



**Republic v Public Procurement Administrative Review Board & 2 others; Mitchell
Cotts Freight Kenya Limited & Fintech Edge Company Limited (Ex parte Applicant);
Africa Global Logistics Kenya Limited (Interested Party) (Judicial Review E234 of 2025)
[2025] KEHC 12519 (KLR) (Judicial Review) (10 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E234 OF 2025
JM CHIGITI, J
SEPTEMBER 10, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

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

**ACCOUNTING OFFICER, KENYA NATIONAL EXAMINATIONS
COUNCIL 2ND RESPONDENT**

KENYA NATIONAL EXAMINATION COUNCIL 3RD RESPONDENT

AND

**MITCHELL COTT'S FREIGHT KENYA LIMITED & FINTECH EDGE
COMPANY LIMITED EX PARTE APPLICANT**

AND

AFRICA GLOBAL LOGISTICS KENYA LIMITED INTERESTED PARTY

JUDGMENT

1. Through the Originating Motion Application dated 31st July 2025, the Applicant seeks the following orders:

a. spent



- b. spent.
- c. That upon prosecution of the substantive Originating Motion, this Honourable Court be pleased to set aside the entire decision of the Public Procurement Administrative Review Board (PPARB), the 1st Respondent herein, delivered in PPARB Request for Review Application No. 78 of 2025 on June 16, 2025, on the grounds of conflict of interest, bias, illegality and irrationality.
- d. That this Honourable Court be pleased to issue an order of Certiorari to quash the Public Procurement Administrative Review Board Decision dated 25th July 2025 dismissing the Applicant's request for review and SET ASIDE the entire decision of the Accounting Officer, Kenya National Examination Council, the 2nd Respondent herein, in relation to Tender No: KNEC/RFP/20242025/01- Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments, and delivered vide Notification of Award letters dated June 20, 2025.
- e. That this Honourable Court be pleased to Prohibit the Accounting Officer, Kenya National Examination Council, the 2nd Respondent herein, from progressing and finalizing the proceedings in relation to Tender No Tender No: KNEC/RFP/2024-2025/01- Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments.
- f. That this Honourable Court be pleased to direct the Accounting Officer, Kenya National Examination Council, the 2nd Respondent herein, to terminate the tender process in relation to Tender No.: Tender No: KNEC/RFP/2024-2025/01- Provision of End-to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments, and commence a fresh tender process;
- g. Costs of the Application.
- h. Any other order this court may deem fit

The Applicants' Case;

2. The Applicants argue that on 14th March 2025, the Respondents invited expression of interest under tender number KNEC/EOI/2024-2025/01 Invitation for Expression of Interest (EOI) On Provision of Provision of End-to-end Integrated Logistics System and Related Services During Administration Of Examinations And Assessments.
3. The Applicants collaborated through a Joint Venture (JV) consortium and submitted their expression of interest in bidding for the aforementioned tender.
4. The Applicants argue that they submitted their tender proposal before the deadline which was 17th June 2025 at 10:00am.
5. The Applicants argue that they were verbally informed by the procuring entity upon inquiry that the tender would be opened at 4pm and that they were the only bidders who submitted their bid before the deadline of 10.00 am.
6. It is the Applicants case that the Interested Party's bid was submitted after the deadline of 10:00am, 17th June 2025 and that there was no addendum issued for the foregoing change in tender submission and tender opening time in accordance with the Request for Proposal document and thus the variation was illegal.



7. On 19th June 2025, the Respondents informed the Applicants that its bid was non-responsive at the technical stage as we had attained a technical score of 45% which was below the minimum score of 75% required for the bid to proceed to the financial evaluation.
8. They argue that the 1st Respondent, herein unreasonably found that the Applicants' disqualification at the Technical Evaluation Stage was lawful and justified.
9. On 20th June 2025, the 3rd Respondent informed the Applicant of the Intention to award the Contract of Tender No KNEC/RFP/2024-2025/01 to the Interested Party.
10. Being dissatisfied with the turn of events, the Applicants lodged a request for review dated 4th July 2025 with the 1st Respondent. Judgment was delivered on 25th July 2025.
11. The Applicants believe that the 1st Respondent unfairly and illegally determined that there were no irregularities in the extension of tender submission time and tender opening time and that the submissions of the interested party's bid was not time barred.
12. The Applicants are also aggrieved by the fact that the 1st Respondent further noted that the claim under the ground of irregularity was also time barred as per section 167 of the Public Procurement and Assets Disposal Act and in any event an addendum was issued varying the tender submission and tender opening time from 17th June 2025 at 10:00 am to 4:00pm on the same day.
13. It is their case that The 1st Respondent disregarded the facts within its knowledge and perpetuated the conflict of interest and unfair advantage gained by the advocate for the 2nd and 3rd Respondents, one Mr. Justus Omollo due to the following reasons:
 - i. That the Applicants initially instructed Mr. Justus Omollo from the firm of Sigano & Omollo LLP to act for them in this matter before the Review Board and they had strict instructions to file the Request for Review on 1st July 2025.
 - ii. That without the Applicants knowledge and authorization, the firm of Sigano & Omollo LLP delegated the suit to another firm, the firm of Wanza Kivindu & Company Advocates.
 - iii. That the Request for Review was then filed on 1st July 2025 through the firm of Wanza Kivindu & Company Advocates and payment made.
 - iv. That the matter was later withdrawn without the Applicant's knowledge as it only learnt of the withdrawal on 2nd July 2025 when Mr. Justus Omollo purported to refund the legal fee.
 - v. That upon learning of the withdrawal of the request, they instructed the firm of SKM Advocates LLP to enter appearance and file the Request for Review on behalf of the Applicants, which they did.
 - vi. That upon service to the 2nd and 3rd Respondents, they were shocked to see that Mr. Justus Omollo was their advocate on record and they instructed their advocates to challenge the representation of the 2nd and 3rd Respondents by Mr. Omollo due to the professional conflict of interest.
 - vii. The said firm of SKM Advocates LLP did not raise these issues before the board as directed.
 - viii. That it is therefore reasonable to deduce that Mr. Omollo colluded with the procuring entity, took the Applicants instructions, delegated the assignment only for him to withdraw request for review in order to defeat the statutory timelines and favour the 2nd and 3rd Respondents.



- ix. That the 1st Respondent was all along aware of the earlier request filed and withdrawn and the circumstances under which it was done.
 - x. That the firm of Sigano & Omollo LLP colluded with the procuring entity to tactfully orchestrate a scheme to defeat the Applicant's Request for Review claim and was aided by the Applicants' advocates SKM Advocates LLP by not raising an objection to the representation at the Review Board.
14. It is their case that as a result of the foregoing, the Review Board's decision and the procurement proceedings conducted are fatally flawed, unlawful and irregular because the Respondents have breached their obligations under the Public Procurement and Asset Disposal Act and the constitution as demonstrated hereinabove.
 15. The 1st Respondent disregarded the information and agreed to the variation of the criteria which altered the evaluation consideration by introducing additional requirements which doesn't sit well with the Applicants.
 16. It is their case that the Review Board's decision dated 25th July 2025, is unconstitutional and illegal as it failed to establish that the 2nd and 3rd Respondents fundamentally breached the provisions of Article 227 of the constitution of Kenya, 2010 by conducting procurement under Tender Reference No. KNEC/RFP/2024-2025/01 in a manner that was neither fair, equitable, transparent, competitive, nor cost-effective and the opaque evaluation process adopted fundamentally undermined the constitutional safeguards meant to ensure accountability, transparency and public trust in procurement processes.
 17. They argue that the Respondents contravened section 80 of the Public Procurement and Asset Disposal Act and Regulations 74, 77, 77, 126(1),(2),(3),(4)&(6) and 127 of the Public Procurement and Asset Disposal Regulations, 2020 by applying an evaluation criterion that was not specified in the Tender Documents, thereby rendering the evaluation process subjective, discriminatory and biased against the Applicants.
 18. They argue that the Respondents' decision further breached the Applicant's legitimate expectations that the procurement process would be fair, transparent and competitive as per the request for proposal submitted to the shortlisted consultants.

The Applicants Submissions;

19. The Applicants submit that the Review Board erred by holding that the challenge against extension of tender submission and tender opening time was time barred.
20. They further submit that they had lodged a valid application for review within the statutory timelines with the Review Board.
21. The Applicants submits that the withdrawal of the application for review without the consent or knowledge of the Applicants herein can only be viewed as an elaborate scheme by the advocate for the 2nd and 3rd Respondents in collusion with the Review Board to defeat the Applicants' claim on the basis of statutory timelines.
22. They submit that Mr. Justus Omollo from the firm of Sigano & Omollo LLP was instructed by the Applicants to act for them in filing of the application for review.



23. The said advocate who received instructions and legal fees for the matter and was duly furnished with all information and documents in relation to the matter proceeded to delegate the suit to another firm, the firm of Wanza Kivindu & Company Advocates.
24. The application for review was duly filed, and withdrawn thereafter without the knowledge and consent of the Applicants and these facts have not been challenged.
25. Mr. Omollo thereafter refunded the legal fees to the Applicants and thereafter proceeded to receive instructions from the 2nd and 3rd Respondents in a clear case of conflict of interest.
26. The Review Board aware of all these facts proceeded to determine that the claim in relation to the tender submission and opening was time barred.
27. This they submit is a well-orchestrated scheme by the Respondents to deprive the Applicants the right to a fair hearing.
28. The advocate for the 2nd and 3rd Respondents unduly used insider information in mounting the defense by the 2nd and 3rd Respondents at the review Board level and this unduly prejudiced the Applicants herein.
29. Reliance is placed in the case of *Delphis Bank Ltd v Channan Singh Chatthe & 6 Others* [2005] eKLR where the Court of Appeal held that:

“I have no doubt in my mind that the Respondents will consciously or unconsciously or even inadvertently use that confidential information acquired from the appellants under the retainer during preparation of the loan agreement and the security documents as well as knowledge of subsequent events against the appellants in the main suit. The result will be that the appellants will not only be confronted with their own confidential information but will suffer great injustice and prejudice during the trial of the main suit”.
30. The Applicant prays that the finding by the Review Board, be quashed by this honourable court since the Review Board’s decision and the procurement proceedings conducted are fatally flawed, unlawful and irregular.
31. On another front, they submit that the alteration of the tender submission time from 10.00 am to 4.00pm was irregular, unprocedural and unlawful as the Procuring Entity did not adhere to the provisions of the *Public Procurement and Asset Disposal Act* as well as the Instruction To Tenderers (hereinafter “itts”) in the RFP.
32. The Respondents have failed to prove by way of evidence how the extension of the tender submission and opening period was done and communicated to the bidders as there was no addendum served on the bidders and this in violates of paragraph ITT 9 of the RFP, which requires the Procuring Entity to communicate any changes or amendments of the Tendering Document through an addendum in writing to all bidders and further publish the addendum on the Procuring Entity’s webpage.
33. They further submit that Review Board erred in upholding the 2nd and 3rd Respondents arguments that the tender submission and opening time was lawfully varied.
34. To buttress this argument they submit that the email excerpt produced by the Respondents as annexure KNEC- 01 is clearly headed “Response on areas of clarification – Tender Number KNEC/ RFP/2024-2025-01” which has nothing to do with the alleged extension of tender submission and opening period.



35. They further note that the alleged email has only four properly labelled attachments and none of the subject of the attachments relates to the alleged addendum on extension of tender submission and opening time if the subject of those attachments is anything to go by.
36. They submit that the 2nd and 3rd Respondents have failed to demonstrate how and when the addendum was: firstly, communicated to the JV; and secondly, published on the Procuring Entity's website in line with ITT 9.2 of the RFP and this violates section 75(3) and 78(3) of the Public Procurement and Assets Disposal Act, 2015.
37. In the absence of the said evidence and noting that both the Respondents and the Interested party did not dispute that the tender proposal of the Interested Party was submitted after 10.00am, They submit that the extension of deadline for submission of the tender proposal was irregular and unlawful and thus the tender proposal by the Interested Party was non-responsive for reason of being submitted beyond the legal submission deadline set in the RFP.
38. On the issue of the criteria they submit that the Procuring Entity did not apply the technical evaluation criteria set out in the RFP in evaluating the JV's proposal for the following reasons;
39. In its notification of results for the Technical evaluation to the JV through a letter dated 19th June 2025, the Procuring Entity noted that the JV had not provided recommendation letters from clients addressed to CEO KNEC for Contract/LPOS evidence attached; methodology and work plan for the Fintech Edge Co Limited as the second partner in the JV; and qualifications and experience of the key technical staff for Fintech Edge Co Limited, the second partner in the JV.
40. They submit that the JV did provide sufficient experience and qualifications in their individual capacities separate from the qualifications of the independent sub-contractors. The said experience was demonstrated in the recommendation letters from clients and the contracts between the JV partners and clients.
41. The said experience of the JV is evident in page 120 to 172 of the Applicants tender document and the Procuring Entity chose to disregard the experience and focus only on Benir Global Limited's experience which was provided in page 197 to 239 of the Applicants bundle.
42. They submit that by disregarding the contracts and recommendation letters provided by the JV, the Procuring Entity veered off the technical evaluation criteria in the RFP in violation of section 80(2) of the Public Procurement and Assets Disposal Act, 2015.
43. On the second issue of methodology and work plan for the Fintech Edge Co. Limited as the second partner in the JV, we note that there was no requirement in the RFP for the individual partners in the JV to provide separate methodology and work plan. This would have defeated the purpose of the JV.
44. The JV was compliant as it duly submitted a joint methodology and work plan since the contract would have been executed by the JV and not the individual partners.
45. Contrary to the 2nd and 3rd Respondents assertion, the said methodology does not indicate to have been provided by Benir Global Limited and only indicates that Benir Global Limited would be a logistics system partner in execution of the tasks in the contract as per the methodology.
46. They submit that as per the JV tender documents submitted, Benir Global Limited is a subcontractor by dint of the agreement dated 10th March 2025 annexed on page 39 of the Applicant's bundle whose role is to provide deployment of digital logistics tracking and management system as well as co-ordination of physical logistics including collection, transportation, delivery, and retrieval of examination materials.



47. They submit further that the methodology provided by the JV was sufficient in the circumstances as it comprehensively covered all the tasks in the contract and by requiring Fintech Edge Co. Limited to provide a separate methodology is unreasonable, contrary to the technical evaluation criteria and defeats the purpose of the JV.
48. On the third issue of the submission of qualifications and experience of the key technical staff for Fintech Edge Co Limited, the Applicants submit that there was no such requirement in the RFP.
49. The JV provided a very comprehensive list of key technical staff together with their qualifications (academic and professional) and experience on page 432 to 527 of the Applicants bundle filed with the Review Board.
50. They submit that it was not a question of apportioning the key technical staff between the partners in the JV, but the requirement was to provide sufficient competent technical staff which the JV did. The key technical staff could not be split between the two partners in of the JV as each of the partner in the JV had a different role to play in the contract.
51. The role of each of the JV partners is outlined in clause 4 of the agreement (page 129 of the Applicant’s bundle filed with the Review Board) which provides that; “Fintech Edge Company Limited guarantees that it shall obtain and be responsible for project management, preparation and submission of tenders and financial advisory services whereas Mitchell Cotts Freight Kenya Limited guarantees that it shall be responsible for all technical design, technical expertise and ensuring compliance with relevant regulations and quality standards.”
52. They submits that it would hence be expected that the key staff in the execution of the contract would be drawn from the Mitchell Cotts Freight Kenya Limited and not Fintech Edge Company Limited due to the technical role to be played by Mitchell Cotts Freight Kenya Limited in the JV.
53. In relation to the application of ITT 41.2 of the RFP as highlighted by Review Board in its ruling, the limitation only relates to the qualifications of the JV. ITT 41.2 provides that:
- “The determination shall be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer’s subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.”
54. The Applicants submit that the limitation is only applicable when considering the qualifications of the Tenderer. In the case of the JV, the JV partners did provide sufficient qualifications in the form of contracts, recommendation letters and qualifications of key technical staff besides the qualifications of Benir Global Limited, the subcontractor.
55. Therefore, the Procuring Entity they submit erred in disregarding the qualifications of Mitchell Cotts Freight Kenya Limited and Fintech Edge Company Limited on page 240 to 293 of the Applicants bundle filed with the Review Board.
56. The Procuring Entity disregarded the Technical Evaluation Criteria outlined in page 42 of the Applicants bundle filed with the Review Board as well as the provisions of Section 80(2) of the Public Procurement and Assets Disposal Act, 2015 which provides that:
- “The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to



the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”

57. Reliance is also placed in the Court of Appeal in Republic V Public Procurement & Another Ex-Parte Hyosung Ebara Company Limited [2011] eKLR where the court held that:

“No other criteria apart from the ones set out in the tender documents should have been relied upon in carrying out the evaluation. The spirit of confidentiality as stated under Section 44 of the Act and strict adherence to the evaluation criteria of tenders in the tendering process as required in Section 66 of the Act must be guarded jealously if the objectives of the Public Procurement and Disposal Act are to be realized.”

58. They submit that it is clear that deviating from the set evaluation criteria in the RFP and disregarding the information provided by the JV while imposing additional and unreasonable requirements on the JV’s proposal is thus incurably flawed and has tainted the entire procurement process by the Procuring Entity.

59. Reliance is placed on the case of Republic v Office of the Director of Public Prosecution & 2 others; Siwa (Ex parte); Mungai (Interested Party) (Miscellaneous Judicial Review E002 of 2025) [2025] KEHC 11884 (KLR) where the court relied on the test outlined in Pastoli v Kabale District Local Government Council & others (2008) 2 EA 303 where the court held as follows:

“In order to succeed in an application for judicial review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

60. In the instant suit, the Applicants submit that the decision of the Review Board is unfair, unreasonable, irrational and illegal for the following reasons:

- a. The Review Board misdirected itself and disregarded the evidence in the form of the tender documents submitted to the 2nd and 3rd Respondent which showed that the Applicants met the technical evaluation criteria and that the Procuring Entity erred by disregarding the documents and explanations provided, which position was rubber stamped by the Review Board. Thus, the decision of the Review Board is so unreasonable and irrational as no reasonable authority, addressing itself to the facts and the law before it in the form of evidence adduced, would have made such a decision.



- b. The Review Board disregarded the tender evaluation criteria provided in the request for proposal and proceeded to rubberstamp the Procuring Entity’s variation of the requirements set out in the technical evaluation criteria without any justification making their decision unreasonable and illegal as reasonable authority, addressing itself to the facts and the law before it in the form of evidence adduced, would have made such a decision.
 - c. The Review Board erred in finding that the extension of tender submission and opening time was lawful while there was no valid addendum issued by the procuring entity makes its decision unreasonable and irrational as no reasonable authority, addressing itself to the facts and the law before it in the form of evidence adduced, would have made such a decision.
 - d. The Review Board erred in finding that the claim by the Applicants that the extension of the tender submission and opening time was time barred while it was well aware that the Applicants had filed a valid claim within the prescribed statutory timelines and the claim withdraw by the advocates of the 2nd and 3rd Respondents. This clearly demonstrates procedural Impropriety as there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision.
61. It submits that the Preliminary Objection by the 2nd and 3rd Respondent lacks merit.
62. They rely in the case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696* is arguably the locus classicus of what merits as a preliminary objection, where the Honourable Court observed thus;
- “... 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.”
63. The court in the foregoing case proceeded to expound that:
- “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.”
64. It is submitted that the Preliminary Objection raised by the 2nd and 3rd Respondents is not based on pure points of law and the court cannot make a determination without delving into the facts of this case.

The 1st Respondent’s Case;

65. The 1st Respondent argues that on 4th July 2025, Mitchell Cotts Freight Kenya Ltd & Fintech Edge Company Ltd, the Applicant herein, filed Request for Review Application No. 78 of 2025 before the Respondent seeking the following orders:
- a. A declaration be and is hereby issued that the Accounting Officer and the Procuring Entity have breached the provisions of Articles 10, 27, 201, 227 and 232 of the *constitution* of Kenya and Sections 3, 70, 77, 78, 79, 80 and 86 of the *Public Procurement and Asset Disposal Act*.
 - b. This Board do issue an Order that the public procurement proceedings commenced by the Respondents through Tender No. KNEC/RFP/2024- 2025/01 For Provision of End-to-end Intergrated Logistics System And Related Services During Administration of Examinations and Assessments be and are hereby annulled in entirety and set aside.



- c. This Board do issue an Order that the Respondents' decision and Notification of Award to the Interested Party in respect to the award of the Tender No. KNEC/RFP/2024-2025/01 For Provision of End- Toend Intergrated Logistics System and Related Services During Administration of Examinations and Assessments be and is hereby annulled and set aside.
 - d. This Board do issue an Order that the decision and notification of unsuccessful bid dated 19th June 2025 and 20th June 2025 addressed to the Applicant in the Tender No. KNEC/RFP/2024- 2025/01 For Provision of End-to-end Intergrated Logistics System and Related Services During Administration of Examinations and Assessments be and is hereby annulled and set aside.
 - e. This Board do review the Applicants' Technical Evaluation on the Tender No. KNEC/RFP/2024- 2025/01 For Provision Of End-to-end Intergrated Logistics System and Related Services During Administration of Examinations and Assessments and award appropriate scores and admit the Applicants bid to the financial stage of evaluation.
 - f. In the alternative to prayer (e) above, this Board do issue an Order directing the Procuring Entity and Accounting Officer to reevaluate the Tender No. KNEC/RFP/2024-2025/01 For Provision of End-to- End Intergrated Logistics System And Related Services During Administration of Examinations and Assessments at the technical stage taking into consideration the findings and orders of the Public Procurement Administrative Review Board herein.
 - g. In the alternative to prayers (e) and (f) above this Board do direct the Accounting Officer of Kenya National Examination Council to commence the procurement proceedings afresh taking into consideration the findings and orders of the Public Procurement Administrative Review Board herein within such period to be stipulated.
 - h. This Board do grant the Applicants damages for loss of business amounting to a sum of KES 80,737783.
 - i. The Respondents be ordered to pay costs and incidentals to these proceedings.
 - j. Any other relief that the Board may deem fit and just to grant.
66. On 25th July 2025, the Respondent, made the following orders:
- a. The Request for Review dated 4th July 2025 is hereby dismissed.
 - b. The 1st Respondent, Accounting Officer of the Kenya National Examination Council, be and is hereby directed to proceed with and oversee the tender proceedings for Tender No. KNEC/RFP/2024- 2025/01 – Provision of End- to-End Integrated Logistics System and Related Services During Administration of Examinations and Assessments to their logical and lawful conclusion; and
 - c. Each party shall bear its own costs of the proceedings.
67. It is its case that in determining Request for Review No. 78 of 2025, the 1st Respondent began by addressing several preliminary issues, including the timeliness of the Applicant's written submissions.
68. The Board found that while the submissions were filed outside the prescribed timeline, they were nonetheless filed within the overall filing period.



69. That the 1st Respondent also considered a further preliminary issue as to whether the Applicant's Further Supporting Affidavit had been irregularly commissioned in contravention of Section 5 of the *Oaths and Statutory Declarations Act*.
70. The Board found that the affidavit had been regularly commissioned and accordingly admitted it as part of the record.
71. That the 1st Respondent also considered the issue of whether Susan Wangui Ngugi, a Director of the Applicant, had the authority to swear affidavits on behalf of the joint venture. The Board determined that she indeed had the requisite authority to do so.
72. In addressing the issue of whether the tender opening process was conducted in breach of the applicable procedures, the 1st Respondent considered all the documents filed by the parties and found that the process was conducted in accordance with the law.
73. The Board specifically noted that the Procuring Entity had sent an email to all tenderers notifying them of the extension of the tender opening deadline. Additionally, the Board observed that the Applicant's allegation of irregularity was time-barred, as the Applicant became aware of the alleged breach on 17th June 2025 but only filed its Request for Review on 4th July 2025.
74. In determining whether the Procuring Entity properly evaluated the Applicant's tender in accordance with Section 80 of the *Public Procurement and Asset Disposal Act* and the provisions of the Tender Document, the 1st Respondent observed that the Applicant had submitted documents belonging to an Entity that was not part of the joint venture. This led to the Applicant's disqualification, which the Board found to be consistent with the evaluation criteria set out in the Tender Document.
75. The 1st Respondent, in its Decision, duly considered all the parties' pleadings, written submissions, oral arguments, and confidential documents.
76. The 1st Respondent argues that it acted within the confines of the *constitution*, the *Public Procurement and Asset Disposal Act*, the Public Procurement and Asset Disposal Regulations, 2020, the *Fair Administrative Action Act*, and the rule of law in rendering its decision in Request for Review No. 78 of 2025.
77. The Decision was well-reasoned and was neither unreasonable, ultra vires, unlawful, misconceived, erroneous, irrational, nor illogical, contrary to the allegations made by the Applicant. It argues that it has not flouted any law nor acted in excess of its powers.
78. It is its case that the Applicant has failed to demonstrate any elements of illogicality, illegality, irrationality, procedural impropriety, or unfairness in the manner in which the Respondent considered and interrogated the evidence, documents, pleadings, and information before it in arriving at its Decision in Request for Review No. 78 of 2025.

The 1st Respondent's Submissions;

79. The Kenya National Examinations Council initiated a tendering process for an integrated logistics system (Tender No. KNEC/RFP/2024-2025/01), which involved multiple stages of evaluation and submissions. The initial Expression of Interest was issued on 19th March 2025, with only one application received. A re-advertisement occurred on 25th March 2025, leading to four bidders responding by 4th April 2025. The evaluation process included preliminary and technical evaluations, with the Applicant and Interested Party qualifying for further consideration.



80. The evaluation committee assessed the bids through a structured process, ultimately recommending the Interested Party for the tender award. Three bidders were found responsive after the preliminary evaluation. The Applicant scored 45% in the technical evaluation, below the required 75%, while the Interested Party scored 84%. The Interested Party's bid was compliant in the financial evaluation, leading to a recommendation for award. The Applicant filed a Request for Review vide Application No.78 of 2025 challenging the procurement process and the evaluation results. The Request for Review was filed on 4th July 2025, seeking multiple orders including annulment of the tender award.
81. Each party presented their arguments regarding the validity of the tender process and the evaluation criteria. The Applicant argued that the extension of the tender submission deadline was unlawful and that their bid was unfairly evaluated. The Respondents contended that the extension was valid and that the Applicant's bid did not meet the required technical threshold. The Interested Party maintained that their bid was submitted on time and that the Applicant's claims were unfounded. The Request for Review was dismissed, affirming the legality of the evaluation process & the 2nd Respondent herein was directed to proceed with the tender proceedings to their lawful conclusion.
82. The Board reviewed the evaluation of the Applicant's tender in accordance with the Act and Tender Document and upheld the following:
- a. The Applicant's bid was disqualified for failing to meet the 75% minimum technical threshold, scoring only 45%.
 - b. The Applicant did not provide required recommendation letters and submitted documents from a subcontractor, violating ITT 41.2.
 - c. The Board confirmed that the evaluation was conducted fairly and in line with the criteria set out in the Tender Document.
83. Dissatisfied with the Board's decision, the Applicants filed the Judicial Review Application herein.
84. The 1st Respondent submits that the procurement process – including any deadline extension and the technical evaluation – was conducted lawfully and equitably.
85. Article 227 of the *constitution* requires procurement to be fair, equitable, transparent and competitive. The tender here was governed by the *Public Procurement and Asset Disposal Act* and its regulations to ensure exactly those principles.
86. It is its submission that the Invitation to Tender explicitly allowed the Procuring Entity to extend the deadline by issuing an addendum. In fact, the Review Board found that an addendum was duly issued and circulated to all bidders (the Applicants and the Interested Party) extending the submission time by five hours on 17th June 2025. This ensured equal notice to all parties.
87. The Applicants' objection that no addendum was issued is not borne out by the record; the Board's finding of a valid, timely addendum confirms the extension was effected correctly. The extension procedure thus complied with Section 75(5) of the Act (which mandates adequate response time) and the PPADA regulations.
88. Section 80(2) of the Act provides that tenders must be evaluated using the procedures and criteria set out in the tender document. The tender here specified a 75% minimum technical score and required each joint-venture partner to submit its own qualifications.



89. The Board held that the Applicants' bid failed to meet these requirements. In particular, the Applicants attempted to rely on documents from a third-party subcontractor (Benir Global) which was not a member of their JV – a practice expressly disallowed by the tender.
90. The Board sought clarification on the applicability of ITT 41.2 regarding the qualifications of subcontractors during the evaluation process.
91. The Applicant's Counsel argued that ITT 41.2 applies only at the qualification evaluation stage, prohibiting consideration of subcontractor qualifications.
92. The tender document allows inclusion of subcontractors in the proposed methodology, but their qualifications cannot enhance the tenderer's own qualifications.
93. The Board's conclusion was simply that the JV partners had to qualify on their own merits, and any use of outside documents rendered their tender non-responsive.
94. According to it, the finding is a lawful application of the evaluation rules, not an extraneous requirement. Far from being arbitrary, it is the converse, the Board enforced the very criteria that the Applicants themselves agreed governed evaluation.
95. The process was transparent and even-handed, fully in keeping with Article 227 and procurement law.
96. The 1st Respondent strongly contests the Applicant's allegations of conflict of interest said to involve Counsel for the 2nd and 3rd Respondents, who are alleged to have previously acted for the Applicants and subsequently withdrawn the Request for Review without their consent.
97. A perusal of Exhibit "SW-3" (the Request for Review) clearly demonstrates that the issue of conflict of interest was not pleaded as one of the grounds therein.
98. The Applicants have sought to improperly introduce the same in the present Application and has further attributed the Board's decision to the alleged conflict.
99. The Board, in its considered determination, did not address conflict of interest as it was not placed before it for adjudication.
100. The attempt by the Applicant to introduce it at this stage amounts to trial by ambush, which is irregular and impermissible in law.
In addressing the issue whether the issues raised by the Applicants were time-barred under the statutory 14-day limit the 1st Respondent submits that all challenges based on issues raised outside the statutory 14-day window are impermissible.
101. Under Section 167(1), a review must be sought within fourteen days of notification of an award or the breach complained of. This deadline is jurisdictional. Here, the alleged breaches (alteration of opening time and evaluation details) occurred in mid-June 2025.
102. Any complaint about those acts should have been filed by late June 2025. The Applicants did not file their Request for Review until 4th July 2025 – well beyond 14 days of the award or the putative breach.
103. In its decision, the Board correctly ruled that the Applicants' complaint about the "irregularities in the extension of the tender submission deadline" was time-barred, since it was "raised outside the fourteen-day statutory period prescribed under Section 167 of the Act".
104. Eliance is placed in the case of RRepublic v Registrar of Titles & 2 others Ex-parte Redcliffe Holdings Limited [2016] KEHC 6918 (KLR) reference was made to an important explanation of the



significance of the conduct of an ex parte Applicant in pursuit of judicial review from Halsbury's Laws of England 4th EDN.Vol. 1 (1) para 12 page 270 thus:

“The remedies of quashing orders (formerly known as orders of Certiorari) prohibiting orders formerly known as orders of prohibition (mandatory orders formerly known as orders of mandamus) ...are all discretionary. The court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief.”

105. Section 167 contains no exception or discretion to extend the filing deadline; it is a condition precedent to the Board's competence. The Applicants themselves evidently understood the limit when they invoked the Board's jurisdiction.
106. The Board correctly refused to entertain any claim raised after the 14-day cutoff. In *Republic v Procurement Administrative Review Board & another; Wodex Technologies Ltd (Exparte Applicant); Tana Solutions Limited (Interested Party)* (Judicial Review Miscellaneous Application E104 of 2023) [2023] KEHC 24930 (KLR) (Judicial Review) (7 November 2023) (Judgment) The court ruled on the jurisdiction of the Public Procurement Administrative Review Board regarding requests for review not filed within the stipulated time frame.
107. It submits that the Board acted legally in dismissing the request for review due to lack of jurisdiction as it was not filed within 14 days of notification of award.
108. On the issue whether the decision of the 1st Respondent was irrational, illegal, or procedurally improper to warrant intervention by this Honourable Court it submits that this Honourable Court will intervene only on one of the classic public-law grounds: illegality, irrationality (Wednesbury unreasonableness) or procedural unfairness.
109. The Board's findings here were fully lawful and logical. It carefully reviewed the evidence and the tender rules, and its conclusions follow from those facts.
110. It found that the Applicants failed to meet the minimum technical threshold because key documents were missing or outside their JV. Likewise, its finding of a valid addendum shows that it respected the formalities of law when addressing the extension issue.
111. As held in *Republic vs. Public Procurement Administrative Review Board & 2 Others ex-parte Numerical Machining Complex Limited* [2016], the Board “had no power to compel the [procuring entity] to act unlawfully,” and it “exceeded its jurisdiction” only if it did so. Here, by contrast, the Board did not order any illegal action – it merely upheld a lawfully extended deadline and affirmed the application of the tender's own rules. It did not violate any statute or usurp any discretion vested in others. Nor was there any breach of fair procedure.
112. Reliance is placed in the case of *Pastoli vs Kabale District Local Government Council & Others*, (2008) 2 EA 300 and similar cases make clear, a judicial review Applicant must identify a concrete defect in the decision-making process. Here none exists.



The 2nd and 3rd Respondents Case;

113. In opposing the application, the 2nd and 3rd Respondents have raised a preliminary objection on points of law against the Applicants' Originating Motion dated 31st July 2025 raising fundamental jurisdictional and procedural bars capable of disposing of the suit in entirety.
114. The 2nd and 3rd Respondents have raised objections on points of law to the effect that;
1. The judicial review Application herein which primarily challenges the decision of the 1st Respondent dated and delivered on 25th July 2025 is hopelessly incompetent and bad in law as the 1st Respondent, being an unincorporated Board established under section 27(1) of the [Public Procurement and Asset Disposal Act](#), lacks legal capacity to be sued in its own name.
 2. The Ex Parte Applicants have neither pleaded nor shown themselves as "persons aggrieved" within the meaning of section 175(1) of the [Public Procurement and Asset Disposal Act](#) hence the Ex Parte Applicants lack locus standi to institute and continue the instant Judicial Review Application as held by the Court of Appeal in the case of Kenya Ports Authority & another v Rhombus Construction Company Limited & 2 others [2021] KECA 438 (KLR).
 3. The Ex Parte Applicants' Application which is principally anchored on the alleged impugned (mis)conduct of the Advocate on record for the 2nd and 3rd Respondents offends the doctrine of exhaustion under section 9(2) of the [Fair Administrative Action Act](#) because the Applicants have not exhausted the remedies available outside of this Court under the [Advocates Act](#) and the Code of Standards of Professional Practice and Ethical Conduct.
 4. The Honourable Court lacks jurisdiction to take cognizance of, hear and determine the Ex Parte Applicants' Application herein.
115. It is their case that The Kenya National Examinations Council is a State Corporation established under section 3 of the [Kenya National Examinations Council Act](#) with the statutory mandate to, among others, set and maintain examination standards, conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels.
116. They argue that The 1st Respondent invited expressions of interest under tender number KNEC/EOI/2024-2025/01 for Provision of End-to-end integrated logistics system and related services during administration of examinations and assessments.
117. They argue that the invitation was by way of a notice dated 4th March 2025. The submission deadline was scheduled for 19th March 2025 at 10.00am.
118. Upon the lapse of the deadline, only one bidder, the Interested Party herein submitted its response to the request for expressions of interest published on 4th March 2025.
119. The procuring entity did not, therefore, receive the minimum number of proposals contemplated under section 121(3) of the [Public Procurement and Asset Disposal Act](#). Accordingly, in compliance with section 121(6) of the [Public Procurement and Asset Disposal Act](#), the procuring entity repeated the process of publication of the notice inviting expressions of interest.
120. The repeated notice of expressions of interest was published on 25^h March 2025. The submission deadline was scheduled for 4th April 2025 at 10.00am. At the lapse of the deadline for submission of expressions of interest, the procuring entity received applications for expressions of interest from the following four firms whose applications were opened in the presence of their respective representatives



- in compliance with section 120 as read with section 78 of the [Public Procurement and Asset Disposal Act](#).
121. The evaluation committee of the procuring entity evaluated the bids of the four bidders in full compliance with the requirements of section 121(1) and (2) of the [Public Procurement and Asset Disposal Act](#).
 122. Following the evaluation the following shortlisted bidders and invited them to submit their respective proposals:
 - a. Fintech Edge Company Ltd & Mitchell Cotts Freight Kenya Limited JV
 - b. Africa Global Logistics Kenya (AGL Kenya Limited)
 123. Under ITT 30.1 of the Request for Proposal document, the procuring entity specified the selection method of Quality and Cost Based Selection (QCBS) method in compliance with section 124(1) of the [Public Procurement and Asset Disposal Act](#).
 124. The initial deadline for submission of proposals as stipulated in the original Request for Proposal document was 17th June 2025 at 10:00am.
 125. In exercise of the mandate under section 75 of the [Public Procurement and Asset Disposal Act](#), the procuring entity issued an addendum dated 13th June 2025 in response to inquiries made by the candidates.
 126. In full compliance with section 75(3) of the [Public Procurement and Asset Disposal Act](#), the procuring entity promptly communicated via email to all the shortlisted candidates the said addendum dated 13th June 2025 together with the forwarding letter dated 13th June 2025.
 127. The addendum and forwarding letter were dispatched to the shortlisted candidates on 13th June 2025 at 8:11pm at their respective email addresses specified below:
 - a. The Applicants: info@fintechedge.co.ke (the said email address was specified by the Applicants herein in their expression of interest and was previously used by the procuring entity to issue the Request for Proposal document to the Applicants).
 - b. The Interested Party: Charles.maina@aglgroup.com (the said email address was specified by the Interested Party herein in their expression of interest and was previously used by the procuring entity to issue the Request for Proposal document to the Interested Party).
 128. The addendum dated 13th June 2025 together with the forwarding letter reference number KNEC/RFP/2024-2025/01 dated 13th June 2025 as well as the proof of dispatch by email sent on 13th June 2025 at 8:11pm are attached at pages of the annexure marked "NM-01".
 129. Following the above, the procuring entity further reminded the shortlisted bidders on the specified time for tender opening through the email dispatched on 17th June 2025 at 7:10am.
 130. The Applicants acknowledged receipt of the reminder email at paragraph 8 of the Supporting Affidavit of Susan Wangui Ngugi sworn on 3rd July 2025 and lodged before the 1st Respondent. The reminder email sent by the procuring entity on 17th June 2025 at 7:10am.
 131. The procuring entity did not irregularly alter the time for tender opening.
 132. The procuring entity therefore did not contravene section 70(6)(f) of the [Public Procurement and Asset Disposal Act](#) as alleged by the Applicants or at all. The procuring entity did not contravene section 78(3)



of the *Public Procurement and Asset Disposal Act*. The procuring entity did not contravene section 77(3) of the *Public Procurement and Asset Disposal Act*. At the lapse of the deadline for submission of tenders (17th June 2025 at 4:00pm), the Respondent opened proposals.

133. The Applicant's bid was disqualified at the technical evaluation stage having failed to attain the minimum technical score of 75% stipulated in the request for proposal document, because:
- a. ITT 41.1 of the Request for Proposal document provides as follows: "The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section 111, Evaluation and Qualification Criteria."
 - b. ITT 41.2 of the Request for Proposal document provides as follows: "The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates subcontractors or any other firm(s) different from the Tenderer that submitted the Tender".
 - c. Further, ITT 18.2 provides as follows: "The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section 111, Evaluation and Qualification Criteria."
 - d. Having regard to ITT 3.1 of the Request for Proposal document, the tenderer that submitted the tender subject of these review proceedings is the joint venture of Mitchell Cotts Freight Kenya Limited and Fintech Edge Company Limited (both of whom are the Applicants in this request for review).
 - e. Pursuant to ITT 41.2, the Applicants herein could not rely upon the qualifications of Benir Global Limited (which was designated as a subcontractor of Fintech Edge Company Limited through the Subcontractor Agreement dated 10th March 2025 to satisfy the qualification criteria stipulated in the tender document.
 - f. The Applicants did not provide recommendation letters from their respective clients addressed to the CEO of KNEC which corresponded to certified copies of LPOs/ contracts valued at a minimum of KES 20Million as stipulated in technical evaluation criteria number 1. Pursuant to ITT 41.2, the qualification documents from Benir Global Limited could be taken into account in determining the qualification of Applicants.
 - g. The Applicants did not provide the technical approach and detailed workplan for execution of the roles and responsibilities assigned to Fintech Edge Company Limited under the Joint Venture Agreement dated 8th June 2025.
 - h. It should be noted that under Clause 3.4 of the Joint Venture Agreement dated 8th June 2025 the Applicants expressly provided that "All documents relating to the tender shall be prepared in the names of Fintech Edge Company Limited as the lead firm."
 - i. Section V — Schedules of Services Requirements defined, among others, the end-to-end integrated logistics system (assigned to Fintech (as the lead firm) under the Joint Venture Agreement) which formed part of the primary scope of the work to be performed under the subject tender.



- j. Pursuant to ITT 41.2, the Applicants could not rely on the documents and qualifications of Benir Global Limited (a subcontractor) to satisfy the requirements of the tender document regarding the technical approach and workplan for the end-to-end integrated logistics system comprising IT infrastructure development and operation, systems design and digital security.
 - k. It is noteworthy that the Applicants deliberately separated their roles and responsibilities to be performed by Mitchell Cotts and Fintech under Clause 2 of the Joint Venture Agreement dated 8th June 2025 while at the same time designating Fintech as the lead firm under Clause 3.4.
 - l. The Applicants were obligated to demonstrate the technical capacity of each member of its joint venture, particularly its lead firm (Fintech) which was designated as such under Clause 3.4 of the Joint Venture Agreement, to perform the assigned scope of work.
 - m. However, the Applicant's technical methodology (see pages 173 to 186 of the Applicant's technical proposal) and workplan(see page 190 of the Applicant's technical proposal) do not demonstrate Fintech's technical capacity to execute the project. Instead, the Applicants have only provided technical methodology and workplan for BenirGlobal Limited (the subcontractor) whose qualification documents or roles cannot be relied upon by the procuring entity to determine the Applicant's qualification as stipulated by ITT 41.2.
 - n. The Applicants therefore omitted critical information regarding the qualification and technical capacity of Fintech to perform the scope of work assigned to it under the Joint Venture Agreement particularly considering that it was the designated lead firm under Clause 3.4 of the Joint Venture Agreement.
 - o. The procuring entity reiterate that Fintech did not provide proof of qualifications and/or experience of its own key technical staff to perform the roles assigned to it under Clause 2 of the Joint Venture Agreement. These were critical roles in the scope of work under Section V Schedules of Services Requirements.
134. In full compliance with the obligations under section 79(1) and 80(2) & (3) of the Act the procuring entity rightly evaluated the Applicants' tender taking account of ITT 41.2 and ITT 18 considering that the Applicants relied on qualification documents from a third-party subcontractor (Benir Global Limited).
135. It is their case that The Interested Party was the only bidder that met the minimum technical requirements, having scored 84%.
136. The Interested Party's financial proposal was opened on 20th June 2025 at 10:00am and subjected to the financial evaluation process stipulated in the tender document.
137. The procuring entity, in full compliance with section 126(4) of the [*Public Procurement and Asset Disposal Act*](#) issued all bidders with notifications dated 20th June 2025.
138. On 4th July 2025, the Applicants filed request for review number 78 of 2025 dated 3rd July 2025 through the law firm of SKM Advocates LLP under rule 203 of the Public Procurement and Asset Disposal Rules. The same was served upon the 2nd and 3rd Respondents on 4th July 2025.
139. It is argued that rule 208 of the PPAD Rules 2025 mandates and entitles any party to the request for review to be represented by an advocate of their own choice and no one can dictate the choice of advocate to represent the 2nd and 3rd Respondents in the administrative review proceedings.



140. Having attended the proceedings scheduled before the Review Board in review application no. 78 of 2025 on 16th July 2025 and 21st July 2025, the Applicants did not raise any objection against the firm of advocates chosen under rule 208 of the PPAD Rules by the to the 2nd and 3rd Respondent's.
141. The Review Board afforded all the parties to the administrative review proceedings in review no. 78 of 2025 adequate opportunity to be heard through their respective advocates chosen by them pursuant to rule 208 of the PPAD Rules. The respective parties were equally afforded an opportunity to file their pleadings and written submissions through their respective advocates of choice.
142. The request for review was heard and determined within the statutory timelines of 21 days. The PPARB acted fairly and duly considered all respective submissions made on behalf of the parties to the request for review as can be readily gleaned from the decision.
143. The decision was arrived at after duly considering the relevant facts and the applicable law in the circumstances. The Ex Parte Applicants have not exhibited any Agreement for provision of legal services executed by and between the Ex Parte Applicants and the law firm of Sigano & Omollo LLP and/or Justus Omollo pursuant to section 45 of the *Advocates Act* which would otherwise preclude the said law firm and/or the advocate from representing the 2nd and 3rd Respondents in the request for review proceedings before the Review Board.
144. The objection of alleged conflict of interest raised by the Applicants for the first time in these judicial review proceedings is therefore an afterthought and does not constitute grounds for judicial review.
145. The Applicants have failed to demonstrate any breach of the *Public Procurement and Asset Disposal Act* or any regulations thereunder and hence are undeserving of the reliefs sought herein.
146. Judicial Review Orders sought herein by the Applicants are wholly discretionary and the circumstances and conduct of the Applicants herein do not justify the exercise of such discretion in favour of the Applicants.

The Interested Party's case;

147. It is its case that upon being shortlisted, by an email dated 5th June 2025 at 15.20hrs AGL received from the 3rd Respondent, the Kenya National Examination Council ("KNEC"), an invitation to bid for provision of end-to—end integrated logistics management services, (the Tender).
148. On 9th June 2025 at 12.09 hrs AGL was invited to a pre-bid meeting that was scheduled to be held on 10th June 2025 at 10,00a.m.
149. AGL attended the pre-bid meeting and was represented by 7 of its officials being: myself, Lennox Abondo, Robert Gichohi, James Wanjau, Yorick de Beauregard, Wairimu Kimani and Felix Bosire.
150. There were a substantial number of requests for clarifications both before and during the pre-bid meeting. As such KNEC provided detailed clarifications to the bidders as follows:
 - 9.1. The clarifications for the said tender were received as attachments by the email on 13th June 2025 at 20.11hrs (i.e., 01. Letter from DCM in response to the queries raised, 02. Detailed responses to all the queries raised, Annex III) detailing schedule of drop off points marked as An92.

A request was also made that in light of the additional information/clarifications provided by KNEC, given the numerous clarification requests by bidders, for extension of time for submission of bids from 10.00 am on 17th June 2025 to 20th June 2025.



This was declined by KNEC given its need to have a successful bidder on board by 1st July 2025, but a limited 5 working hours extension was granted i.e., the new submission deadline would be 4.00 pm on 17th June 2025, instead of 10.00 am. (See page 128 of the Exhibit CMI at Question 26 of the document titled Request for Clarification 01),

- 9.3. KNEC formally communicated this extension to both bidders by its addendum dated 13th June 2025 (the 'Addendum') (i.e., the attachment named 01 Letter from DCM in response to the queries raised) (Annexed at page 122-131 of the Exhibit CMI is the 3rd Respondent's email of 13th June 2025 as well as the Exhibits thereto).

At paragraph 2.0 of that letter, KNEC provided:

The clarifications provided will ensure that the shortlisted firms have the required information on the areas that KNEC has provided additional information.

However, the tender closing date remains 17th June 2025, but the times has been extended from 10.00 am to 4.00pm.

(See page 123 of the Exhibits CMI for the addendum dated 13th June 2025).

- 9.4. Another email received from KNEC on 14th June 2025 at 11.40 hrs detailed further clarifications (Annex V) - Service requirements Clarifications.

(Annexed at page 132-139 of the Exhibit CMI is the 3rd Respondent's email of 14th June 2025 as well as the Exhibits thereto.)

151. On 17th June 2025 at 7.11 hrs an email was sent by KNEC to both bidders inviting the bidders for the tender opening meeting with a detailed explanation of the venue, the time and the names of the coordinating staff from KNEC.
152. This email reiterated that the tender opening would be on 17th June 2025 at 4.00pm and was sent to the Applicant's email address info@fintechedme.co.ke and the Applicant admits to receiving it. (Annexed at page 140 of the Exhibit is the 3rd Respondent's email of 17th June 2025 with the Applicant's admission of it at paragraph 7 of Exhibit SW5D to Ms. Ngugi's Affidavit.
153. On 23rd June 2025 at 12.51 hrs KNEC attached a letter dated 20th June 2025 notifying AGL of KNEC's intention to award the contract to AGL ("the Notification").
154. A request for review dated 4th July 2025 was thereafter lodged with the Board challenging the Notification by KNEC of its intention to award the Tender to AGL. On 16th and 21st July 2025, the Board delivered its decision in on 25th July 2025.
155. This precipitated the filing of the instant judicial Review proceedings. Under section 167(1) of the PPADA, a tenderer is required to file a request for review within 14 days of the date of the alleged breach of duty by a procuring entity.
156. The extension of the submission deadline was communicated to AGL and the Applicants on 13th June 2025 by the Addendum sent by email of the same date. The extension was reiterated by email of 17th June 2025 and Ms. Ngugi has admitted to being aware of the extension of time on 17th June 2025.
157. It is its case that in the circumstances, the belated challenge to the extension of time, improperly introduced through Ms. Ngugi's Further Affidavit before the Board sworn on 18th July 2025, was hopelessly out of time, the statutory deadline having been 1st July 2025. The Boards findings on this issue are therefore unimpeachable.



158. The Applicants have equally belatedly put forward before this Court allegations that the Board disregarded a purported timely request for review filed on 1st July 2025 on the Applicants' behalf by the firm of Wanza Kivindu & Company Advocates and later withdrawn.
159. They now aver that their advocates before the Board, SMK Advocates LLP, KNEC's advocates before the Board, Sigano & Omollo LLP, and the firm of Wanza Kivindu & Company Advocates had a conflict of interest and colluded to prevent the Applicants from filing a timely challenge to the extension.
160. These matters averred to in paragraph 18 of Ms. Ngugi's Affidavit are entirely new issues which were not placed before the Board and were neither pleaded nor proved in the Board proceedings and cannot be considered by this Honorable Court.
161. It argues that Ms. Ngugi had ample opportunity to present these facts to the Board but chose not to do so:
- 25.1. The facts deponed to in the said paragraph 18 of Ms. Ngugi's Affidavit surrounding the purported timely request for review filed on 1st July 2025 and later withdrawn are alleged to have occurred between 1st and 2nd July 2025. She was well aware of these facts at the time she swore the Supporting Affidavit in support of the Request for Review dated 4th July 2025 but chose not to place them before the Board for determination.
 - 25.2. She swore on oath that she learnt upon service to KNEC that Sigano & Omollo LLP were acting for KNEC. Service was undertaken prior to the first hearing date before the Board on 16th June 2025.
 - 25.3. She thereafter had ample opportunity in the Further Affidavit sworn on 18th June 2025 to place all the facts before the Board but once again failed to do so.
162. The Board should not be faulted for disregarding material which the Applicants failed to plead and adduce evidence in support during the Board Proceedings. This Honourable Court nor the Board are the proper forums to determine disputes between advocates and the clients concerning alleged professional misconduct and conflict of interest.
163. The Applicants ought to seek redress under the appropriate statutory mechanisms and remedies available under the *Advocates Act*.
164. On the question of whether the Board erred in finding that KNEC's extension of the bid submission deadline was lawful, the Applicants appear to found this on the allegations that (i) the addendum communicating the extension was not communicated to it; and (ii) the addendum was time barred.
165. The extension was communicated through the addendum dated 13th June 2025 and sent to the Applicants by their designated email address: info@fintechedge.co.ke and reiterated in the email of 17th June 2025 as deponed in paragraphs 9-11 hereinabove.

The Interested Party's Written Submissions;

166. It is submitted that upon being shortlisted, by an email dated 5th June 2025 from the 3rd Respondent procuring entity ("KNEC"), AGL was invited to bid for provision of end-to-end integrated logistics management services during administration of examinations ("the Tender).



167. The bid documents stipulated, inter alia, that the deadline for submissions was at 10.00 am on 17th June 2025. 4.4. There were a substantial number of requests for clarifications both before and during the pre-bid meeting of 10th June 2025, with responses provided by KNEC to both bidders.
168. A request was also made that in light of the additional information/clarifications provided by KNEC, given the numerous clarification requests by bidders, for extension of time for submission of bids from 10.00 am on 17th June 2025 to 20th June 2025.
169. This was declined by KNEC given its need to have a successful bidder on board by 1st July 2025, but a limited 5 working hours extension was granted to the effect that the new submission deadline would be 4.00 pm on 17th June 2025, instead of 10.00 am.
170. KNEC formally communicated this extension to both bidders by its addendum dated 13th June 2025 (the “Addendum”) (i.e., the attachment named 01. Letter from DCM in response to the queries raised). At paragraph 2.0 of that letter, KNEC provided:
- “The clarifications provided will ensure that the shortlisted firms have the required information on the areas that KNEC has provided additional information. However, the tender closing date remains 17th June 2025, but the times has been extended from 10.00 am to 4.00pm. All other details remain as per the principal tender documents.” (emphasis supplied).
171. On 17th June 2025 at 7.11hrs an email was sent by KNEC to both bidders reiterating the extension of time and stating that tender opening would be on 17th June 2025 at 4.00pm. It was sent to the Applicant’s email address info@fintechedge.co.ke and the Applicant admits to receiving it.
172. The tenders were opened by KNEC at 4.00 pm. By a letter dated 23rd June 2025 at 12.51 hrs KNEC attached a letter dated 20th June 2025 notifying AGL of KNEC’s intention to award the contract to AGL (“the Notification”).
173. On 4th July 2025, the Applicants lodged a request for review challenging the Notification by KNEC to AGL. on 16th and 21st July 2025, the Board issued the Review Decision dismissing the Applicant’s Request for Review and directing KNEC to proceed with the Tender process. Ostensibly aggrieved, the Applicants have lodged these Judicial Review proceedings (“the JR Proceedings”).
174. The thrust of the Applicants case is predicated on the following three heads which we respond to in turn: the Applicants’ case seems to be to invite this Honourable Court to sit on appeal of the Board’s decision. The Applicants wish to turn this Judicial Review Court into a trial court contrary to established legal principles governing this Court’s standard of review in judicial review.
175. They submit that this court must sit on appeal from the Board’s decision. Reliance is placed in the case of *Republic v Public Procurement Administrative Review Board; Galana Oil Kenya Limited & 2 others (Interested Parties); Rubis Energy Kenya PLC (Exparte Applicant) (Judicial Review Miscellaneous Application E016 of 2023) [2023] KEHC 3703 (KLR) (Judicial Review) (14 April 2023) (Judgment)* where the Court held that; “where an Applicant has not satisfied the court that the Board’s decision was ultra vires, un-procedural, unlawful, illegal, breached rules of natural justice, or marred with procedural impropriety, this court is unable to issue judicial review orders.”



176. The Court of Appeal in *Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & 23 others* (Civil Appeal E169 of 2023) [2023] KECA 1457 (KLR) (27 November 2023) (Judgment) further emphasised:

“It is clear that the intention of the enactment of the *Fair Administrative Action Act* was neither to transform judicial review into full-fledged inquiry into the merits of a matter nor to convert a judicial review court into an appellate court.”

177. It submits that this Court ought not to be persuaded to delve into rehearing the dispute that was placed before the Board, nor to disturb the well-founded findings of fact and legal conclusions reached by the Board.

178. Section 167(1) of the PPADA requires a tenderer to file a request for review within 14 days of the date of the alleged breach of duty by a procuring entity.

179. The extension of the bid submission deadline was communicated to AGL and the Applicants on 13th June 2025 by the Addendum sent by email of the same date. The extension was reiterated by email of 17th June 2025 and Ms. Ngugi has admitted to being aware of the extension of time on 17th June 2025. The Board's findings on this issue are therefore unimpeachable.

180. In *Republic v Public Procurement Administrative Review Board & Another ex parte Sports, Arts and Social Development Fund; Accounting Officer, Sports, Arts and Social Development Fund and Another* [2021] eKLR where the Applicant alleged a breach at the technical review stage but waited until the award had been made to seek for review, the Board was correct to uphold the argument that the Applicant ought to have filed its application for review within 14 days of the breach.”

181. It also relies The Court of Appeal expressly upheld this decision in *Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & 23 others* (Civil Appeal E169 of 2023) [2023] KECA 1457 (KLR) (27 November 2023) (Judgment) where the Court went further to state:

“[...] Parliament deliberately set out to demarcate the three stages at which Request for Review may be made. To our mind, that deliberate demarcation was meant to ensure that, for example, complaints in the procurement process are resolved as soon as they arise so that a party ought not to wait till the end of the process to lodge a complaint [...] All these allegations [...] allegedly occurred before the award was made in the subject tender, and before a notification of intention to enter into a contract was made by the 2nd and 3rd Respondents. They were matters which were well within the appellant's knowledge. In the circumstances, the appellant ought to have lodged its application for review on the allegations raised in those paragraphs, by virtue of regulation 203(2) (c) (i) of the Regulations, within 14 days of the occurrence of the respective breaches complained of. [...] having failed to do so, the 1st Respondent cannot be faulted for reaching the decision that the Request for Review arising from the alleged breaches was out of time.”

182. In these JR Proceedings, the Applicants seek to excuse their failure to lodge a timely application for review on the conduct of various advocates who they purport to have instructed at various times.

183. They allege that the Board disregarded a purported timely request for review filed on 1st July 2025 on the Applicants' behalf by the firm of Wanza Kivindu & Company Advocates and later withdrawn.



184. They now aver that their advocates before the Board, i.e., SMK Advocates LLP, KNEC’s advocates before the Board, i.e., Sigano & Omollo LLP, and the firm of Wanza Kivindu & Company Advocates had a conflict of interest and colluded to prevent the Applicants from filing a timely challenge to the extension of time.
185. They submit that these matters, which are averred to in paragraph 18 of Ms. Ngugi’s Affidavit, are entirely new issues which were not placed before the Board and were neither pleaded nor proved in the Board proceedings.
186. It is trite law that this Court’s judicial review powers do not extend to new issues that were not raised before the Board see *Republic v Public Procurement Regulatory Authority & another; Auto Terminal Japan Limited (Exparte Applicant); Auditor General & another (Interested Parties) (Judicial Review 55 of 2022) [2022] KEHC 10782 (KLR) (Judicial Review) (27 May 2022) (Judgment)*:
- “This court’s powers under judicial review does not extend to new issues that were not raised before a tribunal or an administrative body. The jurisdiction is limited to calling for the record of the tribunal or administrative body and scrutinize if the decision made meets the criteria set in law both under the *constitution* and statute.”
187. The Court of Appeal affirmed this in *Vickers Security Services Limited v Public Procurement Administrative Review Board & 3 others [2025] KECA 671 (KLR)* where it emphasised the importance of pleadings in proceedings before the Board just as they are in court proceedings. The Board is bound by the pleadings before it by giving fair notice of the case to all parties to enable them respond to the case as disclosed. The Board was therefore was right in reaching the Review Decision based on the pleadings, complaints and issues raised before it by the parties in keeping with the right to fair hearing and rules of natural justice.
188. The Applicants omission in pleading this issue before the Board is exacerbated by the fact that the Applicant had ample opportunity to present the facts purportedly explaining its failure to file a timely review application against the extension but chose not to do so:
- 19.1. The facts deponed to in paragraph 18 of Ms. Ngugi’s Affidavit surrounding the purported timely request for review filed on 1st July 2025 and later withdrawn are alleged to have occurred between 1st and 2nd July 2025. She was well aware of these facts at the time she swore the Supporting Affidavit in support of the Request for Review to the Board dated 4th July 2025 but chose not to place them before the Board for determination.
- 19.2. She swore on oath in her supporting affidavit before this Court that she learnt upon service to KNEC that Sigano & Omollo LLP were acting for KNEC. Service was undertaken prior to the first hearing date before the Board on 16th June 2025.
- 19.3. She thereafter had ample opportunity in her Further Affidavit before the Board of 18th June 2025 to place all the facts before it but once again failed to do so.
189. It is its submission that in the circumstances, the Board cannot not be faulted for disregarding material which the Applicants failed to plead and adduce evidence in support during the Board Proceedings. It is the duty of a litigant to constantly check with their advocate the progress of their case. It invites this Court to apply the equitable principles “equity aids the vigilant not the indolent”.
190. The Applicants cannot claim ignorance of the law as they are well aware, as longstanding participants in public procurement processes, the strict timelines for lodging requests for review and their



- determination under the PPADA. As such, the Applicants ought to suffer the consequences of their delays.
191. Reliance is placed in the Court of Appeal in *Mukangu v Mukangu* [2025] KECA 1352 (KLR) where it was held that the timelines appointed for the doing of certain things and taking of certain steps are indispensable to the proper adjudication of the appeals that come before it. This is moreso in public procurement cases, where the Court of Appeal has held in *Aprim Consultants v Parliamentary Service Commission & another* (Civil Appeal E039 of 2021) [2021] KECA 1090 (KLR) (8 October 2021) (Judgment) and *Joint Venture of Lex Oilfield Solutions Ltd & CFAO Kenya Ltd v Public Procurement Administrative Review Board & 4 others* (Civil Appeal 022 of 2022) [2022] KECA 424 (KLR) (4 March 2022) (Judgment) that the strict time frames under public procurement law underscore the intention of Parliament to ensure that disputes relating to public procurement are disposed of expeditiously.
 192. On the issue of counsel's conduct, it is submitted that the Applicants ought to seek redress under the appropriate statutory mechanisms and remedies available under the *Advocates Act*.
 193. Reliance is placed in the case of *Republic v Advocates' Disciplinary Committee Interested Party Daniel Mutisya Ngala Ex-Parte Danstan Omari Mogaka*[2015] KEHC 8347 (KLR) where this Honourable Court held that the onus of determining whether an act of professional misconduct has been undertaken belongs to the Disciplinary Tribunal and it would amount to usurpation of that mandate were the court to decide the same. This Court's judicial review jurisdiction over acts of professional misconduct only arises once the Disciplinary Tribunal has made a finding and an appropriate challenge from that finding made to this Court.
 194. SMK Advocates LLP, Sigano & Omollo LLP, and Wanza Kivindu & Company Advocates are not parties to this suit and do not have the opportunity to argue their cases and put forward facts and evidence in rebuttal to allow this Court to undertake a full trial and determine whether the allegations are well founded or not.
 195. On the question of whether the Board erred in finding that KNEC's extension of the bid submission deadline was lawful, the Applicants appear to found this on the allegations that (i) the addendum was time barred; and (ii) the addendum communicating the extension was not communicated to it.
 196. The first issue on the addendum purportedly being time barred is new issue which was neither placed before the Board for determination nor has been argued with any level of detail before this Court. *Republic v Public Procurement Regulatory Authority & another; Auto Terminal Japan Limited* (Exparte Applicant); *Auditor General & another* (Interested Parties) (Judicial Review 55 of 2022) [2022] KEHC 10782 (KLR) (Judicial Review) (27 May 2022) (Judgment).
 197. On another issue of the extension of time to submit bids, it is submitted that this was communicated through the addendum dated 13th June 2025 and sent to the Applicants by their designated email address: info@fintechedge.co.ke and reiterated in the email of 17th June 2025 to the very same email info@fintechedge.co.ke.
 198. Section 75(1) of the PPADA requires that: (i) such an extension of time is made at any time before the deadline for submitting tenders; (ii) the addendum does not materially alter the substance of the original tender; (iii) a copy is provided to each person to whom the procuring entity provided copies of the tender documents; (iv) the addendum shall be deemed to be part of the tender documents; and (v) an extension of time to submit the tender proposals is granted if the tender is amended at a late stage. All these conditions are satisfied here and there is no credible suggestion made otherwise by the Applicants.



199. It is further submitted that the Tender itself permitted such extension. Instructions to Tender (ITT) 9.3 and 23.2:

“9.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 8.4.

9.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 23.2.” [...]

“23.2. The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadlines shall thereafter be subject to the deadline as extended.”

200. The letter dated 13th June 2025 was a lawful amendment pursuant to Section 75 of the Act can be seen from its contents. It expressly states at paragraph 2.0 thereof that “all other details remain as per the principal tender.”

201. It is its submission that, no nexus for irrationality, illegality or impropriety can be attributed to the decision to extend time for submitting bids and the Applicants claims on this issue should fail.

202. The Applicant has failed to specifically plead and prove any violations of the constitution, the law or the Tender in the manner in which the Board dealt with the issues on the technical evaluation of the bid. The Applicant only make generalised allegations that information provided by it was disregarded by the Board and additional requirement not provided for in law or the Tender were imposed without specifying which such information was ignored or which additional requirements were imposed.

203. In Republic v Public Procurement Administrative Review Board & another; Celmel Insurance Agency (Exparte Applicant) (Judicial Review Application E096 of 2023) [2023] KEHC 23662 (KLR) (Judicial Review) (12 October 2023) (Judgment):

“The Applicant must demonstrate through evidence that the 1st Respondent violated the concerned rights or that the tendering process offended the law. I find that the Ex parte Applicant has not fulfilled nor met the foregoing minimum standards that would qualify for a merit analysis and I so hold.”

204. In this case, the Board took an in depth consideration of the information provided by the Applicant in support of its technical qualifications for the Tender at paragraphs 130 – 148 of the Review Decision



and made its factual findings on the issues. Specifically, at paragraph 139-140 of the Review Decision, after analysing the documents provided by the Applicants, the Board held:

“ 139. The Board notes that the applicable evaluation criteria required bidders to submit three past or current contracts, each with a contract sum of not less than KES 20 million, supported by certified copies of contracts or LPOs issued within the last five years, as well as recommendation letters from the respective clients addressed to the 1st Respondent. Upon review, the Board observes that the Applicant did not strictly comply with this requirement, as it only submitted recommendation letters without attaching the requisite certified contracts or LPOs.

140. The Board further observes that the Applicant submitted documents belonging to Benir Global Limited, a subcontractor that was not a party to the Joint Venture. Accordingly, such documents could not be considered in evaluating the Applicant’s compliance with the tender requirements.”

205. As held in, inter alia, the Court of Appeal decision of *Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others*, (2016) KLR: this Court ought to restrain itself from usurping and interfering with the matters entrusted to the Board and cannot substitute its decision or preferred outcome with that of the Board. In any event, no basis whatsoever has been laid for this Court to interfere with the Board’s findings and substitute its own decision for that reached by the Board.

206. It is submitted that no nexus for irrationality, illegality or impropriety can be attributed to the Board’s decision to warrant interference by this Court. We therefore urge this Honourable Court to dismiss the Applicant’s challenge on this issue and uphold the Board’s Review Decision.

Analysis and Determination;

207. Upon perusing the application, the responses by the various parties in opposition to the application, the following issues call for analysis and determination;

1. Whether or not preliminary objection should be upheld or not.
2. Whether the conduct of counsel for the 2nd and 3rd Respondent has any impact on the suit.
3. Whether or not application has merit.
4. Who should bear the costs.

Whether, the Notice of Preliminary Objection has merit:

208. In responding to the application, the 2nd and 3rd Respondents filed a replying Affidavit as well as raised objections on points of law to the effect that;

- a. The judicial review Application herein which primarily challenges the decision of the 1st Respondent dated and delivered on 25th July 2025 is hopelessly incompetent and bad in law as the 1st Respondent, being an unincorporated Board established under section 27(1) of the *Public Procurement and Asset Disposal Act*, lacks legal capacity to be sued in its own name.
- b. The Ex Parte Applicants have neither pleaded nor shown themselves as “persons aggrieved” within the meaning of section 175(1) of the *Public Procurement and Asset Disposal Act* hence the Ex Parte Applicants lack locus standi to institute and continue the instant Judicial Review



Application as held by the Court of Appeal in the case of Kenya Ports Authority & another v Rhombus Construction Company Limited & 2 others[2021] KECA 438 (KLR).

- c. The Ex Parte Applicants' Application which is principally anchored on the alleged impugned (mis)conduct of the Advocate on record for the 2nd and 3rd Respondents offends the doctrine of exhaustion under section 9(2) of the Fair Administrative Action Act because the Applicants have not exhausted the remedies available outside of this Court under the Advocates Act and the Code of Standards of Professional Practice and Ethical Conduct.
 - d. The Honourable Court lacks jurisdiction to take cognizance of, hear and determine the Ex Parte Applicants' Application herein.
209. In determining the Notice of Preliminary Objection, this court is guided by the principles that were enunciated in the case of Mukisa Biscuits Manufacturing Co. Ltd –vs- West End Distributors Ltd. [1969] E.A. 696, where it was cited with approval in the case of Bamato Distributors Limited v Mohamed Ali(Environment & Land Case E003 of 2022) [2022] KEELC 15456 (KLR) (9 December 2022) (Ruling) where Lord Charles Newbold P. held that a proper Preliminary Objection constitutes a pure point of law. The Learned Judge then held that: -
- “The first matter related to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A Preliminary Objection is in the nature of what used to be a demurer 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 in the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop” [Emphasis supplied.]
210. The first ground of the Notice of Preliminary Objection is that the 1st Respondent, being an unincorporated Board established under Section 27(1) of the Public Procurement and Asset Disposal Act, lacks legal capacity to be sued in its own name.
 211. It is this court's finding that the Public Procurement Administrative Review Board (PPARB) can be sued in procurement disputes through a judicial review process in the High Court and not a typical civil lawsuit to challenge its decision.
 212. Parties dissatisfied with the Board's decision can apply for orders of certiorari, mandamus or prohibition or lodge an Appeal if they believe the Board acted unfairly or unlawfully.
 213. The board is the custodian of all the records that form substratum of the proceedings that culminate in the impugned ruling. To hold that the 1st Respondent cannot be sued would amount to a violation of the right to access to redress of parties who are dissatisfied with the board's ruling.
 214. In judicial review proceedings it is only the board that can inform or explain to this court what it did in terms of procedure, administrative action and how it arrived at its decision. This limb of the Notice of Preliminary objection in the circumstances fails and the same is disallowed.
 215. On the second ground being whether the conduct of counsel for the 2nd and 3rd Respondent has any impact on the suit.
 216. The court notes from the get go that, no order has been sought by the Applicants to bar the 2nd and 3rd respondent's Advocates from representing the respondents.



217. The Court of Appeal in *Rakusen vs. Ellis Munday and Clarke* (1912) 1 Ch. 831 (1911 -1913) ALL ER Rep 813...Cozens-Hardy MR laid down the test as being that “court must be satisfied that real mischief and real prejudice will, in all human probability, result if the solicitor is allowed to act.....As a general rule, the court will not interfere unless there be a case where mischief is rightly anticipated.”

218. In *William Audi Odode & Another-vs- John Yier & Another*, Court of Appeal Civil Application No. NAI 360 of 2004 (KSM33/04) while declining to bar an advocate from acting for some of the parties in the matter, the court held as follows;

[I must state on (sic) the outset that it is not the business of the courts to tell litigants which advocate should and should not act in a particular matter. Indeed, each party to a litigation has the right to choose his or her own advocate and unless it is shown to a court of law that the interests of justice would not be served if a particular advocate were allowed to act in the matter, the parties must be allowed to choose their own counsel.]

The right to legal representation by counsel of one’s choice in civil matters is implicit in the constitutional provisions with regard to access to justice, particularly Articles 48, 50 (1) and 159(2) (a) of the constitution, and it is only in exceptional circumstances that this right should be taken away’

219. This court cannot determine whether or not the Applicants have been affected by the conduct of counsel for the 2nd and 3rd respondents, unless the court delves into an analysis that would help ascertain whether the applicants have suffered prejudice as a result of the abuse and misuse of the information by counsel with the intention of gaining an unfair advantage over the Applicants. Judicial review proceedings do not go into the merits of the issues or the case.

220. This court cannot dictate, nor get into an analysis of the conduct or omissions on the part of an advocate in matters before it devoid of any reliefs against counsel. To do so would amount to the usurpation of the powers of the advocates a disciplinary Tribunal and the breach of the doctrine of exhaustion.

221. Challenges against counsel like the one mounted by the Applicants in this suit without any attendant prayers against counsel do not fall within the remit the Judicial Review court or any court. This limb of the Notice of preliminary Objection fails.

222. In the Notice of Preliminary Objection, the 2nd and 3rd Respondents have also raised a ground that the Honourable Court lacks jurisdiction to take cognizance of, hear and determine the Ex Parte Applicants’ Application herein.

223. The case of *The Owners of Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited* (1989) KLR, where the Court of Appeal at Mombasa stated:

“ Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“ By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited.”



224. The Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR 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 respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

225. Upon looking at the nature of the issues raised and the reliefs sought by the Applicants, it is this court's finding and I so hold that this court has the requisite jurisdiction to determine this suit under Article 165 of the constitution, Section 9 of The Fair administrative Action Act as read alongside Order 53 of The Civil Procedure Rules. This ground fails.

Having determined the first two issues hereinabove this court now proceeds to determine whether the application has merit.

226. In order to determine this issue the court is guided by the principles that have been enunciated in the case of Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300, where it was held that:

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.



227. In analyzing this issue the court is guided by Article 227 of the *constitution* which requires procurement to be fair, equitable, transparent and competitive. It is not in dispute that the submission deadline was scheduled for 19th March 2025 at 10.00am.
228. The initial deadline for submission of proposals as stipulated in the original Request for Proposal document was 17th June 2025 at 10:00am.
229. In exercise of the mandate under section 75 of the *Public Procurement and Asset Disposal Act*, the procuring entity issued an addendum dated 13th June 2025 in response to inquiries made by the candidates.
230. In compliance with section 75(3) of the *Public Procurement and Asset Disposal Act*, the procuring entity communicated via email to all the shortlisted candidates the an addendum dated 13th June 2025 together with the forwarding letter dated 13^h June 2025.
231. The addendum and forwarding letter were dispatched to the shortlisted candidates on 13th June 2025 at 8:11pm at their respective email addresses specified below:
- a) The Applicants: infothe@fintechedge.co.ke.
232. The addendum dated 13th June 2025 together with the forwarding letter reference number KNEC/RFP/2024-2025/01 dated 13th June 2025 as well as the proof of dispatch by email was sent on 13th June 2025 at 8:11pm.
233. The procuring entity further reminded the shortlisted bidders on the specified time for tender opening through the email dispatched on 17th June 2025 at 7:10am.
234. The Applicants acknowledged receipt of the reminder email at paragraph 8 of the Supporting Affidavit of Susan Wangui Ngugi sworn on 3rd July 2025 and lodged before the 1st Respondent. The reminder email sent by the procuring entity.
235. Section 75(1) of the PPADA requires that: (i) such an extension of time is made at any time before the deadline for submitting tenders; (ii) the addendum does not materially alter the substance of the original tender; (iii) a copy is provided to each person to whom the procuring entity provided copies of the tender documents; (iv) the addendum shall be deemed to be part of the tender documents; and (v) an extension of time to submit the tender proposals is granted if the tender is amended at a late stage. All these conditions are satisfied here and there is no credible suggestion made otherwise by the Applicants.
236. The Tender itself permitted such extension. Instructions to Tender (ITT) 9.3 and 23.2:
- “9.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity’s webpage in accordance with ITT 8.4.
- 9.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend,



as necessary, the deadline for submission of Tenders, in accordance with ITT 23.2.” [...]

“ 323.2. The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadlines shall thereafter be subject to the deadline as extended.”

237. It is this court’s finding that the Applicants have not proven that The procuring entity altered the time for tender opening irregularly.
238. The procuring entity did not contravene section 70(6)(f) nor Section 78(3) of the *Public Procurement and Asset Disposal Act* as alleged by the Applicants or at all. This issue has not been proven.
239. On another front, the court has also applied its mind and analysed the issue of the criteria used by the board in awarding the tender.
240. In determining this question, this court cautions itself that it must carry out a merit analysis that will ultimately interfere with the discretion of the board. To do so would mean that the court is presiding over this matter on appeal. The court lacks the justification to do that.
241. From the proceedings and the impugned decision of the board it is clear that the Board took an in depth appreciation of the information provided by the Applicants in support of its technical qualifications for the Tender at paragraphs 130 – 148 of the Review Decision and before arriving at its factual findings on the issues.
242. In exercising its discretion, the Board held:

“ 139. The Board notes that the applicable evaluation criteria required bidders to submit three past or current contracts, each with a contract sum of not less than KES 20 million, supported by certified copies of contracts or LPOs issued within the last five years, as well as recommendation letters from the respective clients addressed to the 1st Respondent. Upon review, the Board observes that the Applicant did not strictly comply with this requirement, as it only submitted recommendation letters without attaching the requisite certified contracts or LPOs.

140. The Board further observes that the Applicant submitted documents belonging to Benir Global Limited, a subcontractor that was not a party to the Joint Venture. Accordingly, such documents could not be considered in evaluating the Applicant’s compliance with the tender requirements.”

243. Section 80(2) of the Public Procurement and Assets Disposal Act, 2015 provides that:

“The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”



244. From the foregoing, this court is satisfied that the board exercised its decision in determining whether the Procuring Entity properly evaluated the Applicant’s tender in accordance with Section 80 of the *Public Procurement and Asset Disposal Act* and the provisions of the Tender Document.
- 2445 The 1st Respondent observed that the Applicant had submitted documents belonging to an Entity that was not part of the joint venture. This led to the Applicant’s disqualification, which the Board found to be consistent with the evaluation criteria set out in the Tender Document.
246. The court finds that the Applicant has not proven that the 1st Respondent acted ultravires, illegally and or uprocedurally as to warrant the granting of the orders sought and I so hold.
- The final limb that this court looks at is whether the issues raised by the Applicants were time-barred under the statutory 14-day limit.
247. The Applicants argued that their advocates before the Board, SMK Advocates LLP, KNEC's, Sigano & Omollo LLP, and the firm of Wanza Kivindu & Company Advocates had a conflict of interest and that they colluded to prevent the Applicants from filing a timely challenge to the extension.
248. These matters were not were neither pleaded nor proved in the Board proceedings and cannot be considered by this Honorable Court. The challenges based on issues raised outside the statutory 14-day window are impermissible.
249. In any event, Section 167(1) stipulates that a review must be sought within fourteen days of notification of an award or the breach complained of. The alleged breaches and in particular the alteration of opening time and evaluation details occurred in mid-June 2025. The Applicants did not file their Request for Review until 4th July 2025 – well beyond 14 days of the award or the putative breach.
250. In its decision, the Board correctly ruled that the Applicants’ complaint about the “irregularities in the extension of the tender submission deadline” was time-barred, since it was “raised outside the fourteen-day statutory period prescribed under Section 167 of the Act”.
251. This court finds that the Board acted legally in dismissing the request for review given that it was not filed within 14 days of notification of award. No procedural irregularity has been established by the Applicants.
252. In the case of *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* (2020) KLR The Supreme Court held as follows: “(49)[49] Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
253. In concluding the analysis it is this court’s finding that the decision was not unreasonable, ultra vires, unlawful, misconceived, erroneous, irrational, nor illogical, contrary to the allegations made by the Applicants.

The issue of costs;

254. The Applicants also sought for an order of costs. No doubt there was an expectation that should it succeed then it would be entitled to costs.



255. In Halsbury's Laws of England, 4th ed Re-Issue (2010), Vol. 10, para. 16:

“The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice” [emphasis supplied].

256. In *Joseph Oduor Anode v. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

“...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ...” [emphasis supplied].

257. The *Civil Procedure Act* (Cap. 21, Laws of Kenya), the primary law of judicial procedure in civil matters, thus stipulates (Section 27(1)):

“Subject to such conditions and limitations’ as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order” [emphases supplied].

Disposition;

258. In this case, the Applicants have not proven that the Respondents acted illegally, unprocedurally or with any impropriety as to warrant the grant of the reliefs sought.

259. The Exparte Applicants have failed to prove that their case and I so hold.

260. The 2nd and 3rd Respondents Notice of Preliminary Objection is lacks merit.

Order;

261.

1. The Notice of Preliminary Objection is dismissed.
2. The suit is dismissed with costs to the interested party.



DATED, SIGNED AND DELIVERED AT NAIROBI VIA CTS THIS 10TH DAY OF SEPTEMBER 2025.

.....

J. CHIGITI (SC)

JUDGE

