



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 647 OF 2017

**IN THE MATTER OF AN APPLICATION BY THE COUNTY ASSEMBLY OF BUSIA FOR
LEAVE TO FILE JUDICIAL REVIEW PROCEEDINGS SEEKING**

**ORDERS OF CERTIORARI IN RESPECT OF THE DETERMINATION OF THE PUBLIC
PROCUREMENT**

ADMINISTRATIVE REVIEW BOARD IN REVIEW NO. 86 OF 2017 ISSUED ON 19/10/2017

AND

**IN THE MATTER OF SECTION 175 OF THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL ACT, 2015**

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 OF THE
LAWS OF KENYA**

AND

**IN THE MATTER OF PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
REVIEW NO. 86 AND 2017: BAYCOMS**

AFRICA LTD- VS- THE COUNTY ASSEMBLY OF BUSIA.

BETWEEN

REPUBLICAPPLICANT

VERSUS

PUBLIC PROCUREMENT ADMINISTRATIVE

REVIEW BOARD	1 ST RESPONDENT
BAYCOMS AFRICA LTD	2 ND RESPONDENT
OPTIC TECHNOLOGIES KENYA LTD	INTERESTED PARTY
COUNTY ASSEMBLY OF BUSIA	EX-PARTE APPLICANT

RULING

1. Vide a chamber summons dated 8th November 2017 supported by a supporting affidavit sworn by **Allan Wafula Mabuka** and brought under the provisions of Section 175 of the Public Procurement and Asset Disposal Act, 2015; Article 47 of the Constitution of Kenya, Section 8 and 9 of the Law Reform Act, Cap 26 Laws of Kenya, Section 4 of the Fair Administrative Action Act, 2015, and Order 53 Rule 1 of the Civil Procedure Rules, the applicant **County Assembly of Busia** seeks from this court leave to institute Judicial Review proceedings and for an order of **Certiorari** to remove into this court and bring for purposes of quashing part of the 1st respondent Public Procurement Administrative Review Board's determination issued on 19th October, 2017, to wit those relating to the provisions of Section 67 of the Public Procurement and Asset Disposal Act, 2015; and costs.
2. The ex parte applicant claims that it invited bids through an open tender for the supply, installation and commissioning of a multi media digital congress system on 25th July 2017.
3. That at the closing date for submission, three bids were received including those of the 2nd respondent **Baycom's Africa Ltd** and the interested party **Optic Technologies Kenya Ltd**.
4. That during the evaluation, the 2nd respondent and the interested party had their bids proceed to technical evaluation and passed upon which they were evaluated on their financials.
5. That the interested party submitted the lowest priced bid and was accordingly recommended for the award of the 'contract' (sic).
6. That the 2nd respondent having lost the bid, lodged a request for Review at the Public Procurement Administrative Review Board (PPARB) in case No 86 of 2017 on 5th October, 2017.
7. After hearing the parties, the Review Board rendered its determination on 19th October 2017 nullifying the award of the tender to the interested party and ordering the procuring entity to commence the procurement process afresh.
8. However, that in its ruling, the Review Board on its own motion framed an issue for determination, which issue was not part of the pleadings to wit:

“Whether the clerk/accounting officer in furnishing the applicant with confidential documents complied with the provisions of Section 67 (3) and 87(3) of the Act.
9. It is therefore claimed that the above issue as framed is prejudicial to the applicant and unjustified in the circumstances hence it is unfair, extraneous, and unreasonable as it did not flow from pleadings.
10. It is further claimed that the Review Board acted without jurisdiction by arbitrarily framing an issue that did not flow from pleadings before it and in proceeding to render a decision thereon which issue of disclosure under Section 67(3) of the Public Procurement and Asset Disposal Act was never pleaded nor canvassed at the hearing.
11. That in addition, the ex parte applicant was never given an opportunity to be heard on the aspect of

disclosure under Section 67(3) of the Act before the impugned determination was made contrary to the dictates of fair administrative action and which alleged and unfair determination by the 1st respondent embarrasses the ex parte applicant and opens it to possible prosecution and or legal action by third parties hence the need for the portion of the decision of the Review Board complained of to be quashed.

12. The applicant also claims that it was issued with the ruling of the Review Board on 19th October 2017 and that taking into account three holidays of 20th October, 2017, 25th October, 2017 and 26th October 2017 and weekend, the application is filed within time.

13. The application is also supported by the statement of facts and verifying affidavit sworn by **Allan Wafula Mabuka** on 8th November 2017, who is the Clerk/Accounting Officer of the County Assembly of Busia County together with a supporting affidavit and exhibits which include the impugned decision dated 19th October, 2017 and pleadings filed before the Review Board.

14. When this matter was placed before me as duty Judge on 9th November 2017 for consideration, I certified it as urgent and directed the applicant to serve the respondents and the interested party for interparties consideration on 15th November 2017.

15. The applicant complied with the above order and on 14th November 2017 the interested party filed a preliminary objection.

16. The 2nd respondent filed notice of appointment of advocates on 14th November 2017. None of the parties, filed replying affidavits or grounds of opposition.

17. In the notice of preliminary objection, the interested party contends that the application for leave was filed out of time contrary to the provisions of Section (1) of the Public Procurement and Asset Disposal Act, 2015.

18. Parties filed written submissions to urge the preliminary objection which they wholly adopted for the court's determination, save for the 1st respondent who neither filed reply nor written submissions and its counsel Miss Maina left it to court to determine the preliminary objection.

19. According to the interested party, the ruling of the 1st respondent Review Board having been made on 19th October 2017, the Judicial Review proceedings ought to have been initiated within 14 days from 19th October 2017 as stipulated in Section 175(1) of the Public Procurement and Asset Disposal Act which 14 days lapsed on 3rd November 2017 but that the chamber summons were filed on 8th November 2017 outside the 14 days stipulated in the Act which is untenable and that the ex parte applicant's computation of time is legally untenable since holidays and weekends are not excluded in computation of time unless the period within which an act or proceeding is to be done does not exceed 6 days as espoused in Section 59(d) of the Interpretation and General provisions Act.

20. In addition, it was contended that even if the 3 holidays and weekends were to be taken into account and excluded from the time, the application for leave was still filed outside the 14 days by two (2) days. Reliance was placed on **Republic Vs Public Procurement Administrative Review Board & Another ex parte Wajir County Government[2016] e KLR** where an application filed 8 days outside the 14 days was found to be contrary to Section 175(1) of the Public Procurement and Asset Disposal Act and was found by the court to be fatally incompetent.

21. It was submitted that this application is an afterthought as it was filed in an attempt to counter the grounds in support of the interested party's application in JR No. 640/2017, a matter before this court, after the applicant was served with the said Judicial Review application arising from the same proceedings before the Review Board. It was also submitted that there is no application for enlargement of time to seek leave to apply.

22. The rest of the submissions by the interested party touch on the merits of the application and the intended motion which is outside the preliminary objection.

23. The 2nd respondent's submissions were filed on 16th November 2017 urging the preliminary objection to be dismissed while delving into the merits of the application. The court will only consider the submission relating to the preliminary objection.

24. According to the 2nd respondent at paragraph 8 of its submissions, the legal threshold for preliminary objection as set out in the **Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd [1969] EA 696** case was not met. Further, that the upholding this preliminary objection will not settle the dispute fully before the court because there is a different JR No. 640/2017 involving same parties and issues. It was submitted that the point of law relied upon is not settled as was espoused in the exparte **Selex Sistemi Integrati [2008] KLR 728** case.

25. It was also submitted that the decision though rendered on 19th October 2017 was given to parties several days later hence the application for leave was filed in time because the applicant could not be expected to institute Judicial Review proceedings before reading the detailed ruling and forming an informed view on the same.

26. It was submitted that in any case, Section 175 (1) of the Act is not an end in itself and so must be interpreted purposively and that entertaining this application for leave would in any case not offend the object underlying the said Section and that entertaining the application for leave will not delay the procurement process of public services hence a genuine claimant should not be shut out of justice in the guise of Section 175(1) of the Act in such unique circumstances.

27. The 2nd respondent urged this court to dismiss the applicant's preliminary objection and direct that this matter be consolidated with and heard together with JR 640/2017.

28. In opposing the preliminary objection, the exparte applicant filed its submissions on 17th November 2017. Most of the submissions relate to the merits of the application for leave but I will focus on the objection to the preliminary objection submissions.

29. According to the applicant, the computation of time is as stipulated in Order 50 Rule 2 of the Civil Procedure Rules, 2010 and that the Act is silent on how to compute time where time is more than 6 days, and whether Sundays and public holidays are to be taken into account hence Sundays and public holidays must be excluded, which, it is claimed, is a matter of practice and tradition within the legal practice.

30. It was further submitted that after delivery of the ruling on 19th October 2017, three days were gazetted to be public holidays thus 20th, 25th and 26th October 2017 and that since public offices do not work during holidays and Sundays, it would be impracticable for ordinary legal business to be expected to be transacted during such days and that taking into account Sundays and public holidays, the subject application has been filed within time.

31. In addition, it was submitted that the Review Board rendered its ruling orally on 19th October 2017 but was only able to provide the written ruling on 31st October 2017. Further, that the Review Board sat and delivered its oral ruling at Eldoret while the written ruling was collected from Nairobi, and that the exparte applicant's offices are in Busia. That the process of obtaining the ruling is the main cause for any such delay that may have occurred in the filing of the application which cannot be blamed on the applicant.

32. The applicant's counsel further submitted, relying on Order 53 of the Civil Procedure Rules and averred that in any case, as the prayer sought is certiorari, Order 53 Rule (2) of the Civil Procedure Rule gives time for filing of such an application 6 months and that the same argument is fortified by Section 9(3) of the Law Reform Act which is the substantive law to the procedural law under Order 53

of the Civil Procedure Rules. It was further submitted that in any case, no prejudice will be suffered by the interested party or any part if the Judicial Review application was filed out of time which is denied and that disallowing the application on the basis that it is time barred is in breach of Article 159 (2) (d) of the Constitution of Kenya which stipulates that justice shall be administered without undue regard to procedural technicalities.

33. The *ex parte* applicant's counsel asserted that in any event, the delay is a blunder which should not cause his client to suffer. Reliance was placed on the case of **Philip Keiptoo Chemwolo & Another vs Augustine Kubende [1986] KLR 495**.

34. The *ex parte* applicant also relied on **Branco Arabe Epanol versus Bank of Uganda [1999] 2 EA** where it was held, *inter alia*, that:

“ the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors, lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely, the hearing and determination of disputes should be fostered rather than hindered”.

35. It was submitted that the *ex parte* applicant stands to suffer greater prejudice and is exposed to possible litigation on account of the findings of the Board and hence the preliminary objection should be dismissed and the application for leave be granted.

DETERMINATION

36. I have carefully considered the preliminary objection as raised by the interested party, the submissions in support and opposition thereto and the statutory, constitutional and case law cited.

37. In my humble view, the issues for determination that flow from the submissions are:

- 1. Whether the preliminary objection raised meets the threshold set in the Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors Ltd (supra)***
- 2. Whether the application for leave to institute review proceedings seeking or orders of certiorari is tenable in view of Section 175(1) of the Public Procurement and Asset Disposal Act, 2015.***
- 3. What orders should the court make; and***
- 4. Who should bear the costs of these proceedings.***

38. On the first issue of whether the preliminary objection as raised meets the threshold set out in the Mukisa Biscuits case(*supra*), it is important to note that the Mukisa Biscuits case defined a preliminary objection to be one that raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. Therefore, Preliminary objections when raised by the opposing party must be pure points of law without going into the merits of the cases because it does not take into account the validity of the applicant's claim.

39. A preliminary objection may be taken on the basis of lack of jurisdiction of the court or tribunal to hear and determine a case or matter; or that the suit discloses no cause of action; or that the suit is statute barred by limitation i.e a suit or claim which is instituted outside the statutory limitation period; or that the relief sought cannot be granted either because it is barred by law or it does not lie or the court is divested of jurisdiction to grant the relief claimed or otherwise anfractuous; or based on the doctrine of *Res sub judice* or *Resjudicata*.

40. A preliminary objection is narrow in scope and cannot raise substantive argumentative factual issues raised in the pleadings that may have to be determined by the court after perusal and consideration of evidence.

41. In other words, based on a preliminary objection, the court cannot dismiss a suit or matter on its merits. A preliminary objection is a basic legal weapon that an adverse party can utilize without expending too much effort.

42. The interested party herein raised a preliminary objection claiming that these proceedings are unsustainable because they offend the provisions of Section 175(1) of the Public Procurement and Asset Disposal Act which stipulates that any party who wishes to challenge a decision of the Public Procurement Administrative Review Board may file the application for Judicial Review in the High Court within 14 days from the date of the decision.

43. It was contended that the decision which is impugned herein was made on 19th October 2017 but that the applicant came to court after the stipulated 14 days which was 8th November 2017 hence the application is statute barred and ought to be struck out for being incompetent.

44. I have no doubt in my mind that a preliminary objection based on limitation or statutory bar is a pure point of law for consideration without delving into the merits arguments of the case.

45. Accordingly, I find and hold that the preliminary objection meets the threshold laid down in the **Mukisa Biscuit Manufacturing Company Ltd** (supra) case.

46. The only question that then remains is whether the application for leave to apply for Judicial Review remedy of certiorari as sought is in the present chamber summons sustainable in view of Section 175(1) of the Public Procurement and Asset Disposal Act, 2015.

47. There is no dispute that the impugned decision of the Review Board was made on 19th October 2017. The applicant says that it was furnished with the written decision on 31st October 2017 after delivery of an oral ruling on 19th October 2017.

48. However, the applicant asserts that notwithstanding, the application was filed in time because public holidays and Sundays are excluded when computing time and further, that in any case, Section 9(3) of the Law Reform Act stipulates that Judicial Review remedies of certiorari shall be initiated within 6 months from the date of the decision or order.

49. Further, that the delay in instituting the application for leave was not inordinate, it is curable under Article 159(2) (d) of the Constitution; and that to strike out the application on the basis of time bar offends the purpose for which the provisions of Section 175(1) of the Act was enacted.

50. It was also argued by the exparte applicant that the delay is a mere blunder which should not be used to punish the applicant since the interested party will suffer no prejudice if leave is granted in this meritorious matter.

51. It was contended that litigation should be concluded on merits and not through such objections as that would defeat the administration of justice.

52. Section 175 of the Public Procurement and Asset Disposal Act stipulates that

“(1) 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 on both parties.”

53. On the other hand, Section 9(3) of the Law Reform Act Cap 26 Laws of Kenya provides:-

“In the case of an application for an order of certiorari to remove any judgment, order or decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired” [emphasis added].

54. The above provision is replicated in Order 53 Rule 2 of the Civil Procedure Rules. From the provisions of Section 9(3) of the Law Reform Act, although certiorari has a time limit of 6 months from the date of the decision or order being challenged, but the Section clearly acknowledges that a shorter period may be prescribed for bringing such action under any other written law.

55. That written law in this case, is the Public Procurement and Asset Disposal Act, 2015 at Section 175 (1) which clearly stipulates that the period for challenging the Review Board’s decision by way of Judicial Review in the High Court by an aggrieved person is fourteen days.

56. For that reason, I find that the lengthy arguments by the exparte applicant and the 2nd respondent on the issue are baseless and make no legal sense at all to the legal and judicial process.

57. This issue came up before Odunga J in **Republic vs Public Procurement Administrative Review Board and Another exparte Wajir County Government [2016] e KLR** and the learned judge citing several other decisions held, inter alia:

“ 16. It is not for this court to interpret legislation in a manner that completely alters the legislative intent of the enactment. Where there is a lacuna in law as contended by the exparte applicant, herein the recourse is to move Parliament to correct the same and not to urge this court to in effect amend the same. It is not competent to any court to proceed upon an assumption that Parliament had made a mistake. There being a strong presumption that Parliament does not make mistakes. If blunders are found in legislation, they must be corrected by the legislative, and it is not the function of the court to repair them. Thus, while terms can be introduced in the statute to give effect to its clear intention by remedying mere defects of language and to correct the obvious misprints or misnomers no provision which is not in the statute can otherwise be implied to remedy an omission”

58. A similar holding was reached in **Raila Odinga & 6 Others vs Nairobi City Council Nairobi HCC 899/1993[1990-1994] EA 482 and Halframe Ltd vs Mediterranean Shipping Company [1986] KLR 54.**

59. As correctly stated by Odunga J in the **exparte Wajir County Government (supra)** case, where the statute is clear like in this case, where it limits the time within which an application for Judicial Review should be brought, the applicant cannot by craft or innovation go round such legislative edict to attempt to sway this court to find otherwise.

60. What the applicant has done is justifying the failure to institute the application for leave to apply for Judicial Review proceedings within the stipulated period of 14 days, without laying before the court an application for enlargement of such time. The applicant It has also gone to great lengths to even stretch the 14 days by excluding weekends and public holidays that fell in the intervening period after 19th October 2017 and claiming that there were three public holidays in between and that infact, it received the written decision on 31st October 2017 from Nairobi although the oral decision was made on 19th October 2017 on Eldoret!

61. The applicant is not stipulating that it was never made aware of the date of the decision until 31st October 2017 and neither is it seeking leave of court to enlarge the period for filing the application and

giving reasons for the delay including the intervening public holidays and weekends which may have led to some kind of confusion.

62. The applicant has adopted a hard stance on the limitation period and cannot see or hear Order 50 Rule (6) of the Civil Procedure Rules which would be a useful tool to invoke to seek for enlargement of time.

63. The provision of Section 175(1) of the Public Procurement and Asset Disposal Act says the Judicial Review may be filed within 14 days from the date of the Review Board's decision. It does not stipulate that time for institution of the proceedings starts running from the date when the copy of the decision is collected from the Review Board.

64. The court in the **exparte Wajir County Government [supra case]** made it clear and I concur that failure to collect or to be furnished with the decision within time would be a good ground to rely on for an application for enlargement of time as stipulated in Order 50 Rule 6 of the Civil Procedure Rules and not a justification for filing the proceedings outside the 14 days stipulated in the Act.

65. As stated by Odunga J in the **exparte Wajir County Government case(supra)**, there is nothing wrong with the Public Procurement and Asset Disposal Act limiting the period for filing of Judicial Review application to the High Court because Section 2 of the Act clearly reveals that one of the objects of the procurement process is speed hence public policy and interest is geared towards expeditious resolution of public procurement disputes (See **Republic vs Public Procurement Review and Administrative Review Board & Another vs Selex Sistemi Integrati. Nairobi Misc. Appl. 1260 of 2007 [2008] EKL.R.**

66. I cannot conclude this matter without touching on the issue of computation of time for clarity purposes. Computation of time is governed by the Constitution, the Interpretation and General provisions Act and Order 50 of the Civil Procedure Rules, 2010.

67. Article 259(5) of the Constitution provides that ***“ 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,

.....

68. Section 59(a) of the Interpretation and General Provision Act, Cap 2 Laws of Kenya states:

“ In computing time for the purpose of a written law, unless the contrary intention appears:-

(a) a period of days from the happening of an event or 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”

69. Order 50 Rule 8 of the Civil Procedure Rules also stipulates **(computation of days):**

“ In any case in which any particular number of days not expressed to be clear days is prescribed under these rules or by an order or direction of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.”

70. The Ruling by the Review Board was made on 19th October 2017. Whereas 20th October, 2017 is a National Mashujaa day stipulated in the 2010 Constitution, therefore a public holiday, the 25th and 26th October 2017 were gazetted public holidays for purposes of the fresh presidential elections of 26th October, 2017. The rest of the days falling within the 14 days after the decision of the Review Board was

rendered are neither Saturdays nor Sundays thus 21st and 22nd October, 2017.

71. The 14th day which was the last day from the date of the decision by the Review Board is 2nd November, 2017 which was neither a public holiday nor a Saturday or a Sunday.

72. Under Order 50 Rule 7 of the Civil Procedure Rules, where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sundays, Christmas day and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.

73. In addition, Order 50 Rule 3 of the said Civil Procedure Rules is clear that ***“where the time for doing any act or taking any proceeding expires on Sunday or other day in which the offices are closed, and by reason thereof, such act or proceedings cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.”***

74. From the above two provisions under the Civil Procedure Rules which deal with exclusion of Sundays and public holidays where the limited time is less than six days; and where time expires on Sunday or on a day when offices are closed, it is clear that the exparte applicant's application for leave does not fall in any of the two categories for this court to find that it was filed within the 14 days stipulated in Section 175(1) of the Public Procurement and Asset Disposal Act, 2015.

75. In **Republic vs Public Procurement Administrative Review Board & Another exparte TSC & Zacs Construction Ltd** the court when dealing with a similar issue under Section 100(1) of the repealed Public Procurement and Asset Disposal Act made it clear that unless an aggrieved party files for Judicial Review against the decision of the Review Board within 14 days from the date of such decision, the decision becomes final and binding on the parties; and that Section 100(1) of the Act did not say that the time starts running from the date when a copy of the decision is supplied.

76. Since the application for leave was brought under Order 53 of the Civil Procedure Rules, the applicant had the option of seeking for enlargement of time under Order 50 Rule 6 of the Civil Procedure Rules but chose not to and instead insisted on justifying why it did not matter that its application had been filed after the 14 days stipulated in the Section 175(1) of the Act.

77. In **Wilson Osolo vs John Ojiambo Ochola & Another CA of 1995**, the Court of Appeal, while appreciating that Section 9(3) of the Law Reform Act, Cap 26 Laws of Kenya clearly stipulates that an application for leave to apply for an order of certiorari could not be made six months after the date of the order or decision to be quashed and that as there is no provision for extending the time prescribed there under, the court was nevertheless of the view that:

“It is was a mandatory requirement of Order 53 Rule 3(1) of the Civil Procedure Rules then and it is now again so that the notice of motion must be filed within 21 days of grant of such leave. No such notice of motion having apparently been filed within 21 days of 15th February 1982, there was no proper application before the superior court. This period of 21 days could have been extended by a reasonable period had there been an application under Order 49 of the Civil Procedure Rules. There was no such application save the one dated 28th April 1994. That came too late in the day in any event and the learned judge erred in even considering the extension of time some 12 years after the event.”

78. IN this case there was no application for enlargement of time. I find that attitude by the applicant's counsel to be strange and unfortunate. Justice looks at both ways as the rules of procedure are meant to regulate administration of justice and are meant not to assist the indolent. Filing of an application outside the stipulated statutory timelines cannot be a mere procedural technicality curable by Article 159(2) (d) of the Constitution, and neither does Article 159(2) (d) oust mandatory provisions of the law which allows the application of any other written law with regard to the limitation of time for instituting judicial review proceedings.

79. In my humble view, the applicant herein has decided to adopt its own special and outlandish procedure and used that procedure unknown in law, by craft to enlarge its time within which to file Judicial Review proceedings.

80. This is evident from the hard stances and justifications for filing the application for leave out of time. The arguments may be 'innovative' and quite persuasive but not backed by law and practice established in the administration of justice.

81. For those reasons, I must find as I hereby do, that the chamber summons filed on 8th November 2017 is fatally incompetent for being filed outside the statutory limitation of 14 days stipulated in Section 175(1) of the Public Procurement and Asset Disposal Act, 2015. It must be struck out. I hereby proceed and strike out the application for leave.

82. The applicant and the 2nd respondent have wasted judicial time and resources. They have heavily engaged the court and the interested party in a cyclical battle of all sorts over an obvious matter where the legal position is long settled, not even for academic purposes.

83. Accordingly, I order that the applicant shall pay costs of the application as struck out, to the interested party **Baycoms Africa Ltd**, to be agreed or to be taxed.

84. Those shall be orders of the court.

Dated, signed and delivered in open court at Nairobi this 14th day of December, 2017.

R.E. ABURILI

JUDGE

In the presence of:

Mr Munene for the 1st Respondent

Mr Odhiambo for the 2nd Respondent and H/b for Mr Kiprono for the Interested Party

Miss Okoth h/b for Mr Juma for the exparte applicant

Court Assistant: George