



**Republic v Kenya Wildlife Service & 2 others; Pepela (Suing as the Legal Representative of the Estate of Bravine Wanjala Pepela - Deceased) (Ex parte Applicant) (Judicial Review E004 of 2025) [2025] KEHC 11682 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11682 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
JUDICIAL REVIEW E004 OF 2025  
FN MUCHEMI, J  
JULY 31, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

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

**COUNTY WILDLIFE CONSERVATION & COMPENSATION COMMITTEE,  
KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

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

**AND**

**RICHARD WANJALA PEPELA (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF BRAVINE WANJALA PEPELA -  
DECEASED) ..... EX PARTE APPLICANT**

**JUDGMENT**

**Brief Facts**

1. By a Notice of Motion dated 18<sup>th</sup> March 2025, the ex parte applicant seeks the following orders:-
  - a. An order of mandamus be issued to compel the respondents to immediately release Kshs. 5 million to the applicant’s advocate.
2. The 1<sup>st</sup> respondent opposed the application and filed a Replying Affidavit dated 29<sup>th</sup> April 2025.



### **The Ex parte Applicant's Case**

3. The ex parte applicant states that she is the legal representative of the Estate of James Ng'ang'a (the deceased). On 10<sup>th</sup> June 2021, the deceased was viciously attacked by a hyena occasioning him fatal injuries. The ex parte applicant further states that they reported the matter at Thika police station and the 1<sup>st</sup> respondent's officers went and took the details and promised to compensate him for the fatal injury sustained. The ex parte applicant avers that she filled the claim form as provided by the 1<sup>st</sup> respondent.
4. The ex parte applicant states that upon following up on the claim at the County Offices, she learnt that the Ministerial Wildlife Compensation Committee approved the award on 21/11/2022 however she is yet to receive the compensation. Further, on various occasions, she has followed up on the compensation but the 1<sup>st</sup> respondent has not been forthcoming with feedback and has been taking her round in circles. The ex parte applicant further states that since the fatal attack took place on 10/06/2021 he has now waited for over four (4) years and the respondents are yet to make good the compensation as envisaged under the Act.
5. The ex parte applicant argues that the respondents continue to unjustifiably delay the compensation without any plausible explanation.
6. The ex parte applicant is apprehensive that unless the court intervenes and compels the respondents to act on their decision and settle the claim, they will continue to ignore his demands for compensation and thus erode his confidence and the general public in the efficiency of the administrative process in Kenya.

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

7. The 1<sup>st</sup> respondent opposes the application on the premise that it 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 the 1<sup>st</sup> respondent's mandate. The 1<sup>st</sup> respondent argues that it is not its duty or authority to compensate the ex parte applicant pursuant to Section 7 of the *Wildlife Conservation and Management Act, 2013*.
8. The 1<sup>st</sup> respondent avers that the Kiambu County Wildlife Conservation Committee (KCWC) 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 1<sup>st</sup> respondent further states that it is the secretary to the County Wildlife Conservation Committee.
9. The 1<sup>st</sup> respondent asserts that upon the ex parte applicant reporting the incident at Thika Police Station, its officers went and took details of the alleged attack on 10/6/2021 by a hyena. The ex parte applicant was issued with claim compensation forms from the Ministry of Tourism and Wildlife, which she filled and returned to them for processing, thus lodging the claim for compensation under Section 25(1) of the Act.
10. The 1<sup>st</sup> 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*.
11. The 1<sup>st</sup> 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.

12. Parties put in written submissions.

### **The Ex parte Applicant's Submissions**

13. The ex parte applicant submits that she is the widow and legal representative of the estate of James Ng'ang'a (deceased) who was killed by a hyena on 10<sup>th</sup> July 2021 as a result of the 1<sup>st</sup> respondent's negligence pursuant to the provisions of the Wildlife Conservation and Management Act, No. 47 of 2013. The ex parte applicant further submits that she reported the incident and the 1<sup>st</sup> respondent's officers promised to compensate her for the loss of the deceased.
14. The ex parte applicant submits that pursuant to Section 6 & 7 of the Wildlife Conservation and Management Act, 2013, the 1<sup>st</sup> 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. Further, the ex parte applicant relies on the case of 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.
15. The ex parte applicant further relies on Section 7, 18 and 19 of the Wildlife Conservation and Management Act, 2013 and submits that the mandate of the 1<sup>st</sup> respondent includes setting up the Community and County Wildlife Committees and assigning them duties which include verifying claims and making recommendations to the Cabinet Secretary for purposes of compensation. To support her contentions, the ex parte applicant refers to the decision in Republic vs Kenya Wildlife service & 3 Others; Musau (Interested Party) (Judicial Review Miscellaneous Application 54 of 2020) [2022] KEHC 102 (KLR) (7 February 2022) (Ruling).
16. Pursuant to Section 27 of the Wildlife Conservation and Management (Compensation) Regulations, 2017, the duration of settling wildlife claims is sixty days from the date of reporting. The ex parte applicant argues that the respondents' inaction is a blatant violation of Article 50 of the Constitution which guarantees fair hearing. Further procedural fairness entails expeditious disposal of matters. Therefore, a delay of over four (4) years in considering the ex parte applicant's claim is inordinate and not excusable.
17. Relying on the case of Republic vs Kenya National Examinations Council ex parte Gathenji & 8 Others Civil Appeal No. 234 of 1996, the ex parte applicant submits that she has demonstrated that she is within her right to seek an order of mandamus to compel the respondents carry out their statutory duty and enforce the compensation as it has been provided for under Section 25 of the Act.

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

18. The 1<sup>st</sup> 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. Relying on the cases of Republic vs County Government of Nairobi & 2 Others ex parte Kingpost Limited [2021] eKLR and Republic vs Kenya Vision 2030 Delivery Board & Another ex parte Eng Judah Abekah [2015] eKLR, the 1<sup>st</sup> respondent submits that an order of mandamus can only be issued to compel one to perform a statutory duty owed yet it is not statutorily mandated to compensate the ex parte applicant as the same is vested on the 3<sup>rd</sup> respondent under Section 25(3) of the Act.



## The Law

19. 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 4<sup>th</sup> 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.

20. In the instant case, the ex parte applicant has moved this honourable court to compel the respondents, particularly the 1<sup>st</sup> respondent for compensation for the death of his son in the sum of Kshs. 5 million.
21. 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.
22. 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.

23. Upon establishing that the 1<sup>st</sup> 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 his claim under the Act as was done by the ex parte applicant.

24. 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 be 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.
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 M'ngai M'itumitu* [2021] eKLR where the courts held:-

Clearly, 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, it is evident that the ex parte applicant is within her right to file the instant judicial review proceedings with a view of enforcing the compensation. Consequently, the 1<sup>st</sup> respondent has failed to carry out its duty of compensating the ex parte applicant and claims that it is the Cabinet Secretary who ought to make the payments and not themselves. The said Committee approved the claim on 21/11/2022 but the 1<sup>st</sup> respondent has not processed the payment of the claim – this is a delay of three (3) years since the claim was processed by the Committee. In my view, this is neglect of duty by the 1<sup>st</sup> respondent which has led to suffering of the claimant and his family. The delay by the 1<sup>st</sup> respondent demonstrates indolence on their part which is likely to develop into impunity and neglect as well as breach of duty.
27. 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 Ngera & 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.

28. It is argued by the 1<sup>st</sup> respondent that the payments for compensation are paid by the Cabinet Secretary and not themselves.

It is noted that the 1<sup>st</sup> respondent does not deny that the County Committee which is one of its internal organs processed the ex parte applicant's claim on 21<sup>st</sup> November 2022. No explanation has been given by the 1<sup>st</sup> respondent why the compensation of Ksh.5,000,000/= has not been paid. The 2<sup>nd</sup> respondent supervises the 1<sup>st</sup> respondent who are its internal organ. In my considered view the 1<sup>st</sup> respondent is to blame for neglecting their duties of compensating the ex parte applicant. It is their duty to forward the claim to the Cabinet Secretary for payment.

29. The above decision clearly points out 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 has disbursed the monies or not. In that regard, it is my considered view that the 1<sup>st</sup> respondent is liable to compensate the ex parte applicant by ensuring all the required processes are completed within a reasonable time.

30. The purpose of the order of mandamus is to compel a public official or body to perform a specific public duty for which it is legally obligated to carry out. The ex parte applicant has proved to the balance of probabilities that he has suffered loss of death of his son and that he is entitled to compensation by the 1<sup>st</sup> respondent under Section 25 of the Act. The 1<sup>st</sup> respondent has failed to fulfil its duty and as such the ex parte applicant is, in my view entitled to a remedy.

31. I find the ex parte applicant's claim successful and I hereby enter judgment in her favour against the 1<sup>st</sup> respondent as follows: -

- a. That an order of mandamus do issue compelling the 1<sup>st</sup> respondent to pay the ex parte applicant Ksh.5,000,000 as compensation for the loss of death of his son caused by an animal within its area of duty and care within sixty (60) days.
- b. That the 1<sup>st</sup> respondent shall bear the costs of these proceedings.

32. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

