

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
JUDICIAL REVIEW MISC. APPLICATION NO. E001 OF 2025

IN THE MATTER OF THE CONSTITUTION OF KENYA,2010
AND
IN THE MATTER SECTION 25 OF THE WILDLIFE
CONSERVATION AND MANAGEMENT ACT, 2013
AND
IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL
REVIEW ORDER OF MANDAMUS
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

MILLICENT ANYANGO (suing as the legal
Representative and Administrator of the Estate
of JOSEPH OTIENO OBURU.....EX PARTE
APPLICANT

JUDGMENT

[1] Before the Court for determination is the Notice of Motion dated 19th February 2025. It was filed by the *ex parte* applicant, **Millicent Anyango** (hereinafter, “the applicant”), pursuant to **Sections 8 and 9** of the Law Reform Act, Cap 26 of the laws of

Kenya and **Order 53 Rule 3** of the Civil Procedure Rules, for the following orders:

[a] That an Order of Mandamus be issued to compel the respondents to consider the applicant's claim and immediately release Kshs. 5,000,000/= to the applicant's Advocate.

[b] That the costs of the application be provided for.

[2] The application was premised on the grounds set out on the face thereof and in the Statutory Statement dated 14th August 2024, as well as the Verifying Affidavit sworn by the applicant on 13th August 2024. The applicant deposed that she is the legal representative of the estate of **Joseph Otieno Oburu**, the deceased herein. She further averred that on the 7th November 2020, the deceased was viciously attacked by a hippopotamus while fishing at Usao Sato, occasioning him fatal injuries. The applicant blamed the 1st respondent for breach of statutory duty under the Wildlife Conservation and Management Act, No. 47 of 2013.

[3] The applicant further deposed that the occurrence was reported to Mbita Police Post; and that the 1st respondent's officers visited the scene, took the particulars of the deceased and promised to compensate his estate. She added that she formally applied for compensation by filling the claim form provided by the 1st respondent. She further averred that upon visiting the County offices of the 1st respondent, she was informed that the claim had been approved by the 3rd respondent; and that

in spite of various demands, the claim is yet to be settled four years down the line.

[4] It was therefore the contention of the applicant that, unless the Court intervenes and compels the respondents to act on their decision and settle the claim, they will continue to ignore her demands for compensation. Accordingly, she prayed for the issuance of an Order of Mandamus to compel compliance by the respondents.

[5] The 1st respondent filed a Replying Affidavit in response to the application. The affidavit was sworn by **Jackson Kibor**, the 1st respondent's County Warden for Homa Bay. He deposed that he is also the Secretary of the 2nd respondent, a Committee established to review claims resulting from human-wildlife conflict. He deposed that inaction on the part of respondents was due to the fact that they are public bodies that adhere to timelines dictated by availability of funds.

[6] The 1st respondent further averred that, in its deliberations of on the 15th December 2021 the 2nd respondent recommended payment to the applicant in the sum of Kshs. 5,000,000/=, but the said amount could only be paid in quarterly instalments due to financial constraints. It was further averred that, to that end, the applicant had been allocated Kshs. 1,750,000/= for the financial year 2025. The 1st respondent annexed a list of disbursements to the tune of Kshs. 950 Million for the 2025/2026 financial year and added that the balance of 3,250,000/= would

be paid in the subsequent payouts in installments to be determined by the 3rd respondent until completion.

[7] The 1st applicant explained that it required parliamentary approval of its budget as presented by the 3rd respondent before the claim could be settled; and that the bureaucracy resulting in delay of compensation to victims of Human wildlife conflict is not by design but necessary evil that ensures only the deserving victims receive compensation. Accordingly, the 1st respondent prayed for the dismissal of the application with costs.

[8] Hearing proceeded *ex parte* on 23rd June 2025 pursuant to **Order 12 Rule 2(a)** of the Civil Procedure Rules after the respondents failed to attend court in spite of service. The applicant relied entirely on the Verifying Affidavit filed in support of her Notice of Motion. She annexed to the said affidavit copies of the Compensation Claim Form issued by the 1st respondent, Post-mortem Form issued by Mbita Police Station, among other documents. In addition, counsel for the applicant filed written submissions dated 5th May 2025, in which he 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 *ex parte* applicant; and

[c] Whether *ex parte* applicant is entitled to the Order of Mandamus.

[9] According to the applicant, it is not in dispute that the deceased was killed by a hippo on the 7th November 2020. She relied on **Section 25** of the Act to demonstrate that the 1st respondent is mandated to compensate the estate of the deceased. The applicant also made reference to **Kenya Wildlife Service v Joseph Musyoki Kalonzo** [2017] eKLR and **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited, Supreme Court** Petition No. 11 of 2015 [2018] eKLR, in urging the Court to find and hold that the 1st respondent has the mandate to award compensation to persons injured due to human-wildlife conflict.

[10] On whether an Orders of Mandamus should issue as sought herein, the applicant urged the Court to rely on **Republic v Principal Secretary, Ministry of Internal Security & another, ex parte Schon Noorani & another** [2018] eKLR and **Republic v Kenya Wildlife Service & 2 Others, Muhia** (Ex parte Applicant) (Judicial Review Application E003 of 20204) KEHC 8086 KLR for the proposition that she was within her rights to file the instant Judicial Review application.

[11] In the applicant's submission, she has demonstrated that the Wildlife Conservation and Management Committee recommended for compensation to the deceased's estate in the sum of Kshs. 5,000,000/= for the death the deceased as provided for under **Section 25** of the Act; that the 1st respondent's duty to manage and conserve wildlife comes with the attendant responsibility to shoulder any claim of loss or damage caused by the breach of

that duty; and that the 1st respondent had failed to satisfy the recommendation for compensation within 60 days from reporting of the claim as per the Regulations. Accordingly, the applicant posited that she is entitled to the Order of Mandamus as sought in the application before this court together with costs.

[12] From the foregoing summary, there is no dispute that the deceased was attacked and fatally injured by a hippopotamus while fishing along the shores of Lake Victoria; or that the applicant, as the administrator of the estate of the deceased, caused the incident to be reported to the 1st respondent. There is also no dispute that the respondents, as the relevant bodies charged with the statutory duty of paying compensation in cases of human-wildlife conflict, received a claim from the applicant for payment but 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.

[13] 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..."

[14] The applicant has 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.”

[15] 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.”

[16] 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.

[17] The applicant has demonstrated that reasonable time to comply with the demand was given, and that 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.”

[18] 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.”

[19] In the premises, I find merit in the Notice of Motion dated 19th February 2025. The same is hereby allowed and orders granted as follows:

[a] An Order of Mandamus be and is hereby made to compel the respondents to pay compensation in the sum of Kshs. 5,000,000/= to the Ex Parte Applicant.

[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 10TH DAY OF MARCH 2026**

.....
OLGA SEWE
JUDGE