



Republic v Kenya Wildlife Service & 2 others; COT (A minor Suing Through Her Father and Next Friend BO) (Ex parte Applicant) (Judicial Review Miscellaneous Application E001 of 2025) [2026] KEHC 1445 (KLR) (6 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2025**

OA SEWE, J

FEBRUARY 6, 2026

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF THE WILDLIFE CONSERVATION AND
MANAGEMENT ACT, NO. 47 OF 2013 LAWS OF KENYA**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE COMPENSATION COMMITTEE, HOMA
BAY 2ND RESPONDENT**

**MINISTERIAL WILDLIFE COMPENSATION COMMITTEE 3RD
RESPONDENT**

AND

**COT (A MINOR SUING THROUGH HER FATHER AND NEXT FRIEND
BO) EX PARTE APPLICANT**



JUDGMENT

1. This suit was filed on behalf of the minor, B A, by her next friend and father, COT, the ex parte applicant (hereinafter, “the applicant”). He prayed for the following orders:
 - (a) An Order of Mandamus to compel the respondents to consider the applicant’s claim and immediately release Kshs. 3,000,000/= to the applicant’s advocate.
 - (b) The costs of this application to be provided for.
2. The application was based on the ground set out in the Statutory Statement and the applicant’s Verifying Affidavit filed therewith. The applicant averred that the minor was fetching water at River Miriu near Chuowe beach when she was viciously attacked by a hippopotamus, thereby occasioning her grievous injuries. The applicant blamed the incident on the 1st respondent’s negligence and breach of statutory duty as governed by the provisions of the *Wildlife Conservation and Management Act* No. 47 of 2013.
3. The applicant further averred that the occurrence was reported at the Kendu Bay Police Station under OB No. 13/26/01/2019 and that the 1st respondent’s officer took the particulars of the minor and promised to follow up the matter with a view of having the minor compensated. The applicant further deposed that he formally applied for compensation on behalf of the minor by filling a claim form that was provided by the 1st respondent. He also averred that thereafter the 1st respondent convened a meeting of the Community Wildlife Conservation Committee (CWCC) in connection with the minor’s claim for compensation, and that he expected payment within sixty (60) days as provided for under the law.
4. The applicant pointed out that the claim has been pending for more than five (5) years and contended that the continued delay in effecting compensation is not only unjustified but also unexplained. The applicant averred that the application is meritorious and has been brought without unreasonable delay. He expressed the apprehension that, unless this Court intervenes and compels the respondents to act on their decision and settle the claim, they will continue to disregard the minor’s demands for compensation, thereby undermining and eroding the confidence of both the applicant and the general public in the efficiency and integrity of Kenya’s administrative processes.
5. The 1st and 3rd respondents opposed the application vide their Grounds of Opposition dated 12th May 2025. They contended that:
 - (a) The Application is bad in law and incurably defective.
 - (b) The prayers sought are not available under the circumstances.
 - (c) The right forum for the ex-parte applicant to address any grievance caused by wildlife is to invoke section 25 of the *Wildlife Conservation and Management Act*, 2013.
 - (d) Judicial review being discretionary in nature, the remedies sought herein are not the most efficacious in the circumstances.
 - (e) The remedy of Mandamus cannot ensue in the circumstances since its sole objective would be to arrogate to the 1st and the 3rd respondents a duty by law vested upon the 2nd respondent, hence an illegality.



- (f) The ex-parte applicant has failed to demonstrate any illegality or procedural impropriety in relation to this application.
 - (g) If the orders sought are granted, the same will aid the ex-parte applicant in abusing the judicial process.
 - (h) The ex-parte applicant should have exhausted the avenues provided under section 25 of the [Wildlife Conservation and Management Act](#), 2013.
 - (i) In the interest of justice, the remedies sought be denied.
 - (j) The ex-parte applicant stands to suffer no prejudice if the remedies sought are denied.
 - (k) The application is otherwise bad in law, incompetent, misplaced and an abuse of the process of this Honourable Court and should be dismissed with costs.
6. The application was canvassed by way of written submissions; to which end the applicant filed written submissions dated 5th May 2025. He reiterated the factual basis of the application and submitted that the respondents' continued delay in settling the claim without any plausible explanation is what precipitated the filing of the instant application for the judicial review order of Mandamus. Accordingly, the applicant proposed the following issues for determination:
- (a) Whether the 1st respondent is statutorily bound to manage national parks and reserves.
 - (b) Whether the 1st respondent is mandated to compensate the Ex Parte applicant.
 - (c) Whether the Ex Parte applicant is entitled to the orders for mandamus.
7. The applicant invited the Court to look at Sections 6 and 7 of the [Wildlife Conservation and Management Act](#), 2013 (the Act) being the provisions that set out the functions of the 1st respondent; namely:
- (a) to 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;
8. The applicant proceeded to outline the applicable procedure for payment of claims under the [Act](#) as set out in Section 25 of the [Act](#). Reliance was also placed on the decisions of the Supreme Court in [Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited](#), Supreme Court Petition No 11 of 2015 (2018) eKLR and the Court of Appeal in [Kenya Wildlife Service v Joseph Musyoki Kalonzo](#) 2017 eKLR in which it was held that the 1st respondent's duty to manage the national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage caused to property and human life by wildlife.
9. It was therefore the submission of the applicant that the 1st respondent is liable to compensate minor herein in the sum of Kshs. 3,000,000/=, her claim having been approved for purposes of Section 25 of the [Wildlife Conservation and Management Act](#). The applicant relied on the case of [Republic v Kenya Wildlife Service & 2 others; Mubia \(Exparte Applicant\)](#) (Judicial Review Application E003 of 2024) 2024 KEHC 8086 (KLR) among others, where the High Court faced with a similar application as the present one held that the applicant was within her right to file the Judicial Review application and was accordingly granted an order of Mandamus to compel payment by the 1st respondent. It was therefore



the applicant's prayer that the application dated 10th March 2025 be allowed and orders granted as prayed.

- 10 It is therefore not in dispute that minor was fetching water at River Miriu near Chuowe beach when she was viciously attacked by a hippopotamus; occasioning her grievous injuries. It is also not contested that the matter was reported to the police station at Kendu Bay as well as to the 1st respondent. It is also common ground that the respondents, being the entities mandated to handle compensation in cases of human-wildlife conflict, duly processed the applicant's claim but are yet to pay six years down the line.
- 11 Section 25(5) of the *Wildlife Conservation and Management Act* provides:
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.
12. The provision is plain that if someone is injured or killed by certain wildlife, their family or representative can file a compensation claim with the County Wildlife Conservation and Compensation Committee. The Committee verifies the claim, forwards it to the Cabinet Secretary,



who may approve payment (up to Kshs. 5 million for death, Kshs. 3 million for permanent disability, and up to Kshs. 2 million for other injuries) but the duty to pay is that of the 1st respondent.

13. In *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* (*supra*) the Supreme Court held at paragraph 66 that:

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 outcomes, including compensation for damage made by animals and wildlife... The *Wildlife Act* gives responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damage occasioned by wild animals.

14. The Court of Appeal took a similar view in *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (*supra*) and held:

The appellant admits the duty to manage and conserve wildlife. That duty comes with the 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. 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*. In the case of *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* 2018 KEHC 9433 (KLR), the court held: -

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. v. Canada (Attorney General)*,²³ and, was also discussed in *Dragan v. 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.

16 The applicants have no other way of enforcing payment of their award 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.

17. As was pointed out in Republic v Permanent Secretary, Ministry Of State For Provincial Administration And Internal Security Ex parte Fredrick Manoah Egunza 2012 KEHC 1643 (KLR):

In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. 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...

18. The applicant has shown that a claim was lodged and various demands for payment issued to no avail. The respondents were afforded reasonable time to comply, yet no payment has been made on the claim. In the same vein, the respondent was afforded an opportunity herein to explain why the payment has not been forthcoming but opted to raise technical points instead. Consequently, the duty to pay has crystallized, warranting the issuance of an order of Mandamus.

19. In the premises, I find merit in the Notice of Motion dated 10th March 2025. The same is hereby allowed and orders granted as follows:

- (a) An Order of Mandamus be and is hereby granted to compel the respondents to process and pay the applicant herein Kshs. 3,000,000/= on behalf of the minor.
- (b) Costs of the application be paid to the applicant by the respondents.

It is so ordered.

DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY 2026

OLGA SEWE

JUDGE

