



**Republic v Kenya Wildlife Service & 2 others; SMP (A Minor Suing Through His Father and Next Friend MOM) (Exparte Applicant) (Judicial Review E002 of 2024) [2025] KEHC 1296 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1296 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
JUDICIAL REVIEW E002 OF 2024  
CM KARIUKI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA WILDLIFE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY WILDLIFE COMPENSATION COMMITTEE, NAROK .... 2<sup>ND</sup> RESPONDENT**

**MINISTERIAL WILDLIFE COMPENSATION COMMITTEE .... 3<sup>RD</sup> RESPONDENT**

**AND**

**SMP (A MINOR SUING THROUGH HIS FATHER AND NEXT FRIEND MOM) ..... EXPARTE APPLICANT**

**RULING**

1. The Ex-parted Applicant herein filed the present Notice of Motion dated 28/06/2024 seeking an order of Mandamus to compel the 1<sup>st</sup> Respondent to release Kshs 1,500,000/= recommended by the 2<sup>nd</sup> Respondent and approved by the 3<sup>rd</sup> Respondent as compensation for the injuries incurred by his son after being attacked by buffalo while grazing at Talek area.
2. The application is premised in sections 8 and 9 of the Law Reform Act and Order 53 Rule 3 of the Civil Procedure Rules.
3. The application is based on the grounds set out in the statutory statement and the verifying sworn statement of MOM, sworn on 12/06/2024.



4. The grounds upon which the reliefs are sought are that the ex-parte applicant is a next of kin and the legal representative of the minor, SMP; on 01/10/2020, the minor was viciously attacked by a buffalo while grazing at Talek area occasioning him serious injuries as a result of the 1<sup>st</sup> respondent's negligence and breach of statutory duty as governed by provisions of the [Wildlife Conservation and Management Act](#). No. 47 of 2013.; the ex-parte applicant reported the matter at Talek police post and the 1<sup>st</sup> respondent's officers went and took the details and promised to compensate the ex-parte applicant for the injuries incurred by his son; the ex-parte applicant thereafter applied for compensation by filing the claim form provided by the 1<sup>st</sup> respondent; the 1<sup>st</sup> respondent convened a meeting of the Community Wildlife Conservation Committee(CWCC) on 14/12/2021 as regards the claim for compensation, a function which it is tasked with together with making recommendations to Ministerial Wildlife Compensation Committee(MWCC) that validates and approves payment of the awards by the aforesaid committee; on following up at the county offices within this year, the ex-parte applicant that the ministerial wildlife compensation committee approved the award; in spite of the foregoing, he ex parte applicant is yet to receive the compensation on behalf of their injured son; the ex-parte applicant has on various occasions made a follow upon the compensation but the 1<sup>st</sup> respondent has not been forthcoming with feedback and has been taking him round in circles; the ex-parte applicant has now waited for close to 4 years and the respondents are yet to make good the compensation even after requisite meetings and approval of the claim by relevant committees; the respondents continue to unjustifiably delay the compensation without any plausible explanation; the ex-parte applicant is apprehensive that unless this court intervenes and compels the respondents to act on their decision and settle the claim, the respondents will continue to ignore the applicant's demands for compensation and thus corrode and erode the confidence of the applicant and the general public in the efficiency of the administrative process of Kenya; and that it is therefore important that this matter be heard as a matter of urgency for just and expeditious disposal.
5. The application was opposed by the 1<sup>st</sup> respondent who filed a replying affidavit dated 30/08/2024 sworn by Derrick Karinga, the 1<sup>st</sup> respondent's legal officer who deponed inter alia; that the application is fatally defective and bad in law as it seeks to compel the 1<sup>st</sup> respondent to do that which is not within its mandate; that the Narok County Wildlife Conservation Committee as established under section 18 of the [Wildlife Conservation And Management Act](#), 2013(WCMA) 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 WCMA; that the 1<sup>st</sup> respondent is only the secretary of the county wildlife conservation committee established under section 18 of the [Wildlife Conservation And Management Act](#), 2013; that the 1<sup>st</sup> respondent has duly performed their statutory duty fully as regards the applicant's claim for compensation; that the narok county wildlife conservation committee considered applicant's claim for compensation and recommended that the claimant be paid Kshs. 1,500,000 on 14/12/2021; that the claim and recommendation was then submitted to the cabinet secretary ministry of tourism and wildlife in accordance with section 25(2) of the WCMA where the claim was considered and approved for compensation by the Ministerial County Wildlife Compensation Committee on 21/11/2022 in accordance with section 25(3) of the WCMA; that the responsibility to compensate for human wildlife conflict matters lies with the cabinet secretary tourism and wildlife and as such the 2<sup>nd</sup> and 3<sup>rd</sup> respondents ought to be compelled to compensate the applicant; that it is unjust for the applicant to seek payment from the 1<sup>st</sup> respondent yet the 1<sup>st</sup> respondent is not mandated by law to compensate for human wildlife conflict matters; that the proper party to compel to make payment as approved is the cabinet secretary tourism and wildlife; that the import of the application results in requiring the court to enforce an illegality as it is demanding the 1<sup>st</sup> Respondent to perform an act outside its mandate according to the law; that the Applicant has not demonstrated how



his constitutional rights have been violated by the 1<sup>st</sup> Respondent; that the application is not merited as against the 1<sup>st</sup> Respondent and should be dismissed with costs.

#### **Directions of the court.**

6. The ex-parte applicant was granted leave to file this application on 24/06/2024.
7. The case against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents was withdrawn on 14/10/2024.
8. The motion was canvassed by way of written submissions.

#### **The Ex Parte-Applicant's Submissions**

9. The ex-parte applicant submitted that the legal ability and the mandate of the 1<sup>st</sup> respondent includes the management of the national parks, wildlife conservation areas, and sanctuaries under its jurisdiction. The ex-parte applicant relied on sections 6 and 7 of the *Wildlife Conservation and Management Act*, 2013.
10. The ex-parte applicant submitted that the 1<sup>st</sup> respondent is liable to compensate the ex-parte applicant. The ex-parte applicant relied on section 25 of the *Wildlife Conservation and Management Act*, the court of appeal in *Kenya Wildlife Service vs. Joseph Musyoki Kalonzo* [2017] elk, the supreme court in *Kenya Wildlife Service vs. Rift Valley Agricultural Contractors Limited*, supreme court petition no. 11 of 2015 [2018] eKLR.
11. The ex-parte applicant submitted that the ex-parte applicant is within his right to file the instant judicial review to enforce the compensation. Therefore, the ex-parte applicant is entitled to the order of mandamus as looked for in the application before this court. The ex-parte applicant relied on *Kenya Wildlife Service Vs Awuor (Civil Appeal E013 Of 2022)* [2023] KEHC 3721(KLR)(26 April 2023) (Judgment, *Kenya Wildlife Service Vs Abraham Mangai Mitmita* [2021] elk, *Republic V Kenya Wildlife Service & 2 Other; Muhia (Exported Applicant)* (Judicial Review Application E003 Of 2024) [2024] KEHC 8086(KLR).

#### **The 1<sup>st</sup> Respondent's Submissions.**

12. The 1<sup>st</sup> respondent submitted that The Cabinet Secretary of Tourism and Wildlife is responsible for paying the compensation sums recommended by the County Wildlife Compensation Committee where appropriate. The 1<sup>st</sup> respondent, therefore, denies responsibility to pay the applicant the approved sum. The 1<sup>st</sup> respondent relied on *Civil Appeal E013 of 2022 Kenya Wildlife Service v Quinter Awuor elk 2023*.

#### **Analysis and Determination.**

13. This court considered the Pleadings and the submission by the respective parties.

#### **Issues**

14. The key issues for determination: -
  - i. Whether the 1<sup>st</sup> respondent is statutorily bound to manage national parks and reserves.
  - ii. Whether the 1<sup>st</sup> respondent is mandated to compensate the ex-parte applicant.
  - iii. Whether the ex-parte applicant is entitled to the orders for mandamus.



## **I. Whether the 1<sup>st</sup> respondent is statutorily bound to manage national parks and reserves**

15. Section 7 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 –

- a) conserve and manage national parks, wildlife conservation areas, and sanctuaries under its authority.
- b) provide security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries.

16. 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 belaboring 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.

17. The legal ability and the mandate of the 1<sup>st</sup> Respondent about this case are clear from the above provisions. Amongst them is the management of the National parks, Wildlife Conservation areas, and sanctuaries under its authority. This would imply that the 1<sup>st</sup> Respondent has a statutory mandate to control wildlife.

## **II. Whether the 1st respondent is mandated to compensate the ex-parte applicant.**

18. Upon establishing that the 1<sup>st</sup> respondent is statutorily bound to control wildlife by dint of Sections 3A and 7 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 his claim under the Act as was done by the ex-parte applicant.

19. It is not in dispute that the Applicant's request for compensation has already been vetted and approved by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the sum of Kshs. 1,500,000/=.

20. The 1<sup>st</sup> respondent has maintained that it is not its duty to compensate the applicant.

21. Under Sections 6 and 7 of the *Wildlife Conservation and Management Act*, 2013, the 1<sup>st</sup> respondent has obligations under the act and cannot, therefore, run away from them. In the same vein, the duty to compensate victims arising from human-wildlife conflicts is squarely on its shoulders to discharge. Section 25 of the Act provides as follows:

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 set up under Section 18 shall verify a claim made under Section 18 shall verify a claim made under subsection (1) and, upon verification, give the claim to the cabinet secretary together with its recommendation thereon.



3. The Cabinet Secretary shall consider the recommendations made under sub-section (2) and, where proper, 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 case of any other injury, a maximum of two million shillings, depending on the extent of the injury.
22. The Court of Appeal has said and reinstated that the duty to manage the National parks and reserves comes with the attendant responsibility to shoulder claims arising out of loss, injury, or damage caused to property and human life by wildlife. See the Court of Appeal in *Kenya Wildlife Service vs. Joseph Musyoki Kalonzo* [2017] elk, and *Joseph Boro Negra & Supa Duka Nakuru Vs. Kenya Wildlife Service* Civil Appeal NO. 71 of 1997.
23. The Supreme Court in *Kenya Wildlife Service Vs. Rift Valley Agricultural Contractors Limited*, Supreme Court Petition No. 11 of 2015 (2018) eKLR stated as follows at paragraph 66:

A global comparison of laws and jurisprudence relating to animal and wildlife management normally provides 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 outcomes, including compensation for damage made by animals and wildlife.... The Wildlife Act gives responsibility to Kenya Wildlife Service as the park revenue collector to compensate for damages occasioned by wild animals.
24. It is, therefore, incumbent upon the 1<sup>st</sup> Respondent to compensate the ex-parte Applicant since the applicant's claim had been approved following the laid down procedures under Section 25 of the *Wildlife Conservation and Management Act* as stated above. The 1<sup>st</sup> Respondent, therefore, owes the applicant the amount of Ksh1,5000,000/= as compensation for the injury.

### III. Whether the ex-parte applicant is entitled to the orders for mandamus.

25. The courts in *Kenya Wildlife Service vs Awuor (Civil Appeal E013 of 2022)* [2023] KEHC 3721 (KLR) (26 April 2023) (Judgment) and *Kenya Wildlife Service vs Abraham Mangai Mitmita* [2021] elk where the courts held:-

The appellant having awarded an amount under the Act, further intervention in court could only have been by the appeal process following upon the provision of the section, that is to say, through the mechanism of a first appeal to the tribunal and thereafter a second appeal to the Environment and Land Court. The respondent may have opted to pursue its claim for compensation in negligence for damages for personal injury in the civil court as an alternative to the statutory compensation mechanism. Without deciding, I would consider that the respondent may also have pursued judicial review remedy in the High Court, if so, advised by his advocates, for the award of the full award of compensation prescribed under the Act. The respondent may also, as he may be advised by his legal advisors, file an application for extension of time to pursue the appeal process set out in Section 25(6) of the Act.

26. Applying the above principles to the present case, the ex-parte applicant is within her right to file the instant judicial review to enforce the compensation. Consequently, the 1<sup>st</sup> respondent has failed



to compensate the ex-parte applicant and claims that it is the Cabinet Secretary who ought to make the payments and not themselves. The Court of Appeal in *Kenya Wildlife Service vs Joseph Musyoki Kalonzo* [2017] eKLR stipulated as follows on this issue: -

The appellant admits the duty to manage and conserve wildlife. That duty comes with the attendant responsibility to shoulder any claims of loss or damage caused by the breach of that duty. The law on that point was succinctly pronounced in *Joseph Boru Negra & Another vs. Kenya Wildlife Service vs 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.

27. It is not in dispute that the 1<sup>st</sup> respondent is liable to compensate the ex-parte applicant, and it is not for him to concern himself with the internal arrangements of the 1<sup>st</sup> respondent as to whether the Cabinet Secretary should disburse the monies to the applicant. It is my considered view that the 1<sup>st</sup> respondent is liable to compensate the ex-parte applicant and that the applicant's claim was approved following the laid down procedures under the *Wildlife Conservation and Management Act*. The applicant has satisfied this court that the 1<sup>st</sup> respondent owes him the amount of KSh.1,500,000 in the form of compensation for injuries sustained.
28. The Applicant has been compelled to approach the court for redress following the failure of the 1st Respondent to compensate him despite the clear provisions under the relevant Act. Under Section 25 (7) of the *Wildlife Conservation and Management Act* No. 47 of 2013, the Minister for Tourism and Wildlife is mandated to enact regulations that govern the claim-handling process.
29. Under the Kenya Subsidiary Legislation, 2017, Legal Notice No. 245, published in September 2017, the Minister published the said regulations. Under Part IV Section 27 (1) and (2), the Applicant's claim was to be settled within 60 days of reporting. It is now 4 years since the Claimant reported his claim. Despite the Respondents approving the same for payment of Ksh1,500,000/= four (4) years ago as has been admitted by the 1st Respondent, the same stays outstanding to date despite the suffering that the Claimant. This is way beyond the regulatory 60 days as provided for under the regulations.
30. Consequently, I find this application is merited and allows it. So, in the following terms:
  - a. That the 1<sup>st</sup> Respondent is hereby compelled by an order of Mandamus to pay KSh.1,500,000/= as compensation for the injuries sustained by ex-parte applicant's son as approved by the 3<sup>rd</sup> Respondent within 30 days.
  - b. That the costs of this application are awarded to the Applicant.
  - c. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**CHARLES KARIUKI**

**JUDGE**

