



Mulaa v Kenya Pipeline Company Limited & 2 others; Director General Public Procurement Regulatory Authority & another (Interested Parties) (Petition E194 of 2025) [2025] KEHC 16535 (KLR) (Constitutional and Human Rights) (13 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E194 OF 2025
LN MUGAMBI, J
NOVEMBER 13, 2025**

BETWEEN

FREDRICK MULAA PETITIONER

AND

KENYA PIPELINE COMPANY LIMITED 1ST RESPONDENT

CHAIRPERSON OF THE BOARD KENYA PIPELINE COMPANY LIMITED 2ND RESPONDENT

BOARD MEMBERS KENYA PIPELINE COMPANY LIMITED 3RD RESPONDENT

AND

DIRECTOR GENERAL PUBLIC PROCUREMENT REGULATORY AUTHORITY INTERESTED PARTY

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD INTERESTED PARTY

RULING

1. The Petitioner in the Petition dated 9th April 2025, challenges the 1st Respondent’s procurement process in relation to Tender No. KPC/PU/OT-163/PROJ-ECTS/NBI/24-25, which was advertised on 11th March 2023. The same relates to engineering, procurement and construction of tanks and inter-tanks flow rate enhancement for Western Kenya Depots. Fundamentally, the Petitioner asserts that the process did not adhere to the constitutional principles of fairness, transparency, competitiveness, cost effectiveness and was also not equitable. Considering this, the Petitioner seeks the following reliefs:



- i. A declaration that tender KPC/PU/OT-163/PROJ-ECTS/NBI/24-25 which is for Engineering, Procurement and Construction of Tanks and Inter-Tanks Flow Rate Enhancement for Western Kenya Depots is unconstitutional and contrary to Articles 10, 27 and 227 of *the Constitution*.
 - ii. An order of certiorari to quash tender KPC/PU/OT-163/PROJ-ECTS/NBI/24-25 which is for Engineering, Procurement and Construction of Tanks and Inter-Tanks Flow Rate Enhancement for Western Kenya Depots is unconstitutional.
 - iii. An order of mandamus to compel the 1st Respondent to re-advertise tender KPC/PU/OT-163/PROJ-ECTS/NBI/24-25 with strict adherence to *the Constitution* and the Public Procurement & Asset Disposal Act and more specifically to allow Foreign tenderers and Joint Ventures to participate in the tender.
 - iv. Any other further relief that this Court shall deem fit to grant.
2. The 1st Respondent in rejoinder filed a Notice of Preliminary Objection dated 25th April 2025 which is the subject of this brief. The 1st Respondent opposes the Petition on the basis that:
- i. The Jurisdiction of this Court has been wrongly and prematurely invoked in relation to the issues for which specific and exclusive avenues/mechanisms have been established and in particular that:
 - ii. The issues raised in the Petition and Application, being the restriction of participation in the tender to citizen contractors and the barring of Joint Ventures' participation in the tender, fall within the mandate of the Public Procurement Administrative Review Board pursuant to Sections 28 and 167 of the *Public Procurement and Asset Disposal Act*.
 - iii. As confirmed by the Petitioner, the matter is currently under review and investigation by the Public Procurement Regulatory Authority, under Sections 9 and 35 of *Public Procurement and Asset Disposal Act* and the suit is therefore not only premature but also offensive to the spirit of the implementation of the Act.
 - iv. The Petitioner has ignored, circumvented and/or failed to pursue and exhaust alternative dispute resolution mechanisms provided for grievances over tender processes and/or disputes relating to public procurement as prescribed under the *Public Procurement and Asset Disposal Act*.
 - v. The Petition and Application offend the Doctrine of Exhaustion of Alternative Remedies and Constitutional Avoidance.
 - vi. The Petitioner's claim against the Respondent offends the provisions of Section 167 and 170 of the *Public Procurement and Asset Disposal Act* as read with Regulation 203 (2) (c) of the Public Procurement and Asset Disposal Regulations for being time and statute-barred as it was filed outside of the 14 days provided for.
 - vii. In the circumstances, the Petition and Application amount to an abuse of the process of this Court.



1st Respondent's Submissions

3. The 1st Respondent through its Counsel, G & A Advocates LLP filed submissions dated 23rd May 2025 in support of its Preliminary Objection where the single issue identified for determination was: whether the Notice of Preliminary Objection is merited.
4. Answering in the affirmative, Counsel submitted that pursuant to the provisions and Regulations of the *Public Procurement and Asset Disposal Act* (PPADA), particularly Sections 28, 167 and 173, the Review Board is the proper forum to determine the legality of the eligibility criteria and further has the requisite mandate to cancel and order the re-advertisement of the tender if found to be illegal. Accordingly, Counsel submitted that this Petition is an attempt to circumvent the established mechanisms of handling of procurement disputes hence and is thus barred by the doctrine of exhaustion of remedies hence the jurisdiction of this Court had been wrongly invoked.
5. Reliance was placed in *Mirambo & another v Independent Electoral and Boundaries Commission & another; Smartmatic International Holdings BV & another (Interested Parties)* [2022] KEHC 11763 (KLR) where it was held that:

“It is, therefore, apparent that the Procurement Act fuses the relevant aspects of *the Constitution* such that whenever the Procurement Act is applied, that can only be within the confines of *the Constitution*. It also means that the Review Board, being a creature of the Procurement Act must, in discharging its mandate, uphold and defend *the Constitution* and the law. Of course, that calling is expressly so provided for in Article 3 of *the Constitution* to the extent that every person, as defined in article 260 of *the Constitution*, has an obligation to respect, uphold and defend *the Constitution*.

 112. Putting it more succinctly, the Review Board has the jurisdiction to determine whether *the Constitution* and the law were violated by a procuring public entity in respect to public procurement and assets disposal proceedings.
 113. This court, therefore, takes great exception to the position that tribunals, quasi-judicial bodies, State organs or any person, except courts of law, cannot determine whether *the Constitution* and the law is infringed. That cannot, by any shred of imagination, be correct. The reason is simple. Article 3 of *the Constitution* and in mandatory terms, obligates every person, as defined in article 260 of *the Constitution*, to respect, uphold and defend *the Constitution*. It is, hence, the finding and holding of this court, that the Review Board has unfettered jurisdiction to determine whether *the Constitution* and the law is infringed in procurement and disposal proceedings by public entities.”
6. Comparable reliance was placed in *Okiya Omtatah Okoiti v National Treasury And Planning & 2 others; Oracle Technology Systems (Kenya) Limited (Interested Party)* [2022] KEHC 2655 (KLR) and *Strathmore Research & Consultancy Centre Limited v County Government of Kiambu* [2024] KEHC 6943 (KLR).
7. Counsel additionally submitted that the Petitioner cannot argue that he lacks audience before the Review Board as Section 170 of the Act makes it plain under sub-Section (d) ‘that such other persons as the Review Board may determine’ have audience before the Board as well. Counsel noted that this



position has similarly been affirmed by the Court. Reliance was placed in *Mirambo & another*(supra) where it was observed that:

“There is no doubt that the petitioners did not fall within the first three categories of the parties. That is because the petitioners were not persons who requested for the review neither were they the accounting officers of the Commission and nor were they the tenderers notified as successful by the Commission. The petitioners are public-spirited Kenyans desirous of defending *the Constitution* and public interest. Could the petitioners be falling within the last category of the parties to a review under section 170 of the Procurement Act? That category is ‘such other persons as the Review Board may determine..... A person considering himself, herself or itself, as having identifiable interest or stake in a procurement or disposal process and who is not among the person who requested for the review, or is not the accounting officer of the procuring entity and is not the tenderer notified as successful by the procuring entity, has the right to seek audience and demonstrate its interest before the Review Board. It, however, remains the discretion of the Review Board to either allow such a person to participate in the proceedings before it or not.”

8. Similar dependence was placed in *Ezekiel Otieno v Funds Account Manager, Mathare National Constituency Development Fund & 2 others; Public Procurement Review Board & 12 others (Interested Parties)* [2022] KEHC 26987 (KLR) and *Kibunja in Timber Manufacturers Association v Kenya Airports Authority & another* [2022] KEELC 15398 (KLR).

Petitioner’s Submissions

9. The Petitioner in response filed submissions dated 30th May 2025 through Chimei and Malenya Company Advocates. Counsel identified the issues for discourse as: whether the Court has jurisdiction to hear and determine this suit, whether the Petitioner has a recourse provided by statute and whether the Notice of Preliminary Objection is merited.
10. On the first issue, Counsel relying in *Owners Motor Vessel Lilian “S” v Caltex Oil Kenya Ltd* (1989) KLR stated that a Court’s jurisdiction is everything when determining a matter before it. Equal dependence was placed in *Rift Valley Railways Workers Union (K) v Kenya Railway Staff Retirement Benefits Scheme & another* (2017) eKLR and *Mary Ariviza Mwami v Nairobi City County Assembly Service Board & 2 others* (2019) eKLR.
11. Counsel submitted that this Court has jurisdiction to entertain this matter by virtue of Article 165(3) (d) of *the Constitution*. That is, to determine the constitutionality of any act or omission done including by State Organs during a public procurement. In his view, the Petition raises genuine constitutional questions under Articles 10, 19, 20, 22, 23 and 227 of *the Constitution*, thus not solely a procurement grievance.
12. Moreover, Counsel submitted that the doctrine of exhaustion is not absolute and can in no way oust this Court’s jurisdiction in relation to constitutional questions and fundamental rights. Considering this, Counsel relying in Section 9(4) of the *Fair Administrative Action Act* submitted that where there exist exceptional circumstances in a matter, the Court can intervene. Further reliance was placed in



Fleur Investments Ltd v Commission of Domestic Taxes & another [2018] eKLR where it was held that:

“Courts would be in order to intervene even where the litigant who approaches the Court has not exhausted the preliminary process where arbitrariness, malice capriciousness and disrespect of the rules of natural justice are manifest.”

13. Equal dependence was placed in Chief Justice and President of the Supreme Court of Kenya & another v Bryan Mandila Khaemba [2021] eKLR.

14. Furthermore, Counsel submitted that the Petitioner was apprehensive that he would not be able to access justice before the Board as its authority to issue remedies is limited to annulling of decisions or directing re-evaluation. Counsel argued essentially that the Board cannot issue declarations, award of damages or resolve complex constitutional issues such as discrimination in award of a tender. Dependence was placed in Republic vs Independent Electoral and Boundaries Commission and Others ex parte Coalition for Reform and Democracy (SC. Application No. 637 of 2016) where it was held that:

“Where a remedy provided under the Act is made illusory with the result that it is practically a mirage, the Court will not shrink from its constitutional mandate to ensure that the provisions of Article 50(1) are attained with respect to ensuring that a person’s right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body is achieved. We are therefore of the view that the alternative remedy provided under the PPA Act would be a mirage in so far as the Applicant is concerned.”

15. Like dependence was placed in Al Ghurair Printing and Publishing LLC vs Coalition for Reforms and Democracy & 2 others [2017] eKLR.

16. Counsel as well pointed out that the Petitioner was not competent to submit his case before the Board as he did not actively participate in the tender. To buttress this point reliance was placed in Elias Mwangi Mugwe vs. Public Procurement Administrative Review Board & 5 Others [2016] eKLR where the Court held that:

“... Any person who has no automatic right to participate in the review proceedings may properly resort to other available modes of ventilating his rights.”

17. On constitutional avoidance, Counsel relied in the Supreme Court opine in Petition No. 039 Jovet (Kenya)Limited vs Bavaria N.N. where it was observed that:

“there has always been tension between the doctrine of constitutional avoidance and the primacy of rights approach...the obligation to the courts to develop the law is not discretionary. The Courts are under a general obligation to develop the law where it falls short of the standards in the Bill of Rights.”

18. Like dependence was placed in Nicholas Kiptoo Arap Korir Slat vs IEBC & 7 others (2015) eKLR. In sum, Counsel submitted that the 1st Respondent’s Preliminary Objection was not merited.



Other Parties Case

19. The other Parties responses and submissions to the 1st Respondent’s Preliminary Objection are not in the Court file or Court Online Platform (CTS).

Analysis and Determination

20. It is my considered opinion that the single issue that arises for determination is:

Whether the 1st Respondent’s Preliminary Objection is merited.

21. The threshold of a Preliminary Objection was summarized in *Parbat Siyani Construction Limited v Kenyatta International Convention Centre* [2023] KEHC 1603 (KLR) where the Court citing the classic authorities stated as follows:

“ 55. 55. The foregoing nature of preliminary objections was discussed in *Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd*, (1969) EA 696 page 700 when the Court observed as follows: -

‘So far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.’

22. Likewise, the Court in *Dismas Wambola v Cabinet Secretary, Treasury & 5 others* [2017] KEHC 8777 (KLR) observed as follows:

“...a preliminary objection may only be raised on a “pure question of law.” To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.”

23. The present preliminary objection is based on the doctrine of exhaustion of remedies where Courts decline to exercise initial jurisdiction if it is shown that there are other legally established forums that have been created and are capable of resolving the dispute instead of the Court.



24. The Supreme Court in *Waity vs Independent Electoral & Boundaries Commission and Three Others* [2019] KESC 54 (KLR) elaborated the principle by stating thus:

“(63) Where *the Constitution* or the law, consciously confers jurisdiction to resolve a dispute, on an organ other than a court of law, it is imperative that such dispute resolution mechanism, be exhausted before approaching the latter. Were it not so, parties would bide their time, overlooking the recognized forums, and later springing a complaint at the courts. Such a scenario would be a clear recipe for forum shopping, an undertaking that must never be allowed to fester in the administration of justice. We are fortified in this regard, by the persuasive authority by the Court of Appeal, in *Geoffrey Muthinja Kabiru & 2 Others*; [2015] eKLR; wherein the Appellate Court observed:

“It is imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Courts be invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.”

25. Similarly, the Supreme Court in *Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme)* [2019] KESC 83 (KLR) held:

“...We hold that if indeed the appellant had any dispute with the RBA, he ought to have followed the route prescribed by the RBA, before proceeding to the High Court. We hold like the court below, and for the reasons we have given, that the appellant’s petition lacked merit and was for dismissal.”

(118) In the pursuit of such sound legal principles, it is our disposition that disputes disguised and pleaded with the erroneous intention of attracting the jurisdiction of superior courts is not a substitute for known legal procedures. Even where superior courts had jurisdiction to determine profound questions of law, first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute.

(119) Such a deferred jurisdiction and the postponement of judicial intervention and reliefs until the mandated statutory or constitutional bodies take action rests, not alone on the disinclination of the judiciary to interfere with the exercise of the statutory or any administrative powers, but on the fact of a legal presumption that no harm can result if the decision maker acts upon a claim or grievance. Such formulation underlies the analogous cases, frequently cited for the exhaustion doctrine, in which the court refuses to enjoin an administrative official from performing his statutory duties on the ground that until he has acted the complainant can show no more than an apprehension that he will perform his duty wrongly, a fear that courts will not allay. Such cases may be



expressed in the formula that judicial intervention is premature in the absence of administrative action.”

26. The doctrine of exhaustion thus raises a jurisdictional issue in the strict sense for if the Court were to find that the matter offends this doctrine, it must divest itself of matter so that it can be dealt with in the right forum. The Court of Appeal in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR) stressed the significance of jurisdiction by stating thus:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court pronounced; *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989):

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

27. The 1st Respondent argues that this dispute belongs to Public Procurement Review Board in line with the provisions of the [Public Procurement and Asset Disposal Act](#). The preamble to the Act states as follows:

‘An Act of Parliament to give effect to Article 227 of [the Constitution](#); to provide procedures for efficient public procurement and for assets disposal by public entities; and for connected purposes.’

28. Section 3 lists the guiding principles of the procurement process as follows:

Public procurement and asset disposal by State organs and public entities shall be guided by the following values and principles of [the Constitution](#) and relevant legislation—

- a. The national values and principles provided for under Article 10;
- b. The equality and freedom from discrimination provided for under Article 27;
- c. Affirmative action programmes provided for under Articles 55 and 56;
- d. Principles of integrity under the [Leadership and Integrity Act](#) (Cap. 185C);
- e. The principles of public finance under Article 201;
- f. The values and principles of public service as provided for under Article 232;
- g. Principles governing the procurement profession, international norms;
- h. Maximization of value for money;
- i. Promotion of local industry, sustainable development and protection of the environment; and



j. Promotion of citizen contractors.

29. Discussing the procurement process, the Court in *Okoiti v Kenya Ports Authority & 5 others; Portside Freight Terminals Limited & 8 others (Interested Parties)* [2023] KEHC 20571 (KLR) observed as follows:

“ 137. Article 227 of *the constitution*, in my view, provides the minimum threshold when it comes to public procurement and asset disposal. Being the minimum threshold, it is my view that in public procurement and asset disposal, the starting point must necessarily be *the constitution*. Any procurement must therefore, before considering the requirements in any legislation, rules and regulations, meet the constitutional threshold of fairness, equity, transparency, competitiveness and cost-effectiveness. In other words, any other stipulation whether in an enactment or in the tender document can only be secondary to the said constitutional dictates.

138. In the case of *PPRB v KRA Misc.Civil Application No. 540 of 2008, eKLR* the court had this to say:

“ To my mind, failure by the Respondents to have regard to mandatory provisions of the Act concerning procurement procedures...violated the purpose of the Act which is clearly stated in Section 2...I find that any breach of a mandatory statutory provision does prejudice in some way the Section 2 objectives...Adherence to the applicable law is the only guarantee of fairness and in the case of procurement law the only guarantee of the attainment of fair competition, integrity, transparency, accountability and public confidence. There cannot be greater prejudice to the applicant than failure by the decision maker to comply with positive law. Failure to adhere to the applicable law, gives rise to a presumption of bias and prejudice contrary to the argument put forward by the Respondent’s counsel.”

30. On dispute resolution, the Act under Section 167 provides as follows:

Request for a review

1. Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act, or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.
2. A request for review shall be accompanied by such refundable deposit as may be prescribed in the regulations, and such deposit shall not be less than ten per cent of the cost of the contract:
Provided that this shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups.
- (3) A request for review shall be heard and determined in an open forum unless the matter at hand is likely to compromise national security or the review procedure.
- (4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—



- a. the choice of a procurement method;
- b. a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and
- (c) where a contract is signed in accordance with section 135 of this Act.

31. Section 173 of the Act on the powers of Review Board provides as follows:

Upon completing a review, the Review Board may do any one or more of the following—

- a. annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;
- b. give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;
- c. substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;
- d. order the payment of costs as between parties to the review in accordance with the scale as prescribed; and
- e. order termination of the procurement process and commencement of a new procurement process.

32. In addition, Section 175(1) details the power of an appeal from the Review Board as follows:

1. A person aggrieved by a decision made by the Review Board may seek judicial review by the High Court within fourteen days from the date of the Review Board's decision, failure to which the decision of the Review Board shall be final and binding to both parties.
2. The application for a judicial review shall be accepted only after the aggrieved party pays a percentage of the contract value as security fee as shall be prescribed in Regulations.
3. The High Court shall determine the judicial review application within forty- five days after such application.
4. A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decision and the Court of Appeal shall make a decision within forty- five days which decision shall be final.
5. If either the High Court or the Court of Appeal fails to make a decision within the prescribed timeline under subsection (3) or (4), the decision of the Review Board shall be final and binding to all parties.
6. A party to the review which disobeys the decision of the Review Board or the High Court or the Court of Appeal shall be in breach of this Act and any action by such party contrary to the decision of the Review Board or the High Court or the Court of Appeal shall be null and void.
7. Where a decision of the Review Board has been quashed, the High Court shall not impose costs on either party.



- 33. The Petition and its Supporting affidavit disclose a dispute that is principally founded on the tendering process which could suitably be resolved by invoking the procedures for dispute resolution contained in the Act.
- 34. Section 167 of the Act provides that a party aggrieved by a decision relating to procurement process shall, in the first instance, seek administrative review before the Public Procurement Administrative Review Board.
- 35. In fact, the jurisdiction of the Court is ousted and the only time the Court is required to act is by judicial review or appeal against the decision of the Board.
- 36. The Petitioner herein was not a party in the tendering process and his position is that he instituted this suit in public interest.
- 37. Section 170 of the Public Procurement and Asset Disposal Act, 2015 provides that parties who can seek a review are:
The parties to a review shall be—
 - a. the person who requested the review;
 - b. the accounting officer of a procuring entity;
 - c. the tenderer notified as successful by the procuring entity; and
 - d. such other persons as the Review Board may determine.
- 38. Section 170 (d) thus makes it open even to a non-party in the procuring process to challenge a procurement process before the Review Board and that in my humble view would include a person doing so in public interest. Approaching this Court directly when the Act provides that it can only be done as a challenge to the decision of the Review Board by way of an appeal or through judicial review is thus untenable. The Petitioner should have ventilated his grievances with the Review Board in the first instance instead of this Court by way of a petition.
- 39. Article 159 of the Constitution as read with Section 9 of the Fair Administrative Action Act augment the express provisions of the Public Procurement and Asset Disposal Act on the need for utilization of alternative dispute settlement mechanisms. I concur with the 1st Respondent that the dispute was prematurely rushed to Court in utter disregard of the primary forum hence offends the doctrine of exhaustion of remedies. The Preliminary is meritorious. I uphold the same and strike out this Petition.
- 40. As it is public interest litigation, I make no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

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L N MUGAMBI

JUDGE

