



Inhemeter Africa Company Limited v Public Procurement Administrative Review Board & 3 others (Civil Appeal E870 of 2025) [2025] KECA 2023 (KLR) (28 November 2025) (Judgment)

Neutral citation: [2025] KECA 2023 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E870 OF 2025
DK MUSINGA, SG KAIRU & LA ACHODE, JJA
NOVEMBER 28, 2025**

BETWEEN

INHEMETER AFRICA COMPANY LIMITED APPELLANT

AND

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

**THE CHIEF EXECUTIVE OFFICER/ MANAGING DIRECTOR KENYA
POWER & LIGHTING COMPANY 2ND RESPONDENT**

KENYA POWER AND LIGHTING COMPANY 3RD RESPONDENT

METERS AND ELECTRIC KENYA COMPANY LIMITED 4TH RESPONDENT

*(Being an appeal from part of the Judgment of the High Court of
Kenya at Nairobi (J. Chigiti, (SC), J.) dated 9th October 2025 in JR.
Application No. E262 of 2025 Consolidated with E264 & E271 of 2025)*

JUDGMENT

1. This appeal arises from the decision of the High Court (Chigiti, J.) delivered on 9th October 2025. By that decision, the learned judge allowed the appellant's application dated 28th August 2025 in which the appellant sought, inter alia, an order of certiorari to remove into the High Court for purposes of quashing the decision of the Public Procurement Administrative Review Board, the 1st respondent, in Application No. 85 of 2025 to cancel and set aside the Notification of Award of Tender in Tender No. KP1/9A.3/RT/14/24-25 for supply of single-phase smart meters (local manufacturers and assemblers). The learned judge also directed the 1st respondent to reconsider the application within fourteen (14) days of his decision.



2. A brief history of the dispute was that on or about 4th June 2025, the Chief Executive Officer of the Kenya Power and Lighting Company and the Kenya Power and Lighting Company, the 2nd respondent, (hereinafter referred to as “Kenya Power”), being the procuring entity, invited sealed tenders for supply of single-phase smart meters (local manufacturers and assemblers). The invitation was through limited tender open to local meter manufacturers and assemblers and was advertised through the Kenya Power website and the Public Procurement Information Portal where bidders accessed the tender documents and were instructed to submit their bids electronically. By the extended deadline of 1st July 2025, nine tenders had been successfully submitted through the e-procurement portal.
3. Kenya Power also issued three (3) Addenda to the subject tender, namely Addendum No. 1 dated 13th June 2025, Addendum No. 2 dated 16th June 2025, and Addendum No. 3 dated 20th June 2025. The said Addenda amended the tender document and extended the tender submission deadline to 1st July 2025 at 10:00 a.m.
4. After evaluation of all responsive bids, Kenya Power issued notifications of intention to award on 17th July 2025 to successful tenderers, including M/s Inhemeter Africa Company Limited, the appellant, (hereafter Inhimiter), and to unsuccessful bidders, including M/s Chint Meters and Electric Kenya Company Limited, the 4th respondent, (hereafter Chint Meters), which was informed that its bid was uncompetitive.
5. Dissatisfied with both the process and outcome, the 4th respondent lodged a Request for Review at the Public Procurement Administrative Review Board (hereafter “the Board”), vide Application No. 85 of 2025. It asserted that the evaluation process was flawed, discriminatory and contrary to the law. It also complained about the method of award, the absence of site visits at the outset of the process, and the selective approach to due diligence. It sought various orders, including: annulment of the tender proceedings and the letter of intention to award the said tender; an order to restrain the procuring entity from issuing award letters and contracts to the successful bidders; and an order to compel the Board to review the impugned decision.
6. Three other bidders for the tender in question appeared in the proceedings as interested parties. These were the 1st, 2nd and 3rd Interested parties. The appellant did not appear in the said proceedings, either as a respondent or as an interested party.
7. The Board, after hearing the parties rendered, its decision on 19th August 2025. It determined, inter alia, that the mode of award had been applied unlawfully. According to the Board, although Addendum 1 had introduced additional evaluation structure and allocation criteria, the manner in which these criteria were applied contradicted section 86 of the *Public Procurement and Asset Disposal Act*, Cap 412C (hereafter “the PPADA”) and resulted in opaque and inconsistent outcomes across categories 2 and 3. The Board further found that due diligence had been conducted selectively and inconsistently. In the end, the Board cancelled the awards and directed Kenya Power to re-tender for all the categories of tender.
8. Being dissatisfied with the decision of the Board, the appellant filed a Judicial Review Application at the High Court, to wit, JR Application No. E264 of 2025 on 28th August 2025. In the application, the appellant sought an order of certiorari to remove into the High Court for purposes of quashing the decision of the Board in Application No.85 of 2025; an order of prohibition to prohibit the 2nd and 3rd respondents from giving effect to, enforcing, or in any way implementing the impugned decision in Application Number 85 of 2025 by the 1st respondent; and a declaration that the advertisement, evaluation and award of the tender was done in conformity with *the Constitution* of Kenya, 2010,



Procurement laws and Regulations, and that the process was fair, transparent, cost-effective and lawful as per the laid down procedures.

9. The grounds in support of the application were, inter alia that, the Board acted without jurisdiction by considering and determining issues that had not been pleaded in the review application, and that even if irregularities existed, they did not justify cancelling the entire tender but should have been confined to category 3, the only category in which the Chint Meters had participated.
10. The applicant further contended that Chint Meters when filing its own Request for Review dated 29th July 2025 failed to include it as a necessary party, thereby rendering the proceedings defective, and that the Board misunderstood the legal status of the tender documents and the addenda by failing to appreciate that they formed the binding basis for evaluation. The applicant also accused the Board of acting irrationally by acknowledging that the tender met all the mandatory requirements, yet still upholding a cancellation of the entire tender. It contended that the respondents failed to recognize that there was no dispute concerning categories 1 and 2, and that the Board acted in bad faith and for improper purposes by purporting to nullify awards in categories in which Chint Meters had no interest.
11. The applicant also challenged the neutrality and fairness of the Board, asserting that by cancelling the whole tender, the Board acted in a prejudicial and biased manner; undermined legitimate expectations; and departed from the laid-down statutory procedure governing tender reviews. It argued that the respondents failed to apply sections 79, 80, 86, 87 and 170 of the Act properly, particularly regarding modifications introduced through the addenda, the criteria for notification of award, and the circumstances under which due diligence was required. It maintained that the Board ignored past review decisions forming part of the Board's precedents, including those distinguishing between different tender categories and the separate legal treatment they require.
12. In addition, the applicant contended that the Board's decision was illegal and irrational because it applied jurisdiction selectively, acknowledging in parts of the ruling that the Request for Review was confined to category 3, yet nonetheless proceeding to make determinations affecting categories 1 and 2. It contended that this overreach rendered the decision ultra vires and void. It further contended that the Board acted inconsistently by finding that Chint Meters was not a tenderer in categories 1 and 2, while at the same time cancelling the awards in those categories. According to the applicant, this inconsistency demonstrated that the Board's reasoning was contradictory, illogical and incapable of justification.
13. It was also contended that by cancelling the tender in its entirety, the Board violated Articles 47 and 227 of *the Constitution* by denying the applicant the right to fair administrative action and undermining procedural fairness and reasonableness. It argued that it was unjustly prejudiced by the said decision, and the decision defeated the constitutional objectives of public procurement. According to the applicant, these cumulative errors rendered the Board's decision illegal, irrational, biased and fundamentally unfair, warranting intervention by the court.
14. JR Application No. E264 of 2025 was consolidated with two other applications, to wit, JR Application No. E262 of 2025 and JR Application No. E271 of 2025 which sought more or less similar orders as those in JR Application No. E264 of 2025. The court designated JR Application No. E262 of 2025 as the lead file.
15. In response to the application, the Board contended that it acted lawfully and within the bounds of *the Constitution*, the PPADA, the 2020 Regulations, and the *Fair Administrative Action Act* when it rendered its decision in Request for Review No. 85 of 2025. It opposed the application and urged the court to dismiss it with costs. It contended that the review was triggered by the request filed on 29th



July 2025 by Chint Meters, and that after considering all the pleadings, submissions, authorities and confidential documents provided under section 67(3)(e), it issued its final orders on 19th August 2025 cancelling all awards in categories 1, 2 and 3 and directed that the tender be re-run afresh.

16. It further averred that it handled all preliminary objections as per the standard in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, only sustaining those that raised pure points of law. It maintained that section 167(1) of the PPADA requires that only loss or risk of loss be pleaded, not proved, and that it found that the applicant in the review application had pleaded prejudice flowing from non-disclosure of lot-specific outcomes and from an award cap that allegedly undermined value for money. In its view, this satisfied the statutory threshold. It also contended that it applied time-bar rules carefully. Complaints about the mode of award became known only upon receipt of the notifications on 17th July 2025 and as such, a filing on 29th July 2025 was within time.
17. Regarding the merits of its decision, the Board contended that it examined ITT 40 and Addendum No. 1 and concluded that the procuring entity had adopted criteria that was neither transparent nor predictable, contrary to section 86 of the PPADA and Article 227 of *the Constitution*. It found that the notifications issued on 17th July 2025 violated section 87(3) of the PPADA because they excluded essential information, such as unit prices and lot-specific outcomes. It further found that due diligence had been applied selectively, undermining fairness and equal treatment. Because the award criteria, notifications and due-diligence process were unlawful, the Board concluded that the resulting awards were incapable of standing and thus, it properly exercised its powers under section 173 to annul them and direct a fresh tendering process.
18. On their part, Kenya Power and its CEO, who were in support of the consolidated applications, contended that the proceedings before the Board were fundamentally flawed; that the Board's decision to annul the entire tender was illegal, irrational and tainted by errors of law; that the Board misinterpreted section 167(1) of the PPADA regarding standing, and section 87 on notifications, as well as sections 80 and 86 on evaluation criteria; that the Board wrongly concluded that Chint Meters' pleadings established standing and incorrectly held that the notifications were unlawful, despite the fact that Kenya Power had complied with statutory disclosure requirements; and that the Board's cancellation of the entire tender was unreasonable, given that each category had distinct criteria and Chint Meters had only participated in category 3.
19. They also contended that the Board overlooked critical operational and public-interest concerns; that energy meters are essential to Kenya Power's revenue collection and financial health and therefore cancelling the tender jeopardized operations because meter shortages could result in losses projected at Ksh.
 1. 274 billion per month; that the Board acted irrationally by disregarding the fact that the procurement cycle for meters takes about six months, thereby making the cancellation detrimental to service delivery and to members of the public waiting for connections; that the order for a fresh tender was unlawful because procurement must follow annual procurement plans and once a financial year lapses, a procuring entity cannot simply retender using the prior budget or procurement plan, meaning the Board's direction was both impractical and contrary to procurement law.
20. They further faulted the Board for finding ambiguity in the award criteria, arguing that any such ambiguity should have been raised by bidders before the tender closed on 1st July 2025; that raising the issue at the review stage was an afterthought, and the Board lacked jurisdiction to entertain it; that the Board committed procedural impropriety by disregarding the tender document's express provisions on due diligence which required factory inspections only for new local manufacturers who had not



previously supplied meters; but instead, the Board substituted its own subjective view of best practice contrary to section 80(2) of the PPADA which demands strict compliance with the tender document.

21. Finally, they contended that the Board committed another error by failing to hold that non-joinder of the appellant, who had been awarded in category 2 lot 3 was fatal, given that the Board simultaneously held that the award criteria across the three categories were interlinked.
22. On its part, Chint Meters, who had brought the application before the Board and which application was determined largely in its favour, contended that the judicial review proceedings by the appellant were essentially an appeal disguised as a review and brought by a party who declined to participate before the Board, despite being invited under section 170 of the PPADA; that it was a valid tenderer and that its bid was submitted through the e-procurement system, evaluated at every stage, and treated as one of the ten bids considered by the Tender Opening Committee, thereby making the allegations about non-submission both factually incorrect and time-barred; that the dispute arose after it was notified on 17th July 2025 that its bid was unsuccessful due to uncompetitive pricing, prompting it to file Request for Review No. 85 of 2025 which the Board lawfully determined within the statutory timeline.
23. It also contended that the appellant could not claim a violation of the right to be heard because it was invited to participate but chose not to appear before the Board. On the substantive issues, it maintained that the evaluation criteria for categories 2 and 3 were opaque, inconsistent and capable of multiple interpretations, and that the Board correctly found the mode of award unlawful after reviewing all the parties' pleadings and submissions. It emphasized that the intertwined nature of categories 2 and 3 justified the Board's decision to annul the entire tender as the flawed award mechanism applied across categories and could not be severed. It asserted that the Board fully understood and applied sections 75, 79, 86, 167 and 170 of the PPADA; exercised its statutory powers under section 173 properly and made findings that cannot be overturned in Judicial Review proceedings without the court exceeding its limited supervisory jurisdiction.
24. The High Court (Chigiti, J.) after considering the application, the response, as well as the submissions made by all the parties, delivered judgment in the consolidated applications on 9th October 2025. On the preliminary objection based on the argument that the individual who swore the supporting affidavit of Chint Meters lacked authority to do so, the court agreed with the Board that this issue required evidence and was not a pure point of law. It held that the Board exercised its discretion properly, and that any attempt to reopen this would entail a merit appeal.
25. However, on the status of successful bidders, the court disagreed with the Board. It found that successful bidders are mandatory parties under section 170(c) of the PPADA and that, because the Civil Procedure Rules do not govern participation in procurement disputes, such bidders are substantive parties, not mere interested parties in the civil procedure sense; that they therefore had locus standi to raise new issues or seek additional reliefs before the Board; and that the Board misdirected itself in purporting to limit the scope of their participation.
26. On standing under section 167(1) of the PPADA, the court acknowledged that the Board identified prejudice pleaded by Chint Meters and treated that as sufficient for jurisdiction. The court was satisfied that this was a matter within the Board's remit and declined to interfere, noting that to revisit whether the Board correctly applied that threshold would convert the proceedings into an appeal. It took a similar approach to the confidentiality objection, upholding the Board's interpretation of section 67 on information, and finding that the Board's conclusion that no confidential information had been exhibited was a proper application of the law, not warranting judicial intervention.



27. The court's departure from the Board's decision related to the Board's treatment of the different categories; the issue of joinder;

the approach to due diligence and the breadth of the orders it ultimately issued. It noted that the Board contradicted itself by declaring that it lacked jurisdiction over categories 1 and 2 because M/s Chint Meters had not tendered, yet later proceeded to analyse the mode of award in those same categories and even set aside the resulting awards. The appellant had been a successful bidder in category 2 lot 3 but was neither joined to the Request for Review nor invited to participate. The court found that this omission breached section 170 of the PPADA and violated the appellant's rights to a fair hearing and fair administrative action under Articles 50 and 47, effectively condemning it without being heard. In the court's view, the failure to join a successful bidder rendered the Request for Review incompetent for any category in which that bidder had been awarded, and the Board acted outside its mandate by cancelling awards and nullifying the entire tender without the participation of mandatory parties.

28. On due diligence and evaluation criteria, the court recognized that the Board had criticized selective due diligence and had found the award criteria and notifications unlawful, opaque and inconsistent with Article 227 and section 86 of the Act. The court accepted that some of these findings were rooted in an examination of confidential files and could not be reopened on the merits, but it considered that the Board's reasoning became internally contradictory and irrational. It pointed out that the Board had, on one hand, accepted a selective approach to due diligence for entities with prior supply history and, on the other, used that same selectivity to condemn the process as unlawful. Similarly, it noted that the Board held at one point that ITT 40 provided a clear evaluative framework, yet later described the same provision as not discernible, undermining the coherence of its conclusion that the mode of award was unlawful. The court ultimately found that the Board had not provided a cogent and consistent basis for annulling the awards, and that its decision to cancel all categories and order a full re-tender when the complaint was confined to category 3 was manifestly excessive, disproportionate and unreasonable.
29. In the end the court was satisfied that the Board had failed to act within the confines of *the Constitution*, the PPADA, the Regulations and the *Fair Administrative Action Act* when it annulled all the awards and directed a retender. It held that the decision of the Board was illegal, irrational, procedurally unfair and ultra vires. The court issued an order of Certiorari removing into the Court for quashing and setting aside the decision of the Board dated 19th August 2025; an order of Prohibition directed at the 2nd and 3rd respondents prohibiting them from implementing the decision of the Board; an order of Prohibition directed at the 2nd and 3rd respondents prohibiting them from re- advertising, re-tendering and/or issuing fresh invitations for sealed tenders or bids for the meters under categories 1, 2 and 3; and remitted the matter to the Board for reconsideration within fourteen (14) days. It made no orders as to costs. In compliance, the Board subsequently reconsidered the matter and rendered its decision on 23rd October 2025.
30. The appellant, being aggrieved and dissatisfied with the decision of the High Court, preferred this appeal. However, and before we advert to the grounds upon which this appeal is premised, we deem it necessary to first address ourselves to the second decision of the Board delivered pursuant to the judgment of the High Court.
31. The Board convened and heard all the parties on 21st and 22nd October 2025. The Board delivered its second decision on 23rd October 2025. It held that it had jurisdiction to hear and determine the Request for Review, except for the complaint relating to the absence of site visits, which it found to be time barred. It further held that the evaluation and award in the tender were not carried out in accordance



with the procedures and criteria set out in the tender document, nor did they comply with sections 80(2) and 86 of the PPADA read together with Article 227(1) of *the Constitution*.

32. The Board also noted that section 173(b) of the PPADA grants it the discretion to direct the accounting officer of a procuring entity on actions to be taken or repeated within the procurement process. Considering the cumulative effect of the flawed evaluation and mode of award and the resulting lack of fairness across the tender as a whole, the Board found it necessary to restore equity by ordering that the tender be undertaken afresh.

It held that a re-tender was the only way to uphold the principles of fairness and transparency required by Article 227. The Board therefore allowed the Request for Review and proceeded to issue the following final orders:

1. The letters of Notification of Intent to Award Tender No. KP1/9A.3/RT/14/24-25 for Supply of Single-Phase Smart Meters. (Local Manufacturers and Assemblers) dated July 17, 2025, issued by the CEO, Kenya Power to the M/s Chint Meters & Electric Kenya Company Limited and all other successful and unsuccessful bidders in regard to Categories 2 and 3 of the subject tender are hereby nullified and set aside.
 2. The procurement proceedings in Tender No. KP1/9A.3/RT/14/24-25 for Supply of Single-Phase Smart Meters. (Local Manufacturers and Assemblers) as pertains categories 2 and 3 be and are hereby cancelled and set aside.
 3. The CEO, Kenya Power is hereby directed to re-tender for Supply of Single-Phase Smart Meters. (Local Manufacturers and Assemblers) as pertains to categories 2 and 3 afresh while taking into consideration the Board's findings herein.
 4. Each party shall bear its own costs in this Request for Review.
33. After delivery of the above second decision by the Board, the CEO, Kenya Power, vide a letter dated 5th November 2025 communicated to the appellant herein of the tender cancellation pursuant to the decision of the Board.
34. After the Board delivered its decision, several parties invoked section 175(1) of the PPADA and moved to the High Court. Hexing Technology Company Limited, one of the bidders, approached the High Court vide Judicial Review Application No E347 of 2025 challenging the Board's decision of 23rd October 2025. It sought judicial review remedies, including prohibition, certiorari, declaration and mandamus, all aimed at stopping or overturning the Board's decision.
35. After reviewing the application, the court (Aburili, J.) vide a ruling delivered on 6th November 2025 granted the prohibitory order sought pending further proceedings.
36. The court directed the applicant to serve the Originating Motion on the respondents and all interested parties by close of business that day, with each of the parties granted five days to file and serve their responses. The matter was set for mention on 26th November 2025 to fix a judgment date.
37. Apart from Hexing Technology Company Limited, the other party who moved the High Court after delivery of second decision by the Board was Magnate Ventures Limited. Vide Originating Motion dated 6th November 2025 filed in Judicial Review Miscellaneous Application E144 of 2025, Magnate Ventures Limited sought to prohibit implementation of the Board's decision pending the determination of the substantive motion. Vide a ruling delivered on 7th November 2025, Aburili, J. made similar orders as in the earlier application by Hexing Technology Company Limited.



38. Returning to this appeal, which is against the judgment delivered by the High Court in the consolidated applications, the appellant contends that the learned judge erred in law by: misdirecting himself by ordering that the matter be remitted to the Board for reconsideration within fourteen days without considering that the PPADA sets strict statutory timelines, and that non-compliance with those timelines would deprive the appellant of its right of appeal before this Court; applying the wrong legal principles in directing that the matter be remitted to the Board for reconsideration within fourteen days, while disregarding section 175(4) and (5) of the PPADA which entitles an aggrieved party to appeal to the Court of Appeal within seven days and requires the Court of Appeal to determine such an appeal within forty-five days; failing to appreciate that any further decision by the Board would effectively leave the appellant without recourse as the strict statutory timelines under the PPADA would lapse before the appellant could pursue its right of appeal, remitting the matter to the Board for a rehearing despite having already found that the Board's impugned decision was tainted by procedural impropriety, irrationality and unreasonableness whereas the PPADA contains no provision empowering the High Court to remit a matter to the Board in such circumstances; remitting the matter to the Board for a rehearing despite having already found that the Board's decision to cancel the entire tender was unreasonable and irrational, particularly given that each category had its own distinct award criteria and Chint Meters had only submitted a bid under category 3; failing to be guided by section 5 of the PPADA; and by failing to be guided by section 175 of the PPADA.
39. We heard this appeal via the Court's virtual platform on 17th November 2025. For the appellant, learned counsel Ms. Faith Gichuru appeared with Mr. Munene Njeru, while learned counsel Ms. L. Owano appeared for Kenya Power and its CEO. Learned counsel Mr. Mwitini Kinyua appeared for Chint Meters. All counsel relied on their respective client's written submissions, which they briefly highlighted.
40. The appellant contended that its appeal was directed solely at order No. 4 of the impugned judgment which remitted the matter to the Board for reconsideration within fourteen days. It contended that the High Court erred by annulling the entire tender across categories 1, 2 and 3 even after it made findings to the extent that the three categories were distinct and that Chint Meters only participated in category 3, yet the remittal order would inevitably affect categories 1 and 2, including the appellant's successful award under category 2. It was reiterated that the Board itself had previously acknowledged that Chint Meters was not a tenderer in categories 1 and 2 and had raised no challenge regarding those categories, which rendered the High Court's order inconsistent with both the statutory framework and the court's own reasoning.
41. It was further submitted that the remittal order violated the structure and timelines established under the PPADA. According to the appellant, sections 5, 167 (1), 174 and 175 of the PPADA collectively set out mandatory jurisdictional limits and strict appeal timelines that could not operate coherently once the matter was returned to the Board. Section 175(4) and (5), in particular require that a party aggrieved by the High Court's decision must appeal to this Court within seven days, and that the appellate court must determine the appeal within forty-five days. The appellant posited that sending the matter back to the Board for a new decision within fourteen days created a procedural impossibility in the sense that any new decision of the Board would take effect before the expiry of the statutory timelines for appellate review, thereby depriving the appellant of its right of appeal. It reiterated that the Board lacked jurisdiction to reconsider categories 1 and 2, as section 167 of the PPADA only allows candidates or tenderers in a specific category to trigger review and successful bidders in category 2 had never been parties before the Board.
42. To support its interpretation of the law, the appellant relied on the decision of this Court in *LSG Lufthansa Services Europa/Afrika GmbH & Another v Mwangi* (Practising in the name and Style



of Muturi Mwangi & Associates Advocates) [2022] KECA 834 (KLR), wherein the Court adopted the South African Supreme Court of Appeal's reasoning in *Administrator, Cape and Another v Mtshwagela and Others*, 1990 (1) SA 705 (A) at 715 F-1 and held that a court's order must be interpreted alongside its reasons, and where ambiguity exists, reference may be made to the surrounding circumstances. By applying that principle, the appellant contended that the remittal order was ambiguous and unworkable when read together with the High Court's own findings. In this regard, the appellant asserted that the remittal order provided no clear parameters for what the Board was expected to reconsider and, in its ambiguous terms, appeared to confer jurisdiction over all categories of the tender, even though the High Court's own findings barred the Board from dealing with categories 1 and 2.

43. The appellant further relied on the decision of this Court in *Tramex Mediquip Limited v Public Procurement Administrative Review Board & Others*, Civil Appeal No. E621 of 2025, wherein the Court held that a bidder who tenders for only one lot cannot challenge awards in unrelated lots. The appellant submitted that the same logic applied in the present circumstances because Chint Meters submitted a bid only for category 3 and thus had no lawful basis to challenge categories 1 and 2.
44. The decision of this Court in *Dhiman v Shah* (Civil Appeal E380 of 2023) [2025] KECA 1264 (KLR) (11 July 2025) (Judgment) was also cited for the proposition that court orders must be clear, precise, and unambiguous, leaving no room for doubt as to their meaning or effect. According to the appellant, once the High Court found that the three categories were separate and distinct, it ought to have issued clear and precise orders to guide the parties because the Board had no jurisdiction to hear, rehear or reconsider issues raised by a party who could not be regarded as a candidate or tenderer within the meaning of section 167(1) of the PPADA. A party seeking to dispute a tender in which it never participated could only approach the High Court under section 174 of the PPADA which expressly provides that the right to request a review is in addition to any other legal remedy available.
45. Finally, the appellant relied on the decision of the High Court in *Republic v Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 Others* [2017] KEHC 4663 (KLR) to demonstrate that persons who cannot lawfully invoke the Board's jurisdiction retain alternative remedies through judicial review or constitutional petitions, which underscored the error in sending matters involving categories 1 and 2 back to the Board.
46. It was contended therefore that pursuant to the High Court's own findings, and given that section 174 of the PPADA prevented the appellant from submitting to the Board's jurisdiction in respect of a tender category in which it never participated, the remittal order was in direct conflict with the Act and urged us to allow the appeal.
47. On their part, Kenya Power and its CEO contended that the appeal lacked any live controversy because the order directing the Board to reconsider the matter within fourteen days had already been fully implemented. They asserted that the Board reheard the matter and issued fresh determinations, including marking the challenge by Chint Meters in respect of category 1 as withdrawn and cancelling the procurement proceedings relating to categories 2 and 3 and directing a re-tender. On that basis, it was contended that these actions constituted full compliance with the High Court's directive, and consequently there is no live controversy remaining for this Court's adjudication. The 2nd and 3rd respondents invoked the doctrine of mootness and relied on the decision of this Court in *National Assembly of Kenya & Another v The Institute for Social Accountability & 5 Others*, Civil Appeal No. 92 of 2015 consolidated with Civil Appeal No. 97 of 2015, where the Court held that mootness arises where a dispute no longer presents a real controversy, and that courts should avoid spending judicial time on abstract or academic questions. They further cited *Redhill Heights Investments Ltd v Suzanne Achieng Butler & 4 Others* [2018] KECA 776 where this Court clarified that once events overtake



the impugned order and no practical relief can result, the court lacks jurisdiction unless exceptional circumstances justify continued adjudication.

48. According to the 2nd and 3rd respondents, given that the Board has already reheard the matter and issued a fresh determination, the core question underlying this appeal, which is whether the matter ought to have been remitted to the Board for reconsideration no longer exists. In addition, it was submitted that the appellant had not shown that this appeal was within the limited circumstances in which a court may entertain a matter that has become moot. In that regard, it was contended that this Court cannot meaningfully set aside an order that has already been complied with and whose consequences have already unfolded. They therefore asked that the appeal be struck out as moot.
49. In the alternative and without prejudice to their argument on mootness, they submitted that even on the merits, the appeal was unfounded. They contended that the appellant had invoked the High Court's judicial review jurisdiction under the *Fair Administrative Action Act*, Cap 7L and the Fair Administrative Action Rules, 2024, thereby willingly subjecting itself to the remedial framework under section 11 of the Act and Regulation 27 of the Rules. Those provisions, it was contended, expressly empower the High Court when granting Judicial Review orders to remit a matter to the administrator for reconsideration, with or without directions, provided the order is just and equitable. It was therefore contended that the High Court acted squarely within its statutory mandate. Since the High Court's direction for reconsideration was reasoned, lawful and proportionate, they argued that there was no basis for this Court to interfere with the impugned decision. The 2nd and 3rd respondents therefore urged this Court to find the appeal moot, or alternatively lacking in merit, and to uphold the High Court's judgment in full.
50. Chint Meters on its part associated itself with the submissions made by Kenya Power and its CEO that the appeal had been overtaken by events and was therefore moot. In this regard, it was contended that the remittal to the Board had already been implemented, the Board had reheard the matter within the 14- day period, and judgment had been delivered on 23rd October 2025. It relied on the Supreme Court's articulation of the doctrine of mootness in *Institute for Social Accountability & Another v National Assembly & 3 Others & 5 Others* (Petition 1 of 2018) [2022] KESC 39 (KLR) (8 August 2022), where the Court held that a matter becomes moot when subsequent events deprive it of any practical effect and there is no longer a live controversy. It also relied on the decision of this Court in *Okiya Omtatah Okoiti & 2 Others v Attorney General & 4 Others* [2020] eKLR, wherein the Court adopted the High Court's statement in *Daniel Kaminja & 3 Others (suing as Westlands Environmental Caretaker Group) v County Government of Nairobi* [2019] eKLR, that courts do not issue orders in vain, and that a matter is moot where further proceedings can have no practical impact.

Additional reliance was placed on *Ole Pere & Another v District Land Adjudication and Settlement Officer, Narok South & 24 Others; Pere & Another (Interested Parties)* (Civil Appeal 79 of 2019) [2025] KECA 113 (KLR) (24 January 2025) (Judgment) which reaffirmed the principle that courts should decline to determine academic questions lacking a live dispute. On that basis, it maintained that since the Board had already complied with the High Court's order and rendered a new decision, there remained no practical relief that this Court could grant.

51. In the alternative, and in the event this Court were to address the appeal on its merits, the 4th respondent maintained that the High Court acted within its supervisory jurisdiction under Article 165(6) of *the Constitution* and section 175(1) of the PPADA when it remitted the matter to the Board for reconsideration. It emphasized that the Judicial Review applications before the High Court were brought under the *Fair Administrative Action Act* which empowers the court, under section 11(1) (e) and (h) to remit a matter to the administrator for reconsideration with or without directions. To support this support, it cited the Supreme Court's holding in *Praxedes Saisi & 7 Others v Director of*



Public Prosecutions & 2 Others (Petition 39 & 40 of 2019 (Consolidated) [2023] KESC 6 (KLR) (Civ) (27 January 2023), where the Court explained that Judicial Review courts are limited to the remedies enumerated in section 11 of the *Fair Administrative Action Act*, and may properly remit matters to specialized bodies because courts cannot substitute their own decision for that of the primary decision-maker. In the 4th respondent's view, the High Court properly exercised this discretion and did not sit as an appellate court. We were therefore urged not to interfere with the impugned decision of the High Court.

52. We have considered the record, the submissions of learned counsel and the law. The object of Judicial Review is to determine whether decisions by public bodies are unreasonable, irrational, unfair or unproportional in appropriate cases. In this appeal, the appellant contends that the High Court fell into grave error when it remitted the matter to the Board for reconsideration within fourteen days. The 2nd to 4th respondents on the other hand take the contrary position, arguing that the High Court acted squarely within its jurisdiction, including that conferred by section 11 of the *Fair Administrative Action Act*. They further urge us to find that no live controversy remains, the Board having fully implemented the High Court judgment. Therefore, this appeal, presents two questions for our determination: whether the High Court erred in directing a remittal to the Board, and whether the appeal has been rendered moot by subsequent events. In our view, the issue of mootness needs to be determined first because our decision thereon shall determine whether or not we need to consider the second issue.
53. Black's Law Dictionary 9th Edition defines mootness as "having no practical significance; hypothetical or academic (the question on appeal became moot once the parties settled their case)."
54. The doctrine of mootness bars the exercise of jurisdiction where subsequent events have extinguished the controversy and no practical relief can follow. In *Institute for Social Accountability & Another v Senate & 5 Others* (supra), the Supreme Court held thus:
- "47. ... a matter is moot when it has no practical significance or when the decision will not have the effect of resolving the controversy affecting the rights of the parties before it. If a decision of a court will have no such practical effect on the rights of the parties, a court will decline to decide on the case. Accordingly, there has to be a live controversy between the parties at all stages of the case when a court is rendering its decision. If after the commencement of the proceedings, events occur changing the facts or the law which deprive the parties of the pursued outcome or relief then, the matter becomes moot."
55. In *Okiya Omtatah Okoiti & 2 Others v Attorney General & 4 Others* (supra), this Court observed thus:
- "65. In *Daniel Kaminja & 3 Others* (Suing as Westland Environmental Caretaker Group) vs. County Government of Nairobi [2019] eKLR, Mativo, J. stated that:
- "A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact."
- And that,



“No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.”

56. It is clear from the above decisions that the doctrine of mootness seeks to ensure that courts confine themselves to resolving disputes that present a real, practical controversy and to prevent the expenditure of judicial time on matters that have been overtaken by events, or whose resolution would have no meaningful consequence to the parties or the public.
57. Turning to the circumstances of this appeal, the only order challenged in the impugned judgment is the one that remitted the matter to the Board for reconsideration within fourteen days. It is clear beyond any peradventure that the said order has been fully implemented. As already noted, the Board reconvened, heard all parties on 21st and 22nd October 2025, and on 23rd October 2025 delivered a fresh decision in which it confirmed its jurisdiction (save for the time-barred site visit issue); found that the evaluation and award contravened sections 80(2) and 86 of the PPADA and Article 227(1) of *the Constitution*; held that fairness across the tender had been compromised; and ordered cancellation and re-tendering of categories 2 and 3 pursuant to section 173(b) of the PPADA.
58. Kenya Power subsequently communicated cancellation of the tender to the appellant in accordance with that decision. That sequence of events, in our view, amounts to complete implementation of the impugned order and leaves no aspect outstanding for remittal or intervention. More importantly, the Board’s second decision has already triggered fresh proceedings before the High Court under section 175(1) of the PPADA. Hexing Technology Company Ltd filed HCJR E347 of 2025, whereas Magnate Ventures Ltd filed HCJR E144 of 2025, each challenging the Board’s decision of 23rd October 2025. The appellant is an interested party in both proceedings. As already stated, the High Court has already issued interim prohibitory orders preserving the status quo as well as directions relating to the filing of responses and submissions. Cognizant of the strict timelines in procurement matters, the High Court fixed both matters for mention on 26th November 2025 for purposes of fixing a judgment date.
59. The legitimacy of the Board’s second decision is therefore actively before a court of competent jurisdiction in proceedings in which the appellant is a necessary participant and where it can advance any challenge arising from the Board’s rehearing. If dissatisfied, it retains an unimpeded right of appeal to this Court. Against that backdrop, no live controversy remains arising from the High Court’s original order remitting the matter to the Board. Even if this Court were to, peradventure, set aside the order, it cannot undo the Board’s completed rehearing, the resulting decision or the ongoing High Court proceedings. Any pronouncement on the propriety of the remission would therefore be purely academic and incapable of yielding any practical effect.
60. In addition, the appellant has not, in our view, demonstrated that any of the narrow exceptions to mootness is applicable in this appeal. We are not persuaded that the issues raised present a question of public importance requiring authoritative determination, or that they are likely to recur in a manner that would evade review. We say this in light of the fact that the appellant can directly contest the merits of the Board’s second decision in the pending High Court proceedings, and if not satisfied, prefer an appeal before this Court. For these reasons, it is our respectful view that this appeal presents no dispute capable of resolution and it is, for all intent and purposes, moot.



61. Having reached this finding on the issue of mootness, it would be otiose and unnecessary for us to determine the other pending issue. Consequently, this appeal is devoid of any merit and it is accordingly dismissed in its entirety with costs to the 2nd, 3rd and 4th respondents.

DATED AND DELIVERED AT NAIROBI 28TH DAY OF NOVEMBER, 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb, C.Arb.

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JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

