REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MAKINDU

CIVIL CASE NO E228 OF 2025

RODA MUSENYA JOHN (Suing on behalf of the estate of PAUL MUTUA KASIMU-DECEASED……PLAINTIFF

VERSUS

KENYA WILDLIFE SERVICE……1ST DEFENDANT

THE HON. ATTORNEY GENERAL……2ND DEFENDANT

RULING

THE PRELIMINARY OBJECTION

This is a determination on a preliminary objection raised by the 1st defendant herein. The notice of the preliminary objection is dated 10/7/2025 and was filed in court on the same day. The objection is premised on the following grounds:

1) THAT this Honourable court lacks jurisdiction to hear and determine this suit which is instituted contrary to the provisions of Section 25 of the Wildlife Conservation and Management Act.
2) THAT this suit is instituted in contravention of the doctrine of exhaustion of the specific statutory procedure for dispute resolution.

3) THAT the procedure and remedies under Section 25 of the wildlife Conservation and Management Act are competent, simple, cheap, efficacious and sufficient and bestowed upon them by the law.
4) THAT therefore the suit herein is incompetent, bad in law and should be struck out with costs to the Defendant.

MAIN ISSUE FOR DETERMINATION

In my opinion, the main issue for determination is whether this court has jurisdiction to entertain the plaintiff's claim.

SUBMISSIONS BY THE 1ST DEFENDANT

The 1st defendant filed written submissions in support of the preliminary objection. The 1st defendant submitted that the Plaintiff's claim belongs to County Wildlife Conservation and Compensation Committee established under section 18 of the Wildlife Conservation and Management Act, 2013 and mandated to verify and review claims for compensation and recommend payment of compensation on claims resulting from loss or damage caused by wildlife. It was further submitted that Section 25 of the Act provides a comprehensive compensation mechanism for persons who suffer loss, bodily injury or death caused by wildlife.

The 1st defendant submitted that while the provisions of section 25(4) of the Act use the modal verb '*may*', its use is meant to give procedure to persons who suffer loss or damage to crops, livestock or other property caused by wildlife and wish to pursue compensation. A person may choose to follow the statutory procedure in pursuance of compensation or opt not to pursue compensation. The 1st defendant relied on the authority of ***Kenya Wildlife Service v Purity Kanini (Suing as the Next Friend to Edward Koome) [2024] KECA 1127 (KLR) (6 September 2024).***

It was further submitted that this Honourable Court lacks jurisdiction to hear and determine this matter as the suit herein has been brought in contravention of the doctrine of exhaustion. That this doctrine is to the effect that where there is an alternative mechanism provided in a statute, an aggrieved party is required to exhaust the alternative mechanism provided by statute prior to approaching any court. That it is only in exceptional

circumstances that the court may intervene against the exhaustion doctrine. The 1st defendant relied on the Supreme Court authority of ***NGO's Coordination Board v E.G. & 4 others; Katiba Institute (Amicus Curiae) (Petition No. 16 of 2019) [2023] KESC 17 (KLR).*** The 1st defendant contended that the Plaintiff ought to have exhausted the procedures and remedies under section 25 of the Act prior to institution of these proceedings. The 1st defendant also relied on the authority of ***Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 others [2015] eKLR***, where it was held that courts ought to be a forum of last resort. The 1st defendant urged the court to strike out the suit with costs to the 1st defendant.

SUBMISSIONS BY THE PLAINTIFF

The plaintiff also filed written submissions. While the plaintiff appreciated the doctrine of exhaustion of remedies, she submitted that there were exceptions to the applicability of the doctrine. The plaintiff submitted that before the 1st defendant can invoke the doctrine of exhaustion, it must satisfy the court that:

a) An alternative remedy exists and can be pursued without hindrance;
b) The alternative mechanism is accessible, affordable, expeditious and effective; and
c) The alternative mechanism is capable of addressing the issues raised in their entirety.

The plaintiff argued that Article 48 of the Constitution guarantees the right to access justice and that the use of the word "may" in the Act signifies that a claimant has the option of either presenting a claim before the committee or instituting a suit in court for the tort of negligence. The plaintiff maintained that this court has jurisdiction to hear and determine the claim. She relied on the following authorities:

1) ***Gathaga & another v Mureithi & 2 others [2025] KEELC 2907 (KLR);***
2) ***William Odhiambo Ramogi & 3 others v The Attorney General & 4 others, ex parte Muslims for Human Rights & 2 others [2020] eKLR;***
3) ***Galsaracho Teteya & 5 others v Kenya Wildlife Service [2021] eKLR;***
4) ***Kanini Mutula & another v Kenya Wildlife Service [2022] eKLR.***

ANALYSIS AND DETERMINATION

I have carefully considered the preliminary objection and given due regard to the submissions made by the parties. The question of what constitutes a preliminary objection was well answered in the celebrated case of ***Mukisa Biscuit Manufacturing Co. Ltd v Westend Distributors Ltd [1969] E.A. 696*** where at page 700 D – E Law J.A. stated: -

"So far as I am aware, Preliminary objection consists of a pure point of Law which has been pleaded, or which arises by clear implication out of the 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 the contract giving rise to the suit to refer the dispute to arbitration."

At page 701 Sir Charles Newbold, P. said: -

"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".

It is trite law that a preliminary objection can be raised at any time when the proceedings are still active. The case of ***Ng'ang'a Kahuha v Munyi Kahuha [2008] eKLR*** is germane on this point. In the said case, the court held as follows:

"Did the defendant/applicant raise the issue of jurisdiction too late? I also answer this question in the negative. Jurisdiction is everything and if it turns out to be an issue in court proceedings, it has to be addressed regardless of the stage of the proceedings. Nevertheless, jurisdiction ought to be raised at the earliest possible opportunity.....In the present case, the issue of jurisdiction has been pursued belatedly but I must consider it all the same. Note should be taken that even the court can raise the issue of jurisdiction suo motu".

The main suit herein is yet to be heard, so no concrete evidence on the substantive issues in contention has been tendered before court. The nature of the objection is on jurisdiction and therefore, it fits the description of a preliminary objection. I will proceed to determine it.

In the writings of John Beecroft Saunders in a treatise entitled ***"Words and Phrases Legally defined"*** – Volume 3: I – N at page 113, quoted in the case of ***Seven Seas Technologies Limited v Eric Chege [2014] eKLR***, the following was said about jurisdiction:

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given".

In the celebrated case of ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1,*** Justice Nyarangi (as he then was) of the Court of Appeal held as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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".

In ***Samuel Kamau Macharia & Another v Kenya commercial Bank & 2 Others [2012] eKLR***, the Supreme Court of Kenya pronounced itself on jurisdiction and stated:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law."

The Constitutional and statutory foundation for the jurisdiction of the Magistrates courts is Articles 23 (2) and 169(1) (a) of the Constitution as read with the Magistrates Court Act No. 26 of 2015. Section 4(1) of the Magistrates Court Act stipulates as follows:

"The objective of this Act is to enable magistrate courts to facilitate just, expeditious, proportionate and accessible judicial services in exercise of the criminal and civil jurisdiction in this Act or any other written law."

From the above provision, it can be inferred that in order to ascertain whether a Magistrate's court has jurisdiction to try a matter before it, the court does not have to restrict itself to the provisions of the Magistrates Court Act. Jurisdiction may be conferred or ousted by other written law.

Section 7(1) of the Magistrates Court Act provides as follows:

"A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

(a) twenty million shillings, where the court is presided over by a chief magistrate;

(b) fifteen million shillings, where the court is presided over by a senior principal magistrate;

(c) ten million shillings, where the court is presided over by a principal magistrate;

(d) seven million shillings, where the court is presided over by a senior resident magistrate; or

(e) five million shillings, where the court is presided over by a resident magistrate."

According to section 5 of the Civil Procedure Act, any court shall, subject to the provisions contained in the Act, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.

Section 25 of the Wildlife Conservation and Management Act provides in part thus:

"(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.

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

The above provision has been a subject of litigation in both subordinate and superior courts. This is evident from the several authorities that the parties have relied upon. It is not in dispute that a claim such as the one herein may be lodged (although the Act uses the term launch) at the County Wildlife Conservation and Compensation Committee established under the Act. What is in issue is whether section 25 above ousts the jurisdiction of this court to hear and determine such a claim in the first instance. There are conflicting decisions from the superior court concerning the subject. Parties have relied on both the High court and Court of appeal decisions. Owing to the doctrine of precedent, I will focus on the Court of Appeal decisions, since they bind the High court and courts of equal status as well as courts and tribunals below.

Let me highlight the decisions of the Court of Appeal.

1) ***Peter Muturi Njuguna v Kenya Wildlife Service [2017] KECA 42 (KLR),***

The plaintiff in the lower court suit was viciously attacked by a wild pig. Following the attack, he reported to the offices of KWS and was advised to lodge his claim for compensation, which he did. KWS did nothing thereafter for over four years. The victim then went before the Magistrate's court in Nakuru and sought extension of time to file suit and was allowed to do so. In the suit, he blamed KWS for negligence and/or breach of statutory duty. He sought special damages as well as general damages for pain, suffering and loss of amenities. KWS raised a preliminary objection on the ground that the court lacked jurisdiction to entertain the claim as there was a procedure set up under *section 62* of the Wildlife (Conservation and Management) Act (now repealed).

The lower court upheld the preliminary objection and dismissed the suit. Aggrieved by the dismissal, the appellant filed an appeal to the High Court contending that section 62 (1*)* of the Act is permissive as the word "may" had been used and that a victim of a wildlife attack could choose to go either to court or to the district committee. Ouko, J (as he then was) was not persuaded by that argument and upheld the trial magistrate's decision. The Court of Appeal on the interpretation of the words **"may"** and **"shall"** held that:-

"It cannot, therefore, be overemphasized that while the court must rely on the language used in a statute or in the rules to give it proper construction, the primary purpose is to discern the intention of the Legislature (or Minister) in enacting or making of the provision..... Whether the words "shall" or "may" convey a mandatory obligation or are simply permissive, will depend on the context and the intention of the drafters."

The court further held:

"Nevertheless, and again we agree, there was compulsion to exhaust the procedure provided under the section before going to court. To that extent therefore, whereas the appellant was under no compulsion to make any claim, once he chose to do so, as he might, <u>he was compelled to lodge it at the appointed forum, being the District Committee.</u>" (Emphasis supplied)

The Court of Appeal observed that where there is a specific procedure as to the redress of grievances, the same ought to be strictly followed. That Section 62 (1) (the equivalent of section 25 of the current Act) of the Act is explicit on the procedure to be followed by any

person who suffers bodily injury from or is killed by any animal. Such person, is required to make an application to the District Committee (now the County Wildlife Conservation and Compensation Committee). The court held that it is good practice intended to foster public confidence and trust to let each organ perform its mandate. The court upheld the finding that the Magistrate's court did not have jurisdiction to hear and determine the claim.

2) ***Kenya Wildlife Service v Joseph Musyoki Kalonzo [2017] KECA 234 (KLR).***

The victim's legal representative filed a claim for compensation with Kenya Wildlife Services, being the institution that is in charge of Wildlife Management and Conservation. He completed some claim forms as provided for under the Wildlife Conservation & Management Act 2013 (the Act) and submitted them to KWS for processing and payment of damages/compensation as provided for under Section 25(3) of the Act. He continued following up the claim but the appellant failed to pay. Left with no other option, the respondent moved to the High Court in Garissa and lodged his claim. Judgment was entered in favour of the victim's legal representative. KWS lodged an appeal on the grounds, *inter alia*, that the High Court lacked jurisdiction to entertain the matter, which according to the appellant was the preserve of the County Wildlife Conservation and Compensation Committee under the Act.

The Court of Appeal, differently constituted held:

"In our view, even from a literal interpretation, this provision does not oust the jurisdiction of the High Court to hear any matters raised under that Act. If the Act meant to remove those matters from the realm of the High Court or the other courts, then it would have expressly stated so. It gives an aggrieved party an option to go to the committee as a first option. This in our view was meant to ease matters for the poor people whose crops and domestic animals are ravaged by wild animals occasionally, and which people may be far removed from the structured judicial systems.....The Act in our view meant to make it easier for such people to access justice that is more easily accessible in terms of not traveling long distances and also in terms of simplicity in lodging their claims. It could not have been meant to shut out everybody else who would prefer to pursue their

claims before the conventional courts. That would explain the use of the word 'MAY' and the absence of any provision expressly limiting or ousting the jurisdiction of the High Court."……In other words, there is no ouster clause in the Wildlife and Conservation Management Act, that bars a party from seeking relief outside the process provided for under that Act. An ouster, or privative clause specifically divests the court of jurisdiction to hear or entertain any matters arising from the specific statute. In this case, Section 25 of the Act only gives an aggrieved party an option to pursue its claim either through the process stipulated under the Act, or through the court. The respondent could either lodge his claim through the Act, which he did but no remedy was forthcoming, or pursue the remedy under common law through the courts. Every person has a right to pursue a remedy under common law, for a wrong or injury suffered." (Emphasis supplied)

3) ***Kenya Wildlife Service v Kanini (Suing as the Next Friend to Edward Koome) [2024] KECA 1127 (KLR).***

The claimant, Purity Kanini (suing as the next friend to Edward Koome), sought general and special damages from Kenya Wildlife Service, following snake bite injuries suffered by the minor, Edward Koome. KWS argued that under section 25(3) of the *Wildlife Conservation and Management Act*, 2013 the claimant ought to have launched the claim to the County Wildlife Conservation and Compensation Committee for its verification and review before recommending to the Cabinet Secretary responsible for Wildlife Conservation and Management for payment and that the Chief Magistrate's Court did not have the jurisdiction to hear and determine the dispute. The plea was dismissed by the Magistrate's court. On appeal at the High court, the High court upheld the finding on jurisdiction by the Magistrate's court.

While affirming that the Magistrate's court did not have original jurisdiction, the court held:

"From the record, the respondent made a complaint to the County Wildlife Conservation and Compensation Committee. There was no evidence given as to what became of the complaint, whether the respondent pursued it or abandoned it. If there was delay on the part of the Committee in dealing with the claim, there was no effort to force it to act by

way of Judicial Review. In our considered view, 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, 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. The respondent, instead, opted for the court which, quite unfortunately, did not have the original jurisdiction to hear and determine the dispute. It is for these reasons that we find that the learned Judge fell into error when he dismissed the appellant's appeal by holding that the Chief Magistrate's Court had jurisdiction to hear and determine the claim following the snake attack on the minor. We do not agree that the respondent had the option either to lodge the claim in court or go to the County Wildlife Conservation and Management Committee. The claim belonged to the County Wildlife Conservation and Management Committee. Consequently, we allow the appeal with costs. There will be an order dismissing the suit with costs." (Emphasis supplied).

I have pointed out decisions of the Court of Appeal which appear to reach different conclusions on the legal question before this Court. The decisions are of equal hierarchical status and therefore pose a conflict. Unfortunately, I have not been able to find a Supreme Court decision on the same. By virtue of the doctrine of *stare decisis*, I am bound by the decisions of the Court of Appeal. Which decision should this court follow? Ordinarily, this would pose a dilemma as to which decision to follow particularly for the subordinate court such as this one in view of the doctrine of *stare decisis*.

In the case of ***Union of India v Raghubir Singh, [1989] 2 SCC 754***, The Supreme Court of India held that the benefit of the doctrine of precedent is to provide certainty, stability, predictability and uniformity. That it increases the probability of judges arriving a correct decision, on the assumption that collective wisdom is always better than that of an individual. It also preserve the institutional legitimacy and "adjudicative integrity. It provides equality in treatment and thus prevents bias, prejudice and arbitrariness and avoids inconsistent or divergent decisions. It prevents uncertainty and ambiguity in law. In State of U.P v Ajay Kumar Sharma, (2016) 15 SCC 289), the Supreme Court of India observed that the courts have to nurture, strengthen, perpetuate and proliferate certainty of law and

not deracinate its clarity. With respect, I agree. The use of precedent is an indispensable foundation upon which to decide what is the law and its application in individual cases. It provides a basis for orderly development of legal rules.

In ***Dwarikesh Sugar Industries Ltd v Prem Heavy Engineering Works (P) Ltd, AIR 1997 SC 2477,*** the Supreme Court of India held that:

"When a position, in law, is well settled as a result of judicial pronouncement of the Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

The above authority emphasizes the importance of the doctrine of precedent. The decisions of the Court of Appeal bind the courts below it. What then should the court do when faced with conflicting decisions from a superior court? In the Canadian case of ***Woolfrey v Piche [1958], 13 D.L.R. (2d) 605*** LeBel J.A. stated as follows:

".....but I am now faced with two conflicting decisions in this Court on the same point, and in that unfortunate state of things I apprehend that I must choose between them as I have done. That is what was done in Young v. Bristol Aeroplane Co., [1944] 1 K.B. 718, where three exceptions to the application of the rule in Velazquez [the stare decisis rule] were stated. One of these (the first incidentally) is that "the court is entitled and bound to decide which of two conflicting decisions of its own it will follow". [p. 729]. There is authority also for the proposition <u>that where two cases cannot be reconciled, the more recent and the more consistent with general principles ought to prevail ".</u> (Emphasis added)

In another Canadian case of ***Jamt v Schuurman [1985] 426 (BC SC),*** it was held that where there is a division of opinion between trial judges of the same court, the practice is to follow the more recent decision or decisions, provided that they have considered the

conflicting decisions. It was further held that judgments which have been accepted and followed in later cases may have greater weight than those which have not been followed. Back home, in the case of ***Justice Jeanne W Gacheche & 5 others v Judges and Magistrates Vetting Board & 2 others [2015] eKLR***, a five Judge bench of the High Court held as follows:

"The circumstances in which a Court may decline to follow a decision which would otherwise be binding on it are:
(a) where there are conflicting previous decisions of the court; or
(b), the previous decision is inconsistent with a decision of another court binding on the court; or
(c) the previous decision was given per incuriam.
As a general rule though not exhaustive, the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness or some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong."

The Court of Appeal authority of Edward Koome (*supra*) is more recent and considered the conflicting decision. The court emphasized the exhaustion of administrative remedies before seeking redress in court. In the authority of ***Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (Petition 3 of 2016) [2019] KESC 83 (KLR) (8 November 2019) (Judgment),*** the Supreme Court of Kenya rendered itself thus:

"The foregoing verdict also finds support in an adage principle in administrative law of "Exhaustion of Administrative Remedies" and from the jurisprudence emanating from this Court and the lower Courts, which has been restated with notoriety to the effect that, where there exists an alternative method of dispute resolution established by legislation, the Courts must exercise restraint in exercising their Jurisdiction conferred by the

constitution and must give deference to the dispute resolution bodies established by statutes with the mandate to deal with such specific disputes in the first instance**……..**

In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute." (Underlining mine)

The Court of Appeal in ***Muthinja & another v Henry & 1756 others [2015] KECA 304 (KLR***), held that:

"We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts. This accords with article 159 of the constitution which commands Courts to encourage alternative means of dispute resolution. We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely."

The above authorities accentuate the need to exhaust alternative remedies provided by law in line with Article 159(2) (c) of the Constitution of Kenya which enjoins the courts to

promote alternative dispute resolution mechanisms. In my view, the courts cannot be said to be promoting alternative dispute resolution mechanisms when they cling to all manner of disputes even where the law expressly provides for an alternative, such as in this case. In this case, it would appear that the plaintiff did not even attempt to adopt the procedure provided for under section 25 of the Wildlife Conservation and Management Act. In the decision of ***Edward Koome*** (*supra*), the Court of Appeal approached the question of jurisdiction broadly, in terms of what section 25 provides and the need to exhaust administrative remedies. Given the Supreme Court authorities on the question of exhaustion of administrative remedies, and the fact that the authority of ***Edward Koome*** considered the earlier conflicting decision, I am inclined to adopt the decision in the ***Edward Koome*** case. It is my finding that this court is devoid of jurisdiction to entertain the plaintiff's claim. The proper forum is the County Wildlife Conservation and Compensation Committee within the jurisdiction established under the Wildlife Conservation and Management Act.

I think I have said enough to show that the proposition that a Magistrate's court lacks original jurisdiction to hear and determine the instant dispute, is the correct position, unless the Supreme Court decides otherwise. The later Court of Appeal authority is more consistent with the general principles and are in conformity with the current jurisprudence. In view of the foregoing, I will proceed to down my tools at this stage.

DISPOSITION

The upshot of the above considerations is that the preliminary objection is meritorious. I proceed to uphold the same. Consequently, the plaintiff's suit is hereby struck out with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 16TH DAY OF DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.