



**Bagaja (Suing on Behalf of Buke Abdi Guracha - Deceased) v Kenya Wildlife Service & another
(Tribunal Appeal 33 of 2021) [2023] KENET 489 (KLR) (Civ) (9 October 2023) (Judgment)**

Neutral citation: [2023] KENET 489 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
CIVIL**

TRIBUNAL APPEAL 33 OF 2021

**EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS**

OCTOBER 9, 2023

BETWEEN

**BORU ABDIKADIR BAGAJA (SUING ON BEHALF OF BUKE ABDI GURACHA
- DECEASED) APPELLANT**

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**MINISTERIAL WILDLIFE CONSERVATION AND COMPENSATION
COMMITTEE 2ND RESPONDENT**

JUDGMENT

1. The Appellant moved this tribunal by way of a Notice of Appeal dated 17th December 2021 and filed under rule 4 of the National Environment Tribunal Rules. The Appeal emanated from a decision rendered by the Ministerial Wildlife Conservation and Compensation Committee (MWCCC) rejecting a claim for compensation instituted by the Appellant on behalf of the deceased, Buke Abdi Guracha. The compensation was rejected on the grounds that there was no post-mortem report to ascertain the cause of death.
2. The 1st respondent had raised a preliminary objection which hinged on the question of whether the appeal was filed within time. In the ruling issued on March 31, 2023, the Tribunal declared that the objection to jurisdiction would be deferred for consideration during the main hearing of the appeal. Following this ruling, a mention for directions was scheduled for April 3, 2023, during which the tribunal specified that the appeal would be canvassed by way of written submissions.



Determination

3. Having considered the Appellant's appeal instituted vide a notice of appeal dated 17th December 2021, the Parties' submissions, and further documents, the tribunal will address the following issues:
 - a. Whether the Appeal is time-barred by dint of section 25 (6) of the [Wildlife Conservation and Management Act](#)
 - b. Whether the Appellant has locus standi to bring the appeal
 - c. Whether this tribunal has the jurisdiction to admit additional evidence

Whether the Appeal is time-barred by dint of section 25 (6) of the [Wildlife Conservation and Management Act](#)

4. The 1st Respondent contends that the Appeal has been instituted out of time and ought to be dismissed and states that section 25(6) of the [Wildlife Conservation and Management Act](#) (No. 47 of 2013) provides that Appeals before this Honourable tribunal should be brought within 30 days of notification of the decision by the Ministerial Wildlife Compensation Committee. They aver that the tribunal has, therefore, no jurisdiction and therefore cannot proceed, and state the case of *The Owners of Motor Vessel 'Lillian S v Caltex Oil Kenya Ltd* [1989] 1KLR 1 AND [Mercy Kirito Mutegi v Beatrice Nkatha Nyaga & 2 others](#) [2013] EKLK in support.
5. In rebuttal of this argument, the Appellant, through his submissions, states that the notification was picked by him on the 25th November 2021, which is confirmed by the attached collection register.
6. 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.
7. The Supreme Court of Kenya in [Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others](#), Civil Appl. No. 2 of 2011, observed as follows:

“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.”
8. The Appeal before us was instituted on 17th December 2021. The aforementioned register shows that the Appellant Boru Abdikadir Bagaja collected the letter dated 15th October 2021 on 25th November 2021 and even signed the register alongside his name.
9. The tribunal finds that the period of 30 days within which the Appellant was required to file the appeal began to run on the date of notification, which is the 25th November 2021 when he collected the letter.



10. We find that the appeal filed on December 17, 2021, was timely and not subject to any time-bar limitations.

Whether the Appellant has locus standi to bring the appeal

11. The Respondent contends that the Appellant has no locus standi in this matter as he has not produced Letters of Administration Ad Litem. The Respondent relied on the case of the Estate of [*Robert Kinyua Mwangi*](#) – Succession Cause No. 292 of 2015 at Kerugoya in which the judge stated that:

“It is clear that a limited grant of letters of administration ad litem is usually used when the estate of a deceased person is required to be presented in court proceedings.”

12. On his part, the Appellant contends that all the requisite documents were attached to the application. However, in his affidavit dated 22nd March 2022, he produced the limited grant of letters of administration ad litem that was issued to him and another on the 10th March 2016.

13. The question of locus standi goes to the heart of the Tribunal’s jurisdiction. In [*Apex Finance International Limited and Another v Kenya Anti-Corruption Commission*](#) [2012] eKLR, Justice Emukule cited with approval *Goodwill and Trust Investment Ltd and another v Witt and Bush Ltd Nigerian* SC 266/2005 where the Nigerian Supreme Court observed as follows:

‘It is trite law that to be competent and have jurisdiction over a matter; proper parties must be identified before the action can succeed, the parties to it must be shown to be proper parties whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the suit in limine. When proper parties are not before the court the court lacks jurisdiction to hear the suit, and, “where the court purports to exercise jurisdiction which it does not have, the proceedings before it, and its judgment will amount to a nullity no matter how well reasoned.’

14. The issue of locus standi is cardinal and it is settled before courts. In [*Hawo Shanko v Mohamed Uta Shanko*](#) [2018] eKLR Justice Chitembwe explains the need for parties to obtain a limited grant before instituting a suit on behalf of the Estate of a deceased person as follows:

“..... The general consensus is that a party lacks the Locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or Applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate.... It is the Limited grant which gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit.

15. Further, in the case of [*Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another*](#) [1987] eKLR this Court stated: “an administrator is not entitled to bring an action as an administrator before he has taken out letters of Administration. If he does, the action is incompetent at the date of its inception...” and in [*Julian Adoyo Ongonga v Francis Kiberenge Abano*](#), Migori Civil Appeal No. 119 of 2015, where the court held the following on the issue of a party filing suit without having obtained a limited grant:

“Further the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case simply put, a party without locus in a civil suit lacks the right to institute



and or maintain suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party.

16. Following the above precedents, it is clear that to institute a civil suit on behalf of the estate of a deceased person, the party must have obtained a grant before the institution; otherwise, they lack the legal leg to stand before any judicial authority.
17. In this matter, the Appellant had the grant of letters of administration ad litem; the only omission was that the said grant was not attached to the Appeal.
18. The Appellant's omission to attach the grant of letters of administration at the time of filing this Appeal is a mere irregularity that can be cured. The Appellant has produced the grant before the judgment, and the grant was issued by the courts before the institution of the Appeal.
19. We determine that the Respondent has not suffered any prejudice as a result of the omission, and it would be against the interests of justice to deny the Appellant an opportunity to be heard. This tribunal has the power to cure irregularities in proceedings, especially where it would be against the interests of justice to do otherwise.
20. It is our finding that the Appellant had locus to institute this Appeal.
Whether this tribunal has the jurisdiction to admit the post-mortem report as additional evidence:
21. The 1st Respondent in its submissions and further documents, opposes the introduction of any new evidence that was not subject to the appeal, they contend it would be prejudicial to their case. Reliance was placed on *Mohamed Abdi Mohamud vs. Ahmed Abdullahi Mohamad & 3 Others* [2018] eKLR.
22. The Appellant seeks the introduction of the post-mortem report in support of his case. The Committee had rejected the compensation claim because there was no post-mortem report attached.
23. Following the death of Buke Abdi Guracha, the Appellant, following the procedure set out in law, filed a claim with the MWCCC seeking compensation. The Appellant had produced a certificate of death issued on the 24th of June 2014, indicating that the deceased's cause of death was an attack by an animal or snake, and the compensation claim form for persons injured/death caused by wildlife, the Marsabit station had indicated that the deceased had died as a result of a snake bite and approved the claim form.
24. Section 25 (1) of the *Wildlife Conservation and Management Act* No.47 of 2013 provides that:

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."
25. In the case of *HMH v Kenya Wildlife Service* (Tribunal Appeal 010 of 2020) [2022] KENET 760 (KLR) (Civ) (12 October 2022) (Judgment) the tribunal stated as follows:

Kenya's wildlife resources are a valuable heritage for this country and its conservation is paramount. The Respondents and the institutions falling under the Wildlife (Conservation and Management) Act No.47 of 2013 are tasked, by law, to ensure the preservation and management of wildlife. With this responsibility is the rights bestowed on people injured or killed by wildlife. This right is also vital and given statutory backing by the compensation scheme under section 25 of the Act. The manner in which claims for injury or death are handled as a result of wildlife cannot be done causally by the mandated authorities. There must be respect for both wildlife and human life by the organs concerned.



26. The evidence is not denied by the Respondent that the death was occasioned by a snake bite. The Respondent's only contention is that the Appellant did not attach the actual post-mortem report as they submit that it is the key evidence on which the MWCCC is to rely.
27. It has been previously held that the court should not be too technical in its approach to the evidence. The court should be guided by the common-sense principle that the evidence should be considered as a whole and that the court should draw all reasonable inferences from the evidence.
28. From the evidence in place, the death certificate and the compensation claim form would have informed the Committee that the cause of death was indeed through attack by a snake.
29. From the evidence, we are persuaded that the Appellant died as a result of the attack by a snake. On a balance of probability, the appellant laid sufficient evidence to justify that the deceased died as a result of an attack by a snake through the certificate of death.
30. We have considered the appeal and the documents produced by the parties. The death certificate is a legal document that provides evidence of the cause of death. The committee is bound to give weight to the death certificate when making its decision. In this case, the Committee failed to give any weight to the death certificate.

Orders

31. Having found that the Respondent had a duty to award compensation for personal injury or death by wildlife under the *Wildlife Conservation and Management Act*, No 47 of 2013, the tribunal will proceed to determine whether the appellant is entitled to the reliefs sought in the notice of appeal.
32. The Appellant, in paragraph 6 of the Notice of Appeal dated 17th December 2021 prays that 'the decision of the MWCCC be reconsidered and the appellant decision to be compensated is allowed.
33. In the compensation claim form for persons injured/death caused by wildlife, the Marsabit Committee approved the claim at Kenya Shillings five million (Kshs 5,000,000/=). The tribunal finds that there was no sufficient basis by the 2nd Respondent for rejection of the claim since sufficient evidence was adduced to prove that the deceased died as a result of a snake bite.
34. Further, the compensation of Kenya Shillings five million (Kshs 5,000,000/=) was duly approved by the respondent through the Marsabit Committee.
35. The tribunal is thus inclined to award this sum to the Appellant.
For the above reasons, the tribunal makes the following orders:
 - a. The Appeal is hereby allowed
 - b. The 1st Respondent shall pay to the Appellant the sum of Kenya Shillings five million (Kshs 5,000,000/=) being compensation for the death of Buke Abdi Guracha caused by an attack by a snake.
 - c. The Respondent shall bear the costs of the Appeal.

Dated at Nairobi this 9TH day of OCTOBER 2023

EMMANUEL MUMIACHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA MEMBER



RONALD ALLAMANO MEMBER

