



**Republic v Public Procurement Administrative Review Board & 2 others;
Precision Experts Limited (Exparte Applicant); Quality Inspection Services
Inc Japan (Interested Party) (Miscellaneous Application E041 of 2025)
[2025] KEHC 4665 (KLR) (Judicial Review) (11 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4665 (KLR)

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

MISCELLANEOUS APPLICATION E041 OF 2025

**JM CHIGITI, J
APRIL 11, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD 1ST
RESPONDENT**

KENYA BUREAU OF STANDARDS 2ND RESPONDENT

**ACCOUNTING OFFICER, KENYA BUREAU OF STANDARDS 3RD
RESPONDENT**

AND

PRECISION EXPERTS LIMITED EXPARTE APPLICANT

AND

QUALITY INSPECTION SERVICES INC JAPAN INTERESTED PARTY

RULING

1. Before this Honourable Court is the Interested Party's Notice of Preliminary Objection dated April 08, 2025, which challenges the jurisdiction of this Honourable Court, on the ground that the Application dated and filed on April 04, 2025, is time-barred as the same is filed outside the time stipulated under Section 175 (1) Public Procurement Asset Disposal Act, 2015 (PPADA).
2. The 2nd and 3rd Respondents case;



3. It is their case that the 1st Respondent rendered its decision on 20th March, 2025. It follows that the statutory fourteen days started running on 21st March, 2025 and ended on 3rd April, 2024. The Application filed on 4th April, 2025 was therefore filed on the 15th day after the Decision of the 1st Respondent and is therefore time-barred.
4. It is their case that Section 175(1) of PPDA is couched in mandatory terms and the consequences of failure to file a judicial review application within 14 days are clearly spelt out.
5. Failure to act within 14 days means the decision of the Review Board shall be final and binding to both parties and the decision of review board became final and binding on midnight 3rd April, 2025.
6. This renders this court to be without jurisdiction to hear the filed application.
7. Reliance is placed in the Supreme Court decision in *Kidero & 4 others v Waititu & 4 others* (Petition 18 & 20 of 2014 (Consolidated)) [2014] KESC 11 (KLR) (29 August 2014) (Judgment) where the court upheld the mandatory statutory timelines in Section 85A of the *Elections Act* as follows:

The foregoing principles are well reflected in still further decisions of the Court of Appeal itself. In *Basil Criticos v. Independent Electoral and boundaries Commission & 2 Others* [2014] eKLR, the words of Okwengu JA are illuminating in this regard (paragraph 12): “Thus under section 85A of the *Elections Act*, the right to a hearing in regard to an appeal from an election petition is tied to the timelines provided in that Act. In this way the right to a hearing is appropriately balanced with the public interest of expeditious disposal of electoral disputes. This is as it should be, for one party may have brought an appeal, but the outcome affects the interest of the public whose right to representation is in limbo during the pendency of the appeal.....Consequently, and in view of our appraisal of the law, we hold that the learned Judges of Appeal erred in law by admitting, and determining an incompetent appeal- the same having been filed out of the time prescribed by the peremptory provisions of Section 85A (a) of the *Elections Act* as read with Article 87 (1) of *the Constitution*. In so doing, the Court of Appeal acted without jurisdiction. In the circumstances, the majority Judgment annulling the election of the first appellant herein is a nullity for all purposes.

The Ex parte Applicant’s case;

8. The Applicant opposes the Notice of Preliminary objection. It is the Ex parte applicant’s case that the decision of the PPARB was delivered electronically on March 20, 2025, at 08:26 PM.
9. It is its case that Regulation 211 of the Public Procurement and Asset Disposal Regulations, 2020, expressly stipulates that the Business Hours for the Public Procurement Administrative Review Board shall be between 8:00 AM to 5:00 PM on normal working days.
10. It is in the circumstances its case that the decision of the Board was delivered outside the regular business hours, as stipulated by the PPADA Regulations, 2020.
11. Further that PPARB Application No. 21 of 2025 was filed on February 28, 2025, the final day for delivery of the decision was March 21, 2025 and not March 20, 2025 as submitted by the Interested Party.
12. The Ex Parte Applicant has mounted a reaction that The 1st Respondent has attempted to afford some justification, by asserting that it was necessary for it to comply with the 21 day timeline imposed by Section 171 (1) of the PPADA Act.



13. Consequently, considering that electronic service was effected outside regular hours as prescribed by the Law, it is the Ex parte Applicant's position that the decision is deemed to have been delivered on the next business day being March 21, 2025 at 8:00AM.
14. It argues that where the decision is deemed to have been delivered on March 21, 2025, the computation of time commences on March 22, 2025 given that the date when the event happened is excluded from the computation of time.
15. It is its case that the 14 day period lapsed on April 04, 2025, the date the present Chamber Summons Application was lodged.
16. Reliance is placed in the decision of the Supreme Court in *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others*, Supreme Court Petition No. 26 of 2014 (2014) eKLR, where the apex court advocated for a purposive approach to legislative interpretation, as opposed to a strict constructionist view.
17. It is urged that computation of time for legal events is a constitutional imperative and NOT a procedural prescript as misleadingly assumed and asserted by the Respondents and the Interested Party.
18. Article 259 of *the Constitution* of Kenya (2010) sets out the constitutional position as to computation of time between two events. In particular, Article 259(5) of *the Constitution* provides that the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included.
19. That the Civil Procedure Rules cited by the Respondents and the Interested Party simply implements the requirement of *the Constitution* of Kenya 2010.
20. The Civil Procedure Rules, Order 50 (Time) is said to substantively adopt the constitutional approach as to computation of time. Further, Section 57 of the Interpretations and General Provisions Act, Chapter 2, Laws of Kenya (IGPA) is also instructive on this matter.
21. It is further argued that Section 57 (a) of the IGPA clearly provides that in computation of time the date of when an event occurs is excluded in the computation of time. Further, in determining the date when the event occurred, we rely upon the provisions of Order 50 Rule 9 of the Civil Procedure Rules, where the same stipulates that where service is effected after 5PM in the afternoon on a weekday, other than Friday or Saturday, it is deemed effected on the following day.
22. In the sum totality of the foregoing, the applicant submits that the impugned decision was effectively delivered on March 21, 2025 and time started to run on March 22, 2025, and consequently lapse was on April 04, 2025.
23. The Exparte Applicant argues that no provision of the PPADA (Section 5 as cited) or any other statute can change the constitutional prescription on the computation of time as misleadingly and irrationally asserted by the Interested Party.
24. It further submits that when the drafters of the PPADA, 2015 advanced the prescription under Section 175 (1), at that time decisions were predominantly delivered in person, and the use of electronic means had not been adopted in the dispensation of justice. It argues that as such, the expectation is that the decision of the Review Board was to be delivered in person, on regular business hours.
25. It urges the Court to acknowledge the dangers or conflicts that portend in adopting a strict constructionist approach (as advocated by the Respondents and Interested Party).



26. In the event a decision is delivered on a Friday, at 11:59 PM, the computation of time would start on the following day- a Saturday. Where reasonably a party would access the decision on the start of the following week (Monday), the aggrieved party has lost two (2) days in a strict constructionist interpretation.
27. It argues that where regular business hours and days are being disregarded, in the event a decision is delivered on a Saturday, Sunday, or Public Holiday, once again a party is unduly prejudiced;
28. It is urged that this approach begs the question, what this the purpose of setting the procedural legitimate expectation of business hours under Regulation 211 of the PPADA Regulations?
29. It advances the argument that a strict constructionist approach precipitates an unreasonable expectation that a party or a party's representative is required to have access to work-related communications at all times, 24 hours a day, 7 days a week.
30. It is further its case that a strict constructionist approach creates more confusion as to computation of time. It further encroaches on the aggrieved party's rights to fair trial and access to justice, as decisions circulated outside regular hours reasonably expose an aggrieved party to time starting to run when a party is not aware of the release of the decision.
31. The applicant urges this court to find that it is lawful and appropriate to restrict official action to official hours and days. Where such action is taken outside those hours, then it is deemed to have taken place on the next official day. This approach is most fair, as it is even adopted in service of summons under Order 5 Rule 22B (Service by Electronic Mail).
32. The Applicant calls for a purposive interpretation of Section 175 (1) PPADA, 2015, taking into account the constitutional prescription on computation of time, calls for any action undertaken outside business hours, is deemed to have been taken on the next business day.
33. As such, the computation of time by the Respondents and Interested Parties is not merited, and does not adhere to constitutional principles. Further, that in the present proceedings, computation of time lapses on April 04, 2025.

The interested Party's case;

34. It argues that Section 175(1) of the PPAD Act stipulates the statutory timelines within which a person aggrieved by a decision of the Review Board may seek judicial review by the High Court. The stipulated timeline is "within fourteen days from the date of the Review Board's decision".
35. The Review Board's decision was delivered on 20th March 2025. Fourteen days from the date of the decision lapsed on 3rd April 2025. The application herein was filed on 4th April 2025. It is its case that the application for judicial review is statute-barred since it was lodged outside the stipulated statutory timelines under section 175(1) of the PPAD Act.
36. It is its case that having regard to the statutory provisions for reckoning time under section 57 of the *Interpretation and General Provisions Act* (which is the applicable- Act of Parliament regarding the construction, application and interpretation of written law such as PPAD Act).
37. It further argues that Section 5(1) of the *Public Procurement and Asset Disposal Act* is instructive that the PPAD Act prevails in the event of any inconsistency or conflict between the PPAD Act and any other legislation in matters relating to procurement and asset disposal.



38. It is its case that any suggestion that the Review Board's decision was deemed to have been delivered on 21st March 2025 would lead to the alternative absurd finding that the decision was delivered outside the 21 days' statutory period under Section 171 of the PPAD Act which renders the Review Board's decision a nullity.
39. Reliance is placed in the case of *Aprim Consultants -v- Parliamentary Service Commission & Another* the Court of Appeal held that "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.... It seems clear to us that 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.
40. In the case of *Gerald Iha Thoya v Chiriba Daniel Chai & another* [2018] eKLR the High Court (Korir, J (as he then was)) held that "There is no room for the exercise of any discretion in relation to the allotted time.... The appeal in question has lapsed by one day as at 7th December 2011 when the same was listed for hearing. That means that as at that date the appeal had ceased to exist in law and could therefore not have been heard - it was dead in the eyes of the law and *the Constitution*."
41. Further reliance is placed in the case of *Republic v Public Procurement Administrative Review Board; Sirketi & another (Interested Parties);, Principal Secretary/Accounting Officer Ministry of Defence & another* Exparte applicants 2025 KEHC 2012 KLR where it was held that
- “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.... I am satisfied that the suit before me was filed outside the statutory window as provided for under Section 175 of the PPDA Act.”
42. On its part, the 1st Respondent expressed that they would support the 1st Interested party's notice of preliminary objection.

Analysis and determination

The issue for determination is whether or not the notice of preliminary objection by the interested party has merit or not.

43. In order to determine whether this court has jurisdiction. In determining this issue, the court is guided by the case of *Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others*, Application No. 2 of 2011 [2012] eKLR, where 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).

44. In the Matter of The Interim Independent Electoral Commission (Applicant) [2011] KESC 1 (KLR) the Court stated: -

“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)

45. The Lillian 'S' case established 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*.

46. 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.”

47. I have looked at the preliminary objection and I am satisfied that it raises a point of law which speaks to the jurisdiction of this court. Having so found the next question that this court tasks itself with is to determine whether the Notice of preliminary objection has merit or not.

48. 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)* the court 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 Electricdad S.A. & Ansaldoenergia v. PPARB & 3 Others, CA. No. E012 of 2022 (“the TSK Electronica case”).

49. In the Aprim case, 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..."

50. This court is further guided by the findings in case of *The Consortium of TSK Electronica Y Electricidad S.A. & Ansaldoenergia v. PPARB & 3 Others*, CA. No. E012 of 2022 ("the TSK Electronica case") which accentuate that the timelines under Section 175 of the Act are cast in stone, cannot be varied and that these timelines also accentuate the intention of Parliament to ensure that disputes relating to public procurements and asset disposals are disposed of expeditiously. Consequently, the Court of Appeal held that it no longer has jurisdiction to hear and determine the appeal and proceeded to strike it out.
51. This is also echoed in the case of *Joint Venture of Lex Oilfield Solutions Ltd & CFAO Kenya Ltd v PPARB & 4 Others*, Civil Appeal No. E022 of 2022 where it also upheld the timelines under Section 175 and held that they were cast in stone. This was after citing the TSK Electronica decision which followed the Aprim Consultants decision and found it to be good law. The Court of Appeal concluded that there was no basis to ask them to depart from the consistent decision of the court on this issue without moving the court in the normal way for an expanded bench.
52. In the instant suit, The 1st Respondent rendered its decision on 20th March, 2025. The fourteen days started running on 21st March, 2025 and ended on 3rd April, 2024.
53. The Application filed on 4th April, 2025 was therefore filed on the 15th day after the Decision of the 1st Respondent and is therefore time-barred.
54. Section 175(1) of PPDA is couched in mandatory terms. The consequence of failure to file a judicial review application within 14 days are clearly spelt out "failure to which the decision of the Review Board shall be final and binding to both parties".
55. Regulation 211 of the Public Procurement and Asset Disposal Regulations, 2020, which stipulates that the Business Hours for the Public Procurement Administrative Review Board shall be between 8:00 AM to 5:00 PM on normal working days cannot stand in the way of the computation of the timelines as set out in the main Act.
56. The decision of the review board became final and binding on midnight 3rd April, 2025 given that the Regulations are subservient to the parent Act which has set out clear timelines.
57. In any event Section 5(1) of the *Public Procurement and Asset Disposal Act* is instructive that the PPAD Act prevails in the event of any inconsistency or conflict between the PPAD Act and any other legislation in matters relating to procurement and asset disposal. The timelines set out in the Act are cast in stone.
58. In the sum totality the Applicant submitted that the impugned decision was effectively delivered on March 21, 2025.
59. This court is in agreement with the interested party that any suggestion that the Review Board's decision was deemed to have been delivered on 21st March 2025 would lead to the alternative absurd finding that the decision was delivered outside the 21 days' statutory period under section 171 of the PPAD Act which renders the Review Board's decision a nullity.



Disposition:

60. The Interested party's Notice of Preliminary Objection dated April 08, 2025 has merit.

Order:

1. The Interested party's Notice of Preliminary Objection dated April 08, 2025 is upheld.
2. The suit is here by dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL 2025

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J. CHIGITI (SC)

JUDGE

