



Republic v Kenya Wildlife Services & 3 others (Judicial Review E006 of 2025) [2026] KEHC 2386 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2386 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
JUDICIAL REVIEW E006 OF 2025
MA ODERO, J
FEBRUARY 27, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICES 1ST RESPONDENT

CABINET SECRETARY MINISTRY OF TOURISM & WILDLIFE 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

GEORGE KAUWIRIA KITHELA 4TH RESPONDENT

JUDGMENT

1. Pursuant to leave granted on 17th June 2025, George Kauwiria Kithela, the Ex-Parte Applicant filed a Notice of Motion dated 20th June 2025 seeking the following orders:-

“1. That an order of mandamus do issue against the 1st Respondent compelling him to pay compensation to the exparte Applicant in the sum of Kshs. 3,000,000 as contemplated under Section 25(3) (b) of the [Wildlife Conservation and Management Act](#).

2. That costs of this Application be borne by the 1st Respondent.”

2. The application is premised upon Order 53 (3) of the Civil Procedure Rules 2010 and was supported by the statutory statements dated 12th June 2025 and the Supplementary Affidavit dated 26th September 2005 both sworn by the Ex Parte Applicant.

3. The 1st Respondent Kenya Wildlife Service opposed the application through the Replying Affidavit dated 22nd July 2025 sworn by Gideon Mutai the 1st Respondent’s legal Officer.



4. The matter was canvassed by way of written submissions. The Ex Parte Applicant filed the written submissions dated 26th September 2025, whilst the Respondents did not file any submissions despite having been given the opportunity to do so.
5. The Ex Parte Applicant deponed that he sustained injuries arising from an attack by an elephant on 18th May 2015. The Applicant filed a claim for compensation in June 2015 but to date the 1st Respondent has failed/refused to pay him any compensation.
6. The Ex Parte Applicant contends that under Section 4 of the Fair Administrative Actions Act he is guaranteed the right to expeditious and efficient administrative action. That Section 25(1) - 3(b) of the *Wildlife Conservation and Management Act* obligates the 1st Respondent to receive, verify and forward such claims to the Cabinet Secretary Ministry of Tourism and Wildlife (the 2nd Respondent) with recommendations for payment of compensation.
7. The Ex Parte Applicants complains that ten (10) years after lodging his claim for compensation no action has been taken. He states that the 1st Respondent has a legal duty to act on his claim.
8. In its reply the 1st Respondent stated that the application was legally defective and was bad in law as it sought to compel the 1st Respondent to do an act which did not lie within its mandate. That the entity which was mandated to pay compensation in such cases is the County Wildlife Compensation Committee (CWCC) which is set up under the 2nd Respondent and that the 1st Respondent has no budgetary allocation to pay such claims.
9. That the doctrine of exhaustion has not been adhered to as the Ex Parte Applicant did not avail himself of the provision of Section 25 of the Act which provided that the duty of the 1st Respondent is limited to deliberating upon and verifying a claim. It was stated that the Ex-Parte Applicants claim was considered but a decision thereon was deferred as the Applicant was yet to undergo a medical examination to determine the degree of his injury and once this is done a decision will be made and will be forwarded to the Cabinet Secretary for further action. Finally the 1st Respondent submitted that the present application is premature.

Analysis And Determination

10. I have carefully considered this application the reply filed thereto as well as the written submissions filed by both parties. The main issue for determination is whether the Ex Parte Applicant is entitled to an order of mandamus compelling the 1st Respondent to pay compensation for the injuries sustained from the elephant attack.
11. Article 165 (3) of *the Constitution* of Kenya 2010 confers upon the High Court unlimited original jurisdiction in both civil and criminal matters, including the jurisdiction to hear and determine any question of *the constitution*.
12. The only issue for determination here is whether the Court should grant the orders sought by the Ex Parte Applicant i.e. orders of mandamus to compel the Respondents to compensate ex parte applicant for injuries resulting from an elephant attack.
13. The purpose of an order of mandamus is to compel the performance of a public duty, such order would therefore issue against a public officer who has failed/neglected to perform a duty required of him by law. The Court will not grant an order of mandamus where there is an alternative remedy available to the applicant. Similarly the court may decline to grant an order of mandamus in cases where the enforcement of such order will pose implementation challenges that will require supervision by the court.



14. In Republic -vs- Town Clerk Kisumu Municipality Ex Parte East African Engineering Consultants [2007] 2 EA the Court stated that an order of mandamus compels a public officer to act in accordance with the law.

15. In Republic -vs- Kenya National Examinaitons Council Ex Parte Gathenji & Others [1997] eKLR, the Court of Appeal expounded on the principles necessary for an order of mandamus to issue as follows:-

“.....What is the scope and efficiency of an order of Mandamus. Once again we turn to Halsburys laws of England, 4th Edition Vol 1 at Page 111 Paragraph 89. The learned treatise says

“The order of mandamus is of 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, although there is an alternative legal remedy yet that mode of redress is less convenient, beneficial and effectual.....an order of mandamus will compel 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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.....”

16. The Ex-parte Applicant lodged his claim for compensation in June 2015 and that claim has remained pending to date (ten (10) years later) - this amounts to unreasonable delay. The 1st Respondent is a body corporate set up under Section 6 of the *Wildlife Conservation and Management Act* 2013. Under Section 25 (1) (2) (3) (b) of the Act the 1st Respondent has the duty to receive compensation claims, verify such claims and forward the claim together with its recommendations to the 2nd Respondent for payment. The Respondents have failed to act in this matter despite having a statutory obligation to act.

17. Consequently I do find that the orders of mandamus are necessary. In the circumstances this court makes the following orders:-

- (1) The Ex Parte Applicant to forward within thirty (30) days his medical report to the 1st Respondent.
- (2) Upon receipt of the Medical report the 1st Respondent to within Sixty (60) days deliberate upon the said report and forward a report containing its recommendations to the 2nd Respondent.
- (3) Mention within ninety (90) days to confirm compliance.
- (4) Each party to meet its own cost for this application.

DATED IN NYERI THIS 27TH DAY OF FEBRUARY 2026.

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MAUREEN A. ODERO

JUDGE

