REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E046 OF 2026

IN THE MATTER OF AN APPLICATION BY KENYA REINSURANCE CORPORATION LIMITED AND THE ACCOUNTING OFFICER OF KENEYA REINSURANCE CORPORATION LIMITED FOR JUDICIAL REVIEW BY WAY OF THE ORDER OF CERTIORARI

AND

IN THE MATTER OF SECTION 175 OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015

AND IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 RULE 1(1) AND (2) OF THE CIVIL PROCEDURE RULESS, 2010

BETWEEN

REPUBLIC……APPLICANT

AND

EBONY ESTATES LIMITED……1ST RESPONDENT

PUBLIC PROCUREMENT ADMINISTRATIVE

REVIEW BOARD……...2ND RESPONDENT

EXPARTE

THE ACCOUNTING OFFICER,

KENYA REINSURANCE CORPORATION LIMITED…1ST APPLICANT

KENYA REINSURANCE CORPORATION LIMITED...2ND APPLICANT

RULING

ISSUE: ***Whether the High Court has jurisdiction to enlarge time for filing of judicial Review proceedings from the decision of the Public Procurement Administrative Review Board under Section 175(1) of the Public Procurement***

and Asset Disposal Act, which mandates that judicial review be filed within 14 days of the date of the decision of the Review Board.

1. The exparte applicant's application dated 25th February, 2026 which was filed on 26th February, 2026 under certificate of urgency and argued exparte in the first instance on 27th February, 2026 seeks for orders, among others, enlargement of time within which the judicial review application should have been filed, challenging the decision of the 2nd respondent, Public Procurement Administrative Review Board rendered on 30th January, 2026, between **Ebony Estates Limited v PPARB and Accounting Officer, Kenya Reinsurance Corporation Limited and Another,** in respect of Tender No. KRC/2025/2636/336.
2. The applicant also seeks leave of Court to challenge the said decision by way of *certiorari* to remove into this court for purposes of quashing and to quash the decision of the 2nd respondent PPARB rendered on 30th January, 2026 in Request for Review Application No. 6 of 2026.
3. The grounds upon which the application is predicated are on the face of the chamber summons and the statutory statement as verified by the affidavit of Hillary Maina Wachinga, the applicant's Managing Director.
4. I heard this application exparte after inviting the applicant's counsel to appear and submit on the question of leave to file the application out of time, taking into account the statutory timelines for filing of judicial review from

the date of the decision of the PPARB, under section 175(1) of the PPADA, is 14 days.

5. Mr. Peter Wanyama Counsel for the applicant submitted conceding that indeed, the application was filed out of the 14 days stipulated in the law but that this case moved him to tears upon being briefed by the exparte applicant's accounting officer on what exactly transpired during the tender evaluation process where there was evidence of interference with the process by the procuring entity's staff hell bent to award the tender to their preferred tenderer and that there was no objectivity in the process, with some staff of the procuring entity and officials of the Review Board being threatened with dire consequences if they did not award the subject tender to the 1st respondent herein. He submitted that there was impropriety.
6. The court had sought to be told as to under what provisions of the law conferred jurisdiction on the court to enlarge time for filing of judicial review out of time. Counsel submitted that the facts of this case are very peculiar and that this court could invoke its inherent jurisdiction to enlarge time for filing of the judicial review, which time had lapsed, as the Judicial Review Application herein ought to have been filed on or before 13th February, 2026 but was now late by 12 days from 13th February, 2026, for substantive justice to be served.

7. It was submitted that the staff of the corporation were frustrating the Managing Director whose term is ending in March 2026 and were not taking any instructions from him.
8. The question therefore is whether this court has jurisdiction to enlarge time for filing of judicial review proceedings where such time is fixed by the Public Procurement and Asset Disposal Act and if so, is the intended motion prima facie arguable? It is however important to note that if this court finds that it has no jurisdiction to enlarge the period for filing of the application, it will down its tools and will not delve into determining whether the intended application is arguable to warrant leave of this Court.
9. **Section 175 (1) of the Public Procurement and Asset Disposal Act** provides that:

   "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."

10. There are two mandatory happenings here. The first is the filing of judicial review which must be done within 14 days from the date of the Review Board's decision while the second is the decision of the Review Board becoming final in the event that the judicial Review is not filed within 14 days, challenging the decision of the Review Board. In other words, upon the

lapse of 14 days, the decision of the Review Board takes effect and what remains is implementation thereof.

11. The main question, thus, is, does this Court have any inherent or residual power or jurisdiction to enlarge the time for filing of judicial review proceedings out of time, where the 14 days stipulated in section 175(1) have lapsed?

12. This is a jurisdictional issue which, must be determined having regard to the law and judicial precedent. Jurisdiction is the power donated to courts to hear and determine disputes. In the case of **Samuel Kamau Macharia& Another v. Kenya commercial Bank & 2 Others, Application No. 2 of 2011 [2012] eKLR,** the supreme court pronounced thus on jurisdiction:

> ***"(68) A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which Is conferred upon it by law. We agree with counsel for the first and second Jurisdiction to entertain a matter before it, is not one of mere procedural Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, Commission (Applicant), Constitutional Application Number 2 of 2011. Where they cannot expand its jurisdiction must operate within the constitutional limits. It confers power upon***

Parliament to set the jurisdiction of a Court of law or tribunal, court or tribunal by statute law." (Emphasis provided) where it quoted with approval the oft cited case of Owners of Motor Vessel 'Lillian S' v Caltex In Re The Matter of the Interim Independent Electoral Commission where the Court stated: -

" (29) Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

" I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step."(underlining supplied)

(30) The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of

legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution."

13. In **Misc JR No. E002 Of 2020 at Eldoret Republic Versus Public Procurement Administrative Review Board Exparte Moi Teaching and Referral Hospital and The Consortium of Rento Africa Ltd, Interested Party Pharmaken, [2021] eKLR,** Bw'ononga J (as he then was), was faced with the question of whether he had jurisdiction to enlarge time for filing of judicial review application in public procurement matter where such time as stipulated in section 175(1) of the Act had lapsed. The applicant in that case had argued, *inter alia*, that the section was unconstitutional because it purports to limit a constitutional right that guarantees access to justice as well as the right to a fair administrative action. Dismissing the application, the learned Judge reached several conclusions and held that:

"It is common ground among the ex parte applicant, the respondent and the first interested party that the instant application was filed out of time, following the delivery of the impugned decision. Furthermore, it is trite law that jurisdiction is donated by the constitution or statute or both, according to Samuel Kamau Macharia v & Another v Kenya Commercial Bank Ltd & 2 Others, supra. The ex parte applicant has not pointed to any constitutional or statutory provision that donates to

this court power to extend time within which to file its application for judicial review, outside the permitted 14 days. Counsel for the ex parte applicant cited the decision of this court (Mativo, J) in Republic v Speaker of the Senate & Another, ex parte Afrison Export Import Ltd & Another, supra, in which that court held that the right to a fair administrative action is a constitutional right and therefore access to courts is a fundamental right and can only be limited in a manner that can pass constitutional muster. The court then proceeded to grant the application through the interpretation process. Furthermore, counsel for the ex parte applicant also cited Republic v Kenya Revenue Authority, ex parte Stanley Mombo Amuti, supra, in which that court observed that in an application for extension of time, all that the applicant is required to do, is to demonstrate that he has a good reason for failing to file the application within the time allowed by the court. I find that a court of law must interpret the words used in a statute by giving effect to their ordinary and plain meaning. I therefore find it difficult to follow the ratio decidendi in the above cases. Additionally, counsel for the ex parte applicant has urged this court to rely on its inherent powers and discretion to allow the application. I accept that a court of law has inherent powers to enable it to administer justice as enshrined in section 3A of the Civil Procure Act. It is the law that a court of law is not allowed to resort to its inherent and discretionary

powers, where there are statutory provisions to meet the circumstances of the case. Inherent powers should not be resorted to, where they will be in conflict with those statutory provisions. They may only be resorted to where there is a lacuna or ambiguity in a statute. They may also be resorted to in order prevent an abuse of the court process. Furthermore, it is also important to point out that section 175 of the PPADA has not made any statutory provisions for the enlargement of time, within which an applicant may out of time file an application for judicial review; where such applicant has failed to file such an application within the permitted 14 days. Additionally, the 2010 Constitution of Kenya has not provided for the period within which an applicant may be allowed by the court to file out of time an application for judicial review proceedings. In the absence of the enabling constitutional and/or statutory provisions, a court of law is not allowed by law through interpretation, to aggrieved applicant to file out of time an application for judicial review. In the words of the court in Republic v PPARB & Another, ex parte, Teacher's Service Commission, supra, a court of law cannot go round the legislative edict of section 175 (1) of the PPADA by craft or innovation. It is for the foregoing reasons that I am unable to agree with the decisions of the court in Republic v Speaker of the Senate & Another, ex parte Afrison Export Import Ltd & Another and

Republic v Kenya Revenue Authority, ex parte Stanley Mombo Amuti, supra.

The constitutionality, propriety and legality of the statutory timelines as set out in section 175 (1) PPADA vis-a~-vis the limitation on access to justice under section 148 of the Constitution, was adjudicated upon in Republic v PPARB & Another, ex parte, Teacher's Service Commission, infra, and in the Republic v PPARB & Another, ex parte, Wajir County Governor, supra, and the courts in those two cases found no conflict.

I find that these two authorities are persuasive. Furthermore, it should be borne in mind that the constitutional right of access to courts is not an absolute right. It is one of those rights that may be limited in terms of article 24 of the 2010 Constitution of Kenya.

The only rights that cannot be limited are those set out in article 25 of the 2010 Constitution of Kenya; whose provisions read as follows: "Despite any other provision in the Constitution, the following rights and fundamental freedoms shall not be limited- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) the right to a fair trial; and (d) the right to an order of habeas corpus.

"I find that section 175 of the Public Procurement and Asset Disposal Act, 2015 allows an aggrieved party to file within 14 days an application

for judicial review in the High Court. This in itself is a guarantee to the aggrieved party to challenge any unfair administrative action. The purpose of judicial review to enable the High Court to exercise judicial control over administrative bodies, including the instant PPARB. It is therefore clear that the ex parte applicant access to justice through the administrative action has not been limited. This ground therefore lacks merit and is hereby dismissed.

In this regard, I find that the limitation to challenge the order of the respondent within 14 days is one that is imposed by section 175 of the PPADA. It therefore follows that the issue raised by the first interested party is a pure point of law. In the premises, I find no merit in this objection, which I hereby dismiss.

Furthermore, the ex parte applicant urged the court invoke the provisions of article 159 (2) (d) of the 2010 Constitution and apply substantive justice by allowing the applicant's application.

In this regard, I find that the foregoing provisions are not a panacea for all ills and cannot be relied upon to create a legal right, which does not exist in law.

In the premises, I reject the submission of the ex parte applicant that the provisions of section 175 (1) the PPADA are not in conformity with the constitution.

14. **In ADK Technologies Ltd in Consortium with Computer Technologies Ltd v Public Procurement Administrative Review Board & 4 others (Civil Appeal E598 of 2021)** it was held: -

> ***"Section 175 has been the subject of consideration by this Court in Aprim Consultants v. Parliamentary Service Commission & Another, CA. No. E039 of 2021 ("the Aprim case") and in The Consortium of TSK Electronica Y Electricdad S.A. & Ansaldoenergia v. PPARB & 3 Others, CA. No. E012 of 2022 ("the TSK Electronica case").***

15. In the **Aprim** case, the Court stated that section 175 was couched in mandatory terms. The Court expressed itself thus:

> ***"A perusal of section 175 of the Act reveals Parliament's unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act's avowed intent and object of expeditious resolution of those disputes. Parliament was thus fully engaged and intentional in setting the timelines in the Section. But it did not stop there. In one of the rarer instances where all discretion is totally shut out, Parliament expressly enacted a consequence to follow default or failure to file or to decide within the prescribed times: the decision of the Board would crystallize with finality…Thus, any judgment returned outside time would be without jurisdiction and therefore a nullity.***

The same reasoning applies with equal force to section 175(4) which addresses procurement appeals in this Court.

16. In the **TSK Electronica** case the Court agreed with the reasoning in the **Aprim** case, and stated thus:

> ***"Our appreciation of section 175(4) is that a person aggrieved by a decision of the High Court arising from a judicial review decision in a procurement matter under this Act and who desires to prefer an appeal to this Court must do so within a period of 7 days from the decision of the High Court. Thereafter, this Court must hear and make a determination of the appeal within 45 days from the date of its filing. These timelines are cast in stone and cannot be varied. The strict time frames under this section underscore the intention of Parliament to ensure that disputes relating to Public Procurements and Assets Disposal are disposed of expeditiously."***

17. The Court of Appeal further stated:

> ***"''Our reading of the Act is that the High Court was under an express duty to make its determination within the time prescribed. During such time did its jurisdiction exist, but it was a time bound jurisdiction that ran out and ceased by effluxion of time. The moment the 45 days ended, the jurisdiction also ended. Thus any judgement returned outside time would be without jurisdiction and therefore a nullity, bereft of any force***

of law. That legal conclusion remains irrespective of the avowed reasons, no matter how logical, sound, reasonable or persuasive they may be. No amount of policy, wisdom or practicality can invest a decision made without jurisdiction with any legal authority.''

14. The 1st Interested Party also canvassed their application by way of written submissions dated 14th February, 2025.

15. They submit that in the case of **Aprim Consultants v Parliamentary Service Commission & another & another (Civil Appeal E039 of 2021) [2021),** the Court of Appeal observed that:

"Perusal of section 175 of the Act reveals Parliament's unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act's avowed intent and object of expeditious resolution of those dispute …. the jurisdiction of the High Court in Public Procurement judicial review proceedings is expressly limited in terms of time and is not open to expansion by that court. To step out of time is to step out of jurisdiction and any act or decision outside jurisdiction is by application of first principles a nullity."

18. The Court of Appeal decision in **Aprim Consultants v Parliamentary Service Commission & another [2021] eKLR** emphatically stated that the High Court generally lacks the power to enlarge time for filing judicial

review proceedings under Section 175 of the Public Procurement and Asset Disposal Act (PPADA), 2015. The 14-day timeline is considered mandatory and "cast in stone" to ensure, reflecting an intention that stepping outside of it deprives the court of jurisdiction.

19. The Court of Appeal in the above case stated as follows:

"Without a doubt, there are serious practical difficulties with meeting timelines set by the Act, and it may well be that given the sheer numbers of such judicial review matters that get filed before the relevant division of the High Court; the limited number of judges to handle them; and numerous other matters. Besides, as public procurement is but one of the areas in administrative law that spawns judicial review applications, the wisdom of so short a timeline may be fairly questioned. One may wonder whether a situational analysis or any other scientific, data-based research was done to determine the reality on the ground and inform the time that is practical to effectuate the legitimate desire for timelines in disposal of public procurement and disposal disputes. It would seem quite basic that before imposition of timelines sort in section 175 of the Act, there should have been a robust engagement with stakeholders, foremost of whom would be the Judiciary leadership and specifically the judges and registrars of the relevant division. We very much doubt that such engagement did occur given the patently unrealistic timelines in the provision.

"That said, is it open for the High Court, no matter how reasonable its premises, to nonetheless go on and flout the timeliness or proceed as if they did not exist? Are the timelines in question such as leave the Courts with degree of discretion, or they are to be construed as being inflexibility binding?

"We think, with respect, that the provisions of section 175 are couched in terms that are plain and unambiguous, admitting to no interpretive wriggle room…"

20. In a recent decision of the Court of Appeal in **ELC Electroconsult SPA v Public Procurement Administrative Review Board & 3 others (Civil Appeal E1012 of 2025) [2025] KECA 2314 (KLR) (19 December 2025) (Judgment**), the Court of Appeal affirmed the mandatory nature of the timelines given in section 175 of the PPADA. In that case, the applicant filed an appeal to the Court of Appeal from the High Court, outside the 7 days period. In fact, the applicant had filed a Notice of Appeal and argued that a Notice of Appeal was an Appeal.

21. The Court of Appeal, citing other decisions on the mandatory nature of the timelines provided for under the Act held that:

"11. In Aprim Consultants vs. Parliamentary Service Commission & Another to which counsel on both sides referred, this Court expressed as follows:

"16.We think, with respect, that the provisions of section 175 are couched in terms that are plain and unambiguous, admitting to no interpretive wriggle room. The Section sets strict timelines for applicants, the High Court and this Court in a sequential manner;

1.A person aggrieved must file seek (sic) judicial review of the Boards' decision within 14 days.

2.The High Court must determine the judicial review application within 45 days.

3.A person aggrieved by the decision of the High Court must appeal to the Court of Appeal within 7 days.

4.The Court of Appeal must make a decision within 45 days.

17.All of these timelines are patently tight. They also greatly constrict the usual timelines for the filing and determination of proceedings. For this Court, for instance, ordinary appeals are initiated by filing of a notice of appeal within 14 days of the decision appealed from. This is followed by a lodging of the record of appeal some 60 days thereafter. There is no set time within which an appeal is to be heard. It is the decision following hearing of the appeal that is required to be rendered within 90 days by dint of rule 32(1), but the Court may still deliver its judgment outside that period for reasons to be recorded".

22. Section 175(1) requires any person aggrieved by the Review Board's decision to file for judicial review within 14 days. there is indeed, no

residual Discretion for courts to flex the period, and there is no provision to enlarge this time. It follows that filing the application after 14 days renders the matter filed outside jurisdiction.

23. In the above cited **ELC Electroconsult SPA** case, the Court of Appeal further highlighted that:

> ***"13. It bears repeating that procurement proceedings under the Act are sui generis and distinct from normal proceedings. To that extent, the decisions in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral & Boundaries Commission (IEBC) & 7 Others and Multichoice (Kenya) Limited vs. Wananchi Group (Kenya) Limited & 2 Others on which Mr. Kirui relied do not assist in the present circumstances.***
>
> ***14.Underscoring the importance of the strict timelines in procurement matters under the Act, it was stated in Al Ghurair Printing and Publishing LLC v Coalition for Reforms and Democracy & another; Public Procurement Administrative Review Board (Interested Party) (Civil Appeal 63 of 2017) [2017] KECA 565 (KLR) that:***
>
> > ***"Section 175 of the Act as a whole provides for an elaborate time bound process for escalating the dispute from the Review Board (which must complete its review within 21 days after receiving the request), to seeking judicial review to the High Court (which***

must be done within 14 days from the date of the decision of the Review Board); to the High Court (which has 45 days after such application to make its decision). A person aggrieved by the decision of High Court may appeal to the Court of Appeal within 7 days of the High Court decision. The Court of appeal shall make a decision within 45 days which decision shall be final. The importance of the timelines is buttressed by Section 175(5), which provides that the decision of the Review Board shall be final and binding to all the parties should the High Court or the Court of Appeal fail to make a decision within the prescribed timelines."

15.In procurement matters, the strict statutory timelines under Section 175 of the Act take precedence over those in the Court of Appeal Rules. For good measure Section 5 of the Act provides that where there is a conflict between the Act and any other written law, the Act prevails.

24. The Court of Appeal in the above **ELC Electroconsult SPA** case upheld the contention by the 2nd respondent that the appeal was filed out of time and was, therefore, incompetent. It proceeded to strike it out with costs to the 2nd respondent.

25. All that the cited authorities are saying is that the timelines provided for under the PPADA are cast in stone until Parliament decides to amend that

law to say otherwise and that courts have no inherent power or jurisdiction to extend that time whatever the circumstances.

26. The second happening aspect of section 175(1) of the PPADA is that of finality of the decision of the Review Board, in the event that the judicial review application is not filed within 14 days from the date of the Review Board's decision.

27. In other words, failure to file judicial review within 14 days means the decision of the Review Board becomes final and binding. In this case, the decision of the Review Board was rendered on 30th January, 2026. The last day for filing of the judicial review proceedings was on 13th January, 2026. Beyond that date, there having been no judicial review application and no stay of implementation of the decision of the Review Board, the decision of the Review Board took effect. Absence of any proceedings capable of challenging that decision, the decision took effect and must be implemented unless it is established that the 1st respondent is incapable of implementing the contract envisaged. This statutory position is informed by the finality of decisions on public procurement processes.

28. Having said all the above, I find and hold that this Court holds no inherent, residual power to extend the 14-day statutory deadline to enable the applicant file judicial review application out of time and therefore, any such application filed out of time is liable to be struck out for want of jurisdiction. As affirmed n the **Aprim** case, the strict time frames under section 175(1) of

the Public Procurement and Asset Disposal Act (PPADA), Cap 412C underscores the intention of Parliament to ensure that disputes relating to the PPADA are disposed of expeditiously.

29. Additionally, the Public Procurement and Asset Disposal Act, 2015 overrides any other Acts of Parliament on matters of procurement in such a way that if there is any inconsistence, the provisions of the Act take precedence.

30. Section 5 (1) of the Act states that:

> ***"This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and asset disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services."***

31. I will now examine in detail, some of the decisions that courts have held that the timelines under the PPADA are not flexible or elastic. In a more direct Court of Appeal decision in **Principal Secretary/Accounting Officer Ministry of Defence & another v Public Procurement Administrative Review Board & another; Ministry of Gender, Culture, the Arts & Heritage (Interested Party) (Civil Appeal 198 of 2025) [2025] KECA 666 (KLR) (11 April 2025) (Judgment),** the appellants, The Principal Secretary/ Accounting Officer, Ministry of Defence and The Ministry of Defence challenged the ruling of the High Court delivered on 20th February

2025. In that ruling, the High Court struck out, with costs, their application for judicial review on the ground that it was filed outside the statutory window as provided for under Section 175 of the Public Procurement and Disposal Act.

32. The only issue that the Court of Appeal framed and answered was whether in computing the 14 days prescribed under Section 175(1) of the Act, regard should be had to Order 50 Rule 4 of the Civil Procedure Rules to exclude the Christmas recess.

33. The appellant argued that the period of Christmas recess should be excluded while the 2nd respondent submitted that the time frame under Section 175(1) of the Act is cast in stone, and that Order 50 Rule 4 of the Civil Procedure Rules has no application.

34. Among other submissions by the parties in the cited case, and it is important to highlight here to guide all parties even for the future, were that Section 175(1) of the Act does not oust the provisions of Order 50 Rule 4 of the Civil Procedure Rules which provides that the period between 21st December in any year and the 13th day of January in the year next following shall be omitted from any computation of time for doing any act. Reference was also made to Section 57 of *the Interpretation and General Provisions Act (*Cap 2).

35. Counsel for the appellant had submitted that decisions of the Court of Appeal, exemplified by the decision in the case of **Aprim Consultants vs.**

Parliamentary Service Commission & Another, Civil Appeal No. E039 of 2021 [2021] KECA 1090 case, holding that the timelines under Section 175 of the Act are cast in stone, did not contemplate the scenario created by Section 57 of Cap 2 and Order 50 Rule 4 of the Civil Procedure Rules based on which there is a lacuna; that the Court should give a holistic interpretation of those provisions alongside Section 5 of the Act to avoid a construction that produces an absurd, unworkable or impractical result.

36. Further submission was that the appellants have a constitutional right to be treated in litigation proceedings before courts in a fair manner as prescribed by the laws; that the Civil Procedure Rules, of which Order 50 is part, assures and guarantees procedural methods and rules to the litigants meant to maintain order and fairness in legal proceedings; that as the decision of the Review Board in that case was rendered in a period excluded for computation of time, Sections 5 and 175(1) of the Act should be read together with Order 50 Rule 4 of the Civil Procedure Rules which is anchored on Section 57 of Cap 2. It was urged that had the learned Judge of the High Court properly considered the matter with those provisions in mind, the preliminary objections would have been dismissed. With that, counsel for the appellants urged the Court of Appeal to allow the appeal and send the matter back to the High Court for disposal of the appellants' application for judicial review on merits.

37. Opposing the appeal in the above stated case, it was submitted by the respondent's counsel that there is no contestation that the appellants' application for judicial review was filed outside the 14 days set under Section 175(1) of the Act; that Order 50 Rule 4 of the Civil Procedure Rules invoked by the appellant is subordinate legislation and cannot extend time set under statute; that in any event, that rule applies to timelines set under the Civil Procedure Rules or by any order of the court and cannot therefore apply to timelines set under Section 175(1) of the Act.

38. It was submitted on the strength of the decision of the Court of Appeal in the case of **Aprim Consultants vs. Parliamentary Service Commission & Another (above**) that the timelines under Section 175 are mandatory and cast in stone. Moreover, counsel for the respondent submitted, by dint of Section 5 thereof, the Act "shall prevail in case of any inconsistency between [it] and any other legislation".

39. After considering the appeal and the rival arguments, the Court of Appeal stated as follows:

"Section 175 of the Act deals with the 'right of judicial review to procurement'. Section 175(1) of the Act in particular provides:

> ***"(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".***

19.The provisions of Section 175 of the Act have been the subject of interpretation by this Court in many cases. For example, in the case of Aprim Consultants vs. Parliamentary Service Commission & Another (above) to which counsel on either side referred, this Court expressed as follows:“

23.A perusal of section 175 of the Act reveals Parliament’s unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act’s avowed intent and object of expeditious resolution of those disputes.

24.Parliament was thus fully engaged and intentional in setting the timelines in the Section. But it did not stop there. In one of the rarer instances where all discretion is totally shut out, Parliament expressly enacted a consequence to follow default or failure to file or to decide within the prescribed times: the decision of the Board would crystallize and he invested with finality.”

20.Earlier, in the case of Al Ghurair Printing and Publishing LLC vs. Coalition for Reforms and Democracy & 2 Others [2017] eKLR, the Court in speaking to the provisions of Section 175 of the Act stated:

“36. Section 175 of the Act as a whole provides for an elaborate time bound process for escalating the dispute from the Review Board (which must complete its review within 21 days after receiving the request), to

seeking judicial review to the High Court (which must be done within 14 days from the date of the decision of the Review Board): to the High Court (which has 45 days such application to make its decision). A person aggrieved by the decision of High Court may appeal to the Court of Appeal within 7 days of the High Court decision. The Court of Appeal shall make a decision within 45 days which decision shall be final.

37.The importance of the timelines is buttressed by Section 175(5), which provides that the decision of the Review Board shall be final and binding to all the parties should the High Court or the Court of Appeal fail to make a decision within the prescribed timelines.

40….. there is nothing in the elaborate provisions under Section 175 of the Act that goes against <u>the Constitution</u> or that is inimical or likely to lessen or adversely affect or undermine the constitutional underpinning of the remedy of judicial review...”

21.See also ADK Technologies Limited in Consortium with Computer Technologies Limited vs. Public Procurement Administrative Review Board & 4 Others (Civil Appeal E598 of 2021) [2022] KECA 407 (KLR). And in the case of The Consortium of TSK Electronica Y Electricdad S.A. & Ansaldoenergia vs. PPARB & 3 Others, CA. No. E012 of 2022 the Court emphasised that:“These timelines are cast in stone and cannot be varied. The strict time frames under this section underscore the intention

of Parliament to ensure that disputes relating to Public Procurements and Assets Disposal are disposed of expeditiously."

22.Indeed, the Court (a five judge bench of this Court) in the case of Kenya Ports Authority vs. Public Procurement Administrative Board & 2 Others (Civil Appeal 347 of 2017) [2024] KECA 1099 (KLR) when invited to pronounce itself on the question whether section 175(3) and (5) of the Act is unconstitutional for prescribing timelines within which the High Court and the Court of Appeal must determine public procurement disputes, the Court was categorical that:

> ***"In a constitutional dispensation like ours that expressly guarantees its citizens that "justice shall not be delayed" (see article 159(2)(b) of the Constitution), it is not readily apparent to us how a clause that seeks to ensure disputes touching on a critical aspect of the national economy are resolved within stipulated time, can be said to be unconstitutional."***

23.Against that backdrop, the decision of the Review Board in this case was rendered on 23rd December 2024. Fourteen days hence, as asserted by the 2nd respondent, lapsed on 6th January 2025. On the face of Section 175(1) of the Act therefore, the appellants' application filed as it was on 14th January 2025 was filed out of time.

24.Does Order 50 Rule 4 change that? In Maersk Kenya Limited vs. Murabu Chaka Zuma [2017] eKLR, this Court considered the question

whether a limitation period prescribed under the Limitation of Actions Act could be extended by dint of Order 50 Rule 4. In answering that question in the negative, the Court stated that Order 50 Rule 4 of the Civil Procedure Rules makes it clear that the rule applies specifically to computing time under the Civil Procedure Rules, or in accordance with an order of the Court. The Court cited the case of Republic vs. Public Procurement Administrative Review Board & Another exparte Teachers Service Commission [2015] eKLR in which the High court cited the earlier case of Mokombo Ole Simel & Others vs. County Council of Narok & Others Nairobi HCMA No. 361 of 1994. There, the High Court considered whether order 49 rule 5 of the repealed Civil Procedure Rules could enlarge time specified by section 9(2) and (3) of the Law Reform Act and stated that:

"If the limited time is prescribed under the Civil Procedure Rules or by an order of the court or by summary notice, the court could enlarge the period.…Order 49 rule 5 of the Civil Procedure Rules cannot be invoked to supersede the express provisions of the Act...Order 49 rule 3A is similarly a piece of delegated legislation and cannot have the effect of amending the express provisions of section 9(2) and (3) of the Act. The said provisions can only be altered or amended by an Act of the Parliament..."

25.The same applies equally to the matter at hand. Order 50 Rule 4 of the Civil Procedure Rules is not available to enlarge time limited by statute.

26.And in as far as Section 57 of Cap 2 has been invoked as justifying an extension of time, Section 5(1) of the Act on the subject of "conflicts with other Acts" expressly states that:"(1)This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and Asset Disposal except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services. "[Emphasis added]

27.In effect, Section 175(1) of the Act prevails. Based on the foregoing, the learned Judge was right that the appellants' action was time barred and the decision to strike out the same is sound in law and cannot be faulted."

40. From the above decision which I have quoted in extenso and which binds this Court and as this Court has no reason at all to depart therefrom, it follows that Order 50 Rules 4 and 6 of the Civil Procedure Rules, 2010 is not applicable to matters public procurement as the same are expressly ousted by the application of Section 5 (1) of the Act. Even Order 50 Rule 4 of the Civil Procedure Rules which makes the clock stop running between 21st December in any year and 13th January of the following year, as well as Section 57 of the Interpretation and General Provisions Act, Cap 2 Laws of

Kenya are inapplicable to public procurement matters and this court has when handling such matters during the aforesaid period warned the parties not to apply the stated provisions, not even the exclusion of a public holiday, a Saturday or Sunday in computing timeliness for filing of public procurement proceedings, as Section 175 (1) of the PPADA is cast in stone.

41. I have taken much time restating what the Court of Appeal has stated regarding timelines given by the Public Procurement and Asset Disposal Act for reasons that each day that passes, these matters are filed before this Court raising the same issues that this Court and the Court of Appeal determines.

42. This ruling affirms the Court of Appeal decisions that Courts will not consider applications filed outside the strict statutory window provided under section 175 (1) of the PPADA for reasons that the strict time frames under PPADA underscores Parliament's intent to ensure the swift resolution of public procurement disputes.

43. Therefore, in order to mitigate potential losses, contracting authorities, tenderers, investors and advocates are called upon to familiarize themselves with the Public Procurement laws and the strict timelines under the Act as well as the decisions rendered by courts on this issue. These timelines are not elastic, not even for the courts in their hearing and determining the cases once filed. Decisions must be rendered within 45 days of the date of filing failing which the decision of the Review Board becomes final and the courts' decisions becomes a nullity.

44. In the end, I find and hold that these proceedings having been filed on 26th February, 2026, outside the 14-window period of the date when the decision of the Review Board was rendered on 30th January, 2026, this Court's jurisdiction is ousted and neither does this Court have any residual or inherent jurisdiction to enlarge time within which such judicial review application ought to have been filed.

45. Having found that his court has no jurisdiction to enlarge time for filing judicial review proceedings, I will not determine whether the intended motion is arguable as the arguability has been overtaken by jurisdictional challenges.

46. I therefore find the chamber summons dated **25th February, 2026** filed under certificate of urgency on **26th February, 2026** to be incompetent. It is hereby struck out.

47. As these proceedings have been conducted exparte, the respondents having not been served to appear and defend, I make no orders as to costs.

48. This file is closed.

Dated, Signed and Delivered at Nairobi this 2nd Day of March, 2026

R.E. ABURILI

JUDGE