



Republic v Kenya Wildlife Service & 2 others; ML (Minor suing through his next friend Lolguju Letiwa) (Ex parte Applicant) (Judicial Review E008 of 2025) [2026] KEHC 347 (KLR) (20 January 2026) (Judgment)

Neutral citation: [2026] KEHC 347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
JUDICIAL REVIEW E008 OF 2025
AK NDUNG’U, J
JANUARY 20, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**DIRECTOR, MINISTERIAL CONVERSATION COMPENSATION
COMMITTEE 2ND RESPONDENT**

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

AND

**ML (MINOR SUING THROUGH HIS NEXT FRIEND LOLGUJU
LETIWA) EX PARTE APPLICANT**

JUDGMENT

1. Pursuant to leave granted on 4/4/25, the Exparte Applicant filed a substantive motion dated 14/04/2025 for orders that;
 - a. The honourable court be pleased to grant an order of judicial review by way of mandamus compelling the 1st Respondent through the 2nd Respondent to deliberate upon the Exparte Applicant’s claim lodged on 23/7/2023 within the next 30 days pursuant to Regulations 27(1) (2) of the Wildlife Conservation and Management Compensation Regulations, 2017.
 - b. That the 1st Respondent do 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 the issuance of the order.



- c. Costs of and incidental to the application be provided for.
 - d. Such further and other reliefs that this Honourable court may deem just and expedient to grant.
2. The application is based on the grounds thereof, the statement of facts and the affidavit of verification of facts sworn by the ex parte Applicant.
 3. The gist of the Statutory statement, the grounds and the affidavit verifying the statement of facts is that the Applicant was attacked by a Zebra on the 22/1/19 while grazing at Naibor whereby he sustained injuries. That the matter was reported at Rumuruti vide OB/1O/25/06/2019. It is urged that the Respondent is mandated with the obligation to deliberate, verify and recommend compensation for the Applicant in the sum of Kshs. 2,000,000 within 30 days of a report of the incident to them as prescribed under regulation 27(1) of the Wildlife Conservation and Management Compensation Regulations 2017 and pursuant to Section 25 of the *Wildlife Conservation and Management Act*.
 4. It is the ex parte Applicant's case that despite such a report being made and the relevant form filled and returned to the 1st Respondent, the 1st Respondent is reluctant and uncooperative to compel the 2nd Respondent to deliberate, verify and recommend the compensation amount of Kshs. 2,000,000 as provided for in the Act. That the 1st Respondent through its agents or servants has neglected/failed / refused to compensate the applicant despite his several visits to their offices. An order compelling them so to do is thus sought.
 5. The application is opposed principally on grounds that the statutory duty to constitute the County Wildlife Conservation & Compensation Committee, Laikipia (the 2nd Respondent) falls squarely on the Cabinet Secretary, Ministry of Tourism and Wildlife and that there is no properly constituted Committee to enable the 1st Respondent to deliberate on the Applicants' claim. Further, that in any event, and that in any event, the duty to pay falls on the Cabinet Secretary. It is averred that the order compelling the 1st Respondent to pay is premature and is against the doctrine of exhaustion.
 6. The ex parte Applicant filed a further affidavit in which he depones that no administrative action has been taken by the Respondents and he reiterates that the duty to constitute the 2nd Respondent falls on the 1st Respondent.
 7. Further, that the 1st Respondent is clothed with powers over the management and affairs of the 2nd Respondent and the court is invited to compel the 2nd Respondent through the 1st Respondent to deliberate upon the ex parte Applicant's claim and report its decision to enable the ex parte Applicant seek further intervention in the matter.
 8. In addition, it is deponed that the 1st Respondent is a necessary party in these proceedings in view of its mandate under section 7 of the Act.
 9. The 2nd and 3rd Respondents did not file any response.
 10. The matter was canvassed by way of written submissions. On the suggestions by the 1st Respondent that the Applicant has not exhausted the internal mechanism, the ex parte Applicant's counsel submitted that the Applicant has never been informed of any decision by the 2nd Respondent. That for them to invoke section 9 of the Fair Administrative Actions Act, the Applicant must be satisfied that the 2nd Respondent has notified the Applicant of a decision and once that has been confirmed, the court is precluded from entertaining judicial review proceedings as the Applicant has to follow the laid down procedure. That the essence of these proceedings is to compel the 2nd Respondent to deliberate upon the Applicant's claim. That there has been no administrative decision deliberated by



- the Respondents. That the Applicant is seeking for orders of mandamus to compel the 1st Respondent through the 2nd Respondent to act on her claim within the timelines prescribed under the Regulations.
11. Counsel argued that the 2nd Respondent is an agent of the 1st Respondent and the 2nd Respondent acts on behalf of the 1st Respondent which position was deliberated in Judicial Review Application No E054 of 2024 in the matter Republic vs Kenya Wildlife Service & County Wildlife Conservation & Compensation Committee & Director, Ministerial Conservation Compensation Committee And Joyce Wangui Muhia. That it is the 1st Respondent who is clothed with powers over the 2nd Respondent hence the 2nd Respondent should be compelled through the 1st Respondent to deliberate on her claim. As to whether the 1st Respondent is a necessary party to the proceedings, counsel quoted a plethora of cases where the court found the 1st Respondent to be an important party in cases of this nature including JR Application No. E054 of 2024 (supra), Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited (2018) eKLR, and Kenya Wildlife Service vs Joseph Musyoki Kalonzo (2017) eKLR.
 12. As to whether this court can grant the orders sought, counsel relied on the case of Republic vs Kenya Wildlife Service & Director General, Kenya Wildlife Service & Chief Magistrate, Mau Law Courts & Abraham M'ngai M'itimitu (suing as the legal representative of the Estate of Judy Gakii M'ngai where the court stated that a claim for judicial review must challenge a decision, act or failure to act by a body exercising a public function. The order of mandamus will compel the performance of a public duty and where the person or body of persons has failed to perform the duty. It is submitted that the 1st Respondent is a necessary party to these proceedings, the role of the 2nd Respondent is only limited to verifying and recommending for payment of claims, the 1st Respondent is responsible for compensating victims injured by human wildlife conflict and the ex parte Applicant should not be concerned with the internal arrangements or mechanisms of the 1st Respondent when it comes to compensation of claims.
 13. In rejoinder, counsel for the 1st Respondent maintained that the duty of the 1st Respondent as the secretary of the Committee is only limited to verifying a claim, deliberating upon the same and give its recommendation to the Cabinet Secretary. That pursuant to section 18 of the Act, it is the Cabinet Secretary who has a duty to constitute and direct the Committee to sit and deliberate on claims arising from human wildlife conflicts. Further, an order compelling the 1st Respondent to deliberate upon the claim within 30 days cannot issue as there is no properly constituted committee by the Cabinet Secretary as the term of the Committee who were appointed in 2019 has come to an end and in light of section 18, order compelling the 1st Respondent to deliberate on the claim cannot issue against it.
 14. Further, pursuant to section 25(2) (3) of the Act read together with Part V, Rule 27(2) of the Regulations, it is provided that once a on by the committee and upon recommendations being made, is compensation is by the Cabinet Secretary. Therefore, the orders sought squarely fall on the Cabinet Secretary and not the 1st Respondent hence the Applicant has failed to demonstrate with precision that the 1st Respondent is statutorily mandated to constitute the CMCC Committee or is liable to pay compensation. Additionally, the order sought is also premature and against the doctrine of exhaustion as the Committee is yet to sit and deliberate on the Applicant's claim as there is no properly constituted committee. That in light of section 9(1) and (2) of the Fair Administrative Actions Act, the Applicant should have sought alternative mechanisms provided by statute prior to seeking an order of mandamus.
 15. I have considered the application, the response by the 1st Respondent and rival submissions. The issue for determination is whether the Respondents should be compelled to verify, deliberate on and compensate the ex parte Applicant.



16. It is not disputed that the ex parte Applicant was injured by a zebra. It is not denied that the ex parte Applicant filled the necessary forms and submitted the claim. There is no evidence of action on the claim.
17. The 1st Respondent's case is that it is not the proper party in this case since it neither has the mandate to vet the claim nor to compensate as those responsibilities are borne by the 2nd Respondent and the Cabinet Secretary. Further, the Applicant has ran afoul of the doctrine of exhaustion as there are mechanisms set by the statute.
18. The Kenya Wildlife Service is created under the *Wildlife Conservation and Management Act*. Section 6 of the Act states;
 - (1) There is established a uniformed and disciplined Service to be known as the Kenya Wildlife Service.
 - (2) The Service shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—
.....
19. The functions of the Service are provided under section 7 of the Act which states;
The functions of the Service shall be to—
 - (a) conserve and manage national parks, wildlife conservation areas, and sanctuaries under its jurisdiction;
 - (b) provide security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries;
 - (c) set up a county wildlife conservation committee in respect of each county;
 - (d) promote or undertake commercial and other activities for the purpose of achieving sustainable wildlife conservation;
 - (e) collect revenue levies and charges due to the national government from wildlife and, as appropriate, develop mechanisms for benefit sharing with communities living in wildlife areas;
 - (f) develop mechanisms for benefit sharing with communities living in wildlife areas;
 - (g) advise the Cabinet Department on matters pertaining to wildlife policy, strategy and legislation;
.....
20. The Act also creates County Wildlife Conservation & Compensation Committee under section 18 which states that;
 - (1) Each County shall have Wildlife Conservation Committee of—
 - (a) of a chairperson appointed by the Cabinet Secretary being the County Commissioner;
 - (b) an officer of the Service for the county who shall be the Secretary;
 - (c)
21. The functions of the committee are set in section 19 as follows;



The functions of the Community Wildlife Conservation Committees shall be to—

- (a) review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife;
 - (b) develop and implement, in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigation of human wildlife conflict;
 - (c) bring together relevant stakeholders to harness participation in conservation and management programmes of wildlife; and
 - (d) perform such other functions as the Service may require or delegate to it.
22. With respect to compensation, section 25 of the Act gives guidelines on compensation for personal injury or damage to property. It states as follows;
- (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—
.....
 - (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:
.....
23. The Wildlife Conservation and Management (Compensation) Regulations under Regulation 12 also provides;
- (1) Subject to section 25 of the Act, a person shall be eligible for compensation under these Regulations if it relates to human injury or death by any wildlife listed under the Third Schedule to the Act or loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule to the Act.
24. The procedure on deliberation of the claim is set under Regulation 27 and 28 of the Regulations which states as follows;
- (1) On receipt of a claim for bodily injury or death, the Committee shall within thirty days of such receipt verify the claim and submit it to the Cabinet Secretary together with its recommendations.



- (2) Upon receipt of a claim for bodily injury or death, the Cabinet Secretary shall consider the recommendation of the Committee and make payments within thirty days of receipt of the claim.
28. On receipt of a claim for loss or damage to crops, livestock or other property, the Committee shall within thirty days of such receipt verify the claim and make recommendations.
25. Having established the functions of the 1st and 2nd Respondent, I will now delve into the main issue in this matter. The 1st Respondent case is that it is not its duty to compensate the ex parte Applicant rather it is the duty of the 2nd Respondent and the Cabinet Secretary. I think, and with tremendous respect, the Respondent misapprehends the application herein. In issue here is not whose duty it is to compensate, but rather, whose duty is it to deliberate on the claim and give recommendations.
26. Section 7 of the Act as seen earlier provides for the functions of the Service, the 1st Respondent. One of the functions set under section 7(c) 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 5 of the Regulations, the 1st Respondent is responsible to issue the declaration of vacancy in any of the Committee under section 18 of the Act. Regulation 5 states that;
- (1) Within fourteen days of the commencement of these Regulations, or in the event of an occurrence of a vacancy under section 18(g) of the Act, in any of the Committees, the Service shall advertise in the Gazette and in at least two newspapers with nationwide circulation a vacancy in the Committee and invite the community wildlife associations within the county to nominate persons who shall be elected to serve as members of the Committee.
 - (2) The associations shall send the names of their nominees to the Service within the time set down in the advertisement.
 - (3) The Service shall organize elections for members of county Committees elected under section 18(g) of the Act.
27. From the above, it is evident that the 2nd Respondent is 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. Therefore, the argument by the 1st Respondent that the term of office of the previous members of the Committee has expired and new members are yet to be appointed by the Cabinet Secretary shows that it has failed in its duties as provided under section 7(c) of the Act and Regulation 5.
28. In Judicial Review App No. E002 Of 2025, Republic v Kenya Wildlife Service & 2 others, Ishalai Echua Lokui, ex parte applicant (unreported), this court stated as follows;
- “With profound respect, it is hypocritical, unfathomable, illogical, unacceptable, and indeed, a ridicule of the rule of law and the administration of justice to have the body mandated by law under section 7(c) to constitute the 2nd Respondent base its defence on the fact that the term of the Committee who were appointed in 2019 has come to an end and yet it is its duty to re-constitute the committee”.
29. As regards the relationship between the 1st Respondent, the 2nd Respondent and the Cabinet Secretary, I find guidance in the case of Joseph Boru & Ano vs KWS & Ano (2014) e KLR as cited by the Court of Appeal in Kenya Wildlife service vs Joseph Musyoki [2017] KECA 234 (KLR) where it was held that 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.
30. In *Kenya Wildlife Service vs Joseph Musyoki* (supra) the court concluded by stating that;
- “If there is any conflict of responsibilities or performance of duty between the CEO and the cabinet secretary, that is upon the two to sort out, but that should not be used to deny a party compensation duly owed to it.”
31. The Supreme Court in the case of *Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited* [2018] eKLR held as follows:-
- “The appellant’s obligations under Section 3A(l) could not and were not abdicated in favour of, or transferred to Narok County Government. Without belabouring on this point any further we find that the breach of Section 3A(l) imposes a liability on the appellant to compensate for destruction of crops by wildlife.”
32. Further guidance on the matter is found in the decision in *Republic v Kenya Wildlife Service & 2 others; Pepela* (Suing as the Legal Representative of the Estate of Bravine Wanjala Pepela - Deceased) (Ex parte Applicant) [2025] KEHC 11682 (KLR) the court stated thus;
- “I have further considered the decision in the case of *Kenya wildlife service vs Rift valley Agricultural contractors Ltd* (2018) eKLR 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.
- 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.”
33. As to whether the order of mandamus can be granted, what the ex parte Applicant is seeking is for orders to compel the 1st Respondent through the 2nd Respondent to deliberate on her claim within the stipulated timelines set under the Regulations.
34. The words of Goudie J in *Shah Vs Attorney General* (No. 3) Kampala HCMC No. 31 of 1969[1970]EA 543 sum up the scope of judicial review as follows;
- “Mandamus is a prerogative order issued in certain cases to compel the performance of a duty.....Thus it is used to compel public officers to perform duties imposed upon them by common law or statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. Mandamus is neither a writ of right, but it will be granted if the public duty and especially affects the rights of an individual, provided no other appropriate remedy With regard to the question whether Mandamus will lie, that case falls within the class when officials have a public duty to perform, and having refused to perform it, Mandamus will lie on the application of a person interested to compel them to do so.....What the applicant is seeking is not relief against the Government but to compel a Government official to do what the Government, through Parliament, has directed him to do.”
35. According to Halsbury’s Laws Of England, 4th Edition Volume 1 at page 111 from paragraph 89. That learned treatise says: mandamus is of a most extensive remedial nature, and is, in form, a command



issuing from the High Court of Justice, directed to any person corporation or inferior tribunal, requiring him or them to do some particular thing therein specified.

36. A claim for judicial review must challenge a decision, act or failure to act by a body exercising a public function.” The foregoing denotes that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
37. This therefore means that an order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done.
38. The 1st and 2nd Respondents have failed to perform a public duty which is imposed on them by a statute, specifically Sections 7(c), 19(a) and Section 25(2) and (4) to the detriment of the ex parte Applicant who has a legal right to expect the duty to be performed. In the circumstances, an order of mandamus becomes the appropriate remedy.
39. Before I conclude, I need to comment on prayer no. 2 in the application which seeks that the 1st Respondent do report to this Honourable court its decision and/or deliberation under prayer 1 on or before the expiry of 30 days from the date of the issuance of the order. In my considered view, this prayer is not available to the ex Parte Applicant since the provisions of the Act are self- executing and if at a subsequent stage any obligated body fails to perform its part, the Applicant shall be at liberty to apply.
40. With the result that the application herein has merit and is allowed. I make the following orders;
 1. An order of Mandamus be and is hereby issued compelling the 1st Respondent through the 2nd Respondent to deliberate upon the ex parte Applicant’s claim within the next 30 days pursuant to Regulations 27(1)(2) of the Wildlife Conservation and Management Compensation Regulations, 2017.
 2. The 2nd Respondent shall upon deliberation and verification of the claim by the ex parte Applicant submit it to the Cabinet Secretary together with its recommendations.
 3. Costs awarded to the Applicant.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF JANUARY 2026.

A.K. NDUNG’U

JUDGE

