



Republic v Kenya Wildlife Service & 2 others; OH (A minor suing through his father and next friend Hassan Abdullahi) (Ex parte Applicant) (Judicial Review E011 of 2025) [2026] KEHC 4013 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
JUDICIAL REVIEW E011 OF 2025
JN NJAGI, J
MARCH 13, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**CABINET SECRETARY MINISTRY OF TOURISM & WILDLIFE 2ND
RESPONDENT**

THE HON ATTORNEY GENERAL 3RD RESPONDENT

AND

**OH (A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND
HASSAN ABDULLAHI) EX PARTE APPLICANT**

RULING

1. The Ex parte Applicant has filed a Notice of Motion application dated 8th October 2024 seeking an order of mandamus to compel the 1st Respondent to pay a sum of Ksh.2,000,000/= to the ex parte Applicant. The case for the ex parte applicant is that the plaintiff who is a minor was on 26th November 2014 attacked and bitten by a snake as a result of negligence and breach of duty by the 1st Respondent. That the ex parte applicant and his family reported the incident at the 1st Respondent’s offices and lodged their claim. That the 1st Respondent has failed to compensate the ex parte applicant and has been taking them in circles and has now waited for 10 years with no avail. That the 1st Respondent has continued to delay the compensation without any plausible explanation. They consequently filed the instant application seeking orders of mandamus to compel the 1st Respondent to compensate the ex parte Applicant in the sum state above.



2. The application was opposed by the 1st Respondent vide the replying affidavit of its legal officer, Derrick Karinga in which he deposes that it is not the duty of the 1st Respondent under section 7 of the *Wildlife Conservation and Management Act* (herein referred to as the WCM Act or the Act) to compensate the ex parte applicant. That his case was dealt with by the Tana River County Wildlife Compensation Committee as established under section 18 of the WCM Act who are mandated to review and recommend payment of compensation claims resulting from loss or damage caused by wildlife under section 19(1) and 25(3) of the WCM Act. That the 1st Respondent is only secretary to the County Wildlife Compensation Committee established under section 18 of the Act. That the ex parte applicant's claim for compensation was considered by the said Committee which on the 9th March 2016 recommended payment of Ksh.30,000/=. That the Committee forwarded the recommendation to the Ministerial Wildlife Conservation Committee which deferred the matter for purposes of clarification on the date of incident of the claim and the P3 forms presented. That payment of compensation by the Cabinet Secretary as contemplated by section 25(3) of the WCM Act is only upon recommendation by the 2nd Respondent. That no payment can be made by the Cabinet Secretary as the 2nd Respondent has not reviewed and recommended payment of the claim and as such the claim is premature. That this court cannot take over the functions of the 2nd Respondent under section 18 of the Act to review the claim and recommend the same for payment as is being requested by the ex parte applicant. Nor can the court take over the functions of the Cabinet secretary under section 25(1) of considering recommendations and approving the same.
3. It was deposed that the duty to pay compensation under section 25(3) of the Act is vested on the Cabinet secretary and not on the 1st Respondent. That to ask this court to compel the 1st Respondent to make the payments is to ask it to act beyond its powers. That if such orders are granted they will amount to an illegality. That the ex parte applicant is asking the court to impose on the 1st respondent a duty not statutorily bestowed upon it but is the preserve of another entity, the cabinet secretary. That this is tantamount to amendment of the legislation through imposition of a duty.
4. The application was canvassed by way of written submissions.

Ex parte Applicant's submissions

5. Counsel for the Ex parte applicant submitted that the 1st Respondent by virtue of section 7 of the WCM Act has the duty to manage national parks and with that mandate it can be implied that it has a statutory mandate to control wildlife. That the Court of Appeal in the case of *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (2017) eKLR re-stated that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage caused to property and human life by wildlife. Said the court:

The appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty. The law on this point as succinctly pronounced in *Joseph Boru Ngera & Another vs Kenya Wildlife Service vs 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 the 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.



6. That the Supreme Court in the case of Kenya Wildlife Service v Rift Valley Agricultural Contractor Limited, Supreme Court Petition No.11 of 2015 (2018) eKLR stated as follows on the subject:

A global comparison of laws and jurisprudence relating to animal and wildlife management normally provided that an entity charged with such a management task also collected the revenues generated from activities relating to the same. The rationale being that such revenue supported the costs of management and any related outcomes, including compensation for damage made by animals and wildlife.

7. Arising from the two authorities it was submitted that the duty to pay compensation has been determined by the Court of Appeal and by the Supreme Court. That the ex parte applicant's claim has been approved at Ksh.30,000/= and therefore the 1st Respondent is liable to compensate the ex parte applicant in the sum of Ks.30,000/=. In this respect the applicant relied on the case of Republic v Kenya Wildlife Service & 2 others; Muhia (Ex parte Applicant) (Judicial Review Application E003 of 2024) (2024) KEHC 8086 (KLR) where a sum of Ksh. 5,000,000/= was paid as compensation for the death of the deceased.

1st Respondent's submissions

8. Counsel for the 1st Respondent identified 2 issues for determination:
1. Whether the 1st Respondent is a proper party in these proceedings, and if so whether the orders sought against them are available to the ex parte applicant.
 2. Who shall bear the costs of the application.
9. On the first issue counsel for the 1st Respondent submitted that that they are improperly joined in these proceedings and that the orders sought against them cannot be granted.
10. It was in the first place submitted that an order of mandamus can only issue to compel a party to perform a statutory duty owed to an Applicant. The 1st Respondent in this respect relied on the case of Republic v Kenya Vision 2030 Delivery Board & another Ex parte Eng Judah Abekah (2015) eKLR where the court stated that:

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. 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.

11. The court in the same case stated as follows:

It is important to note, however, that an order of mandamus is not an order of specific performance, like in a contract situation. A party in a judicial review seeking an order of mandamus must show the existence of a statutory duty conferred or invested by statute upon some person, body of persons or tribunal which such person, body of persons or tribunal has failed to perform. See Republic vs. Registrar of Societies & 5 Others ex parte Kenyatta & 6 Others Nairobi HCMCA No. 747 of 2006 [2008] 3 KLR (EP) 521.



12. Counsel referred to the same case where the court cited the Court of Appeal decision in *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge*, Nrb Civil Appeal No. 266 of 1996 which quoted par.90 Halsbury's Laws of England, 4th Edition vol.1 at 111 that:

“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.”

13. It was submitted that the duties of the 1st Respondent are spelt out under section 7(a) to (s) of the WCM Act. That none of these include the duty to compensate or pay compensation on claims resulting from loss or damage caused by wildlife. That such payment not being a statutory duty of the 1st Respondent can only lead to the conclusion that the 1st Respondent is improperly joined in these proceedings and the reliefs sought against it are not only unwarranted but cannot be granted.
14. It was submitted that the submission by the ex parte Applicant that the 1st Respondent should take up the role of the 2nd Respondent to compensate the Applicant is wrong interpretation of the law. That this court should interpret the law as it is without any modifications whatsoever. The 1st Respondent in this respect relied on the case of *Republic v County Government of Nairobi & 2 others x parte Kingpost Limited* (2021) eKLR where the court in declining to grant orders of mandamus against the 3rd Respondent (County Executive Member, Lands and Urban Planning stated that the 3rd Respondent not being the accounting officer (who was statutorily bound to satisfy a court decree) had no role in proceedings and had been improperly enjoined. The court stated:

Whereas the Ex-parte Applicant is correct that the 3rd Respondent is the line minister in matters land, it is apparent that he has no role in these proceedings. This is a case of mis-joinder.

15. It was submitted that the process of compensation claims of loss and damage caused by wildlife is clearly provided for under sections 24 and 25 of the WCM Act. That the Applicant's claim was considered by the Ministerial Wildlife Compensation Committee and deferred the claim. That what was deferred is Ksh.30,000/= and not Ksh.2,000,000/= as is being claimed by the Ex parte Applicant.
16. It was submitted that these proceedings seek to impose a duty on the 1st Respondent in clear disregard and contravention of sections 25(3) of the WCM Act. Consequently, that ex parte applicant has not demonstrated that they are entitled to the orders sought and the application should be dismissed with costs.

Analysis and determination

17. I have considered the grounds in support of the application and the grounds in opposition thereto. The issues for determination:
- (1) Whether the 1st Respondent is under statutory duty to compensate or pay compensation on claims resulting from loss or damage caused by wildlife.
 - (2) Whether this court has the power to issue the prayers sought.
18. The 1st respondent argues that they are not under such duty by virtue of the provisions of section 7 of the WCM Act which sets out its duties but none of those duties stated therein includes the duty to



compensate or pay compensation on claims resulting from loss or damage caused by wildlife. The Ex parte applicant on the other hand argues that one of the duties of the 1st Respondent under the said section is management of national parks which implies that the 1st Respondent has a statutory duty to control wildlife. They relied on the Court of Appeal decision in *Kenya Wildlife Service v Joseph Musyoki Kalonzo* (2017) eKLR where the court stated that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage caused to property and human life by wildlife.

19. Additionally, they cited the Supreme Court decision in the case of *Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited* [2018] KESC 48 (KLR) where the court stated that:

A global comparison of laws and jurisprudence relating to animal and wildlife management normally provided that an entity charged with such a management task also collected the revenues generated from activities relating to the same. The rationale being that such revenue supported the costs of management and any related outcomes, including compensation for damage made by animals and wildlife.

20. It is now abundantly clear that the duty to pay compensation in the matter under dispute has been settled by the Court of Appeal and the Supreme Court in the two decisions cited above. The 1st Respondent has apparently raised similar arguments before other courts as he is raising before this court. The courts in those cases followed the two cited cases in holding that the 1st Respondent is under duty to compensate claims arising out of human and wildlife conflicts. In *Republic v Kenya Wildlife Service & 2 others; Oguna* (Suing as the Legal Representative of the Estate of Peter Ouma Ogola) (Exparte Applicant) [2025] KEHC 2019 (KLR), where the 1st Respondent herein raised a similar argument as in this case that it had no duty to compensate the Applicant, Kimei J. upon considering the two cases cited above stated that:

.....it is evident that the duty to pay compensation has been positively determined by the Court of Appeal and the Supreme Court. It is therefore, incumbent upon the 1st Respondent to compensate the ex parte Applicant since the applicant's claim had been approved following the laid down procedures under Section 25 of the *Wildlife Conservation and Management Act* as stated above. The 1st Respondent therefore owes the applicant the amount of Ksh5,000,000/= as compensation for the fatal injury the deceased. The Applicant has been compelled to approach the court for redress following failure of the 1st Respondent to compensate them despite the clear provisions under the relevant Act.

21. In *Republic v Kenya Wildlife Service & 2 others; Muhia* (Exparte Applicant) [2024] KEHC 8086 (KLR) where the 1st Respondent similarly argued that it was not its duty to compensate the ex parte Applicant and that it was the responsibility of the Cabinet Secretary to do so, the court while relying on the Court of Appeal decision in *Joseph Musyoki Kalonzo* case (supra) held the 1st Respondent liable to compensate the ex parte Applicant. I entirely agree with the decisions in those cases.
22. Going by the above, it is my finding that the issue on who should pay compensation for claims arising from injuries and damage sustained as a result of wildlife attacks is settled: the duty falls on the shoulders of the 1st Respondent. The Supreme Court of Kenya has decreed so and this court is bound by the judgment of that court.
23. It is however to be noted that in all the claims in the above quoted cases, the claims had been approved through the structures set up by section 25 of the WCM Act and the 1st Respondent had refused and or



neglected to honour payment. Judicial Review orders were thus issued to compel the 1st Respondent to honour the payment.

24. The Ex parte Applicant herein in his supporting affidavit stated that after filing the claim form supplied by the 1st Respondent, the 1st Respondent convened a meeting of the Community Wildlife Conservation Committee. That he has been making a follow up on compensation with the 1st Respondent and he was informed in 2024 that the Ministerial Wildlife Compensation Committee approved the claim in 2023 but he is yet to receive the compensation. That the 1st Respondent has not been forthcoming and has been taking in circles for the last 10 years.
25. The legal counsel for the 1st Respondent on the other hand stated in his replying affidavit that the Ex parte Applicant's claim was deliberated by the Tana River County Wildlife Conservation Compensation Committee which recommended payment of Ksh.30,000/=. That the recommendation was referred to the Ministerial Wildlife Conservation Committee which deferred the matter for purpose of clarification on the date of incident of the claim and the P3 form presented.
26. It is clear that the 1st Respondent has taken unduly long to make a determination on the Ex parte Applicant's claim. The 1st Respondent was under duty to make the determination within reasonable time. A period of 10 years is inordinate delay and cannot be construed to be within any stretch of reasonable time. The question is whether the 1st Respondent being guilty of inordinate delay should be compelled by orders of mandamus to pay compensation.
27. A reading of section 25 of the WCM Act shows that an order of mandamus can issue under that section to compel the 1st Respondent to pay a claim approved in accordance with that section where the 1st Respondent has failed to pay. That is why orders of mandamus were issued in the cases referred to above with the effect of compelling the 1st Respondent to pay claims already approved. However, in this case there is no evidence that the claim has been approved as provided under section 25 of the WCM Act. A question then arises whether the court can issue orders of mandamus on the 1st Respondent where a claim has not been approved by the relevant bodies under section 25 of WCM Act.
28. 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.

29. I have perused the WCM Act and noted that it does not make provision for remedy where the Respondents have inordinately delayed in determining a claim lodged by a victim of wildlife attack. In view this lacuna in law, I am of the considered view that this court should intervene by issuance of orders of mandamus to compel the respondents to do their duty which they have refused and or neglected to do to the detriment of the ex parte applicant. They cannot take for ever to determine the



claim. An order of mandamus will serve the ends of justice in this case where the Respondents have failed to perform their duty within some reasonable time.

30. The Ex parte Applicant is asking this court to award him Ksh.2,000,000/= as compensation. However, the duty to verify, recommend and approve compensation falls under mandate of the bodies provided under section 25 of the WCM Act. This court cannot usurp the powers of those bodies so as to make compensation to the Ex parte Applicant as submitted by his counsel. In the case of Benson Ambuti Atega –vs- Kibos Distillers Ltd & 5 Others [2020] eKLR where the dispute related to decisions made in relation to development permissions, the Supreme Court emphasized that, where appropriate, the superior Courts should remit the dispute to the relevant bodies for adjudication.
31. In view of the foregoing, I am of the view that an order of mandamus should issue to the Respondents to determine the dispute over the ex parte applicant's claim within a certain time frame. The Ex parte Applicant cannot continue waiting indefinitely for the Respondents to make a decision.
32. The upshot is that the argument by the 1st Respondent that it is not its duty to compensate the Ex parte Applicant is dismissed. Consequently, I make the following orders:
 1. An order of mandamus be and is hereby issued to the Respondents herein to determine the Ex parte Applicant's claim within three months from the date of delivery of this judgment.
 2. The Ex parte Applicant to have the costs of this application.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 13TH MARCH, 2026

J. N. NJAGI

JUDGE

In the presence of:

Miss Njoroge HB for Mr. Opondo for Ex parte Applicant

Mr. Nyaga for 1st Respondent

Court Assistant - Jumaa

