

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E049 OF 2025

WILKEN COMMUNICATIONS LIMITED..... APPLICANT

VERSUS

POST MASTER GENERAL.....1ST RESPONDENT

POSTAL CORPORATION OF KENYA2ND RESPONDENT

RULING ON CONTEMPT OF COURT APPLICATION

1. This Ruling determines the applicant's application notice dated 18th July, 2025, seeking orders that the 1st respondent be cited for contempt of court for disobeying judgment and decree for mandamus dated 28th May, 2025 and issued on 3rd June, 2025 respectively. The applicant also prays for costs of the application.
2. The application is premised on the grounds on the face of the application and supported by an affidavit sworn by Owino Opiyo advocate for the applicant.
3. The applicant's case provides a history of when the cause of action arose until the present date. According to the applicant, as per its depositions and submissions in support of its case, on 28th May 2025, judgment for mandamus was rendered in favour of the applicant against the respondents, following an earlier judgment delivered in favour of the applicant in Milimani HCCC NO. 527 of 2011, Wilken Communications Limited V Postal Corporation of Kenya in the sum of Kshs 7,553,796.40 plus costs.

4. The decree, judgment and mandamus orders were all served upon the respondents and there is no dispute about service or knowledge of the decree, as demonstrated in the proceedings where the parties were all represented by counsel.
5. The applicant asserts that its counsel wrote to the respondents' counsel urging them to settle decree for mandamus but there has been no response and neither is the application for contempt of court responded to.
6. The applicant therefor avers that the authority of the court has been brought into disrepute and therefore the 1st respondent should be held to be in contempt of Court.
7. As stated above, the respondent though ably represented in this matter by an advocate, no replying affidavit was filed to challenge the contempt of court proceedings.

Analysis and determination

8. The issue for determination is whether the applicant has demonstrated that the 1st respondent is in contempt of court decree of this Court dated 28th May 2025 as alleged by the applicant.
9. The essential ingredients of civil contempt of court, particularly for disobedience of court orders, are now well-settled. An applicant must prove the following:
 - a. Existence of a lawful court order. There must be a clear, unambiguous, and binding order or decree issued by a court of

competent jurisdiction. The terms must be capable of being complied with.

- b. Knowledge of the order by the respondent. The respondent must have been served with the order or otherwise made aware of it. Actual knowledge may be proved by service, participation in proceedings, consent orders, or conduct demonstrating awareness.
- c. Ability to comply with the order- It must be shown that the respondent had the capacity, means, or legal authority to comply with the order, either wholly or substantially. In civil contempt, impossibility of compliance can be a defence; hence ability must be demonstrated by the applicant unless admitted or obvious.
- d. Wilful disobedience or failure to comply. Here, the applicant must show that the respondent deliberately, knowingly, and intentionally failed to comply. Mere non-compliance is not sufficient; the conduct must amount to wilful disobedience, neglect, or indifference to the court's authority.

10. It is true that on 28th May 2025, this Court rendered judgment issuing judicial review order of mandamus compelling the respondents to settle decree of the Court and the respondents were ably represented. The 1st respondent is the accounting officer of the 2nd respondent Corporation. The extracted decree was served on 3/6/2025 upon the respondents demanding for settlement.

That decree is crystal clear, compelling settlement of money decree of the court.

11. The respondents were not only served with the decree but that they have knowledge of the said decree having fully participated in these proceedings from the beginning up to this moment and were ably represented by counsel.
12. On ability to settle decree, the statute places upon the 1st respondent a duty to without delay, settle decree of the court upon receipt and from resources of the 2nd respondent, noting that the corporation's assets are exempt from attachment and sale in execution of decree. There is no evidence of lack of the resources contemplated in section 25 of the Act on the part of the 2nd respondent.
13. On willful disregard for the decree, the applicant has demonstrated that the conduct of the 1st respondent is that of impunity as there has been no effort made to settle decree and no response made to the demand for settlement. No response to the application for contempt was filed.
14. In the Judgment for mandamus delivered on 28th May 2025, this Court observed as follows:

“8. Whereas the 2nd respondent Corporation is a body corporate with a common seal and perpetual succession with the power to sue and be sued in its own name as stipulated in section 3 of the Postal Corporation of Kenya Act, section 25 of the same Act exempts the property of the Corporation from execution as follows:

25. Restriction on execution against property of Corporation

(1) Notwithstanding anything to the contrary in any written law—

(a) where any judgement or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any property of the Corporation; but the Postmaster General shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation to the person entitled thereto;

(b) no property of the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Postmaster General.

9. It is the above provision that saved the Corporation from the initial attempt by the exparte applicant to execute decree by way of attachment and sale.

10. That being the case, the only remedy available to the decree holder is by way of mandamus since there exists a legal duty for all decree holders to settle valid decrees of the court.

11. The section places a duty on the Postmaster general of the Corporation, where any judgement or order has been obtained against the Corporation, and in mandatory terms, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the

judgement or order, be awarded against the Corporation to the person entitled thereto.

12. *The above duty in my view has crystalized and it does not require discretion of the 1st respondent since judgment was entered against the Corporation on 10th May, 2021 and decree Issued on 26th July 2021, which decree has not been set aside.*

13. *The respondents have not disputed the decree and their undertaking to settle the same in monthly instalments. The respondents acknowledge the unsettled decree and if there are any issues with the computation of figures, nothing has stopped them from settling that sum which they do not have issues with, having undertaken to settle by monthly instalments of one million on account of facing financial hardships. They have not shown any willingness to settle the decree or any part thereof yet the interest continues to accrue. The 2nd respondent is a public body and any continued accrued interest is a burden to the Kenyan taxpayer.”*

15. Section 25 of the Postal Corporation Act bars execution by way of attachment of the assets of the Corporation, the 2nd respondent herein. However, the same section mandates the 1st respondent Post Master General to, where there is judgment or decree of the Court, ***to, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by***

the judgement or order, be awarded against the Corporation to the person entitled thereto.

16. The 1st respondent is mandated by statute to settle decree of the court expeditiously and from the resources of the 2nd respondent.

17. There is no doubt that the 2nd respondent generates its own revenue. There is no evidence that it is unable to settle the subject decree from its own resources as mandated by statute.

18. Section 11 of the Act provides that ***the Postmaster-General shall be the chief executive of the Corporation and shall, subject to the directions of the Board, be responsible for the day-to-day management of the Corporation.***

19. The functions of the 2nd respondent are outlined in section 5 of the Act as follows:

5. Functions of the Corporation

The Corporation shall, in accordance with the provisions of section 50 of the Kenya Information and Communications Act (Cap. 411A)—

(a) provide and operate—

(i) postal services, and perform incidental services relating to the receiving, collecting, sending, dispatching and delivering of postal articles and electronic mail;

(ii) postal financial services, and incidental services relating to the issuing, receiving, and paying of mobile e-money, mobile payments,

money remittance business, money and postal orders, postal drafts, postal cheques, postal travellers' cheques, giro services, cash on delivery, collection of bills, virtual savings services, general electronic online agency services and registration and for delivery of newspapers and periodicals, and

(iii) electronic retail transfers and the National Payments System.

(b) perform such other functions or duties as the Cabinet Secretary may, from time to time assign to it.

20. On the other hand, the financial provisions of the 2nd respondent are stipulated in section 17 of the Act as follows:

17. Funds of the Corporation

The funds of the Corporation shall consist of—

(a) such moneys or assets as may accrue to or vest in the Corporation in the course of the exercise of its powers or the performance of its functions under this Act or any other written law;

(b) such sums as may be payable to the Corporation pursuant to this Act or any other written law, or pursuant to any gift or trust;

(c) such moneys as may be provided by Parliament for the purposes of the corporation; and

(d) all moneys from any other source provided for or donated or lent to the Corporation.

21. The applicant avers that the 1st respondent has willfully ignored and disrespected the decree of this Court despite service of the said decree upon him.
22. Indeed, on 28/10/2025, the respondents' counsel informed the court that they had been pursuing their client on the matter but were yet to get instructions.
23. When the matter came up for oral submissions on 13th November, 2025, still no replying affidavit had been filed despite leave being granted on 28th October, 2025.
24. There is no challenge to the mandamus decree issued by the court compelling the 1st respondent accounting officer of the 2nd respondent corporation to settle.
25. The 1st respondent has not bothered to indicate to court when he will, from the resources of the 2nd respondent, settle the mandamus decree, or whether the 2nd respondent has no resources for settling the decree as stipulated in section 25 of the Postal Corporation Act. This conduct, in my view, is clear evidence of impunity and therefore being brazenly contemptuous of court orders. It follows that the contempt of court order application was not made by the applicant for the sake of it. Only contempt of Court orders against an alleged contemnor can protect the dignity of the Court to prevent anarchy and protect the rule of law.

26. Contempt of Court orders trifles with the authority of judicial orders and from the conduct of the 1st respondent, he has adopted a posture of waiting to see what consequences may follow, in the hope that none will, which conduct is wholly unacceptable in a country which is governed by the rule of law.

27. It is a cardinal principle of the rule of law that all persons and authorities, including statutory bodies, are bound to obey the orders of the Court. Accordingly, no statutory body may rely on its institutional character as a shield against compliance, nor may it treat a decree of the Court as optional.

28. In the instant case, there is no lawful justification for continued inaction on the part of the respondents to settle decree.

29. In the circumstances, the 1st Respondent's conduct can only be characterized as a deliberate and willful refusal to obey a clear decree issued by a court of competent jurisdiction and exercising judicial authority on behalf of the people of Kenya.

30. This Court cannot countenance such disregard. A statutory body that elects to disobey of the court undermines public confidence in lawful administration.

31. In conclusion, Court orders are not mere suggestions or invitations to negotiate compliance at one's convenience. They are binding commands issued under the authority of the law, requiring strict and timely obedience by all persons and bodies to whom they are directed. The integrity of the

judicial process depends upon their observance. When a party, particularly a statutory body charged with upholding the law, elects to disregard or postpone compliance, it strikes at the very foundation of the rule of law.

32. Disobedience of a court order is not a trivial lapse; it is a serious affront to the administration of justice and constitutes contempt, for the authority of the Court is measured not by the eloquence of its pronouncements but by the fidelity with which they are obeyed.

33. Accordingly, I find and hold the 1st Respondent Post Master General being the person occupying that office whether in acting or a substantive office holder as the accounting officer of the Postal Corporation of Kenya and which office is currently occupied by Mr. John Kipyegon Tonui is hereby found and declared to be in contempt of the decree of this Court for mandamus issued on 28th May 2025 compelling the Corporation's Postmaster General to settle decree in Milimani HCCC No. 527 of 2011 and requiring settlement thereof. This order is further made pursuant to section 45 of the Interpretation and General provisions Act which provides that:

Reference to holder of office includes person discharging functions of that office.

In this Act and in any other written law, instrument, warrant or process of any kind, a reference to a person holding an office shall include a reference to any person for the time being lawfully discharging the functions of that office.

34.the 1st respondent office holder Mr. John Kipyegon Tonui being the accounting officer of the 2nd Respondent is hereby convicted for being in contempt of court orders compelling settlement of court decree, which is his statutory duty to do so.

35.The said being the person responsible for ensuring compliance with court orders and execution of the 2nd Respondent's statutory mandate, shall personally appear before this Court on 27th January, 2026 with legal representation, for mitigation and sentencing as shall be appropriate and lawful for the court to order.

36.Costs of these contempt proceedings shall be borne by the 2nd Respondent Corporation.

37.It is so ordered.

Dated, Signed and Delivered at Nairobi this 15th Day of December, 2025

**R.E. ABURILI
JUDGE**