

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
MISC. JUDICIAL REVIEW NO. E010 OF 2024

**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

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

MARGRATE ADHIAMBO OKONGA.....1ST EX PARTE
APPLICANT

WINNIE ANYANGO OKOTH.....2ND EX PARTE
APPLICANT

JUDGMENT

[1] The Notice of Motion dated 16th January 2025 was filed by the two *ex parte* applicants, **Margrate Adhiambo Okonga** and **Winnie Anyango Okoth** in their capacity as the next of kin and

legal representatives of the estate of **Joseph Ochieng Wasonga** (the deceased). They 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 the applicants' claim and immediately release Kshs. 5,000,000/= to the applicants' 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 by the 1st applicant on 8th August 2024. The applicants stated that on the 8th February 2020, the deceased, **Joseph Ochieng Wasonga**, was viciously attacked by a hippopotamus while bathing at the shores of Lake Victoria, thereby occasioning him fatal injuries. The matter was reported at Mbita Police Station vide OB No. 12/08/02/2020 and employees of the 1st respondent visited them and took their particulars with a promise of compensation for the loss of their husband and father, respectively. The applicants thereafter applied for compensation by filling the Claim Form provided by the 1st respondent.

[3] The applicants further averred that it was within their knowledge that the 1st respondent convened a meeting of the 2nd respondent and that recommendations were duly made to the 3rd respondent but the claim is yet to be paid. The applicants are

apprehensive that unless this Court intervenes and compels the respondents to act and settle the claim, the respondents will continue to ignore their demands for compensation.

[4] Apparently, 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 applicants filed written submissions dated 5th May 2025, the respondents did not. The applicants 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 applicants

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

[5] The applicants relied on **Sections 6 and 7** of the Wildlife Conservation and Management Act 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 applicants 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."

[6] The applicants 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, among other authorities, and urged the Court to find that he has made out a good case for the issuance of the Order of Mandamus.

[7] From the foregoing summary, there is no dispute that the deceased, **Joseph Ochieng Wasonga**, died on the 8th February 2020 as a result of human-wildlife conflict. The deceased was bathing on the shores of Lake Victoria when he was injured by a hippopotamus. The applicants, as the administrators of the estate of the deceased caused the incident to be reported to the 1st respondent. They also signed and filed a Claim Form with 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.

[8] 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..."

[9] The applicants have 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."

[10] 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."

[11] 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.

[12] The applicants have 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.”

[13] 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.”

[14] In the premises, I find merit in the Notice of Motion dated 16th January 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 **Joseph Ochieng Wasonga**.

[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

ORIGINAL