



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
APPLICATION NO. E162 OF 2021

REPUBLIC.....APPLICANT

-VERSUS-

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD.....RESPONDENT

-AND-

THE ACCOUNTING OFFICER KONZA TECHNOPOLEIS DEVELOPMENT

AUTHORITY.....1ST INTERESTED PARTY

KONZA TECHNOPOLEIS DEVELOPMENT AUTHORITY.....2ND INTERESTED PARTY

CENTRAL ELECTRICALS INTERNATIONAL LIMITE.....3RD INTERESTED PARTY

CONTEMPORARY ENGINEERING COMPANY LIMITED.....4TH INTERESTED PARTY

EX PARTE MASTER POWER SYSTEMS LIMITED

JUDGMENT

The application before court is the applicant's motion dated 22 November 2021 said to be brought under section 3, 4, 7, 9, 10 and 11 of the Fair Administrative Actions Act, 2015, Section 175(1) of the Public Procurement and Asset Disposal Act, 2015 and Order 53 Rule 1 & 2 of the Civil Procedure Rules.

The orders sought have been framed as follows:

“

- a. An order of certiorari to bring into the High Court for purposes of being quashed a portion on the validity of the tender security of the decision of the Public Procurement Administrative Review Board dated the 5th November, 2021 in Review Application No. 127 of 2021 in regard to Tender No. KoTDA/NC001/2021-2022 for the Construction of the proposed Konza Complex Conference Facility Phase II: Electrical Installations and Associated Services.
- b. Such further and other reliefs as this Honourable Court may deem just and expedient to grant.
- c. Costs of this application be provided for.”

The application is based on the statement of facts dated 17 November 2021 verified by the affidavit of Prakash H. Modashiya who has described himself in that affidavit as a director of the applicant.

According to the statement and the affidavit, on 5 November, 2021, the respondent delivered a decision in Review Application No. 127 of 2021 in regard to Tender No. KoTDA/NC001/2021-2022 for the Construction of the proposed Konza Complex Conference Facility Phase II: Electrical Installations and Associated Services. I will henceforth refer to this tender as simply 'the tender' or 'the subject tender'.

According to the impugned decision, the respondent cancelled the notification of award and letters of regret issued to all the bidders on the basis that the said notifications did not disclose the tender sum of the successful tenderer and thus the said notifications were not issued in accordance with Section 87 (3) of the Public Procurement and Asset Disposal Act as read with Regulation 82 of the Public Procurement Regulations, 2020.

It is the applicant's case that it is dissatisfied with a section of the decision to the extent that the respondent improperly exercised its jurisdiction by erroneously interpreting the requirements in the Tender Document that comprised the 'Invitation to Tender', 'the Instructions to Tenderers' and the Appendix to the 'Instructions to Tenderers', and 'the applicable law'. As a result of what the applicant thinks was an erroneous interpretation, the applicant contends that respondent reached a wrong conclusion on the correct interpretation of what 'the validity period of the tender security' entail.

The applicant urged that whereas the Appendix to Instructions to tenderers maintained that the tender validity period will be 150 days from the date of tender opening, the Tender Document (Form of Tender Security) and Clause 13.3 Section II of the Instructions to Tenderers provided that the tender security must remain in force 30 days after the period of tender validity, which the applicant interpreted to mean that the tender security ought to have been valid for at least 180 days.

Contrary to this interpretation, the respondent is alleged to have illegally ignored the requirements in the Tender Document, Invitation to Tender, Instructions To Tenderers and the Appendix to the Instructions to Tenderers and concluded erroneously and irrationally that, in this case, the tender validity period and the tender security period being the same did not occasion any prejudice to the procuring entity.

It is the applicant's contention that the respondent illegally and irrationally permitted a nonresponsive bidder to be awarded the subject tender and that the respondent failed to exercise its mandate to ensure transparent, reasonable, accountable and fair process in respect of the criteria utilized in evaluating the validity of the tender security.

The respondent is alleged to have illegally and unreasonably failed to exercise its duty under Section 168 of the Act by failing to inform the applicant of the proceedings before it so as to enable the applicant sufficient opportunity to make representation before the respondent.

The respondent did not respond to the application; as a matter of fact, only the 1st and 2nd interested parties did and in that regard filed a joint replying affidavit which was sworn by John Paul Okwiri who describes himself as the Manager, Supply Chain of the 2nd interested party which I will also refer to as the procuring entity.

In their response, the 1st and 2nd respondents have, by and large, defended the 1st respondent's decision. Okwiri has sworn that on 27 July 2021 the procuring entity invited bids through the Government Advertising Agency (GAA) in an Open Tender, being Tender Number KoTDA/NC001/2021-2022 described as Phase II Electrical Installations and Associated Services. This was in line with Section 96 of the Public Procurement and Asset Disposal Act.

Interested eligible bidders were invited to download the Tender Documents from the procuring entity's website. The applicant, according to Okwiri, did not lodge any request for review and therefore did not demonstrate, at the appropriate time, how it suffered or risked suffering loss or damage due to the breach of a duty imposed on the procuring entity.

Instead, the applicant participated in the Request for Review proceedings as an interested party where it advanced the same argument it has advanced in the present application that the Tender Document provided for the guarantee to remain in force up to at least 30 days after the tender validity period and that the prices quoted would remain valid for 180 days from the date of the tender opening.

According to the 1st and 2nd interested parties, the respondent addressed conclusively the issue of tender security and tender validity requirements raised by the applicant in the impugned decision.

In particular, so it has been urged, that it is not disputed by the applicant that the Tender Security was for 150 days although it contends that under Clause 13.3 of the Tender Document, the tender security was to be valid for at least 30 days beyond the tender validity of 150 days thus totaling to 180 days.

In its decision, the respondent differentiated between 'tender validity' and 'tender security' defining the former as the period within which a tender remains alive and once such period lapses a tender dies a natural death while it defined tender latter as a guarantee required by the procuring entity for a tenderer to secure the fulfillment of any obligation in the tender process prior to issuance of a performance guarantee in favour of the procuring entity.

The 1st and 2nd interested parties further urged that the respondent cited the provisions of Section 80 (2) of the Public Procurement and Asset Disposal Act which outlines how a tender evaluation committee is required to conduct evaluation and comparison of tenders guided by the procedures and criteria set out in the tender documents.

The respondent noted further that the Standard Tender Document provided the procedure and criteria for evaluation of the tender with respect to tender validity and tender security. On the Tender Validity, the respondent reproduced verbatim Clause 12.1 of the Standard Tender

Document in answer to the question raised by the applicant and on the Tender Security, the Respondent also cited verbatim Clause 13.3 & 13.4 of the Standard Tender Document that the tender security shall be valid for at least thirty days beyond the tender validity period. According to that clause, the format of the Surety was to be in accordance with the sample form of Tender Surety included in the tender documents; other formats could be permitted subject to the prior approval of the Employer.

Upon considering the applicant's application, the response thereto and the submissions filed in support of the respective positions the parties' have adopted, it is obvious that it is the respondent's decision of 5 November 2021 that is in focus.

The facts preceding this decision are not in dispute.

The 2nd interested party invited sealed tenders for the subject tender from qualified tenderers in an open tender advertised through the Government Advertising Agency (GAA); this was on 27 July 2021. By the submission deadline of 19 August 2021, eleven tenders had been received. They were then opened by the tender opening committee in the presence of the representatives of the tenderers. Amongst the bids received were those from the applicant, 3rd and 4th interested parties.

The tenders were evaluated at three different stages before the award was made; these were the preliminary, the technical and the financial evaluation stages. At the preliminary evaluation, only two tenders were found responsive; these were Central Electricals International Limited which is named as the 3rd interested party in these proceedings and the applicant company. The rest were adjudged to be non-responsive.

The same tenderers that qualified for the technical evaluation also qualified for final financial evaluation stage. At this stage, the 3rd interested party was found to be the lowest evaluated bidder at the tender price of Kshs. 305,948,072.35 and was thus awarded the tender. Vide a letter dated 4 October 2021, the procuring entity notified the tenderers of the outcome of the procurement process.

Contemporary Engineering Company Limited, one of the nine tenderers who were found to be non-responsive at the preliminary stage requested for review of the award in application no. 127 of 2021 which was lodged before the respondent. In that application, Contemporary Engineering Company Limited sought for the orders frames as follows:

“

- a. The decision of the Procuring Entity as communicated in the Notification of Regret dated 4th October 2021, awarding the tender to M/S Central Electrical International Limited be set aside;**
- b. The decision of the Procuring Entity communicated in the Notification of Regret dated 4th October 2021, rejecting the Applicant's bid be set aside;**
- c. The contract for Construction of the Proposed Konza Complex Facility Phase II: Electrical Engineering and Associated Services (the tender) be awarded to the Applicant.**
- d. In the alternative to prayer (c) above; The Procuring Entity be ordered to re-evaluate the tenders afresh in accordance with the tender documents and the law;**
- e. The Respondents be ordered to pay the costs of and incidental to these proceedings.”**

The respondent's Acting Board Secretary notified the 1st and 2nd interested parties of the Request for Review through a letter dated 15 October 2021. These interested parties also responded to the request for review.

The Secretary also informed the rest of the tenderers of the application before the respondent through a letter dated 26 October 2021 and, in the same breath, invited them to supply the respondent with any information and arguments touching on the subject tender.

The applicant in the present motion participated in those proceedings as one of the interested parties and filed a response to the request for review but largely supported the application by Contemporary Engineering Company Limited.

After consideration of the parties' respective cases the application was allowed but only to the extent of nullification of the notification letters given to the unsuccessful tenderers which the 1st respondent found to have erroneously omitted the information on the tender amount. To quote the pertinent part of the 1st respondent's decision, the 1st respondent held as follows:

“The Board therefore finds that the Applicant's letter of notification does not satisfy the threshold of section 87 (3) of the Act read together with Regulation 82 of Regulations 2020 because the amount at which award was made to the Interested Party was not disclosed.

In totality of the foregoing the Request for Review succeeds only in respect to the Board's finding that the 1st respondent's notification letters issued to the unsuccessful tenderers dated 4th October 2021, do not satisfy the threshold of section 87 (3) of the Act read together with Regulation 82 of Regulations 2020. Since section 87 of the Act requires unsuccessful tenderers to be notified of the outcome of their respective tenders at the same time the successful tenderer is notified, the Board deems it fit to nullify the 1st Respondent's notification of contract award letter issued to the Interested Party dated 4th October 2021 when

nullifying the 1st respondent's notification letters issued to unsuccessful tenderers dated 4th October 2021 to enable all tenderers to be notified of the outcome of their tenders simultaneously.”

Among other orders that the respondent made, it also ordered that as follows:

“3. The 1st Respondent is hereby directed to notify all tenderers of the outcome of tender evaluation in Tender No. KoTDA/NC001/2021-2022 for Phase II-Electrical Installations and Associated Services in accordance with section 87 of the Act read with Regulation 82 of Regulations 2020 within seven (7) days from the date of this decision taking into consideration the Board's findings in this Review.”

Parties were asked to bear their respective costs.

It would appear that Contemporary Engineering Company Limited was satisfied with this decision because it did not take any further against it.

The applicant in the present motion was, however, not so satisfied and hence, the instant proceedings.

As earlier noted, the applicant participated in the Request for Review proceedings as an interested party. Its quest in the application before the respondent was one of the mandatory requirements under Chapter 9 Page 7 of the tender document (form of tender security). It was about the guarantee remaining in force for up to and including thirty days after the period of tender validity and also about the mandatory requirements at page 4 of the tender document (invitation to tender document) which was to the effect that prices quoted were to remain valid for 180 days from the date of tender opening. The applicant urged that the tender security required by the tender document was to be valid for 150 days. It conceded, however, that the tender security was for 150 days and further that the validity of the subject tender was 150 days but the tender surety had to remain in force for 30 days beyond the tender validity of 150 days bring the total number to 180 days after the opening of the tender.

The applicant has escalated the same issues and the same arguments before the 1st respondent in the present application; they have been captured in the applicant's submissions in paragraphs 5 to 10 where the applicant is quoted as urging as follows:

“5. However, the Applicant herein is dissatisfied with a portion of the decision on grounds that, the Review Board improperly exercised its Jurisdiction by erroneously interpreting the requirements in the Tender Document, the Instructions to Tenderers and the Appendix to the Instructions to tenderers, the applicable law and rational logic resulting to an illegal and flawed conclusion on the question of the validity period of the tender security.

6. Whereas, the Appendix to Instructions to Tenderers maintained that the tender validity period will be 150 days from the date of tender opening, the Tender Document (Form of Tender Security) and Clause 13.3 Section II of the Instructions to Tenderers provided that the tender security must remain in force 30 days after the period of tender validity, that is to say, the tender security must be valid for at least 180 days.

7. Similarly, Section III Appendix to Instructions to Tenderers Clause 6 amended Clause 13.1 and 13.2 on provision of the tender security and that the same should be as per the letter of invitation. Importantly, this amendment imported by Clause 6 of Section III Appendix to Instructions to Tenderers does not amend Clause 13.3 of Section II of the Instructions to Tenderers which maintained that the validity of the tender security period must be 30 days beyond the tender validity.

8. The Tender Document provided that the tender price quoted must remain valid for 180 days from the date of tender opening.

9. Contrary to the position enumerated in (3) to (6) hereinabove, the Review Board illegally ignored the requirements in the Tender Document, Instructions To Tenderers and the Appendix to the Instructions to Tenderers and the settled rationale behind the requirement of the tender security validity period extending beyond the tender validity for at least 28 days and concluded erroneously and irrationally that in this case the tender validity period and the tender security period being the same did not occasion any prejudice to the procuring entity.

10. In view of the foregoing, the Review Board illegally and irrationally permitted a non-responsive bidder to be awarded the subject tender and legitimized a haphazard procurement process which exposes the procuring entity and the public on the safeguards provided by the tender security.”

The respondent addressed evaluated the evidence presented before it with respect, in particular, to the applicant's concerns in the impugned decision. As a matter of fact, it framed the applicant's concerns as an issue in the following terms:

“2. Whether the Interested Party's tender security with a validity period of 150 days from the date of opening of tenders i.e. 19th August 2021 satisfies the Mandatory Requirements set out in Stage 1 Preliminary Evaluation-Mandatory Requirements of Tender Evaluation Criteria of Section II of the Appendix To Instructions To Tenderers of the Tender Document read together with Clauses 12.1, 13.1 and 13.3 of Section II of the Instructions To Tenderers of the Tender Document, Clauses 12.1 and Add to Clauses 13.1 and 13.2 of Section III of the Appendix To Instructions To Tenderers of the Tender Document, Section I of the Invitation for Tenders of the Tender Document, Form of Tender Security provided in the Tender Document and Section 80(2) of the Act.”

Its findings on this issue was as follows:

“A reading of Clauses 5 and 6 of Section III. Appendix to Instructions To -renderers, Stage 1. Preliminary Evaluation-Mandatory Requirements of Section III. Appendix To Instructions To Tenderers and mandatory requirement 13 in the letter of invitation of Section I. Invitation to Tender of the Tender Document on tender validity and tender security shows that the tender validity period for the subject tender should be 150 days from the date of opening of tenders and the tender security required should be valid for also 150 days from the date of opening of tender. However, the prices quoted are required to remain valid for 180 days.

At this juncture, it is important to differentiate between tender validity and tender security. Tender validity is the period within which a tender remains alive and once the validity period lapses a tender dies a natural death and an award cannot be made with respect to a dead tender, neither can a contract with respect to such a dead tender be entered into. On the other hand, a tender security is a guarantee required by a procuring entity for a tenderer to secure the fulfillment of any obligation in the tender process prior to issuance of a performance guarantee in favor of a procuring entity, which performance guarantee is ordinarily issued on or before filing a contract following an award of a tender. A performance guarantee on the other hand secures the fulfillment of any obligation in a procurement contract in favor of the procuring entity, this to us is evidence that a performance guarantee replaces a tender security after an award has been made and prior to the signing of a procurement contract. In this case, if the tender validity is 150 days from the date of opening of tender then the tender is only alive for 150 days from the date of opening of tenders and a contract in the subject tender can only be made on or before the 15th day of January 2021, having noted that a performance guarantee issued on or before signing of a contract it is clear that the 2nd Respondent in the subject tender is not exposed in any way because the validity of the tender security and the tender validity period are set to expire on the same day that is 15th January 2021 and at that point the 2nd Respondent is expected to have signed a contract with a successful tenderer in the subject tender if no appeal is preferred by any tenderer against the decision of the 1st respondent to award the subject tender and the procuring entities interest will be at that point be secured by a performance guarantee as opposed to a tender security.

Noting that the Appendix To Instructions To Tenderers complement or amend the provisions of Instructions To Tenderers and where there is a conflict between the provisions of the Instructions To Tenderers and the provisions of the Appendix To Instructions To Tenderers, the provisions of the Appendix To Instructions To Tenderers prevail over those of the Instructions To Tenderers.

Accordingly, and going by the provisions of the Appendix To Instructions To Tenderers that the tender security be as in the letter of invitation and the letter of invitation having indicated mandatory requirement 13 is for tenderers to provide a tender security that is valid for 150 days from the date of opening of tenders, the Board finds that tenderers were required to provide a tender security whose validity was 150 days from the date of opening of tenders.

We say so because, Section 80(2) of the Act requires evaluation and *comparison of tenders to be done in accordance with the criteria and procedures set out in the Tender Document. The Tender Document's criteria for evaluation of tender securities provided by tenderers is outlined as mandatory requirement of Stage 1. Preliminary Evaluation-Mandatory Requirements of Section III, Appendix To Instructions To Tenderers and requires the validity of the tender security to be 150 days from the date of opening of tenders, This criterion also falls under the Appendix To Instructions To Tenderers which takes precedence over the Instructions To Tenderers where there is conflict.*

The Board has perused the 1st Interested Party's original tender document as submitted at tender opening and notes that in response to Mandatory Requirement... *a tender security from APA Insurance in the sum of Kshs. 2,000,000.00 valid for a period of 150 days from 19th August 2021(which was the date of opening of tenders) and any demand in respect thereof is required to reach APA Insurance as the Guarantor not later than 16th January 2021.*

In the circumstances, the Board finds the 1st Interested Party's tender security with a validity period of 150 days from the date of opening of tenders i.e. 19th August 2021 satisfies the Mandatory Requirement M set out in Stage 1 Preliminary Evaluation-Mandatory Requirements of Tender Evaluation Criteria of Section III of the Appendix To Instructions To Tenderers read together with Clauses 5 and 6 of Section III. Appendix To Instructions To Tenderers of the Tender Document and mandatory requirement 13 of Section I of the Invitation for Tenders of the Tender Document and Section 80(2) of the Act which prevail over Clauses 12.1 t 13.1 and 13.3 of Section II of the Instructions To Tenderers of the Tender Document and the Form of Tender Security referred to in Clause 13.3 of Section II of the Instructions To Tenderers of the Tender Document as provided in the Tender Document.”

It is apparent therefore that the respondent addressed itself, relatively comprehensively, to the concerns raised by the applicant and came to a conclusion that, in its opinion, was consistent with the established facts and its interpretation of the applicable law.

What the applicant is basically seeking in this motion is for this Honourable Court to evaluate the evidence afresh, consider the same law that the respondent considered and probably come to a different conclusion. Essentially, the Court is being asked to assume its appellate jurisdiction in application for judicial review. This, as the following decision will show, the court cannot do.

In **Energy Regulatory Commission v S G S Kenya Limited & 2 others (2018) eKLR Civil Appeal No. 341 of 2017** the Court of Appeal faulted the High Court for determining a judicial review matter as if it was an appeal, and for going into the merits of a decision already taken. The Appellate Court held it to be improper for the High Court to make value judgment regarding the evidence; to weigh the same, and to minutely examine it, to determine whether it reached a certain standard of acceptance. The Court found that the High Court had occasioned room for abuse of its power, by usurping the competences of the Public Procurement Administrative Review Board.

It was held that in a judicial review matter, the Court's mandate is limited to procedural improprieties, and extends not to the merits of a decision. In the case before the Court of Appeal, the Board had been duly mindful of its own earlier decision in *Avante International INC v. IEBC* (Review No. 19 of 2017): it took into consideration the nature and weight of the opinion on technological change, which the procuring entity had acted upon; and the Board's reasoning exhibited a fidelity to practicality and to good sense. Consequently, the Judge ought to have shown greater deference to the Board's decision, and should have been more circumspect in its view of such a decision, bearing in mind the specializations of the Board.

And in *OJSC Power Machines Limited, TransCentury Limited, and Civicon Limited (Consortium) v Public Procurement Administrative Review Board Kenya & 2 others* [2017] eKLR Civil Appeal No. 28 of 2016 it was held that:

“Save for a limited scope, which we shall return to later, the court, considering a judicial review application, must never consider its role as appellate court and must avoid any temptation to go into the substance of the impugned decision itself or to ask questions, whether there was or there was no sufficient evidence to support the decision of the public body concerned. It is not for the court or individual judges to substitute their opinion for that of the public body constituted by law to decide the matter in question. See Republic vs. Kenya Revenue Authority ex parte Yaya Towers Limited (2008) Misc. Civil Appl. No. 374 of 2006. In judicial review proceedings, the mere fact that the public body's decision was based on insufficient evidence, or on misapplication of evidence, cannot be a ground granting judicial review remedies. Whether that decision was right or not, the affected party ought to challenge it on appeal. In reaching its determination, it must, however, be recognized that a tribunal or statutory body or authority has jurisdiction to err and the mere fact that in the course of its inquiry it errs on the merits is not a ground for quashing the decision by way of judicial review as opposed to an appeal. It is only an appellate tribunal which is empowered and in fact enjoined in cases of the first appeal to re-evaluate the evidence presented at the first instance and arrive at its own decision on facts. Whereas a decision may properly be overturned on an appeal, it does not necessarily qualify as a candidate for juridical review. See East African Railways Corp. vs. Anthony Sefu Far-Es-Salaam (1973) EA 327.”

Further in *Biren Amritlal Shah & Anor vs. Republic & 3 others* (2013) eKLR it was held:

“The learned Judge would only have been entitled to interfere were it the case that there was absolutely no evidence before the Board that would have justified the upholding of the appellant's termination of the tender. In other words, the case should have been so plainly and self-evidently devoid of evidence or basis for termination, as to render upholding of the termination an inexplicable act of capricious irrationality defiant of all logic and reason. It should have been such a decision that no reasonable tribunal, properly directing itself on the case would have arrived at. That is the Wednesbury unreasonableness that would invalidate a tribunal's decision by way of certiorari.”

Besides avoiding the temptation to invoke appellate jurisdiction in judicial review applications, it has been held that where there is room for exercise of discretion in an administrative action, courts should be hesitant to disturb such an exercise of discretion; this was observed by Lord Diplock in *Secretary of State for Education and Science v Tameside Metropolitan BC* [1976] 3 All ER 665 at 695, [1977] AC 1014 at 1064 where he noted:

“The very concept of administrative discretion involves a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred.”

Courts may intervene to review a power conferred by statute on the ground of unfairness but only if the unfairness in the purported exercise of the power be such as to amount to an abuse of the power. See *Preston v IRC* [1985] 2 All ER 327, [1985] AC 835, per Lord Templeman.

And in *Chief Constable of the North West Police vs Evans* (1982) 3 ALL ER 141 at 154 it was held that:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

It was held further in this case that:

“The remedy by way of judicial review under RSC..., vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and ... administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner...and not to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.” (Per Lord Hailsham at 1160E-H).

These authorities are sufficient enough to demonstrate that a judicial review court should not supplant a tribunal's or administrative body's decision with its own decision. I need not belabour the point that judicial review is concerned more with the process by which a decision is arrived at than with the merits of that decision unless, of course, the decision is so irrational or unreasonable that no reasonable tribunal could have reached it.

It does not matter that this Court could probably have reached a different conclusion on interpretation of certain facts or particular provisions of the law with particular regard to specific aspects of the subject tender, for instance, the tender validity period or the validity period of the tender security.

A difference of opinion on interpretation of the law or conclusions on matters of fact cannot be a basis for the intervention of a judicial review court to upset a tribunal's or administrative body's decision that has, otherwise been procedurally taken.

In the ultimate, I am not satisfied that the applicant has made out a case for this Honourable Court to interfere with the 1st respondent's decision dated 5 November 2021. The motion dated 22 November 2021 is thus dismissed with costs. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 4TH JANUARY, 2022

NGAAH JAIRUS

JUDGE