



**Republic v Public Procurement Administrative Review Board; Sirketi & another
(Interested Parties); Principal Secretary/Accounting Officer Ministry of Defence
& another (Exparte Applicants) (Miscellaneous Application E006 of 2025)
[2025] KEHC 2012 (KLR) (Judicial Review) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E006 OF 2025
JM CHIGITI, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD RESPONDENT**

AND

**SUMMA TURIZM YATIRIMCILIGI ANONIM SIRKETI . INTERESTED PARTY
MINISTRY OF GENDER, CULTURE, THE ARTS &
HERITAGE INTERESTED PARTY**

AND

**THE PRINCIPAL SECRETARY/ACCOUNTING OFFICER MINISTRY OF
DEFENCE EXPARTE APPLICANT
MINISTRY OF DEFENCE EXPARTE APPLICANT**

RULING

Brief Background:

1. The Applicants filed a Notice of Motion Application dated 17th January 2025, initiating Judicial Review proceedings against the Respondent's decision that was rendered on 23rd December 2024. The reliefs sought include:



- i. An order of Certiorari to move this Honourable Court and quash the directions and/ or orders purportedly administratively issued by the Public Procurement Administrative Review Board in Review Application Number 119 of 2024 filed on 2nd December 2024, Summa Turizm Yatimciligi Anonim Sirketi vs The Principal Secretary/ Accounting Officer Ministry of Defence and the Ministry of Defence.
 - ii. An order of certiorari to bring to this Honourable Court for the purposes of being quashed, the proceedings filed in Public Procurement Administrative Review Board Review Application Number 119 of 2024 filed on 2nd December 2024, Summa Turizm Yatimciligi Anonim Sirketi vs The Principal Secretary/ Accounting Officer Ministry of Defence and the Ministry of Defence.
 - iii. Costs of and incidental to this suit.
2. The application was premised on the grounds interalia that;
- a. The 2nd Interested Party entered into an Agreement with the 2nd Applicant for Transfer of Procuring Responsibility for the design, construction and equipping of the Barnas International Convention Complex to facilitate a more economical and efficient procurement of contractual services of the scope of works.
 - b. The 2nd Applicant invited the 1st Interested Party to submit its bid in response to Direct Tender No. DHQINFRAS/004/23-24 for the proposed design, building and equipping the Barnas International Convention Complex and the 1st Interested Party was notified of its award of Direct Tender No. DHQINFRAS/004/23-24 vide a letter dated 22nd November 2023.
 - c. The tender validity period ended on 15th March 2024 and the procurement contract was yet to be signed but the 1st Interested Party filed the Public Procurement Administrative Review Board Application number 119 of 2024 on 2nd December 2024 after more than the fourteen (14) days statutory period prescribed under section 167 of the Public Procurement and Assets Disposal Act, Cap 412c without enlargement of time.
 - d. The Respondent administratively, rendered a decision and/or order on the 23rd December 2024 extending the tender validity period beyond what had been pleaded by the parties and outside its jurisdiction as clothed under section 173 of the Public Procurement and Assets Disposal Act, Cap 412c.
 - e. The Respondent exercised powers reserved to the Accounting Officer without authority contrary to section 88 of the Public Procurement and Assets Disposal Act, cap 412 and failed to take into account the provisions of section 44(2) (e) and 135(4) of the PPDA.

Respondent’s and Interested Parties’ case:

3. In responding to the Application, The Respondent and the interested Parties raised Preliminary Objections on points of Law that are dated 6th February, 2025 and 12th February, 2025 respectively. They come up for determination through this ruling.
4. The Respondent’s Objection is based on the following grounds:
 - i. Section 175(1) of the Act provides a statutory period of 14 days within which one can challenge the Decision of the Respondent on a Request for Review.



- ii. The Respondent delivered its Decision in Request for Review No. 119 of 2024 on 23rd December 2024 and thus the statutory window for challenging the Decision closed on 6th January 2025.
 - iii. The Ex-parte Applicant instituted the present judicial review proceedings on 14th January 2025.
5. The 1st Interested Party's Objection is based on the on the following grounds:
- i. The Notice of Motion dated 1st January 2025 was filed outside time as per Section 175(1) of the *Public Procurement and Asset Disposal Act*.
 - ii. The Court therefore has no jurisdiction to hear and determine the Notice of Motion Application dated 17th January 2025.
6. The Respondent canvassed their preliminary objection by way of written submissions dated 14th February, 2025.
7. It is contended that the Respondent delivered its Decision in Request for Review Application No. 119 of 2024 on 23rd December 2024 and thus the statutory window for challenging the Decision lapsed on 6th January 2025 whereas the Ex-parte Applicants herein instituted the present judicial review proceedings on 14th January 2025 way outside the statutory 14 days' period.
8. According to the Respondent the *Public Procurement and Asset Disposal Act*, 2015 overrides any other Acts of Parliament on matters of procurement in such a way that if there is any inconsistency, the provisions of the Act take precedence.
8. They invoke Section 5 (1) of the Act which states that,
- “This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services.”
9. It is posited that Order 50 Rule 4 of the Civil Procedure Rules, 2010 is not applicable on matters procurement as the same are expressly ousted by the application of Section 5 (1) of the Act.
10. Reliance is placed in the case of *Martha Akinyi Migwambo v Susan Ongoro Ogenda* [2022] eKLR, where justice Kiarie Waweru Kiarie summarized the importance of a preliminary objection as seen from two of the judges in *Mukisa Biscuit Manufacturing Co Ltd* as follows: -
- “A preliminary objection must be on a point of law. The Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd* [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. At page 701 paragraph B-C Sir Charles Newbold, P added the following: A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
11. The Respondent argues that they have raised their Objection on a pure point of law that the subject Application is time barred by operation of Section 175 (1) of the Act which provides that 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.

12. It is submitted that this court lacks jurisdiction and should down its tools.
13. Reliance is also placed in the case of ADK Technologies Ltd in Consortium with Computer Technologies Ltd *v Public Procurement Administrative Review Board & 4 others (Civil Appeal E598 of 2021)* where it was held:-

“Section 175 has been the subject of consideration by this Court in *Aprim Consultants v. Parliamentary Service Commission & Another, CA. No. E039 of 2021* (“the Aprim case”) and in *The Consortium of TSK Electronica Y Electricidad S.A. & Ansaldoenergia v. PPARB & 3 Others, CA. No. E012 of 2022* (“the TSK Electronica case”).

In the Aprim case, the Court stated that section 175 was couched in mandatory terms. The Court expressed itself thus: “A perusal of section 175 of the Act reveals Parliament’s unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act’s avowed intent and object of expeditious resolution of those disputes. Parliament was thus fully engaged and intentional in setting the timelines in the Section. But it did not stop there. In one of the rarer instances where all discretion is totally shut out, Parliament expressly enacted a consequence to follow default or failure to file or to decide within the prescribed times: the decision of the Board would crystallize with finality... Thus, any judgment returned outside time would be without jurisdiction and therefore a nullity.

The same reasoning applies with equal force to section 175(4) which addresses procurement appeals in this Court. In the TSK Electronica case the Court agreed with the reasoning in the Aprim case, and stated thus: “Our appreciation of section 175(4) is that a person aggrieved by a decision of the High Court arising from a judicial review decision in a procurement matter under this Act and who desires to prefer an appeal to this Court must do so within a period of 7 days from the decision of the High Court. Thereafter, this Court must hear and make a determination of the appeal within 45 days from the date of its filing. These timelines are cast in stone and cannot be varied. The strict time frames under this section underscore the intention of Parliament to ensure that disputes relating to Public Procurements and Assets Disposal are disposed of expeditiously.” (Emphasis added.)

14. The 1st Interested Party also canvassed their application by way of written submissions dated 14th February, 2025.
15. They submit that in the case of *Aprim Consultants v Parliamentary Service Commission & another & another (Civil Appeal E039 of 2021)* [2021], the Court of Appeal observed that:

“perusal of section 175 of the Act reveals Parliament’s unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act’s avowed intent and object of expeditious resolution of those dispute the jurisdiction of the High Court in Public Procurement judicial review proceedings is expressly limited in terms of time and is not open to expansion by that court. To step out of time is to step out of jurisdiction and any act or decision outside jurisdiction is by application of first principles a nullity.”



16. It is submitted that the Applicants rely on Order 50 rule 4 of the Civil Procedure Rules which provision applies to situations where extension of time is provided for under the said rules or by an order of the Court whereas in the instant case, the extension is neither provided by the Civil Procedure Rules nor by an order of the Court.
17. They place reliance in the cases of Republic vs Public Procurement Administrative Review Board and Another Exparte Wajir County Government [2016] eKLR, and Republic vs Public Procurement Administrative Review Board and Another Exparte Teachers Service Commission [2015] eKLR.
18. In opposing the Preliminary Objections, the Applicants submitted that pursuant to this court in exercise of its inherent powers to meet the ends of justice and granting them leave to file their substantive notice of motion they seek refuge under Article 48 of the *Constitution* of Kenya 2010, Section 3 and 3A of the *Civil Procedure Act*, cap 21 of the laws of Kenya Order 50 rule 4 of the Civil Procedure Rules 2010 and Gazette Notice No. 13190 issued on 11th October 2024.
19. They contend that the Decision of the Public Procurement Administrative Review Board in Application No. 119 of 2024 was made on 23rd December 2024, having been made within the days excluded in so far as computation of time is concerned.
20. They assert that the time for computing the 14 days prescribed under section 175 (1) of the Public Procurement and Assets Disposal Act, Cap 412c, begun running from the 14th of January 2025.
21. They urge this Honorable court to dismiss the Notices of the Preliminary Objection.

Analysis and determination:

The only issue for determination is whether or not the Notices of Preliminary Objections by the Respondent and the interested parties should be upheld or dismissed.

22. It is not in dispute that the Administrative Review Application Number 119 of 2024 was filed on 2nd December 2024 being Summa Turizm Yatimciligi Anonim Sirketi vs The Principal Secretary/ Accounting Officer Ministry of Defence and Ministry of Defence. It is further not in dispute that the Application was determined by the Respondent through the impugned decision on 23rd December 2024.
23. This precipitated the filing of the proceedings before this court. The Applicant moved the court through a Chamber Summons dated 14th January, 2025. The Applicants' thereafter filed a Notice of Motion dated 17th January, 2025.
24. In responding to the application, the Respondent and the 1st Interested Party filed Preliminary Objections dated 12th February, 2025 dated 6th February, 2025 respectively.
25. The Law on preliminary objection is well settled in the case of Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributors Limited [1969] EA 696, Newbold, V.P, observed as follows;

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase cost and, on occasion, confuse issues. This improper practice should stop.”



26. This court is satisfied that the Respondent's and the interested parties Preliminary Objections raise fundamental questions of law that go to the root of this court's jurisdiction.
27. In the case of Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR, the supreme court pronounced itself on jurisdiction thus:

“(68) A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second Jurisdiction to entertain a matter before it, is not one of mere procedural. Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, Commission (Applicant), Constitutional Application Number 2 of 2011. Where they cannot expand its jurisdiction must operate within the constitutional limits. It confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, court or tribunal by statute law.” (Emphasis provided) where it quoted with approval the oft cited case of Owners of Motor Vessel 'Lillian S' v Caltex In Re The Matter of the Interim Independent Electoral Commission where the Court stated: -

“(29) Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.”(underlining supplied)

(30) The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”



28. The Applicant’s argument that in the computation of the 14 days prescribed under section 175 (1) of the Public Procurement and Assets Disposal Act, time begun running from the 14th of January 2025 cannot stand since Order 50 Rule 4 of the Civil Procedure Rules is ousted by Section 5 of the PPAD Act Section 5 (1) of the PPAD Act which provides that;

“This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services.”

29. This court is bound by the findings in the case of ADK Technologies Ltd in Consortium with Computer Technologies Ltd *v Public Procurement Administrative Review Board & 4 others (Civil Appeal E598 of 2021)*:-

“Section 175 has been the subject of consideration by this Court in Aprim Consultants *v. Parliamentary Service Commission & Another, CA. No. E039 of 2021* (“the Aprim case”) and in The Consortium of TSK Electronica Y Electricidad S.A. & Ansaldoenergia v. PPARB & 3 Others, CA. No. E012 of 2022 (“the TSK Electronica case”).

In the Aprim case, the Court stated that section 175 was couched in mandatory terms. The Court expressed itself thus: “A perusal of section 175 of the Act reveals Parliament’s unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act’s avowed intent and object of expeditious resolution of those disputes. Parliament was thus fully engaged and intentional in setting the timelines in the Section. But it did not stop there. In one of the rarer instances where all discretion is totally shut out, Parliament expressly enacted a consequence to follow default or failure to file or to decide within the prescribed times: the decision of the Board would crystallize with finality... Thus, any judgment returned outside time would be without jurisdiction and therefore a nullity.

The same reasoning applies with equal force to section 175(4) which addresses procurement appeals in this Court.

30. I am satisfied that the suit before me was filed outside the statutory window as provided for under Section 175 of the PPDA Act.

Determination:

31. The Notices of Preliminary Objection dated 6th February, 2025 and 12th February, 2025 have merit.

Order;

1. The Notices of Preliminary Objection dated 6th February, 2025 and 12th February, 2025 are upheld.
2. The suit is struck out with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025.

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J.M. CHIGITI (SC)

JUDGE

