



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW CASE NO. 281 OF 2019

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS
AND**

IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PUBLIC PROCUREMENT

ADMINISTRATIVE REVIEW BOARD.....RESPONDENT

AND

NAIROBI CITY COUNTY.....1ST INTERESTED PARTY

ERDERMANN PROPERTY LIMITED.....2ND INTERESTED PARTY

EX PARTE:

LORSHIP AFRICA LIMITED

RULING NO 2

Introduction

1. Lordship Africa Limited, which is the *ex parte* Applicant herein (hereinafter “the *ex parte* Applicant”), was granted leave by this Court on 29th September 2019 to commence judicial review proceedings, with respect to a decision made by the Public Procurement Administrative Review Board (hereinafter “the Respondent”). The impugned decision was with respect to the award of Tender No. NCC/UR&H/RFP/526/2018-2019 - Redevelopment of Ngong Road Phase 2 Estate Within Nairobi City County Through Joint Venture Partnership (Re-Tender), which was awarded by the Nairobi City County to Edermann Properties Limited. The Nairobi City County and Edermann Properties Limited are joined as the 1st and 2nd Interested Parties respectively herein.

2. On 1st October 2019, the *ex parte* Applicant consequently filed a substantive application by way of a Notice of Motion dated 30th September 2019, seeking various judicial review orders. The Respondent and 2nd Interested Party thereupon filed replying affidavits in response to the application, while the 1st Interested Party filed a Notice of Preliminary Objection dated 14th October 2019 seeking orders that the *ex parte* Applicant’s application be dismissed *in limine* with costs, on the ground that the proceedings before this Court are fatally and incurably defective and irregular, as the same have been commenced in violation of section 175(1) as read with section 3(e)&(h) of the Public Procurement & Asset Disposal Act, No. 33 of 2015, section 9(1),(2)&(3) of the Law Reform Act, and Order 53(2) of the Civil Procedure Rules, 2010.

3. On 23rd October 2019, this Court directed that the 2nd Interested Party’s Notice of Preliminary Objection would be heard and determined first by way of written submissions, and in a ruling dated found that the grounds raised by the 1st Interested Party could not be effectively and legally decided in a preliminary objection, as they entailed the calling of evidence, arguments thereon by the parties and exercise of this Court’s discretion, and could therefore only be addressed in the context of a full hearing on merits.

4. The *ex parte* Applicant thereafter filed an application by way of a Notice of Motion dated 16th December 2019 seeking the following orders:-

a) This Court be pleased to enlarge the time for the *ex parte* Applicant herein to commence proceedings in the nature of judicial review against the decision of the Respondent dated and delivered on 3rd September, 2019 through the Chamber Summons application dated 25th September, 2019 and filed on even date.

b) The Chamber Summons application dated 25th September, 2019 and filed on even date be deemed as having been filed within the prescribed period.

c) The costs of this Application be provided for.

5. The said application is supported by an affidavit sworn by Guto Mogere on 16th December, 2019, and a Further and supplementary Affidavit sworn by Ronald Wakhisi Makokha on 16th June 2020 and 25th August, 2020 respectively. Both deponents are Advocates practicing in the firm of Mohammed Muigai LLP, which is representing the *ex parte* Applicant. In response, the Respondent filed a replying affidavit dated 11th August 2020, sworn by its Secretary, Henock K. Kirungu. The 1st Interested Party filed Grounds of Opposition dated 27th April, 2020, while the 2nd Interested Party filed a Replying Affidavit deponed to on 18th February, 2020 by Ze Yun Yang, its Managing Director. The parties' respective cases are as follows.

The *ex parte* Applicant's Case

6. The *ex parte* Applicant averred that the Respondent by its decision rendered on 3rd September, 2019 struck out the *ex parte* Applicant's Request for Review dated 13th August, 2019, and that upon the delivery of the said decision, the Respondent informed the parties' advocates that the hard copy of the decision would be made available on 10th September, 2019. Further, that through a letter dated 10th September, 2019, the firm of Mohammed Muigai LLP followed up on the availability of the hard copy of the Respondent's said decision, which hard copy was only made available to themselves on 11th September, 2019. The *ex parte* Applicant contended that it then proceeded to file and sought leave to commence judicial review proceedings in a Chamber Summons application dated 25th September, 2019, a statutory statement of even date, and a verifying affidavit sworn by one Andrew Tirop on even date, and all filed under a Certificate of Urgency on 25th September, 2019.

7. The *ex parte* Applicant further averred that the Chamber Summons application of 25th September, 2019 was heard *ex parte* and leave to commence proceedings in the nature of judicial review was granted by the orders given by Hon. Lady Justice Nyamweya on 26th September, 2019 and issued by this Court on 30th September, 2019. Further, that the *ex parte* Applicant complied with the timelines for filing and service of the substantive motion on the other parties within 14 (fourteen) days of the said Order made on 26th September, 2019 through the Notice of Motion application dated 30th September, 2019 and filed on 1st October, 2019.

8. The *ex parte* Applicant explained that the delay in filing the Chamber Summons application of 25th September, 2019 was occasioned by the unreasonable, unjustified and unexplained delay by the Respondent in availing the hard copy of the decision of 3rd September, 2019, which is the subject of these judicial review proceedings, and which delay in availing the decision had not been explained. The *ex parte* Applicant pointed out that the issue of the Respondent's delay was expressly canvassed in its verifying affidavit and that that the delay is uncontested and undisputed by the parties, and in particular by the Respondent, through the replying affidavit sworn by Henock K. Kirungu on 25th October 2019 in response to the substantive application.

9. Therefore, that the *ex parte* Applicant filed its Chamber Summons application of 25th September, 2019 being well within 14 days of receipt of the Respondent's decision and as such, the delay was not inordinate, and has been explained and justified. The *ex parte* Applicant contended that no prejudice shall be suffered by the Respondent and/or Interested Parties should the prayers sought in the instant Notice of Motion application be allowed, and that it is the one that shall suffer prejudice in the event that the application filed herewith is not allowed as it will be denied the opportunity to challenge a decision which was unreasonably, unjustifiably, inexplicably and unfairly withheld by the Respondent. That it is therefore in the interest of fairness and justice that this Court exercises its discretion in the *ex parte* Applicant's favour.

10. The *ex parte* Applicant's advocate, Ronald Wakhisi Makokha, did not deny that he was present and in attendance before the Respondent on 3rd September, 2019 when the ruling was delivered, and stated that as confirmed by the Respondent, what was read out to the parties in attendance on the day was an abridged version which was a summary of the ruling, and not the full and final version of the same, which was only made available to the *ex parte* Applicant's advocates on 11th September, 2019. He deponed that in view of the foregoing, it is untenable for the Respondent on one hand to admit that what was orally delivered on 3rd September, 2019 was an abridged version of the ruling, and purport that the very same abridged version was sufficient for the *ex parte* Applicant to be fully furnished with the contents of the Respondent's decision to issue instructions.

11. Further, that the Respondent ought not be allowed to now purport to lay blame on the *ex parte* Applicant and/or its advocates for the delay in filing these judicial review proceedings on the basis of an abridged version of the ruling which was delivered on 3rd September, 2019. He contended that it was necessary for the *ex parte* Applicant to first be furnished with the full and final version of the ruling in order for it to assess the merits, import and purport of same so as to make an informed decision on the next steps to be taken, in realization of the *ex parte* Applicant's right to fair administrative action as enshrined in Article 47 of the Constitution.

12. Lastly, the *ex parte* Applicant stated that no justifiable basis had been laid by the Respondent to purport that the period of six (6) days after receipt of the hard copy of the ruling was sufficient for it to examine and assess the said ruling, and thereafter instruct its advocates to

file and commence judicial review proceedings. Further, that to uphold this position would deprive the *ex parte* Applicant of its statutory entitlement of a period of fourteen (14) days for the same action, and unfairly lock it out from legal recourse in contravention of Articles 47 and 48 of the Constitution. In addition, that no evidence has been adduced of alleged negligence on the part of the *ex parte* Applicant's advocates, as their letter of 10th September, 2019 is a clear demonstration of the diligence of both the *ex parte* Applicant and its advocates to pursue the hard copy of the ruling of 3rd September 2019.

The Respondent's Case

13. In response, the Respondent averred that the *ex parte* Applicant is wholly responsible for failing to institute judicial review proceedings since on 3rd September, 2019, a representative of the *ex parte* Applicant's Advocate, Renold Wakhisia Makokha, was one of the attendees of the Board's reading of its decision. Further, that the Respondent read out an abridged version of the decision, and during the reading, it canvassed the issues for determination, its findings on the issues for the determination, and its conclusions, and orders thereto. Hence, that from the events of 3rd September, 2019, the *ex parte* Applicant was fully furnished with the contents of the Respondent's decision. It was also contended that in the circumstances, as of the 3rd September, 2019, the *ex parte* Applicant's representatives were sufficiently informed of the content of the Respondent's decision to adequately appraise the *ex parte* Applicant and for the instructions to issue.

14. It was the Respondent's case that moreover, the *ex parte* Applicant's representatives had sufficient time to draft the appropriate documents for the intended judicial review proceedings, and that by the 11th September 2019, the *ex parte* Applicant had an additional (six) 6 days, which was sufficient time to file its application for leave to institute judicial review proceedings, which they failed to do. Therefore, that the Respondent is not at all responsible for the *ex parte* Applicant's failure to comply with the timelines in instituting judicial review proceedings against the Respondent's decision, and the hard copy of the said decision was neither materially nor fundamentally different from an abridged version of the decision, and the *ex parte* Applicant was therefore not prejudiced. The Respondent also stated that the delay in furnishing a hard copy of its decision is as a result of several factors outside its control including limited resources, the large volume of disputes filed for determination before it, the strict timelines provided by statute on hearing and determination of disputes, and poor case management by disputants.

15. Lastly, the Respondent contended that the *ex parte* Applicant negligently failed to note and appreciate its decision as a read out on 3rd September 2019, and did not act diligently in filing for judicial review as it considered the information provided on the Respondent's findings and rationale thereto as a mere formality and inconsequential. Therefore, that the current application is an unwarranted delay to the procurement process, in addition to being frivolous consequently prejudicing the 1st and 2nd Interested Parties' interests, in the procuring process.

The 1st Interested Party's Case

16. The 1st Interested Party's main ground of opposition was that the instant application is devoid of merit as the jurisdiction of the Court is divested for two reasons. The first is that the application is filed outside the statutory timelines; and, second that the law does not anticipate legal authority to extend the statutory timeline. Further, that section 175(1) of the Public Procurement and Disposal of Assets Act provides that a party displeased by a decision of the Respondent may seek judicial review by the High Court within fourteen days from the date of the decision, and does not state that time starts running from the date when a copy of the decision is supplied or availed.

17. In addition, that section 175(1) does not anticipate any extensions of time, and section 59 of the Interpretation and General Provisions Act provides that extension of statutory timelines can only be pursuant to power given to a court or other authority to extend that statutory timeline. Furthermore, that neither section 95 of the Civil Procedure Act nor Order 50 Rule 6, of the Civil Procedure Rules envisage extension or enlargement of statutory timelines, and only envisage extension of time fixed by the Court.

18. Lastly, the 1st Interested Party stated that invoking the Court's discretion and inherent power under Section 1A, 1B and 3A, Civil Procedure Act and under Article 159(2)(d) of the Constitution is a misapprehension, as these are powers to be exercised within the ambit of legality, and are not meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from courts of law. Further, that the insistence that parties adhere to the statutorily decreed timelines does not amount to paying undue regard to procedural technicalities. The 1st Interested Party was of the view that recourse may lie in a claim for unfair administrative action as against the Respondent, if at all it is proved that the delay violated a party's rights under Article 47 of the Constitution or any other provision; but the delay cannot resuscitate a cause expressly extinguished by statute.

The 2nd Interested Party's Case

19. The 2nd Interested Party averred that Section 175(1) of the Public Procurement and Asset Disposal Act, 2015 provides that an aggrieved party must lodge Judicial Review proceedings within 14 days from the date of the decision of the Review Board, and that the 14 days' period was due to expire on 17th September, 2019. The 2nd Interested Party contended that where there is a clear procedure for the redress of any particular grievance prescribed by law, that procedure should be strictly followed. Further, that the *ex-parte* Applicant alleges that they received the ruling from the Respondent on 11th September, 2019, which left it with more than ample time to meet the timeline set by the Public Procurement Asset Disposal Act, 2015 to file the chamber summons application for leave to institute the Judicial Review proceedings.

20. It was asserted by the 2nd Interested Party that the beneficiary of an enlargement of time should also demonstrate that there was no delay in filing the application for enlargement of time. However, that the *ex-parte* Applicant filed the instant application three (3) months after the Respondent delivered its ruling and 2 months after the 1st Interested Party's filed its Preliminary Objection dated 14th October, 2019 raising the issue of time. Further, that the delay in filing the instant application had not been explained by the *ex parte* Applicant, and was not only inordinate but a clear afterthought. Moreover, this Court in its ruling delivered on 03/02/2020 on the 1st Interested Party's Preliminary Objection which raised the issue of time, held that the effect of a delay by the Respondent in availing its decision to parties is a material

factor in a Court's decision as to whether or not to assume jurisdiction, and introduces the element of the exercise of this Court's discretion and that the grounds raised by the 1st Interested Party could not be effectively and legally decided in a preliminary objection. Therefore, that extension of time is not a right of a party, it is an equitable remedy that is only available to a deserving party at the discretion of the Court.

21. In conclusion, the 2nd Interested Party stated that if the orders sought were allowed, the same would not only prejudice the Interested Parties but the public who were to benefit from this project, that has been subjected to delays by a party that has no *locus standi* before this court.

The Determination

22. The instant application was canvassed by way of written submissions. Mohammed Muigai LLP, the *ex parte* Applicant's advocates on record, filed submissions dated 16th June, 2020. The Respondent's submissions dated 11th August 2020 were filed by Senior State Counsel Chimau Judith. CM Advocates LLP, the 1st Interested Party's advocates on record, filed written submissions dated 17th July, 2020 and supplementary submissions dated 24th August, 2020, while Mucheru Law LLP, the 2nd Interested Party's advocates on record, filed written submissions dated 1st July, 2020.

23. It is not in dispute that the Respondent orally delivered the subject decision on 3rd September 2019, and availed a hard copy of the decision to the *ex parte* Applicant on 11th September 2020. It is also not in dispute that the *ex parte* Applicant subsequently filed its application for review of the Respondent's decision on 25th September 2019.

24. The issues which therefore arise for determination are as follows:

a) Whether the *ex parte* Applicant's application for judicial review of the Respondent's decision was time barred under the provisions of section 175 (1) of the Public Procurement and Asset Disposal Act.

b) If the application is time barred, whether the court can extend the time within which to file the application for review.

On Whether the ex parte Applicant's application was time barred

25. The *ex parte* Applicant submitted in this respect that all statutory provisions, including those limiting a party's access to a Court must conform with the Constitution, and that where such statutory provisions are in conflict with and/or irreconcilable with the Constitution, it is the Constitution which shall prevail. Reliance was placed on the decision in **R vs Kenya Revenue Authority Ex-Parte Stanley Mombo Amuti [2018] eKLR**, that provisions limiting access to courts must be read in a manner that conforms with the constitution. Therefore, that in view of the foregoing, section 175(1) of the Public Procurement and Asset Disposal Act, 2015, section 9 of the Law Reform Act, section 59 of the Interpretation and General Provisions Act, and Order 50 Rule 3 of the Civil Procedure Rules, 2010 all of which are the statutory provisions which limit the time to commence judicial review proceedings and that were relied upon by the 1st Interested Party must also conform to the Constitution, or in the alternative, must be construed with such adaptations, alterations, modifications so as to conform with the Constitution.

26. The *ex parte* Applicant accordingly submitted that Articles 47 and 48 of the Constitution supersede and override the aforesaid statutory provisions in these circumstances where the Respondent failed to furnish the *ex parte* Applicant with a copy of the ruling of 3rd September, 2019 within a reasonable period following its delivery. Further, that no compelling reason has been given by the Respondent as to why the *ex parte* Applicant ought to be denied its constitutionally guaranteed right under Article 48 of the Constitution to access justice through this Court so as to challenge the ruling of 3rd September, 2019. The *ex parte* Applicant submitted, that these facts notwithstanding, it still filed its judicial review within fourteen (14) days of receipt of the Respondent's decision on 11th September 2019.

27. The Respondent on its part submitted that the Public Procurement and Asset Disposal Act, 2015 is an Act of Parliament that gives effect to Article 227 of the Constitution, and provides procedures for effective public procurement and for assets disposal by public entities. Further, that it delivered its decision to the parties on 3rd September, 2019, and the *ex parte* Applicant filed his application for judicial review on the 25th September 2019 which was 22 days after the date of the said decision, and notwithstanding the allegation that it availed hard copies of its decision on the 11th September 2019, the fact stands that the *ex parte* Applicant was aware of delivery of a decision and its contents on the 3rd September, 2019.

28. Therefore, that the fourteen (14) day time period within which the *ex parte* Applicant ought to have filed for judicial review under section 175(1) of the Public Procurement and Asset Disposal Act, 2015 lapsed on the 17th September 2019, and the Respondent also cited section 57 (a) of the Interpretations and General Provisions Act on the computation time. It was the Respondent's submission that this court in determining when its decision was delivered to the parties, the court should consider the date at which the parties first become aware of the contents in the decision, which is on the 3rd September 2019. Reliance was also placed on the decision in the case of the **Speaker of National Assembly vs. Njenga Karume [2008] KLR 425**, that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

29. The 1st Interested Party's submissions on the issue were that the *ex parte* Applicant's failure to lodge its review application within the 14-day statutory timeline, goes to the very heart of the legal authority and jurisdiction of this Court to entertain the said application. The 1st Interested Party cited the decision in **Republic vs Public Procurement Administrative Review Board and Another ex-parte Teachers Service Commission [2015] eKLR** that the timeline is mandatory, and that time starts running from the date of the Review Board's decision. Further, that it is undisputed that the Respondent rendered its decision on 3rd September 2019, and that the hard copy decision was availed to parties on 11th September, 2019, still well within the fourteen (14) day statutory deadline which was scheduled to expire on 18th

September, 2019. Therefore, that the *ex parte* Applicant had at least eight (8) clear days to prepare and file its application within time.

30. The 1st Interested Party further submitted that the statutory timeline in issue was enacted in 2015, in full conformity with and five (5) years after the promulgation of Constitution of Kenya, 2010, and that there has never been a challenge as to the constitutionality or otherwise, of section 175(1), PPADA, 2015. The 1st Interested Party added that the Courts in **Republic vs Public Procurement Administrative Review Board and Another ex-parte Teachers Service Commission [2015] eKLR** and in **Republic vs Public Procurement Administrative Review Board and Another ex-parte Wajir County Government [2016] eKLR** had opportunity to adjudicate on the propriety, legality and constitutionality of the effect of limiting time under section 175(1) of the Public Procurement and Asset Disposal Act, 2015 vis-à-vis the limitation on access to justice under Article 48 of Constitution, and did not find any conflict.

31. Lastly, the 1st Interested Party distinguished the decisions in **R vs Kenya Revenue Authority ex-parte Stanley Mombo Amuti [2018] eKLR** as having been on the statutory timeline under sections 8 & 9 of the Law Reform Act as read with Order 53, Civil Procedure Rules in light of the transitional provisions of the new Constitution, whereas the statutory timeline in issue herein, is affixed, stipulated and prescribed in the Public Procurement and Asset Disposal Act, 2015 which was enacted on the 18th December, 2015.

32. The time of filing of judicial review proceedings in this Court by an applicant in a procurement disputes is regulated by the law, and if not complied with may have the effect of ousting the jurisdiction of this Court as explained by Nyamu, J (as he then was) in **Republic vs. Public Procurement Administrative Review Board & Another Ex Parte Selex Sistemi Integrati Nairobi HCMA No. 1260 of 2007 [2008] KLR 728**. Section 175 (1) of the Public Procurement and Asset Disposal Act in this respect provides timelines within which applications for review from decisions of the Respondent can be filed as follows:

“A person aggrieved by a decision made by the Review Board may seek judicial review by the High Court within fourteen days from the date of the Review Board’s decision, failure to which the decision of the Review Board shall be final and binding to both parties.”

33. The point of departure between the *ex parte* Applicant on the one hand and the Respondent and Interested Parties on the other, is on the interpretation of the said provisions as regards the date of the Respondent’s decision. In this regard, the **Black’s Law Dictionary , 2nd Edition** defines a date as the specification or mention, in a written instrument, of the time (day and year) when it was made. The date therefore can only be ascertained by reference to a deed or document in writing which expresses the day of the month and year in which it was made or given. The primary significance of a date is not of time in the abstract, nor of time taken absolutely, but of time given or specified in some way that can be ascertained and fixed.

34. Article 259(5) of the Constitution in this regard provides as follows as regards computation of time:

“ in calculating time between two events or any purpose under this constitution, if the time is expressed;

(a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included,....”

35. This position is also restated in section 57 of Interpretation and General Provisions Act, which provides as follows as regards computation of time:

“ In computing time for the purposes of a written law, unless the contrary intention appears—

(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.”

36. The relevant event or act by which the material date is to be identified, and which will trigger the computation of time in the instant application is the subject decision by the Respondent. in this respect it is necessary to define and interpret what is meant by the term “decision” for purposes of section 175(1) of the Public Procurement and Asset Disposal Act, given that there are two conflicting dates as when the said decision was said to have been given, namely the date of oral delivery on 3rd September 2019, of what the Respondent termed was an abridged version of its decision, and the date when the hard copy of its decision was availed to the *ex parte* Applicant, being 1st September 2019.

37. The legal meaning attributed to a “decision” by the **Black’s Law Dictionary, 2nd Edition** is that of a judgment or decree pronounced by a court in settlement of a controversy submitted to it. Order 21 Rule 4 of the Civil Procedure Rules in this respect also provides that judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

38. The main function of the Respondent under section 28 of the Public Procurement and Asset Disposal Act is the reviewing, hearing and determining tendering and asset disposal disputes. In the context of the said Act, the term “decision” in section 175(1) thereof is therefore a technical term, to be interpreted and construed in the constitutional and legal context within which the Respondent operates. The Respondent is in this regard both a quasi-judicial tribunal and an administrative body that is governed by the dictates of Article 47 of the Constitution on fair administrative action when rendering its decisions, as well as the provisions set out in this regard in the Fair Administrative Action Act.

39. Section 5(1) of the Fair Administrative Action Act specifically requires as follows:

(1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall-

(a) issue a public notice of the proposed administrative action inviting public views in that regard;

(b) consider all views submitted in relation to the matter before taking the administrative action;

(c) consider all relevant and material facts; and

(d) where the administrator proceeds to take the administrative action proposed in the notice-

(i) give reasons for the decision of administrative action as taken;

(ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and

(iii) specify the manner and period within the which such appeal shall be lodged.

40. Under section 173 of the Public Procurement and Asset Disposal Act, certain powers are given to the Review Board when making its decision. The section provided that upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

41. Lastly, under Order 53 Rule 1 of the Civil Procedure Rules, there are certain requirements as regards what pleadings and information is required of an applicant when making a judicial review application of a decision made by the Respondent as follows:

(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave as aforesaid shall be made *ex parte* to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

42. All these constitutional and statutory provisions lend themselves to an interpretation of the term “decision” to mean a reasoned ruling pronounced by the Respondent, based on the facts that have been presented to it in any given dispute or request for review. While such a reasoned decision may be given orally, for purposes of appeal and judicial review, it will require to be in written form so as to form part of the court record. It is also notable in this regard that Order 21 Rule 4 of the Civil Procedure Rules requires judgments to be signed at the time of pronouncement, and this presupposes a written judgment. The requirement of signature is also necessary for all decisions for purposes of verification and legitimacy.

43. The Respondent did not describe the nature of the abridged version of the oral decision that was delivered on 3rd September 2019, and whether it met the foregoing requirements set out in the law. In any event, it is only a full judgement and not an abridged or summary judgment that can be an authoritative reasoned decision. This Court therefore finds that the only evidence of the Respondent’s reasoned decision within the meaning of section 175(1) of the Public Procurement and Asset Disposal Act, was the hard copy availed to the *ex parte* Applicant on 11th September 2019, for purposes of date of delivery of the decision, and of time starting to run for an application for judicial review. The *ex parte* Applicant’s Chamber Summons application dated and filed on 25th September 2019 is accordingly found to have been filed within the fourteen (14) days timeline time provided for in section 175(1) of the Public Procurement and Asset Disposal Act, and is therefore not time barred for this reason.

44. In the premises, the issue as to whether this court can extend the time within which to file the application for review therefore becomes moot, and I accordingly order as follows:

I. The *ex parte* Applicant's Chamber Summons dated and filed on 25th September 2019 was filed within 14 days of the date of the delivery of the Respondent's, reasoned, written and signed decision on 11th September 2019, and was accordingly filed within time.

II. The *ex parte* Applicant's Chamber Summons application dated 25th September 2019 and subsequent substantive Notice of Motion dated 30th September 2019 are accordingly properly on record.

III. The *ex parte* Applicant's Notice of Motion dated 16th December 2019 is accordingly dispensed with in the terms of the foregoing orders, and there shall be no order as to costs of the said Notice of Motion.

45. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DECEMBER 2020

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this ruling will be delivered electronically by transmission to the email addresses of the *ex parte* Applicant's, Respondent's and Interested Parties' Advocates on record.

P. NYAMWEYA

JUDGE