



**Amazon Transporters Limited v Public Procurement Administrative Review Board & 2 others; Jennygo Enterprises Limited (Interested Party) (Miscellaneous Application E025 of 2025) [2025] KEHC 4664 (KLR) (Judicial Review) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4664 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**MISCELLANEOUS APPLICATION E025 OF 2025**

**RE ABURILI, J**

**APRIL 9, 2025**

**BETWEEN**

**AMAZON TRANSPORTERS LIMITED ..... APPLICANT**

**AND**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD .... 1<sup>ST</sup> RESPONDENT**

**ACCOUNTING OFFICER, KENYA NATIONAL BUREAU OF STATISTICS ..... 2<sup>ND</sup> RESPONDENT**

**KENYA NATIONAL BUREAU OF STATISTICS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JENNYGO ENTERPRISES LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. The Applicant is Amazon Transporters Limited. For determination is the Originating Motion dated 28<sup>th</sup> February 2025. The motion is brought pursuant to the provisions of Articles 10, 22, 23(3)(f), 47, 48, 50 (1) and 227 of *the Constitution* of Kenya 2010, Section 175 (1) of the *Public Procurement and Asset Disposal Act*, Sections 7, 9 and 11 of the Fair Administrative Actions Act and Rule 11(2) of the Fair Administrative Action Rules, 2024.
2. The Originating Motion seeks the following orders:
  1. That this Honorable Court be pleased to issue an order of Certiorari, to remove into the High Court and quash and/or set aside the Decision of the Public Procurement Administrative



Review Board (the 1<sup>st</sup> Respondent) dated 17<sup>th</sup> February 2025 in Public Procurement Administrative Review Board Application No. 5 of 2025, Amazon Transporters Limited vs. Accounting Officer Kenya National Bureau of Statistics, Kenya National Bureau of Statistics and Jennygo Enterprises Limited, in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis, and to remit the matter for reconsideration by the 1<sup>st</sup> Respondent and issuance of appropriate and effective relief(s) on merit within 21 days, taking into consideration the Judgment of this Honourable Court.

2. That this Honourable Court be pleased to issue an order of Prohibition, directed at the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, prohibiting them from implementing the Decision of the 1<sup>st</sup> Respondent Dated 17<sup>th</sup> February 2025 by proceeding to oversee the procurement proceedings in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis to its logical conclusion.
  3. That this Honourable Court be pleased to issue an order of Prohibition, directed at the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Interested Party, prohibiting them from proceeding with the implementation and performance of the Contract dated 14<sup>th</sup> August 2024 entered into between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Interested Party in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis.
  4. That in the alternative, this Honourable Court be pleased to issue an Order for Declaration, to declare the Contract dated 14<sup>th</sup> August 2024 entered into between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Interested Party in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis null and void.
  5. That pending the hearing and determination of the substantive Originating Motion, that this Honourable Court be pleased to issue An Interim Order For Stay, to stay the Execution and/ or Implementation of the Decision of the Public Procurement Administrative Review Board (the 1<sup>st</sup> Respondent) Dated 17<sup>th</sup> February 2025 in Public Procurement Administrative Review Board Application No. 5 of 2025, Amazon Transporters Limited vs. Accounting Officer Kenya National Bureau of Statistics, Kenya National Bureau of Statistics and Jennygo Enterprises Limited, with Respect to Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis.
  6. That pending the hearing and determination of the substantive Originating Motion, that this Honourable Court be pleased to issue An Interim Order For Stay, to stay the Implementation of any Contract and/ or any Procurement Proceedings between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the Interested Party with Respect to Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis subject of these proceedings.
  7. That the costs of these proceedings to be provided for.
  8. Such other, further, incidental and/ or alternative relief(s) as this Honourable Court may deem just and expedient.
3. The Originating Motion is predicated on the grounds on its face and the supporting affidavit of Feisal Mohamed Abdi.
  4. A brief background of the matter before this court is that the 2<sup>nd</sup> Respondent Procuring Entity herein advertised for bids for tender number KNBS/ONT/30/2023- 2024 for Provision of Car Hire Services



- on As and When Required (AWR) Basis and issued tender documents to all eligible bidders who wished to participate.
5. The Applicant and the Interested Party were among the nine bidders who submitted their proposals and upon lapse of the deadline for submission, the bids were opened on 2<sup>nd</sup> July 2024. Having completed the evaluation process, the Procuring Entity- the Bureau, notified all bidders of the outcome of the evaluation and this was through the letters of notification delivered to all bidders via email on 23<sup>rd</sup> July 2024. In the notification, the Bureau informed the bidders that the successful bidder was Jennyngo Enterprises Limited, the Interested Party herein.
  6. The Interested Party duly accepted the tender award vide the letter dated 25<sup>th</sup> July 2024 and pursuant to section 135(3) of the *Public Procurement and Asset Disposal Act*, a contract was subsequently signed on 14<sup>th</sup> August 2024 between the Procuring Entity and the successful bidder during the tender validity period.
  7. The Applicant on the other hand upon receiving the notification, lodged a complaint with the procuring entity through a letter dated 25<sup>th</sup> July 2024 in which the Applicant expressed their dissatisfaction with the evaluation process and requested KNBS to “review [its] evaluation process and make a fair decision.” The Bureau responded to the Applicant herein through a letter dated 30<sup>th</sup> July 2024 providing full debriefing on the reasons for disqualification of its tender.
  8. The Applicant on 1<sup>st</sup> August 2024 responded to the Bureau through a letter requesting for due diligence to ascertain any claims and justification and verification of the facts. On the same day, the Applicant equally filed a complaint against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents at the Public Procurement Regulatory Authority (PPRA)- the Authority.
  9. On 30<sup>th</sup> August 2024, after the procurement contract was executed between KNBS and the Interested Party, the Bureau received a letter from Public Procurement Regulatory Authority dated 28<sup>th</sup> August 2024 citing receipt of letters of complaint dated 1<sup>st</sup> and 2<sup>nd</sup> August 2024 from the Applicant herein on grounds, including, that the Applicant had established that the successful firm did not have a valid NSSF Compliance Certificate.
  10. Through a letter dated 5<sup>th</sup> September 2024, KNBS responded to the letter from PPRA regarding the allegations made by the Applicant herein citing, among others, that a debrief letter was sent to the Applicant herein on 30<sup>th</sup> July 2024 disclosing all the reasons for disqualification of the Applicant’s tender. KNBS also asserted in relation to the Applicant’s allegations on validity of the successful bidder’s NSSF Compliance Certificate that the Applicant herein was usurping the mandate of the evaluation committee of the procuring entity by purporting to evaluate the tender of the successful tenderer.
  11. Nevertheless, by its letter to the Bureau dated 3<sup>rd</sup> October 2024, PPRA provided guidance to the Bureau on the application of evaluation criteria at Clause 8 of the Preliminary Mandatory Requirements (MR8) as well as the necessity to conduct a due diligence to ascertain the validity of the successful tenderer’s NSSF Compliance Certificate and the authenticity of the Automobile Association membership documentation submitted by bidder number 2 and bidder number 9 (the Applicant herein).
  12. In a letter to the PPRA dated 9<sup>th</sup> October 2024 the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are said to have demonstrated full compliance with the requirements of the *Public Procurement and Asset Disposal Act* and the regulations thereunder in the initiation and conduct of the subject procurement proceedings. They also emphasised in the letter that although PPRA had issued guidance to them to conduct due diligence, the provisions of Section 83 of the Act state that the same is not mandatory.



13. The PPRA through its letter dated 21<sup>st</sup> November 2025 is said to have addressed and noted the Bureau's significant compliance with the substantive and procedural requirements of the law in initiating and conducting the subject procurement proceedings, including the execution of a procurement contract in accordance with section 135 of the PPADA. However, the Authority maintained that the Bureau should submit to it documentary evidence relating to the authenticity of Automobile Association of Kenya membership documents of bidder number 2 and bidder number 9 as well as proof of authenticity of the successful bidder's NSSF Compliance Certificate.
14. Pursuant to the direction issued by PPRA in its letters to the Bureau dated 3<sup>rd</sup> October 2024 and 21<sup>st</sup> November 2024, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein wrote to Automobile Association of Kenya, through the letter dated 5<sup>th</sup> December 2024, seeking confirmation of authenticity of proof of membership of bidder number 2 and bidder number 9. At the same time, the Bureau, through a letter dated 5<sup>th</sup> December 2024, wrote to NSSF seeking confirmation of authenticity of the NSSF Compliance Certificate submitted by the successful tenderer.
15. Through the letter dated 6<sup>th</sup> December 2024, the Automobile Association of Kenya informed the Bureau that bidder number 2 and bidder number 9 had valid membership of Automobile Association of Kenya. The Bureau is also said to have been informed by NSSF, through the letter dated 6<sup>th</sup> December 2024, that the NSSF Compliance Certificate issued to the successful tenderer (Jennygo Enterprises Limited) was authentic and valid as at 2<sup>nd</sup> July 2024.
16. The PPRA through its letter to the Bureau dated 11<sup>th</sup> December 2024 directed the Bureau to review the decision(s) made regarding the processing of the subject tender, taking into consideration the observations made in PPRA's letter of 11<sup>th</sup> December 2024 and to previous correspondence. In a letter dated 20<sup>th</sup> December 2024, the Bureau communicated to the PPRA the outcome of the exercise and it also sought advice and further guidance on the contract noting that the Interested Party herein still emerged the successful tenderer.
17. Vide its letter dated 2<sup>nd</sup> January 2025, the PPRA is said to have observed that the Bureau's recommendation to award the tender to the Interested Party was in accordance with procurement laws, and the Bureau was directed to proceed with the procurement process to its conclusion.
18. Further, that the validity period of the tender was suspended upon receipt by the Bureau of the letter dated 28<sup>th</sup> August 2024 on 30<sup>th</sup> August 2024. The PPRA also observed that the complaints lodged by bidder 2 and bidder 9 regarding the initial evaluation were considered closed. Additionally, it directed that all relevant procurement documents were to be uploaded to the Public Procurement Information Portal (PPIP) at [www.tenders.go.ke](http://www.tenders.go.ke).
19. On 14<sup>th</sup> January 2025, the Bureau informed the Applicant of the outcome of their complaint to PPRA, lodged through letters dated 1<sup>st</sup> and 2<sup>nd</sup> August 2024. Subsequently, in compliance with PPRA's directive to conclude the procurement process, the Bureau issued new letters of notification dated 13<sup>th</sup> January 2025 to all tenderers, including the Applicant, via email on 15<sup>th</sup> January 2025, in accordance with section 87 of the *Public Procurement and Asset Disposal Act*. These notifications are said to have also been uploaded to the Public Procurement Information Portal (PPIP) as directed by PPRA in its letter dated 2<sup>nd</sup> January 2025.
20. Subsequently, on 27<sup>th</sup> January 2025, the Applicant filed a Request for Review Application No.5 of 2025. The request for review was opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well as the Interested Party.
21. Vide the 1<sup>st</sup> Respondent's Decision dated 17<sup>th</sup> February 2025, the 1<sup>st</sup> Respondent dismissed the Request for Review Application No. 5 of 2025. In its decision, it stated that the Request for Review was found



- to be time barred under Section 167(1) of the Procurement Act, as it was filed nearly six months after the Applicant became aware of the Interested Party's alleged NSSF compliance issue.
22. Additionally, the Board held that the procurement contract had already been properly concluded, thereby removing the Review Board's jurisdiction under Section 167(4)(c). The Board further observed that since the Request was based on a decision arising from a complaint to the Public Procurement Regulatory Authority, it could only be addressed through judicial review. The Review Board also noted that it did not have supervisory authority over the Authority's investigative actions, further ousting its jurisdiction under Section 39. It is this decision that led the Applicant to file these judicial review proceedings.
  23. In the instant proceedings the Applicant urges that Board's decision is tainted with illegalities and/or irregularities, for the reason that the 1<sup>st</sup> Respondent erroneously, selectively, narrowly and/or superficially interpreted and/or applied the provisions of Sections 135, 167(1) and 167 (4) (c) of the Procurement Act in blatant disregard of the Applicant's pleadings and submissions.
  24. According to the Applicant, its Request for Review dated 27<sup>th</sup> January 2025 was timely under Section 167(1) of the Procurement Act, as following a fresh Notification dated 13<sup>th</sup> January 2025 and received on 15<sup>th</sup> January 2025, which arose from a re-evaluation of the tender. The notification is said to have expressly communicated of the Applicant's unsuccessful bid, initiated a new 14-day standstill period, and also stated that complaints could be submitted by 27<sup>th</sup> January 2025.
  25. The Applicant maintains that this triggered a new/fresh cause of action against the decision of the Accounting Officer of the 3<sup>rd</sup> Respondent and as such, the 1<sup>st</sup> Respondent had jurisdiction to hear and determine the Request for Review, and that despite this, the Review Board dismissed the Request as being time-barred, relying on the Applicant's earlier knowledge of the Interested Party's alleged NSSF non-compliance and finding the contract of 14<sup>th</sup> August, 2024 to be regularly concluded.
  26. The Applicant contends that the contract was signed in breach of Section 135 of the Act and that the Board ignored material pleadings, misapplied Sections 55(5), 66(1) and (3)(a), 86(1)(a), and 87 of the PPADA and failed to evaluate whether the award complied with the law. The impugned decision is challenged as irrational, unreasonable, and contra legem. The Applicant also relies on Sections 7(2)(d) (f)(j) and (m) of the *Fair Administrative Action Act*, on this Court's power to review and impugned decision.
  27. In response, the 1<sup>st</sup> Respondent filed a replying affidavit sworn by James Kilaka, the Ag Board Secretary. The 1<sup>st</sup> Respondent contends that in its Decision, it considered all the parties' pleadings, documents, written and oral submissions, the list and bundle of authorities together with the confidential documents submitted to it pursuant to Section 67(3) (e) of the Act.
  28. The Board is said to have identified the following issues for determination;
    - "A. Whether the Board has jurisdiction over the present Request for Review?  
In determining this issue, the Board will consider:
      - i. Whether the present Request for review is time-barred under Section 167(1) of the Act?
      - ii. Whether the Board's jurisdiction is divested under Section 167(4)(c)



- iii. Whether the Board has jurisdiction over the present Request for Review which is ousted under Section 39 of the Act?

Depending on the finding on the first issue:

- A. Whether the Evaluation Committee properly evaluated the bids in the subject tender in accordance with the provisions of the Act and the Tender Document?
- B. Whether the circumstances obtaining in the procurement process in the subject tender warrant an extension of the tender validity period?
- C. What orders should the Board issue in the circumstance?”
29. In determining whether it had jurisdiction over the Request for Review No. 5 of 2025, the 1<sup>st</sup> Respondent considered the Notice of Preliminary Objections dated 30<sup>th</sup> January 2025 filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, as well as the by Interested Party. The Preliminary Objections are said to have raised four key grounds: (a) the Request for Review was time-barred under Section 167(1) of the *Public Procurement and Asset Disposal Act*; (b) the 1<sup>st</sup> Respondent’s jurisdiction was divested by Section 167(4)(c) of the Act; (c) the Request was not signed by the Applicant as required under Regulation 203 of the Public Procurement and Asset Disposal Regulations 2020; and (d) the Request was supported by a defective statement.
30. According to the 1<sup>st</sup> Respondent, at paragraph 98 of its Decision dated 17<sup>th</sup> February 2025 it observed that the gravamen of the Applicant’s Request for Review No. 5 of 2025 as discerned from the grounds therein was that the Interested Party submitted a false and inaccurate NSSF compliance certificate. It made a finding that it was apparent that the Applicant as at 1<sup>st</sup> August 2024 was aware of the Interested Party’s NSSF compliance status for it to relay this information to the Public Procurement Regulatory Authority.
31. It further observed that though Section 167 of the Act and Regulation 203 of Regulations 2020 outline multiple instances that could form the standard date from when the 14-days statutory window opens, the actual standard date for any given candidate or bidder is the date they first learnt of the breach being complained about thus making the question of knowledge of breach complained of central towards identifying the standard date.
32. That the 1<sup>st</sup> respondent upon computing the timeline within which the Request for Review No. 5 of 2025 ought to have been filed found that time for filing started to run on 1<sup>st</sup> August 2024 and lapsed on 15<sup>th</sup> August 2024 which meant that the Applicant had between 1<sup>st</sup> August 2024 and 14<sup>th</sup> August 2024 to seek administrative review before it and that its review application having been filed on 27<sup>th</sup> January 2025 was filed close to six (6) months from when the Applicant knew of the Interested Party’s alleged NSSF compliance status.
33. In response to the Applicant’s argument that the 14-day statutory period should have started running from 15<sup>th</sup> January 2025, when it received the notification about the Interested Party’s successful bid, the 1<sup>st</sup> Respondent rejected this reasoning. It noted two key points: First, that the Applicant was already aware of the Interested Party’s alleged NSSF compliance status as of 1<sup>st</sup> August 2024, as evidenced by its complaint to the Public Procurement Regulatory Authority. It emphasized nothing stopped the



Applicant from invoking its time bound jurisdiction as at the said date when making the complaint to the Authority.

34. Secondly, the 1<sup>st</sup> Respondent cautioned that adopting the Applicant's argument would undermine the purpose of Section 167(1) of the Procurement Act and Regulation 203 of Regulations 2020, as it would allow applicants who find themselves time barred to always file complaints with the Authority with the goal of subsequently filing for review within 14 days of a procuring entity communicating the outcome of the complaint made to the Authority.
35. The 1<sup>st</sup> Respondent also found that a procurement contract was signed between the 3<sup>rd</sup> Respondent and the Interested Party on 14<sup>th</sup> August 2024, 22 days after the notification of award was issued. Despite this, the contract was concluded within the tender's validity period, which ran until 5<sup>th</sup> November 2024. Given that the contract was signed before the validity period expired, the 1<sup>st</sup> Respondent concluded that its jurisdiction was divested under Section 167(4)(c) of the Procurement Act.
36. It is also the 1<sup>st</sup> Respondent's case that, in its Decision, it found that Request for Review No. 5 of 2025, originating from a complaint to the Public Procurement Regulatory Authority, could only be resolved through judicial review in the High Court, as it does not supervise the Authority's investigative powers. Consequently, the 1<sup>st</sup> Respondent is said to have determined that it was divested of jurisdiction under Section 39 of the PPADA.
37. According to the 1<sup>st</sup> Respondent its decision was sound, unbiased, and in line with *the Constitution*, the PPADA, and applicable regulations. Furthermore, that the Applicant's allegations of bias were unsubstantiated, and the 1<sup>st</sup> Respondent's reasoning was based on the rule of law and mental clarity, considering all relevant pleadings and submissions.
38. The 1<sup>st</sup> Respondents case is also that the Applicant has failed to demonstrate any elements of illegality, irrationality, procedural impropriety and/or unfairness in the manner in which it considered and interrogated the evidence, documents, pleadings, and information before it in arriving at its Decision in Request for Review No.5 of 2025.

### **The 2<sup>nd</sup> and 3<sup>rd</sup> respondent's case**

39. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents also filed a Replying Affidavit sworn by Dr. Macdonald G. Obudho, EBS, MBS.
40. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' case is that the Applicant is guilty of laches, having known of the grounds for review as early as 1<sup>st</sup> August 2024 but failing to file a Request for Review within the statutory 14-day period as stipulated under the law. They also assert that the procurement contract between the Bureau and the Interested Party was valid and not annulled by the Public Procurement Regulatory Authority (PPRA).
41. According to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents they filed preliminary objections on points of law against the Applicant's request for review on the grounds that the Public Procurement Administrative Review Board lacked jurisdiction to hear and determine the request for review since it had been filed outside the statutory timelines provided by section 167(1) of the *Public Procurement and Asset Disposal Act* and rule 203(2)(c)(iii) of the Public Procurement and Asset Disposal Regulations.
42. The Respondents maintain that the 1<sup>st</sup> Respondent followed due process, giving all parties a fair chance to be heard on 11<sup>th</sup> February 2025 before delivering its decision on 17<sup>th</sup> February 2025. They reject the Applicant's claims of illegality and irrationality, arguing that the 1<sup>st</sup> Respondent acted within its legal bounds. Additionally, they emphasize that the NSSF Compliance Certificate was verified as authentic,



and due to the expired statutory timelines, the Applicant cannot reopen the issue. The Respondents argue that the Applicant's request for review is frivolous and should be dismissed.

### **The Interested Party's case**

43. The Interested Party also opposed the application through its Replying Affidavit sworn by Mohamed Amin Osman on 12<sup>th</sup> March 2025.
44. The Interested Party's case is that it also assailed the competence of the purported Request for Review vide its Preliminary Objection and Replying Affidavit filed before the 1<sup>st</sup> Respondent.
45. The Interested Party argues that the Applicant's request for review was time-barred because the Applicant was aware of the grounds for review as early as 1<sup>st</sup> August 2024, when it submitted complaints to the Public Procurement Regulatory Authority (PPRA).
46. The Interested Party contends that the Applicant should have filed a request for review within the statutory timelines under section 167(1) of the Public Procurement and Asset Disposal Act and rule 203(2)(c) of the PPAD Regulations, given that the award was communicated to the Applicant on 24<sup>th</sup> July 2024.
47. The Interested Party also asserts that the Review Board's jurisdiction was ousted by the execution of the on 14<sup>th</sup> August 2024, as per section 167(4)(c) of the Act. Additionally, they argue that the Review Board acted lawfully and procedurally in delivering its decision within the required timelines, affording all parties an opportunity to present their cases, and considering all relevant submissions.
48. The Interested Party further emphasizes that the procurement contract was never canceled by the PPRA and that the Applicant's complaint was considered closed by the PPRA as of 2<sup>nd</sup> January 2025. The Interested Party believes that the Applicant's judicial review application is merely a tactic to delay the procurement process, as the grounds for the review were already known to the Applicant long before January 2025.
49. The Interested Party also contends that the Applicant's request for review was improperly based on a "new cause of action" related to the PPRA's notification letter dated 13<sup>th</sup> January 2025, which the Applicant should have addressed via judicial review in the High Court, not through the Review Board. The Interested Party insists that the Review Board had no jurisdiction to hear the request for review due to effluxion of the statutory time limits.

### **Analysis and Determination**

50. I have considered the application and the accompanying affidavit, and annexures. I have also considered the submissions and arguments for and against the application. The following are the issues for determination
  - i. Whether the Request for Review No. 5 of 2025 was filed within the statutory time limits under Section 167(1) of the PPADA.
  - ii. Whether the Review Board had jurisdiction to hear and determine the Request for Review given the execution of the procurement contract on 14<sup>th</sup> August 2024.
  - iii. Whether the Review Board acted in accordance with the law in dismissing the Applicant's request.
  - iv. What orders



**Whether the Request for Review No. 5 of 2025 was filed within the statutory time limits under Section 167(1) of the PPADA.**

51. The PPADA governs the procurement process in Kenya and provides mechanisms for the review of procurement decisions. Section 167(1) of the PPADA requires that a request for review be filed within fourteen (14) days from the date a party became aware of the grounds for review.
52. The Applicant before this court has argued that the Request for Review was filed within the statutory time frame, relying on the fact that a fresh Notification of Intention was issued on 13<sup>th</sup> January 2025, and received on by it on 15<sup>th</sup> January 2025. This notification according to the Applicant led to a fresh 14-day period within which it could file any request for review. It is its case that it adhered to this by filing the Request for Review dated 27<sup>th</sup> January 2025 based on the new cause of action.
53. The Applicant further argues that the Review Board erred in dismissing the request as time barred, as it was based on knowledge of the Interested Party's alleged NSSF compliance issue, which only became relevant after the fresh notification.
54. It is also the Applicant's further contention that the 1<sup>st</sup> Respondent Review Board failed to apply the law correctly, specifically with regard to Section 135 of the PPADA, which governs the procurement process, and Sections 7(2)(d)(f)(j) and (m) of the *Fair Administrative Action Act*.
55. The 1<sup>st</sup> Respondent, in its defense, asserts that the Request for Review was time barred under Section 167(1) of the PPADA, as the Applicant became aware of the alleged NSSF compliance issue as early as 1<sup>st</sup> August 2024, when it submitted complaints to the PPR. The Review Board further argues that the contract between KNBS and the Interested Party was concluded on 14<sup>th</sup> August 2024, within the tender validity period, and therefore, its jurisdiction was ousted by Section 167(4)(c).
56. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the other hand argue that the Applicant's failure to file the Request for Review within the statutory 14-day period after becoming aware of the issue as early as 1<sup>st</sup> August 2024 constitutes laches, and that the procurement contract between KNBS and the Interested Party was validly executed, and no irregularities were found by the PPR.
57. The Interested Party similarly contends that the Request for Review was time barred and that the Review Board had no jurisdiction once the procurement contract was executed. It also argues that the Applicant's attempt to rely on a new cause of action arising from the PPR's notification of 13<sup>th</sup> January 2025 is improper, and that judicial review in the High Court is the proper forum for addressing such concerns.
58. The first question under this issue 1 is whether the Applicant's Request for Review was time barred. The Applicant asserts that the 14-day period for filing the Request for Review under Section 167(1) of the PPADA commenced on 15<sup>th</sup> January 2025, when it received the Notification of Regret. On the other hand, the Respondents and interested party contend that the Applicant should have filed the Request for Review much earlier, as they were aware of the relevant facts as far back as 1<sup>st</sup> August 2024.
59. The statutory framework for challenging decisions of the procuring entities is spelt out under Section 167(1) of the PPADA as follows:
  167. Request for a review
    - (1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within



fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed. [emphasis added]

60. The 1<sup>st</sup> Respondent in its decision from paragraph 90 did to ascertain whether the request for review filed before it was time-barred. It reproduced section 167 of the PPADA and Regulation 203(2) (c) of the Public Procurement and Asset Disposal Regulations, 2020. The Board reiterated that an interpretation of the above provision underscored the fact that any request for review filed outside the 14 days statutory period was time barred and that the Review Board was divested of jurisdiction to hear the same.
61. The 1<sup>st</sup> Respondent at Paragraph 93 observed that an aggrieved candidate could invoke its jurisdiction in three (3) instances namely (i) before notification of intention to enter into a contract is made (ii) when notification of intention to enter into a contract has been made (iii) after notification to enter a contract has been made. It further observed that the option available to an aggrieved candidate of tenderer in the aforementioned instance is determinant on when occurrence of breach complained took place and should be within 14 days of such breach.
62. The 1<sup>st</sup> respondent went ahead to state that it was obviously not the intention of the legislature that where a breach occurs before Notification of Award is issued, the same is only complained of after the Notification of Award has been issued.
63. At paragraph 96 of its decision, the 1<sup>st</sup> Respondent relied on the case of Republic vs Public Procurement Administrative Review Board & 2 Others Ex-Parte Kemotrade Investment Limited [2018] eKLR where the court reiterated that time began running when the 2<sup>nd</sup> Interested Party in the case had knowledge of the said breach.
64. At paragraph 98 of its decision, the 1<sup>st</sup> Respondent observed that central to the Applicant's request for review was that the Interested Party herein had submitted a false and inaccurate NSSF Compliance Certificate. The Board went ahead to observe at paragraph 101 that as evidenced by the Public Procurement Regulatory Authority's letter dated 28<sup>th</sup> August 2024 the Applicant had become aware of the Interested Party's Compliance NSSF Compliance status as early as 1<sup>st</sup> August 2024. Here, it is obvious that as rightly observed by the 1<sup>st</sup> Respondent, the Applicant would not have made the complaint to the PPRA if it was not aware of the ineligibility of the interested party.
65. The Board went further, at paragraph 103 of its decision to state that seeing that there was no evidence that the Applicant had become aware of the issue of compliance before 1<sup>st</sup> August 2024, then this was the benchmark date from which the 14-day statutory window ought to have run for challenging the award subject tender to the Interested Party herein.
66. The Board observed that as it had held in its long strand of decisions, the question of knowledge of breach being complained of is central towards identifying the benchmark date. The 1<sup>st</sup> Respondent went ahead at paragraph 104 of its decision to compute the period within the Request for Review before it ought to have been filed. In computing the timelines, it was also guided by section 57 of the *Interpretation and General Provisions Act* which as per section 57(a), 1<sup>st</sup> August 2024 was to be excluded being the day that the Applicant had learnt of the occurrence of the alleged breach.
67. It was therefore determined by the 1<sup>st</sup> Respondent that the Applicant had between 1<sup>st</sup> August and 15<sup>th</sup> August 2024 to seek administrative review before it as per Regulation 203(2)(c)(iii). The Board stated that even assuming that on its initial request for review of the evaluation dated 25<sup>th</sup> July 2024 addressed to the Accounting Officer is the date upon which the Applicant received the Notification dated 22<sup>nd</sup>



July 2024, and that discovery of breach complained of was on 1<sup>st</sup> August 2024, then computation of time would have run from 25<sup>th</sup> July 2024 to 8<sup>th</sup> August, being 14 days period, which the Applicant also failed to do so.

68. The 1<sup>st</sup> Respondent further dispelled the arguments by Ms. Nungo, Counsel for the Applicant, that time started running from 15<sup>th</sup> January 2025 for the reasons that the Applicant was aware of the breach as at 1<sup>st</sup> August 2024 and also that allowing the same would defeat the purpose of Section 167(1) of the Act and Regulation 203.
69. This Court agrees with the 1<sup>st</sup> Respondent's finding on this aspect of the issue at hand that indeed, the Applicant had sufficient knowledge of breach as at 1<sup>st</sup> August 2024 and instead of filing a request for review to the Review Board, it opted to file a complaint to the PPR A (the Authority).
70. It is trite that proceedings before the 1<sup>st</sup> Respondent have strict timelines. It is this court's view that as was correctly held by the Board, the Applicant's Request for Review challenging the decision of the procuring entity to award the tender ought to have been filed 14 days from 1<sup>st</sup> August 2024 when the applicant learnt of the breach which was the alleged ineligibility of the interested party on account of an invalid NSSF Compliance Certificate. It follows that the applicant did not have to wait for the Authority to address the complaint. That aside, a challenge to the decision of the Authority is to the High Court by way of Judicial Review
71. Thus, the request for review dated on 27<sup>th</sup> January 2025 was filed far outside the statutory period. This delay, which spans several months beyond the 14-day limit, reflects the Applicant's failure to act promptly. This position is consistent with the Court of Appeal's findings in *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* [2024] KECA 79 (KLR) relied on by the applicant in which the Court of Appeal observed as follows:

45. We are constrained to have a broader interpretation of the words "or date of occurrence of the alleged breach at any stage of the procurement process" as set out in section 167(1) of the Act. This provision in our view, encompassed situations such as the appellant's where allegations of breach arise or become known after the lapse of time for notification of award. A narrow construction of the jurisdiction of the appellant will have untold ramifications in the sense that it will leave the litigants aggrieved with no obvious recourse.

46. Specifically with respect to procurement disputes, the question of how the date of occurrence of a breach is to be determined, was the subject of the persuasive decision by Elias JA of the English Court of Appeal in *SITA vs Manchester Waste Management Authority* (2011) EWCA Civ 156 wherein while applying the decision of the European Court of Justice in *Uniplex (UK) Ltd vs NHS Business Services Authority* (2010) 2 CMLR 47 extensively discussed when time starts to run with respect to a breach in procurement proceedings as follows:

"....In *Uniplex*, the Court of Justice decided to adopt a test of discoverability, not a test which would result in time running from the happening of an event of which the victim might not know. The paragraphs of the judgment in *Uniplex* which I wish to emphasize are paragraphs 30 and 31:

"

"30 However, the fact that a candidate or tenderer learns that its application or tender has been rejected does not place it in a position effectively to bring proceedings.



Such information is insufficient to enable the candidate or tenderer to establish whether there has been any illegality which might form the subject-matter of proceedings.

31. It is only once a concerned candidate or tenderer has been informed of the reasons for its elimination from the public procurement procedure that it may come to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings.

The threshold therefore in determining the date of occurrence of a breach is the date of actual or constructive knowledge of the breach by an applicant. This indeed is one of the key reasons for the notification and stand still requirements in the award of tenders, so as to allow for informed and effective challenges to award decisions before the contracts are concluded. [kenyalaw.org/caselaw/cases/view/280478/](https://kenyalaw.org/caselaw/cases/view/280478/) 10.

47. The answer then to the question of the date of occurrence can only be answered with reference to the 2<sup>nd</sup> respondent's knowledge of the alleged breach, and it is our view that the learned Judge of the superior Court in this respect erred in finding that time should start running from 7<sup>th</sup> September 2023 when the 1<sup>st</sup> respondent was notified of the award, and ought to have considered the averments by the 2<sup>nd</sup> respondents that it only came to learn of the developments on 28<sup>th</sup> September 2023. We accordingly find that the time for filing the request for review under Section 167(1) of the Act started running a day after the 28<sup>th</sup> September 2023 when the record reflects that the 2<sup>nd</sup> respondent became aware of the breach, and that the Request for Review was filed within the 14 days standstill period in consonance with Section 167(1) of the Act read with Regulation 203 (2)(c)(iii) of Regulations 2020. The appellant therefore had jurisdiction to hear and determine the Request for Review.”
72. This Court is therefore bound by the law as pronounced by the Court of Appeal and holds that the Applicant's Request for Review was indeed time-barred, and that the “new cause of action” was not new at all, bearing in mind the time when the applicant learnt of the breach was on 1<sup>st</sup> August 2024.
73. Whether the Review Board had jurisdiction to hear and determine the Request for Review given the execution of the procurement contract on 14<sup>th</sup> August 2024.
74. Even if this Court was to find that the Applicant's Request for Review was filed within the statutory timelines, did the 1<sup>st</sup> Respondent have jurisdiction to determine the Request for Review, seeing that a contract between the procuring entity and the Interested Party herein had already been entered and therefore was the contract in question entered into in accordance with section 135 of the Act?
75. This in my view forms the other critical issue for consideration. The issue has been canvassed by the parties. Section 167(4)(c) of the PPADA provides that once a procurement contract is signed, the Review Board loses its jurisdiction to hear a review unless the contract was signed outside the tender's validity period.
76. In the present case, the contract was signed on 14<sup>th</sup> August 2024, within the validity period of the tender. The Applicant's contention is that the Board's dismissal of its Request for Review, based on the contract being signed, was erroneous. The Applicant argues that despite the signing of the contract, the Review Board still had the jurisdiction to examine whether the contract was legally valid, particularly in light of alleged non-compliance with statutory procurement requirements.



77. This Court finds merit in the Applicant’s argument, particularly given the jurisprudence espoused in *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others supra* where the court also observed as follows:

“On the second limb of jurisdiction relating to the existence of a signed contract, we note that the learned Judge of the superior Court held as follows on this issue:- “... 217. In *Republic vs. Public Procurement Administrative Review Board ex parte Madison General Insurance Kenya Limited; Vice Chancellor Kenyatta University & Another (Interested Parties) (2022) eKLR* where Justice Ngaah held as follows:- “it could be that indeed the contract was invalid, but in my humble view, considering the provisions of Section 167(4)(c) once a contract has been signed, the appropriate forum before which the question of validity of a signed contract can be determined is this Honorable Court. It does not necessarily follow that an aggrieved party is left without a remedy merely because a contract is signed. Grievances arising out of a signed contract will certainly be addressed but not before the Public Procurement Administrative Review Board. They will be addressed before the court which only has the jurisdiction to determine such disputes related to the alleged grievances.” 2

18. The Board lacked jurisdiction to hear and determine the application by the 2nd Respondent under Section 167(4) of the Act, to entertain the application given that there was already a signed contract – signed on 2nd October 2023, between the ex-parte Applicant and the 3rd and 4th Respondent.

219. Given that the Contract was executed between the Applicant and the 4th Respondent, on 2nd October 2023, the Board lacked jurisdiction to adjudicate over any request for review filed after the execution of a contract pursuant to the provisions of Section 167(4)(c) of the Act and I so hold...”

49. As already observed, the appellant’s jurisdiction emanates from Section 167(1) of the Act. Section 167(4) provides matters that shall not be subject to the jurisdiction of the appellant and, Section 167(4) (c) of the Act specifically, ousts the appellant’s jurisdiction where a contract is signed in accordance with Section 135 of the Act. Section 135 in this regard sets out various requirements to be met in the creation and signing of procurement contracts, and an ordinary and purposive interpretation of section 167(4) is that the appellant is required to inquire into whether a procurement contract has been signed in accordance with section 135 of the Act when deciding on whether it has jurisdiction to hear and determine a request for review filed before it in cases where a contract has already been signed, and its jurisdiction is only ousted once this preliminary inquiry establishes that the provisions on creation of a procurement contract under Section 135 of the Act have been met, or where it makes an error as to the existence of this statutory precondition.

50. Indeed in the case of *Ederman Property Limited v Lordship Africa Limited & 2 others [2019] eKLR*, where a similar question arose as to whether the Appellant had properly declined jurisdiction in a case where a contract had been signed, this Court stated thus: -

“...The learned Judge who heard the motion identified as an important question the determination of whether the 2nd respondent committed an error of law when it declined jurisdiction to entertain the application for



review because a contract had already been entered into and the application was filed outside fourteen (14) days...

The review body is not allowed to consider a review where a contract has been signed in accordance with Section 135 of the Act. The learned Judge considered the manner in which the 2<sup>nd</sup> respondent on receiving the request for review had entertained it where it found that it had no jurisdiction to entertain the request for review in the face of a contract that had been signed between the appellant and the 3<sup>rd</sup> respondent. The Judge reviewed a number of decisions on the issue of jurisdiction which the 2<sup>nd</sup> respondent had found it lacked. The Judge distinguished the provisions of Section 167(4)(c) of the Act and Section 135 of the Act. Section 135 states that a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity of the successful tenderer. Section 135(3) provides that...

Having reviewed the provisions of the said Sections 135 and 167 of the Act, the Judge found at paragraph 73 of the judgment that:

“In this case, the review board makes no reference to whether or not the contract allegedly signed was in accordance with Section 135 of the Act. From the above cited case law, it is clear that the review board should have first determined whether the contract in question was signed in accordance with Section 135 of the Act. This is so because the mere fact that a contract has been signed does not necessarily deprive the respondent of the jurisdiction to entertain the request for review. In other words, before the review board makes a determination that it has no jurisdiction to entertain the request by virtue of sect 167 (4) (c) of the Act, it has the duty to investigate whether the contract in question was signed in accordance with Section 135 of the Act and the failure to do so in my view would amount to improper deprivation of jurisdiction; in my further view improper deprivation of jurisdiction is as bad as action without or in excess of jurisdiction” ...

We fully agree with the conclusion reached by the Judge in this respect. It was the duty of the 2<sup>nd</sup> respondent to satisfy itself that the 3<sup>rd</sup> respondent had followed the law on procurement and rules of natural justice in awarding the tender to the appellant and finding that the 1<sup>st</sup> respondent’s tender bid was unsuccessful...”

51. We adopt and agree with this reasoning. Put another way, section 164(7) implies a jurisdiction on the part of the appellant to entertain an application as to whether a contract is signed in accordance with Article 135, and is meant to address the obvious mischief of the signing of illegal procurement contracts so as to oust the jurisdiction of the appellant. The Learned Judge of the superior Court therefore adopted a restrictive interpretation of the provisions of Section 167(4)(c) of the Act and erred in not appreciating and considering the existence of the condition- precedent to the ouster of the appellant’s



jurisdiction where a contract has been signed. Accordingly, it is our finding that that the Learned Judge erred in law in holding that the appellant had no jurisdiction solely on the basis that a procurement contract had been signed without checking on compliance with Section 135 of the Act.”

78. The Court of Appeal in the above case emphasized that the Board should have gone further than merely noting the contract’s existence, and that it should have determined if the execution of the contract adhered to the legal and regulatory framework governing public procurement in Kenya.
79. The Applicant has asserted and quite strongly that the 1<sup>st</sup> Respondent did not examine the validity of the contract between KNBS and the Interested Party. The Applicant’s central argument is that the Interested Party did not meet the statutory requirements, particularly with regard to the NSSF Compliance Certificate. According to the Applicant, the failure to submit a valid certificate should have rendered the contract invalid.
80. The 1<sup>st</sup> respondent in its decision dated 17<sup>th</sup> February 2025 at paragraph 135 of the Act observed that indeed section 135 of the PPADA divested its jurisdiction to hear the request for review before it. The Review Board went ahead to observe at paragraph 115 that it was apparent from section 135 of the PPADA that:
- i. A procurement contract should be between the Procuring Entity and the successful bidder;
  - ii. A procuring contract can only be validly entered into after the standstill period but during the tender validity period of a given tender
  - iii. Contractual obligations between a bidder and the Procuring Entity only arise when a procurement contract has been signed.
  - iv. A procurement contract can only be entered into after an award has been made.
81. At paragraph 117, the 1<sup>st</sup> Respondent relied on the case of Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others supra where the Court of Appeal decreed that the Board had jurisdiction to interrogate whether a procurement contract had been signed in accordance with section 135 of the Act and that whenever a jurisdictional challenge under section 167(4)(c) had been raised.
82. The Review Board, upon studying the confidential file in its analysis at paragraphs 119 and 120 of its decision found that there was nothing irregular with the conclusion of the contract dated 14<sup>th</sup> August 2023 and as such, the contract was regularly concluded with the result that the Board was divested of jurisdiction.
83. This Court finds that indeed, the Review Board complied with the threshold for determining whether the contract entered into was compliant with section 135 of the Act as per the requirements set out in the Court of Appeal decision Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others supra before finding that it was divested of jurisdiction.
84. The Review Board at paragraph 125 of its decision also rightfully went to great lengths to state that the decision of the Public Procurement Regulatory Authority could only be challenged before the High Court through a judicial review application at the Review Board did not have the power to supervise the Authority’s exercise of its investigative function and that its jurisdiction was also ousted in this regard pursuant to section 39 of the Act.



**Whether the Review Board acted in accordance with the law in dismissing the Applicant's request.**

85. Having found as herein above that the Review Board was correct in declining jurisdiction, it is this court's humble opinion that the 1<sup>st</sup> Respondent's decision dismissing the Applicant's Request for Review on account of jurisdiction was in accordance with law and as such, there is no need for this court to interfere.
86. Accordingly, this court finds that the Applicant's application dated 28<sup>th</sup> February 2025 is without merit and it is therefore dismissed.
87. The interim reliefs granted are vacated.
88. Each party shall bear its own costs.
89. Orders accordingly.
90. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL 2025**

**R.E ABURILI**

**JUDGE**

