



**Haro (Suing on Behalf of Saida Hussein Haro (Deceased)) v
Kenya Wildlife Service & another (Tribunal Appeal 14 of 2022)
[2023] KENET 224 (KLR) (Environment and Land) (15 April 2023) (Ruling)**

Neutral citation: [2023] KENET 224 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND
TRIBUNAL APPEAL 14 OF 2022
MOHAMED S BALALA, CHAIR, BAHATI MWAMUYE,
WAITHAKA NGARUIYA & KARIUKI MUIGUA, MEMBERS
APRIL 15, 2023**

BETWEEN

**DIQA HUSSEIN HARO APPELLANT
SUING ON BEHALF OF SAIDA HUSSEIN HARO (DECEASED)**

AND

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

RULING

Background to the Dispute

1. The Appellant instituted this appeal vide a Notice of Appeal dated May 6, 2022 under Rule 4 (1) of the [National Environment Tribunal Procedure Rules](#) and filed on the same date.
2. The appeal is against the decision of the Ministerial Wildlife Conservation Committee (MWCC), communicated to the Appellant vide the letter dated October 7, 2019 informing him that his claim has been rejected by the committee because of lack of post mortem report to ascertain the cause of death and inconsistencies in the date of the incident.
3. The relief which the Appellant is seeking before the Tribunal is compensation for the death of Saida Hussein Haro.



Respondent's Reply

4. The 1st Respondent responded to the appeal vide a Reply to Grounds of Appeal dated May 19, 2022 where at paragraph 4, it raised a Preliminary Objection to the Appeal dated May 6, 2022 on the following grounds: -
 - a. The Appeal is time barred by dint of Section 25 (6) of the [Wildlife Conservation and Management Act](#) that requires it to be filed within thirty (30) days of notification of the decision.
 - b. The Honourable Tribunal lacks jurisdiction to entertain an appeal that is time barred and should therefore be struck out as it is a nullity *ab initio*.
 - c. The Appellant has not demonstrated, as provided for by the [Law of Succession Act](#), Cap 160 that they are the rightful administrator to the estate of the deceased and therefore lacks locus standi to institute this appeal.

Submissions

5. The Appellant and the 2nd Respondent did not file any written submissions on the Preliminary Objection raised by the 1st Respondent in its reply to the grounds of appeal.
6. The 1st Respondent filed its written submissions dated June 2, 2022 on the Preliminary Objection raised in its reply to the grounds of appeal.
7. The 1st Respondent raised the following issues for determination:
 - i. Whether the Appeal is time barred by dint of Section 25(6) of the [Wildlife Conservation and Management Act](#).
 - ii. Whether the Appellant has demonstrated by virtue of the [Law of Succession Act](#) that they are the rightful administrator of the estate of the Deceased and therefore have locus standi to institute this appeal.
 - iii. Whether the Honorable Tribunal has jurisdiction to entertain this appeal.
8. The 1st Respondent, vide its written submissions dated June 2, 2022, prays that the Honourable Tribunal upholds the Preliminary Objection and dismisses the Appellant's appeal on the grounds that:
 - i. It was instituted out of time; and
 - ii. The Appellant has not obtained a Grant ad litem for the purpose of instituting these proceedings against the deceased.

Issues for Determination

9. Having considered the 1st Respondent's Preliminary Objection which was raised at paragraph 4 of its Reply to Grounds of Appeal dated May 19, 2022, the 1st Respondent's written submissions in respect of its Preliminary Objection and all the arguments and evidence presented by the parties, the Tribunal has identified the following issues as arising from the Preliminary Objection:
 - a. Whether the appeal is time barred;
 - b. Whether this Tribunal has Jurisdiction; and
 - c. What orders should the Tribunal make?



Whether the appeal is time barred

10. In the celebrated case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Limited*, the principles of preliminary objections were set out. The court stated as follows: -

"So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit."

11. Section 25(6) of the [*Wildlife Conservation and Management Act*](#) (No 47 of 2013) provides:

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 (emphasis ours).

12. The Appellant lodged their application to the County Wildlife Compensation Committee seeking to be compensated for the death of one Sadia Hussein Haro. The Ministerial Wildlife Conservation and Compensation Committee (MWCCC) replied by way of a letter dated October 7, 2019 rejecting the claim due to lack of post mortem report to ascertain the cause of death and inconsistencies in the date of the incident.
13. The 1st Respondent, vide its written submissions on the Preliminary Objection, submits that the Appellant collected the letter dated October 7, 2019 on the 30th of January 2020 from the 1st Respondent's station at Marsabit County.
14. The 1st Respondent attached, in its list of documents dated June 2, 2022, a copy of the extract of Kenya Wildlife Service Compensation Register.
15. The aforementioned register shows that the Appellant Diqa Hussein Haro collected the letter dated October 7, 2019 on January 30, 2020 and even signed the register alongside his name.
16. The Tribunal finds that the period of 30 days within which the Appellant was required to file the appeal began to run on the 30th day of January 2020 when he collected the letter dated October 7, 2019. Since the appeal was filed on May 6, 2022, the period within which the Appellant was required to institute the appeal had lapsed before the Appellant approached the Tribunal.
17. The Tribunal notes that nowhere in either the Act or in any other written law is it empowered to extend the time within which an appeal under Section 25 of the [*Wildlife Conservation and Management Act*](#) of 2013 should be filed.
18. Consequently, the appeal presented by the Appellant is time-barred.

Whether this Tribunal has jurisdiction

19. This Tribunal in Tribunal Appeal Net 2 of 2018, [*Albert Mumma in his Capacity as Chairman Langata District Association v Director General - National Environmental Management Authority \[NEMA\] & 2 others; Seventh Day Adventist Church \(EA\) Limited \(Interested Party\)*](#) held that:

"It is established practice that where the jurisdiction of the Tribunal is called into question then the first order of business is for the tribunal to make a determination on that issue before rendering its decision on the main points of the appeal."



20. Nyarangi JA while citing Words and Phrases Legally defined in *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* held that:

“By jurisdiction is meant the authority which a court has to decide matters that are before it or take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake both of these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

21. Likewise, in *Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 Others*, Civil Appl. No. 2 of 2011, The Supreme Court of Kenya observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

22. Having found that the Appellant’s Appeal was filed out of time, the Tribunal finds no reason to delve into matters raised in the appeal as it lacks the jurisdiction to take any further step.

Orders

23. For the above reasons, the Tribunal makes the following orders:
- The 1st Respondent’s Preliminary Objection is hereby allowed;
 - The Appeal is hereby dismissed; and
 - Each party to bear their own costs.
24. The parties’ attention is drawn to the provisions of Section 130 of the EMCA.

DATED AT NAIROBI THIS 15TH DAY OF APRIL 2023

MOHAMMED S BALALA.....CHAIRPERSON

BAHATI MWAMUYE.....MEMBER

WATHAKA NGARUIYA.....MEMBER

KARIUKI MUIGUA.....MEMBER

