



Prime Grade Enterprises v Kenya Forest Service (Judicial Review Miscellaneous Application E040 of 2025) [2025] KEHC 4166 (KLR) (Judicial Review) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4166 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E040 OF 2025
RE ABURILI, J
APRIL 3, 2025**

BETWEEN

PRIME GRADE ENTERPRISES APPLICANT

AND

KENYA FOREST SERVICE RESPONDENT

RULING

1. The application dated 1st April 2025 seeks leave of court to apply for Judicial Review orders of certiorari to remove into this court and quash the decision of the Respondent Kenya Forest Service (the Procuring Entity) expressed in Bid No.KFS/DISP/80/2024-2025 dated March 2025 and the subsequent Tender Addendum No.1 dated 27th March 2025 calling for small scale, large scale and large scale plywood forest industry investors within and outside Kiambu County to apply for tenders in respect of sale of forest plantation materials in Kiambu County.
2. The applicant also prays, that the leave so granted do operate as a stay to prevent any further action by the Respondent to actualize the said tender pending further orders of this court.
3. It also prays for any other relief deemed just and expedient in the circumstances and costs of the application.
4. I have considered the application as presented, the grounds and the accompanying statutory statement and verifying affidavit as well as the annexures. The application was filed expeditiously hence I certify it as urgent.
5. On whether I should grant leave to apply, I observe that the applicant is aggrieved by the decision of the procuring entity to change the terms of the tender documents after the bids had already and sent out for bidders in the medium scale forest industry investors within Nyandarua County. That the tenders



reserved value is over Kshs 96 million but restricted to only medium scale investors locking out and discriminating large scale and small scale investors, whose effect was to disadvantage or eliminate the applicant from being eligible to tender or bid without justification.

6. Section 8 of the *Public Procurement and Asset Disposal Act* establishes the Public Procurement and Asset Disposal Authority whose functions at Section 9 include 1-(a) investigate and act on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative Review.
7. Section 10 of the Act on the other hand establishes the Public Procurement Regulatory Board whose functions among them is to ensure the proper and effective performance of the functions of the Authority and approve and ratify the policies of the Authority.
8. Section 27 of the Act establishes the Public Procurement Administrative Review Board whose functions and powers include 1(a) reviewing, hearing and determining tendering and asset disposal disputes.
9. Section 167 of the Act provides for administrative review of procurement and disposal proceedings and under the Section, a candidate or a tenderer who claims to have suffered or risk suffering loss or damage due to the breach of a duty imposed on a procuring entity by the Act or the Regulations may seek administrative review within 14 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.
10. Powers of the Review Board under Section 173 under the Act include annulling anything done by the accounting officer of the procuring entity in the procurement process, including annulling the procurement or disposal proceeding in their entirety; termination of the procurement process and order for fresh or new procurement process; substitute the impugned decision of the procuring entity or give directions on what is to be done or redone in the procurement or disposal proceedings.
11. From the above highlighted provisions of the *Public Procurement and Asset Disposal Act*, it is clear that there are inbuilt mechanisms for resolution of disputes arising from the public procurement process right from the bidding process to the award of the tender and signing of a contract with a successful bidder.
12. In this case, the procurement process is at the bidding stage. The procuring entity is said to have altered the bids and restricting them to a compartment contrary to what had been send out initially thereby disadvantaging the applicant who is aggrieved by that decision.
13. Under the Act, the applicant has two options: one, is to write or lodge a complaint to the Authority which will investigate the complaint and direct the procuring entity to do what it ought to do, legally assuming there is breach of the law and or, secondly, file a request for review to the Administrative Review Board, which Board has wide powers to direct the procuring entity to do what it ought to do, legally.
14. The existence of those mechanisms or avenues for dispute resolution resonates with Article 159(2) (c) of *the Constitution* which mandate courts and tribunals to promote alternative dispute resolution mechanisms and Section 9(2) of the *Fair Administrative Action Act*, which provides in prohibitory terms that: “The High Court...shall not review an administrative action or decision under the Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted”.



15. In this case, the court cannot even invoke Section 9(4) of the *Fair Administrative Action Act* which provides for exemption from the obligation to exhaust internal remedies since there are no special circumstances and no such application has been lodged for consideration on merit.
16. Courts have implemented the above exhaustion of remedies principle for good reasons that parties ought not to prematurely file proceedings in court where there is a multi-door approach to dispute resolution as espoused in Article 159(2) (c) of *the Constitution*. See *Ndiara Enterprises Ltd versus Nairobi City County Government* [2018] eKLR where the Court of Appeal emphasized the point and added that the court has no jurisdiction to hear and determine disputes which disputes ought to be resolved by other bodies or tribunals established in law for purposes of hearing and determining those disputes and as such, courts would lay down their tools the moment they find as such that the matter before them is prematurely filed.
17. In this case, I find that the dispute between the parties hereto must first be resolved through the inbuilt mechanisms set out in the *Public Procurement and Asset Disposal Act* so that a party aggrieved by the decision of the bodies under the Act, can now approach the court either by way of Appeal or Judicial Review (see Section 175 of the Act).
18. In the circumstances, I find that these proceedings are prematurely before this court. They are incompetent. The leave sought cannot be granted. It is declined and the entire application is struck out with no orders as to costs and this file is closed.
19. I order.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

