

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
MISC. JUDICIAL REVIEW NO. E006 OF 2024

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010,
AND
IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL
REVIEW ORDER OF MANDAMUS
AND
IN THE MATTER OF THE WILDLIFE CONSERVATION AND
MANAGEMENT ACT, 2013
BETWEEN

REPUBLIC.....
....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

AND

DAVID OCHUNG OJWANG (the next of kin
and legal representative of the Estate of
MILLICENT AKOTH, deceased).....EX PARTE
APPLICANT

JUDGMENT

[1] The Notice of Motion dated 14th May 2024 was filed by the *ex parte* applicant, **David Ochung Ojwang** in his capacity as the next of kin and legal representatives of the estate of **Millicent Akoth** (the deceased). He filed the suit against the three

respondents herein, namely, **Kenya Wildlife Service, County Wildlife Compensation Committee, Homa Bay,** and **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 consider his claim and immediately release Kshs. 5,000,000/= to his Advocate.

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

[2] The application was premised on the grounds set out in the Statutorily Statement and the Verifying Affidavit sworn on 18th April 2024 by the applicant. The applicant deposed that, on the 18th September 2020, the deceased was viciously attacked by a crocodile while drawing water from River Kuja, occasioning her fatal injuries. The applicant alleged breach of statutory duty on the part of the 1st respondent and relied on the relevant provisions of the Wildlife Conservation and Management Act No. 47 of 2013.

[3] The applicant further stated that the incident was reported at Ndhiwa Police Station under OB No. 13/21/09/2020 whereupon the 1st respondent's officers visited the family of the deceased, took their particulars and promised compensation to the applicant for the loss of his wife. The applicant further averred that, some time in 2019, he formally applied for compensation by filling the claim form provided by the 1st respondent, to which he attached a Postmortem Form.

[4] The applicant also mentioned that it was within his knowledge that the 1st respondent convened a meeting of the County Wildlife Conservation Committee (CWCC) on 15th December 2021 to discuss the claim for compensation, and that the Committee made recommendations to Ministerial Wildlife Compensation Committee (MWCC) that validates and approves payment of such awards. The applicant deposed that on following up at the County Offices, he was informed that the Ministerial Wildlife Compensation Committee approved the award.

[5] The applicant was therefore aggrieved that in spite of the approval of his claim, he is yet to receive the compensation on behalf of the estate of his deceased wife. He expressed his apprehension that unless the Court intervenes and compels the respondents to act on their decision and settle the claim, they will continue to ignore his demands for compensation to the detriment of the estate of the deceased.

[6] The application was unopposed in the sense that, despite service, no response was filed by the respondents. Directions were thereafter given on 25th March 2025 that the application be canvassed by way of written submissions. Whereas the applicant filed written submissions dated 1st April 2025, the respondents did not. 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 applicant.

[c] Whether the applicants are entitled to the Order of Mandamus.

[7] The applicant made reference to Sections 6 and 7 of the Wildlife Conservation and Management Act, which set out the functions of the 1st respondent and urged the Court to find that management of the National Parks, Wildlife Conservation areas and sanctuaries is one of the functions bestowed upon the 1st respondent under the statute. The applicant further submitted that, in line with that mandate, it is the duty of the 1st respondent to ensure that compensation is duly paid in the event of injury or death as a result of human-wildlife conflict. He relied on **Section 25** of the Act, which provides that:

"(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 representatives 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 the injury."

[8] The applicant also placed reliance on the decisions of the Supreme Court and the Court of Appeal in **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited**,

Supreme Court Petition No 11 of 2015 (2018) eKLR and **Kenya Wildlife Service v Joseph Musyoki Kalonzo** [2017] eKLR, respectively, and urged the Court to find that he has made out a good case for the issuance of the Order of Mandamus.

[9] From the foregoing summary, there is no dispute that the deceased, **Millicent Akoth**, died on the 18th September 2020 as a result of human-wildlife conflict. There is no dispute that the deceased was drawing water from River Kuja when she was viciously attacked by a crocodile. She died as a result of the attack and her remains found on the 20th September 2020. It is also not contested that the applicant, as the administrator of the estate of the deceased, caused the incident to be reported to the 1st respondent. He was given standard Claim Form which he filled, signed and submitted to the 1st respondent with a view of compensation. There is no contestation that the respondents, as the relevant bodies charged with the statutory duty of paying compensation in cases of human-wildlife conflict, 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.

[10] 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..."

[11] 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."

[12] 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."

[13] 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.

[14] The applicant has demonstrated 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.”

[15] 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.”

[16] In the premises, I find merit in the Notice of Motion dated 14th May 2024. 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 **Millicent Akoth.**

[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 26TH DAY OF FEBRUARY 2026**

.....
OLGA SEWE

JUDGE