

**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT ISIOLO**  
**JUDICIAL REVIEW NO. E011 OF 2024**

**REPUBLIC .....**  
**.....APPLICANT**

**VERSUS**

**KENYA WILDLIFE**  
**SERVICE .....1<sup>ST</sup> RESPONDENT**

**COUNTY WILDLIFE CONSERVATION &**  
**COMPENSATION COMMITTEE, SAMBURU.....2<sup>ND</sup>**  
**RESPONDENT**

**DIRECTOR, MINISTERIAL CONSERVATION**  
**COMMITTEE .....**  
**.....3<sup>RD</sup> RESPONDENT**

**JARSO KORIMA SALE.....**  
**EXPARTE APPLICANT**

**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 1<sup>st</sup> Respondent , through the 2<sup>nd</sup> respondent ( CMCC) ,to deliberate upon the exparte claim lodged on 29<sup>th</sup> December 2022 , within the next 30 days ,pursuant to Regulation 27(1) (2) of the Wildlife Conservation and Management Compensation Regulations 2017.*

b). That the 1<sup>st</sup> 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 1<sup>st</sup> respondent to pay the ex-parte applicant the sum of Kshs. 2,000,000/= recommended, verified by the 2<sup>nd</sup> respondent and approved by the 3<sup>rd</sup> respondent as compensation for the injuries sustained by the ex-parte applicant in compliance with Regulations 27(1) (2) ,30(1)

d). That the 1<sup>st</sup> respondent be and is hereby ordered to 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 applicant's case that on 29.12.2022 , he was grazing his camels at Ndonyowasin location when he was attacked by an Elephant, and sustained injuries as a result. He submitted his claim for compensation to the 1<sup>st</sup> respondent.
3. The Applicant states that pursuant to Regulation 27 (1) of the Wildlife Conservation and Management Compensation Regulations of 2017, the 2<sup>nd</sup>

respondent is obligated to verify and recommend compensation for the applicant for the sum of Kshs. 2,000,000/= within 30 days of the submission of claim .

4. That the 1<sup>st</sup> Respondent has been reluctant, and is uncooperative, in compelling the 2<sup>nd</sup> respondent to do the verification and recommendation as aforesaid.
5. That he has made visits to the office of the 1<sup>st</sup> respondent's offices in Samburu county on diverse dates, but no information has been forthcoming from the 1<sup>st</sup> respondent on the fate of his claim. He seeks an order compelling the respondents to deliberate on his claim and to proceed to make payment

### **The 1<sup>st</sup> Respondent's case**

6. The Respondent opposes the Application. Through the Affidavit of Christine Wanjiru , the Legal officer, the respondent states to the extent that the Application seeks to compel the 1<sup>st</sup> respondent to carry out a duty which does not fall under its mandate, then it is defective
7. It is further stated pursuant to sections 19(1) and 25(2) of the wildlife conservation and management Act ( The Act) the duty to deliberate on, and make recommendations on claims resulting from loss or damage, caused by wild life belongs to the 2<sup>nd</sup> respondent; that the 1<sup>st</sup> respondent only offer secretarial services to the 2<sup>nd</sup> respondent. It is further stated that the Cabinet secretary in charge of Tourism and wildlife ( The cabinet secretary) is the only one mandated to direct the 2<sup>nd</sup> respondent to deliberate on claims for compensation , and that the 2<sup>nd</sup> respondent is yet to carry out that task. It is also

stated that the cabinet secretary is the one to compensate the Applicant and the 1<sup>st</sup> respondent is only charged with the responsibility of transmitting the funds to the claimants.

8. The Applicant further states the prayer for an order of mandamus has been made prematurely and in contravention of the provisions of section 9(2) of the Fair Administrative Actions Act( FAAA) as to the remedies available ; and Rule 11(1) of the FAAA Rules 2024, as to the procedure. It is finally stated that the Applicant has failed to demonstrate that the 1<sup>st</sup> respondent has infringed on his constitutional rights.
9. The other respondents did not file any response.
10. The Application proceeded by way of written submissions.

### **Appellant's submissions**

11. It is the Applicant's submissions that the 1<sup>st</sup> 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 1<sup>st</sup> respondent , who has authority over the 2nd respondent , to carry out verification and deliberations of the claim, as provided for under the above stated Regulations.

12. The Applicant submits that the 1st Respondent is clothed with powers over the 2nd Respondent and reliance has been made on the case 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 , among others*** ( citations not provided).
13. 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. To demonstrate the aforesaid relationship, the Applicant has relied on section 16 of the Act which provides that the Board of trustees of the 1st respondent is responsible for the payment of salaries and allowances for the committees set up under section 18 of the Act which committee includes the 2nd respondent herein.
14. 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.*”.

15. 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 whose duty is owed.

### **Respondent's submission**

16. It is the 1<sup>st</sup> respondent submissions that pursuant to the provisions of section 18 of the Act, the statutory mandate to constitute and direct the 2<sup>nd</sup> respondent to sit and deliberate on claims arising from wildlife- human 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 2<sup>nd</sup> respondent to sit and deliberate on claims is the cabinet secretary, and not the 1<sup>st</sup> respondent.
17. It is further submitted that , in accordance with section 25 (2) and (3) of the Act, the claims arising from attacks by wildlife are settled by the Cabinet secretary , and not the 1<sup>st</sup> respondent
18. The 1<sup>st</sup> respondent further submits that the Applicant has not demonstrated that the 1<sup>st</sup> 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) e KLR** has been relied on.

19. On the demand for payment of Kshs. 2,000,000/= as compensation, it is submitted that the claim is premature and misplaced, as the applicant is yet to exhaust the procedural steps provided for under Section 25 of the Act and Regulation 27(2) of the regulations thereunder. It is argued that the Application violates the *exhaustion principle* as captured by the section 9 (1) (2) of the FAAA. It is further argued that the applicant must first exhaust the available remedies provided under statute before resorting to the court process. The decisions in the case of **Peter Muturi Njuguna - Vs- Kenya Wildlife Service (2017) e KLR, Albert Chaurembo Mumba & 7 others vs Maurice Munyao & 148 others (2019) e KLR** and **NGO Coordination Board vs E.G & 4 Others [2023]KESC 17(KLR)** have been relied on, in this regard.
20. It is finally submitted the 2<sup>nd</sup> respondent do not currently exists as the terms of the then constituted committee members appointed as per Gazette Notice No. 7262 of 2019 have since expired.

### **Analysis and determination**

21. 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.

For purposes of determination I will refer to the 1<sup>st</sup> respondent as *'The respondent'*

*Respondent's statutory obligations to the Applicant*

22. The applicant was attacked by an Elephant as he went about grazing his camels at Ndonyowasin location of Isiolo county. The claim for compensation was filed at the 1<sup>st</sup> respondent's offices in Isiolo.
23. 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.
24. 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 1<sup>st</sup> respondent to direct the 2<sup>nd</sup> respondent to initiate the verification process.
25. On the other hand, the 1<sup>st</sup> respondent insists that it has no mandate to direct the 2<sup>nd</sup> 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 1<sup>st</sup> respondent has based its argument on section 18(3) of the Act and

the fact that the cabinet is the appointee of most of the members of the committee.

26. I have considered the Respondent's submissions in this regard. Firstly, there is nowhere in the Act stating that the cabinet secretary directs the 2<sup>nd</sup> respondent to sit. Section 18, which the 1<sup>st</sup> Respondent is relying on provides for the setting up of county compensation committees, and prescribes the number of meetings that the committee should hold in a given year. Section 18(3), that the respondent has referred to should be read with section 18(2). The relevant portions of section 18 sections 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.*

27. 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) when read with section 18(2), implies that the cabinet secretary is the one directing the sittings of the committee is a misinterpretation or an

exaggerated interpretation of the section. In any case the functions of the committee as can be seen under 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.

28. Thus 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 only limited to verifying claims and making recommendations, and nothing else. .

29. Further it is evident from section 7 of the Act that the formation of the compensation committees is the work of the 1<sup>st</sup> respondent. One of the functions of the 1<sup>st</sup> 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 1<sup>st</sup> respondent, established pursuant to section 7(c )

30. Also , pursuant to regulation 15 of the 2017, the 1<sup>st</sup> 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.

31. 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 2<sup>nd</sup> respondent herein.
32. 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’.*
33. The Respondent has raised an issue related to the constitution of the compensation committee; that currently there is no compensation committee in place as the term of the previous committee members appointed in the year 2019 has since expired. This issue was not raised in the replying affidavit and therefore the Applicant was denied a chance to address it. The court is therefore not inclined to address it.
34. Nevertheless , the above argument is ironical , evasive and intended to mislead. And this is why; The 1<sup>st</sup> and 3<sup>rd</sup> respondents are responsible for the constitution of the compensation committees.( **see sections 7 ( c ) and 18 of the Act**) They can not fail to carry out their mandate ,and use the their failure to purport to evade their duty , under the Act.
35. 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 case was the Respondent herein.

36. It is my finding therefore that in as far as the applicant's claim has not been acted on, the respondents have failed in its statutory duty. Prayer 1 of the Application is therefore warranted.

37. Under prayer 2 of the application, the Applicant prays that the 1<sup>st</sup> respondent be compelled to report to this court on compliance. I need to point out that Regulation 29 set out the timelines for compliance by the committee and the cabinet secretary. Consequently, once the 1<sup>st</sup> respondent complies with Order 1, then process should take a life of its own. In any case, in the event that the respondents fail to comply, the usual execution remedies are available to the Applicant. 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.*

38. The Applicant has asked this court to compel the respondent to make payment for a ksh. 2,000,000 set by the Act. That is not the work of this court, and as correctly submitted by the respondent, it is premature. The process must run through the

entire process provided under section 25 of the Act. Further, the ksh. 2 million is the maximum payable under the Act and it is possible that once the assessment is done, the amount payable may as well fall below ksh. 2 million.

39. Nevertheless, any payment to be made is subject to an assessment by the 2<sup>nd</sup> respondent. This court cannot usurp the work of the respondents laid out under the Act.

40. The 1<sup>st</sup> 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.

41. However, the defence of exhaustion doctrine would only be valid if the process of deliberation had began, 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.

42. 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 29<sup>th</sup> December, 2022, 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 16<sup>th</sup> day of October, 2025.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- Court Assistant.

ORIGINAL