

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**JUDICIAL REVIEW MISCELLANEOUS E006 OF 2025**

**REPUBLIC.....EX-PARTE APPLICANT**

**ESOKON                      EWALAN                      &                      ACHUA  
EWALAN.....APPLICANTS**

**-VERSUS-**

**KENYA WILDLIFE SERVICE.....RESPONDENT**

**RULING**

**1.** Pursuant to leave of the court granted on 6<sup>th</sup> November, 2025 to the **Ex-parte** Applicants, **Esokon Ewalan** and **Achua Ewalan** to apply for an order of Mandamus to compel the Respondent to pay them Kshs.5,000,000/- recommended by the County Wildlife Compensation Committee for the death resulting from the attack and injury by wildlife; Through a substantive motion dated 11<sup>th</sup> November, 2025 they seek orders thus;

***a) An order of Mandamus be issued to compel the Respondent to pay the Ex-parte Applicants the sum of Kshs.5,000,000/- to the Applicant's advocate.***

***b) Costs and further incidentals to this application be provided for by the Respondent.***

***c) Such further or other relief as the Honourable Court may deem just and expedient to grant.***

- 2.** The motion is premised on grounds that the *Ex-parte* Applicants are legal representatives and administrators of the Estate of **Lopedeki Loruntilei**, deceased, who died on 17<sup>th</sup> June, 2022 as a result of polytrauma due to vicious attack by a wild animal and they obtained limited grant of letters of Administration Ad-litem.
- 3.** Having made a report to the police, the *Ex-parte* Applicants applied for compensation by filing a claims form provided by the Respondent and when a meeting of the Community Wildlife Conservation Committee (CWCC) convened, they considered his case and the award was approved.
- 4.** Three years down the line they have not been compensated without any plausible explanation.
- 5.** The Respondent, Kenya Wildlife Service (KWS) was duly served and was aware of the matter but neglected and/or refused to put in a response hence the allegations by the Applicants stand unopposed.
- 6.** The relief sought is for mandamus order to issue compelling payment of Kshs.5,000,000/- for the fatality. The KWS related committee, the County Wildlife Compensation Committee is stated to have failed to pay a claim by the *Ex-parte* Applicants. **Section 25 of the Wildlife Conservation and Management Act provides 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.***

***(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.***

***(4)Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.***

***(5)The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates: Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.***

***(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.***

***(7)The Cabinet Secretary may, by notice in the Gazette, prescribe such regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.***

7. Mandamus is a court order that compels performance of a mandatory non-discretionary legal duty that the agency or individual has declined to do where no other legal recourse exists. In ***Republic v Principal Secretary, Ministry of Internal Security & Another Ex-parte Schon Noorani & Another [2018] eKLR*** Mativo J (as he then was) stated that;

***“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in Apotex Inc. vs. Canada (Attorney General), [23] and, was also discussed in Dragan vs. Canada (Minister of Citizenship and Immigration). [24] The eight factors that must be present for the writ to issue are:-***

- (i) There must be a public legal duty to act;***
- (ii) The duty must be owed to the Applicants;***
- (iii) There must be a clear right to the performance of that duty, meaning that:***

**a. The Applicants have satisfied all conditions precedent; and**

**b. There must have been:**

**I. A prior demand for performance;**

**II. A reasonable time to comply with the demand, unless there was outright refusal; and**

**III. An express refusal, or an implied refusal through unreasonable delay;**

**(iv) No other adequate remedy is available to the Applicants;**

**(v) The Order sought must be of some practical value or effect;**

**(vi) There is no equitable bar to the relief sought;**

**(vii) On a balance of convenience, mandamus should lie.”**

**8.** The duty to make relevant payments is entrenched in statute which obligates the Respondent to compensate the damage caused by wildlife. The *Ex-parte* Applicants have waited for three (3) years since the occurrence but action has not been taken as provided by the law.

**9.** The Respondent was served, knowledge of existence of the matter was within their knowledge in addition to the claim made by the Applicants but no compliance was attempted. Since there is no remedy available for the Applicants on a balance of convenience, the order sought should issue.

**10.** In the premises, I find the motion by the Applicants being meritorious and order that;

**a) An order of Mandamus be and is hereby issued to compel the Respondent to pay the Ex-parte Applicants Kshs.5,000,000/- within 30 days of today.**

**b) Costs are awarded to the Applicants in any event.**

**11.** It is so ordered.

**Dated, signed and delivered virtually this 20<sup>th</sup> day of January, 2026.**

**.....**

**L.N. MUTENDE**

**JUDGE**