

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT LODWAR**  
**HCJR NO. E009 OF 2025 (CONSOLIDATED WITH E009 OF 2025)**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR**  
**JUDICIAL REVIEW (ORDERS 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.....APPLI**

**CANT**

**VERSUS**

**KENYA WILDLIFE SERVICE.....**

**RESPONDENT**

**AWESIT LOMOSINGO** (Suing as the Legal Representative of the Estate of Lochering  
Lobuin and Lobwel Luboin respectively (DCDs)

.....**EX PARTE APPLICANT**

**RULING**

**The application**

1. The matters before this Court for determination involve two consolidated Notice of Motion Applications both dated 20<sup>th</sup> October 2025. The Ex Parte Applicant in both applications is appearing as the legal representative and administrator of the estates of two deceased individuals; Lochering Lobuin in Application E010 of 2025 and Lobwel Lubuin in Application E009 of 2025.
2. The two Applications have been brought pursuant to the leave granted by this court on 18<sup>th</sup> November 2024. Both and seek the orders of:

- a. An Order of Mandamus be issued to compel the Respondent to pay to the *ex parte-applicant* the sum of Kshs. 5,000,000.00 being compensation awarded by the county compensation committee as confirmed by the ministerial wildlife compensation committee
  - b. Costs of the Application be provided for by the Respondents.
  - c. Such further orders or other reliefs as the Honourable Court may deem just and expedient to grant
3. The grounds upon which the Ex Parte Applicant seeks the Order of Mandamus are set out comprehensively in the Statutory Statements and amplified in the Verifying Affidavits sworn by Awesit Lomosingo. The applications are premised on the fact that the 1<sup>st</sup> Respondent is a statutory body with a clear, non-discretionary duty to compensate victims of human-wildlife conflict once the internal verification and approval processes have been concluded.
4. The primary ground is the existence of a statutory right under Section 25(3)(a) of the Wildlife Conservation and Management Act, 2013, which provides that in the case of death, the Cabinet Secretary shall pay compensation of five million shillings. The Applicant argues that once the relevant committees have recommended and approved the sum of award, the duty moves from the realm of administrative discretion to a mandatory ministerial duty.
5. It is the Applicant's case that nearly nine years have elapsed since the deaths occurred, and approximately three years have passed since the formal approval by the Ministerial Committee. The delay is characterized as a breach of the Applicant's right to fair administrative action under Article 47 of the Constitution of Kenya, which requires that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
6. The third ground focuses on the 1<sup>st</sup> Respondent's failure to perform its primary function of wildlife management and the attendant liability for losses caused by wildlife. The Applicant asserts that the 1<sup>st</sup> Respondent is

mandated under Sections 6 and 7 of the Act to manage national parks and conservation areas, and that this mandate carries with it the responsibility to shoulder any claims arising from the breach of that duty.

7. The Applicant posits that the State's failure to pay approved compensation awards undermines the rule of law and leaves the public with the impression that the government is immune to its own laws. The Applicant argues that unless the Court intervenes, the 1<sup>st</sup> Respondent will continue to ignore the Applicant's demands, thereby causing further psychological and economic distress to the bereaved family.
8. Finally, the Applicant contends that there is no other adequate or alternative remedy available. Due to the protections afforded to the government under Section 21(4) of the Government Proceedings Act, the Applicant cannot levy execution or attachment against government property to satisfy the debt. Therefore, an Order of Mandamus is the only effective legal instrument to compel the relevant accounting officers to release the funds.

### **Response**

9. The 1<sup>st</sup> Respondent opposed the applications through two Replying Affidavits sworn by Elijah Chege, the Assistant Director in charge of Turkana County. The primary argument is that it is an improper party to the proceedings. It asserts that its functions are limited to those enumerated under Section 7 of the Wildlife Conservation and Management Act, which include conservation, security for wildlife, and management of national parks, but do not include the payment of compensation for human-wildlife conflict. The Respondent argues that Section 25(3) of the Act specifically places the duty of payment on the Cabinet Secretary for the Ministry of Tourism and Wildlife.
10. The Respondent views its role in the compensation committee structure as purely secretarial. It argues that while it serves as the secretary to the County Wildlife Conservation and Compensation

Committee (CWCCC) established under Section 18, the committee itself is the body mandated to review and recommend payments, which are then subject to the Cabinet Secretary's approval. Therefore, the 1<sup>st</sup> Respondent contends that it cannot be compelled to perform an act that is legally the preserve of the Cabinet Secretary.

11. Regarding the specific claims, the Respondent acknowledges the incident of 5<sup>th</sup> March 2016 and the subsequent filing of claim forms. However, in relation to Application E009 of 2025, the Respondent depones that the claim was deferred for several years due to disparities in the date of death appearing on the death certificate. The Respondent argues that the nine-year delay is largely attributable to the Applicant's failure to provide correct documentation initially.
12. The Respondent further argues that the applications are premature and offend the doctrine of ripeness. It contends that until a specific decision to pay has been signed off by the Cabinet Secretary and funds are allocated by the National Treasury, the Court cannot issue a Mandamus order compelling payment. The Respondent suggests that granting the orders sought would be tantamount to the Court usurping the roles of the CWCCC and the Cabinet Secretary.
13. Finally, the 1<sup>st</sup> Respondent submits that issuing an order for immediate payment would be in violation of Section 24 of the Act, which establishes a Wildlife Compensation Scheme funded through the budget process. It argues that the KWS does not have independent funds to satisfy these claims and that such an order would cripple its conservation efforts to the detriment of the general public.

### **Applicant's Submissions**

14. The Applicant filed its written submissions on 19<sup>th</sup> January 2026, addressing the issues of statutory mandate, the person responsible for compensation and the availability of Mandamus. On the first issue of

mandate, the Applicant relies on Sections 6 and 7 of the Act to demonstrate that the 1<sup>st</sup> Respondent has the statutory authority to manage wildlife. The Applicant posits that this mandate is not limited to counting animals but extends to managing the outcomes of wildlife presence, including human-wildlife conflict.

15. The Applicant relies heavily on the Court of Appeal decision in **Kenya Wildlife Service v Joseph Musyoki Kalonzo (2017) eKLR**, where it was held that because the appellant has 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 Court of Appeal further observed that neither the parties nor the courts should concern themselves with the internal arrangements of the KWS regarding whether the CEO or the Cabinet Secretary disburses the money.
16. To further bolster this point, the Applicant cites the Supreme Court's finding in **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited, Supreme Court Petition No. 11 of 2015 (2018) eKLR**, which stated that since the KWS is the revenue collector for national parks, it is responsible for compensating for damage occasioned by wild animals. The Applicant submits that the KWS, as a body corporate, is the principal entity responsible for these claims, regardless of the administrative label of the committee secretary.
17. On the issue of whether Mandamus is available, the Applicant submits that the four-year delay after approval is unconscionable. The Applicant points out that various High Court judges have granted Mandamus orders in identical circumstances, compelling the KWS to pay approved sums of Kshs. 5,000,000.00 within 30 days.
18. The Applicant concludes that having satisfied all procedural requirements and obtained the necessary approvals from both the County and Ministerial committees; the Ex Parte Applicant is entitled to an order of Mandamus to enforce the compensation. The Applicant also seeks

costs, citing the Respondent's obstructive and bureaucratic posture which forced the family into litigation.

### **Respondent's Submissions**

19. In its submissions dated 15<sup>th</sup> January 2026, the 1<sup>st</sup> Respondent maintains that it is an improper party because it lacks the accounting authority to satisfy the award. Citing **Republic vs County Government of Nairobi & 2 others Ex-Parte Kingpost Limited (2021) eKLR**, the Respondent argues that suing a line minister or a secretary instead of the accounting officer is a case of mis-joinder. It argues that the fulcrum of an order of mandamus is that a statutory duty must be owed to an applicant by the specific body being sued.
20. On the Application in E009 of 2025, the Respondent acknowledges the long delay but submits that the delay was a product of laxity on the part of the Ex-parte Applicant who failed to provide a duly filled form with the correct date of death. It argues that the KWS's act of assisting the Applicant in rectifying the forms was a gesture in the spirit of service to humanity that should not be used as a basis for a finding of maladministration.
21. The Respondent also addresses the amount sought. It argues that while the Act sets a cap of Kshs. 5,000,000 for death, the Court cannot simply award this amount without a final recommendation from the CWCCC. The Respondent argues that for the Court to order the payment of a specific sum would be "arbitrary and unlawful.
22. Finally, the Respondent submits that human-wildlife conflicts are resolution preserves of experts and committee members not being employees or officers of the 1st Respondent. Therefore, the assumption that KWS makes these decisions is utterly misleading and the application should be dismissed with costs.

### **Issues, Analysis and Determination**

23. The court having duly considered the applications before it, the respective responses and the parties' rival submissions identifies the sole issues for determination to be whether the Applicant is entitled to the judicial review orders of Mandamus as sought in the two applications.
24. To start with, there exist the undisputed facts that there occurred a crocodile attack incident of 5th March 2016 when the deceased persons were viciously and fatally attacked while fetching water at Teloteteleit location within Turkana County. The incident was duly reported to the Lodwar station of the 1<sup>st</sup> Respondent, the necessary claim forms were duly obtained and completed, and the required evidence of death and legal representation presented. Thereafter the 1<sup>st</sup> Respondent officers visited the scene, conducted investigations and documented the details of the attack, providing the family with expectations that statutory compensation would be forthcoming as provided under the Wildlife Conservation and Management Act, No. 47 of 2013.
25. The Respondent then provided the Ex Parte Applicant with the statutory claim forms which were completed and returned to their Lodwar office on 19<sup>th</sup> May 2016. For application No E010 of 2025, the Ministerial Wildlife Compensation Committee (MWCC) validated and approved a compensation award of Kshs. 5,000,000.00 on 21<sup>st</sup> November 2022. However, in Application E009 of 2025, the 1<sup>st</sup> Respondent initially raised objections regarding disparities in the date of death on the death certificate, which led to the claim being deferred by the County Wildlife Conservation and Compensation Committee (CWCCC) during its meetings in May 2017 and October 2019 but was eventually approved.
26. Based on the said facts, the court mandate crystalises to determine whether the Applicant is entitled to the judicial review orders of Mandamus sought in the application. The 1<sup>st</sup> Respondent has anchored its entire opposition on the argument that the Cabinet Secretary, and not the Kenya Wildlife Service, is the entity mandated to pay compensation under Section 25(3) of the Act. While a literal reading of the relevant provisions

identifies the Cabinet Secretary, this Court must, as guided by the Court of Appeal and the Supreme Court, adopt a purposive and holistic approach to statutory interpretation, as mandated by Article 259 of the Constitution.

27. The 1<sup>st</sup> Respondent is established under Section 6 of the Act as a body corporate with perpetual succession and a common seal, having the capacity to sue and be sued. Section 7 sets out the functions of the Service, which include the management and conservation of wildlife conservation areas.
28. The superior courts in Kenya have consistently held that the mandate to manage is not an abstract concept but includes the responsibility for the outcomes of that management. In the case of **Kenya Wildlife Service vs Joseph Musyoki Kalonzo (2017) eKLR**, the Court of Appeal held that the duty to manage and conserve wildlife carries an attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty. The Court stated as follows:

**“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.”**

29. This Court further notes that the County Wildlife Conservation and Compensation Committees (CWCCC) are established under Section 18 of

the Act, and their operations are inextricably linked to the 1<sup>st</sup> Respondent. The KWS provides the secretarial services and the Act mandates the Secretary to the committees be an officer of the Service. This creates an agency relationship where the 1<sup>st</sup> Respondent acts as the principal for the administrative functions of the committee. As a principal, the 1<sup>st</sup> Respondent cannot disclaim liability for the delays or omissions of its agents.

30. The Supreme Court of Kenya in **Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited (2018) eKLR** provided the final word on this matter by stating that as the revenue collector for national parks, the KWS is responsible for compensating damages occasioned by wild animals. It is a basic principle of natural justice and public law that the entity that derives economic benefit from a resource must also bear the social costs of its maintenance. The KWS manages the wildlife, collects park fees, and possesses the technical expertise to verify claims; it cannot then pass the buck to the Cabinet Secretary when it is time to pay.
31. Consequently, the Court finds that the 1<sup>st</sup> Respondent is the proper party to these proceedings and that it owes a public legal duty to the Applicant to ensure that compensation awards, once recommended and approved through the statutory process, are satisfied without delay. The defense of misjoinder is therefore dismissed as a meritless procedural technicality that flies in the face of established superior court precedents.
32. The Respondent further argues that the claims are not ripe for determination because the administrative process has not been completed, particularly in Application E009 where documentation was deferred. However, the Respondent's own affidavits contain admissions that contradict this position. That resistance equally fails for being evasive and lacking in candour.
33. In Application E010 of 2025, the Applicant asserts that approval was granted by the Ministerial Committee on 21<sup>st</sup> November 2022. The Respondent has not produced any evidence to rebut this specific date of

approval. In Application E009 of 2025, the Respondent admits in its Replying Affidavit that the rectification of the claim form has since been done and communicated to the Claimant now awaiting payment. By making this admission, the Respondent has effectively conceded that the claim has passed all verification hurdles and has entered the final phase of disbursement.

34. The ripeness doctrine, as discussed in **Republic vs Kenya Wildlife Service & 2 others; Leseo & another (2023) KEHC 10559 eKLR**, is meant to prevent courts from adjudicating hypothetical or incomplete disputes. A claim is ripe when it has crystallized into a recognized debt or when the administrative body has made its final decision. In the instance, the administrative decisions have been made; the only thing remaining is the ministerial act of releasing the funds.
35. Similarly, the exhaustion of remedies argument falls flat. The doctrine of exhaustion applies when a claimant has a statutory appropriate and adequate process available but chooses to bypass it. Here, the Applicant is not challenging a negative decision but is seeking to enforce a positive one or an admitted liability. There is no appeal against an approval that is simply not being paid. Mandamus is specifically designed to address such procedural delays and failures to act.
36. On the delay, the court notes that the victims were killed on 5<sup>th</sup> March 2016. The initial committee deliberations took place in May 2017. The claim in Application E010 of 2025 was deferred in October 2019. On the other hand, approval in Application E009 of 2025 was granted in November 2022. It is now 2026. A total of ten years has passed since the tragedy, and over three years since the final approvals were noted.
37. Article 47 of the Constitution and the Fair Administrative Action Act provide that every person has a right to administrative action that is expeditious. Regulation 27 of the 2017 Regulations sets a target of settlement within 60 days of reporting. While these regulations post-date the incident, they serve as a benchmark for what the legislature considers

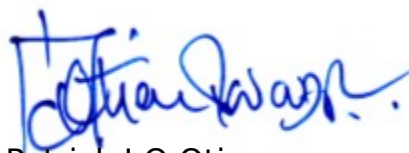
a reasonable time for government action. A delay of three years post-approval is, by any objective standard, unreasonable, unlawful, and unconstitutional. In **Republic v Kenya Wildlife Service & 2 others; Ouma (2023) KEHC 5759 (KLR)**, the court noted that a five-year delay in payment after approval erodes the confidence of the general public in the efficiency of the administrative processes of the Government.

38. The Court holds that the *lack of funds* or *waiting for the Treasury* excuses by the 1<sup>st</sup> Respondent is not a valid legal justification for failing to comply with a statutory duty. Public bodies have a duty to prioritize court-ordered payments and statutory compensation claims over other discretionary spending. The Respondents' accounting officers have a legal obligation to ensure that funds specifically allocated for the Wildlife Compensation Scheme under Section 24 of the Act are budgeted for and utilized for their intended purpose.

39. In the premise, the court finds merit in the Notice of Motion applications both dated both dated 20<sup>th</sup> October 2025. The same are hereby allowed and the orders granted as follows:

- a. An Order of Mandamus is hereby issued and directed at the 1<sup>st</sup> respondent and compelling it, the Kenya Wildlife Service, to pay to the Ex Parte Applicant, Awesit Lomosingo (as the legal representative and administrator of the estates of Lochering Lobuin and Lobwel Luboin), the sums of Kshs. 5,000,000.00 each, being the approved wildlife compensation.
- b. The 1<sup>st</sup> Respondent shall pay the costs of these consolidated applications to the Ex Parte Applicant.

Dated, signed and delivered virtually this 9<sup>th</sup> day of April 2026.



Patrick J O Otieno

Judge

ORIGINAL