



Goldfield Insurance Brokers Limited v Public Procurement Administrative Review Board & 3 others (Civil Appeal E137 of 2026) [2026] KECA 711 (KLR) (2 April 2026) (Judgment)

Neutral citation: [2026] KECA 711 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E137 OF 2026
DK MUSINGA, P LILAN & JO OKELLO, JJA
APRIL 2, 2026**

BETWEEN

GOLDFIELD INSURANCE BROKERS LIMITED APPELLANT

AND

THE PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD 1ST RESPONDENT

THE ACCOUNTING OFFICER, COUNTY GOVERNMENT OF NYERI 2ND RESPONDENT

COUNTY GOVERNMENT OF NYERI 3RD RESPONDENT

UTMOST INSURANCE BROKERS LIMITED 4TH RESPONDENT

*(Being an appeal from the Judgment and orders of the High Court at Nairobi (R. E. Aburili, J.) delivered on 16th February 2026 in Judicial Review Application No. E001 of 2026 ***** Consolidated with Judicial Review Application No. E002 of 2026)*

JUDGMENT

1. Section 167(1) of the Public Procurement and Asset Disposal Act (PPADA) states as follows:

“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. In the judgment that gave rise to this appeal, the trial judge, Aburili, J., held that the 1st respondent had no jurisdiction to entertain a request for review that had been filed outside the fourteen (14) days’ period stipulated under section 167(1) of the PPADA.
3. The central issue in the determination of this appeal, therefore, is whether the learned judges’ holding regarding jurisdiction of the 1st respondent was right, since jurisdiction is everything, a foundational prerequisite in all courts or administrative proceedings, without which a court or any other adjudicative body cannot act.
4. The background that gave rise to the appeal is that on 28th October 2025, the 3rd respondent advertised Tender No. CGN/CS/INS/01/2025-2026 for the provision of comprehensive medical insurance cover, whose closing date was 6th November, 2025. The appellant as well as the 4th respondent submitted their respective bids in accordance with the tender requirements. The tender opening was done on 6th November, 2025, and the tender was subsequently awarded to the 4th respondent. The notification of the award was dated 18th November, 2025.
5. On 1st December, 2025 the appellant filed a request for review before the 1st respondent, alleging some irregularities in the process of the award, particularly the tender opening. The 2nd and 3rd respondents raised a preliminary objection on jurisdiction pursuant to section 167(1) of the PPADA and Regulation 203(2)(c)(iii) of the PPADA Regulations, 2020, contending that any challenge relating to the manner in which the tender opening was conducted ought to have been lodged within fourteen (14) days of the occurrence of the alleged breach.
6. The 1st respondent heard the Review application, dismissed the preliminary objection, and proceeded to determine the Review application on its merits, nullified the letter of notification of award and cancelled the entire tender proceedings, and directed that the tender be re-advertised.
7. Both the appellant and the 4th respondent were aggrieved by the 1st respondent’s decision and instituted Judicial Review applications before the High Court. In Judicial Review Application No. E001 of 2026, the 4th respondent sought an order of certiorari to quash the 1st respondent’s decision; an order of prohibition to restrain its implementation, and an order of mandamus to give effect to the original notification of award.
8. In Judicial Review Application No. E002 of 2026, the appellant sought, inter alia, a Declaration that the 1st respondent acted ultra vires its statutory mandate by issuing systemic directives to the Director General of the Public Procurement Regulatory Authority; an order of certiorari to quash the final orders of the 1st respondent made in the Review application; and an order of mandamus to compel the 2nd and 3rd respondents to conclude the procurement process of the said tender in its favour ; and an order of prohibition to restrain the 2nd and 3rd respondents from re-advertising or commencing any fresh procurement process in respect of the said tender.
9. The two Judicial Review applications were consolidated and heard together.
10. In the impugned judgment, the learned judge held that the appellant’s right to file a Request for Review was derived from section 167(1), which allows any candidate or tenderer who claims to have suffered loss or damage due to a breach of duty to seek administrative review, which applies at any stage of the procurement process.



11. The learned judge proceeded to state, inter alia:

“248. In this case, upon discovery of the alleged breach on 6/11/2025, the procuring entity went ahead to correct what appeared to be a disqualifying mark and allowed the exparte applicant to proceed to the evaluation stage after notifying all tenderers. It is that act of allowing the applicant to proceed to evaluation stage and the exparte applicant turning out to be the most responsive tenderer that led to the 2nd interested party filing a request for review, claiming that the exparte applicant ought to have been disqualified for having failed to avail a Tender Security guarantee for 6.9 million.

249. Consequently, this court finds and holds that the Request for Review was filed outside the 14-day period contemplated in section 167(1) and Regulation 203 (2) (c) and that the 14-day clock was not triggered by the formal notification of the tender outcome but at the preliminary stage post the tender opening session on 6th November, 2025.

250. I further find and hold that Section 78(7) of the Act ensures the sanctity of the opening stage by prohibiting premature disqualification, while Section 167(1) preserves the bidder's right to challenge any breach of duty that occurs at any stage of the procurement process and therefore the candidate or bidder is not "precluded" from requesting for review, provided they do so within 14 days of the moment they become aware of the breach. A tenderer does not have to wait until they are disqualified for them to challenge the breach complained of at any stage of the procurement process, taking into account internal review mechanisms such as seeking for clarifications.

251. For the above reasons, I find and hold that the Review Board had no jurisdiction to entertain the merit review of the Request for Review Application No. 111 of 2025 filed by the 2nd interested party regarding Tender No. CGN/CS/INS/01/2025-2026 because the Request for Review was filed outside the 14 days period from the date of alleged breach of duty which was on 6th November, 2025.

252. Having so found, I could proceed to down my tools and say no more. However, in the event that I am found to be wrong on this point, which I highly doubt, I now proceed to determine the second issue on the correctability of the alleged oversight by the tender opening Committee, assuming that the request for review was made within 14 days of the allegation of breach, but which alleged breach, I maintain, could only have occurred on 6th November, 2025 and not on the date of notification of the award to the most responsive bidder on 18th November, 2025.”

12. The learned judge found that the 4th respondent was the lowest evaluated responsive bidder; that under section 86 of the PPADA the award of the tender must go to the lowest responsive bidder in the spirit of Article 227 of *the Constitution*; and therefore, there was no basis upon which the 1st respondent annulled the entire procurement process and ordered for a re-advertisement. The court quashed the 1st respondent's decision regarding cancellation of the tender and restored the legal status of the notification of intention to award that had been made to the 4th respondent.



13. Being aggrieved by the said judgment, the appellant preferred this appeal. Although the appellant's memorandum of appeal raises 16 grounds of appeal, in its written submissions, the appellant approached it in two main fronts. The first one was that the High Court was wrong in law to hold that the Request for Review was filed out of time. The second one was that, even on the High Court's own premise that the 1st respondent lacked jurisdiction, the learned judge fell into a fatal internal contradiction by proceeding to determine the merits of the dispute and grant restorative final relief founded on a process she had already pronounced a nullity.
14. The appellant restated the provisions of section 167(1) of the PPADA and Regulation 203(2)(c) which recognises that an aggrieved party may seek administrative review before award, at the time of notification of the award, and after award, citing this Court's decision in *Space Contractors & Suppliers Investment Limited v Public Procurement Administrative Review Board & 23 Others* [2023] KECA 1457 (KLR). The appellant's contention was that although it saw an illegality on 6th November, 2025 at the tender opening stage when the tender opening committee allegedly varied the amount of the Bid Bond submitted by the 4th respondent, that anomaly had not yet matured into an operative procurement injury because section 78(7) bars disqualification at that stage; the tender opening committee was not the evaluation committee; and the process had not yet produced any legally consequential award decision.
15. The appellant's position is that the operative date was 18th November, 2025 when notification of the award was issued in favour of the 4th respondent and, therefore, the Request for Review filed on 1st December, 2025 was made within fourteen (14) days of notification of the award.
16. Regarding the second major limb of the appeal, the appellant submitted that the learned judge, having held that the 1st respondent had no jurisdiction on account of the late filing of the Request for Review, exceeded her supervisory jurisdiction in Judicial Review by proceeding to pronounce herself on the merits of the matter, and acted like an appellate court. This Court's decision in *OJSC Power Machines Ltd & Another v Public Procurement Administrative Review Board Kenya & 3 Others* [2017] KECA 386 (KLR) was cited in support of that submission.
17. Similarly, the appellant also sought to rely on the Supreme Court decision in *SGS Kenya Ltd v Energy Regulatory Commission & 2 Others* [2020] KESC 64 (KLR), where the Court affirmed this Court's reasoning that the High Court had improperly entered into merits review under the guise of judicial review, and confirmed that procurement disputes must respect the statutory architecture of specialised adjudication bodies.
18. The appellant also faults the learned judge for her interpretation and application of section 78(6) of the PPADA, which requires that at tender opening the committee should read out and record, among other things, what has been given as tender security, which promotes transparency, equal treatment and verifiability of the process. This Court's decision in *Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others* [2012] KECA 104 (KLR) was cited in support of that submission.
19. The 4th respondent opposed the appeal and supported the trial court's judgment. It was submitted that the appellant's Request for Review fell squarely within the provisions of section 167(1) of the PPADA, read together with Regulation 203 and, therefore, the learned judge was right in holding that the 1st respondent had no jurisdiction to determine it as it was filed outside the statutory period.
20. As regards the provisions of section 78(7) which precludes the tender opening committee from disqualifying a bidder at the tender opening stage, it was submitted that the provision does not prevent an aggrieved party from lodging a Request for Review at any stage of the procurement process where



it believes that a breach has occurred, in terms of section 167(1) and Regulation 203. Time began to run on 6th November 2025 when the appellant became aware of the alleged breach, the 4th respondent contended. Reliance was placed on the decision in *Sita v Manchester Waste Management Authority* (2011) EWCA Civ 156, Citing *Uniplex (UK) Ltd v NHS Business Services Authority* (2010) 2 CMLR 47, where it was held that time begins to run once a party has, or ought reasonably to have had sufficient knowledge of the alleged breach.

21. The 4th respondent further cited *Republic v Public Procurement Administrative Review Board & Another ex parte Sports, Arts and Social Development Fund* [2025] eKLR, where it was held that a party who alleges a breach at the technical evaluation stage but still waits until the award stage to file a review renders the application time barred.
22. As to whether the learned judge exceeded the scope of the High Court's supervisory jurisdiction under Article 165 of *the Constitution*, section 175 of the PPADA and the *Fair Administrative Action Act*, the 4th respondent argued that the learned judge addressed jurisdiction as a pure process question in line with the well known principles in *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd* [1989] KLR 123. This Court's decision in *Aprim Consultants v Parliamentary Service Commission & Another*, Civil Appeal No. 039 of 2021 was also cited for the proposition that non-compliance with strict statutory timelines deprives the court of jurisdiction and renders any ensuing proceedings a nullity.
23. Turning to the appellant's argument that even if the learned judge was right in her holding regarding the 1st respondent's lack of jurisdiction, she erred in law in proceeding to make other findings instead of downing tools, the 4th respondent submitted that the learned judge's analysis and determination in paragraphs 252 to 257 of the impugned judgment was expressly framed in the alternative, which is a method routinely employed and approved by this Court in procurement appeals. This is a contingent, the 4th respondent submitted, which does not explain jurisdiction, but ensures that if a higher court disagrees on the primary ground and finding, there is a considered view on the other secondary issues.
24. The 4th respondent further submitted that the learned judge did not re-conduct the procurement evaluation or assume an appellate role. The learned judge only examined the legality, rationality and proportionality of the 1st respondent's decision within the established grounds of Judicial Review. The Judge's findings and dispositive orders made were warranted because the 1st respondent had committed a reviewable error, as held in *Suchan Investment Limited vs Ministry of National Heritage & Culture & 3 Other* [2016] eKLR.
25. The 1st respondent neither filed any submissions nor participated in the appeal, despite service of a hearing notice upon it. The 2nd and 3rd respondents filed submissions opposing the appeal in its entirety, and substantively associated themselves with the submissions of the 4th respondent. We shall, therefore, not restate their submissions, as they largely mirror those of the 4th respondent.
26. When the appeal came up for hearing on 9th March 2026, Mr. C. Akhaabi appeared for the appellant, Mr. Kinyua Irungu for the 2nd and 3rd respondents, while Mr. G. Muturi was present for the 4th respondent. Counsel briefly highlighted their respective client's submissions.
27. Having carefully perused the submissions, we agree with the appellant that appeal raises two main issues: First, whether the High Court erred in law in holding that the Request for Review was filed out of time and therefore the 1st respondent had no jurisdiction to hear and determine it, and secondly, having so held, whether the High Court further erred in law by proceeding to make a merit determination of the grievance.



28. It is not disputed that the Request for Review was filed on 1st December, 2025 and that the appellant invoked the jurisdiction of the 1st respondent under section 167(1) of the PPADA, 2015. The basis of the request was alleged fundamental breaches of mandatory requirements under section 64 and the mandatory evaluation rules under section 80(2).
29. The appellant stated that the mandatory Tender Security (Bid Bond) was Kshs. 6,900,000, but during the public tender opening on 6th November 2025, the Bid Bond amount that was read out in respect of the 4th respondent's bid was Kshs.3,000,000, whereas that of the appellant and Transnep Insurance Brokers Limited was Kshs.6,900,000 each. However, one hour after the conclusion of the public opening, the appellant received an SMS communication from the tender opening committee stating that it had been clarified that the valid bank guarantee for the 4th respondent was Kshs.6,900,000 from Family bank, contradicting the Kshs.3,000,000 figure from SMEP Bank that had been publicly read.
30. But according to the 4th respondent, it had submitted a paginated and bound bid document containing a bank guarantee dated 5th November, 2025 from Family Bank Kenya, in the sum of Kshs.6,900,000 appearing at page 43 of the tender document, but during the tender opening the committee erroneously read out details of a guarantee letter dated 6th March, 2024 from SMEP Bank at page 233 of the bid document, which formed part of the documents required under the Insurance Regulatory Authority guidelines for bank guarantees, and was not the tender security required. This was said to have been an oversight on the part of the tender opening committee, and shortly thereafter it communicated the oversight by way of telephone calls and SMS messages to all the bidders' representatives, recalling them to the venue for purposes of clarification.
31. On 18th November, 2025 the 1st respondent issued letters of notification of intention to award the subject tender to the 4th respondent, indicating that it was the lowest evaluated bidder.
32. From the foregoing, it is evident that as at 6th November, 2025, shortly after the tenders were opened, the appellant was aggrieved by the communication that it received from the tender opening committee regarding the clarification of the Bid Bond placed by the 4th respondent. However, the appellant did nothing until 1st December 2025. Nothing stopped the appellant from seeking administrative review soon after 6th November, 2025, before expiry of the statutory fourteen days' period stipulated under section 167(1) of PPADA.
33. Once a bidder is aware of any breach of a procurement process that may be prejudicial to the bidder's interest, the bidder need not wait to know the outcome of their bid. A proper reading of section 167(1) and 87 of PPADA and Regulation 203(1)(2)(c) and (3) of Regulation 2020 and the Fourteenth Schedule of Regulations 2020 reveals that an aggrieved candidate or tenderer can request for a review within fourteen days of
 - (i) occurrence of breach, before an award is made,
 - (ii) notification of intention to enter into a contract having been issued, or,
 - (iii) occurrence of breach complained of having taken place after making of an award to the successful tenderer, whichever is the earliest available option. This is because procurement proceedings are strictly time bound. Neither the parties concerned nor the Review Board and courts have the luxury of time for hearing and determination of such proceedings. We do not think section 78(7) precludes an aggrieved tenderer who alleges breach of duty by the tender opening committee from applying for a review by the Board.



34. We therefore concur with the learned judge that the appellant filed the Request for Review out of time. It follows, therefore, that the 1st respondent had no jurisdiction to hear it.
35. Having arrived at this conclusion, and given the centrality of jurisdiction in all court proceedings, it is superfluous for us to proceed to make elaborate findings on the remaining issues. We say so because the issue of jurisdiction is the lifeline of every court dispute. Had the 1st respondent struck out the appellant's Request for Review, as it ought to have done, the end result would have been exactly what the learned judge arrived at, because the 4th respondent, having been declared the most responsive tenderer, would have been awarded the tender.
36. We do not agree that the learned judge exceeded the scope of the High Court's supervisory jurisdiction in judicial review. Having rightly determined the primary issue of jurisdiction, the rest of the judge's findings served to bring out clarity and a neat ending to the legal dispute. In the circumstances of the dispute, we see no basis of faulting her for not having downed her tools as soon as she concluded that the 1st respondent acted without jurisdiction.
37. All in all, we find no merit in this appeal and dismiss it with costs to the 2nd, 3rd and 4th respondents.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF APRIL 2026.

D. K. MUSINGA (PRESIDENT)

JUDGE OF APPEAL

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P. LILAN

JUDGE OF APPEAL

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DR. J. OKELLO

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

