

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: MUSINGA, P, MUMBI NGUGI & HASSAN, JJ.A.)

CIVIL APPEAL NO. E076 OF 2026)

BETWEEN

JAMARI ENTERPRISES LIMITED.....APPELLANT

AND

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

**THE ACCOUNTING OFFICER, THE KENYA POWER
& LIGHTING COMPANY PLC 2ND
RESPONDENT**

**THE KENYA POWER & LIGHTING
COMPANY PLC 3RD
RESPONDENT**

(Being an appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (R.E Aburili, J.) delivered on the 27th January 2026

in

***Judicial Review Application No. E406 of
2025)***

******* JUDGMENT OF THE**

COURT

Introduction

1. This is an appeal from the judgment of the High Court of Kenya at Nairobi (**Aburili, J.**) delivered on 27th January 2026 in Judicial Review Application No. E406 of 2025, in which the learned judge

- dismissed the appellant's application for judicial review orders challenging the decision of the Public Procurement Administrative Review Board.
2. The appellant, Jamari Enterprises Limited, being dissatisfied with the said judgment, lodged a Notice of Appeal on 29th January 2026 and subsequently filed a Memorandum of Appeal dated 2nd February 2026, setting out eleven grounds upon which the judgment of the High Court is impugned. In essence, the appellant contends that the learned judge erred in law in upholding the decision of the Public Procurement Administrative Review Board and in declining to grant the judicial review remedies sought.
 3. The respondents oppose the appeal and urge this Court to uphold the decision of the High Court, maintaining that both the Review Board and the High Court properly applied the governing legal principles and acted within the confines of their respective statutory mandates.

Background

4. This appeal stems from a dispute over the propriety and legality of a public procurement process undertaken by the 3rd respondent, Kenya Power & Lighting Company PLC (KPLC), in respect of Tender No. KP1/9A.2/OT/003/NM/25-26 for the Provision of Roads/Pavement Opening/Cutting, Ducting, and Reinstatement Services. The appellant challenged the terms of

the Tender Document before the Public Procurement
Administrative

Review Board, alleging that several provisions were inconsistent with the Constitution and the Public Procurement and Asset Disposal Act, 2015. The Review Board dismissed the challenge, holding that it had been mounted prematurely. The High Court, upon judicial review, upheld that determination. The present appeal therefore calls upon this Court to consider whether the Review Board and the High Court properly exercised their respective mandates within the statutory procurement framework. To appreciate the issues that arise for determination, it is necessary to outline the factual and procedural background of the dispute.

5. The 3rd respondent is a public limited company charged, *inter alia*, with the responsibility of generating, transmitting, distributing, and retailing electricity throughout the Republic of Kenya. In the discharge of that mandate, the 3rd respondent routinely undertakes works involving the installation and maintenance of electricity infrastructure, which often necessitate excavation, road cutting, ducting and reinstatement works. It is in this context that the Tender in question was issued.
6. The tender was advertised by the 3rd respondent, Kenya Power & Lighting Company PLC (KPLC), on 29th October 2025. It was restricted to local limited liability companies and the closing date for submission of bids was initially set for 20th November 2025 at 10:00 a.m., thereby allowing prospective bidders approximately twenty-two days within which to prepare and

submit their bids.

7. The record shows that the appellant, Jamari Enterprises Limited, downloaded the Tender Document from the 3rd respondent's e- procurement portal on or about 3rd November 2025. Upon reviewing the document, the appellant formed the view that several provisions of the Tender Document were inconsistent with the governing procurement framework established under the Public Procurement and Asset Disposal Act, 2015 (PPADA), the Public Procurement and Asset Disposal Regulations, 2020, and the Constitution.
8. In particular, the appellant contended that the bidding period provided under the Tender Document, approximately twenty days at the time the document was downloaded, was manifestly inadequate for a works contract of the magnitude, complexity and financial value contemplated under the Tender. According to the appellant, the limited timeframe curtailed meaningful participation by potential bidders and therefore contravened sections 58 and 70(3) of the PPADA as well as the constitutional principles governing public procurement under Article 227 of the Constitution.
9. The appellant further took issue with the financial evaluation framework prescribed under Part III of the Tender Document. It was alleged that the financial evaluation relied on a document described as the "Powerline Construction Services Cost Handbook", which had not been disclosed to prospective bidders,

nor incorporated as part of the Tender Document. In the appellant's view, reliance on such an undisclosed benchmark rendered the evaluation criteria opaque and contrary to the statutory requirement that evaluation criteria be objective, transparent and disclosed in advance.

10. Additionally, the appellant challenged clauses 39 to 42 of the Instructions to Tenderers, which addressed matters relating to abnormally low tenders, abnormally high tenders, unbalanced tenders and qualification of bidders. The appellant contended that those provisions vested the procuring entity with broad and subjective discretion to reject bids without providing objective and verifiable parameters. According to the appellant, such provisions were inconsistent with section 80 of the PPADA and offended the constitutional principles of transparency, fairness and accountability in public procurement.
11. Aggrieved by what it perceived to be fundamental defects in the Tender Document, the appellant lodged Request for Review Application No. 107 of 2025 before the **Public Procurement Administrative Review Board (the 1st Respondent)** on 12th November 2025. By virtue of section 168 of the PPADA, the filing of the Request for Review automatically suspended the procurement process pending the determination of the application.

12. The Review Board heard the parties and subsequently rendered its decision on 3rd December 2025. In its determination, the Board addressed, among other issues, whether the time provided for submission of bids was reasonable, and whether the impugned provisions of the Tender Document contravened the Constitution and the PPADA.
13. Upon consideration of the material placed before it, the Review Board concluded that the time provided for preparation and submission of bids was reasonable. In particular, the Board noted that although the initial tender period was approximately twenty- two days, subsequent addenda issued by the procuring entity extended the deadline for submission of bids to 28th November 2025, thereby providing prospective bidders with approximately thirty days from the date of advertisement.
14. The Review Board further held that the challenge mounted by the appellant in respect of the impugned provisions of the Tender Document was premature. According to the Board, the submission deadline had not yet lapsed, and prospective bidders remained at liberty to seek clarifications from the procuring entity during the tender period. On that basis, the Board dismissed the Request for Review and directed that the procurement process proceeds.
15. Dissatisfied with that decision, the appellant moved to the

High Court by way of Judicial Review Application No. E406 of
2025 filed

on 16th December 2025. In the Notice of Motion before the High Court, the appellant sought orders of certiorari to quash the Review Board's decision, mandamus to compel the termination and re-advertisement of the Tender in compliance with the law, and prohibition restraining the respondents from proceeding with the procurement process under the impugned Tender Document.

16. The gravamen of the appellant's case before the High Court was that the Review Board had misdirected itself in law by declining to interrogate what the appellant described as patent illegalities in the Tender Document on the ground that the challenge was premature. The appellant further contended that the Review Board had thereby abdicated its statutory duty and violated the appellant's right to fair administrative action guaranteed under Article 47 of the Constitution and the Fair Administrative Action Act.
17. The respondents opposed the application, maintaining that the Review Board had properly exercised its statutory mandate. They further contended that the time allowed for submission of bids complied with the statutory framework governing restricted tenders, and that the issues raised by the appellant either related to the merits of the procurement framework, or could appropriately be addressed through the clarification mechanisms provided under the Tender Document.

18. Upon considering the pleadings, affidavits and submissions placed before it, the High Court (Aburili, J.) delivered judgment on 27th January 2026 dismissing the judicial review application in its entirety. The learned judge held that the Review Board had properly exercised its jurisdiction and had undertaken a structured consideration of the issues raised by the appellant.
19. The learned judge further held that the challenge to the Tender Document was indeed premature at the stage at which it was brought, noting that no bids had been submitted or evaluated and that the procurement process had not progressed to a stage where the alleged defects could be said to have crystallized into actionable illegality.
20. The Court also emphasized the limited scope of judicial review in procurement matters, observing that the court's supervisory jurisdiction is concerned primarily with the legality, rationality and procedural propriety of administrative action rather than the merits of procurement decisions.
21. As a result, the High Court declined to grant the orders of certiorari, mandamus and prohibition sought by the appellant and dismissed the application with costs.
22. Aggrieved by that decision, the appellant lodged a notice of appeal on 29th January 2026 and subsequently filed the present appeal on 2nd February 2026, challenging the entirety of the High Court's judgment.

23. The appeal is predicated upon eleven grounds set out in the Memorandum of Appeal, in which the appellant essentially contends that the learned judge misapprehended the nature of the challenge before her, failed to properly interrogate the legality of the Tender Document, and erred in upholding the Review Board's determination.
24. The respondents oppose the appeal and maintain that both the Review Board and the High Court correctly applied the law and acted within their respective mandates.
25. The appeal came up for hearing before us on 23rd February 2026. Mr. Duncan Kiprono appeared for the appellant, Ms. Wamuyu appeared for the 1st respondent, while Ms. Nicole Kihara appeared for the 2nd and 3rd respondents. During the hearing, the parties adopted the written submissions they had filed before the High Court and reiterated substantially the positions they had advanced therein, save for the appellant who had filed written submissions in support of the present appeal, which he adopted in addition to the submissions he had filed before the High Court.
26. Thereafter, Mr. Kiprono clarified that the matter had been listed for the hearing of the main appeal and requested that the appellant's notice of motion seeking stay orders be subsumed within the appeal. Counsel further indicated that

the appellant

had filed submissions on both the appeal and the motion the previous night.

27. The respondents indicated that they would largely rely on the submissions previously filed before the High Court.
28. A brief summary of the parties' respective arguments is set out hereunder.

Submissions for the appellant

29. Mr. Kiprono submitted that the learned judge fell into error by misapprehending the nature and scope of judicial review. According to counsel, the learned judge treated the appellant's claim as though it were an appeal on the merits of the procurement process rather than a challenge directed at the legality, procedural fairness, and reasonableness of the decision of the Public Procurement Administrative Review Board ("the Board").
30. Relying on the decision in **Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others** [2016] eKLR, counsel submitted that judicial review in the post-2010 constitutional dispensation encompasses a broader inquiry than the traditional common law grounds and extends to questions such as whether the decision-maker failed to take into account relevant considerations, abused its discretion, or

arrived at a decision that was unreasonable within the meaning of section 7(2)

of the Fair Administrative Action Act. In counsel's view, the High Court failed to apply this expanded framework and instead accorded undue deference to the Board despite what he described as clear jurisdictional errors.

31. On the issue of prematurity, counsel faulted the Board's finding that the appellant's challenge to the Tender Document was premature. It was submitted that the Tender Document contained patent illegalities that were apparent on its face and which justified immediate intervention. Counsel pointed, in particular, to the initial 22-day bidding period, later extended to 30 days, which he contended was inadequate; the reliance on a "Powerline Construction Services Cost Handbook" that was not disclosed within the Tender Document itself; and provisions contained in Clauses 39-42 of the Instructions to Tenderers which, according to the appellant, conferred unfettered discretion on the procuring entity to reject bids.
32. It was argued that these provisions were inconsistent with sections 58, 60(1), 70, and 80 of the Public Procurement and Asset Disposal Act (PPADA) and violated the constitutional principles of transparency, accountability, and fairness embodied in Articles 10, 47, 227, and 232 of the Constitution. Counsel contended that requiring bidders to first participate in a procurement process that was fundamentally flawed before challenging it would be illogical and contrary to the doctrine of effective remedies

contemplated under section 9 of the Fair Administrative Action Act and section 175 of the PPADA.

33. The appellant further contended that the Board abdicated its statutory mandate under section 173 of the PPADA by declining to interrogate the alleged illegalities in the Tender Document. According to counsel, the Board thereby failed to discharge its oversight function and violated the appellant's right to fair administrative action.
34. Counsel submitted that the High Court compounded the error by upholding the Board's decision and failing to appreciate that the Board's reasoning was irrational, procedurally unfair, and disproportionate. He argued that intervention by this Court was warranted in order to safeguard the integrity of the public procurement process and the prudent use of public resources.
35. In support of these submissions, counsel relied on, among other authorities, **Republic v Public Procurement Administrative Review Board & Another Ex Parte Gibb Africa Ltd & Another** [2012] eKLR and **Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others** [2012] eKLR. He urged us to allow the appeal with costs.

Submissions for the 1st Respondent

36. Ms. Wamuyu, learned counsel for the 1st respondent, informed

the Court that the Board would rely on the written submissions filed

before the High Court on 29th December 2025, which appear at pages 964-970 of Volume 2 of the Record of Appeal. Counsel urged us to dismiss the appeal with costs.

37. The 1st respondent's submissions stated that the Board properly exercised its jurisdiction under section 173 of the PPADA and that its decision was lawful, rational, and procedurally sound. According to the 1st respondent, the Board correctly found that the challenge mounted by the appellant was premature since the procurement process had not progressed to the stage of submission or evaluation of bids.
38. It was further submitted that the appellant had failed to utilize the available mechanisms within the procurement framework, including the procedure for seeking clarification or extension of time provided under Clause ITT 8.2 of the Tender Data Sheet. In counsel's view, the Board was therefore entitled to conclude that the dispute had not crystallized.
39. With regard to the bidding period, counsel submitted that the initial 22-day period, subsequently extended to 30 days, complied with section 102(2) of the PPADA and Regulation 89(7) of the Public Procurement and Asset Disposal Regulations, 2020, which require a minimum period of seven days for restricted tenders limited to local firms.
40. The 1st respondent's submissions also stated that the impugned clauses of the Tender Document were largely

derived from the

Standard Tender Document issued by the Public Procurement Regulatory Authority, and that any customization undertaken by the procuring entity remained within the parameters permitted under the statutory framework. It was further contended that the reference to the Powerline Construction Services Cost Handbook was not opaque, as the document was accessible through the procuring entity's website.

41. The 1st respondent's submissions maintained that the Board did not abdicate its mandate but instead addressed the issues raised and concluded that no illegality had crystallized at the stage the complaint was made. The reasons given by the Board, it was argued, were intelligible and fell within the range of lawful and reasonable responses available to it.
42. Finally, counsel submitted that the High Court properly appreciated the limited scope of judicial review and rightly refrained from substituting its own opinion for that of a specialized statutory body. Reliance was placed on **Republic v Public Procurement Administrative Review Board & Another Ex Parte Gibb Africa Ltd & Another [2012]** eKLR. Counsel argued that allowing the appeal would unnecessarily disrupt the procurement process and undermine the public interest in timely public procurement.

Submissions for the 2nd and 3rd REspondents

43. Ms. Kihara, learned counsel for the 2nd and 3rd respondents, relied on their joint written submissions filed before the High Court and appearing at pages 439-448 of Volume 1 of the Record of Appeal. Counsel likewise urged that the appeal be dismissed with costs.
44. Counsel submitted that the procurement process in question was undertaken in full compliance with the PPADA, the relevant Regulations, and the constitutional principles governing public procurement. In her view, the bidding period was reasonable for a restricted tender of this nature, and the extensions issued through addenda adequately addressed any potential concerns.
45. It was further submitted that the financial evaluation framework and the provisions dealing with abnormally low, abnormally high, or unbalanced tenders were objective and transparent and were disclosed to all bidders in advance, in conformity with sections 60(1) and 80 of the PPADA. Counsel reiterated that the Powerline Construction Services Cost Handbook was publicly available and that bidders were at liberty to seek clarification where necessary.
46. Counsel supported the Board's finding that the appellant's challenge was premature, emphasizing that no bids had been submitted and that the appellant had failed to utilize the

internal mechanisms available within the procurement process. In her

view, the appellant's complaint was therefore speculative and premature.

47. Finally, counsel submitted that the High Court correctly exercised its judicial review jurisdiction and properly concluded that the Board's decision was neither illegal, irrational, nor procedurally unfair. She emphasized the significant public interest in ensuring the timely implementation of procurement processes relating to essential electricity infrastructure and warned that nullifying the process at this stage would occasion disproportionate prejudice.
48. Counsel relied on several authorities, including **Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others** (supra), and urged us to dismiss the appeal with costs.

Issues for Determination

49. We have considered the record of appeal, the judgment of the High Court, the rival submissions of counsel and the applicable law. Although the Memorandum of Appeal raises eleven grounds, it is well settled that an appellate court may, for purposes of clarity and convenience, condense the grounds of appeal into a few dispositive issues.
50. In our view, the appeal turns on the following four issues:
 - (i) Whether the High Court properly applied the principles

governing judicial review in declining to interfere with the decision of the Board.

- (ii) Whether the Board properly exercised its statutory mandate in addressing the appellant's complaints concerning the alleged illegalities in the Tender Document and procurement process.
- (iii) Whether the Board and the High Court erred in holding that the appellant's challenge to the Tender Document was premature in the circumstances of the procurement process.
- (iv) Whether the appellant has demonstrated any illegality, irrationality, procedural impropriety, or constitutional violation in the procurement process warranting the intervention of this Court.

Analysis

- (i) **Whether the High Court properly applied the principles governing judicial review in declining to interfere with the decision of the Public Procurement Administrative Review Board.**

51. The starting point is to consider the scope of judicial review. Judicial review is not concerned with the merits of a decision but with the legality of the decision-making process. The central question is whether the decision complained of was reached lawfully, rationally and in a procedurally fair manner.

52. This principle has long been settled in administrative law. In

Republic v Public Procurement Administrative Review Board

& Another Ex Parte Gibb Africa Ltd & Another (supra), the Court restated the classic formulation in the following terms:

“The reach of judicial review is now well established. In the case of Council of Civil Service Unions vs. Minister for the Civil Service [1985] AC 374, Lord Diplock set out three grounds upon which a public decision may be impugned through judicial review: illegality, irrationality and procedural impropriety.”

53. The same position was emphasized in that decision in the following words:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion eyes of the court.”

54. These principles are particularly significant in disputes arising from public procurement processes. The statutory framework established under the PPADA created specialized institutions to handle procurement disputes, including the Public Procurement Administrative Review Board (the Board). Courts have consistently held that such specialized bodies must be accorded appropriate deference in matters falling within their statutory competence.

55. In **Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others**(supra), this Court emphatically stated:

“The Review Board is a specialized statutory tribunal established to deal with all complaints of breach of

duty by the procuring entity... From its nature the Review Board is obviously better equipped than the High Court to handle disputes relating to breach of duty by procurement entity. It follows that its decision in matters within its jurisdiction should not be lightly interfered with.”

56. The appellant nevertheless argued that the High Court mischaracterised the judicial review proceedings as an appeal on the merits and failed to interrogate “patent illegalities” in the tender documents. Reliance was placed on **Suchan Investment Limited v Ministry of National Heritage & Culture & 3 Others** (supra), where this Court recognized that judicial review in the post-2010 constitutional dispensation has evolved to incorporate elements of reasonableness and proportionality under Article 47 of the Constitution.

57. In that case the Court observed:

impugned decision is unreasonable.”

58. However, as this Court also made clear in **Suchan**, the expansion of judicial review does not convert the High Court into an appellate forum over every administrative decision. Courts remain

concerned primarily with the legality and propriety of the process, not the correctness of the decision itself.

59. Applying those principles to the present appeal, we are satisfied that the learned judge properly appreciated the limits of judicial review. The record demonstrates that the Board assumed jurisdiction, heard the parties, considered their pleadings, submissions, and authorities, and delivered a reasoned determination grounded in the provisions of the PPADA and the Public Procurement and Asset Disposal Regulations, 2020.
60. The Board identified the issues raised in the Request for Review, addressed the legality of the tender provisions complained of, and explained why it considered the challenge premature at the stage the procurement process had reached. Its reasoning cannot be described as irrational or devoid of legal basis.
61. In those circumstances, the learned judge cannot be faulted for declining to substitute the Court's own view for that of the specialized tribunal established by statute to resolve procurement disputes.

(ii) Whether the Public Procurement Administrative Review Board properly exercised its statutory mandate in addressing the appellant's complaints concerning the alleged illegalities in the Tender

Document and procurement process.

62. The appellant contended that the tender process violated section 58 of the PPADA and Articles 47 and 227 of the Constitution, particularly on account of the alleged inadequacy of the bidding period and the use of evaluation criteria derived from the Powerline Construction Services Cost Handbook.
63. We have carefully examined the record of appeal and the tender documentation placed before the Board and the High Court. The evidence does not support the allegation that the procurement process was conducted in a manner inconsistent with the statutory framework or constitutional requirements.
64. The Board evaluated the structure of the procurement and noted that the tender was issued as a restricted tender limited to local companies, a procedure expressly permitted under section 102(2) of the PPADA and Regulation 89(7) of the Public Procurement and Asset Disposal Regulations, 2020. Under that regulatory framework, the minimum preparation period for restricted tenders is seven days.
65. The record further shows that the initial bidding period of twenty- two days, running from 29th October 2025 to 20th November 2025, was subsequently extended through addenda, effectively giving bidders up to thirty days to prepare and submit their bids. The Board also observed that the appellant did not utilize the clarification mechanism provided under Clause ITT 8.2 of the Tender Data Sheet to seek clarification or extension of time.

66. On the allegation that the evaluation framework relied on an undisclosed cost handbook, the Board found that the document in question was accessible through the procuring entity's website and that any ambiguity could be clarified during the bidding process. The Board further invoked the *contra proferentem* principle, noting that any ambiguity in tender documents would ultimately be interpreted against the procuring entity in favour of bidders.

67. In our view, those findings demonstrate that the Board actively engaged with the appellant's complaints and addressed them within the framework of the applicable law.

68. The limits of judicial review in such circumstances were succinctly captured in **Republic v Public Procurement Administrative Review Board & 2 others Ex Parte Sanitam Services (E.A.) Limited [2013] eKLR**, where the Court stated:

decision itself.

69. Similarly, in **Engineering Co. Ltd/Pride Enterprises v Public Procurement Administrative Review Board & 2 Others [2015] eKLR**, the Court observed:

"There is a general presumption that a public decision-making body has no jurisdiction or

power to commit an error of law; hence, where a body erred in law in

reaching a decision or making an order, the court may quash that decision or order.”

70. In the present case, no such error of law has been demonstrated. The Board’s interpretation and application of the procurement framework were entirely consistent with the statutory provisions governing public procurement.

(iii) Whether the Review Board and the High Court erred in holding that the appellant’s challenge to the Tender Document was premature in the circumstances of the procurement process.

71. Another central plank of the appellant’s case was that the Board and the High Court erred in holding that the challenge to the tender document was premature.

72. The doctrine of exhaustion of remedies is firmly embedded in our administrative law jurisprudence and finds statutory expression in section 9 of the Fair Administrative Action Act. The principle requires litigants to first exhaust available administrative remedies before seeking judicial intervention.

73. The rationale for the doctrine was explained in **Republic v National Environment Management Authority** [2011] eKLR, where the Court held:

“Where there is an alternative remedy, and especially where Parliament has provided a statutory appeal

procedure, it is only in exceptional circumstances that an order for judicial review would be granted.”

74. In the present matter, the Review Board did not summarily decline jurisdiction. To the contrary, the record shows that it considered the issues raised by the appellant, including the bidding timeline and the alleged illegality of certain clauses in the tender document.
75. The Board ultimately concluded that the challenge had been brought prematurely because the procurement process had not progressed to the stage of bid submission or evaluation. At that point, no bidder had suffered loss or damage, and the tender process still allowed for clarifications and addenda to address any ambiguity.
76. We agree with the High Court that such a finding fell squarely within the Board’s statutory mandate under section 173 of the PPADA. It cannot be said that the Board acted irrationally or failed to exercise its jurisdiction.

(iv) Whether the appellant has demonstrated any illegality, irrationality, procedural impropriety, or constitutional violation in the procurement process warranting the intervention of this Court.

77. The final aspect of the appeal concerns the alleged violation of constitutional principles governing public

procurement,

particularly the requirement of fairness and equitable participation under Article 227 of the Constitution.

78. The High Court considered these concerns and concluded that the procurement process incorporated the safeguards required under the statutory framework, including compliance with anti-corruption declarations, procurement planning, and ethical standards.

79. It is also important to bear in mind the public interest considerations that underpin public procurement processes. Courts have repeatedly cautioned against unnecessarily disrupting procurement processes that are essential to the delivery of public services.

80. In **Republic v County Government of Mombasa Ex Parte Outdoor Advertising Association of Kenya** [2014] eKLR, the Court observed:

“There can never be public interest in breach of the law, and the decision of the respondent, if indeed it was in breach of the law, cannot be protected by the public interest because it is not in the public interest to whip up sentiments of any of the law.”

81. However, where no illegality has been demonstrated, the public interest lies in allowing lawful procurement processes to proceed without undue interruption.

82. Similarly, in **Robert N. Gakuru & Others v Governor Kiambu County & 3 Others** [2014] eKLR, the Court emphasised that public administration must strike a balance between participation, transparency and administrative efficiency.
83. In the present case, the appellant did not demonstrate that the procurement framework was discriminatory, opaque, or designed to exclude potential bidders. On the contrary, the process incorporated mechanisms for clarification and compliance, and the appellant did not avail itself of those mechanisms.

Conclusion

84. Having carefully reconsidered the entire record of appeal, the judgment of the High Court, the rival submissions and the applicable legal principles, we are not persuaded that this appeal discloses any basis upon which this Court may properly interfere with the decision of the High Court.
85. The dispute before us ultimately concerns the manner in which the Public Procurement Administrative Review Board exercised its statutory mandate under the Public Procurement and Asset Disposal Act. As we have already observed, the Board is a specialized tribunal established by Parliament to adjudicate disputes arising from public procurement processes. Courts have consistently emphasized that decisions of such

specialized bodies ought not to be lightly interfered with unless it is demonstrated that they acted in excess of jurisdiction, committed an error of

law, or arrived at a decision that is irrational or procedurally unfair.

86. In the present case, the record demonstrates that the Board assumed jurisdiction over the dispute, heard the parties, examined the impugned provisions of the Tender Document, and rendered a reasoned determination grounded in the applicable statutory framework. The Board addressed the appellant's concerns regarding the bidding timeline, the financial evaluation framework, and the provisions relating to abnormally low, high or unbalanced tenders. Having done so, it concluded that the challenge had been mounted prematurely at a stage when the procurement process had not yet progressed to bid submission or evaluation.
87. The learned judge, exercising judicial review jurisdiction, undertook a careful and structured examination of the Board's decision and correctly directed herself to the well-established limits of judicial review. In doing so, she properly appreciated that the court's supervisory jurisdiction is concerned with the legality, rationality and procedural propriety of the decision-making process, and not with substituting the court's own view for that of the statutory tribunal entrusted with the matter.
88. We are satisfied that the learned judge cannot be faulted for declining to interfere with the Board's determination. The appellant has not demonstrated that the Board acted outside its

jurisdiction, misapprehended the applicable law, ignored relevant considerations, or arrived at a decision that was so unreasonable as to warrant the intervention of the court.

89. Equally, the alleged violations of the constitutional principles governing public procurement under Articles 47 and 227 of the Constitution were not substantiated by the material placed before the Board, the High Court or this Court. On the contrary, the evidence on record indicates that the procurement process incorporated mechanisms for clarification, compliance and participation by prospective bidders within the framework established under the Public Procurement and Asset Disposal Act and the Regulations made thereunder.
90. It is also important to bear in mind that public procurement processes are undertaken in the broader public interest and are often linked to the timely delivery of essential public services. Courts must therefore exercise caution before intervening in such processes, particularly where no demonstrable illegality has been established and where the statutory dispute resolution mechanisms have not already been invoked and exhausted.
91. In the circumstances, we are satisfied that the appeal is devoid of merit, and it is hereby dismissed in its entirety.
92. The Judgment and Decree of the High Court (Hon. Lady Justice R. E. Aburili) delivered on 27th January 2026 in Judicial Review

Application No. E406 of 2025 is hereby upheld.

93. The costs of this appeal and of the proceedings in the High Court shall be borne by the appellant.

It is so ordered.

Dated and delivered at Nairobi this 13th day of March 2026.

D. K. MUSINGA (PRESIDENT)

.....
JUDGE OF APPEAL

MUMBI NGUGI

.....
JUDGE OF

APPEAL AHMED

ISSACK

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.