



Wilken Communications Limited v Post Master General & another (Judicial Review Application E049 of 2025) [2025] KEHC 6997 (KLR) (Judicial Review) (28 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E049 OF 2025
RE ABURILI, J
MAY 28, 2025**

BETWEEN

WILKEN COMMUNICATIONS LIMITED APPLICANT

AND

POST MASTER GENERAL 1ST RESPONDENT

POSTAL CORPORATION OF KENYA 2ND RESPONDENT

JUDGMENT

1. Pursuant to leave to apply granted in judicial Review Application No. E036 of 2025, the ex parte applicant Wilken Communications Limited seeks from this Court judicial review Orders of Mandamus compelling the 1st respondent Postmaster General and accounting officer of the 2nd respondent Postal Corporation of Kenya to settle decree and certificate of costs in Nairobi HCCC 527 OF 2011 being a sum of Kshs 6,411, 784.50 decreed on 17/4/2020 plus costs amounting to Kshs 1,142,011.90 all totaling Kshs 7,553,796.40.
2. The Notice of motion is dated 24th February 2025, supported by the statutory statement, verifying affidavit and annexures supporting the chamber summons for leave to apply.
3. The ex parte applicant's case is that it was awarded a tender number TB/RPC/20/2007-2008 by Postal Corporation of Kenya for the design and construction of a data centre at a contractual sum of Kshs 43, 944,999 and later, the terms of the contract signed on 25/4/2008 were varied by an addendum contract which contract the ex parte applicant fully performed by constructing phase 4 and 90% of phase 5 which latter could not be fully completed due to non-payment of outstanding Kshs 10,311,149.
4. The default prompted the ex parte applicant to file suit vide Nairobi HCCC 527 of 2011 and vide judgment rendered by Said Chitembwe J on 17/4/2020, the applicant was awarded Kshs 6,411,784.50



plus costs of the suit. Costs were taxed as stated above and certificate of taxation dated 12th January 2022 issued. Decree was issued dated 26th July 2021.

5. The applicant then served the respondents with the above stated documentation and demand for settlement to no avail. Initially, there were attempts to execute decree by way of attachment and sale of the 2nd respondent's movable property but this did not materialize owing to the bar to attachment by section 25 of the Postal Corporation Act. That the applicant has no other remedy hence the prayer for mandamus to compel performance of a legal duty to settle decree.
6. The respondents did not file any response to the Notice of Motion which was argued orally with the applicant reiterating the grounds in support of the motion adding that the respondents had undertaken to settle decree by monthly instalments of Kshs one (1) million. The respondent's counsel submitted that the respondents had not refused to settle the decree but that there were some computation issues which, once sorted, the respondents would settle.

Analysis and Determination

7. I have considered the application, the grounds and oral submissions by both parties' counsel. The issue for determination is whether the application is merited.
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 ex parte 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.
14. In the case of *Shah v Attorney General (No. 3) Kampala HMC No. 31 of 1969 [1970] EA 543*:
- “Mandamus is essentially English in its origin and development and it is therefore logical that the court should look for an English definition. The Dictionary of English Law by Earl Jowitt tells us that mandamus “is a prerogative order issued in certain cases to compel the performance of a duty” and that it was substituted for the writ of mandamus by the Administration of Justice (Miscellaneous Provisions) Act, 1938. It issues from the Queen’s Bench division of the English High Court where “the injured party has a right to have anything done, and has no other specific means of compelling its performance, especially when the obligation arises out of the official status of the respondent. Thus, it is used to compel public officers to perform duties imposed upon them by common law or by statute... it is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual.”
15. The Court of Appeal in *Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & Others [1977] eKLR* held:-
- “The next issue we must deal with is this: What is the scope and efficacy of an Order Of Mandamus. Once again, we turn to Halsbury’s Law Of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That treatise says:
- The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”
16. At paragraph 90 headed “the mandate” it is stated:
- “The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”
17. In the present case, the Applicant is not seeking any order that the 1st Respondent be compelled to exercise his discretion in any particular manner, but that he exercises the power or duty given to him by statute. A public body which or officer who has been given a power or duty by the law to act or perform cannot choose not to act. More so, where refusal to act in one way or the other will subject a



citizen to some hardship, loss or prejudice. In this case, the Refusal by the 1st Respondent to exercise the power given under Section 25 of the [Postal Corporation of Kenya Act](#), will deny the decree holder or anyone with a claim against Corporation an opportunity to execute the decree or recover the claim to his/her prejudice.

18. Accordingly, this Court has the jurisdiction to compel the 1st Respondent to exercise the duty directed under Section 25 of the [Postal Corporation of Kenya Act](#) to the extent that it will not direct him how to exercise it.
19. In the end, an Order of Mandamus do and is hereby issued compelling the 1st Respondent on behalf of the 2nd respondent to pay the exparte applicant the sum of Kshs 7,553,796.40 being the decretal sum plus costs as claimed herein, arising from Nairobi HCCC 527 of 2011 Wilkem Telecommunications Kenya Limited versus Postal Corporation of Kenya.
20. I make no orders as to costs of the application herein.
21. The matter shall be mentioned before the Deputy Registrar on 22nd July 2025 to confirm settlement of decree and in default, the applicant shall be at liberty to apply.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 28TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

