



**Kenya Pipeline Company Limited v Public Procurement Regulatory Board; Sender Services Limited (Interested Party) (Judicial Review Application 426 of 2025) [2026] KEHC 370 (KLR) (Judicial Review) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION 426 OF 2025  
RE ABURILI, J  
JANUARY 22, 2026**

**BETWEEN**

**KENYA PIPELINE COMPANY LIMITED ..... APPLICANT**

**AND**

**PUBLIC PROCUREMENT REGULATORY BOARD ..... RESPONDENT**

**AND**

**SENDER SERVICES LIMITED ..... INTERESTED PARTY**

**RULING**

1. Justice does not flow from a solitary watch. If the court stands awake and the parties lie in slumber, the river of justice runs dry. Courts and litigants must keep equal vigil, for the greater the stake in the cause, the stricter the obligation to respect time and timelines.
2. The above statement by this Court justifies the final order that this court will make in this matter, and sends a signal that excusing delay is an act of judicial discretion, not a matter of course. It cannot be claimed where the Court is expected to stay alert while the parties remain latent. Courts and litigants must act in tandem, and the more significant the matter to a party, the stricter must be its adherence to timelines.
3. This is because, Justice cannot be administered if the Court alone is vigilant while the parties choose repose and vice versa. Vigilance is required of both and the greater the stake a party claims in a matter, the heavier lies upon that party the obligation to respect time and to act with alacrity.
4. All I have said in the above three paragraphs is one and the same thing, which is that the law does not countenance a situation where the Court keeps vigil while the litigant sleeps, only to awaken seeking



- indulgence. Vigilance is demanded of both and where a party asserts grave stakes in a matter, it must display commensurate diligence in complying with directions of the court which include timelines.
5. The factual position in this matter is that on 19/12/2026, the Respondent, The Public Procurement Regulatory Board rendered a decision in Debarment Application No. 8/2025 between Kenya Pipeline Company Ltd vs Sender Services limited, declining the application by the applicant Kenya Pipeline Company Limited to debar the Interested Party herein, Sender Services limited from participating in public procurement and Asset Disposal as stipulate din section 41 of the Act.
  6. The applicant, Kenya Pipeline Company Ltd was aggrieved by that decision taken pursuant to the provisions of section 41 of the [Public Procurement and Asset Disposal Act](#). It filed a chamber summons dated 23<sup>rd</sup> December 2025 on 29/12/2025 under certificate of urgency. This was during the recess. This court as a duty court certified the said application as urgent, noting that the proceedings arising from public procurement processes are bound by strict timelines.
  7. I then rendered a ruling granting leave to the applicant to apply for substantive Judicial Review orders challenging the Respondent's decision rendered on 19/12/2025.
  8. Again, owing to the strict timelines for determination of public procurement matters, I issued very specific directions to the applicant and in doing so, I did not leave anything to chance. I clarified that for purposes of these proceedings, owing to the statutory timelines for their conclusion, the provisions of Order 50 of the Civil Procedure Rules would not apply. This was informed by the fact that the statutory timelines under the [Public Procurement and Asset Disposal Act](#) for disposal of disputes under the Act are not elastic. They cannot be enlarged, even if the court retains the inherent jurisdiction to enlarge timelines that it has set.
  9. Furthermore, filing of documents or pleadings into court is now digital and therefore one would not be prejudiced that the physical court registry would be found to be closed or that it was on a Sunday, Saturday or a public Holiday when the parties were to file their pleadings. Needless to say, is that filing is now self-initiated and concluded without intervention by the Court staff except where there is an issue with mapping or other technical hitch requiring specialized support.
  10. This court therefore directed the applicant to file and serve the substantive motion by close of business on 31/12/2025. This timeline again, is in line wiht the provisions of Order 53 Rule 3(1) of the Civil Procedure Rules which provides:
    - (3) Application to be by Notice of Motion.
      - (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within 21 days by notice of motion to the High Court, and there shall unless the Judge granting leave has otherwise directed be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
  11. As the matter falls under the Public Procurement and Disposal Act which stipulates timelines for filing of requests for review and Judicial Review which was filed within time of 14 days after the decision as per Section 42 of the Act, and as this court is bound by timelines of 45 days to determine the Judicial Review application, it follows that parties must be ready at all times and so is the court, to abide by the directions of the court.
  12. Regrettably, the applicant did not file any substantive Notice of Motion as directed by the court on the timelines, even with the court uploading the Ruling on 30/12/2025.



13. Further, in clarifying that the excluded days under Order 50 of the Civil Procedure Rules were included, this court was cognizant of the wordings of Order 50 Rule (4) of the Civil Procedure Rules that time does not run except where otherwise directed by a Judge and for reasons to be recorded in writing, the period between the 21<sup>st</sup> day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under those Rules or any order of the Court) for the amending, delivering, or filing of any pleadings or the doing of any other act provided that this rule shall not apply to any application in respect of a temporary injunction.
14. Coincidentally, the period contemplated in Order 50 Rule 4 of the Civil Procedure Rules is exactly the High Court recess period.
15. However, the provisions, as read and reproduced above, are alive to circumstances when a shorter period may be ordered by the court, having regard to the circumstances of each case, for filing of documents or pleadings, and in this case, the shorter period given by the court was with reasons that the proceedings are time bound.
16. By an application dated 5/1/2026 and filed on 7/1/2026, the applicant seeks for enlargement of time within which to file the substantive notice of motion. The reasons for the delay as stated in the supporting affidavit are that the applicant's staff took a break from the office on 15/12/2025. However, in the further affidavit and submissions, the Applicant's Counsel submits that the authorized deponent was taken ill and that the other senior officer was engaged in the applicant's privatization exercise.
17. The applicant relies on decisions of this court which I take judicial notice of and where this court excused the respective parties' delay and enlarged timelines for filing Judicial Review Motions where delay was not inordinate and explained to the satisfaction of the court. As stated above, judicial discretion is exercised judiciously, having regard to the circumstances of each case. It is not an absolute discretion.
18. The applicant also argues, through its Counsel, that it is in the public interest that the application be allowed since it has already filed the substantive motion, following Counsel's misapprehension of directions given on 8/1/2026 directing it to serve the application for enlargement of time and instead filed and served the substantive motion which is an originating motion dated 13/1/2026.
19. Further, that it is in the interest of justice to allow the application and that no prejudice will be occasioned to the other parties.
20. The Interested Party opposes the application for enlargement of time and filed grounds of opposition dated 20/1/2026, insisting that it had not been served with the application in question but got it from the Case Tracking System.
21. Arguing in support of the grounds of opposition, the Interested Party's Counsel submitted that there was no proper lawful or sufficient grounds given by the applicant to warrant enlargement of timelines given on 30/12/2025.
22. That these proceedings being time bound, the application offends Order 50 of the Civil Procedure Rules and Section 42 of the *Public Procurement and Asset Disposal Act*. That the originating motion dated 13/1/2026 was filed without leave of court hence it should be dismissed.
23. That both deponents of the affidavits of the applicant are legal officers of the applicant and could have sworn the alleged affidavit, if need be, on 30<sup>th</sup> or 31<sup>st</sup> December 2025 since there is no evidence that the



- two of them were indisposed. That there are no crucial documents annexed to the two applications which could not have been obtained either on 30<sup>th</sup> or 31<sup>st</sup> December, 2025.
24. Further, contention is that there is no demonstration of prejudice to be suffered by the decision of 19/12/2025 whether quashed or not.
  25. The respondent did not file a response to the application dated 5.1.2026 and instead filed a response to the application dated 13/2026, which it claims was the one only one served upon it by the applicant.
  26. Having considered the above position, with the respondent associating itself with the interested party's position, the issue for determination is whether the application is merited.
  27. I start by stating that the applicant is not deserving of the order of enlargement of time. I have given some of the reasons in the historical background that I have provided. In addition, this court finds the applicant to be mischievous and abusing court process. This is because, the applicant concedes that Public Procurement proceedings are time bound. It came to court during the recess on 29/12/2025 and on 30/12/2025, this court granted it orders for leave to apply and issued directions for compliance with timelines.
  28. The application for leave was dated 23/12/2025 and filed in court on 29/12/2025, six days later during the recess and during the period that its deponent claims, that the applicant's staff had gone away on a break on 15<sup>th</sup> December, 2025. However, someone in the name of Gloria Khafafa, the applicant's Legal Services Manager, was available to swear an affidavit verifying the facts in the chamber summons for leave dated 23<sup>rd</sup> December, 2025.
  29. The decision of the Respondent was rendered on 19/12/2025 ostensibly, after the applicant's staff had gone on a break but somehow, someone was on hand to instruct the Advocates to prepare pleadings expeditiously by 23/12/2025 and file them in court on 29/12/2025 within 14 days stipulated in Section 42 of the *Public Procurement and Asset Disposal Act*.
  30. The irony is that it appears that as soon as this court granted leave on 30/12/2025 and directed compliance with timelines, the applicant's staff became 'away on a break from 15/12/2025' and in addition, now the staff who did swear the verifying affidavit on 23/12/2025, emerges with a sick sheet and sick off dated 22/12/2025 which was before she swore the affidavit of 23/12/2025 verifying the chamber summons for leave, claiming that on 14/12/2025, she was admitted at Nairobi Hospital and discharged on the 22/12/2025 and allowed off duty 21 days from 23/12/2025 to 12/1/2026 .
  31. These statements neither assist the Court nor advance the applicant's case. Their relevance is inexplicable. They are contradictory.
  32. Finally, and more critically, is the question of whether the applicants required any affidavit to be sworn to support the substantive motion to be filed pursuant to the leave granted on 30/12/2025 by this court.
  33. The legal position regarding how notice of motion should be filed under Order 53 Rule (4) of the Civil Procure Rules has been stated by this court severally, and in recent decisions of this court. Much earlier, Nyamu J (as he then was) in Republic versus Land Disputes Tribunal Court Central Division & Another exparte Nzioka [2006] eKLR. The learned Judge held that there is no legal requirement that the Notice of Motion be filed simultaneously with any other documents. The learned Judge C.W. Githua in JR Misc 133/2010 Republic vs Kenya Airports Authority exparte Anthony Muthumbi Wachira in her Ruling rendered on 9<sup>th</sup> December, 2011 agreed with Nyamu J and stated as follows, in the matter where a preliminary objection was filed by the Respondent contending that the Notice of



Motion was incurably defective and fatally incompetent as it was not supported by an affidavit hence it could not stand on its own.

34. The learned Judge stated, inter alia: concurring with Nyamu J in the above cited case and I have no reason to differ, that:

“...it is clear from the provision of Order 53 Rule 4 (CPR) that the Notice of Motion need not be filed with any document. The law only requires that it be served together with a statement and affidavits supporting grant of leave. In the circumstances, I find no substance in the submission that the Notice of Motion filed herein was defective and incompetent as it had not been filed together with an independent supporting affidavit...”

35. The learned Judge supported her position with the provisions of Order 53 Rule 4 of the Civil Procedure Rules which stipulates that:

“(1) Copies of the statement accompanying the application for leave shall be served with the Notice of Motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement”.

36. Order 53 Rule 3 of the Civil Procedure Rules provides that the application, once leave is granted, to be made by way of Notice of Motion. The Rule states:

1. When leave has been granted to apply for an order of mandamus, prohibitory or certiorari, the application shall be made within twenty one days by notice of motion to the High Court.
2. The Notice shall be served on all persons directly affected....
3. An affidavit giving the names and addresses of, and the place and date of service on all persons who have been served with the Notice of Motion shall be filed before the notice is set down for hearing....

4. ....”

37. The above provision, unlike Order 53 Rule 1 does not require any supporting affidavit to accompany the notice of motion and the reason being that the documents which are filed with the chamber summons for leave to apply would all accompany the Notice of Motion, as stipulated in Rule 4(1) reproduced above. Under Order 53 Rule 1(2), an application for leave shall be accompanied by;

- a. A statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
- b. Affidavits verifying the facts and averment that there is no other cause pending and that there have been no previous proceedings in any court between the Applicant and the Respondent, over the same subject matter and that the cause of action relates to the Applicants named in the application with all the above in mind, it is apparently clear that the applicant cannot introduce another affidavit purporting to annex new documents or new grounds in support of the substantive motion. Since the main pleading in the proceeding is the statutory statement which sets out the name and description of the applicant, the relief sought and the grounds on which it is sought.



38. Accordingly, the applicant cannot be heard to say that it did not have, close to it, an authorized deponent to swear the supporting affidavit to the substantive notice of motion. That excuse is dismissed as being bare.
39. Additionally, whereas it is true that timelines granted by the court can be enlarged by the court as stipulated in Order 50 Rule 6 of the Civil Procedure Rules, and whereas such enlargement can still be done after the lapse of the period stipulated by the court, especially where the delay is not inordinate and where no prejudice would be occasioned to the adverse parties, and or in public interest matters where substantial loss or prejudice is likely to occur to be suffered by the applicant if extension of time is not granted, in this case, this court has not been shown what prejudice the applicant will suffer in a matter where the Respondent declined to debar the Interested Party, noting that in Public Procurement matters, tenders are only awarded to qualifying bidders who meet the criteria set by the procuring entities.
40. Further, although the applicant claims that the delay is not inordinate, from a point of proceedings which have no statutory timelines, the delay might look or appear to be immaterial. However, as I write this Ruling following an expeditious hearing of the application only this morning, already 23 days have lapsed since the application for leave was filed on 29/12/2025. The applicant having approached this court under Order 53 of the Civil procedure Rules, time started running from the date of filing of the application for leave, not the substantive motion.
41. Additionally, the remainder period now, to the determination of the substantive motion, assuming enlargement of time is allowed and the now filed motion is deemed duly filed, is 21 days. The decision must be rendered by 12/2/2026, the 45<sup>th</sup> day.
42. The question is, which machine is exclusively available at the Judicial Review Division of the High Court to, from today, give directions on filing of responses and rejoinders together with submissions and to manufacture a judgment capable of making Judicial sense, in the midst of other pending public procurement matters which are pending judgment in the next two weeks, several originating motions pending judgments to be rendered in the same period; and with no legal researcher on site to aid in summarizing the cases, with one Judge on duty from 1<sup>st</sup> December 2025 until February 2026, handling a daily Cause list and all certificates of urgency?
43. This is a case where the court cannot delay a judgment by one minute past midnight of the last day when time lapses. It is for that reason that the court and a Judge serving in this Division must be conscious of timelines and parties and their advocates must adhere to the statutory call in Section 1A (3) of the [Civil Procedure Act](#) to assist the court to further the overriding objective of the Act and to that effect, to participate in the processes of the court to comply with the directions and orders of the court.
44. The overriding objective of the Act and the Rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
45. Section 1B places a duty on this court to handle all matters before it for purposes of obtaining the following aims:
  - a. The just determination of the proceedings;
  - b. The efficient disposal of the business of the court;
  - c. The efficient use of the available judicial and administrative resources.
  - d. The timely disposal of the proceedings and all other proceedings in the court, at a cost affordable by the respective parties.



- e. The use of suitable technology.
46. The above provisions mirror Article 159 of *the Constitution* which abhors application of procedural technicality at the expense of substantive justice but also demands that justice must not be delayed. In other words, in as much as this Court must balance access to justice, the right to be heard and expedition, however, a party who is well aware of the statutory timelines and fails to assist the court in achieving the overriding objectives of the law and or promote the principles espoused in Article 159 of *the Constitution*, cannot claim denied justice.
47. Delay defeats equity, the same way delayed decision-making defeats justice to the justice seeker. Parties must come to court with clean hands and comply with directions of the court. They must act with alacrity.
48. As observed above, the applicant has not come to court with clean hands and has not acted with alacrity. It has sought to rely on exception to the general Rules instead of complying with directions given by the Court on timelines, which directions were very clear, with reasons provided for requiring expedition and not the usual 21 days provided for under Order 53 of the Civil Procedure Rules and instead seek enlargement of time.
49. Each case must be considered on its own merits and circumstances. The circumstances of the present case do not permit this Court to adopt a liberal approach to timelines. This Court, like all courts, functions within the discipline of time prescribed by statute. Where the legislature has fixed timelines for disposal, the Court does not operate on elastic or extended clocks. While this Court remains committed to upholding the values of justice, it cannot act mechanically or without regard to the statutory mandate.
50. For all the above reasons, I find and hold that the applicant does not deserve the exercise of this court's discretion to enlarge time for filing of the substantive notice of motion and the Originating Motion (instead of Notice of Motion though not fatal for want of form) dated 13/1/2026 filed out of the timelines given by this court is hereby struck out. The application dated 5/1/2026 seeking enlargement of time is declined and is hereby dismissed.
51. Each party to bear their own costs of these proceedings.
52. This file is closed.
53. I so order.

**DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY, 2026**

**R.E. ABURILI**

**JUDGE**

