

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

JUDICIAL REVIEW MISC. APPLICATION NO. E006 OF 2025

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

VERSUS

KENYA WILDLIFE SERVICE1ST

RESPONDENT

CABINET SECRETARY MINISTRY OF

TOURISM AND WILDLIFE.....2ND

RESPONDENT

AND

JOHN KAHANG'I WANYOIKE
(Suing as the legal representative of the Estate of
SHADRACK WANYOIKE (Deceased).....EX
PARTE APPLICANT

JUDGMENT

Brief Facts

1. By a Notice of Motion dated 2nd April 2025, the *ex parte* applicant seeks the following orders:-
 - a) An order of mandamus be issued to compel the respondents to immediately consider the *ex parte* applicant's claim of Kshs. 5 million as compensation for a wildlife attack on the deceased.
 - b) An order of mandamus be issued to compel the 1st respondent to compensate the *ex parte* applicant a sum of Kshs. 5 million as approved through its compensation procedure.
2. The respondents opposed the application and filed grounds of opposition and a Replying Affidavit dated 18th July 2025 and 28th October 2025 respectively.

The *Ex parte* Applicant's Case

3. The *ex parte* applicant states that he is the legal representative of the Estate of Shadrack Wanyoike (the

deceased). On 27th December 2021, the deceased was viciously attacked by a hyena occasioning him fatal injuries and he reported the matter at Makongeni Police Station under OB No. 51/27/12/2. The 1st respondent's officers

went and took the details of the report and promised to compensate the deceased family for the loss.

4. The *ex parte* applicant states that the 2nd respondent failed to consider the claim within sixty (60) days pursuant to **Section 27 of the Wildlife Conservation and Management Compensation Regulations** and despite the findings of Thika Court in Inquest Case No. E008 of 2022. Further, on various occasions, he has followed up on the compensation but the 1st respondent has not taken the necessary action towards paying compensation. The *ex parte* applicant further states that he has now waited for over four (4) years and the respondents are yet to make good the compensation as envisaged under the Act.
5. The *ex parte* applicant argues that the respondents continue to unjustifiably delay the compensation without any plausible explanation.
6. The *ex parte* applicant is apprehensive 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 and thus erode his confidence and the general public in the efficiency of the administrative process in Kenya.

The 1st Respondent's Case

7. The 1st respondent opposes the application on the premise that it is fatally defective and bad in law as it seeks to compel the 1st respondent to do that which is not within the 1st respondent's

mandate. The 1st respondent argues that it is not its duty and not authority to compensate the *ex parte* applicant pursuant to **Section 7 of the Wildlife Conservation and Management Act, 2013**.

8. The 1st respondent avers that the Kiambu County Wildlife Conservation Committee (KCWC) as established under **Section 18 of the Wildlife Conservation and Management Act, 2013** is mandated to review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife under **Sections 19(1) and 25(2) of the Act**. The 1st respondent further states that it is the secretary to the County Wildlife Conservation Committee.

9. The 1st respondent asserts that upon the *ex parte* applicant reporting the incident at Makongeni Police Station, its officers went and took details of the alleged attack on 27/12/2021 by a hyena. The *ex parte* applicant was issued with claim compensation forms from the Ministry of Tourism and Wildlife, which he filled and returned to them for processing, thus lodging the claim for compensation under **Section 25(1) of the Act**.

10. The 1st respondent states that the responsibility to compensate for human wildlife conflict matters lies with the Cabinet Secretary Tourism and Wildlife as provided for in **Section 25(3) of the Wildlife Conservation and Management Act**.

11. The 1st respondent argues that it is unjust for the applicant to seek payment from them without having gone through the

compensation process as provided for in law and in any event, the Cabinet Secretary is the one mandated by law to compensate for human wildlife conflict matters and therefore the proper party to compel to make the payment.

The 2nd Respondent's Case

12. The 2nd respondent argues that the application offends **Section 21 of the Government Proceedings Act** as there is no Certificate of Order against the government that has been served on the Honourable Attorney General nor has the same been attached herein.

13. Parties put in written submissions.

The Ex parte Applicant's Submissions

14. The *ex parte* applicant submits that he is the legal representative of the estate of Shadrack Wanyoike (deceased) who was killed by a hyena on 27th December

2021 as a result of the 1st respondent's negligence pursuant to the provisions of the Wildlife Conservation and Management Act, No. 47 of 2013. The *ex parte* applicant further submits that he reported the incident and the 1st respondent's officers promised to compensate him for the loss of the deceased.

15. The *ex parte* applicant submits that pursuant to **Section 6 & 7 of the Wildlife Conservation and Management Act, 2013**, the 1st respondent is bound to manage national parks, wildlife

conservation areas and sanctuaries under its jurisdiction and provide security to animals and people in reserve areas. Further, the *ex parte* applicant relies on the case of **Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited, Supreme Court Petition No. 11 of 2015 (2018) eKLR** and submits that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage to property and human life by wildlife.

16. The *ex parte* applicant further relies on **Section 7, 18 and 19 of the Wildlife Conservation and Management Act, 2013** and submits that the mandate of the 1st respondent includes setting up the Community and County Wildlife Committees and assigning them duties which include verifying claims and making recommendations to the Cabinet Secretary for purposes of

compensation. To support his contentions, the *ex parte* applicant refers to the decision in **Republic vs Kenya Wildlife Service & 3 Others; Musau (Interested Party) (Judicial Review Miscellaneous Application 54 of 2020) [2022] KEHC 102 (KLR) (7 February 2022) (Ruling)**.

17. Pursuant to **Section 27 of the Wildlife Conservation and Management (Compensation) Regulations, 2017**, the duration of settling wildlife claims is sixty days from the date of reporting. The *ex parte* applicant argues that the respondents' inaction is a blatant violation of **Article 50 of the Constitution** which guarantees fair hearing. Procedural fairness entails expeditious disposal of matters.

A delay of over 4 years in considering the *ex parte* applicant's claim is not excusable.

18. Relying on the case **of Republic vs Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No. 234 of 1996**, the *ex parte* applicant submits that he has demonstrated that he is within his right to seek an order of mandamus to compel the respondents carry out their statutory duty and enforce the compensation as it has been provided for under **Section 25 of the Act**. Further, the applicant submits that the 1st respondent has a duty to constitute the committee that receives, reviews and evaluates claims. The applicant

further submits that the 1st respondent be compelled to constitute the County Wildlife Compensation Committee who should sit and do consider his claim and later forward its recommendations to the 2nd respondent within 60 days for action.

The 1st Respondent's Submissions

19. Relying on the cases of **Republic vs County Government of Nairobi & 2 Others ex parte Kingpost Limited [2021] eKLR** and **Republic vs Kenya Vision 2030 Delivery Board & Another ex parte Eng Judah Abekah [2015] eKLR**, the 1st respondent submits that an order of mandamus can only be issued to compel one to perform a statutory duty owed yet it is not statutorily mandated to compensate the *ex parte* applicant as the same is vested on the 2nd respondent under Section 25(3) of the Act. It is further argued that, no decision has been made by the 2nd respondent compelling them

to pay the *ex parte* applicant the sum of Kshs. 5 million. Thus, the 1st respondent argues that it is improperly joined in the instant proceedings.

The Law

20. The Court of Appeal discussed the nature of the remedy of mandamus in **Republic vs Kenya National Examinations Council ex parte Githinji & 8 Others [1997] eKLR** citing with approval Halsbury's Laws of England 4th Vol. 7 p. 111 para 89:-

The order of mandamus is the 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 remedy, yet that mode of redress is less convenient, beneficial and effectual..."These principles mean that an order of mandamus compels 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 had failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.

21. In the instant case, the *ex parte* applicant has moved this honourable court to compel the respondents, particularly the 1st respondent for compensation for the death of his son in the sum of Kshs. 5 million.

22. **Section 3A of the Wildlife Conservation and Management Act** outlines the functions of the Kenya Wildlife Service as follows:-

The functions of the Service shall be to-

**(c) manage National Parks and National Reserves;
(l) render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.**

23. The Supreme Court in the case of **Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited [2018] eKLR** held that the appellant had the statutory duty to control wildlife by dint of Section 3A of the Wildlife Act and held as follows:-

The appellant's obligations under Section 3A(l) could not and were not abdicated in favour of, or transferred to Narok County Government. Without belabouring on this point any further we find that the breach of Section 3A(l) imposes a liability on the appellant to compensate for destruction of crops by wildlife.

24. Upon establishing that the 1st respondent is statutorily bound to control wildlife by dint of **Section 3A of the Act**, it is prudent to outline that the Act under **Section 25** provides for the procedure to

be followed for payment of damages by a claimant who opts to pursue his claim under the Act as was done by the *ex parte* applicant.

25. Section 25 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 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.

26. The deceased herein was attacked by a hyena on 27th December 2021 occasioning him fatal injuries. The *ex parte* applicant states that the County Wildlife Conservation and Compensation Committee (CWCC) has never sat to consider his claim. **Section 18(2) of the Act** provides that the Community Wildlife Conservation Committee may hold a maximum of four meetings every financial year. Additional meetings may be held with prior consent of the Cabinet Secretary. It is not in dispute that the committee which works under the supervision of the 1st respondent has failed to carry out its duties of holding a meeting to move into action the compensation to the *ex parte* applicant for a period of over four (4) years. The 1st respondent having neglected/failed to carry out its mandate calls for the intervention of this court.

27. The committee is mandated to hold a maximum of four meetings annually. No good reason was advanced by the 1st respondent why the case of the *ex parte* applicant has not been dealt with. Furthermore, additional meetings may be held with prior consent of the Cabinet Secretary. Assuming that the 1st respondent may have heard too many cases to resolve that could not be accommodated in

the four annual meetings, permission of the Cabinet Secretary ought to have been sought to add one or two meetings to cover any cases not attended to in a given year. Accordingly, this court grants the *ex parte* applicant an order for

mandamus to compel the respondents to sit and hear the *ex parte* applicant's claim.

28. I am of the considered view that the *ex parte* applicant has established that the 1st and 2nd respondent without good cause have failed to perform their mandate of setting the process of compensation to the *ex parte* applicant in motion and as such, there is need to compel them to act accordingly.

29. I hereby find these proceedings successful and enter judgment in favour of the *ex parte* applicant jointly and severally against the 1st and 2nd respondents jointly and severally.

30. The following orders shall issue in favour of the *ex parte* applicant:-

- a) That an order of mandamus shall issue compelling the 1st and 2nd respondent to put in motion the compensation process in favour of the applicant as provided for under Section 25

of the Wildlife Conservation and Management Act No.47 of 2013 Laws of Kenya.

b) That the process of the claim and payment thereof under order (a) herein shall be completed within sixty (60) days.

c) That the costs of these proceedings shall be borne by the 1st and 2nd respondents.

31. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2026.

F. MUCHEMI
JUDGE