



Republic v Kenya Wildlife Service & 2 others; Muchiri (Ex parte Applicant) (Judicial Review E004 of 2025) [2025] KEHC 11528 (KLR) (1 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
JUDICIAL REVIEW E004 OF 2025
RM MWONGO, J
AUGUST 1, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW (ORDERS 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 COMPENSATION COMMITTEE, EMBU 2ND
RESPONDENT**

**MINISTERIAL WILDLIFE COMPENSATION COMMITTEE 3RD
RESPONDENT**

AND

JACKLINE WANYAGA MUCHIRI EX PARTE APPLICANT



JUDGMENT

The Application

1. Pursuant to leave granted through an order of this Court issued on 05th March 2025, the applicant filed a notice of motion dated 05th March 2025 seeking the following orders:
 1. An order of Mandamus to compel the respondents to consider the exparte applicant's claim and release Kshs.1,000,000/= to the applicant's advocate;
 2. The costs of this application be provided for.
2. The exparte applicant suffered a snake bite while in her house because of the 1st respondent's negligence of its duties assigned under the *Wildlife Conservation and Management Act*. She reported the matter at Ishiara Police Station under OB no. 11/6/11/017 and officers from the 1st respondent took her details for compensation purposes. She provided all the relevant information to the 1st respondent including medical reports of the injuries incurred and treatment received. The 3rd respondent approved compensation in the sum of Kshs.1,000,000/= but the 2nd respondent did not pay the said amount within the stipulated period of 1 year.
3. The exparte applicant stated that he has been following up on compensation for the injuries since 2017, to no avail. At the time of filing this application, it had been 7 years since the claim was made. The exparte applicant stated that unless the court intervenes by issuing the orders prayed, the respondents will not pay the amount for compensation.

Responses and Written Submissions

4. Despite due service, the application is unopposed. The court directed parties to file written submissions but only the exparte applicant and 1st respondent complied.
5. The exparte applicant submitted that the role of the 1st respondent as provided under sections 6 and 7 of the *Wildlife Conservation and Management Act* includes management and control of wildlife. She relied on section 25 of the *Wildlife Conservation and Management Act* and the cases of Kenya Wildlife Service v Joseph Musyoki Kalonzo [2017] KECA 234 (KLR), Kenya Wildlife Service v Rift Valley Agricultural Contractors Limited [2018] KESC 48 (KLR), Kenya Wildlife Service v Awuor [2023] KEHC 3721 (KLR), Kenya Wildlife Service v Abraham M'ngai M'itumitu [2021] KEHC 7105 (KLR), Republic v Kenya Wildlife Service & 2 others; Muhia (Exparte Applicant) [2024] KEHC 8086 (KLR), among others. She urged that court to allow the application.
6. The 1st respondent submitted that it was wrongly sued since the responsibility to compensate the exparte applicant lies with the Cabinet Secretary upon recommendation and approval by the 2nd and 3rd respondents. It relied on section 7 of the *Wildlife Conservation and Management Act* which provides for the functions and duties of the 1st respondent. It also relied on section 25(2) & (3) of the *Wildlife Conservation and Management Act* and Rule 27(2) of the Wildlife Conservation and Management (Compensation) Regulations 2017. Reliance was also placed on the case of Republic v Kenya Vision 2030 Delivery Board & another Ex-parte Eng. Judah Abekah [2015] KEHC 7078 (KLR).

Issue for Determination

7. The issue for determination is whether the orders sought by the applicant may be granted.



Analysis and Determination

8. The circumstances under which judicial review orders of mandamus are issued were discussed in the case *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR. There the Court of Appeal relied on the text in Halsbury's Law of England, 4th Edition. Vol. 7 p. 111 para 89 stating thus:

“The order of mandamus is of most extensive remedial nature and is in form of 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 legal 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 has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

9. The ex parte applicant's injury was reported in accordance with the procedures of the law, and the matter was taken up by the 1st respondent. The compensation amount was duly approved by the 3rd respondent in accordance with Section 25 of the *Wildlife Conservation and Management Act*, at Kshs.1,000,000/=. The amount should have been paid by the 2nd respondent, whom the ex parte applicant says has not paid since 7 years ago, hence the application herein. She produced her medical reports and other accompanying documents for the processing of the compensation claim.
10. Sections 6 and 7 of the *Wildlife Conservation and Management Act* establish the 1st respondent and define its mandate. This mandate extends to wildlife control and management in the community, meaning that the 1st respondent owes the community a duty of care in matters concerning injuries caused by wildlife. Therefore, it was rightly sued. In fact, this position was upheld in the case of *Yanda v Kenya Wildlife Services* [2024] KEHC 16063 (KLR) where it was held;

“This means that the respondent owed the appellant a duty of care under section 7 of the *Wildlife Conservation and Management Act*, which duty was breached, thus there was negligence on its part.”

11. It was the ex parte applicant's responsibility to report the wildlife attack she suffered, to the 2nd respondent Committee which is established under section 18 of the Act. The functions of this Committee are set out under section 19 of the Act. They include to review and recommend payment of compensation on claims resulting from loss or damage caused by wildlife. 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 representative 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 injury.
- (4) Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.
- (5) The County Wildlife Conservation and Compensation Committee shall review the claim and award and pay a compensation valued at the ruling market rates:

Provided that no compensation shall be paid where the owner of the livestock, crops or other property failed to take reasonable measures to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.
- (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.
- (7) The Cabinet Secretary may, by notice in the Gazette, prescribe such regulations and guidelines as are necessary and appropriate to carry out the purposes of this section.” [Emphasis added]

12. Under the notice of motion, the *exparte* applicant seeks an order of mandamus to compel the respondents to consider and pay her claim which was already promptly presented before the relevant legal body. Under Section 25(5) of the Wildlife Conservation and Management Act, it is the duty of the 2nd respondent to pay the claim for compensation after the procedure has been followed exhaustively. In this case, the *exparte* applicant stated that she was advised that the 3rd respondent had already approved the payment of Kshs.1,000,000/=, although no evidence of this has been given. That notwithstanding, none of the respondents has controverted this position.

13. As already stated hereinbefore, an order of mandamus may be issued where a matter ought to be done by a public body but has not been done, to the detriment of another party. In *Republic v. Town Clerk, Kisumu Municipality Ex-Parte East African Engineering Consultants*



[2007] KEHC 147 (KLR), it was held that an order of mandamus compels a public officer to act in accordance with the law. For an order of mandamus to issue, the main principles that apply are firstly, that the Court will only issue a mandatory order if it concludes that it is the only decision lawfully open to the public body; and that there is no other legal remedy that is available to remedy the infringement of a legal right. (See also the case of Republic v Jomo Kenyatta University of Agriculture and Technology Ex parte Elijah Kamau Mwangi [2021] eKLR)

Conclusion and Disposition

14. In my view, the applicant has satisfied all the legal requirements for compensation by making the appropriate claim to the 2nd Respondent. The 2nd Respondent failed to defend the application and the facts propounded by the applicant are uncontroverted. The applicant asserts that on following up the claim, she was told that it was approved at Kshs.1,000,000/- but the Respondents have maintained a deaf silence on the claim. There is no more the applicant can do.
15. In the circumstances, the application must succeed as it is unopposed and not controverted. The Court hereby makes the following orders:
 1. An order of Mandamus hereby issues to compel the respondents to consider the exparte applicant's claim and pay her the sum of Kshs.1,000,000/= as compensation for injuries caused by a wildlife attack on her;
 2. In compliance with section 25 of the *Wildlife Conservation and Management Act*, the respondents are hereby ordered to consider and pay the exparte applicant's claim within 30 days from the date of service of the order of Mandamus herein; and
 3. Costs and all incidentals of the application are awarded to the exparte applicant.
16. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 1ST DAY OF AUGUST, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Kalisto for 1st Respondent
2. Ms. Njoroge holding brief for Opondo for Exparte Applicant
3. No Representation for 2nd and 3rd Respondent
4. Francis Munyao - Court Assistant-

