



**Wilson Airport Police Canteen Limited v The Inspector General of Police Kenya  
Police Service & another (Environment and Land Judicial Review Miscellaneous  
Application 3 of 2022) [2022] KEELC 13760 (KLR) (13 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13760 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION 3 OF 2022**

**LN MBUGUA, J**

**OCTOBER 13, 2022**

**BETWEEN**

**WILSON AIRPORT POLICE CANTEEN LIMITED ..... APPLICANT**

**AND**

**THE INSPECTOR GENERAL OF POLICE KENYA POLICE  
SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR . 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. On February 22, 2022, the *ex parte*-applicant was granted leave to file a judicial review substantive motion of which the same was duly filed and is dated March 14, 2022. The *ex parte* applicant seeks the following orders:
  - i. That an order of certiorari do issue directing that the decision of the respondents illegally and irregularly awarding the tender for provision of canteen services at the Wilson Airport Police Canteen and all subsequent contracts and or awards be declared null and void and be removed and brought forth to this honourable court for the purpose of being quashed and/or set aside;
  - ii. That an order of prohibition do issue directed at the respondents prohibiting them, and/or their agents jointly and or severally from commencing or proceeding with eviction of the applicant from the premises and handing over the operations of the Wilson Airport Police Canteen to any third party;
  - iii. Costs of and incidental to the application be provided for;



2. The application is premised on the grounds set out in the statement of facts and the verifying affidavit thereof of Albert Kipchirchir Lagat who is the managing director of the *ex parte* applicant. The applicant contends that it is a limited liability company that runs the Wilson Airport Police Canteen situated at Wilson Airport serving police officers stationed at the airport, prisoners and staff of the airport by providing affordable meals on a 24 hours basis.
3. It is averred that the applicant has been successfully running the facility for the last eight (8) years. Their license to operate the facility expired on June 11, 2021 where they sought to renew the license and got a three (3) months extension on September 27, 2021 and which extension lapsed on December 27, 2021.
4. Upon seeking renewal of the license on December 23, 2021, the respondents *vide* a letter dated January 27, 2022 informed the applicant that the canteen services for Wilson Airport Police Canteen had been awarded to an unmentioned third party after being subjected to a tendering process.
5. The *ex parte* applicant contends that they were unaware of any ongoing tendering process as there was no advertisement of the purported tender as per the provisions of the [Public Procurement and Disposal Act 2015](#), thus the tendering process was illegal and the actions of the respondent in awarding the tender to another entity was unlawful *ultra vires*, and unconstitutional ab initio.
6. The respondents have opposed the application through the affidavit of one David Maina, the OCS at Wilson Airport. He has sworn a rather lengthy affidavit contending that the *ex parte* applicant is guilty of misleading the court by tendering half-truths and is keen on abusing judicial processes for his own personal gain.
7. The respondents aver that the suit premises are held by the respondent on behalf of the Government of Kenya subject to prevailing laws and conditions on its management and use. That pursuant to section 72 of the [Public Finance Management Act](#) No 18 of 2012, the suit premises are managed by the respondent's Account's Officer (designated by the Cabinet Secretary pursuant to section 67 of the [Public Finance Management Act](#)) who is responsible for, other than the management of the respondent's assets, has a further obligation to manage those assets in a way which ensures that the respondent achieves value for money in acquiring, using and disposing of those assets.
8. That in management of the suit premises, the respondent's accounting officer is subject to the provisions of article 277 of the [Constitution](#) on 'Procurement of public goods and services' which dictates that contracts for goods or services shall be done in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. The deponent went ahead to quote extensively on the provisions of the [Public Procurement and Asset Disposal Act](#), No 33 of 2015.
9. The respondents contend that in March 2017, a formal agreement was executed between the 1st respondent and the applicant in relation to operation of the canteen and a renewal of the said agreement was made for a further period of two years from 3rd June, 2019.
10. That according to the terms of the agreement, the canteen was established to supply meals to members of the 1st respondent and their families and with the permission of the OCS Wilson police station, supply prisoners in custody with meals. However, in contravention of the agreement, the *ex parte* applicant operated a bar and restaurant serving members of the public as opposed to police officers, their families and prisoners and this compromised the security situation at the station and airport.
11. The respondents further state that the *ex parte* applicant has been playing loud music and serving customers late in the night causing a nuisance, they failed to maintain the premises in good state of repair and cleanliness thus posing a health risk in contravention of the agreement.



12. The respondents also contend that the agreement between the applicant and the 1st respondent lapsed on June 11, 2021 and due to the blatant disregard of the terms of the agreement by the applicant, the 1st respondent did not renew the said agreement, and instead, they were issued with a notice of termination of the agreement and the requirement to vacate the premises within 30 days from August 27, 2021.
13. Thus the respondent proceeded to conduct open tendering of the canteen services. The process was done via the Government tender website [www.tenders.go.ke](http://www.tenders.go.ke) and in the Ministry of Interior and Coordination of National Government website [www.interior.go.ke](http://www.interior.go.ke) tender No MICNG/SDI/KPS/005/2021-2023 for provision of canteen services. To this end, the provisions of section 96 of the [\*Public Procurement and Asset Disposal Act\*, 2015](#) were complied with.
14. The respondent contends that the *ex parte* applicant is seeking to challenge the procurement/tendering process through this honourable court after he failed to take part in the process, and that they obtained orders through non-disclosure and concealment of material facts.
15. The respondent further contends that there exists no valid agreement between the applicant and the respondents that is capable of enforcement by the court since the agreement signed between the applicant and the 1st respondent lapsed on June 11, 2021.
16. The respondents deny being in contempt of any court orders averring that the structures at the site are temporary and have not been demolished.
17. During the trial, it emerged that the *ex parte* applicant had filed an application for contempt as they had allegedly been evicted from the suit premises. The court gave directions for both the application and the substantive judicial review motion to be heard by way of written submissions simultaneously.
18. I have duly considered all the issues raised herein as well as the submissions of both parties. I discern that there was no agreement or license between the *ex parte* applicant and the respondents as at the time the tendering process was being conducted.
19. Indeed at paragraph 9 of the verifying affidavit of Albert Kipchirchir Lagat (Managing Director of the *ex parte* applicant), their license had expired on June 11, 2021 but were given an extension of three months. The license was not renewed again. I pose the question; What legal right and or interest did the *ex parte* applicant possess over the suit property after the termination of the license? None. Contracts are voluntary undertakings and a court of law cannot re write a contract between parties: See [\*National Bank of Kenya Ltd v Pipeplastic Samkolit \(k\) Ltd and another \[2002\] EA 503\*](#).
20. There being no agreement between the parties for further extension or renewal of the license, then this court cannot impose an obligation upon the respondents to create another contractual relationships between the parties.
21. What is clear is that the *ex parte* applicant is challenging the procedure and decision of the respondent to award the tender No MICNG/SDI/KPS/005/2021 – 2023 to a certain entity known as point mark valuers limited averring that the issuance of the said tender was marred by procedural improprieties. However the compliance of, or none compliance with the [\*Public Procurement and Disposal Act\*](#), is on issue which does not fall under the jurisdiction of this court in terms of the provisions of article 162 (2) (b) of the [\*Constitution\*](#).
22. In the circumstances, the entire suit is dismissed and any orders of stay given herein are hereby discharged; hence the application for contempt dated March 16, 2022 is also dismissed. The *ex parte* applicant shall bear the costs of the suit.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022  
THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

Wanja Mutegi holding brief for Kibera Maina for the ex parte applicant

Allan Kamau holding brief for Fatma Ali for the respondents

Court assistant: Eddel/Joan

