

REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT ISIOLO
JUDICIAL REVIEW NO. E005 OF 2025

REPUBLIC
.....APPLICANT

VERSUS

**KENYA WILDLIFE
SERVICE1ST RESPONDENT**

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

**MINISTERIAL WILDLIFE CONSERVATION
COMMITTEE**
.....3RD RESPONDENT

GALGALO GUYO MALICHA

(suing as the legal representative and administrator of
the Estate of Wako Guyo -
Deceased.....**EXPARTE**

APPLICANT

JUDGMENT

1. The Applicant's Notice of Motion dated 13th March 2025 Seeks orders as follows;
 - a) *An Order of Mandamus to compel the Respondents to consider the Applicant's claim and immediately release Kshs.5,000,000/= to the Applicant's Advocate*
 - b) *The costs of this Application to be provided for*

2. The Notice of Motion was filed pursuant to leave granted on 3rd February 2025.

The Applicant's case

3. It is the Applicant's case that Wako Guyo Malicha, the deceased herein was viciously attacked by an Elephant while walking within Dadacha Lokore Village occasioning him fatal injuries . The Applicant blames the 1st Respondent for negligence and breach of statutory duty as per provisions of the **Wildlife Conservation and Management Act No.47 of 2013** (the Act).
4. The Applicant states, he reported the incident to the 1st Respondent, however, since June 2023, the Respondents have refused to convene a meeting to consider the claim as is envisaged under the Act and Section 27 of the Wildlife Conservation and Management (Compensation) Regulations, 2017, (The Regulations), which requires that wildlife claims be considered and concluded within 60 days from the date of submission. That it has been over 2 years and the Respondents are yet to take any action in accordance with their statutory obligation.
5. The Applicant is apprehensive that unless this court intervenes and compels the Respondents to make good their promise, the Respondents will continue to ignore their demands for compensation.

The 1st Respondent's case

6. The Application is opposed through the Replying Affidavit of the 1st Respondent's legal officer, one Gideon Mutai, sworn on dated 13th May 2025

7. It is the respondent's case that the Application is defective as it seeks to compel the 1st Respondent to do that which is not within its mandate. It is stated that it is not the statutory mandate of the 1st respondent to consider and compensate the Applicant's claim; that pursuant to the provisions of section 18 and 25(2) of the Act, the duty to direct the said committee to verify the claims is the work of the cabinet secretary in charge of Tourism and wildlife (The cabinet secretary); and finally, that, it is the duty of the said cabinet secretary to make payments to the claimants.
8. The 1st respondent further states that it merely sits in the compensation committee as a secretary of the said committee.
9. The other two Respondents did not file any response.

The Applicant's Submissions.

10. It is the Applicant submission that it is the function of the 1st Respondent to conserve and manage national parks, wildlife conservation areas and sanctuaries under its jurisdiction. That the function is broad to include facilitating and handling claims process which culminates with compensation of the claimants.
11. The Applicant makes reliance on Section 7, 18 and 19 of the Act and submits that it is not asking the court to order the 1st Respondent to carry out an illegality, since on matters of wildlife injury claims, the buck stops with the 1st Respondent herein as was held in ***Republic v KWS & 3 Others (2022)eKLR***
12. The Applicant contends that the timeline within which wildlife claims should be considered and settled is within 60 days from the date of reporting, thus the

Respondent's delay is illegal and is blatant violation of the Regulations governing settlement of claims.

13. It is the Applicant's further submission that the procedural fairness entails expeditious disposal of matters.
14. The Applicants therefore submit that the 1st Respondent herein be compelled to constitute the County Wildlife Compensation Committee, who would convene to consider the Applicant's claim and forward its recommendation to the 2nd Respondent all within 60 days.

The 1st Respondent's Submissions

15. It is the 1st Respondent submission that it has been improperly enjoined in these proceedings and that it is not the proper party to compel the constitution of the 2nd Respondent or to mandate the payment of claims arising from human-wildlife conflict.
16. The 1st Respondent contends that the statutory mandate to constitute and direct the 2nd Respondent to sit and deliberate on claims is vested with the Cabinet Secretary, pursuant to Section 18 of the Act. The 1st Respondent's duty as the Secretary to the Committee is limited only to submitting recommendations to the Cabinet Secretary.
17. Further, the 1st Respondent submits that as stipulated under Section 25(2) and (3) of the Act as read together with Part V, Rule 27(2) of the Regulations, the statutory duty to pay compensation for personal injury or death, after verification and recommendation by the 2nd Respondent, falls exclusively on the Cabinet Secretary.
18. In opposing the prayers for Mandamus compelling payment, the 1st Respondent submits that such an

order is premature and is against the doctrine of exhaustion of remedies. The Applicant should first exhaust the alternative mechanisms provided by statute, as mandated by Section 9(1) and (2) of the Fair Administrative Actions Act. In support of this argument, the 1st Respondent cited the Supreme Court decision in **Albert Chaurembo Mumba & 7 others v Maurice Munyao & 148 others (2019) eKLR**, which held that relevant bodies must be given the first opportunity to deal with a dispute as provided for in the relevant parent statute.

19. It is further argued that an order of mandamus only issues to compel the performance of a statutory duty owed to an applicant which the public body has failed or refused to discharge. That since the duty to constitute the 2nd Respondent and pay compensation rests with the Cabinet Secretary, the Applicant has failed to demonstrate that KWS is statutorily mandated to perform the required actions.

Analysis and determination

20. 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 verify and compensate the Applicant.
- b) Whether an order of mandamus should issue.

Respondent's statutory obligations to the Applicant

21. The facts and circumstances giving rise to the applicant's claim are not disputed. The Deceased was

attacked by an elephant while walking within Dadacha Lokore Village. He sustained fatal injuries as a result. A claim was filed with the respondents. By the 1st respondent's own admission the claim is yet to be deliberated by the 2nd Respondent.

22. 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. The committee is supposed to consider 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 from the committee

23. 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.

24. On the other hand, the 1st respondent has argued that it neither has the mandate to vet the claim nor to compensate the Applicant, and that the two responsibilities are the work of the 2nd respondent and the Cabinet secretary, respectively. In effect the 1st respondent has disassociated itself from the 2nd respondent, and consequently its liability to the Applicant.

25. However, I have looked at Section 7 of the Act. It sets out the functions of the 1st Respondent. One of those functions is to set up County Wildlife Conservation Committee (the 2nd respondent) in respect of each county. It is therefore evident that the committee established under Section 18 is a creature of the 1st respondent, established pursuant to

the provisions of Section 7(c). Further pursuant to Regulation 15 of the Regulations, the 1st respondent is responsible for the declaration of vacancy in any of the committees established under section 18, either at the first establishment of a particular committee of a particular county or whenever a vacancy arises.

26. From the above two provisions it is evident that the 2nd respondent was established by the 1st respondent as a vehicle of carrying out certain functions. In other words, the 2nd respondent is a creature of the 1st respondent. The structure establishing the 2nd respondent makes it legally untenable for the 1st respondent to run away from the actions or inactions of the 2nd respondent.

27. In regard to the relationship between the 1st respondent, the committee and the Cabinet Secretary, I associate myself with the findings of the court in **Joseph Boru & Ano vs KWS & Ano (2014) e KLR** as cited in **Kenya Wildlife service vs Joseph Musyoki(supra)** where it was held that courts should not be concerned with the internal arrangements between the respondents, as the business of wildlife whether the benefits derived therefrom or the liabilities attended to it, is primarily the work of the 1st Respondent.

28. I have further considered the decision in the case of **Kenya wildlife service vs Rift valley Agricultural contractors Ltd (2018) e KLR** where the court of Appeal expressed the view that the mandate of managing wildlife, and collecting revenue from the services offered, could not be separated from the duty to compensate those who are injured or suffer loss, caused by wild life.

29. It is my finding therefore that in as far as the Applicant's claim has not been vetted and recommendations made to the minister, the 1st Respondent has failed in its statutory duty.

Whether an order of mandamus should issue.

30. The Respondent has argued, correctly, that an order of mandamus can only issue where the Applicant has demonstrated that the respondent has a statutory duty, and which duty it has failed to discharge. This court has already found that the 1st Respondent as the principal of the 2nd Respondent is under a statutory duty to vet the Applicant's claim and recommend to the minister. The Applicant is therefore entitled to an order of mandamus.

31. In respect to the 2nd limb of the prayer, this court cannot compel the respondents to make payment. In accordance with the Act, any payment to be made is subject to vetting and assessment by the Compensation Committee. It is the work of the committee to *inter alia* vet the documents and claimants for instance, before approving the claim. If this court was to order payment, it will be usurping the role of the respondents.

32. Further the procedure of compensation is set out in the Act and pursuant to the *doctrine of exhaustion*, and indeed section 9(1) and (2) of the FAAA, the remedies provided in the Act must first be exhausted before the Applicant seeks the intervention of the court. And the first court of call, in terms of section 25(6) of the Act is the National Environmental tribunal and the 2nd, and final, would be the Environment and Land court.

33. In other words, save for judicial review reliefs, and only limited as aforesaid in the circumstances of this case, the high court has no other role to play in a claim such as this.

34. In view of the all the foregoing, 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 in respect thereof, and thereafter, make payment, or convey the decision arrived at, to the exparte Applicant, within 30 days following the said decision.
- b. The costs of the Application, assessed at Ksh. 30,000 is awarded to the Applicant.

Dated, signed and delivered virtually at Nairobi this 24th day of November 2025.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- court Assistant