



**Principal Secretary/Accounting Officer Ministry of Defence & another v
Public Procurement Administrative Review Board & another; Ministry
of Gender, Culture, the Arts & Heritage (Interested Party) (Civil Appeal
198 of 2025) [2025] KECA 666 (KLR) (11 April 2025) (Judgment)**

Neutral citation: [2025] KECA 666 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 198 OF 2025
SG KAIRU, FA OCHIENG & AO MUCHELULE, JJA
APRIL 11, 2025**

BETWEEN

**THE PRINCIPAL SECRETARY/ACCOUNTING OFFICER MINISTRY OF
DEFENCE 1ST APPELLANT**

MINISTRY OF DEFENCE 2ND APPELLANT

AND

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

SUMMA TURIZM YATIRIMCILIGI ANONYM SIRKETI 2ND RESPONDENT

AND

**MINISTRY OF GENDER, CULTURE, THE ARTS &
HERITAGE INTERESTED PARTY**

*(Being an appeal against the Ruling and Orders of the High Court of Kenya
at Nairobi (Chigiti, J.) dated 20th February 2025 in HCJR. No. E006 of 2025)*

JUDGMENT

1. In this appeal, the appellants, The Principal Secretary/ Accounting Officer, Ministry of Defence and The Ministry of Defence have challenged the ruling of the High Court delivered on 20th February 2025. In that ruling, the High Court struck out, with costs, their application for judicial review on the ground that it was filed outside the statutory window as provided for under Section 175 of the Public Procurement and Disposal Act.



2. The background is that the appellants, through the direct tendering method, invited Summa Turizm Yatirimciligi Anonim Sirket, the 2nd respondent, to submit its bid in response to Direct Tender No. DHQINFRAS/004/23-24 for the proposed design, build and equip The Bomas International Convention Complex in Nairobi. Upon evaluation of the bid, the 2nd respondent was notified of its award of the subject tender by a letter dated 22nd November 2023.
3. For close to one year after the award, no procurement contract had been signed between the parties. By a letter dated 16th October 2024, transmitted on 14th November 2024, the appellants notified 2nd respondent that the tender had been terminated. The 2nd respondent was aggrieved.
4. On 2nd December 2024, the 2nd respondent filed a Request for Review before 1st respondent, the Public Procurement Administrative Review Board (the Review Board) seeking orders for annulment or quashing of the appellants' decision to terminate the tender; and for an order directing the appellants to sign the contract within 60 days.
5. Having heard the matter, the Review Board rendered its decision on 23rd December 2024, substantially, in the following terms: That the request for review dated 2nd December 2024 in respect of direct tender for proposed design, build and equip The Bomas International Convention Complex in Nairobi is allowed; That the letter dated 16th October 2024 as well as the letter dated 14th November 2024 in respect of the tender are set aside; That the tender validity is extended for a period of 90 days; That the procurement process be concluded within 90 days; and that each party to bear its own costs.
6. The appellants were dissatisfied. Through the Attorney General, they moved to the High Court for judicial review by an application dated 14th January 2025 seeking leave to apply for orders of Certiorari to quash the decision and the proceedings of the Review Board. On the same date, the High Court allowed that application and granted the appellants leave to file a substantive application. Pursuant to the leave granted, the appellants filed the substantive application dated 17th January 2025 to quash the decision and proceedings of the Review Board.
7. The Review Board and the 2nd respondent filed Notices of Preliminary objections dated 6th February 2025 and 12th February 2025 respectively urging the High Court to strike out the appellants' application on the ground that it was time barred under Section 175(1) of the *Public Procurement and Asset Disposal Act* (the Act). They contended that Section 175(1) of the Act provides a statutory period of 14 days within which the decision of the Review Board can be challenged; that in this case, the Review Board rendered its decision on 23rd December 2024; that the 14 days lapsed on 6th January 2025; and that by the time the appellants moved the High Court on 14th January 2025, time had already lapsed.
8. In its ruling delivered on 20th February 2025 (the subject of the present appeal) the High Court (Chigiti, J.) was satisfied that the application was filed outside the statutory window as provided for under Section 175 of the Act, upheld the preliminary objections and as already stated, struck out the appellants' application with costs.
9. The appellants have challenged that decision on five grounds set out in the Memorandum of Appeal the essence of which is that in calculating the 14 days provided for under Section 175(1) of the Act, the Judge should have had regard to Order 50 Rule 4 of the Civil Procedure Rules which excludes the period of Christmas Recess in the computation of the 14 days. Had he done so, the appellants contend, the learned Judge should have dismissed the preliminary objections and determined the matter on merits.



10. We heard the appeal on 1st April 2025. Mr. Githu Kabi, learned counsel appeared for the appellants while Mr. Paul Nyamodi, learned counsel, appeared for the 2nd respondent. There was no appearance for the Review Board or the interested party despite notice of hearing having been served on them.
11. The only issue arising for determination is whether in computing the 14 days prescribed under Section 175(1) of the Act, regard should be had to Order 50 Rule 4 of the Civil Procedure Rules to exclude the Christmas recess. Whereas the appellants' submission is that the period of Christmas recess should be excluded, the 2nd respondent on the other hand submits that the time frame under Section 175(1) of the Act is cast in stone, and that Order 50 Rule 4 of the Civil Procedure Rules has no application.
12. Counsel for the appellants submitted that Section 175(1) of the Act does not oust the provisions of Order 50 Rule 4 of the Civil Procedure Rules which provides that the period between 21st December in any year and the 13th day of January in the year next following shall be omitted from any computation of time for doing any act. Reference was also made to Section 57 of the *Interpretation and General Provisions Act* (Cap 2).
13. Counsel submitted that decisions of this Court, exemplified by the decision in the case of Aprim Consultants vs. Parliamentary Service Commission & Another, Civil Appeal No. E039 of 2021 [2021] KECA 1090 holding that the timelines under Section 175 of the Act are cast in stone, did not contemplate the scenario created by Section 57 of Cap 2 and Order 50 Rule 4 of the Civil Procedure Rules based on which there is a lacuna; that the Court should give a holistic interpretation of those provisions alongside Section 5 of the Act to avoid a construction that produces an absurd, unworkable or impractical result.
14. It was submitted that the appellants have a constitutional right to be treated in litigation proceedings before courts in a fair manner as prescribed by the laws; that the Civil Procedure Rules, of which Order 50 is part, assures and guarantees procedural methods and rules to the litigants meant to maintain order and fairness in legal proceedings; that as the decision of the Review Board in this case was rendered in a period excluded for computation of time, Sections 5 and 175(1) of the Act should be read together with Order 50 Rule 4 of the Civil Procedure Rules which is anchored on Section 57 of Cap 2. It was urged that had the learned Judge of the High Court properly considered the matter with those provisions in mind, the preliminary objections would have been dismissed.
15. With that, counsel for the appellants urged us to allow the appeal and send the matter back to the High Court for disposal of the appellants' application for judicial review on merits.
16. In opposing the appeal, Mr. Nyamodi submitted that there is no contestation that the appellants' application for judicial review was filed outside the 14 days set under Section 175(1) of the Act; that Order 50 Rule 4 of the Civil Procedure Rules invoked by the appellant is subordinate legislation and cannot extend time set under statute; that in any event, that rule applies to timelines set under the Civil Procedure Rules or by any order of the court and cannot therefore apply to timelines set under Section 175(1) of the Act.
17. It was submitted on the strength of the decision of this Court in the case of Aprim Consultants vs. Parliamentary Service Commission & Another (above) that the timelines under Section 175 are mandatory and cast in stone. Moreover, counsel submitted, by dint of Section 5 thereof, the Act "shall prevail in case of any inconsistency between [it] and any other legislation".



18. We have considered the appeal and the rival arguments. Section 175 of the Act deals with the ‘right of judicial review to procurement’. Section 175(1) of the Act in particular provides:

“(1) A person aggrieved by a decision made by the Review Board may seek judicial review by the High Court within fourteen days from the date of the Review Board's decision, failure to which the decision of the Review Board shall be final and binding to both parties”.

19. The provisions of Section 175 of the Act have been the subject of interpretation by this Court in many cases. For example, in the case of *Aprim Consultants vs. Parliamentary Service Commission & Another* (above) to which counsel on either side referred, this Court expressed as follows:

“23. A perusal of section 175 of the Act reveals Parliament’s unmistakable intention to constrict the time taken for the filing, hearing and determination of public procurement disputes in keeping with the Act’s avowed intent and object of expeditious resolution of those disputes.

24. Parliament was thus fully engaged and intentional in setting the timelines in the Section. But it did not stop there. In one of the rarer instances where all discretion is totally shut out, Parliament expressly enacted a consequence to follow default or failure to file or to decide within the prescribed times: the decision of the Board would crystallize and be invested with finality.”

20. Earlier, in the case of *Al Ghurair Printing and Publishing LLC vs. Coalition for Reforms and Democracy & 2 Others* [2017] eKLR, the Court in speaking to the provisions of Section 175 of the Act stated:

“36. Section 175 of the Act as a whole provides for an elaborate time bound process for escalating the dispute from the Review Board (which must complete its review within 21 days after receiving the request), to seeking judicial review to the High Court (which must be done within 14 days from the date of the decision of the Review Board): to the High Court (which has 45 days such application to make its decision). A person aggrieved by the decision of High Court may appeal to the Court of Appeal within 7 days of the High Court decision. The Court of Appeal shall make a decision within 45 days which decision shall be final.

37. The importance of the timelines is buttressed by Section 175(5), which provides that the decision of the Review Board shall be final and binding to all the parties should the High Court or the Court of Appeal fail to make a decision within the prescribed timelines.

40. ... there is nothing in the elaborate provisions under Section 175 of the Act that goes against *the Constitution* or that is inimical or likely to lessen or adversely affect or undermine the constitutional underpinning of the remedy of judicial review...”

21. See also *ADK Technologies Limited in Consortium with Computer Technologies Limited vs. Public Procurement Administrative Review Board & 4 Others* (Civil Appeal E598 of 2021) [2022]



KECA 407 (KLR). And in the case of *The Consortium of TSK Electronica Y Electricdad S.A. & Ansaldoenergia vs. PPARB & 3 Others*, CA. No. E012 of 2022 the Court emphasised that:

“These timelines are cast in stone and cannot be varied. The strict time frames under this section underscore the intention of Parliament to ensure that disputes relating to Public Procurements and Assets Disposal are disposed of expeditiously.”

22. Indeed, the Court (a five judge bench of this Court) in the case of *Kenya Ports Authority vs. Public Procurement Administrative Board & 2 Others* (Civil Appeal 347 of 2017) [2024] KECA 1099 (KLR) when invited to pronounce itself on the question whether section 175(3) and (5) of the Act is unconstitutional for prescribing timelines within which the High Court and the Court of Appeal must determine public procurement disputes, the Court was categorical that:

“In a constitutional dispensation like ours that expressly guarantees its citizens that “justice shall not be delayed” (see article 159(2)(b) of *the Constitution*), it is not readily apparent to us how a clause that seeks to ensure disputes touching on a critical aspect of the national economy are resolved within stipulated time, can be said to be unconstitutional.”

23. Against that backdrop, the decision of the Review Board in this case was rendered on 23rd December 2024. Fourteen days hence, as asserted by the 2nd respondent, lapsed on 6th January 2025. On the face of Section 175(1) of the Act therefore, the appellants’ application filed as it was on 14th January 2025 was filed out of time.

24. Does Order 50 Rule 4 change that? In *Maersk Kenya Limited vs. Murabu Chaka Zuma* [2017] eKLR, this Court considered the question whether a limitation period prescribed under the *Limitation of Actions Act* could be extended by dint of Order 50 Rule 4. In answering that question in the negative, the Court stated that Order 50 Rule 4 of the Civil Procedure Rules makes it clear that the rule applies specifically to computing time under the Civil Procedure Rules, or in accordance with an order of the Court. The Court cited the case of *Republic vs. Public Procurement Administrative Review Board & Another exparte Teachers Service Commission* [2015] eKLR in which the High court cited the earlier case of *Mokombo Ole Simel & Others vs. County Council of Narok & Others Nairobi HCMA No. 361 of 1994*. There, the High Court considered whether order 49 rule 5 of the repealed Civil Procedure Rules could enlarge time specified by section 9(2) and (3) of the *Law Reform Act* and stated that:

“If the limited time is prescribed under the Civil Procedure Rules or by an order of the court or by summary notice, the court could enlarge the period.

...Order 49 rule 5 of the Civil Procedure Rules cannot be invoked to supersede the express provisions of the Act...Order 49 rule 3A is similarly a piece of delegated legislation and cannot have the effect of amending the express provisions of section 9(2) and (3) of the Act. The said provisions can only be altered or amended by an Act of the Parliament...”

25. The same applies equally to the matter at hand. Order 50 Rule 4 of the Civil Procedure Rules is not available to enlarge time limited by statute.

26. And in as far as Section 57 of Cap 2 has been invoked as justifying an extension of time, Section 5(1) of the Act on the subject of “conflicts with other Acts” expressly states that:

“(1) This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in matters relating to procurement and Asset Disposal except in cases where procurement of



professional services is governed by an Act of Parliament applicable for such services. ”

[Emphasis added]

27. In effect, Section 175(1) of the Act prevails. Based on the foregoing, the learned Judge was right that the appellants’ action was time barred and the decision to strike out the same is sound in law and cannot be faulted.
28. Lastly there was a complaint that the learned Judge erred in awarding costs to the 2nd respondent. It is established that costs are in the discretion of the Court and normally follow the event. The appellants have not demonstrated that the award of costs by the Judge constituted a wrong exercise of judicial discretion. We have no basis therefore for interfering with that decision.
29. The result is that the appeal fails. It is accordingly dismissed with costs to the 2nd respondent only being the only party that opposed the appeal.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL, 2025.

S. GATEMBU KAIRU, FCIArb.

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

