



**Republic v Kenya Wild Life Service; Ahmed (Exparte) (Judicial Review Application E179 of 2024) [2025] KEHC 5837 (KLR) (Judicial Review) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5837 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E179 OF 2024**

**RE ABURILI, J**

**MAY 5, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA WILD LIFE SERVICE ..... RESPONDENT**

**AND**

**MUNIR SHEIK AHMED ..... EXPARTE**

**RULING**

1. On 19<sup>th</sup> August 2024, the ex parte applicant herein Munir Sheik Ahmed was granted leave to apply for judicial review orders of certiorari directed at the respondent procuring entity herein Kenya Wildlife Service to bring into this court and quash the decision made on 16<sup>th</sup> July 2024 disqualifying the applicant's bid in the Tender No. KWS/ONT/BDM/95/2023-2024 for leasing and management of Tourism sites in Nairobi National Park wherein the applicant was one of the bidders.
2. The applicant also seeks judicial review order of mandamus to compel the respondent procuring entity to produce under oath before this court the Tender evaluation report as earlier requested by the applicant for transparency and accountability purposes.
3. The substantive Notice of Motion as filed dated 23<sup>rd</sup> August 2024.
4. Apart from the factual background of the matter, the legal ground relied on is that the time for filing of request for review before the PPARB had lapsed as provided for under section 175 of the Act hence the applicant had come to court under section 174 of the Act having been locked out of invoking section 175 of the Act.



5. Following the tender evaluation and the applicant's tender having been found to be technically non responsive, the applicant wrote an email dated 30<sup>th</sup> July 2024 to the Public Procurement Regulatory Authority lamenting that since the tender was done for individuals, there was no requirement for CR12 and that the physical location of the applicant bidder was provided contrary to the respondent's assertion. He also asked for the evaluation report.
6. By a letter of response dated 12<sup>th</sup> August 2024, the PPRA wrote back indicating that it had communicated the compliant to the respondent procuring entity and would revert once they received and analyze the response.
7. On 12th September, 2024, the respondent filed a notice of preliminary objection to the effect that this court has no jurisdiction to hear and determine the application. It also filed a replying affidavit sworn by Anne Mumbua, the respondent's Principal Supply Chain Officer who deposes on 11<sup>th</sup> September 2024 that the applicant did not meet the technical criterial for bidders as evaluated and that despite having been notified of his non responsiveness on 14<sup>th</sup> July 2024, he only wrote to the respondent on 30<sup>th</sup> July 2024 seeking clarification on his dis qualification at the lapse of 14 days within which he could have filed a request for review before the PPARB as provided for in law and that no reason for the delay had been provided nor the non-exhaustion of the remedies provided for under the Act hence he cannot invoke section 174 of the Act by way of judicial review.
8. The respondent urged this court to dismiss the application.
9. In response to the preliminary objection, the Applicant filed a replying affidavit sworn by Kay Adams Yotto Advocate on 7<sup>th</sup> October 2024 on behalf of his client in which he deposes that, time for filing request for review having lapsed, after 14 days stipulated in section 175 of the Public Procurement and Asset Disposal Act, the applicant could only come to court as he did under section 174 of the Public Procurement and Asset Disposal Act.
10. Further, that the delay or lapse of time was occasioned by the respondent's failure to respond to the applicant's email dated 30<sup>th</sup> July 2024 which was within the stand still period as contained in the respondent's notice of intention to award the tender. That the applicant sought for reasons why his tender was disqualified but the inquiry was never responded to by the respondent.

### **Submissions**

11. Parties filed written submissions to canvass the preliminary objection, with the respondent maintaining that this court is devoid of jurisdiction to entertain the matter by way of judicial review, the applicant having failed to file a request for review to the Public Procurement Administrative Review Board as required under section 175 of the Act, while the applicant, citing several decisions of this court, insisted that the applicant had a right to approach this court under section 174 of the Public Procurement and Asset Disposal Act (PPADA).
12. It was submitted by the applicant that he had a legitimate expectation to receive a response from the respondent explaining the reasons for the disqualification of the applicant's bid, in vain hence the delay and the decision to file the judicial review application as an alternative to the request for review to the Review Board. The applicant relied on section 167 of the PPADA on his right to seek for administrative review. He also relied on the case of Republic v PPARB & 2others [2015] e KLR where Korir J held that the Review Board's jurisdiction is limited to entertaining applications for review filed within the time frame provided by the Regulations.



13. On the reliance on section 174 of the Act, the applicant's counsel submitted relying on R v IEBC & 2 others [2017] eKLR where Odunga J stated that an aggrieved tenderer cannot be left without a remedy in view of section 174 of the Act. He also relied on Asphalt Works Investments Limited v KPA JR E022 of 2023 on the holding that a party can approach the court directly even where there is an alternative dispute resolution mechanism to a party, where that cause of action is the most appropriate in the circumstances.

### **Analysis And Determination**

14. I have considered the preliminary objection and the arguments for and against. The issue for determination is whether this court has jurisdiction to hear and determine the matter herein between the parties, being a public procurement matter.

15. Section 167(1) of the PPADA (2015) provides that:

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.
- (2) A request for review shall be accompanied by such refundable deposit as may be prescribed in the regulations, and such deposit shall not be less than ten per cent of the cost of the contract:  
  
Provided that this shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups.
- (3) A request for review shall be heard and determined in an open forum unless the matter at hand is likely to compromise national security or the review procedure.
- (4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—
  - (a) the choice of a procurement method;
  - (b) a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and
  - (c) where a contract is signed in accordance with section 135 of this Act.

16. The above provision is clear that an aggrieved tenderer is expected to lodge a request with the Review Board within the stipulated timelines under the Act. In other words, the PPARB has original and exclusive jurisdiction to hear procurement disputes at first instance.

17. Thereafter, the decision of the Review Board may be challenged before this Court within the stipulated period of 14 days of the date of the decision, as stipulated in section 175(1) of the Act which provides that:

175. Right to judicial review to procurement



- (1) 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.
18. In the instant case, it is not in dispute that the applicant's bid was disqualified during the technical evaluation and that he was so notified of such disqualification. He then wrote to the respondent and the Authority complaining about the disqualification and the Authority responded saying it was waiting for a response from the procuring entity, respondent herein, which response was never received.
19. It is also not in dispute that the applicant never filed any request for review to the Review Board as contemplated in section 167 of the Act. Instead, the applicant has now filed judicial review application seeking for quashing of the decision of the respondent dated 16<sup>th</sup> July 2024, to disqualify the applicant's bid and to compel the respondent to produce on oath the tender evaluation report for transparency and accountability purposes.
20. During all this time, the time for completion of the procurement process continues to run because there was no order of stay of the procurement process granted by the Court.
21. The law under section 167 of the PPADA is clear that the appropriate forum to handle public Procurement disputes is the Public Procurement Administrative Review Board (PPARB). It follows that if an aggrieved bidder fails to file a request for review with the PPARB within the statutory 14-day window under Section 167, they cannot turn to the courts for judicial review as a way to bypass this failure.
22. Although the applicant claims that he has come to court under section 174 of the Act, courts have held that the review process under the PPADA is mandatory and exclusive for procurement disputes, unless the Review Board lacks jurisdiction. Additionally, that judicial review is not an alternative or substitute remedy when a party has failed to act within the timelines of the statutory mechanism. The courts are therefore reluctant to intervene where the bidder had the opportunity to seek redress under Section 167 but failed to act diligently.
23. The following decisions address the above position:
  1. Republic v Kenya Ports Authority & Another ex parte Seastorm Kenya Limited [2019] eKLR where the court held that a bidder who fails to invoke the statutory mechanism under Section 167 cannot later approach the High Court for judicial review. The Court emphasized the doctrine of exhaustion of remedies.
  2. Republic v Public Procurement Administrative Review Board & 2 others Ex parte Sanitam Services (E.A) Limited [2019] eKLR, where the court stated that judicial review is not a cure for a party who fails to act within the prescribed legal procedure and timeframes.
  3. R v PPARB & Others Ex parte Syner-chemie Ltd [2018] eKLR where the court rejected judicial review application because the bidder failed to file a request for review to the PPARB and tried to bypass the procedure by filing for judicial review application in court.
24. The thread emerging from the above decisions is that Judicial review is not available as a fallback mechanism for parties who sleep on their rights or fail to comply with the timelines set by the Act to request for review of the decision of the procuring entity.
25. Additionally, the provisions of section 174 of the Act are only available where the party did file a request for review and instead of challenging the review Board's decision to court by way of judicial review as



- stipulated in section 175(1) of the Act, approaches the court, say, by way of appeal or files a suit for compensation in damages.
26. Accordingly, it is clear to this Court that where a bidder does not file a request for review under Section 167 of the Act, they are barred from filing judicial review proceedings in court, which JR proceedings can only arise when challenging the decision of the Review Board.
  27. Additionally, in *Republic v Public Procurement Administrative Review Board & 2 Others ex parte Selex Sistemi Integrati* (2008), the court held that judicial review could not be used to circumvent the review mechanisms established under procurement law and that statutory mechanisms must be exhausted unless exceptional circumstances exist.
  28. In *Republic v Kenya Revenue Authority Ex parte Stanley Mombo Amuti* [2018] eKLR, the Court reaffirmed that judicial review is not a substitute for internal statutory remedies, especially where the time to invoke those remedies has lapsed.
  29. In *Geothermal Development Company Ltd v. Attorney General & 3 Others* [2013] eKLR, the court held that judicial review cannot be used to bypass the review process provided under the procurement laws and must be invoked only after exhaustion.
  30. The above decisions echo the age-old locus classicus case on exhaustion of available and efficient dispute resolution mechanisms popularly known as the doctrine of exhaustion as authoritatively pronounced in *Speaker of the National Assembly v. Karume* [1992] KLR 21 that:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
  31. In this case, section 167 of the *Public Procurement and Asset Disposal Act* clearly stipulates that a bidder who is aggrieved by the breach by the procuring entity, has the opportunity to challenge that decision or breach, by way of a request for administrative review to the public procurement Administrative Review Board. The timeline for seeking for review is also provided, being 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. That timeline lapsed without the applicant seeking for administrative review.
  32. The applicant having failed to utilize the remedy available under section 167 of the Act, he cannot be allowed to by-pass the Review Board, as he could only have come to this court by way of judicial review to challenge the decision of the Review Board, not the procuring entity as stipulated in section 175 (1) of the Act.
  33. It is also worth emphasizing that as the timelines for public procurement are stipulated in law, the applicant having by passed a mechanism of request for administrative review, and in the absence of stay of implementation of the awards made to successful bidders, even assuming that the application herein was properly before this court, which it is not, then the matter is already overtaken by events and spent.
  34. In the end, I find the preliminary objection file don 12<sup>th</sup> September, 2024 to be merited. I uphold it. Consequently, the Notice of motion dated 23<sup>rd</sup> August, 2024 is hereby found to be incompetently filed before this court which has no jurisdiction to hear and determine the same. It is hereby struck out with an order that each party bear their own costs of these proceedings.
  35. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 5<sup>TH</sup> DAY OF MAY, 2025**

**R.E. ABURILI**



**JUDGE**

