

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
JUDICIAL REVIEW NO E002 OF 2025

BETWEEN

REPUBLIC.....

APPLICANT

VERSUS

KENYA WILDLIFE SERVICE.....1ST
RESPONDENT

COUNTY WILDLIFE CONSERVATION &
COMPENSATION COMMITTEE, LAIKIPIA.....2ND
RESPONDENT

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

ISHALAI ECHUA LOKUI.....EXPARTE
APPLICANT

J U D G M E N T

1. Pursuant to leave granted on 4.4.25, the Exparte Applicant filed a substantive motion dated 14/04/2025 for orders that;

- i. 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 18/01/2024 within the next 30 days pursuant to Regulations 27(1)(2) of the Wildlife Conservation and Management Compensation Regulations, 2017.
- ii. 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.
- iii. Costs of and incidental to the application be provided for.
- iv. 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 Ishalai Echua Lokui, the Exparte Applicant.

3. She averred that she and her four sheep were attacked by a lion occasioning her serious injuries while her sheep were all killed in the

process. Consequently, she visited the 1st Respondent offices who issued her with a compensation form which she filled and returned to the 1st Respondent. That under **Regulation 27(1) of the Wildlife Conservation and Management Compensation Regulations, 2017**(hereby referred as Regulations) and **section 25 of Wildlife Conservation and Management Act** (hereby referred as the Act), the 2nd Respondent is mandated to deliberate, verify and recommend compensation for the Applicant a sum of Kshs.2,000,000/- and Kshs.40,000/- within 30 days from the date the incident is reported to them. However, the 1st Respondent is reluctant and uncooperative to compel the 2nd Respondent to deliberate, verify and recommend the compensation.

4. She averred that she has visited the 1st Respondent offices severally to ask of the progress but they kept telling her they will call to inform her on the progress of her case. That the proceedings are intended to compel the 1st Respondent through the 2nd Respondent to deliberate, verify and recommend to the 1st Respondent to compensate her and to compel the 1st Respondent to compensate her within 14 days from the date of deliberation and verification of the claim by the

2nd Respondent. That the interest of justice would be better served by order of mandamus directing the 1st Respondent through the 2nd Respondent to deliberate, verify and recommend compensation and directing the 1st Respondent after deliberation, to compensate.

5. In opposing the application, the 1st Respondent filed a replying affidavit sworn by Gideon Mutai, 1st Respondent legal officer. He deposed that the application is defective as it sought to compel the 1st Respondent to do what is not within its mandate. That the function of the 1st Respondent is limited to verifying a claim, deliberating upon the same and giving its recommendation to the Cabinet Secretary, Ministry of Tourism and Wildlife for further action. The delay in deliberating the claim by the Applicant is as a result of non-existence of a properly constituted committee as the term of County Wildlife Conservation Committee (hereby referred as the Committee) members who were appointed vide Gazette Notice No. 7262 of 2019 has since come to an end and the Cabinet Secretary is yet to appoint new members. Under **section 18** of the Act, the duty to appoint the committee members falls on the Cabinet Secretary hence the 1st Respondent is unable to

deliberate and give its recommendation to the Cabinet Secretary as there is no properly constituted committee.

6. Further, the responsibility to compensate and/or pay the ex parte Applicant falls squarely on the Cabinet Secretary in accordance with **section 25(2) (3)** of the Act and not the 1st Respondent. That the 1st Respondent is the go between the Applicant and the Cabinet Secretary thus the Applicant has not demonstrated how the 1st Respondent has infringed on her constitutional rights.

7. In rejoinder, the Exparte Applicant filed a further affidavit and deposed that there has been no administrative decision or action by the Respondents as alleged in paragraph 8. That by virtue of section **6,7,8,9** and **16** of the **Act**, the 1st Respondent is mandated to set up and control the management of the affairs of the 2nd Respondent and by dint of **section 25** of the Act, the 1st Respondent is mandated to set up the Committee to verify the claims for compensation. Further, the Applicant is not concerned with the internal mechanisms of the Respondents but only invites this court to compel the 2nd Respondent through the 1st Respondent to deliberate upon her claim and report its decision to enable the Applicant seek further intervention.

8. The 2nd and 3rd Respondents did not file any response.

9. 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 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.

10. 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.**

11. 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 Exparte Applicant should not be concerned with the internal arrangements or mechanisms of the 1st Respondent when it comes to compensation of claims.

12. 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.

13. Further, pursuant to **section 25(2) (3)** of the **Act** read together with **Part V, Rule 27(2)** of the Regulations, it states that claim deliberated on by the committee and upon recommendations is compensated 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.

14. I have considered the application by the Exparte Applicant, the response by the 1st Respondent and rival submissions. The issue

for determination is whether the 1st Respondent should be compelled to verify, deliberate on and compensate the Exparte Applicant.

15. It is not disputed that the Exparte Applicant was injured by a lion and her four sheep were killed on 15/08/2023. She averred that she reported the matter to Rumuruti police station and also visited the 1st Respondent's offices where she was issued with a compensation form which she filled and returned to the 1st Respondent. She stated that despite her filling the requisite form, she is yet to be compensated despite visiting the 1st Respondent's offices on several occasions who keeps telling her that they will call to inform her on the progress of her case.

16. 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.

17. 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—

.....

18. 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;

.....

19. 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)

20. 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.

21. 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:

.....

22. 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.

23. 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.

24. 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 Exparte Applicant rather it is the duty of the 2nd Respondent and the Cabinet Secretary.

25. **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. **Regulations 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.

26. 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**.

27. 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.

28. With respect to 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.

29. 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.”

30. 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(I) 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(I) imposes a liability on the appellant to compensate for destruction of crops by wildlife.”

31. Also, 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) 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.

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.”

32. As to whether the order of mandamus can be granted, what the Exparte 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.

33. The Court of Appeal discussed the nature of the remedy of mandamus in ***Republic vs Kenya National Examinations Council ex parte Githinji & 8 Others [1997] eKLR*** citing with approval ***Halsbury's Laws of England 4th Vol. 7 p. 111 para 89:-***

"The order of mandamus is the 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 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, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual..." These principles mean that an order of mandamus compels 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 had failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed."

33.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.

34. 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.

34. 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 Exparte Applicant's claim lodged on 18/01/2024 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