

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
JUDICIAL REVIEW NO. E006 OF 2025

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION
ACT, NO. 4 OF 2015**

AND

**IN THE MATTER OF AN APPLICATION TO COMPEL THE
KENYA WILDLIFE TO COMPENSATE THE APPLICANT
PURSUANT TO SECTION 25 OF THE WILDLIFE
CONSERVATION AND MANAGEMENT ACT, 2013**

BETWEEN

SILFANO OKELLO NUNDU

(suing as the next friend of **P.O.O.(DECEASED)**).....
....**APPLICANT**

VERSUS

KENYA WILDLIFE SERVICE.....1ST
RESPONDENT

**COUNTY WILDLIFE CONSERVATION
AND COMPENSATION COMMITTEE,
THE COUNTY OF HOMA BAY.....2ND**
RESPONDENT

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

JUDGMENT

[1] The applicant, **Silfano Okello Nundu**, filed the Originating Motion dated 30th April 2025 as the next friend of **P O O** (the deceased). He filed the suit against the three respondents, namely, **the Kenya Wildlife Service, the County Wildlife Compensation Committee, Homa Bay, and the Ministerial Wildlife Compensation Committee** for the following orders:

[a] That the Court be pleased to issue an Order of Mandamus to compel the respondents to pay compensation of Kshs. 5,000,000/= to the applicant for the loss sustained as a result of a crocodile attack on 13th January 2011 at Kananga Beach, as required under **Section 25** of the Wildlife Conservation and Management Act, 2013.

[b] That the costs of the application be provided for.

[2] The application was premised on the grounds set out on the face thereof and in the Supporting Affidavit sworn by the applicant on 30th April 2025. The applicant averred that on 13th January 2011, the deceased, **Philip Onyango Okello**, was attacked and swallowed by a crocodile while fetching water at Kananga Beach in Homa Bay. The applicant averred that the matter was reported to the 1st respondent and a claim submitted to the 1st and 2nd respondents for payment; which claim remains unpaid to date.

[3] The applicant asserted that the respondents have a statutory duty to process such claims within a reasonable time; and that their inaction is not only unlawful but also unjustified. In the premises, the applicant filed the instant Motion to have the respondents compelled into action.

[4] Apparently, no response was filed by the respondents. Directions were given herein on 19th May 2025 that the

application be canvassed by way of written submissions. Whereas the applicant filed written submissions dated 13th June 2025, the respondents did not. The applicant proposed the following issues for determination:

[a] Whether the deceased was killed by a crocodile to warrant compensation under **Section 25** of the Wildlife Conservation and Management Act.

[b] Whether the Order of Mandamus should issue as sought herein.

[5] According to the applicant, it is not in dispute that the deceased was swallowed by a crocodile and that an order was made by the Chief Magistrate for a Death Certificate to issue in respect of the subject death. The applicant relied on **Section 25** of the Kenya Wildlife Conservation and Management Act to demonstrate that the 1st respondent is mandated to compensate the estate of the deceased. The applicant also made reference to **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited**, Supreme Court Petition No. 11 of 2015 [2018] eKLR, and **Kenya Wildlife Service v Kinyua Ikabu**, Civil Appeal No. 49 of 2017 [2019] eKLR in urging the Court to find that the 1st respondent has the mandate to award compensation to persons injured due to human wildlife conflict.

[6] On whether an Orders of Mandamus should issue as sought herein, the applicant placed reliance on **Republic v Principal**

Secretary, Ministry of Internal Security & another, ex parte Schon Noorani & another [2018] eKLR and **Republic v Kenya Wildlife Service & 2 Others, Muhia** (Ex parte Applicant) (Judicial Review Application E003 of 20204) KEHC 8086 KLR for the proposition that the applicant was within his right to file the instant Judicial Review application.

[7] In the applicant's submission, he has demonstrated that the Wildlife Conservation and Management Committee recommended for compensation in the sum of Kshs. 500,000/= for the death the deceased as provided for under **Section 25** of the Act; that the 1st respondent's duty to manage and conserve wildlife comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of that duty; and that the 1st respondent has failed to satisfy the recommendation for compensation within 60 days from reporting of the claim as per the Regulations. Accordingly, the applicant posited that he is entitled to the Order of Mandamus as sought in the application before this court together with costs.

[8] From the foregoing summary, there is no dispute that, on the 13th January 2011, the deceased was swallowed by a crocodile while fetching water from Lake Victoria. The applicant, as the administrator of the estate of the deceased caused the incident to be reported to the 1st respondent. There is also no dispute that the respondents, as the relevant bodies charged with the statutory duty of paying compensation in cases of human-wildlife

conflict, received a claim from the applicant for payment but are yet to settle the same. Therefore, the single issue for determination is whether sufficient cause has been shown by the applicant for the issuance of the Order of Mandamus.

[9] Mandamus is a relief available to litigants under **Article 23(3)(f)** of the Constitution as well as **Order 53** of the **Civil Procedure Rules**. Its scope was well explicated in **Halsbury's Laws of England, 4th Edition, Volume 1** thus:

"The 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 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 legal remedy, yet that mode of redress is less convenient, beneficial and effectual..."

[10] The applicant has no other way of enforcing payment of her claim because in **Section 21(4)** of the **Government Proceedings Act, Chapter 40** of the Laws of Kenya it is stipulated that:

"(4)...no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs."

[11] Accordingly, in **Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security, Ex Parte Fredrick Manoah Egunza [2012] eKLR**, **Hon. Githua, J**, aptly pointed out that:

“Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act.”

[12] Similarly, in **Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another** [2018] eKLR, **Hon. Mativo, J.** (as he then was) held: -

29. 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.

[13] The applicant has demonstrated that a claim was made to the respondents in accord with **Section 25** of the Wildlife Management and Conservation Act; that reasonable time to comply with the demand was given and yet no payment has been

made in respect of the subject claim. Therefore, the duty to pay has arisen in respect of which an order of Mandamus ought to issue. In **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited** (supra), the Supreme Court held:

“A global comparison of laws and jurisprudence relating to animal and wildlife management normally provide that an entity charged with such a management task also collects the revenues generated from activities relating to the same. The rationale being that such revenue supports the costs of management and any related outcome, including compensation for damage made by animal and wildlife...The Wildlife Act gives the responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damage occasioned by wild animals.”

[14] The Court of Appeal was of the same posturing in **Kenya Wildlife Service v Joseph Musyoki Kalonzo** [2017] eKLR that:

“The appellant admits the duty to manage and conserve wildlife. That duty comes with attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty. The law on that point as succinctly pronounced in Joseph Boru Ngera & another v Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited [2014] eKLR among others is still good law on this point. The cabinet secretary referred to in the Act pays 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.”

[15] In the premises, I find merit in the Notice of Motion dated 30th April 2025. The same is hereby allowed and orders granted as follows:

[a] An Order of Mandamus be and is hereby made to compel the 1st respondent to pay compensation in the sum of Kshs. 5,000,000/= to the applicant on behalf of the estate of the deceased **P O O.**

[b] Costs of the application to be paid to the applicant by the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY
THIS 13TH DAY OF FEBRUARY 2026**

OLGA SEWE

JUDGE

ORIGINAL