



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 60 OF 2020**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**PUBLIC PROCUREMENT**

**ADMINISTRATIVE REVIEW BOARD.....1<sup>ST</sup> RESPONDENT**

**ACCOUNTING OFFICER,**

**KENYA BUREAU OF STANDARDS.....2<sup>ND</sup> RESPONDENT**

**AND**

**PREMIER VERIFICATION QUALITY SERVICES**

**PVQS) LIMITED.....PROPOSED INTERESTED PARTY/APPLICANT**

**EX PARTE APPLICANT:**

**TUV AUSTRIA TURK**

**RULING**

1. When this matter was last mentioned before Hon. Mr. Justice Mativo on 9<sup>th</sup> March 2020, the learned Judge gave directions as to filing of pleadings and submissions on the Proposed Interested Party’s Notice of Motion dated 20<sup>th</sup> March 2020, in which it is seeking orders to be joined in this suit as an Interested Party. The Proposed Interested Party has since filed submissions dated 15<sup>th</sup> April 2020 on the said Notice of Motion.

2. The Proposed Interested Party’s application is supported by an affidavit sworn on 20<sup>th</sup> March 2020 by its Director, Abdiwali Ali Mohamed. The main ground for the Proposed Interested Party’s application is that it was the successful bidder in the tender that is the subject of these proceedings, and a party in the subsequent procurement proceedings before the 1<sup>st</sup> Respondent namely PPARB Application No. 14 of 2020, in which a decision as given in its favour. Consequently, that it is a directly affected party entitled to be joined under Order 53 Rules 3(2) and 4(4) of the Civil Procedure Rules, failure to which it will be prejudiced without being heard.

3. The Proposed Interested Party has provided evidence that it participated in the subject tender, and that this fact was acknowledged by the *ex parte* Applicant and Respondent in the pleadings the said parties filed in Public Procurement Administrative Review Board in Application No. 14 of 2020. In addition, I also note that its Notice of Motion and averments therein are not opposed by the *ex parte* Applicant or Respondents. I accordingly find that to the extent that the Proposed Interested Party has an interest in the subject tender that is the subject matter of the proceedings herein, it will be directly affected by the proceedings herein. It is therefore a necessary party in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules.

4. In the circumstances, I hereby direct and order as follows:

I. Premier Verification Quality Services (PVQS) Limited be and is hereby joined to this suit as an Interested Party.

II. The *ex parte* Applicant shall serve the Interested Party with the substantive Notice of Motion dated 12<sup>th</sup> March 2020, and the Chamber Summons dated 2<sup>nd</sup> March 2020 within fourteen (14) days of service of service of this ruling.

III. Upon being served with the said pleadings, the Interested Party shall be required to file its response to the substantive Notice of Motion within fourteen (14) days from the date of service.

IV. The costs of the Interested Party's Notice of Motion dated 20<sup>th</sup> March 2020 shall be in the cause.

V. This suit shall be mentioned on 17<sup>th</sup> June 2020 before Hon Justice Mativo for further directions.

VI. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and written submissions filed by the parties.

VII. The parties shall file their pleadings, applications and written submissions electronically by sending them to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com), and shall avail electronic copies thereof in word format.

VIII. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the name of the Party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

IX. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

X. The parties shall also be required to send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions and the extracted orders to the Interested Party by electronic mail by close of business on Thursday, 21<sup>st</sup> May 2020.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 17<sup>th</sup> June 2020 and bring it to the attention of Hon. Mr. Justice Mativo on that date for directions.

XIII. The Interested Party shall serve the *ex parte* Applicant and Respondents with a copy of this ruling and a mention notice within fourteen (14) days from today's date.

XIV. Parties shall be at liberty to apply.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF MAY 2020

P. NYAMWEYA

JUDGE