



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
JUDICIAL REVIEW APPLICATION NO. E010 OF 2026

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS
OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF: ARTICLES 23, 47, AND 165 (6) (7) OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT, CAP
26 LAWS OF KENYA**

AND

**IN THE MATTER OF ORDER 53, RULES 1 AND 2 OF THE CIVIL
PROCEDURE RULES 2010**

AND

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL ACT 2015**

AND

**IN THE MATTER OF THE DECISION OF THE PUBLIC PROCUREMENT
ADMINISTRATIVE REVIEW BOARD IN APPLICATION NO. 20 OF 2026**

BETWEEN

**THE ACCOUNTING OFFICER, KAKAMEGA
COUNTY WATER & SANITATION COMPANY 1ST
APPLICANT**

**KAKAMEGA COUNTY WATER & SANITATION COMPANY 2ND
APPLICANT**

VERSUS

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
RESPONDENT**

**CANON SECURITY SERVICES LTD.....
INTERESTED PARTY**

RULING

1. The Applicant had initially sought leave, which was granted to file the Notice of Motion application dated 18/3/2026, seeking the following orders:
 - i. *An Order of Certiorari do issue by this Honourable Court for purposes of being quashed and to quash the entire decision of the Public Procurement Administrative Review Board delivered on 26th February, 2026 in Request for Review Application No. 20 of 2026 relating to Tender No. KACWASCO/SEC/00187/2025-2026. Spent.*
 - ii. *An Order of Prohibition do issue prohibiting the Respondent, the Interested Party, and/or any person acting pursuant to the said decision from implementing, enforcing, or giving effect to the decision of the Public Procurement Administrative Review Board delivered on 26th February 2026 in Application No. 20 of 2026.*
 - iii. *A declaration that the Respondent acted without jurisdiction and in excess of its statutory mandate in reviewing and overturning the lawful termination of procurement*

proceedings undertaken by the Applicants pursuant to Section 63(1)(b) of the Public Procurement and Asset Disposal Act, 2015.

- iv. A declaration that the Respondent's directives purporting to compel the Applicants to engage in competitive negotiations and extend tender validity were ultra vires the provisions of the Public Procurement and Asset Disposal Act and therefore null and void.*
 - v. Costs of this Application be awarded to the Applicants.*
 - vi. Any such further or other orders as this Honourable Court may deem just and expedient in the circumstances.*
2. The application is premised upon grounds set out in the Statutory Statement and the accompanying Verifying Affidavit sworn on 11/3/2026.

The Applicants' Case

3. In their statutory statement, they state that the 1st Applicant is the Accounting Officer of the 2nd Applicant and responsible for ensuring that the 2nd Applicant undertakes procurement to comply with the provisions of the Public Procurement and Asset Disposal Act 2015.
4. That the 2nd Applicant is Kakamega County Water and Sanitation Company, a public entity and procuring entity within the meaning of the Public Procurement and Asset Disposal Act.
5. That the Respondent is a Public Procurement Administrative Review Board, a statutory tribunal established under the Public

Procurement and Asset Disposal Act 2015, mandated to hear and determine procurement disputes, while the Interested Party, Canon Security Limited, was a bidder in Tender No. KACWASCO/SEC/00187/2025-2026 for the provision of security services and the Applicants in Request for Review Application No. 20 of 2026 before the Respondent.

6. The application is based on the following grounds:
7. The Interested Party, Canon Security, filed their replying affidavit in response to the application and stated that it was an abuse of the court's process. They faulted the Applicants for non-compliance of the orders issued by the Board, holding that the Board exercised its jurisdiction to interrogate whether the Applicants had met the prerequisite conditions to terminate the tender. It was right to find that the termination of the tendering process was unlawful, as they were the lowest bidder at Kshs. 12,740,094 despite the approved budget of Kshs. 12,000,000/= and that the Applicants had failed to disclose the 6.167% that was allowed in the budget.
8. They denied the allegation that the Board unlawfully assumed the functions of the Accounting Officer, stating that they acted within their discretionary powers, which they claimed were exercised judiciously where the procuring body had failed to comply with the statutory provisions.
9. On the claim by the Applicants that the Board's decision purported to revive terminated proceedings, they supported the decision of

- the Board, arguing that the termination in itself was unlawful as the Applicants had conducted the procurement process accordingly and that the tender validity period had not expired and that the same had been suspended upon the filing of the request for review.
10. On the contention that the Board's decision compelled the Applicants to proceed with the procurement without an adequate budgetary allocation, they contended that the Board's direction was to conduct competitive negotiation to fall within the approved budget of Ksh. 12,000,000, and that there was no Constitutional violation. They asserted that the Board's direction promoted prudent use of public funds, and faulted the Applicants for the cancellation of the tendering process despite them being the lowest bidder, on the ground that it exceeded the budgetary allocation.
 11. They opposed the application for judicial review on the grounds that the Applicants had failed to demonstrate that the Board acted without jurisdiction or exceeded their mandate. They stated that the Applicants failed to demonstrate that the Board's decision was based on any illegality, irrationality, or procedural impropriety, and pleaded that this court not interfere with the decision of the Board.
 12. They stated that they were the lowest bidder after a rigorous process and that they had a legitimate expectation after engaging in competitive negotiations in accordance with the law.
 13. They prayed that the Notice of Motion application be dismissed with costs and the decision of the Board on 26th February 2026 upheld.

14. The application was canvassed by way of written submissions.

Applicants' Submissions

15. The Applicants filed their submissions dated 17th March 2026 and raised three issues for determination.
16. On the first issue as to whether the Respondent had jurisdiction under section 63 of the PPADA, they cite the case of ***Owners of Motor Vessel S v Caltex Oil (Kenya) Ltd, KLR***. They aver that under section 167 (4) (b) of the PPADA, the Respondent was barred from reviewing terminations under section 63 as they had lawfully terminated the tender due to the inadequate budgetary allocation.
17. In support of their argument, they cite the case of ***Republic vs Public Procurement Administrative Review Board & 2 others ex parte Pelt Security Services Ltd eKLR***.
18. They state that the Respondent overreached when it undertook the mandate of competitive negotiations and extension of the tender validity period, a function which fell out of its jurisdiction; hence it acted ultra vires.
19. They submit that upon the termination of the process, there was nothing left for negotiation or extension of the tender validity, as under section 131 of the Act, which dealt with ongoing procurement not terminated or concluded, and that the directions of the

- Board were unlawful and usurped the roles of the accounting officer in reviving a process that was already spent.
20. They refer the case of **Republic vs Kenya Revenue Authority ex parte Yaya Towere Ltd. (2008) eKLR and Kenya National Examinations Council vs Republic ex parte Geoffrey Gathenji Njoroge eKLR** where parties had acted ultra vires.
 21. On the claim of illegality and irrationality, they quote the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd. e KLR** and **Associated Provincial Picture Houses vs. Wednesbury Corporation (1984) 1 KB 22**, and argue that the impugned directive by the Board compelled them into negotiating in the absence of a budgetary allocation contrary to article 201 of the Constitution.
 22. They finally submit that the Respondent lacked the jurisdiction and the statutory overreach compels them to seek judicial review to remedy the situation being an order of certiorari to quash the decision made in excess of jurisdiction as affirmed in **Republic vs NEMA ex parte Sound Equipment Ltd. EKLR**. They also sought an order of prohibition to restrain the implementation of the null decision as per **KNEC vs Republic ex parte Gathenji Njoroge eKLR**.
 23. The Interested Party, Canon Security Services Ltd, filed their submissions dated 23rd April 2026, raising two issues for determination.

24. On whether the Board had jurisdiction to hear and determine the request for review No. 20 of 2026, it argues that the Board correctly exercised its jurisdiction by interrogating whether the preconditions for a valid termination under section 63 of the PPADA Act were met.
25. It asserts that the Board found that the requirements were not met, and that it was vested with jurisdiction to hear and determine the matter. It posits that the Board found that the Applicants failed to submit the mandatory written report to the Public Procurement Regulatory Authority within fourteen (14) days of the purported termination as required under section 63(2) of the Act and that the procedural failure demonstrated that the termination was not conducted in accordance with section 63 of the Act.
26. It cites the case of ***Republic vs Public Procurement Administrative Review Board; Pelican Insurance Brokers (K) Limited (Interested Party) Ex Parte Kenya Revenue Authority (2019) KEHC 8210 (KLR)***.
27. On whether the Board exercised this jurisdiction in accordance with the law, it asserts that the Board has a wide range of power under statute and case law, which it states was affirmed in the case of ***Chief Executive Officer, the Public Services Superannuation Fund Board of Trustees vs. CPF Financial Services Limited & 2 others (Civil Appeal No. E 510 of 2022) (2022) KECA 982 (KLR)***, where the court held that the Board possesses authority to

- give directions to accounting officers, including extension of validity periods where circumstances warranted.
28. It further contends that the court has affirmed the legality of the Board's decisions directing the procuring entity to conduct competitive negotiations within the budgetary allocation and relies on **(Accounting Officer, Kenyatta International Convention Centre & another vs Public Procurement Administrative Review Board; Paramax Cleaning Services Limited & another (interested parties) (2025) KEHC 6031 (KLR))**.
29. It urges that the Honourable court find that it had acted within its jurisdiction in determining the request for review No. 20 of 2026 in holding that the Applicants did not lawfully procedurally terminate the tendering process as required under section 63 of the Act.
30. It prays that the application dated 18th March 2026 be dismissed with costs and the decision of the Board dated 26th February 2026 in request for review No. 20 of 2026 be upheld.

Analysis and Determination

31. This court has carefully analysed the application, the parties' affidavits, as well as the rival submissions, and the impugned finding of the procurement Board.
32. The main issues for determination are:-
- a) *Whether the Board had jurisdiction to entertain the request for review.*

- b) *Whether the Board acted ultra vires by directing the competitive negotiation and the extension of the tender period.*
- c) *Whether the Applicants met the threshold to be granted the prayers they seek, being orders of certiorari and prohibition.*
33. The first issue for determination is whether the Board had the jurisdiction to entertain the request for review No. 20 of 2026. Jurisdiction is a fundamental foundation in legal proceedings and was affirmed to be so in the celebrated decision in ***Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd.***, where the Court of Appeal held that jurisdiction is everything, and without it a court or tribunal must put down its tools. This finding is important in cases where there is a statutory procurement dispute, as the Board has only the powers conferred on it by the Act.
34. The main issue for this court to determine is whether the termination undertaken by the Applicants was "in accordance with section 63."
35. Section 63 of the Public Procurement and Asset Disposal Act, 2015, provides as follows: ***"(1) An accounting officer of a procuring entity may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies (b) inadequate budgetary provision;***

(2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.

(3) A report under subsection (2) shall include the reasons for the termination.

(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination, and such notice shall contain the reason for termination."

36. In their submissions, the Applicants contends that the tendering process was lawfully conducted in accordance with section 63(1)(b), which they opined ousted the Board's jurisdiction by dint of section 167(4) (b).
37. The Interested Party, on the other hand, opined that the Board was within their jurisdiction to interrogate whether the conditions precedent for a lawful termination were met. In support, they relied on the case of **Republic v. Public Procurement Administrative Review Board & Another ex parte Kenya Revenue Authority; Pelican Insurance Brokers Ltd.**
38. Section 167(4)(b) of the Public Procurement and Asset Disposal Act, 2015 (PPADA) states that "**The following matters shall not be subject to the review of the Review Board...**"
- (b) a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act."**

39. In ***Republic vs Public Procurement Administrative Review Board & 2 others ex parte Pelt Security Services Ltd. [2018] eKLR***, it was reiterated that the Board cannot review a termination under Section 63.
40. Section 167(4)(b) of the PPADA is quite clear and not ambiguous by stating that where a procuring entity terminates procurement proceedings in accordance with section 63, the Public Procurement Administrative Review Board is statutorily barred from reviewing that decision.
41. From the records presented before the court, the Applicants terminated the process expressly on the ground of inadequate budgetary provision, a ground expressly recognised under section 63(1)(b). The Applicants was therefore lawfully exercising their statutory discretion under the law.
42. The Interested Party contend that there was procedural non-compliance on the part of the Applicants when they did not file their written report within the required timelines, which was 14 days. While it is true that the Applicants ought to have filed the written report, which is a procedural requirement under section 63(2), and is important for accountability and transparency, this, however, does not render the termination itself a nullity as to revive the Board's jurisdiction.
43. The Act in itself does not make reference to non-compliance with the reporting requirement to automatically invalidate the

termination or remove the protection of section 167. To hold otherwise would be to rewrite the statute and undermine the clear legislative intent behind section 167(4)(b).

44. In ***Republic v Public Procurement Administrative Review Board & 2 others Ex parte Pelt Security Services Ltd [2018] eKLR***, the Court emphasized that once procurement proceedings are lawfully terminated under section 63, the Board lacks jurisdiction to review or interfere with that decision. A similar position was affirmed in ***Republic v. Public Procurement Administrative Review Board Ex parte Kenya Power & Lighting Company Ltd. (Judicial Review Application No. 12 of 2019)***, where the Court held that the ouster clause is not lightly to be circumvented through technical challenges to procedural steps that are ancillary to the substantive power to terminate.
45. Furthermore, upon termination under section 63, the procurement process became non-existent for any competitive negotiations under sections 131 and 132 of the Act or for extension of tender validity. The Board's directive ordering the Applicants to engage in competitive negotiations and to extend the tender validity period amounted to an unlawful attempt to revive an action that has already been spent, and, in my view, this would be tantamount to the Board acting outside its jurisdictional mandate.
46. The decision by the Board to revive the procurement process would, in my view, amount to the substitution of its own decision for that of

- the Accounting Officer, who has the discretion to terminate the procurement process based on the budgetary allocation and not on the Board.
47. Compelling the Applicants to continue with the process of negotiations in the absence of adequate budgetary allocation would amount to the review Board acting outside its statutory mandate. The Board unlawfully interfered with the constitutional and statutory framework governing public finance management under Article 201 of the Constitution, which demands responsible and prudent use of public resources.
 48. While still on the issue of public funds, Article 201 of the Constitution was invoked by the parties. In my view, the public procurement process must be conducted in a manner consistent with sound financial management. A public entity cannot be compelled to undertake contractual actions that would commit public funds beyond what has been lawfully budgeted to them under the law unless the law expressly authorizes such commitment.
 49. It was the Interested Party's argument that it was the lowest bidder in the process and that the Board's decision promoted proper and prudent usage of the public funds by bringing the tender within budget through negotiation. This argument cannot cure the Board's jurisdictional overreach, as the lawfulness of the process cannot be

- sacrificed at the altar of efficiency to satisfy the Interested Party's needs.
50. Where the Act is clear that a terminated process is protected from review, the court cannot again invoke the principle of public interest as urged by the Interested Party to enlarge its mandate.
 51. The principles under judicial review do not permit this Court to substitute its view for that of the Board on the merits of a procurement dispute. But where the complaint is that the Board acted without jurisdiction, misdirected itself on the statute, or made a decision that is legally untenable, the Court should exercise its supervisory mandate under Article 165(6) and (7) to intervene.
 52. Having considered the pleadings, the statutory provisions, and the authorities, I am satisfied that the Applicants have shown that the Board acted *ultra vires*. The procurement had been terminated on a ground recognized by section 63(1)(b), and the Board's decision, as challenged, unlawfully revived the process and directed steps that the Act did not authorize in the circumstances.
 53. I therefore find that the application has merit and is entitled to the relief sought. The impugned decision is liable to be quashed by certiorari, and prohibition should issue to restrain its implementation.
 54. Accordingly, I find that the application dated 18th March 2026 has merit and make the following orders:

- a) *A declaration is hereby issued that the Respondent acted without jurisdiction and in excess of its statutory mandate in reviewing and overturning the lawful termination of procurement proceedings undertaken by the Applicants pursuant to Section 63(1)(b) of the Public Procurement and Asset Disposal Act, 2015.*
- b) *A declaration is hereby issued that the Respondent's directives purporting to compel the Applicants to engage in competitive negotiations and extend tender validity were ultra vires the provisions of the Public Procurement and Asset Disposal Act and therefore null and void.*
- c) *An order of certiorari is hereby issued removing into this Court and quashing the decision of the Public Procurement Administrative Review Board delivered on 26th February 2026 in request for review No. 20 of 2026.*
- d) *An order of prohibition is hereby issued prohibiting the Respondent, the Interested Party, and any person acting pursuant to the impugned decision from implementing, enforcing, or giving effect to the said decision of the Public Procurement Administrative Review Board delivered on 26th February 2026 in Application No. 20 of 2026.*
- e) *The Applicants shall have the costs of the application.*

Dated, signed and delivered at Kakamega this 4th day of May 2026.

**A. C. BETT
JUDGE**

In the presence of:

Mr. Muganda holding brief for Ms. Ashiola for the Applicants

Ms. Kivote holding brief for Mr. Kamau for the Interested Party

No appearance for the Respondent

Court Assistant: Polycap

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