary . That this can be discerned from the fact that the majority of the committee members are appointees of the Cabinet secretary. It is further submitted that in terms of section 18(3) of the Act, the person to direct the 2nd respondent to sit and deliberate on claims is the cabinet secretary, and not the 1st respondent. And finally, that the person to finally make the pay-outs is the same cabinet secretary.
15. The 1st respondent further submits that the Applicant has not demonstrated that the 1st respondent has a statutory obligation to compensate him; that an order of mandamus can only issue where the applicant establishes a statutory duty on the part of the duty bearer. In this regard the decision in the case of **Republic - Vs - Kenya Vision 2030 Delivery Board & Another Exparte. Eng. Judah Abekah (2015) 7078 (KLR)** has been relied on.
16. On the demand for payment of Kshs. 5,000,000/= as compensation, it is submitted that the claim is premature and misplaced, as the

applicant is yet to exhaust the procedural steps under Section 25 of the Act and Regulation 27(2) of the regulations. It is further submitted that the Application violates the *exhaustion principle* and further in breach of the section 9 (1) (2) of the Fair Administrative Action Act. It is argued that the applicant must first exhaust the available remedies provided under statute before resorting to the court process. The case of ***Peter Muturi Njuguna - Vs- Kenya Wildlife Service (2017) KECA 42 (KLR)*** has been relied on , in this regard.

17. The parties have relied on other various Authorities which I have considered.

Analysis and determination

18. I have considered the pleadings as well as the rival submissions. In my view the following issues arise for determination:
- a). Whether the respondents have statutory obligation to review and pay the Applicant's claim
 - b). Whether an order for compensation should be made.
 - c). What appropriate orders should issue.

Respondent's statutory obligations to the Applicant

19. According to the Applicants, the deceased was attacked and fatally wounded by an Elephant at sereolopi Area of Samburu county. The incident was reported to the respondent and a claim for compensation filed.

20. The process of compensation is set out under section 25 of the Act. It begins with the claimant submitting the claim documents to the committee established under section 18 of the Act. The committee is supposed to verify the claim within 30 days of receipt of documents and make recommendation to the Cabinet Secretary. The Cabinet Secretary is supposed to make payments within 30 days of receiving the advice of the committee.
21. It is the applicant's case that despite having dully submitted his claim, the committee has not verified or reviewed it so as to facilitate payment. That it is the role of the 1st respondent to direct the 2nd respondent to initiate the verification process.
22. On the other hand, the 1st respondent insists that it has no mandate to direct the 2nd respondent in the said exercise, and that, giving such a directive is the work of the cabinet secretary. That the cabinet secretary is the one to direct the committee to sit and do the deliberations. The 1st respondent has based its argument on section 18(3) of the Act and the fact that the cabinet is the appointing Authority of most of the members of the committee.
23. I have considered the Respondent's submissions in this regard. Firstly, there is nowhere in the Act stating that the cabinet secretary directs the 2nd respondent to sit. Section 18, which the 1st Respondent has relied on provides for the setting up of county compensation committees, and prescribes the number of meetings that the committee can hold in a year. Section 18(3) that the respondent has referred to, should be read with section 18(2). The

relevant portions of section 18 are hereby reproduced:

18. Community Wildlife Conservation Committees

Each County shall have Wildlife Conservation Committee of—

(2)The Community Wildlife Conservation Committees may hold a maximum of four meetings every financial year

(3)Despite subsection (2), additional meetings may be held with the prior consent of the Cabinet Secretary.

24. Section 18(2) is a general prescription on the number of meetings that a committee of every county must hold in a given year, and then, any additional meetings must be with the approval of the cabinet secretary. To suggest that section 18(3) implies that the cabinet secretary is the one directing the sittings of the committee is a wrong interpretation of the section. In any case the functions of the committee as can be seen in section 19 is not just to deliberate on the claims. Apart from verifying the claims, the committees is also charged with, among others, development and implementation, in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict. It is also charged with bringing together relevant stakeholders, to harness participation in conservation and management programmes of wildlife.

25. *These other functions could as well be the subject of the extra meeting requiring the approval*

of Cabinet secretary. The inference made by the respondent would have been valid, if the role of the committees set up under section 18 were limited to verifying claims and making recommendations , only.

26. Further it is evident from section 7 of the Act that the formation of the compensation committees is the work of the 1st respondent. One of the functions of the 1st respondent under section 7 is to set up County Wildlife Conservation Committee in respects of each county. (**see Section 7 (c)**). It is the therefore evident that the committee established under section 18 is a creature of the 1st respondent, established pursuant to section 7(c)

27. Also , pursuant to regulation 15 of the 2017, the 1st respondent is responsible for the declaration of vacancies in any of the committees established, either at the first establishment of a committee of a particular county or whenever a vacancy arises. Further, as correctly pointed out by the Applicant the respondent is responsible for payment of salaries and allowances for the committees set up under section 18, one of which is the 2nd respondent herein.

28. From the above cited provisions of the Act, it is evident that the 2nd respondent is creature, and it follows, an Agent of the 1st respondent. Any action, inaction or negligence on the part of the 2nd respondent is action, inaction or negligence of the 1st respondent.

29. Finally , I have considered the supreme court decision in the case of ***Kenya Wildlife Service v Joseph Musyoki Kalonzo [2017] KECA 234 (KLR)*** ***where the court of Appeal held : '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”

30. On the various responsibilities of the respondents in the compensation process, the court in **Joseph Musyoki’s** case(supra) went on to state : *The law on this point as 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 the 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. The Appellant in the cited case was the Respondent herein.*
31. It is my finding therefore that, in as far as the applicant’s claim has not been acted on, the respondents have failed in their statutory duty. Prayer one of the Application is therefore warranted.
32. Under prayer 2 of the application, the Applicant prays that the 1st respondent be compelled to report to this court on compliance. I need to point out that Regulation 29 of the Regulations sets out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1st respondent complies with Order 1, then process should take a life of its own. In any case, in the event of default, the Applicant will have the liberty to seek the enforcement through the usual execution

process. I do not therefore consider it necessary for this court to monitor the work of the respondents.

whether an order for compensation should be made.

33. The Applicant has asked this court to compel the respondent to make payment for a ksh. 5,000,000 set by the Act. Whereas it is true that the amount payable in respect of a fatal claim is set by the Act, it does not exempt such a claim for verification. The occurrence of the incident for instance, and ascertaining the rightful claimants must be done. That is the work of the respondents, and not this court. The court must not usurp the work of the respondents clearly set out in the Act. Thus, as correctly pointed out by the respondent, the demand for ksh. 5000,000 is premature as the process must run through the stages set out under section 25.

34. The 1st respondent has brought up the issue of exhaustion principle, which principle is also embodied in Section 9 (2) of the FAAA. It is argued that the applicant ought to exhaust the alternative mechanism under the statute, before seeking an order of mandamus.

35. However, the defence of section 9(2) of FAAA or exhaustion doctrine would be valid only if the process of deliberation had begun, or if the Applicant had not filed his claim with the respondents. For failure to deliberate and make a decision on the Applicant's claim when it had been submitted to them, the Applicant is entitled to an order of mandamus.

36. In conclusion , I hereby proceed to make orders as follows:

a). An order of mandamus is hereby issued directing the respondents to verify and make a determination of the ex-parte applicant's claim lodged on 5th may 29th October 2021 within 30 days of this order and thereafter, make payment, or convey the decision arrived at, to the exparte applicant, within 30 days following the said deliberation. .

b). The costs of the Application, assessed at ksh. 30,000 is awarded to the Applicant.

Dated, signed and delivered at Isiolo this 27th day of October, 2025.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- Court Assistant.

Mr. Amule for the Applicant.

Ms. Wanjiru for the 1st Respondent

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