



Vee Vee Enterprises Limited v Managing Director Kenya Railways Corporation & another (Judicial Review Application E281 of 2024) [2025] KEHC 4560 (KLR) (Judicial Review) (8 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E281 OF 2024

RE ABURILI, J

APRIL 8, 2025

BETWEEN

VEE VEE ENTERPRISES LIMITED APPLICANT

AND

**MANAGING DIRECTOR KENYA RAILWAYS CORPORATION ... 1ST
RESPONDENT**

KENYA RAILWAYS CORPORATION 2ND RESPONDENT

JUDGMENT

1. The exparte applicant is Vee Vee Enterprises Limited. Vide its Notice of motion dated 17th December, 2024, the applicant seeks judicial review orders of mandamus to compel the 1st respondent to pay from the revenues of the 2nd respondent Kenya Railways Corporation balance of decretal sum being Kshs 392, 336, 211.46 as at 19th October, 2024 together with accrued interest at the rate of 14.5% per annum from October 1st, 2029 until payment in full arising from the final Arbitral Award of Calvin Nyachoti FCI Arb and subsequent decree of the Court in HCCCOMSC E601 of 2021 between Vee Vee Enterprises Limited versus Kenya Railways Corporation and the Ministry of Transport. The applicant also prays for another order of mandamus to compel settlement of all costs and expenses that are incidental to the enforcement and execution of the Arbitrator's award being an order and decree arising from HCCCON E601 of 2021.
2. The other prayer is for notice to show cause in the event of default of such settlement, once compelled.
3. It also prays for costs of the application.



4. The grounds in support of the application are on the face thereof and supported by the statutory statement for leave and verifying affidavit together with annexures thereof.
5. Opposing the application, the respondents filed a preliminary objection dated 16th January 2025 contending that the application was fatally defective for non-compliance with section 21 of the *Government Proceedings Act* and Order 29 Rule (3) of the Civil Procedure Rules as no certificate of order and or certificate of costs has been obtained and served upon the respondents which is a mandatory requirement for enforcement of decrees against the government. The respondents also filed a replying affidavit setting out the journey the matter had taken and how it involves the National Treasury and Kenya Revenue Authority and how some of the prayers sought cannot be quantified hence the National Treasury cannot pay.
6. Responding to the Preliminary objection, the applicant filed grounds of opposition and a further affidavit contending that the preliminary objection is based on misapprehension of the law and lacks merit and that it was res judicata the issues raised before Mabeya J in HCCCOM E601 of 2021 in the Garnishee proceedings; that the 2nd respondent is a state corporation established under an Act of Parliament with a corporate seal and perpetual succession which has power to sue and be sued and therefore does not constitute or comprise Government or department of the government for purpose of the *Government proceedings Act* hence those provisions cited do not apply; and that in Kenya Revenue Authority v Habimana Sued Hamad [2015] eKLR the Court of Appeal held that state corporations were not government departments hence they cannot take refuge under the *government proceedings Act*.
7. This court was urged to dismiss the preliminary objection.
8. The application was argued orally with parties' counsel reiterating the positions in the depositions and pleadings.
9. I need not rehash the pleadings, depositions and submissions for three reasons. One, is that the Notice of motion in question as filed on 17/12/2024 pursuant to leave granted as per the ruling uploaded on 19th December, 2024 is not signed. Secondly, is that the leave to apply was granted on 19/12/2024 and no notice of motion was filed pursuant to that leave as granted. The question that I will answer in the succeeding paragraphs of this judgment is what are the consequences of having unsigned pleadings and what about there being, in essence, no notice of motion filed at all, pursuant to the leave granted to the applicant. The unsigned notice of motion was filed together with the application for leave.
10. There is then the issue of whether the 2nd respondent is a government entity, which issue was settled on appeal when the applicant attempted to garnishee the money belonging to the 2nd respondent and held in Kenya Commercial Bank.
11. Allowing the appeal, the Court of Appeal held that the assets of the 2nd respondent could not be attached as stipulated in law because the 2nd respondent is a government entity hence its linkage to the *Government Proceedings Act*. As such, the preliminary objection cannot be said to be far-fetched and neither is it based on misapprehension of the law. It is also not res judicata as it appears the applicant's counsel has not read the Court of Appeal decision on the matter.
12. Commencing with the first question of unsigned notice of motion originating these proceedings, Order 2 Rule 16 of the Civil Procedure Rules provides that:

“Every pleading shall be signed by an advocate, or recognized agent (as defined by Order 9, Rule 2) or by the Party if he sues or defends in person”



13. What is not in dispute is that a pleading is like a bridge. It is an important connection between a litigant and the justice that he or she seeks from court or Tribunal. It is for that reason that Order 2 Rule 16 of the Civil Procedure Rules is framed in mandatory not directory or discretionary terms. Signing of pleadings authenticates the document and determines whether the document is valid or genuinely before a court or tribunal.
14. In Regina Kavenya Mutuku & 3 Others vs United Insurance Co. Ltd[2002]1KLR 250, Ringera J. (as he then was) held that:

“ An unsigned pleading has no validity in law as it is the signature of the appropriate person on the pleading which authenticates the same and an unauthenticated document is not a pleading of anybody, it is a nullity.”
15. The Court of Appeal in Atulkumar Maganlal Shah vs Investment & Mortgages Bank Limited and 2 Others [CA 13/2001](#) stated as follows concerning unsigned pleadings:

“ Where a pleading is not signed the same would be struck out rather than being dismissed. A pleading must be signed either by the advocate or the party himself where he sues or defends in person or by his recognized agent and this is meant to be a voucher that the case is not a mere fiction.... The failure to sign the service copy of the statement of Claim if the original is signed is not fatal...”
16. Thus, it matters not that the mistake is that of an advocate. Since the error is not curable by an amendment, the client must bear the consequences of the carelessness of counsel. See John Onger Mauria & Others vs Paul Matundura CA No. Nai 301 of 2003[2004]2EA 163. See also the Court of Appeal decision and observations in Nai. [CA 228/2018](#) Kiptoo Arap Korir Salat vs IEBC & Others where the Court of Appeal was confronted with an unsigned pleading. It concluded that where a pleading is not signed, the same should be struck out.
17. Consequently, having perused the notice of motion dated 17th December, 2024 as filed into court, and in the e-portal which is not signed, I find no notice of motion and the notice of motion is hereby struck out.
18. The other reason for striking out the Notice of motion date 17th December, 2024 is that leave to apply was granted vide the brief ruling of 19th December, 2024. The Notice of motion dated 17th December 2024 was, according to the court fees receipt, filed together with the chamber summons on 17th December, 2024. No notice of motion was filed pursuant to the leave granted on 19th December, 2024.
19. Accordingly, there is no notice of motion filed pursuant to the leave granted by the Court on 19th December, 2024.
20. I would have stopped there. However, as the applicant is not barred from filing fresh proceedings over the same subject matter, I will briefly discuss the question of whether the certificate of order against the government was mandatory in this matter, following the court of appeal decision that the 2nd respondent is a government entity. This is important because of the misinformation about certificate of order against the government.
21. The applicant maintains the stance that the 2nd respondent is a statutory body independent of the Government hence not governed by Order 29(3) of the Civil Procedure Rules and Section 21 of the [Government proceedings Act](#).



22. The High Court in the case of Association of Retirement Benefits Scheme vs. Attorney General & 3 Others [2017] eKLR aptly cited with approval the Indian Supreme Court case of International Airport Authority of India & Others (1979) SC. R 1042 in which the test for determining whether an entity was a government body or not, was stated as follows:
- “(a) Consider whether any share capital of the corporation is held by the Government and if so that would indicate that the corporation is an instrumentality or agency of Government.
 - (b) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the Corporation, that fact would afford some indication of the corporation being impregnated with Governmental character;
 - (c) It may also be relevant to consider whether the corporation enjoys monopoly status conferred by the State.
 - (d) Whether the body has deep and pervasive State control,
 - (e) Whether the functions of the corporation are of public importance and closely related to Governmental functions then that would be a relevant factor in classifying the corporation as an instrumentality or agency of Government and
 - (f) If a Department of a Government is transferred to a corporation, then it becomes an instrumentality or agency of the Government.”
23. The above decision was rendered quite recently on 25th October, 2024.
24. The Court of Appeal in the matter challenging the decision by Justice Mabeya which allowed garnishee proceedings to proceed against the 2nd respondent, was clear that the 2nd respondent is a government entity and that is the reason section 88 of the Act establishing it bars execution by way of attachment of its assets.
25. Additionally, the applicant cannot insist that the 1st respondent must pay the decretal sum from the revenues collected by the 2nd respondent when it is clear from the correspondence annexed that the 2nd respondent also relies on the exchequer and therefore appropriated funds held by the National Treasury to settle decrees such as the one herein, where the debt is incurred by the 2nd respondent as a government agent in implementing government projects, which fact the applicant is very much aware of the process where the 2nd respondent acts as an agent of the National Government but has chosen a short cut.
26. Without a certificate of order against the government being issued and served upon the Attorney General and the accounting officer of the 2nd respondent, this court, the respondents and the National treasury would not even know how much is payable in prayer 2 of the void notice of motion. A certificate of order against the government quantifies all the amount due on a decree. No judgment should be directed to pay an amount which is unknown.
27. Further, the National Treasury would only settle based on certificate of order against the government. This in my view is important otherwise the 2nd respondent would be confronted with questions as to how much is due of the generalized prayer.
28. This is a very simple matter for the applicant to comply and approach the court, now that the law prohibits attachment of assets of the 2nd respondent, instead of engaging in academic exercise of



litigating whether the 2nd respondent is a government entity or not, a matter that has long been settled by the Court of Appeal. I trust that the applicant will now comply and file an appropriate application and seek to recover the monies owed to it as opposed to engaging in procedural arguments.

29. In the end, the application which has been found to be nonexistent for the reasons given is struck out.
30. Having struck out what appears to be an application which is not signed or filed pursuant to the leave of court granted, I order that each party bear their own costs as the respondents have not denied that the money claimed is owed and remains unsettled.
31. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 8TH DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

