

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CIVIL APPEAL NO. E036 OF 2024

KENYA WILDLIFE SERVICE.....

APPELLANT

VERSUS

STANLEY MUTEGI MUCHECHA.....

RESPONDENT

(The Appeal arises from the judgement and decree of Hon. Mbayaki Wafula (PM) in Marimanti CMCC No. E008 of 2022 delivered on 3rd October 2024.)

JUDGEMENT

1. This Appeal arises from the judgement and decree of Hon. Mbayaki Wafula (PM) in Marimanti CMCC No. E008 of 2022 delivered on 3rd October 2024. By way of a Plaint dated 30th June 2022, the Plaintiff (Respondent) sued the Defendant (Appellant) for damages arising out of a snake bite occasioning the Plaintiff severe bodily injuries resulting in amputation of a portion of his foot.

2. The Plaintiff's case was that on 28th July 2020, while a lawful resident of Kanjoro Location in Marimanti Town within Tharaka Nithi County at around 9:00 am. He was bitten by a poisonous snake. He blamed the Defendant for the negligence and/or carelessness of their agents or authorised officers through whom the Defendants operates and manages its wildlife.

3. The Defendant filed a statement of defence dated 20th July 2023 stating that the Plaintiff's claim is misconceived, bad in law, discloses no cause of action against the Defendant and the same be struck out. The Defendant averred that it had no knowledge of the matters pleaded by the Plaintiff as the same were vague and if the attack occurred, the same was fully caused and attributable to the Plaintiff's own negligence.

4. The matter proceeded for trial with two witnesses testifying for the Plaintiff and one witness for the

Defendant. Judgment was then entered in favour of the Plaintiff in the following terms: -

- i. Liability 70:30 in favour of the Plaintiff.
- ii. General damages for pain and suffering and loss of amenities Kshs. 800,000
- iii. Special damages Kshs. 202,304
- iv. Costs of the suit.
- v. Interest on (i), (ii) and (iii) above from the date of filing the suit until payment in full.

5. Aggrieved with the decision, the Appellant lodged this Appeal on grounds raised in the Memorandum of Appeal as follows: -

- i. That the learned magistrate erred in law and fact in proceeding to adjudicate upon a matter which the said court lacked original jurisdiction to hear and determine.
- ii. That the learned magistrate erred in law and in fact in finding the Appellant 70% liable in negligence where there was no

evidence in support and in total disregard of the evidence adduced at the hearing.

- iii. That the learned trial magistrate erred in law and in fact in awarding general damages of Kenya Shillings Eight Hundred Thousand (Kshs. 800,000) yet the Respondent had not proved negligence on the part of the Appellant to warrant the award.
- iv. That the learned trial magistrate erred in fact and in law in failing to consider all the relevant factors and circumstances of the case in arriving at the decision, judgment and award.
- v. That the learned magistrate erred in fact and in law in failing to consider the written submissions tendered by the Appellant's counsel and in failing to

consider the legal authorities tendered therewith.

6. The Appellant proposed that the Appeal be allowed and the court set aside the trial court's judgment and costs of the Appeal be borne by the Respondent.

Analysis and determination

7. My duty as the first appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. This principle was espoused by the Court of Appeal in the case of **Kiilu & Another-v-Republic (2005) 1 KLR 174** where the Court of Appeal stated: -

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court’s

own decision on the evidence. The first appellate court must itself weight conflicting evidence and draw its own conclusions.

It is not the function of a 1st appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses."

8. The Appeal was canvassed by way of written submissions as directed by the court. The Appellant filed written submissions dated 4th

August 2025. The Respondent written submissions dated 8th September 2025.

9. The Appellant raised the following issues for determination: -

- i. Whether the trial court had original jurisdiction to hear and determine a suit arising from loss and bodily injury suffered by the Respondent caused by wildlife.
- ii. Whether the trial court erred in finding that the Appellant liable for negligence.
- iii. Whether the damages awarded to the Respondent were justified.
- iv. Who should bear the costs of the Appeal.

10. The Respondent framed the following issues for determination: -

- i. Whether the trial magistrate's court had jurisdiction to entertain a claim in tort seeking compensation for personal injury arising from wildlife.

- ii. Whether the learned magistrate erred in finding that the Appellant was liable for negligence under tort of negligence.
- iii. Whether the trial court considered the Appellant's submissions.
- iv. Whether the trial court awarded excessive damages.
- v. Who to bear the costs of the Appeal and trial costs.

11. I have considered the grounds as set out in the Memorandum of Appeal and the issues raised by the parties. I distil the following issues for my determination: -

- i. Whether the trial court had the jurisdiction to hear and determine a claim for compensation for personal injury arising from wildlife.

- ii. Whether the trial court misdirected itself in holding the Defendant liable for negligence.
- iii. Whether the award for general damages for pain and suffering was excessive.
- iv. Costs.

(1) Jurisdiction of the trial court.

12. Counsel for the Appellant submitted that the original jurisdiction to hear and determine the said suit vests in the County Wildlife Conservation and Compensation Committee established under Section 18 of the Wildlife Conservation and Management Act which body is mandated to verify and review claims for compensation and recommend payment of compensation on claims resulting from bodily injury, loss or damage caused by wildlife. That under the Act, Section 25 (1) provides the mechanisms for claims of bodily injury

which a party is required to exhaust prior to approaching the court.

13. In support of their argument, the Appellant relied on the case of Kenya **Wildlife Service v Kanini (Suing as the Next Friend to Edward Koome) [2024] KECA 1127 (KLR)** where the Court of Appeal held that: -

“In our considered view, the intention of the framers of Section 25 of the Act was to cause claimants who had been injured, or those persons whose relative had died, by actions of wildlife, to benefit from the dispute resolution mechanism under the Act; a mechanism that was less cumbersome and which would benefit from the specialised knowledge on matters human wildlife interaction. The Respondent, instead opted for the court which, quite unfortunately, did not have

the original jurisdiction to hear and determine the dispute...the learned judge fell into error when he dismissed the Appellant’s appeal by holding that the Chief Magistrate’s court had jurisdiction to hear and determine the claim.”

14. The Appellant further relied on the case of **Peter Muturi Njuguna v Kenya Wildlife Service [2017] KECA 42 (KLR)** where the Court of Appeal held that the word “may” is permissive to the extent that it was not mandatory for a party to seek compensation but where a party choose to make a claim such party is compelled to make the same at the appointed forum being the District Committee.

15. Counsel for the Appellant submitted that the Respondent’s suit was brought before the trial court against the doctrine of exhaustion. Counsel cited the authority of **Albert Chaurembo Mumba**

& 7 others v Maurice Munyao & 14 Others
[2019] eKLR where the Supreme Court emphasised that in determining profound questions of law the first opportunity had to be given to relevant persons, bodies, tribunals of any other quasi-judicial authorities or organs to deal with the dispute as provided for in the relevant parent statute. Counsel also cited the cases of **NGO's Coordination Board v E. G & 4 Others; Katiba Institute (Amicus Curiae) KESC 17 KLR and Kimani Wanyoike v Electoral Commission and Another [1995] KECA 128 (KLR)** on doctrine of exhaustion.

16. On their part, Counsel for the Respondent as regards the jurisdiction of the trial court submitted that Section 25 of the Act provides for court as an option to lodge claims for Compensation. That the Respondent never lodged a claim to the County Wildlife Conservation and Compensation

Committee but rather opted to lodge a case in court under the tort of negligence for compensation which therefore gave the trial court jurisdiction. Counsel contended that if the Respondent had lodged a claim and then subsequently lodged a negligence claim would have ousted jurisdiction of the courts and would therefore be required to follow the mechanisms in the Act. In support of his argument, the Respondent relied on the decision of **Wildlife Service v Joseph Musyoki Kalonzo [2017] eKLR** where the court stated that: -

“In our view, even from a literal interpretation, this provision does not oust the jurisdiction of the High Court to hear any matters raised under that Act. If the Act meant to remove those matters from the realm of the High Court or the other courts, then it would have

expressly stated so. It gives an aggrieved party an option to go to the committee as a first option. This in our view was meant to ease matters for the poor people whose crops and domestic animals are ravaged by wild animals occasionally, and which people may be far removed from the structured judicial systems. We do note that most of the areas that are prone to wildlife/human conflict are in areas that are outside urban areas where courts are situated. The Act in our view meant to make it easier for such people to access justice that is more easily accessible in terms of not traveling long distances and also in terms of simplicity in lodging their claims. It could not have been meant to shut out everybody else who would prefer to pursue their claims

before the conventional courts. That would explain the use of the word ‘MAY’ and the absence of any provision expressly limiting or ousting the jurisdiction of the High Court.”

17. The Respondent further relied on the case of **Kenya Wildlife Services v Sabdow [2025] eKLR** where the court dealt with a case where a Respondent was attacked by a poisonous snake and lodged a negligence claim in court. The court held that the trial magistrates’ court had the requisite jurisdiction to entertain the matter arising from negligence.
18. From the respective submissions of the parties and the authorities cited to me, it is clear to this court that the decisions of the court of appeal are varied on whether or not the magistrate’s courts lack jurisdiction to hear in the first instance

compensation claims arising out of injury by wildlife.

19. My own perspective is that the Act establishes a specialised, administrative mechanism to verify and recommend compensation for injuries and losses caused by wildlife. Section 25 sets out procedures and timelines, reflecting a legislative intent to channel such claims through the Committee for initial determination.

20. It has been held in several binding authorities that where Parliament has, through statute, established a primary dispute adjudication mechanism, that mechanism ought to be exhausted before the jurisdiction of the superior courts is invoked.

21. In **Speaker of the National Assembly V Njenga Karume [1992] KECA 42 (KLR)** the Court of Appeal stated as follows:

“....In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”

22. The above principle was also outlined in **Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR** as follows;

“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to

resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”

See also **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (2015) eKLR.**

23. The Respondent did not invoke or exhaust the statutory process established under the Act. By directly approaching the court to pursue what is, in substance, a claim for compensation arising from a wildlife related injury, the Respondent bypassed the statutory mechanism specifically designed to address such claims. The trial court ought to have first considered whether the claim fell within the statutory compensation framework and, if so,

whether the prescribed mechanism had been exhausted prior to the institution of the suit. The failure to require exhaustion constituted a jurisdictional error, or at the very least a procedural misdirection, thereby depriving the trial court of jurisdiction and, by extension, this Court on appeal.

24. In so finding, I am guided by the well settled principle in Owners of the **Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd [1989] eKLR**, where the Court of Appeal emphatically held that where a court finds that it lacks jurisdiction, it must immediately down its tools, for it has no power to take even a single further step in the matter.

25. Similarly in **Phoenix of East Africa Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR**, the Court of Appeal reiterated that where a court assumes jurisdiction which it does not possess, the resulting

proceedings and decision are a nullity *ab initio*. It follows, therefore, that where a trial court determines a matter without jurisdiction, its proceedings and judgment cannot stand in law and are liable to be struck out, together with any appeal founded thereon.

26. In the premises, the proceedings before the trial court cannot stand. The suit before the trial court, together with this appeal, are accordingly struck out. The Respondent remains at liberty to pursue compensation through the procedure prescribed under Section 25 of the Wildlife Conservation and Management Act, 2013.

27. Accordingly, I make the following orders:-

- i. The Suit and the proceedings before the trial court are struck out for want of jurisdiction.
- ii. The Appeal is likewise struck out for want of jurisdiction.

- iii. The trial having been declared a nullity means that the Respondent can still seek compensation at the Wildlife Conservation and Compensation Committee.
- iv. Each party shall bear their respective costs on this appeal as well as in the trial court.

Judgement delivered, dated and signed at Chuka this 30th day of April, 2026.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Mutai for the Appellant and Mr. Murimi holding brief for Mr. Murango Mwenda for the Respondent. Muriuki (Court Assistant).