

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
CASE NUMBER: HCJRMISC/E031/2026

**WORLD STANDARDIZATION, CERTIFICATION AND TESTING
GROUP (SHENZHEN) CO. LTD.....APPLICANT**

-VERSUS-

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW
BOARD.....RESPONDENT**

AND

**MANAGING DIRECTOR, KENYA BUREAU OF
STANDARDS1ST INTERESTED PARTY**

**KENYA BUREAU OF STANDARDS.....2ND INTERESTED PARTY
QUALITY INSPECTION SERVICES JAPAN**

**..... 3RD INTERESTED PARTY
CHINA HANSOM INSPECTION AND CERTIFICATE CO.**

**LTD4TH INTERESTED
PARTY**

**ASTC AS TEST CERTIFICATION TECH. (HANGZHOU) CO.
LTD5TH INTERESTED**

**PARTY
CHINA CERTIFICATION AND INSPECTION GROUP**

**INSPECTION COMPANY LIMITED6TH INTERESTED
PARTY**

INTERTEK INTERNATIONAL LIMITED.7TH INTERESTED PARTY

COTECNA INSPECTION SA8TH INTERESTED PARTY

TUV RHEINLAND9TH INTERESTED PARTY

BUREAU VERITAS.....10TH INTERESTED PARTY

SGS SA11TH INTERESTED PARTY

RULING

1. The Application that forms the subject of this ruling is the one dated 23rd day of March 2026 wherein the Applicant is seeking the following orders;

1) That this Application be certified urgent, be given an expedited hearing date, and that pending such hearing this Honourable Court do issue interim orders in terms of Prayers (6) and (7) below pending hearing and determination of the Originating Summons dated March 2, 2026.

2) That this Honourable Court be pleased to find and declare that ESTHER NGARI, the 1st Interested Party, the 2nd Interested Party's Managing Director and accounting officer, acting on behalf of the 2ndInterested Party, is in deliberate and willful contempt of this Honourable Court's Order dated March 3, 2026 (hereinafter the "Injunction Order").

3) That a finding of contempt having been made, the 1st Interested Party be committed to civil jail for such period as this

Honourable Court may deem fit and just, as a sanction for the said contempt.

- 4) That in the alternative to Prayer 2 above, the 1st Interested Party and/or the 2nd Interested Party be ordered to pay a fine in such sum as this Honourable Court may deem fit and just.
- 5) That the purported direct procurement contracts entered into by the 2nd Interested Party with the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Interested Parties herein (the "Direct Procurement Contracts"), being contracts procured in contempt of this Honourable Court's Injunction Order and in violation of Sections 54 and 103 of the Public Procurement and Asset Disposal Act, No. 33 of 2015 ("PPADA"), be declared null, void and of no legal effect whatsoever.
- 6) That pending determination of the main Application herein, the 1st and 2nd Interested Parties and each of them, whether by themselves, their servants, agents, employees, contractors or otherwise howsoever, be restrained by way of injunction from:
 - a. taking any steps to implement, act upon, or give effect to the Direct Procurement Contracts; and
 - b. commencing, continuing, procuring or permitting the commencement of any works, supply of goods, or provision of services under the said Direct Procurement Contracts.

- 7) That the 1st and 2nd Interested Parties do forthwith restore the status quo ante as it existed immediately before the execution of the Direct Procurement Contracts.
- 8) That the costs of and incidental to this Application be borne by the 1st and 2nd Interested Parties.
- 9) That this Honourable Court do make such further and other orders as it may deem fit and just in the circumstances.

The Applicant's Case;

2. It is the Applicant's case that sometime in 2025, the 1st and 2nd Interested Parties invited interested bidders to submit their bids in response to *Tender No. KEBS/PRE-Q/T006/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 20252028*, hereinafter "*the subject tender*".
3. The Applicant tendered its bid which was subsequently established by the Evaluation Committee as being responsive.
4. On 23rd September 2025, the Applicant received a letter from the 1st Respondent notifying it that it had not been pre-qualified precipitating the filing of a Request for Review in *PPARB Application No. 98 of 2025*.
5. on 27th October 2025, a decision was rendered finding that the due diligence exercise was not carried out in accordance with the law.

6. It is the Applicant's case that the Procuring Entity unsuccessfully challenged the Board's decision at the High Court in *Milimani High Court Case No. HCJRMISC E142 of 2025*, wherein the Court upheld the finding of the Board.
7. Another due diligence was allegedly conducted by the Procuring Entity whereupon the Applicant was disqualified.
8. The Applicant filed a new Request for Review before the Board in *PPARB Application No. 14 of 2026*.
9. Thereafter 1st Interested Party caused the 2nd Interested Party to publish a Public Notice on its website titled: "*Public Notice on Expiry of PVoC Contracts for General Goods and Incidental Arrangements Thereof.*"
10. Upon the Board reading its decision on February 17, 2026, the 1st and 2nd Interested Parties published an undated notice on its website titled: "**Public Notice on Pre-Export Verification of Conformity (PVoC) Services for General Goods**" in which they informed the general public *inter alia* that PVoC services are offered by inspection companies contracted by the 2nd Interested Party under a three (3) year contract cycle.
11. The notice went on to inform all stakeholders and the public that the nine (9) companies listed in the notice had been contracted to offer PVoC services for general goods for the next three years with effect from February 19, 2026.

12. It is concerned that the said Public Notice did not state how the nine (9) Companies had been contracted in view of the fact that *Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028* had not been concluded and 14 days had not lapsed from the date of the Board decision.
13. The nine (9) are the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Interested Parties listed contractors firms that were prequalified in the very Prequalification exercise that is the subject of the Applicant's pending challenge in this Court.
14. It is its case that on March 3, 2026, this Honourable Court issued the following interlocutory orders inter alia:

1...

2. 'A temporary injunction does hereby issue, suspending the procurement proceedings in respect of *Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of PreExport Verification of Conformity (PVoC) to Standards Services the Year 2025-2028* pending hearing and determination of the present Application.'

3....

4...

5...

6. 'A judicial review order in the nature of *Prohibition* does hereby issue prohibiting the 1st Respondent or any officer under him or acting on his instructions or delegation from executing any contract with bidders in respect of *Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028 pending the hearing and determination of this suit.*'

15. It is its case that the 1st and 2nd Interested Parties were served with the Court Order dated March 3, 2026 together with pleadings thereof on even date, by email, and they in turn filed their response and submissions in the matter.
16. It argues that at all material times the 1st and 2nd Interested Parties have participated in the present proceedings knowing fully well the existence of interim orders herein notwithstanding the fact that an email forwarding the Order issued on March 3, 2026 was sent.
17. It argues that the Order was made for the purpose of preserving the status quo in the Prequalification pending the Applicant's challenge to its disqualification. Its purpose was to prevent the 2nd Interested Party from taking any step that would render the Applicant's challenge academic or incapable of effective remedy.
18. The 1st Interested Party, acting on behalf of the 2nd Interested Party and in exercise of her personal responsibility as accounting officer under Section 44 of the PPADA, caused the 2nd Interested Party to enter into direct procurement contracts with the 3rd, 4th, 5th, 6th, 7th,

8th, 9th, 10th and 11th Interested Parties (the ‘Contractors’) for *Provision of PreExport Verification of Conformity (PVoC) to Standards Services the Year 2025-2028* (the "Direct Procurement Contracts") according to the Applicant.

19. The award of the Direct Procurement Contracts, whilst the Injunction Order was subsisting and had not been lifted, constituted a direct and deliberate breach of the Injunction Order by the 1st Interested Party.
20. The Contractors have, with the knowledge, authorization and management of the 1st Interested Party, already commenced and are continuing to carry out physical works under the Direct Procurement Contracts as seen in the copies of Conformity Certificates issued by the Contractors in respect of works already completed under the Direct Procurement Contracts and screen shots of web pages showing that works are continuing in the face of this Court’s Order.
21. The certificates were issued by the respective Contractors as a formal acknowledgement by each Contractor that it has carried out and completed defined works under a contract that it knew, as a party to this suit, to be void and made in breach of this Court's Order.
22. According to the Applicant, they are, in effect, formal admissions by each Interested Party that it has entered into and commenced works under the Direct Procurement Contracts; and done so whilst on notice of the Injunction Order, as a party to these proceedings.
23. It argues that the commencement and continuation of physical works aggravates the contempt in the following specific respects. The works

constitute a continuing and escalating act of defiance of the Injunction Order, an act that persists with each day that the works are allowed to continue.

24. It argues that the 3rd – 11th Interested Parties are not passive beneficiaries of a breach committed by someone else, they are active participants in the creation of the irreversible facts on the ground, in full knowledge of the Injunction Order.
25. The 1st and 2nd Respondents have sought to justify the Direct Procurement Contracts by characterising them as awards under the direct procurement method under Section 103 of the PPADA. This characterization is false and legally untenable according to the Applicant.
26. Section 103 of the PPADA permits direct procurement only where the goods, works or services are available from a single source, or where there is an urgent need arising from disaster or conflict. Neither condition exists in this case.
27. Further direct procurement is a single-source method. The simultaneous award of contracts to all nine (9) prequalified firms is incompatible with the direct procurement method as a matter of law.
28. Section 103 of the PPADA expressly prohibits direct procurement for the purpose of avoiding competition. The purpose here was to avoid compliance with a court order, a more serious violation.
29. Section 54 of the PPADA and Regulation 90(1) of the PPADR 2020 prohibit the splitting or structuring of procurement to evade a

prescribed procedure. The recharacterization of the Prequalification exercise as "direct procurement" is precisely such artificial structuring.

30. Regulation 90(4) of the PPADR 2020 requires the accounting officer to report all direct procurement above Kshs. 500,000 to the PPRA within fourteen (14) days of contract award. This obligation was discharged.
31. The invocation of direct procurement in these circumstances was a sham and a subterfuge.
32. It is the Applicant's case that the combined effect of the award of the Direct Procurement Contracts by the 1st and 2nd Interested Parties, their execution by the Contractors, and the commencement and continuation of physical works thereunder, is that all the parties in contempt have collectively achieved, in knowing and deliberate defiance of the Injunction Order, the substantive outcome that the Order was designed to prevent.
33. As at the date of this Application, no party in contempt has taken any step to halt the works and the sustained and collective failure to purge the contempt demonstrates an unambiguous and unrepentant posture of defiance by all parties in contempt. The breach of the Injunction Order by the 1st Interested Party was deliberate and willful.
34. It is its case that the Direct Procurement Contracts and all acts done in purported execution thereof are void and of no legal effect since they were procured and executed in deliberate contempt of a subsisting order

of this Honourable Court by parties who had notice of that order, they were procured in violation of the mandatory conditions of Sections 103 and 104 of the PPADA, they were procured in violation of the anti-avoidance provisions of Section 54 of the PPADA and Regulation 90(1) of the PPADR 2020, they were procured without compliance with the mandatory reporting requirements of Regulation 90(4) of the PPADR 2020.

35. Section 72 of the PPADA makes compliance with the Act a condition for the validity of procurement. Procurement conducted outside the PPADA framework is void while Section 175(6) of the PPADA makes any act committed in disobedience of a High Court Order null and void.
36. The 3rd – 11th Interested Parties, having executed the Direct Procurement Contracts in knowing breach of the law and the Injunction Order, cannot invoke those contracts as a source of rights. No party can profit from its own contempt of court.
37. The Applicant has suffered and continues to suffer irreparable harm as a direct consequence of the 1st Interested Party's contemptuous conduct.

The Applicant's Submissions;

38. The Exparte Court Order of March 3, 2026, *inter alia* suspended the procurement proceedings in respect of *Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028* pending hearing and determination of the Originating Motion. Secondly, it prohibited the procuring entity or

any officer under it or acting on its instructions or delegation from executing any contract with bidders in respect of *Tender No. KEBS/PREQ/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards*.

39. Even if the wording of the Court Order appears narrow in the sense that it refers specifically to the *Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028*, the Applicant reminds this Honourable Court that the legal test for contempt is not merely semantic. Courts look at whether the alleged contemnor took steps that **defeated the purpose and intent** of the order. In *Attorney General v. Ahmed Issack Hassan & 2 Others [2014] eKLR*, the Court of Appeal confirmed that acts designed to render an order nugatory can constitute contempt even if they technically sidestep its literal terms.
40. The procuring entity's defence rests on a technicality; that since the issue of direct procurement was brought up by the Applicant in the Application for review before the Public Procurement Administrative Review Board (hereinafter 'the Board') and abandoned, the same should only be addressed in a substantive suit filed separately.
41. To this argument we state while the Board lacks jurisdiction to hear a challenge on the method of procurement, this Honourable Court suffers no such handicap.
42. The present Application is not predicated on Order 53 of the Civil Procedure Rules but rather on the Sections 7, 9, and 10 of the Fair Administrative Action Act (cap 7L) which has a broader purview.

43. This court has power under its inherent jurisdiction to set aside acts done in defiance of its orders. Further, this Court should be guided by Article 159 of the Constitution.
44. Section 103 of the PPADA 2015 and Regulation 90 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter ‘PPADR’) governs the use of direct procurement, which is one of the alternative procurement methods – the default being open tendering.
45. Direct procurement is highly restricted; a procuring entity may use direct procurement only if: the goods, works or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical.
46. Section 82(2) of the PPADA (as amended in 2022) confirms that for direct procurement there is only one bidder.
47. It submits that the procuring entity has awarded contracts to all the prequalified firms, that is, to multiple contractors simultaneously, as has happened in this case, in a manner that is inconsistent with Section 103. Direct procurement cannot be used to award contracts to a plurality of contractors at once.
48. Section 54 of the PPADA prohibits the splitting of contracts. No procuring entity may structure procurement as two or more

procurements for the purpose of avoiding the use of a procurement procedure. Critically, Regulation 90(1) of the PPADR reinforces this: a procuring entity shall not split or structure its contracts for the purpose of avoiding the use of a procurement procedure as provided for under Section 54(1) of the Act.

49. What the procuring entity has done is structurally equivalent to splitting; it has recharacterized the same pool of contractors and the same subject matter procurement under a different label (direct procurement) precisely to avoid the constraint imposed by the prequalification injunction.
50. Section 103 of the PPADA expressly provides that direct procurement may be used as long as the purpose is not to avoid competition.
51. Here, the purpose is even worse; the sole purpose is not merely to avoid competition, but to avoid compliance with a court order and thwart the Applicant's suit.
52. Under Regulation 90 of the PPADR, an accounting officer shall, within fourteen days after notification of the award of the contract, report any direct procurement of a value exceeding five hundred thousand shillings to the Authority in the format provided by the Authority.
53. This reporting obligation was not fulfilled and the Procuring Entity does not show otherwise.
54. This is a violation of the PPADA and it goes to demonstrate the clandestine nature of the transaction.

55. The three elements of civil contempt are that the terms of the order, knowledge of those terms by the Respondent and deliberate failure to comply with the order.
56. The blatant breach of the PPADA is legally unavailable where there are multiple suppliers, prohibited for the purpose of avoiding competition is not reported to the PPRA as required awarded contracts to exactly the same contractors who were prequalified all of this point irresistibly to the conclusion that the "direct procurement" was a sham or a mere device solely designed to circumvent this Court's Order, not a bona fide parallel exercise.
57. The technical argument that the matter of direct procurement should be heard vide a separate suit or that the court order only restrained contracts under the prequalification and that direct procurement is a separate method are baseless.
58. In *Hadkinson v Hadkinson* [1952] 2 All ER 567, the principle is established that one cannot evade an injunction by doing indirectly what one is directly prohibited from doing.
59. Awarding contracts to all prequalified firms under any procurement method and/or continuing with those contracts during the pendency of that challenge directly defeats the purpose and intent of the order. It renders the prequalification challenge entirely academic.
60. The Court might want to ask itself if there is an ongoing pre-qualification exercise in the face of the Procuring Entity's act of issuing contracts to the 3rd – 8th Interested Parties for the next three

years. What remains of the *Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028?*

61. The breach of the PPADA supports the inference of circumvention. Multiple contractors, same subject matter, no qualifying condition under Section 103), the only logical inference is that it was resorted to for an ulterior purpose — to render any court order nugatory.
62. The anti-avoidance provisions of Section 54 PPADA and Regulation 90 of the PPADR operate as a statutory prohibition against exactly this kind of structuring.
63. Taken together with the timing and the identity of the awardees, the inference of deliberate circumvention of the court's order is irresistible.
64. This is precisely the kind of crafted, sophisticated contempt that this Court should treat most seriously.

The 1st and 2nd Interested Parties Case;

65. It is their case that the Applicant had made prayers against the Direct Procurement Process before the Respondent. The same were withdrawn on 13th February, 2026 as evident from paragraph 38 of the Decision in Application 14 of 2026.

66. Section 175(1) of the Public Procurement and Asset Disposal Act, Cap 412C (PPADA) affords the remedy of judicial review against a Decision issued by the Respondent.
67. The Contracts complained of commenced on 18th February, 2026, prior to the filing of the Applicants Origination Motion and the Orders issued on 3rd March, 2026 as evidenced in **Exhibit ‘HAM 1’** of the Applicant.

The 1st And 2nd Interested Parties’ Submissions;

68. The 1st and 2nd Interested Parties state that the contracts contested by the Applicant commenced on 19th February, 2026. At the time of their making, there were no existing court orders against the signing of the contracts.
69. At the time of filing its Request for Review before the Respondent, the Applicant was aware of the direct procurement process initiated by the 1st and 2nd Interested Parties following which the contracts were signed.
70. In its Request for Review, the Applicant made specific prayers against the direct procurement process but withdrew the same as evidenced in paragraph 38 of the Respondent’s Decision of 17th February, 2026. \
71. The case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)** succinctly laid down the requisite elements that must be established for civil contempt as follows:

*40. It is an established principle of law that in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities¹ Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -*

“There are essentially four elements that must be proved to make the case for civil contempt. The Applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -

(a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

(b) the defendant had knowledge of or proper notice of the terms of the order;

(c) the defendant has acted in breach of the terms of the order; and

(d) the defendant's conduct was deliberate.

72. Page 1 of the Applicant’s bundle of annexures marked “HAM 1” is a public notice published on the 2nd Interested Party’s website to inform the general public of resumption of PVoC services with effect from 19th February, 2026 having signed new contracts with the 3rd to 11th Interested Parties.

73. The court orders cited by the Applicant to have been violated were issued on 3rd March, 2026. There were no prevailing court orders at the time of signing the contracts which took effect from 19th February, 2026 and the terms of the orders of 3rd March, 2026 have no bearing on the already signed contracts. Contempt of court being quasi-criminal in nature, the Applicant has failed to discharge its burden of proof beyond reasonable doubt.
74. Section 175(1) of the Public Procurement and Asset Disposal Act, Cap 412C (PPADA) affords the remedy of judicial review against a decision issued by the Respondent.
75. The Applicant herein made prayers against the direct Procurement Process before the Respondent but withdrew the same as evidenced from paragraph 38 of the decision in Application 14 of 2026.
76. It submits that where the Originating Motion by the Applicant emanated from a decision issued by the Respondent, the Honourable Court lacks jurisdiction to review matters that were not subject of determination by the Respondent.

The 3rd Interested Party Case;

77. It is its case that the Application is does not comply with the mandatory substantive and procedural requirements for contempt of court Applications stipulated in part 81 of the English civil procedure rules (as amended) which are applicable by dint of section 5 of the Judicature Act Cap. 8 of the laws of Kenya.

78. Reliance is placed in the case of **Samuel M. N. Mweru & others v National Land Commission & 2 Others [2020] Kehc 9233 (Klr)**; and the Court Of Appeal (P. Kihara Kariuki (P), Maraga & Ouko, JJ.A) in the case of **Christine Wangari Gachege V Elizabeth Wanjiru Evans & 11 Others [2014] KECA 840 (Klr)**
79. The Applicant's claim relating to the direct procurement which were contained in Applicant's request for review Application no. 14 of 2026 dated 23rd January 2026 and filed on 27th January 2026 was withdrawn by the Applicant as confirmed by the following averments:

*“The Applicant no longer wishes to pursue the Application for review in respect of the direct procurement process in terms of grounds 4 and 5 and prayer (b) in the request for review on account of a recent change in circumstances; instead the Applicant's, Application for review is confined to the fresh due diligence conducted on the Applicant by the Respondents” as seen at paragraph 5 of the Applicant's written submissions dated 12th February 2026 in review Application no. 14 of 2026 at **page 390** of the supporting affidavit of Harold Munala Amaya sworn on 2nd march 2026 lodged by the Applicant in support of the originating motion dated 2nd march 2026) b. “as to paragraphs 4,5 and 6 thereof i wish to state that the Applicant is no longer pursuing matters relating to direct procurement as seen paragraph 5 of the Applicant's written submissions dated 12th february 2026 in review Application no. 14 of 2026 a seen at **page 395** of the supporting affidavit of Harold Munala Amaya sworn on 2nd march 2026 lodged by*

the Applicant in support of the originating motion dated 2nd march 2026.

80. The Application which relates to direct procurement proceedings which were concluded in January 2026 is time-barred having been lodged outside the mandatory statutory timelines under section 175(1) of the public procurement and asset disposal act.
81. It is its case that the court lacks the requisite jurisdiction to take cognizance of, hear and determine the impugned Application as regards the direct procurement process by dint of the express provisions of section 175(1) of the public procurement and asset disposal act since having withdrawn its claim before the review board relating to the direct procurement process, there is no decision of the review board regarding the direct procurement which is amenable to challenge under section 175(1) of the public procurement and asset disposal act.
82. This Honourable court jurisdiction to hear and determine the Applicant's claims against the direct procurement proceedings concluded in January 2026 is ousted by Section 9(2) of The Fair Administrative Action Act considering that the Applicant failed to exhaust the remedy for administrative review under section 167 of the public procurement and asset disposal act.

The 3rd Respondent's Submissions;

83. It submits from the outset that the Applicant's Application seeking to cite parties for contempt of court hopelessly fails to meet the

substantive and procedural threshold for such Applications and is therefore fatally defective and bad in law.

84. Section 5 of the Judicature Act, Cap 8 of the laws of Kenya, is instructive as follows on the jurisdiction of the superior courts of Kenya to punish for contempt of court: *“the High Court and the court of appeal shall have the same power to punish for contempt of court as is for the time being possessed by the high court of justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”*
85. The above provision enjoins the Applicant and this Honourable court to ascertain and apply the law of contempt as applicable by the high court of justice in England as at the date of making the contempt Application.
86. As of the date of filing the Application herein, the applicable law of contempt in England is part 81 of the civil procedure rules as amended by the civil procedure (amendment no. 3) rules 2020/747, which came into effect on 1st October 2020.
87. The revised part 81 (Applications and proceedings in relation to contempt of court) stipulates the substantive and procedural requirements for commencing and conducting contempt proceedings. Specifically, CPR 81.3(1) requires that a contempt Application be made through an Application notice under part 23 of the CPR, as opposed to a notice of motion as filed by the Applicant in the instant matter.

88. Further, CPR 81.4 outlines the mandatory statements which must be disclosed in a contempt Application.
89. It invites this Honourable court to note that the Applicant's Application is hopelessly deficient as it has been instituted as a notice of motion Application rather than an Application notice as required by CPR 81.3(1), and further fails to include the mandatory disclosures prescribed by CPR 81.4.
90. In the case of **Speaker of The National Assembly V James Njenga Karume [1992] Eklr** where the learned judges held 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.”*
91. Similarly, in **Samuel M. N. Mweru & Others V National Land Commission & 2 Others [2020] KEHC 9233 (Klr)**, Mativo, J (as he then was) applied the strict procedural requirements of part 81 of the English civil procedure rules and dismissed a contempt Application that failed to comply with the same. That decision is directly on point with the instant Application.
92. Further reliance is placed in **Christine Wangari Gachege V Elizabeth Wanjiru Evans & 11 Others [2014] Keca 840 (KLR)**, the court of appeal (P. Kihara Kariuki (P), Maraga & Ouko, JJ.A) similarly upheld the strict procedural requirements for contempt Applications holding that *“the court in punishing for contempt exercises ordinary criminal jurisdiction, it is paramount*

that the procedure for instituting such proceedings be scrupulously followed.” Qisj respectfully urges this Honourable court to follow these binding and persuasive authorities.

93. The Applicant cannot find solace in article 159(2)(d) of the constitution as a result of failure to comply with the strict procedure for commencing contempt proceedings. In **Global Motors Center Limited V Clyde Munui Mungui [2020] Eklr**, the high court (Majanja, J) held:

“likewise, article 159(2)(d) of the constitution is not a panacea for the Applicant’s procedural missteps and pitfalls.”

94. Contempt proceedings are quasi-criminal in nature and carry the drastic consequence of imprisonment, fines and confiscation of assets. For this reason, strict compliance with the procedural safeguards established under part 81 of the English CPR is not merely a procedural formality but a fundamental requirement designed to protect the rights and liberties of persons accused of contempt.
95. The Applicant’s failure to comply with these mandatory requirements renders the Application fatally incompetent and incapable of being cured by amendment.
96. It further submits that CPR 81.4 is instructive that this Honourable court *“will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt”*.

97. It submits that the elements that the Applicant must prove to the required standard of beyond reasonable doubt in order to succeed in the contempt Application were comprehensively set out by Mativo, J (as he then was) **In Samuel M. N. Mweru & Others V National Land Commission & 2 Others [2020] KEHC 9233 (KLR)** citing the learned authors of contempt in modern New Zealand.
98. The Applicant has failed to establish any of the above elements to the required standard of beyond reasonable doubt. The injunction order of 3rd March 2026 comprised the following material terms:

Prayer 2: “a temporary injunction does hereby issue, suspending the procurement proceedings in respect of tender no. Keps/pre-Q/to06/2025/2028 – pre-qualifications for provision of pre-export verification of conformity (PVOC) to standards services the year 2025-2028 pending hearing and determination of the present Application.”

Prayer 6: “a judicial review order in the nature of prohibition does hereby issue prohibiting the 1st Respondent or any officer under him or acting on his instructions or delegation from executing any contract with bidders in respect of tender no. Keps/pre-q/to06/2025/2028 – pre-qualifications for provision of pre-export verification of conformity (pvoc) to standards services the year 2025-2028.”

99. It invites this Honourable court to note that the persons against whom the injunction order was directed are specifically identified.

Prayer 2 suspends “the procurement proceedings”; it does not impose any positive or negative obligation on any named party.

100. Prayer 6, the order of prohibition, is expressly directed at “*the 1st Respondent or any officer under him or acting on his instructions or delegation.*” The suit does not have a “1st Respondent”.
101. The reference to “the 1st Respondent” in prayer 6 of the injunction order therefore appears to be either a reference to the PPARB or, at best, an ambiguous reference whose scope and Application is uncertain.
102. It submits that where the terms of an order are ambiguous or unclear as to the identity of the persons bound by it, the alleged contemnor is entitled to the benefit of that ambiguity.
103. An order that is susceptible to more than one reasonable interpretation as to who it binds cannot sustain a finding of contempt beyond reasonable doubt against a person not specifically named in or addressed by the order.
104. On the face of the injunction order, the first element of contempt is not satisfied as against any party named in the suit.
105. Even if this Honourable court were to hold (which is denied) that the injunction order bound a party to the suit, the Applicant has still failed to demonstrate beyond reasonable doubt that any party to the suit has acted in breach of the terms of the order.

106. The injunction order, by its terms, suspended “the procurement proceedings in respect of **tender no. Keps/pre-q/too6/2025/2028**” and prohibited the execution of contracts “with bidders in respect of” the same tender. The order is expressly confined to the specific prequalification tender identified therein.
107. It does not constitute a blanket prohibition on all procurement activity by KEBS or on all contractual engagements between KEBS and any inspection company.
108. The Applicant alleges at paragraph 15 of the Supporting Affidavit that the 1st and 2nd Interested Parties entered into “direct procurement contracts” with the 3rd through 11th Interested Parties.
109. The Applicant further acknowledges at paragraph 21 of the Supporting Affidavit that the 1st and 2nd Interested Parties have characterised these contracts as being awarded under the direct procurement method under Section 103 of the PPADA.
110. Direct procurement under Section 103 is a statutorily distinct procurement method from competitive prequalification under the PPADA.
111. The direct procurement contracts are, by their nature and legal basis, **not** procurement proceedings “in respect of Tender No. KEBS/PRE-Q/Too6/2025/2028.”
112. It submit that regardless of whether the direct procurement was lawful or unlawful as a matter of procurement law (which is a

question for the substantive proceedings), the characterization of the direct procurement as a breach of the Injunction Order is a separate question that must be established beyond reasonable doubt.

113. The Applicant invites this Court to look behind the form of the contracts and examine their substance.
114. In quasi-criminal contempt proceedings, the alleged contemnor is entitled to be judged on the basis of the actual terms of the order, not on the basis of what the Applicant believes the order should have said or should have covered.
115. If the Injunction Order was intended to prohibit all contractual engagements between KEBS and any inspection company for PVoC services regardless of the procurement method employed, the order should have said so in clear and unambiguous terms.
116. The order expressly and specifically referenced “Tender No. KEBS/PRE-Q/To06/2025/2028” and no other procurement process.
117. A penal notice is a mandatory requirement for the enforcement of court orders by way of contempt proceedings. **CPR 81.4(e)** requires the Applicant for contempt to provide “confirmation that any order allegedly breached or disobeyed included a penal notice.”
118. The purpose of a penal notice is to warn the person against whom the order is made that disobedience may result in imprisonment, a fine or seizure of assets.

119. The order does not bear a penal notice. The Applicant has not averred in the Supporting Affidavit, and has not pleaded in the Application, that the Injunction Order contained a penal notice. This omission is fatal to the contempt Application.
120. In **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] KECA 840 (KLR)**, the Court of Appeal underscored the importance of strict compliance with the procedural requirements for contempt Applications. This extends to the requirement for a penal notice. The absence of a penal notice on the Injunction Order renders the Application incompetent insofar as it seeks committal or punishment for contempt.
121. Prayers 6 and 7 of the Applicant's Application seek interim orders pending the hearing and determination of the Applicant's Originating Motion dated 2nd March 2026.
122. Rule 13(1) of the Fair Administrative Action Rules expressly provides that any prayers for interim or conservatory orders must be sought in the Originating Motion. The said prayers were not sought in the Applicant's Originating Motion dated 2nd March 2026.
123. It submits that the Applicant's attempt to smuggle interim prayers into the contempt Application, rather than seeking them in the Originating Motion as mandated by rule 13(1) of the Fair Administrative Action Rules, is a procedural irregularity that renders Prayers 6 and 7 incompetent. Prayers 6 and 7 of the Application ought to be struck out for noncompliance with rule 13(1) of the Fair Administrative Action Rules.

124. Reliance is placed in the case of **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** and urge the Court to find that the Applicant has failed to comply with the procedure for interim orders stipulated under rule 13(1) of the Fair Administrative Action Rules.
125. It submits that the Applicant's claims in the instant Application, insofar as they relate to the direct procurement process concluded in January 2026, are both time-barred and have been expressly abandoned by the Applicant.
126. The Applicant expressly withdrew its claims relating to the direct procurement process as confirmed in its Written Submissions dated 12th February 2026 in Review Application No. 14 of 2026, where it stated at paragraph 5: *"The Applicant no longer wishes to pursue the Application for review in respect of the direct procurement process in terms of grounds 4 and 5 and prayer (b) in the Request for Review on account of a recent change in circumstances; instead the Applicant's Application for Review is confined to the fresh due diligence conducted on the Applicant by the Respondents."*
127. The Applicant further confirmed the abandonment at a separate point in its submissions where it stated: *"As to paragraphs 4, 5 and 6 thereof I wish to state that the Applicant is no longer pursuing matters relating to direct procurement."*
128. Having expressly abandoned its claims relating to the direct procurement process before the Public Procurement Administrative Review Board, the Applicant cannot now be heard to resurrect the

same claims through the back door of a contempt Application. The doctrine of approbation and reprobation prevents a party from blowing hot and cold on the same issue.

129. The direct procurement proceedings were concluded in January 2026. Section 175(1) of the Public Procurement and Asset Disposal Act prescribes mandatory statutory timelines for challenging procurement decisions as result of which the present Application, filed on 23rd March 2026, is well outside these mandatory timelines and is therefore time-barred.
130. It submits that this Honourable Court lacks the requisite jurisdiction to take cognizance of, hear and determine the Application insofar as it relates to the direct procurement process.
131. Section 175(1) of the Public Procurement and Asset Disposal Act limits judicial review to decisions of the Public Procurement Administrative Review Board.
132. Having withdrawn its claim before the Review Board relating to the direct procurement process, there is no decision of the Review Board regarding the direct procurement which is amenable to challenge under section 175(1) of the Act.
133. The Applicant cannot invite this Court to review a decision that was never made by the Review Board on account of the Applicant's own voluntary withdrawal.
134. Section 9(2) of the Fair Administrative Action Act provides that a court or tribunal shall not review an administrative action or decision

unless the mechanisms for appeal or review, including internal mechanisms, provided under any other written law have first been exhausted.

135. The Applicant failed to exhaust the statutory remedy for administrative review under section 167 of the Public Procurement and Asset Disposal Act in respect of the direct procurement process.
136. The jurisdiction of this Honourable Court to entertain the Applicant's claims regarding the direct procurement proceedings is therefore ousted by operation of law.
137. The principle of exhaustion of administrative remedies is well established in our jurisprudence and its Application in this instance is both appropriate and necessary to uphold the integrity of the statutory dispute resolution framework established under the Public Procurement and Asset Disposal Act.

Analysis and determination

The issue for determination is whether the Application has merit.

138. The Applicant moved the court through the Fair Administrative Action Act and the issues raised allows the court to conduct a limited merit analysis. However, the Applicant has to demonstrate that it is entitled to the orders sought. The Application is properly before the court.

139. In determining whether the Application has merit, the court has referred to The Black's Law Dictionary 9th Edition which defines contempt of court as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

140. On March 3, 2026, the court issued a temporary injunction suspending the procurement proceedings in respect of Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028 pending hearing and determination of the present Application.’

141. The court also prohibited the 1st Respondent or any officer under him or acting on his instructions or delegation from executing any contract with bidders in respect of Tender No. KEBS/PRE-Q/Too6/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028 pending the hearing and determination of this suit.’

142. The Applicant thereafter filed the Application that is before this court for determination. In order to succeed, the Applicant has to prove that the Application fits into what would amount to a contempt of the said court order.

143. The Contracts commenced on 18th February, 2026, prior to the filing of the Applicants Origination Motion and the Orders issued on 3rd March, 2026.
144. The Applicant advanced a strong argument that Section 82(2) of the PPADA (as amended in 2022) that for direct procurement there is only one bidder.
145. It was its case that if the procuring entity awarded contracts to all the prequalified firms, that is, to multiple contractors simultaneously, as has happened in this case, this is definitionally inconsistent with the direct procurement method under Section 103.
146. It was further its case that direct procurement cannot be used to award contracts to a plurality of contractors at once.
147. It also argued that Section 54 of the PPADA prohibits the splitting of contracts. No procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure.
148. It was its case that Regulation 90(1) of the PPADR reinforces this and in particular it stipulates that a procuring entity shall not split or structure its contracts for the purpose of avoiding the use of a procurement procedure as provided for under Section 54(1) of the Act.
149. It argued that what the procuring entity has done is structurally equivalent to splitting; it has recharacterized the same pool of contractors and the same subject matter procurement under a

different label (direct procurement) precisely to avoid the constraint imposed by the prequalification injunction.

150. It then argued that Section 103 of the PPADA expressly provides that direct procurement may be used as long as the purpose is not to avoid competition.
151. The Applicant sought to create a nexus between the direct procurement argument and the orders sought.
152. It argued that the sole purpose is not merely to avoid competition, but to avoid compliance with a court order and to thwart the Applicant's suit.
153. It closed that line of argument with the argument that under Regulation 90 of the PPADR, an accounting officer shall, within fourteen days after notification of the award of the contract, report any direct procurement of a value exceeding five hundred thousand shillings to the Authority in the format provided by the Authority. This reporting obligation according to the Applicant was not fulfilled and the Procuring Entity does not show otherwise.
154. The court has noted from the proceedings before the board that the Applicant's claim relating to the direct procurement was part of the Applicant's Request for Review Application No. 14 of 2026 dated 23rd January 2026 where the Applicant had sought orders inter alia that;

b) The decision of the 1st Respondent to award contracts through direct procurement process for the Provision of Pre-Export Verification of Conformity (PVOC) to Standards 18 438

Services the Year 2025 -2028, and the letters of award issued thereto be annulled and set aside in their entirety.

The court further notes from the board's ruling at page 38 of that prior to the commencement of the hearing, the Board sought clarification from the Applicant's Counsel, pursuant to paragraph 10 of the Further Statement by Harold Amaya Munala dated 11th February 2026, as to whether the Applicant had abandoned its claim regarding direct procurement, specifically Grounds 4 and 5 and Prayer (b) of the Request for Review.

The Applicant's Counsel confirmed that the claim had indeed been abandoned.

Counsel for the Respondents, as well as Counsel for the 1st Interested Party and the representative of the 9th Interested Party, indicated that they raised no objection.

The Board consequently ordered that the Applicant's claim on direct procurement be treated as abandoned. The Board identified the following as the issues for determination;

A. Whether the Respondents conducted a fresh due diligence in compliance with the Board's order in PPARB Application

No. 98 of 2025, as upheld by the High Court in Nairobi in HCJR E142 of 2025.

B. What appropriate orders should issue in the circumstances.

155. The board thereafter issued the following final orders;

“In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in this Request for Review:

A. The Request for Review dated 23rd January 2026 be and is hereby dismissed.

B. The 1st Respondent be and is hereby directed to proceed with and conclude the procurement process relating to Tender No. KEBS/PRE-Q/To06/2025/2028 – Pre-Qualifications for 54 474 Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for the Year 2025–2028.

C. Each party shall bear its own costs in this Request for Review.”

156. The court has noted that the Applicant herein has advanced the argument that the Applicant filed Request for Review before the Board in *PPARB Application No. 14 of 2026*. Thereafter 1st Interested Party caused the 2nd Interested Party to publish a Public Notice on its website titled “Public Notice on Expiry of PVoC Contracts for General Goods and Incidental Arrangements Thereof.”

157. Upon the Board reading its decision on February 17, 2026, the 1st and 2nd Interested Parties published an undated notice on its website titled: “Public Notice on Pre-Export Verification of Conformity (PVoC) Services for General Goods” in which they informed the general public *inter alia* that PVoC services are offered by inspection

companies contracted by the 2nd Interested Party under a three (3) year contract cycle.

158. The Applicant argued that the notice went on to inform all stakeholders and the public that the nine (9) companies listed in the notice had been contracted to offer PVoC services for general goods for the next three years with effect from February 19, 2026.
159. The Applicant was concerned that the said Public Notice did not state how the nine (9) Companies had been contracted in view of the fact that *Tender No. KEBS/PRE-Q/T006/2025/2028- Pre-Qualifications for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services the Year 2025-2028* had not been concluded and 14 days had not lapsed from the date of the Board decision.
160. It was its case that the nine (9) are the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Interested Parties listed contractors' firms that were prequalified in the very Prequalification exercise that is the subject of the Applicant's pending challenge in this Court.
161. The Applicant raised the issue of direct procurement and then abandoned it and the court is of the view that the Applicant cannot at this point in time seek to advance the same issue in a bid to prove the Application that is before this court so as to secure contempt of court order.
162. The board gave the Applicant a fair hearing platform pursuant to which the Applicant voluntarily elected to abandon claim touching on the issue of direct procurement as a result of which a legitimate

expectation was created in the mind of the board and the other parties.

163. The Applicant cannot have a second bite at the cherry. It is seeking to unprocedurally resuscitate what it had abandoned through the contempt of court claim.
164. The Applicant had a legal avenue through which to seek redress after the board's ruling. The Applicant should have mounted a challenge to the direct procurement proceedings which were concluded in January 2026 in the High Court within 14 days it didn't.
165. The Applicant is time-barred and it cannot raise the issue outside the mandatory statutory timelines under section 175(1) of the Public Procurement and Asset Disposal Act through the Application that is before this court today.
166. The Court in any event lacks the requisite jurisdiction to take cognizance of, hear and determine issues around direct procurement process by dint of the express provisions of section 175(1) of the Public Procurement and Asset Disposal Act since the Applicant withdrew its claim before the Review Board in so far as the question of the direct procurement process and I so hold.
167. There is no decision of the Review Board regarding the direct procurement issue which is amenable to challenge under section 175(1) of the Public Procurement and Asset Disposal Act.
168. Looked at from another legislative perspective, this Court lacks jurisdiction under Section 9(2) of the Fair Administrative Action Act

considering that the Applicant failed to exhaust the remedy for administrative review under Section 167 of the Public Procurement and Asset Disposal Act.

169. Further, Prayers 6 and 7 of offend the express provisions of rule 13(1) of the Fair Administrative Action Rules because the said prayers were not sought in the first instance in the said Originating Motion Application dated 2nd March 2026.

170. The Applicant has not proven its case.

Determination;

171. The Applicant has not satisfied the court that it is entitled to the orders sought.

Order:

The Application is dismissed with no orders as to costs.

Dated, signed and delivered virtually this 13th day of April, 2026.

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J. CHIGITI (SC)

JUDGE