



**Koruta v Kenya Wildlife Service (Tribunal Appeal 29 of 2023)
[2024] KENET 519 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KENET 519 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
TRIBUNAL APPEAL 29 OF 2023
EMMANUEL MUMIA, CHAIR, WINNIE TSUMA, VICE CHAIR,
DUNCAN KURIA & RONALD ALLAMANO, MEMBERS
APRIL 26, 2024**

BETWEEN

JOSEPH NTIPAPA KORUTA APPELLANT

AND

KENYA WILDLIFE SERVICE RESPONDENT

RULING

1. On 25th September 2023, the Appellant moved the Tribunal by way of an appeal which ostensibly seeks an upward review of the amount of Kshs. 5,000 awarded to him by the 2nd Respondent as compensation. The compensation, as per the compensation claim attached to his bundle of documents, was in respect of the loss of borana cattle.
2. The appeal precipitated the 2nd Respondent’s Notice of Motion application dated 20th February 2024, before us for determination. The application’s principal intent is to have the Tribunal down its tools for want of jurisdiction. The Respondent asserts that the instant appeal was filed outside the 30 days stipulated under the *Wildlife Conservation and Management Act*, and therefore, a hearing and determination of the same will be akin to a chase in the wild, in legal parlance, a nullity ab initio.
3. Despite being served with the application dated 20th February 2024, the Appellant failed to file a response. What we have in our file are the Respondent’s submissions dated 8th April 2024, filed pursuant to the directions of the Tribunal of 18th March 2024

Issue for determination

4. Having carefully considered the pleadings and written submissions filed by the Respondent, we find that the only issue dispositive of the instant application is whether this Tribunal has jurisdiction to entertain the instant appeal.



Whether this Tribunal has jurisdiction to entertain the instant appeal

5. The Respondent has urged the Tribunal to find that the instant appeal is time-barred by dint of section 25(6) of the [Wildlife Conservation and Management Act](#). The section provides as follows:

“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.”
6. We now turn to the facts presented before the Tribunal. The Respondent contends that the Appellant received an award of Kshs. 5,000 which sum was deposited into the Appellant’s bank account on 29th July 2021. In support of this position, they have pointed the Tribunal to the Appellant’s bundle of documents wherein he attaches a Funds Transfer document that is certified as a true copy of the original by Kenya Commercial Bank Ltd.
7. The document indicates that a sum of Kshs. 5,000 was transferred on 29th July 2021 by the Respondent into account number 1107777658 in the name of the Appellant. Alongside the Funds Transfer document, the Appellant produced a schedule of payment detailing twenty (20) other persons whose claim for compensation was approved by the Respondent. The schedule goes further to detail the amounts awarded. The Respondent has urged this Tribunal to find on this account the Appellant was made aware of the award as early as 29th July 2021.
8. We now turn our minds to the letter and import of section 25(6) of the [Wildlife Conservation and Management Act](#) and pose the question: When was the Appellant notified of the Respondent’s decision? The Respondent invites this Tribunal to find that the act of transferring funds into the Appellant’s account in and of itself meets the threshold of notification under section 25(6) of the [Wildlife Conservation and Management Act](#); we disagree.
9. In the appeals that have come before the Tribunal for determination, the Respondent has established a fairly settled practice of notifying claimants in writing of decisions arrived at by the Ministerial Wildlife Compensation Committee. In the absence of such formal written notification, and with no justifiable reason for departing from this settled practice, we find the transfer of funds into the Appellant’s account to be insufficient evidence of notification.
10. It is possible that the Appellant never received a notification of the funds’ transfer on his mobile phone and/or email and may have become aware of the payment upon a follow-up with the Respondent sometime in September 2023, whereupon he obtained the documents filed in support of his appeal. In fact, looking at the nature of the Funds transfer document and the schedule which the Appellant has produced, only the Respondent could have supplied the said documents to the Appellant. It is possible that the same were retained by the Respondent after making payment on 29th July 2021 and were availed to the Appellant as soon as he made inquiries on his claim for compensation in September 2023.
11. The nature of the facts presented before the Tribunal opens up room for conjecture, which is antithetical to our solemn mandate in fact-finding. The Respondent ought to have provided sufficient, near unimpeachable proof of notification as an aide in the computation of time within the meaning of 25(6) of the [Wildlife Conservation and Management Act](#). In the circumstances, the Tribunal is unable to verify when the Appellant was notified of the compensation award by the Respondent. In taking this position, we find refuge in *James Biwott Sawe (suing on behalf on Mitchel Jepchirchir) versus*



Kenya Wildlife Service & 2 others; Tribunal Appeal No.17 of 2022 where faced with a near similar circumstance we held as follows:

We have found that it is not possible to make a determination at this juncture, whether or not this appeal is time barred. This is because we will require to receive evidence demonstrating when the Appellant received the letter dated 15th December 2021 communicating the 2nd Respondent's decision to the Appellant in order to enable us to compute the time within which the appeal should have been lodged.

12. It is not lost on us that the consequence of upholding the Respondent's Notice of Motion application will be to drive away the Appellant from the seat of justice. As bastions of justice and stability, we are under a constitutional obligation to exercise great circumspection every time an invitation is extended to us to strike out an appeal before the same is heard on the merits. We do no better than cite a triumvirate of three eminent Court of Appeal Judges in *Kivanga Estates Limited v National Bank of Kenya Limited* [2017] eKLR:

It is not for nothing that the jurisdiction of the court to strike out pleadings has been described variously as draconian, drastic, discretionary, a guillotine process, summary and an order of last resort. It is a powerful jurisdiction, capable of bringing a suit to an end before it has even been heard on merit, yet a party to civil litigation is not to be deprived lightly of his right to have his suit determined in a full trial.

Order

13. In the premises, we find the Respondent's application lacking merit, and the same is hereby dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI, THIS 26TH APRIL 2024.

EMMANUEL MUMIA.....CHAIRMAN

WINNIE TSUMA.....VICE-CHAIR

DUNCAN KURIA.....MEMBER

RONALD ALLAMANO.....MEMBER

