



**Macharia v Kenya Wildlife Service & another (Tribunal Appeal
20 of 2022) [2023] KENET 492 (KLR) (4 October 2023) (Judgment)**

Neutral citation: [2023] KENET 492 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 20 OF 2022
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR, KARIUKI
MUIGUA, DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
OCTOBER 4, 2023**

BETWEEN

JOHN NGURE MACHARIA APPELLANT

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

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

JUDGMENT

Background To The Dispute

1. The Appellant instituted this appeal vide a Notice of Appeal dated 20th June 2022 and filed on even date under Rule 4 (1) of the [National Environment Tribunal Procedure Rules](#). The appeal is against the decision of the 2nd Respondent to reject the Appellant's claim for compensation.
2. The appeal emanates from the alleged crop (french beans) destruction occasioned by elephants. The Appellant thus seeks compensation for the alleged crop destruction.

Respondent's Reply

3. The 1st Respondent filed its reply to grounds of appeal dated 5th July 2022.

Submissions

4. The Appellant filed his written submissions dated 12th September 2023.
5. On the other hand, the 1st Respondent filed its written submissions dated 25th September 2023.



Issues for Determination

6. Having considered the Appellant's appeal instituted *vide* the Notice of Appeal dated 20th June 2022, the Appellant's and the 1st Respondent's written submissions and all other documents filed by the parties, the Tribunal has identified the following issues for determination:
 - a. Whether the Appellant is entitled to compensation; and
 - b. What is the quantum of compensation due to the Appellant?

Whether the Appellant is entitled to compensation

7. The Appellant lodged his claim with the 2nd Respondent seeking to be compensated for alleged crop (french beans) destruction occasioned by elephants. The 2nd Respondent vide the letter dated 9th May 2022 communicated that the claim had been rejected by the committee

‘as KWS OB number 04/07/03/2014 was issued before the incident indicated on the claim form as 27/09/2014.’
8. The Appellant being dissatisfied with the 2nd Respondent's decision moved to this Tribunal by way of the appeal dated 20th June 2022.
9. Section 25 (4) of the [Wildlife Conservation and Management Act](#) No.47 of 2013 provides that:

Any person who suffers loss or damage to crops, livestock or other property from wildlife specified in the Seventh Schedule hereof and subject to the rules made by the Cabinet Secretary, may submit a claim to the County Wildlife Conservation and Compensation Committee who shall verify the claim and make recommendations as appropriate and submit it to the Service for due consideration.
10. The 1st Respondent submits that the documents presented to MWCC indicate that the incident occurred on 27/09/2014 whereas in support of this Appeal the Appellant tenders a claim form in which the date of incident is captured as 3/3/2014.
11. The 1st Respondent further submits that the discrepancy in the dates of the occurrence of the alleged incident casts doubt on whether the alleged incident actually occurred.
12. It is the Appellant's submission that this is clearly a discrepancy as there is no mention of such a date (27/09/2014) on the claim form.
13. The Tribunal notes that the 1st Respondent has not tendered any evidence and/or documents that it alleges were presented to the 2nd Respondent indicating that the incident occurred on 27/09/2014.
14. The Appellant has tendered, as part of his documents, a crop damage verification form clearly indicating the crops destroyed as well as the description and extent of damage. This crop damage verification form has been signed by an officer from the 1st Respondent as well as an agricultural officer.
15. Additionally, the Appellant also tendered a crop damage assessment report indicating the cause and extent of the destruction of his crops. The report has been duly executed by the Divisional Agricultural Ext. Officer, Rumuruti division.
16. Having considered the above, the Tribunal finds that the Appellant is entitled to compensation for the crop (french beans) destruction occasioned by wildlife, in this case being elephants.



What is the quantum of compensation due to the Appellant?

17. *Vide* the crop damage assessment report dated 7th March 2014, the value of the damage of the destruction of the Appellant's french beans is Kshs. 172,800. According to the report the extent of damage was 90%.
18. Likewise, vide the aforementioned crop damage verification form, the Agricultural officer notes that the crop (french beans) were under intensive growing by use of irrigation. Additionally, he notes that the crops were healthy and mature.
19. This Honourable Tribunal has considered the circumstances of this case and the period of time that has elapsed since the date when the Appellant filed his claim before the 2nd Respondent.
20. The Tribunal is of the view that Kshs. 371,467.92 is reasonable compensation for the Appellant. The Tribunal has arrived at this sum by computing simple interest at the rate of 12% pa earned on the sum of Kshs. 172,800/= from 3rd March 2014 until the date of this judgment.

Orders

21. For the above reasons, the Tribunal makes the following orders:
 - i. The Appeal is hereby allowed;
 - ii. The decision of the 2nd Respondent dismissing the Appellant's claim is hereby set aside.
 - iii. The 1st Respondent shall forthwith pay to the Appellant Kshs. 371,467.92/= as compensation for the destruction of his crops (french beans).
 - iv. The Respondents shall bear the costs of the Appeal.
22. Parties attention is drawn to provisions of Section 130 of the [*Environment Management and Co-ordination Act*](#).

DATED AT NAIROBI THIS 4TH DAY OF OCTOBER 2023

EMMANUEL MUMIA.....CHAIRPERSON

WINNIE TSUMA.....VICE CHAIRPERSON

KARIUKI MUIGUA.....MEMBER

DUNCAN KURIAMEMBER

RONALD ALLAMANOMEMBER

