

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISCELLANEOUS JUDICIAL REVIEW NO. EO16 OF 2025

IN THE MATTER OF AN APPLICATION FOR AN ORDER IN THE NATURE OF MANDAMUS IN THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT NO. 47 OF 2013

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT COMPENSATION REGULATIONS 2017

BETWEEN

REPUBLIC.....APPLICANT

AND

**KENYA WILDLIFE SERVICE.....1ST
RESPONDENT**

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE
MERU.....2ND
RESPONDENT**

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

AND

**GUYO KURI FUGICHA.....EX-PARTE
APPLICANT**

RULING

1. For determination is the chamber summons dated 15/8/2025 pursuant to **Rule 3 of the High Court (Practice and Procedure) Rules,**

Order 53 Rule 1(1) (2) and (4) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, seeking that;

- 1. Spent**
 - 2. Spent**
 - 3. The court be pleased to grant leave to the Ex-Parte Applicant to apply for an order of Judicial Review in the nature of:**

 - 4. An Order of Mandamus be issued to compel the 1st Respondent through the 2nd Respondent (CMCC) to deliberate upon the Ex-Parte's claim within the next 30 days pursuant to Regulation 27 (1) of the Wildlife Conservation and Management Compensation Regulations 2017.**

 - 5. The 1st Respondent do report to this Honorable Court its decision and/or deliberation under Prayer (1) above on or before the expiry of 30 days from the date of issuance of this Order in Prayer No. 3.**

 - 6. Costs of and incidental to the application be provided for.**

 - 7. Such further and other reliefs that this Honourable Court may deem just and expedient to grant.**
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the Ex-parte Applicant on even date. He averred that he was attacked by an Elephant on 8/9/2022 while at Kuromume area and sustained injuries. He duly reported the matter to the Area Chief of Malkadaka Location, Garbatula Police

Station and subsequently visited the offices of the 1st Respondent to fill the requisite compensation forms. The 1st Respondent through the 2nd Respondent is reluctant and uncooperative to deliberate, verify and recommend compensation to the Ex-parte Applicant pursuant to **Section 25 (1) of the Wildlife Conservation and Management Act**, and unless the orders sought are granted, unnecessary delay, great prejudice and frustration will be caused to the Ex-parte Applicant.

3. The 1st Respondent intimated to the court that it would not be opposing the application.
4. The 2nd and 3rd Respondents filed grounds of opposition dated 1/10/2025 that;
 - 1. The Notice of Motion Application dated 15th August, 2025 has not met the threshold for the grant of the orders sought.**
 - 2. The application is misdirected since the 1st and 2nd Respondents have neither failed nor refused to deliberate, verify and/or recommend the compensation of the Applicant since the strict procedures stipulate in the Wildlife Conservation and Management Act, 2013 and the Wildlife Conservation and Management (Compensation) Regulations, 2017 are ongoing.**
 - 3. It is trite law that for a court to grant an order for Mandamus, the Applicant must prove that there is an**

express refusal, or an implied refusal through unreasonable delay by the public body. The 2nd & 3rd Respondents have not refused and/or delayed in complying with the law in the instant matter and are currently processing the requisite documents.

- 4. The application fails to demonstrate any specific breach of statutory duty or wrongdoing on the part of the 1st and 2nd Respondents and there is no evidence establishing neglect, refusal, or failure to perform any duty as required by the law.**
- 5. The 2nd & 3rd Respondents have not abdicated their statutory roles as alleged by the Applicant, and no evidence has been adduced to support those wild allegations.**
- 6. This application is misguided as it seeks to circumvent the prescribed legal and administrative mechanisms expressly established by the law to handle such claims.**
- 7. The Notice of Motion Application is misconceived and full of allegations which are not supported by any evidence and therefore should be dismissed forthwith.**

Submissions

5. The Ex-Parte Applicant, through the firm of Khan & Associates Advocates, filed submissions dated 8/12/2025. Counsel invited the

court to compel the 2nd Respondent through the 1st Respondent to deliberate upon the Ex-parte's claim and report its decision, and cited **Republic v Kenya Wildlife Service & 2 others; Muhia (Exparte Applicant) (Judicial Review Application E003 of 2024) [2024] KEHC 8086 (KLR) (4 July 2024) (Ruling), Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited (2018) eKLR, Kenya Wildlife Service v Joseph Musyoki Kalonzo (2017) eKLR and Republic v Attorney General & another Ex-parte James Alfred Koroso (2013) eKLR.**

6. The 2nd and 3rd Respondents filed submissions through the Attorney General dated 15/11/2025. Counsel cited **Meixner & Another v A.G (2005) 1 KLR 189 and Republic v Kenya Revenue Authority, Commissioner Ex parte Keycorp Real Advisory Limited [2019] KEHC 11050 (KLR)** on the prerequisites to be met before leave to apply for judicial review orders can be granted. Counsel contended that mandamus should not issue where delays in payment are justified and documented, and cited **Republic v Permanent Secretary Ministry of State for Provincial Administration & Internal Security ex parte Fredrick Manoah Egunza (2012) eKLR.**

Analysis and Determination

7. After critical consideration of the application, the responses thereto and the submissions on record together with the cited authorities, the issue for determination is whether the threshold for grant of leave to apply for Judicial Review order of mandamus has been met.

8. **Order 53 of the Civil Procedure Rules** provides that leave must mandatorily be sought before Judicial Review proceedings can be commenced.

9. The principles which guide our courts when exercising jurisdiction to grant leave under order 53 of the Civil Procedure Rules were settled in **Republic v County Council of Kwale & Another; Kondo & 57 others (Ex parte) [1998] KEHC 2 (KLR)** where Waki J (as he then was) enunciated that: ***“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration...Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting***

the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially."

10. In **Meixner & another v Attorney General (Civil Appeal 131 of 2005) [2005] KECA 292 (KLR) (16 September 2005) (Judgment)**, the Court of Appeal held that;

"The leave of the court was a prerequisite to making a substantive application for judicial review. The purpose of the leave is to filter out frivolous applications. The granting of leave or otherwise involves an exercise of judicial discretion. The Court of Appeal can only interfere with the discretion of the judge denying the appellants leave to apply for judicial review on the firmly established principles stated in Mbogo v Shah [1968] EA 93."

11. Evidently, the gist of the ex-parte Applicant's claim is predicated under **Section 25 of the Wildlife Conservation and Management Act** and **Section 27 of the Wildlife Conservation and Management (Compensation) Regulations 2017**.

12. Without going into the merits of the substantive motion so as not to pre-empt the outcome thereof at this interlocutory stage, I find that the Ex-parte Applicant has demonstrated to the satisfaction of this court that he has an arguable case warranting grant of leave.

13. The upshot from the foregoing is that 21 days leave is hereby granted to the Ex-parte Applicant to apply for an order of Mandamus.

File is closed.

DATED AND DELIVERED AT MERU THIS 11TH DAY OF MARCH, 2026.

S. M. GITHINJI
JUDGE

Parties:-

Mr. Mutai for the 1st Respondent.

Others are absent.