



Republic v Kenya Wildlife Service & 2 others; Wanyoike alias John Kahangi Wanyoike (Suing as the administrator and legal representative of the Estate of Shadrack Wanyoike Kahangi - Deceased) (Exparte Applicant) (Judicial Review E010 of 2024) [2025] KEHC 846 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEHC 846 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW E010 OF 2024**

FN MUCHEMI, J

JANUARY 30, 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDER 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 APPLICANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE,
TURKANA 2ND RESPONDENT**

**DIRECTOR, MINISTERIAL CONSERVATION COMPENSATION
COMMITTEE 3RD RESPONDENT**

AND

**YOHANA KAHANGI WANYOIKE ALIAS JOHN KAHANGI WANYOIKE
(SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE
OF THE ESTATE OF SHADRACK WANYOIKE KAHANGI -
DECEASED) EXPARTE APPLICANT**



RULING

Brief Facts

1. By a Notice of Motion dated 11th July 2024, the ex parte applicant seeks for orders that leave be granted for an order of mandamus be issued to compel the respondents to immediately release Kshs. 5 million to the applicant's advocate.
2. This application was made ex parte and was received in court on 19/07/2024. Upon perusal of the application, the court after considering the contents and the grounds relied on directed that the application be served on the respondents so that the parties could argue on the issue of leave. The parties were directed to exchange submissions on the grant of leave to file judicial review proceedings.
3. It is noted that some of the parties filed detailed submissions that went in the root of the intended judicial review proceedings. However this court will restrict itself to the issue of leave as much as it is practically possible.
4. The 1st respondent opposed the application and filed a Replying Affidavit dated 26th August 2024.

The Ex parte Applicant

5. The ex parte applicant states that he is the legal representative of the Estate of Shadrack Wanyoike Kahangi (the deceased). On 27th December 2021, the deceased was viciously attacked by a hyena while walking to work within Muthaiga sublocation Muigo village occasioning him fatal injuries. The ex parte applicant further states that they reported the matter at Makongeni police station under OB No. 51/27/12/21 and the 1st respondent's officers went and took the details and promised to compensate them for the fatal injury sustained.
6. The ex parte applicant avers that he thereafter applied for compensation by filing the claim form provided by the 1st respondent. The ex parte applicant further avers that the 1st respondent has failed to compensate him as provided for despite the findings of the inquest in Thika Court Inquest Case No. E008 of 2022.
7. The ex parte applicant states that on various occasions, he has followed up on the compensation but the 1st respondent has not been forthcoming with feedback and has been taking him round in circles since the year 2021. The ex parte applicant further states that he has now waited for over three (3) years and the respondents are yet to make good the compensation even after requisite meetings and approval of the claim by relevant committees.
8. The ex parte applicant argues that the respondents continue to unjustifiably delay the compensation without any plausible explanation.
9. The ex parte applicant states that the respondents are public bodies established under statute with clear obligations set out under the *Wildlife Conservation and Management Act* No. 47 of 2013. The ex parte applicant further states that the respondents have breached their statutory duty and unless the court intervenes and compels the respondents to settle the claim, they will continue to ignore his demands for compensation.



The 1st Respondent's Case

10. The 1st respondent opposes the application on the premise that it is fatally defective and bad in law as it seeks to compel the 1st respondent to do that which is not within the 1st respondent's mandate. The 1st respondent argues that it is not its duty and not authority to compensate the ex parte applicant.
11. The 1st respondent states that the ex parte applicant sought compensation through the County Wildlife Compensation Committee (CWCC) for the loss of the deceased due to predation by a hyena as prescribed by Section 25 of the *Wildlife Conservation and Management Act*. The 1st respondent avers that the compensation form was issued to the applicant on 7th March 2023 and the applicant returned the form for consideration by the CWCC which is pending verification by the CWCC. Thus the 1st respondent argues that this application is premature.
12. The 1st respondent argues that the assertion by the applicant that they have been pursuing compensation from them for over three years is untrue as is evidenced in the compensation form that shows that the applicant only procured the form on 7th March 2023.
13. The 1st respondent states that while the court in Thika Inquest Case No. E008 of 2022 found that the 1st respondent was negligent, the court advised in its judgment on 17th November 2022 that the applicant seek compensation from the 1st respondent. It is only after the ruling in the inquest that the applicant sought compensation by procuring the compensation form on 7th March 2023 and returning it for approval by the Kiambu CWCC.
14. The 1st respondent avers that the Kiambu CWCC as established under Section 18 of the *Wildlife Conservation and Management Act*, 2013 is mandated to review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife under Sections 19(1) and 25(2) of the Act. The 1st respondent further states that it is the secretary to the County Wildlife Conservation Committee.
15. The 1st respondent states that as secretary to the CWCC it has already issued and submitted the applicant's claim for compensation to the CWCC. Furthermore, the Kiambu CWCC is yet to consider the applicant's claim for compensation and recommend the sum payable to the applicant.
16. The 1st respondent states that the responsibility to compensate for human wildlife conflict matters lies with the Cabinet Secretary Tourism and Wildlife as provided for in Section 25(3) of the *Wildlife Conservation and Management Act*.
17. The 1st respondent argues that it is unjust for the applicant to seek payment from them without having gone through the compensation process as provided for in law and in any event, the Cabinet Secretary is the one mandated by law to compensate for human wildlife conflict matters and therefore the proper party to compel to make the payment.
18. The 1st respondent avers that the application is not merited, an abuse of the court process as the same is premature as the compensation process has not come to its logical conclusion and the reliefs sought are unwarranted. Further, the 1st respondent avers that the applicant has not demonstrated clearly how they have infringed on his constitutional rights.
19. Parties agreed to dispose of the application by way of written submissions.



The Ex parte Applicant's Submissions.

20. The ex parte applicant submits that he is the legal representative of the estate of Shadrack Wanyoike Kahangi (deceased) who was killed by a hyena on 27th December 2021 on his way to work as a result of the 1st respondent's negligence pursuant to the provisions of the [Wildlife Conservation and Management Act](#), No. 47 of 2013.
21. The ex parte applicant further submits that they reported the incident at Makongeni police station where the 1st respondent's officers promised to compensate them for the loss of the deceased.
22. The 1st respondent thereafter opted to have the cause of death of the deceased be established through an inquest and the same proceeded under Thika Inquest Case No. E008 of 2022. The ruling was delivered on 17th November 2022 whereby the court established that the deceased was mauled to death by the roaming hyena as a result of the 1st respondent's negligence. The ex parte applicant further submits that the trial court directed that the 1st respondent do compensate the ex parte applicant for the death caused by their negligence.
23. The ex parte applicant argues that the decision of the inquest was never challenged by the 1st respondent and thus the 1st respondent is liable to compensate him pursuant to Section 25(3) of the [Wildlife Conservation and Management Act](#) No. 47 of 2013.
24. The ex parte applicant submits that pursuant to Section 6 & 7 of the [Wildlife Conservation and Management Act](#), 2013, the 1st respondent is bound to manage national parks, wildlife conservation areas and sanctuaries under its jurisdiction and provide security to animals and people in reserve areas.
25. The ex parte applicant relies on Section 25 of the [Wildlife Conservation and Management Act](#) No. 47 of 2013 and the cases of Kenya Wildlife Service vs Joseph Musyoki Kalonzo [2017] eKLR and Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited, Supreme Court Petition No. 11 of 2015 (2018) eKLR and submits that the duty to manage national parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury or damage to property and human life by wildlife.
26. The ex parte applicant further relies on the cases of [Kenya Wildlife Service vs Awuor \(Civil Appeal E103 of 2022\)](#) [2023] KEHC 3721 (KLR) (26 April 2023) (Judgment); Kenya Wildlife Service vs Abraham M'ngai m'itumitu [2021] eKLR and Republic vs Kenya Wildlife Service & 2 others; Muhia (ex parte applicant) (Judicial Review Application E003 of 2024) [2024] KEHC 8086 (KLR) and submits that he is within his right to file the instant suit to enforce the compensation as it has been provided for under Section 25 of the Act.

The 1st Respondent's Submissions.

27. The 1st respondent submits the ex parte applicant's claim is currently pending verification and recommendation by the County Wildlife Compensation Committee (CWCC) and thus the process has not been completed in order to warrant the instant judicial review application. The 1st respondent relies on Section 9 of the [Fair Administrative Action Act](#) and argues that the instant judicial review application offends the doctrine of exhaustion of administrative remedies enshrined in Article 159 of [the Constitution](#). The 1st respondent further submits that the process provided in Section 25 of the [Wildlife Conservation and Management Act](#) is an administrative process which the magistrate's court in its ruling in the inquest advised the estate of the deceased to pursue and which the estate began to pursue when they procured compensation forms on 7th March 2023, filled them and returned them to the 1st respondent for consideration by the CWCC. The 1st respondent submits that the process by the



CWCC is not complete and there is no recommendation for payment of the estate of the deceased by the CWCC that has been adduced by the applicant before the court to warrant the order of mandamus sought.

28. The 1st respondent submits that even after procuring the compensation forms and initiating the compensation process pursuant to Section 25 of the Act, the applicant has not adduced any evidence to persuade the court that they have been pursuing their claim before the CWCC diligently and exhaustively. The 1st respondent argues that the obiter dictum by the magistrate court in Thika Magistrate's Court Inquest No. E008 of 2022 is not grounds for a judicial review application. The 1st respondent argues that the applicant is seeking for an order of mandamus for the specific sum of Kshs. 5 million in essence invites this court to in the first instance make a determination of the appropriate sum payable to the applicant.
29. The 1st respondent relies on the case of Nyeri Civil Appeal No. 30 of 2020 Kenya Wildlife Service vs Purity Kanini (Suing as the next friend of Edward Koome) and submits that the application herein is premature for want of recommendations by the CWCC capable of the order of mandamus sought. The 1st respondent argues that the *Wildlife Conservation and Management Act* establishes a mechanism for personal injury or death or damage to property caused by wildlife. Further Section 25 of the Act provides for the procedure to follow where a party seeks compensation for loss occasioned by wildlife and who is liable to pay for the loss. The 1st respondent thus submits that the applicant's claim is pending before the CWCC and there is no recommendation for payment to the Cabinet Secretary as provided for in the Act. Thus, the 1st respondent argues that the instant matter is premature having not been heard to conclusion as provided for in Section 25 of the Act. There is no recommendation by the CWCC for which the order of madamus sought can be issued by this Honourable court and in any event the party liable for loss and damage occasioned by wildlife is the Cabinet Secretary Tourism and Wildlife upon recommendation by the CWCC as provided for in Section 25(3) of the Act.
30. The main issue for determination in his application is whether the 1st respondent is entitled to file Judicial review proceedings for an order of mandamus to compel the 1st respondent to pay KShs.5,000,000 compensation for injuries.

The Law

31. The Court of Appeal discussed the nature of the remedy of mandamus in Republic vs Kenya National Examinations Council ex parte Githinji & 8 Others [1997] eKLR citing with approval Halsbury's Laws of England 4th Vol. 7 p. 111 para 89:-

The order of mandamus is the 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 remedy, yet that mode of redress is less convenient, beneficial and effectual..."These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons had failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.

32. In the instant case, the ex parte applicant has prematurely moved this honourable court to compel the respondents, particularly the 1st respondent for compensation for the death of his son in the sum of



Kshs. 5 million. It is noted that this court is at the initial stage of hearing the parties on leave to file Judicial Review Proceedings.

33. Section 3A of the *Wildlife Conservation and Management Act* outlines the functions of the Kenya Wildlife Service as follows:-

The functions of the Service shall be to-

- (c) manage National Parks and National Reserves;
- (l) render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.

34. The Supreme Court in the case of Kenya Wildlife Service vs Rift Valley Agricultural Contractors Limited [2018] eKLR held that the appellant had the statutory duty to control wildlife by dint of Section 3A of the Wildlife Act and held as follows:-

The appellant's obligations under Section 3A(l) could not and were not abdicated in favour of, or transferred to Narok County Government. Without belabouring on this point any further we find that the breach of Section 3A(l) imposes a liability on the appellant to compensate for destruction of crops by wildlife.

35. Upon establishing that the 1st respondent is statutorily bound to control wildlife by dint of Section 3A of the Act, it is prudent to outline that the Act under Section 25 provides for the procedure to be followed for payment of damages by a claimant who opts to pursue such a claim under the Act as was done by the ex parte applicant.

36. Section 25 of the *Wildlife Conservation and Management Act* provides:-

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 representatives 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 the injury.
6. 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.



37. From the record, it is evident that an inquest was instituted in Thika Chief Magistrates Court Inquest Case No. E008 of 2022 whereby the court rendered its ruling on 17th November 2022 finding the 1st respondent negligent in managing and conserving the environment, and ensuring the safety of the deceased. The trial court directed that the estate of the deceased ought to seek compensation for damages incurred by the said hyena from the 1st respondent. The ex parte applicant thereafter filed his compensation claim form for persons injured or killed by wildlife on 7th March 2023 to the County Wildlife Conservation and Compensation Committee, Turkana, the 2nd respondent herein.
38. The 1st respondent states that the claim is still awaiting verification by the County Wildlife Conservation and Compensation Committee which will then make a recommendation to the Cabinet Secretary. It is upon the recommendation that the claimant will be paid compensation in the sum claimed. In the instant suit, the ex parte applicant has not provided the verification and recommendation by the CWCC for payment of the amount claimed as compensation for the loss of the deceased's life. As such, the ex parte applicant has not exhausted all the internal remedies as provided for in Section 25 of the Act to warrant him file the instant judicial review proceedings to enforce compensation. This court will only issue an order of mandamus to compel a party to pay a claim following evidence of an order to pay or a recommendation by the relevant authority to meet the claim.
39. As things stand, such compensation is yet to be given or recommended by the relevant authority. As such, it is my considered view that the instant judicial review application is premature for want of exhausting of the internal mechanisms provided in Section 25 of the [Wildlife Conservation and Management Act](#). It is my considered view that the application dated 17th July 2024 lacks merit and is hereby dismissed.
40. Considering that the application is ex parte, I hereby direct that there shall be no order as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF JANUARY 2025.

F. MUCHEMI

JUDGE

