

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL REVISION NO. E080 OF 2025

MOSES OLE MAHEMETI.....
APPLICANT

=VERSUS=

REPUBLIC.....
RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 25th July 2025 brought under Article 165(6) and (7) and Article 50 of the Constitution of Kenya, Sections 362 and 364 of the Criminal Procedure Code and all other enabling provisions of law seeking the following orders:-

(i) This application be certified as urgent and service thereof be dispensed with in the first instance.

(ii) Pending the hearing and determination of this application, there be a stay of a execution of the sentence and compensation order issued by the Honourable Court at Taveta on 29th May 2025 in Criminal Case No. E177 of 2025.

(iii) This Honourable Court be pleased to call for and examine the record of proceedings and ruling in Criminal Case No. E177 of 2025 for purposes of satisfying itself as to the legality, correctness and property of the orders of compensation imposed on the Applicant.

(iv) The Honourable Court be pleased to set aside the order for compensation of Kshs. 120,000/= to the Kenya Wildlife Service (KWS) on grounds that the discretion to order compensation was not exercised judiciously and lacked legal justification.

(v) The costs of this application to be provided for.

2. It is based on the following grounds:-

(i) On 29th May 2025, the trial court convicted the Applicant of the offence of entry and grazing in a national park and sentenced him to a fine of Kshs. 70,000/= in default six (6) months imprisonment and further ordered the Applicant to pay Kshs. 120,000/= as compensation to KWS, in default of which my cattle be forfeited.

- (ii) The Learned trial Magistrate erred in law and fact by imposing a compensation order of Kshs. 120,000/= without providing any reasons or justification for the same, in breach of the principles of fair trial and due process.**
- (iii) The said compensation amount of Kshs. 120,000/= was not pleaded and proved by the prosecution, and no evidence or valuation report was tendered to support the quantum, thereby rendering the order arbitrary, excessive and punitive.**
- (iv) The offence for which the applicant was convicted, grazing did not occasion any proven or quantified loss or damage and if any claim of damage exists the same ought to be pursued through a civil claim in a competent court.**
- (v) The Learned Magistrate failed to record any reasoning or legal basis for the imposition of the compensation order, thereby denying the applicant the benefit of meaningful appellate or supervisory review.**

- (vi) The orders of the trial court amount to an abuse of discretion, resulting in an unjust enrichment of the complainant (KWS) and financial oppression of the applicant.**
- (vii) The Honourable Court has supervisory jurisdiction under Article 165(6) and (7) of the constitution and revisionary powers under Sections 362 and 364 of the criminal procedure code to intervene and remedy any illegality, incorrectness or impropriety in the subordinate court's proceedings.**
- (viii) The Court failed to exercise its discretion judiciously in making the compensation order contrary to the requirements of Section 31 of the penal code and other applicable legal principles.**
- (ix) While Section 31 of the penal code provides for orders of compensation, the discretion to order compensation must be exercised judiciously and with proper justification. The trial court failed to provide any legal or factual basis for the compensation order, rendering it unlawful.**

(x) That it is in the interest of justice that this Honourable Court revises the said orders to ensure fairness and compliance with the law.

3. The Applicants in E081, E082 and E083 of 2025 filed similar applications supported by affidavits sworn by the Applicants.

4. The Applicant in this revision, **MOSES OLE MAHEMETI** deposed as follows in his supporting affidavit:-

(i) I am the Applicant herein and the accused person in Criminal Case No. E177 of 2025 at the Chief Magistrate's Court at Taveta, hence competent to swear this affidavit.

(ii) There is now produced and shown to me copies of the documents from pages 1 to 2 forming the bundle of documents in support of the exhibit marked 'MOM-1'. Reference to all documents shall be in italics and unless otherwise specified shall refer to the bundle marked 'MOM-1'.

(iii) On 29th May 2025, I was convicted of the offence of grazing in a National Park and sentenced to a fine of Kshs. 70,000/= in default six (6) months' imprisonment. The court further ordered that I

pay compensation of Kshs. 120,000/= to the Kenya Wildlife Service (KWS), in default my livestock be forfeited.

- (iv) I am advised by my advocates on record, whose advice I verily believe to be true that while the court is duly empowered to impose penalties in accordance with the law, the compensation order in this case was made in a manner that is plainly punitive, arbitrary and lacking any legal or evidentiary basis.**
- (v) No valuation of alleged environmental damage or loss was tendered by the prosecution and the trial court did not inquire into or provide reasons as to how the figure of Kshs. 120,000/= as compensation was arrived at.**
- (vi) The prosecution merely made an oral prayer for compensation without providing any factual or legal basis for the same and the trial court simply adopted a compensation figure of Kshs. 120,000/= without question or analysis.**

(vii) I am advised by my advocates on record that such compensation orders, especially in criminal matters, must comply with the law and principles of fairness, and the discretion to impose them must be exercised judiciously. In the absence of reasons or justification, the said order violates my rights under Article 50(2) of the Constitution.

(viii) The Learned Magistrate failed to record any reasoning or legal basis for the imposition of the compensation order, thereby denying the applicant the benefit of meaningful appellate or supervisory review.

(ix) I am further advised by my advocates on record which advise I verily believe that Section 31 of the Penal Code and other enabling provisions allow for compensation only in clear cases where damage or loss is quantifiable, proved, and casually linked to the offence. In this case, no such nexus or proof was established.

(x) If indeed there was damage caused by my cattle, then such claim ought to be pursued through a

civil suit so that liability, quantum and evidentiary issues can be adjudicated upon fairly between parties.

(xi) I am aggrieved by the conduct and decision of the trial court and humbly urge this Honourable Court to intervene to prevent a miscarriage of justice.

(xii) It is in the interest of justice that this Honourable Court exercises its supervisory and revisionary jurisdiction to examine and revise the impugned orders.

5. The parties filed written submissions as follows; The applicants submitted through their Advocate that they are challenging a revision application against an order for compensation of Kshs. 120,000 imposed in Criminal Case No. E177 of 2025.

6. They argued in their written submissions that the compensation order was neither legal nor justifiable.

7. They note that under Section 31 of the Penal Code and Section 175(2) of the Criminal Procedure Code, a court may order compensation only where there is proof of injury

suffered by the complainant and where the convicted person's act gives rise to a civil liability.

8. Citing **Francis Gachugu Niguna v Republic and Ezekiel Mjomba Katu v Republic**, the applicants contend that the trial court must base such an order on proven facts and state reasons for it.
9. In this case, they assert there was no evidence of any injury to the complainant, nor any demonstration that the offences gave rise to civil liability.
10. Regarding the first applicant, the learned magistrate merely stated that 400 cows needed securing and maintenance without any evidence of how or where this occurred.
11. The applicants further argue that without clear proof of injury and civil liability, the compensation amounts to unjust enrichment.
12. They conclude that the compensation order was erroneous and should be set aside, with the applicants reimbursed for any sums already paid.
13. This court has been called upon to exercise its supervisory and revisionary jurisdiction.

14. I have carefully examined the application, the supporting affidavit, the submissions by the applicants, and thoroughly reviewed of the trial court record for Criminal Case No. E177 of 2025.
15. The applicants have challenged the legality and propriety of the compensation order of Kshs. 120,000 made in favour of the Kenya Wildlife Service (KWS) on 29th May 2025.
16. The main grievance is that this order was imposed without any evidentiary foundation, without quantification of loss, and without the trial court providing any reasons or justification as required by law.
17. Having considered the matter, this court finds that the application has clear merit and must be allowed.
18. The power of this court to revise the proceedings of the subordinate court is derived from Article 165(6) and (7) of the Constitution of Kenya, which grants the High Court supervisory jurisdiction over subordinate courts, and Sections 362 and 364 of the Criminal Procedure Code.
19. Section 362 empowers the High Court to call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness,

legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings.

20. In this regard, the court is not merely a passive reviewer but has an active duty to correct any illegality or impropriety that comes to its attention to prevent a miscarriage of justice.

21. The legal framework governing compensation orders in criminal proceedings is found in Section 31 of the Penal Code and Section 175(2)(b) of the Criminal Procedure Code.

22. Section 31 of the Penal Code provides the general discretion for a court to order a convicted person to pay compensation to any person injured by the commission of the offence.

23. However, this discretion is not absolute. It is firmly guided by the principles set out in Section 175(2) of the Criminal Procedure Code, which provides that a court may order a convicted person to pay compensation to an injured party only when it finds, based on the facts proved in the case, that the convicted person has a civil liability arising from the act constituting the offence.

24. The amount awarded must be such sum as the court considers could justly be recovered as damages in civil proceedings.

25. A critical reading of these provisions makes it abundantly clear that an order for compensation is a serious judicial determination with quasi-civil consequences.
26. It cannot be made arbitrarily or as an automatic appendage to a criminal sentence.
27. The trial court must be satisfied on evidence that the complainant suffered actual, quantifiable injury or loss directly caused by the offender's criminal act.
28. Further, the court must determine that the act would give rise to a civil cause of action, such as trespass or negligence, and must then assess the quantum of damages as would be done in a civil court.
29. This requires a judicial inquiry into the facts and a reasoned justification for the final figure awarded.
30. In the present case, the trial court record reveals a stark failure to adhere to these fundamental legal requirements.
31. The applicants were convicted for the offence of entry and grazing in a national park.
32. The prosecution made an oral prayer for compensation. Without any valuation report, expert testimony regarding environmental damage, or any documentary evidence proving

the specific loss suffered by the Kenya Wildlife Service, the trial court simply ordered each applicant to pay Kshs. 120,000 in compensation.

33. The court did not, nor could it on the evidence before it, make a finding on the specific civil liability of the applicants.

34. There was no evidence as to the extent of grazing, the specific area destroyed, the carrying capacity of the land, or the cost of restoration.

35. The figure of Kshs. 120,000 appears to have been plucked from thin air, lacking any anchor in the evidentiary record.

36. By failing to record any reasoning or legal basis for the compensation order, the trial court denied the applicants the benefit of meaningful appellate or supervisory review.

37. The order was arbitrary and excessive. Furthermore, as the applicants rightly argued, the claim for damage to grass or land in a national park, if it exists, is a matter of complex civil liability that would ordinarily require a full civil trial where parties can call witnesses, produce valuation reports, and test evidence through cross-examination.

38. These are processes not available in a summary criminal trial where the primary focus is on the actus reus and mens rea of the penal offence.
39. Compressing a potentially complex tort claim for environmental damage into a cursory oral prayer at the tail end of a criminal trial is a violation of the principles of fair hearing and due process under Article 50 of the Constitution.
40. Consequently, this court finds that the discretion to order compensation was not exercised judiciously.
41. The order for compensation of Kshs. 120,000 was made without legal justification, without proof of loss, and without any stated reasons.
42. This constitutes an illegality and impropriety that this court must, in the exercise of its revisionary powers, correct.
43. The application dated 25th July 2025 is hereby allowed. The order for compensation of Kshs. 120,000 made on 29th May 2025 in Taveta Chief Magistrate's Court Criminal Case No. E177 of 2025 is set aside in its entirety.
44. Consequently, the ancillary order directing the forfeiture of the applicants' cattle in default of payment of the said compensation is also vacated.

45. For the avoidance of doubt, the conviction and the sentence of a fine of Kshs. 70,000 are not the subject of this revision and therefore remain undisturbed.

46. However, the compensation order is expunged from the record.

47. The order to abide in CRIMINAL REVISION NO. E081, E082 and E083 of 2025

48. Orders to issue accordingly.

Dated, signed and delivered this 28th day of April 2026 in open court at Voi High Court.

ASENATH ONGERI
JUDGE

In the presence of:-

Court Assistant: Millicent/Eghwa

Prosecutor:

The Applicant: