



REPUBLIC OF KENYA



**Asumani v Geothermal Development Compny Limited; Gitau t/a Astorion Auctioneers
(Interested Party) (Civil Suit E949 of 2025) [2026] KEMC 2 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEMC 2 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL SUIT E949 OF 2025
PA NDEGE, SPM
JANUARY 22, 2026**

BETWEEN

ADAMUS ASUMANI PLAINTIFF

AND

GEOTHERMAL DEVELOPMENT COMPNY LIMITED DEFENDANT

AND

**KEVIN NGANGA GITAU T/A ASTORION AUCTIONEERS INTERESTED
PARTY**

RULING

1. The Defendant/ Respondent, Geothermal Development Company Limited, has raised a Preliminary Objection (PO) dated 27/10/2025, which basically challenges this Honorable Court's jurisdiction to entertain the Plaintiff's suit and Notice of Motion dated 08/10/2025.
2. The PO is based on the doctrine of statutory exhaustion and asserts that the dispute herein arises from a public asset disposal process governed by the *Public Procurement and Asset Disposal Act, 2015* (PPADA). That as such, the plaintiff ought to have pursued the administrative review mechanism before approaching the Court. The Defendant/ Respondent urged this Honorable Court to uphold the PO and strike out the suit and application with costs.
3. The factual background of the dispute herein is that on 31/07/2025, the Defendant conducted a public auction at its Menengai Project, Laydown 2, through its appointed auctioneer, Astorion Auctioneers, under Tender No. GDC/SC/AUC/079/2024-2025.
4. The Plaintiff participated in the auction and was declared the highest bidder for Lot No. 3 (Used Oil) at a bid process of Kshs. 250,000/-, which he promptly paid. Soon after, the Defendant received several complaints from other bidders alleging irregularities, unfairness and favoritism during the auction.



In response, the Defendant suspended the release of the used oil and instructed the auctioneer to address the complaints by a letter dated 01/08/2025. The auctioneer, through its advocates, replied on 04/08/2025, denying any wrongdoing.

5. After considering all the complaints and correspondences, the Defendant/ Respondent decided to cancel the sale of Lot No. 3 (Used Oil) and to refund Kshs. 250,000/- to the Plaintiff. The cancellation and refund were communicated to the Plaintiff's advocate by a letter dated 08/09/2025.
6. Despite this communication, the Plaintiff filed the present suit and Motion seeking injunctive and compelling orders aimed at restraining both the resale of the used oil and refund of the paid bid price of Kshs. 250,000. The facts herein are uncontested and came from the pleadings, affidavits and documents already filed herein.

Submissions

7. On 30/10/2025, it was directed and agreed that the PO was to be disposed of by way of written submissions. On 16/01/2026, it was confirmed that only the Defendant had filed and served their written submissions to the plaintiff who had nevertheless failed to file a response. I thus only have the Defendant's submissions to consider herein.
8. Learned counsel for the defendant submitted that the present dispute arises from a public asset disposal process regulated under the PPADA, which establishes an elaborate framework for addressing grievances arising from procurement and disposal activities.
9. That under Section 167(1) of the PPADA, a candidate or tenderer who claims to have suffered or risks suffering loss or damage due to a breach of duty imposed by the Act or its Regulations must seek administrative review before the Public Procurement Administrative Review Board.
10. That public auctions, such as the one giving rise to this dispute, fall squarely within the meaning of 'disposal proceedings' under the Act. That it follows that the Plaintiff, having participated in such a process, was bound to pursue redress before the Public Procurement Administrative Review Board rather than through the present proceedings.
11. That section 9(2) of the *Fair Administrative Action Act*, 2015 reinforces this requirement by providing that a court shall not review an administrative action or decision unless the internal mechanisms for appeal or review provided under any written law have first been exhausted. That in the present case, the Plaintiff failed to invoke or exhaust the procedures stipulated under the PPADA. That this suit is therefore premature, offends the doctrine of exhaustion, and this honorable Court ought not to assume jurisdiction in the face of unexhausted statutory mechanisms.
12. Learned counsel referred the Court to the decision in *Speaker Of The National Assembly Vrs Karume* [1992] e KLR, where the Court of Appeal captured the essence of the principle of exhaustion by holding that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Further, learned counsel referred to the case of *Republic Vrs Kenya Wildlife Service; Ahmed (ex Parte)* [2025] KEHC 5837 (KLR), where the High Court emphasized that judicial review or ordinary suits cannot be used as a fallback when a party fails to pursue the administrative review route provided under the PPADA. That in the circumstances, the Plaintiff's suit is premature and this Honorable Court lacks jurisdiction to entertain it as the Plaintiff has failed to exhaust the statutory mechanisms provided by law.



Analysis and Determination

13. I have considered the preliminary objection and the arguments for it. The issue for determination is whether this court has jurisdiction to hear and determine the matter herein between the parties, being a public procurement matter. Section 167(1) of the PPADA (2015) provides that:

167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

(2) A request for review shall be accompanied by such refundable deposit as may be prescribed in the regulations, and such deposit shall not be less than ten per cent of the cost of the contract:

Provided that this shall not apply to tenders reserved for women, youth, persons with disabilities and other disadvantaged groups.

(3) A request for review shall be heard and determined in an open forum unless the matter at hand is likely to compromise national security or the review procedure.

(4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—

(a) the choice of a procurement method;

(b) a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and

(c) where a contract is signed in accordance with section 135 of this Act.

14. The above provision is clear that an aggrieved tenderer is expected to lodge a request with the Review Board within the stipulated timelines under the Act. In other words, the PPARB has original and exclusive jurisdiction to hear procurement disputes at first instance.

15. Thereafter, the decision of the Review Board may be challenged before the High Court within the stipulated period of 14 days of the date of the decision, as stipulated in section 175(1) of the Act which provides that:

175. Right to judicial review to procurement

(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.

16. In the instant case, it is not in dispute that the Plaintiff's bid was disqualified and or suspended due to numerous complaints or concerns raised by other bidders. It is also not in dispute that the Plaintiff never filed any request for review to the Review Board as contemplated in section 167 of the Act. Instead, the Plaintiff has now filed this suit/ application seeking compelling orders against the Defendant to release the Used Oil bided for.



17. During all this time, the time for completion of the procurement process continues to run because there was no order of stay of the procurement process granted by the Court. The law under section 167 of the PPADA is clear that the appropriate forum to handle public Procurement disputes is the Public Procurement Administrative Review Board (PPARB). It follows that if an aggrieved bidder fails to file a request for review with the PPARB within the statutory 14-day window under Section 167, they cannot turn to the courts for as a way to bypass this failure.
18. Courts have held that the review process under the PPADA is mandatory and exclusive for procurement disputes, unless the Review Board lacks jurisdiction. Additionally, that judicial review is not an alternative or substitute remedy when a party has failed to act within the timelines of the statutory mechanism. The courts are therefore reluctant to intervene where the bidder had the opportunity to seek redress under Section 167 but failed to act diligently.
19. In *Republic v Kenya Ports Authority & Another ex parte Seastorm Kenya Limited* [2019] eKLR the court held that a bidder who fails to invoke the statutory mechanism under Section 167 cannot later approach the High Court for judicial review. The Court emphasized the doctrine of exhaustion of remedies.
20. Additionally, the provisions of section 174 of the Act are only available where the party did file a request for review and instead of challenging the review Board's decision to court by way of judicial review as stipulated in section 175(1) of the Act, approaches the court, say, by way of appeal or files a suit for compensation in damages.
21. Accordingly, it is clear to this Court that where a bidder does not file a request for review under Section 167 of the Act, they are barred from filing judicial review or other proceedings in court, which JR proceedings can only arise when challenging the decision of the Review Board.
22. The decisions echo the age-old locus classicus case on exhaustion of available and efficient dispute resolution mechanisms popularly known as the doctrine of exhaustion as authoritatively pronounced in *Speaker of the National Assembly v. Karume* [1992] KLR 21 that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.
23. In this case, section 167 of the PPADA clearly stipulates that a bidder who is aggrieved by the breach by the procuring entity, has the opportunity to challenge that decision or breach, by way of a request for administrative review to the public procurement Administrative Review Board. The timeline for seeking for review is also provided, being within fourteen days of notification of award or date of occurrence of the alleged breach, at any stage of the procurement process, or disposal process. That timeline lapsed without the plaintiff seeking for administrative review.
24. The Plaintiff having failed to utilize the remedy available under section 167 of the Act, he cannot be allowed to by-pass the Review Board, as he could only have gone to the High court by way of judicial review to challenge the decision of the Review Board, not the procuring entity as stipulated in section 175 (1) of the Act.
25. It is also worth emphasizing that as the timelines for public procurement are stipulated in law, the Plaintiff having by passed a mechanism of request for administrative review, and in the absence of stay, even assuming that the suit and application herein were properly before this court, which they are not, then the matter is already overtaken by events and spent.
26. In the end, I find the preliminary objection filed on 27/10/2025 to be merited. I uphold it. Consequently, the Suit herein and Notice of motion dated 08/10/2025 are hereby found to be



incompetently filed before this court which has no jurisdiction to hear and determine the same. They are hereby struck out with an order that each party bear their own costs of these proceedings.

27. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAKURU VIRTUALLY THIS 22ND DAY OF JANUARY ,
2026**

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Muthomi

Defendant's Counsel: Zeron h/b for Rose Muhia

Plaintiff/ Applicant: N/A

