



Republic v Public Procurement Administrative Review Board & 2 others; Chakara Company Limited (Ex parte Applicant); Lindum Systems Limited (Interested Party) (Judicial Review E009 of 2024) [2025] KEHC 9802 (KLR) (7 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW E009 OF 2024**

**A MABEYA, J
JULY 7, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

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

AGRO CHEMICAL & FOOD CO LTD 2ND RESPONDENT

WATTS AUCTIONS 3RD RESPONDENT

AND

CHAKARA COMPANY LIMITED EX PARTE APPLICANT

AND

LINDUM SYSTEMS LIMITED INTERESTED PARTY

RULING

1. This ruling determines the Notice of Motion dated 14/10/2024 brought by the Ex-Parte applicant. The same was brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules 2010.
2. The Ex-Parte applicant sought the following orders: -
 1. An order of judicial review by way of certiorari do issue to remove into the High Court of Kenya the decision of the Public Procurement Administrative Review Board dated 20th September 2024 in Application No. 85 of 2024, the 1st respondent herein, by which it allowed a Request for Review by Lindum Systems Limited and directed that the said Lindum Systems Limited be awarded Tender No. ACFC/HR/02/2024/ 202 – 2026 for the provision of



security services to Agro- Chemical & Food Co. Limited, the 2nd respondent herein and on such removal the decision quashed.

2. An order of judicial review by way of certiorari do issue to remove into the High Court of Kenya, the decision of Agro-Chemical & Food Co. Ltd, the 2nd respondent herein contained in the Notice of Intention To Award Contract transmitted to the applicant on the 25th September 2024 giving notice of intention to award Tender No. ACFC/HR/02/2024/2025-2026 for the provision of security services to Lindum Systems Limited and on such removal the decision be quashed.
 3. An order of a judicial review order of prohibition do issue barring M/S Agro-Chemical & Food Co. Limited, the 2nd respondent herein from entering into a contract with Lindum Systems Limited in respect of Tender No. ACFC/HR/02/2024/2025-2026 for the provision of security services as proposed in the Notice of Intention To Award Contract transmitted to the applicant on the 25th September 2024 giving notice of intention to award the contract.
 4. The court be pleased to issue such further orders as may be necessary to ensure compliance with any orders issued herein.
3. The application was verified by the affidavit of Peter Omollo Osano and on the grounds set out in the Amended Statement of Facts dated 7/10/2024. The applicant's case was that, on or about the 4/4/2024, the 2nd respondent invited open tenders for the provision of security services to which it and the interested party were among the sixteen (16) bidders.
 4. However, on the 17 /8/2024, the 2nd respondent informed the bidders that the said tender had been terminated and proceeded to re-advertise it in the media on the 12/8/2024 with a submission deadline of 23/8/2024. That by a letter dated 6/9/2024, the applicant was informed that the Interested Party sought a Request for Review vide a letter dated 29/8/2024 that sought a reversal of the decision to nullify the first tender and the matter was scheduled for hearing on the 11/9/2024.
 5. That when the Ex-parte applicant he attended the virtual hearing session, it was not accorded an opportunity to make representations whereby the Tribunal awarded the tender to the Interested Party.
 6. That the actions of the Interested Party constituted offences and other misconduct under the Public Procurement & Asset Disposal Act 2015. Further, that the decision of the 1st respondent will only help perpetuate an illegality and result in a void contract and loss of public funds.
 7. In response, the 1st respondent filed a Notice of Preliminary Objection dated 30/10/2024. In it, it contended that the Court lacked jurisdiction to determine the matter as the applicant lacked locus standi having not filed any pleadings nor participated in the proceedings before the 1st respondent in Request for Review No. 85 of 2024 and as such cannot initiate proceedings post judgment.
 8. That the applicant's verifying affidavit had been deponed by an unauthorized person without evidence of any authority being granted by the applicant to initiate the proceedings herein nor depone an affidavit. That as such, the deponent lacked locus standi to initiate the proceedings. That the application was frivolous, vexatious, scandalous and an abuse of the court process and ought to be dismissed with costs.
 9. The 1st respondent also relied on its replying affidavit sworn on the 30/10/2024 by its Secretary, James Kilaka who deposed that the application was an appeal disguised as a judicial review motion against its decision of 20/9/2024 thus the court lacked jurisdiction to entertain the same.



10. That vide an email dated 6/9/2024, the 1st respondent notified all tenderers in the subject tender, including the applicant, of the Interested Party's Request for Review and invited them to submit on the same as well as notified them on the upcoming virtual hearing session slated for the 11/9/2024.
11. That the Ex-Parte applicant neither filed any pleadings nor participated in the proceedings before the 1st respondent and thus lacked locus standi to institute the current suit. That the Ex-Parte applicant had failed to demonstrate any element of illegality, irrationality, procedural impropriety and/or unfairness in the manner in which the 1st respondent exercised its authority.
12. The 2nd Respondent opposed the application vide the replying affidavit sworn by its supply chain manager Amos Mwaighonyi on 13/11/2024. He deposed that the 2nd respondent advertised a tender for provision of security on the 4/4/2024 as the applicant's contract was ending on the 30/6/2024. That 16 bidders, inclusive the applicant, sent their bids.
13. That the Interested Party emerged as the lowest bidder and was recommended to be awarded the tender. However, an issue arose as to whether the interested party lacked personnel and financial capability to undertake the job and an email was sent to all bidders cancelling the tender.
14. That subsequently, the interested party raised a complaint with the 1st respondent and following deliberations by the 1st respondent, it was ordered to award the tender to the interested party and thus due process was followed. That therefore, the applicant's grievances were baseless. That the 1st respondent had discharged its functions properly and made a determination in accordance with the law.
15. That as a result of the on-going Court case, the 2nd respondent has been compelled to extend the applicant's tender as it is the company on the ground and further that there are no grounds to quash the decision of the 1st respondent to award the tender to the interested party.
16. The Interested Party filed a Notice of Preliminary Objection dated 11/11/2024. It urged that the judicial review proceedings as commenced, drawn and filed were fatally defective as it offended the provisions of Section 167 (1) of the *Public Procurement and Asset Disposal Act* 2015 as read with Regulation 203 of the Public Procurement and Asset Disposal Regulations 2020, Order 4, Rule 1 (4), 51, 53 of the Civil Procedure Rules and the Commissioner for Oaths (Fees on Affidavits) Rules, 1956.
17. That since the judicial review proceedings as commenced, drawn and filed were fatally defective and bad in law, the Court lacked jurisdiction to entertain the same as they were not properly before the Court.
18. The Interested Party also relied on its replying affidavit sworn by on the 11/11/2024 by one Dennis Mbote Mumbi in which he addressed the issues raised in the Interested Party's preliminary objection in detail.
19. The parties filed submissions in determination of this matter, which submissions they highlighted on 3/6/2025. I have considered the record, the submissions as well as the authorities relied on. I propose to consider the Preliminary Objection first.
20. In *Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others* [2014] eKLR, the Supreme Court held: -

“ A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer



the dispute to arbitration ... 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.”

21. Further, in *Oraro v Mbaja* [2005] 1KLR 141, it was held that: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence.”

22. The first objection was that this Court lacked jurisdiction to entertain the matter. The provisions of section 175 of the *Public Procurement and Asset Disposal Act*, 2015 were relied on in support of that proposition. That since JR proceedings in matters procurement are supposed to be determined within 45 days of their lodgment, this Court has no jurisdiction to determine the matter as it is well over 150 days since its inception.

23. Section 175 of that Act provides: -

“ 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.

...

(3) The High Court shall determine the judicial review application within forty-five days ...

...

(5) If either the High Court or the Court of Appeal fails to make a decision within the prescribed timeline under section (3) or (4), the decision of the Review Board shall be final and binding to all parties.

...”

24. In *ADK Technologies Ltd In Consortium with Transnational Computer Technologies Ltd vs. Public Procurement Administrative Review Board & 4 Others* [2021] KECA 424 (KLR), the Court of Appeal was categorical that the timelines set out in that section is mandatory. That acting outside those timelines will be acting without jurisdiction.

25. That decision is binding on this Court. The present proceedings were commenced on 7/10/2024. The substantive Motion was filed on 14/10/2024. By the time this matter was being mentioned before me on 25/02/2025, it was the 98th day since its lodgment. That was well outside the timelines set out in the law.

26. Accordingly, the Court has no jurisdiction to delve into the application, the preliminary objection is upheld and the application is struck out. Since it not clear how the applicant contributed to the delay which may be attributed to the Court, because of the transfers that were effected in the High Court in September, 2024, I make no order as to costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF JULY, 2025.



A. MABEYA, FCI Arb.

JUDGE

