



**Osman & another v Kenya Wildlife Service (Tribunal Appeal
44 of 2022) [2023] KENET 1345 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KENET 1345 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 44 OF 2022**

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

OCTOBER 13, 2023

BETWEEN

ADAN ISSACK OSMAN 1ST APPELLANT

ZAKARIA ADAN ISSACK 2ND APPELLANT

AND

KENYA WILDLIFE SERVICE RESPONDENT

RULING

Background

1. The Appellant moved this tribunal by way of notice of appeal dated 30th November 2022 and filed on an even date under Rule 4 of the [National Environment Tribunal Procedure Rules](#).
2. The Appeal emanates from a decision rendered by the Respondents rejecting a claim lodged by the Appellant for compensation following a snake bite. They, therefore, seek compensation for the 2nd Appellant's snake bite.
3. Upon service, the Respondent entered appearance and filed a Reply to Grounds of Appeal dated the 27th of April 2023. At Para. 6 of the Respondent's reply to grounds of appeal is a preliminary objection styled thus:

The Respondent shall before full hearing of the Appeal, raise a preliminary objection for consideration by this Honourable Tribunal on the grounds that; -

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.



The tribunal lacks jurisdiction to entertain an Appeal that is time-barred

4. As of the time of writing this Ruling, the only submissions forming part of our record are those filed by the Respondent.
5. The Respondent filed its written submissions dated 25th April 2023 on the Preliminary objection raised in its reply to the grounds of appeal. They raised the following issues for determination:
 - a. Whether this appeal is time-barred by dint of section 25 (6) of the [Wildlife Conservation and Management Act](#)
 - b. Whether the Honorable Tribunal has jurisdiction to entertain the appeal

Issues for Determination

6. Having considered the Appellant's appeal, the Respondent's Preliminary Objection, the Respondent's written submissions, and all other documents filed by the parties, we find that the following issues arising from the preliminary objection:
 - a. Whether the instant appeal is time-barred by dint of section 25(6) of the [Wildlife Conservation and Management Act](#).
 - b. Whether this Tribunal has jurisdiction.

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

7. The Respondent contends that the instant appeal is time-barred and should be dismissed preliminarily. *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 is a *locus classicus* on preliminary objections. For a preliminary objection to succeed, it must raise a pure point of law. In [Sobanlaldurgadass Rajput & another v Divisional Integrated Development Programmes Co Ltd](#) [2021] eKLR, Lady Justice Nyukuri held that the question of limitation of time 'is a clear point of law, which if argued as a preliminary point may dispose of the suit.
8. Section 25(6) of the [Wildlife Conservation and Management Act](#) (No 47 of 2013) provides in fairly straightforward terms that an appeal against an award of compensation shall be filed 'within thirty days after being notified of the decision and award.'
9. The Appeal before us was instituted on 30th November 2022. The Respondent contends that the Appeal is time-barred, having been filed well over 30 days after the Appellant was notified of the decision by the MWCCC rejecting his compensation claim. In support of this argument, the Respondent availed a collection register that bears the Appellants' name, and contacts. The date to which the collection register is dated is 26th October 2022.
10. We, therefore, proceed from the position that the Appellant was notified of the decision rejecting his claim for compensation on 26th October 2022.
11. As rightfully submitted by the Respondent, the time began to run on 26th October 2022, and by the time the Appellant was lodging the appeal on 30th November 2022, time had not lapsed.
12. The Appeal is, therefore, not time-barred.



Whether this tribunal has jurisdiction

13. 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.”
14. 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 cognizance 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 judgment is given.'
15. Likewise, in *Samuel Kamau Macharia v Kenya Commercial Bank & 2 others*, Civil Application 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 the 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.'
16. Having found that the Appellants' Appeal was filed within the thirty-day limit as provided for by the act, the tribunal, therefore, is vested with the jurisdiction to determine the matter.
17. Further the Appeal before the tribunal seeks to challenge injury caused as a result of a snake bite. It is an appeal under section 25(1) of the *Wildlife Conservation and Management Act*.
18. Section 25(1) provides as follows:

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.

19. The Appeal herein is premised on bodily injury as a result of a snake, where the Respondent herein is vested with the mandate in the aforementioned act.
20. From the foregoing, it is therefore evident that the Tribunal has the requisite jurisdiction to handle the matter of such nature.

Order

21. The notice of preliminary objection raised by the Respondent is therefore devoid of merit and is hereby dismissed. Costs shall abide the outcome of the appeal.

DATED AT NAIROBI THIS 13TH DAY OF OCTOBER 2023

EMMANUEL MUMIA - CHAIRMAN

WINNIE TSUMA - VICE-CHAIR

KARIUKI MUIGUA - MEMBER

DUNCAN KURIA - MEMBER

RONALD ALLAMANO - MEMBER

