



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

ELC MISC. APPLICATION 3 OF 2019

CHARLES KIMEU MWIKYUVYA.....APPLICANT

VERSUS

KENYA WILDLIFE SERVICE.....RESPONDENT

RULING

1. By a notice of motion dated 6th February 2019 brought under **section 18(1)(b)(ii) & (2), sections 1A, 1B & 3A of the Civil Procedure Act (Cap. 21), Article 159 of the Constitution of Kenya, and all enabling provisions of Civil Procedure Rules**, the Applicant sought the following orders:

a. That the suit filed by the Applicant against the Respondent being Siakago CMCC No. 17 of 2018 Charles Kimeu Mwikyuvya Vs Kenya Wildlife Service in the Chief Magistrate's Court be transferred therefrom to the ELC Court at Embu for trial and determination.

b. That costs of the Application be provided for.

2. The said application was based upon the grounds set out on the face of the motion and supported by the supporting affidavit sworn by the Applicant on 6th February 2019. It was contended that Siakago CMCC No. 17 of 2017 was filed in the wrong court which had no jurisdiction and that it would be prudent to transfer that suit to this court for trial and disposal.

3. It would appear from the record that the Respondent did not file any response to the said application. When the application was listed for hearing on 12th March 2019 the Applicant's advocate prosecuted it in the absence of the Respondent who did not appear despite service. The Applicant's advocate prosecuted the said application orally on the basis of the grounds set out in the notice of motion and the supporting affidavit. The court was urged to allow the application since it was not opposed. However, the court reserved the ruling thereon to enable it consider the propriety of the application.

4. The court has noted from the copy of the plaint in Siakago CMCC No. 17 of 2018 that the Applicant's claim against the Respondent is for compensation for the death of his son which resulted from a crocodile attack along Tana River at around Masinga Dam in 2015. The said claim is based both upon the specific provisions of the **Wildlife Conservation and Management Act, 2013** (hereinafter the **WCMA 2013**) and the general provisions of the **Law Reform Act (Cap. 26)**.

5. The court has also noted from the material on record that the Respondent entered appearance and filed a statement of defence denying not only the Applicant's claim but also the jurisdiction of the Magistrate's Court to entertain the claim. It was further pleaded that under **section 25 of WCMA 2013** there was specific statutory procedure for management of such claims which provided for an appeal to the National Environment Tribunal (NET) and a further appeal to the Environment & Land Court (ELC).

6. The court is of the opinion that the main question for determination in this matter is whether this court has **original** jurisdiction to entertain the suit pending at Siakago Law Courts. It would be futile for this court to transfer the suit from one court without jurisdiction to another court equally without jurisdiction.

7. The relevant provisions of **section 25** of the **WCMA 2013** stipulate as follows:

“25. Compensation for personal injury or death or damage to property:

1) Where any person suffers any bodily injury or is killed by any wildlife listed under the Third Schedule, the person injured, or in the case of a deceased person, the personal representative or successor or assign, may launch a claim to the County Wildlife Conservation and Compensation Committee within the jurisdiction established under this Act.

2) The County Wildlife Conservation and Compensation Committee established under section 18 shall verify a claim made under subsection (1) and upon verification, submit the claim to the Cabinet Secretary together with its recommendations thereon.

3) The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows:

(a) In the case of death, five million shillings;

(b) In the case of injury occasioning permanent disability, three million shillings;

(c) In the case of any other injury, a maximum of two million shillings, depending on the extent of injury.

4) The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates: Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to No. 47 Compensation for personal injury or death or damage to property. 1268 No. 47 Wildlife Conservation and Management 2013 take reasonable measures, to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.

5) A person who is dissatisfied with the award of compensation by either the County Wildlife Conservation and Compensation Committee or the Service may within thirty days after being notified of the decision and award, file an appeal to the National Environment Tribunal and on a second appeal to the Environment and Land Court.

6) The Cabinet Secretary may, by notice in the Gazette, prescribe such regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.”

8. The court has further perused the Third Schedule referred to in section 25(1) if WMCA 2013 and noted that a crocodile is amongst the animals listed therein for purposes of a claim for compensation to the relevant Committee under section 25.

9. The court is thus of the opinion that it has no original jurisdiction to entertain the claim for compensation pending before Siakago Law Courts. This court is only bestowed with appellate jurisdiction from any appeals arising from the decision of the NET. It would therefore be futile to grant the order of transfer sought by the Applicant.

10. The court is aware that the Applicant’s claim for compensation is also grounded upon the Law Reform Act (Cap. 26) and the Fatal Accidents Act (Cap. 32). It is arguable that the Applicant may elect to base his claim solely upon the latter statutes to the exclusion of the WMCA 2013. The court is, however, of the opinion that one of the canons of statutory interpretation require that specific statutes shall take precedence over statutes of general application. Parliament was aware of the existence of the two general statutes when section 25 of WMCA 2013 was enacted to deal with compensation claims arising from injury, death or damage to property caused by wildlife. The intention of parliament ought to be given its due effect. See **Ruturi & Another V Minister of Finance & Another [2001] 1E.A.253**.

11. In the case of **Peter Muturi Njuguna V Kenya Wildlife Service [2017] eKLR**, the Court of Appeal was faced with a similar situation under the repealed **Wildlife (Conservation and Management) Act, (Cap. 376)**. The court resolved the issue as follows in paragraph 18 of the judgement:

“From the foregoing, it is abundantly clear to us that where there is a specific procedure as to the redress of grievances, the same ought to be strictly followed. Having arrived at that conclusion, we are satisfied that the learned judge of the High Court did not err by upholding the lower court’s finding. Section 62(1) of the Act is explicit on the procedure to be followed by any person who suffers bodily injury form or is killed by any animal. Such person is required to make an application to the District Committee. It is good practice intended to foster public confidence and trust to let each organ perform its mandate. The Appellant ought to have approached the District Committee first and followed the appellate system designed under the Act ...”

12. The upshot of the foregoing is that the court finds no merit in the Applicant’s notice of motion dated 6th February 2019. Accordingly, the same is hereby dismissed with no order as to costs.

13. It is so decided.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **18TH DAY** of **JULY, 2019**.

In the absence of the Applicant and the Respondent.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

18.07.19