



**Dahir (Suing as Next of Kin of Sahra Mohamed) v Kenya Wildlife Service & another
(Tribunal Appeal 033 of 2022) [2023] KENET 490 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KENET 490 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 033 OF 2022
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
SEPTEMBER 28, 2023**

BETWEEN

**MOHAMMED HANSHI DAHIR (SUING AS NEXT OF KIN OF SAHRA
MOHAMED) APPELLANT**

AND

**KENYA WILDLIFE SERVICE 1ST RESPONDENT
MINISTERIAL WILDLIFE CONSERVATION AND COMPENSATION
COMMITTEE 2ND RESPONDENT**

JUDGMENT

1. The Appellant herein instituted the present Appeal by way of a Notice of Appeal dated September 20, 2022 under Rule 4 (1) of the [National Environment Tribunal Procedure Rules](#) and filed on even date.
2. The appeal is against the decision of the Ministerial Wildlife Conservation Committee (MWCC), communicated to the Appellant vide the letter dated October 20, 2021 informing him that his claim has been rejected by the committee because of lack of post mortem and public inquest report attached to the claim.
3. Therefore, the relief which the Appellant is seeking before the Tribunal is compensation for the death of Sahra Mohammed Hanshi resulting from a crocodile attack.

Submissions

4. On August 3, 2023 parties agreed to canvass the Appeal by way of written submissions. Both the Appellant and the 1st Respondent filed their submissions.



5. The Appellant who contends that he is the father of the deceased submitted that on August 12, 2015, Sahra Mohamed (the deceased) who was 15 years old then had gone to fetch water along the banks of River Tana and she has never been seen or heard from since then.
6. It was submitted by the Appellant that as her body had not been found, it was believed that she had been eaten by a crocodile and based on that it was presumed that she was deceased. Further, the Appellant submitted that he reported the matter to their area chief and to Masalani Police Station and that an extensive search by the police and local divers was undertaken which was not successful in retrieving the deceased or parts of her body.
7. An inquest file was opened by the police referenced 2/2015 and it is the Appellants submission that there was no progress in the investigation which led them to file the claim with the MWCCC, the 2nd Respondent herein.
8. It was the 1st Respondent's submission on the other hand, that the Appellant's claim to the MWCCC lacked key evidence such as the post-mortem report and an inquest which the MWCCC relies on in arriving at a decision. Further, the 1st Respondent submitted that the burden to prove the cause of death for compensation purposes lies with the Appellant.
9. With respect to the MWCCC impugned decision, the Appellants contend that the said decision was made before the seven years that would make a person to be presumed dead had lapsed. They placed their reliance on Section 118A of the Evidence Act which provides the following –

“Where it is proved that a person has not been heard of or seen for seven years by those who might be expected to have heard of him if he was alive, there shall be a rebuttable presumption that he is dead”.
10. Specifically, it was the Appellant's submission that the period since the claim was lodged and the subsequent conclusion was 5 years 9 months and 20 days leaving him with 9 months and 21 days to approach the court for orders of presumption of death.

Analysis and Determination

11. After careful analysis of the Appellant's appeal, written submissions and all other documents filed by the parties, we find that the only issue that presents itself for determination is whether the Appellant's Appeal is merited.
12. To begin with, the instant case falls under the ambit of the Wildlife Conservation and Management Act, 2013 and section 25 was drafted in very clear terms which for avoidance of doubt, we will reproduce hereunder –

“25.

 - (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.”
13. In this instant appeal which has been laid before us pursuant to the above provision and section 25 (6) which gives us jurisdiction, crucial questions still linger. Is the Appellant a personal representative?



Where are the letters of administration to demonstrate this? Where is the evidence of death for us to be able to make determination? These documents are critical and are what makes the appeal meritorious.

13. Being a matter involving a presumed deceased person, the law is very clear on what is to be done and where to get the presumption orders. Certainly, it is not from us and we cannot make a determination in the absence of such evidence. The Appellant is aware of this and had averred that the inquest investigation did not bear any fruits. Additionally, from the Appellants bundle of documents, there is an application for presumption of death orders dated 2016 which on the face of it appears to not have been filed and a quick guess as to the reason is that the statutory period of 7 years had not lapsed.
14. As substantive justice is our ultimate goal as a Tribunal and there being so much to consider in this instant appeal, the Tribunal's attention is drawn to what the law that gives us jurisdiction provides.
15. There is a procedure and it must be followed as was held in the case of *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR in which it was 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...”
16. Accordingly, we find that the appeal lacks merit, and we cannot hear the Appeal.

Orders

17. In the circumstances, the Tribunal makes the following orders;
 - a. The Notice of Appeal dated September 20, 2022 is hereby struck out.
 - b. We consider this case appropriate for each party to bear their costs of the suit.

DATED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023

EMMANUEL MUMIA.....CHAIRMAN
WINNIE TSUMA.....VICE-CHAIR
KARIUKI MUIGUA.....MEMBER
DUNCAN KURIA.....MEMBER
RONALD ALLAMANO.....MEMBER

