

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY

HCJR NO. E004 OF 2026

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**

AND

**IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL
REVIEW ORDER OF MANDAMUS**

BETWEEN

REPUBLIC.....
APPLICANT

VERSUS

THE CABINET SECRETARY
MINISTRY OF TOURISM AND
WILDLIFE.....RESPONDENT

AND

MONICA ACHIENG ADIKA

(Suing as the administrator and
legal representative of the Estate of

MICHAEL OTIENO ORIMA).....EX PARTE
APPLICANT

JUDGMENT

[1] The Notice of Motion dated 8th December 2025 was filed by the *ex parte* applicant, **Monica Achieng Adika** (hereinafter, “the

applicant”) in her capacity as the legal representative of the estate of **Michael Otieno Orima** (the deceased) pursuant to **Sections 8 & 9** of the Law Reform Act (Cap 26) and **Order 53 Rule 3** of the Civil Procedure Rules, 2010, seeking that:

[a] An Order of Mandamus be issued to compel the respondent to pay the *ex parte* applicant the sum of Kshs. 5,000,000/= through his Advocate.

[b] Costs of and further incidentals to this application be provided for by the respondent.

[c] Such further or other relief as the Honorable Court may deem just and expedient to grant.

[2] The application was premised on the grounds set out in the Statutory Statement and the Verifying Affidavit sworn by the applicant. Briefly, the applicant averred that she is the next of kin and widow of the late **Michael Otieno Orima**, (the deceased herein). She annexed a copy of the Grant of Letters of Administration Ad Litem issued to him in that regard on 30th October 2025.

[3] The applicant further averred that on 26th December 2023, the deceased was viciously attacked by a hippo while fishing at Kisuyi Beach on the shores of Lake Victoria, thereby occasioning him fatal injuries. She annexed a copy of the Certificate of Death dated 7th March 2024 and a Postmortem Form dated 3rd January 2024 to her Supporting Affidavit in proof of death of the deceased. She blamed the accident on the negligence and breach

of statutory duty on the part of the respondent as provided for under the Wildlife Conservation and Management Act No. 47 of 2013.

[4] The applicant further averred that the occurrence was reported to Mbita Police Station under O.B. No. 03/26/12/2023. She also made a report to the Chief of the area. She deposed that the respondent's officers went to the scene and took their particulars with a promise that the estate of the deceased would be compensated for his death. The applicant also mentioned that she later filled and filed a claim form provided by the respondent to initiate the payment process.

[5] At paragraphs 5, 6, 7 and 8, the applicant averred that it was within her knowledge that a meeting of the Community Wildlife Conservation Committee (CWCC) was convened at which her claim was approved; and that thereafter recommendations were made to the Ministerial Wildlife Compensation Committee (MWCC) that validates and approves payment of the awards by the aforesaid committee. The applicant added that in the course of following up the matter at the County office of Kenya Wildlife Service, she got to learn that the Ministerial Wildlife Compensation Committee approved the award of Kshs. 5,000,000.00 in September 2025.

[6] The applicant was therefore aggrieved that payment is yet to be made, in spite of her follow-up efforts; hence the instant application. She posited that unless this court intervenes and

compels the respondent to act on their decision and settle the claim, the respondent will continue to ignore her demands for compensation.

[7] The record shows that the applicant applied for and obtained leave of the Court to file the instant application. The record further confirms that the application was duly served on the respondent and that the respondent opted not to defend it. Accordingly, the matter proceeded ex parte upon the Court being satisfied as to service.

[8] From the foregoing summary, there is no dispute that, on the 26th December 2023, the deceased was attacked by a hippopotamus while fishing at Kisuyi Beach on the shores of Lake Victoria. The applicant, as the administrator of the estate of the deceased caused the incident to be reported to Mbita Police Station. There is also no dispute that the respondent, as the relevant body charged with the statutory duty of paying compensation in cases of human-wildlife conflict, received a claim from the applicant for payment but is 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.

[9] 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..."

[10] 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."

[11] 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."

[12] 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.

[13] The applicant has demonstrated that a claim was made to the respondents in accord with **Section 25** of the Wildlife Management and Conservation Act; that reasonable time to comply with the demand was given and yet no payment has been made in respect of the subject claim. The respondent having failed to respond to the application, the conclusion to draw is that there is no justification for the respondent's failure to settle the claim two years down the road. 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.”

[14] 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.”

[15] In the premises, I find merit in the Notice of Motion dated 8th December 2025. The same is hereby allowed and orders granted as follows:

[a] An Order of Mandamus be and is hereby made to compel the respondent to pay compensation in the sum of Kshs. 5,000,000/= to the applicant on behalf of the estate of the deceased **Michael Otieno Orima**.

[b] Costs of the application to be paid to the applicant by the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY
THIS 15TH DAY OF APRIL 2026**

OLGA SEWE

JUDGE