



Kimaru (Appealing as the Legal Representative of Estate of Kimaru Kiserem – Deceased) v Ministerial Conservation and Compensation Committee & another (Tribunal Appeal 002 of 2022) [2023] KENET 204 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KENET 204 (KLR)

REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 002 OF 2022
MOHAMED S BALALA, CHAIR, BAHATI MWAMUYE,
WAITHAKA NGARUIYA & KARIUKI MUIGUA, MEMBERS
APRIL 18, 2023

BETWEEN

COLLINS KIYAI KIMARU (APPEALING AS THE LEGAL REPRESENTATIVE OF ESTATE OF KIMARU KISEREM – DECEASED) APPELLANT

AND

MINISTERIAL CONSERVATION AND COMPENSATION COMMITTEE 1ST RESPONDENT

KENYA WILDLIFE SERVICE 2ND RESPONDENT

RULING

1. The Appellant filed a Notice of Appeal dated January 28, 2022 in which he appealed the decision of the Respondent to decline compensation on the basis that the deceased was killed by an elephant on a protected area.
2. The Respondent filed a response in which it stated that the Appeal was filed out of time thus the Tribunal has no jurisdiction and further stated that the deceased was killed in protected area being Ol Arabel Forest thus such an incident does not attract any compensation. In any event, the Respondent alleges that the death was occasioned by the deceased's own negligence.
3. Both parties have filed their lists of documents and witness statements but there is no record of proceedings of the Respondent thus leaving the Tribunal without critical material on two very important matters for the determination of the appeal, viz: the date when the Appellant was notified of the decision of the Respondent (if at all) and the exact place where the deceased was attacked by the elephant. The two matters are extremely important for the Tribunal to form an opinion on the Appeal and for justice to be served on the parties.



4. In the documents before the Tribunal, the witnesses for the Appellant state that the elephants strayed into the deceased's land, chased him and he ran towards the boundary of the forest where he was killed by the elephant thus he was not in a protected area. As for the objection to the jurisdiction, there is no evidence on whether the Appellant was notified of the decision of the Respondent.
5. The Tribunal had previously ordered that the Appeal be disposed of by way of written submissions but having identified the two fundamental gaps in the documents provided by the parties, the Tribunal may not have a proper basis for its decision on the two critical issues. The Tribunal makes this decision noting that the Appellant is a lay person acting in person and justice needs to not only be done but also be seen to be done to all parties including lay Appellants appearing before the Tribunal.
6. In the circumstances, the Tribunal does vacate its earlier orders for the disposal of this Appeal by way of written submissions and orders that the same be disposed of by way of viva voce (oral) evidence unless otherwise ordered by the Tribunal.

Orders

- a. The orders for the disposal of the Appeal dated January 28, 2022 by way of written submissions are vacated.
- b. The Appeal dated January 28, 2022 shall be disposed of by way of oral hearing unless otherwise ordered by the Tribunal.
- c. Costs in the cause.
- d. A Mention date for further directions to be fixed at the registry as soon as possible.

DATED AND DELIVERED AT NAIROBI, THIS 18TH DAY OF APRIL 2023.

Mohammed BalalaChairperson

Bahati Mwamuye.....Member

Waithaka Ngaruiya.....Member

Kariuki Muigua.....Member

