



**Kaata v Kenya Wildlife Service & another (Tribunal Appeal 005 of 2023)
[2023] KENET 486 (KLR) (Environment and Land) (23 August 2023) (Ruling)**

Neutral citation: [2023] KENET 486 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
ENVIRONMENT AND LAND
TRIBUNAL APPEAL 005 OF 2023
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
AUGUST 23, 2023**

BETWEEN

DANIEL OLE KAATA APPELLANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

MINISTERIAL WILDLIFE CONSERVATION AND COMPENSATION

COMMITTEE 2ND RESPONDENT

RULING

Background

1. The Appellant moved this Tribunal by way of a Notice of Appeal dated 8th February 2023 and filed on 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 what is alleged to be crop damage caused by elephants.
3. The Respondent entered appearance and filed a Reply to Grounds of Appeal dated 23rd February 2023. At Para 6 of the Respondent's Reply to Grounds of Appeal is a preliminary objection styled thus:
The 1st Respondent shall, on/or before the full hearing of the Appeal, raise a preliminary objection for consideration by this Honourable Tribunal on the grounds that:-
 - 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
4. When parties appeared before us on 28th February 2023, we directed that the Preliminary Objection be canvassed by way of written submissions. As of the time of writing this Ruling, the only submissions forming part of our record are those filed by the 1st Respondent.

Issues for determination

5. Having considered the Appellant's appeal, the 1st Respondent's Preliminary Objection, the 1st Respondent's written submissions and all other documents filed by the parties, we find that two issues present themselves for determination:
 - a. whether the instant appeal is time-barred by dint of section 25(6) of the [Wildlife Conservation and Management Act](#); and
 - b. Whether this Tribunal can enlarge time within which an appeal can be filed.

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

6. The 1st 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 *Sohanlaldurgadass 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.'
7. 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.'
8. The Appeal before us was instituted on 8th February 2023. The 1st 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 1st Respondent has availed a collection register which bears the Appellant's name, telephone number, and what appears to be his signature. The date indicated in the collection register is 16th February 2022. The document's authenticity is not disputed; we, therefore, proceed from the position that the Appellant was notified of the decision rejecting his claim for compensation on 16th February 2022.
9. As rightfully submitted by the 1st Respondent, time began to run on 16th February 2022, and by the time the Appellant was lodging his appeal on 8th February 2023, time had lapsed. The appeal is, therefore, time-barred.
10. Having established that the appeal is time-barred, we are guided by Lady Justice Aburilli's holding in [Bosire Ogero v Royal Media Services](#) [2015] eKLR in finding that we lack jurisdiction to entertain the matter:

“The issue of limitation goes to the jurisdiction of court to entertain claims, and therefore, if a Matter is statute-barred, the court has no jurisdiction to entertain the same.”



ii. Whether this tribunal can enlarge time within which an appeal can be filed

11. The 30-day period stipulated under section 25(6) of the *Wildlife Conservation and Management Act* (No. 47 of 2013) is ironclad; as a Tribunal, we do not possess the power to enlarge the same. In *Beatrice Mwikali Musyoka v Kenya Wildlife Service* [2021] eKLR, we found as follows

“We note that Section 25(6) of the *Wildlife Conservation and Management Act* of 2013 is drafted in clear terms. Nowhere in either that Act or in any other written law is this Tribunal empowered to extend the time within which an appeal under Section 25 of the *Wildlife Conservation and Management Act* of 2013 should be filed.”

Order

12. We, therefore, find the 1st Respondent’s preliminary objection to be meritorious and strike out the appeal dated 8th February 2023.
13. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI, THIS 23RD DAY OF AUGUST 2023

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

