

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**JUDICIAL REVIEW MISC.APPLICATION No.E010 OF 2025**  
**REPUBLIC.....APPLICA**  
**NT**  
**VERSUS**  
**COUNTY WILDLIFE COMPENSATION**  
**COMMITTEE, MERU.....1<sup>ST</sup>**  
**RESPONDENT**  
**KENYA WILDLIFE SERVICE .....2<sup>ND</sup>**  
**RESPONDENT**  
**TERESIA MUENI.....EX PARTE**  
**APPLICANT**

**JUDGMENT**

1. Coming up for determination is the Notice of Motion dated 22<sup>nd</sup> July 2025 in which the ex-parte applicant seeks the following orders:
  - a) That an order of mandamus do issue against the respondent's compelling them to settle the claim in the sum of Kshs.4,072,000/= as per the provisions of section 25(4) of the Wildlife Conservation and Management Act No. 47 of 2013 plus costs and interest

thereon calculated at court rates from the date of judgment.

b) That the respondents be ordered to comply by paying the ex-parte applicant the said statutory sum within 14 days from the date of service of the order of mandamus plus costs and interest thereon calculated at court rates from the date of judgment until payment is full.

2. The application is supported by the affidavit sworn by the ex-parte applicant on even date. He avers that leave has been obtained to file the application.

3. It is the ex-parte applicant's case that he had leased land parcel \_\_\_\_\_ number **IGEMBE/NDOLOLI/ANTUBETWE/KIONGO/2368** on which he had planted a variety of crops. That on 19<sup>th</sup> February 2022 his land was invaded by elephants which destroyed the entire crop. That he reported the incident to the 2<sup>nd</sup> respondent's office vide OB no. 06/20/2/2022 and filled the requisite claim form attaching the necessary forms including:

- Agricultural officer's report

- Title deed
  - Land lease agreement
4. The ex-parte applicant avers that he has made follow up visits in the 2<sup>nd</sup> respondent's officers but the respondents have neglected, failed, refused or ignored to finalize the compensation which was assessed by the Agricultural Officer at Kshs.4,072,000/=.
  5. The 1<sup>st</sup> respondent through the Attorney General opposed the application through ground of opposition dated 31<sup>st</sup> October 2025. The following grounds have been set out:
    - a) That the application dated 22<sup>nd</sup> July 2025 has not met the threshold for the grant of the orders sought.
    - b) That the application is misdirected since the 1<sup>st</sup> respondent has neither failed nor refused to deliberate, verify and/or recommend the compensation of the applicant since the strict procedures stipulated in the Wildlife Conservation and Management Act, 2013 and the Wildlife conservation and Management (Compensation) Regulations, 2017 are ongoing.

- c) That as it stands, the ex parte applicant has no claim pending before the County Compensation committee and her claim has never been deliberated upon by the County Wildlife Conservation and Compensation Committee.
- d) That 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 1<sup>st</sup> respondent has not refused and/or delayed in complying with the law in the instant matter.
- e) That the application fails to demonstrate any specific breach of statutory duty or wrongdoing on the part of the 1<sup>st</sup> respondent and there is no evidence establishing neglect, refusal or failure to perform any duty as required by the law.
- f) That the 1<sup>st</sup> respondent has not abdicated their statutory roles as alleged by the applicant and no evidence has been adduced to support those wild allegations.

g) That this application is misadvised as it seeks to circumvent the prescribed legal and administrative mechanisms expressly established by the law to handle allegations of crop damage by wildlife and the resultant compensation if the claim is proved as required by the law.

h) That the application is misconceived and full of untrue allegations which are not supported by any evidence and therefore should be dismissed forthwith.

6. The 2<sup>nd</sup> respondent opposed the application through a replying affidavit sworn by Ali Chimwaga, its Warden, Meru National Park. He avers that the ex-parte applicant initiated the statutory compensation by reporting the alleged crop damage. That he was issued with a claim form which he failed to return for deliberation by the 1<sup>st</sup> respondent.
7. He further avers that the 2<sup>nd</sup> respondent has been improperly joined to the suit as the order sought ought to be against the Cabinet Secretary for Tourism & Wildlife who is statutorily mandated to pay compensation.

8. It is further deposed that having failed to present the claim form, there is no award made hence there is nothing for this court to enforce or compel payment for. That the ex-parte applicant should first return the claim form and seek for orders compelling the 1<sup>st</sup> respondent to deliberate the claim within the statutory 30 days.
9. Parties filed their respective submissions.
10. For the ex-parte applicant, it was submitted that his choice to pursue Judicial Review was within the law as stated in Kenya **Wildlife Service vs Stephen Muchui M’Ndine (2025) eKLR.**
11. It was further submitted that this court has jurisdiction to issue the orders sought as guided by the decision of **Kenya Wildlife Service vs Joseph Musyoki Kalonzo (2017) eKLR.**
12. It was further submitted that the ex-parte applicant is entitled to compensation under section 25 of Wildlife Conservation and Management Act and Regulation 12(1) of the Act’s Compensation Regulations. That despite having lodged the claim over three years ago, the respondents are

yet to pay him the compensation for his destroyed crops. That the Act envisages that where crops are destroyed, the victim ought to be compensated in the sum equivalent to the market value. That the crop damage was duly assessed and the agricultural officer's report submitted to the 1<sup>st</sup> respondent but it has failed to take action. That it was for this reason that the court has been moved to issue orders of mandamus.

13. As for the nature and extent of such an order, counsel cited **Republic vs Kenya Wildlife Service and 2 Others; Muhia (ex-parte applicant) (2024) KEHC 8086 KLR.**
14. For the 1<sup>st</sup> respondent it was submitted that the ex-parte applicant has failed to meet the threshold for granting an order of mandamus, as she has not shown that the 1<sup>st</sup> respondent has refused to perform or undertake its obligation.
15. On the nature of an order of mandamus, the 1<sup>st</sup> respondent cited the decision in **Republic vs James Kenyatta University of Agriculture and Technology ex-parte Elijah Kama (2021) eKLR** and **Republic vs County**

**Government of Siaya and 2 Others ex-parte Olute  
(2024) KEELRC 1868 (KLR).**

16. It was submitted that the application is premature and is not supported by the Act or the Regulations. That under section 25 of the Act, the 2<sup>nd</sup> respondent has a duty to forward the claim forms to the 1<sup>st</sup> respondent who upon receipt of the crop damage report ought to verify it and submit it to the Cabinet Secretary within 30 days. That in the present case, there is no pending claim regarding the ex parte applicant.
17. For the 2<sup>nd</sup> respondent it was submitted that the application is defective as flouts the mandatory provisions of Order 51 Rule 4 which requires that the ground relied upon to be set out in the application.
18. It is further submitted that the 2<sup>nd</sup> respondent has not breached any statutory duty. That the ex-parte applicant has not demonstrated that she lodged a claim and that the Kshs.4,072,000/= has been recommended by the 1<sup>st</sup> respondent after deliberation of the claim. Therefore, it is argued this matter is not ripe for determination by this court.

19. On the doctrine of ripeness, counsel referred the court to the decision in **Republic vs National Employment Authority and 3 Others Ex-parte Middle East Consultancy Services Ltd (2018) KEHC 9449 (KLR)**.
20. It is further submitted that there being no claim received there is no basis to find that the 2<sup>nd</sup> respondent has failed to perform its statutory duty. Cited in support of the submission was the decision in **Republic vs Kenya Vision 2030 Delivery Board and Another Ex-parte Judah Abekah (2015) KEHC 7078 (KLR)**.
21. It is further submitted that making order for payment of Kshs.4,072,000/= as sought would amount to this court taking over the administrative functions of the respondents which are set out under section 19 of the Act. Cited in support of this submission was the decision in **Republic vs Kenya Wildlife Service and Others (2025) KEHC 10559 (KLR)**.
22. Having considered the application, the responses thereto and the parties' submissions, I find that the following issues arise for determination:

- a. The nature of an order of mandamus,
  - b. Whether the application offends the determine of ripeness,
  - c. Whether the ex-parte applicant is entitled to the orders sought.
23. An order of mandamus is a writ issued by this court to compel the performance of a statutory duty owed to an applicant. In the case of **Kenya National Examination Council v Republic, Ex Parte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996** the purpose and scope of an order of mandamus was described as as follows:

**“The next issue we must deal with is this: What is the scope and efficacy of an order of mandamus? Once again we turn to HALSBURY’S LAW OF ENGLAND, 4<sup>th</sup> Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-**

**“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.”**

**At paragraph 90 headed “the mandate” it is stated:**

**“The order must command no more than the party against whom the application is made is**

**legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”**

**What do these principles mean? They mean that 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.”**

24. The order of mandamus is issued pursuant to the provisions of Article 165(6) which states as follows:

**The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.**

25. The Fair Administrative Action Act at section 11 provides as follows:

**Orders in proceedings for judicial review**

**(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order-**

....

**(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;**

26. Section 106 (2) of the Wildlife Conservation and Management Act provides as follows:

**Any person who has reason to believe that the provisions of this Act have been, are being, or are**

**about to be violated, may petition the High Court for—**

**(a) a declaration that the provisions of this Act are being, have been, or are about to be contravened;**

**(b) an injunction restraining any specified person from carrying out the contravention;**

**(c) the writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or any remedy at law or equity for preventing or enforcing the provisions of this Act.**

27. From the foregoing, provisions of the law, it is abundantly clear that this court has the requisite jurisdiction, where appropriate, to issue a writ of mandamus compelling any person or body to undertake an act that it is by law required to so undertake. This has been confirmed in **Republic vs Kenya Vision 2030 Delivery Board (supra)** where it was held as follows:

**“From the cited decisions, it is apparent that an order of mandamus will issue to compel the performance of a statutory duty owed to an applicant.”**

28. For the court to issue an order of mandamus, it has to be satisfied that the person to whom the writ is directed has a statutory duty to undertake certain action and has failed or neglected to undertake such action. In the same case, it was held as follows:

**“Therefore, the fulcrum of an order of mandamus is that a statutory duty must be owed to an applicant and the public officer or public body, after being asked to perform the duty, has refused or failed to discharge that duty and there is no other adequate remedy. In matters involving exercise of judgement and discretion the public officer or public agency can only be directed to take action; it cannot be directed in the manner or the particular way the discretion is to be exercised.”**

29. It is thus not in doubt that this court can issue a writ of mandamus.
30. The respondents' case is that the ex-parte applicants' application is not ripe for determination as there has been no failure of statutory duty on their part for the reason that the ex-parte applicant failed to submit the compensation claim form as required in order to initiate the deliberation by the 1<sup>st</sup> respondent.
31. The Ripeness doctrine is one facet of the broader principle of non-justiciability. It is a jurisdictional issue that bars a court from considering a dispute whose resolution has not crystallized enough as to warrant the court's intervention. Its operation is informed by the idea that there exist other fora with the capacity to resolve the dispute other than court process.
32. The doctrine stipulates that a court ought not to engage in premature adjudication of matters. While the court retains the discretion to determine whether on the circumstances of any matter before it ought to be determined by it, it ought

not to determine issues which are not yet ready for determination or are only of academic interest.

33. These principles were clearly set out by The Supreme Court in **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR** where it held:

***“ The doctrine focuses on the time when a dispute is presented for adjudication. The Black’s Law Dictionary 10th Edition, [supra] at page 1524 defines ripeness as:***

***The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made***

***Courts should therefore frown upon disputes that are hypothetical, premature or academic which have not fully matured into justiciable controversies.”***

34. In **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] eKLR** the court reiterated the same principles. It held that;

***“The extensive quotations were deliberate. It is clear from a review of the above case law that there is now a distinct and coherent jurisprudence within our jurisdiction on the justiciability dogma. There is settled policy with clear arguments as well as out of repetitive precedent that courts and judges are not advise-givers. The court ought not to determine issues which are not yet ready for determination or is only of academic interest having been overtaken by events. The court ought not to engage in premature adjudication of matters through either the doctrine of ripeness or of avoidance. It must not decide on what the future holds either.*”**

***It is however to be noted that the court retains the discretion to determine whether on the circumstances of any matter before it still ought to be determined.”***

35. From a look at the documents presented by the ex-parte applicant, it is clear that the compensation claim forms serial number 17910 was duly issued and was filled in as required including the agents of the 2<sup>nd</sup> respondent. The respondent was thus required to act as directed under Section 25(4) of the Act which provides as follows regarding loss of crops:

**“Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration”.**

36. The Regulations under the Act provide the procedure to be followed. Regulation 28 provides as follows;

**Claims for loss or damage to crops, livestock, or other property**

**On receipt of a claim for loss or damage to crops, livestock or other property, the Committee shall within thirty days of such receipt verify the claim and make recommendations.**

37. It is clear from the material before me that that the ex-parte applicant duly complied with the law and regulations and lodged the compensation claim form. It was thus upon the 1<sup>st</sup> respondent to show that it acted on the claim within the timelines set by the law. The 1<sup>st</sup> respondent has failed to demonstrate that. It is years since the claim was lodged.

38. I am thus of the view that the ex-parte applicant is properly before this court as there was no action taken within the timelines set out by the law.

39. The ex-parte applicant has asked the court to order the payment of Kshs.4,072,000/= being the value assessed by the Agricultural Officer.

40. In my view, and in agreement with the 2<sup>nd</sup> respondent, the court cannot issue such an order. Doing so would be to wade into the statutory mandate and functions duty of the 1<sup>st</sup> respondent to verify the claim and make recommendations. What this court ought to do is to ensure that the statutory body empowered to act does so.
41. In the instant case, the 1<sup>st</sup> respondent has not acted despite being made aware of the claim.
42. As regards the 2<sup>nd</sup> respondent, I find that the forms that were filled, a clear indication that it carried out its mandate as provided under Regulation 16 as read with Regulation 22.
43. Having considered the matter, I am of the opinion that the applicant has made out a case against the 1<sup>st</sup> respondent, but only to the extent that it ought to be compelled to consider the ex-parte applicant's claim, verify it and make appropriate recommendation.
44. Consequently, the following orders do issue:

**a) An order of mandamus is hereby issued to the 1<sup>st</sup> respondent to review the exparte applicant's claim, award and pay the compensation as**

**provided under section 25(5) of the Wildlife Conservation and Management Act within 30 days of order (b).**

**b)The exparte applicant is to re-submit the compensation claim forms to the 1<sup>st</sup> respondent within the next 14 days.**

**c) In default of action on the part of the 1<sup>st</sup> respondent, the ex-parte applicant is at liberty to move this court for appropriate orders.**

**d)The 1<sup>st</sup> respondent shall bear the costs of this application.**

**e) Similar orders do issue in the following files which were consolidated and in which the applicants had lodged their claims:**

- i. Judicial Review No. E002 of 2025 (Ex-parte Applicant Devison Mwiathi Protasio.)**
- ii. Judicial Review E003 of 2025 (Ex-parte Applicant Solomon Muthengi Gitundu.)**
- iii. Judicial Review No. E004 of 2025 (Ex-parte Applicant Peter Mbugi Mutukio.)**

- iv. Judicial Review No. E005 of 2025 (Ex-parte Applicant Brian Muriungi.)**
  - v. Judicial Review No. E007 of 2025 (Ex-parte Applicant Fridah Ntinyari Murira.)**
  - vi. Judicial Review No. E008 of 2025 (Ex-parte Applicant John Kiunga M’Kwalu.)**
  - vii. Judicial Review No. E012 of 2025 (Ex-parte Applicant M’Mburugu M’Inoti).**
  - viii. Judicial Review E013 of 2025 (Exparte Applicant Sebastian Mugambi Mucheke)**
  - ix. Judicial Review No. E015 of 2025 (Ex-parte Applicant Gideon Mutembei Riungu.)**
  - x. Judicial Review No. E0016 of 2025 (Ex-parte Applicant Agnes Kinya.)**
  - xi. Judicial Review No. E077 of 2025 (Ex-parte Applicant Edward Mwiti Ibere.)**
45. In respect the applications in:
- i. Judicial Review No. E011 of 2025 (Ex-parte Applicant Grace Njeri Peter.)**

**ii. Judicial Review No. E014 of 2025 (Ex-parte Applicant Titus Mutegi Richard)**

I find that the claimants had similarly complied and lodged their claims. The tenor of the orders above shall apply mutatis mutandis to theme.

46. The following order shall issue therein:

- i) **An order of mandamus is issued against the 1<sup>st</sup> respondent compelling it within 30 days of order (b) above to verify the ex parte applicant's claims under section 25(2) of the Act and submit the claim and the recommendations to the Cabinet Secretary.**
- ii) **The 1<sup>st</sup> respondent shall bear the costs of the applications.**

**Dated, Signed & Delivered at Meru this 12<sup>th</sup> day of March, 2026.**

**H.M. NYAGA  
JUDGE**

