



Amazon Transporters Limited v Public Procurement Administrative Review Board & 2 others; Jennyngo Enterprises Limited (Interested Party) (Civil Appeal E295 of 2025) [2025] KECA 984 (KLR) (30 May 2025) (Judgment)

Neutral citation: [2025] KECA 984 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E295 OF 2025
F TUIYOTT, JM NGUGI & GV ODUNGA, JJA
MAY 30, 2025**

BETWEEN

AMAZON TRANSPORTERS LIMITED APPELLANT

AND

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

**ACCOUNTING OFFICER, KENYA NATIONAL BUREAU OF
STATISTICS 2ND RESPONDENT**

NATIONAL BUREAU OF STATISTICS 3RD RESPONDENT

AND

JENNYGO ENTERPRISES LIMITED INTERESTED PARTY

(Being an Appeal against the Judgement and Orders of the High Court of Kenya at Nairobi (R. E. Aburili, J) delivered on the 9th April 2025 in JRMISC E025 of 2025)

JUDGMENT

1. The appeal before us arises from the decision of the High Court at Nairobi in Judicial Review Miscellaneous Application No. E025 of 2025. By that decision, the learned Judge (Aburili, J), on 9th April 2025 found no merit in, and dismissed, the appellant’s application dated 28th February 2025.
2. A brief background of the matter before us is necessary to put the appeal into perspective. The 3rd respondent, the Procuring Entity, advertised for bids for tender number KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis and issued tender documents to all eligible bidders who had expressed the desire to participate therein. Amongst the



bidders who submitted their proposals, were the appellant and the interested party. Upon lapse of the deadline for submission, the bids were opened on 2nd July 2024 and after completing the evaluation process, the 3rd respondent notified all bidders of the outcome of the evaluation through the letters of notification delivered via email on 23rd July 2024, by which the bidders were informed that the successful bidder was Jennygo Enterprises Limited, the interested party herein.

3. By a letter dated 25th July 2024, the interested party accepted the tender award and pursuant to section 135(3) of the *Public Procurement and Asset Disposal Act* (the Act), a contract was signed on 14th August 2024 between the 3rd respondent and the interested party during the tender validity period.
4. Upon receipt of this information, the appellant, by a letter dated 25th July 2024, lodged a complaint with the 3rd respondent expressing its dissatisfaction with the evaluation process and requesting the 3rd respondent entity to “review [its] evaluation process and make a fair decision.” The 3rd respondent responded by a letter dated 30th July 2024 providing full debriefing on the reasons for disqualification of the appellant’s tender.
5. On 1st August 2024, the appellant requested for due diligence to ascertain any claims and justification and verification of the facts and on the same day, filed a complaint against the 2nd and 3rd Respondents at the Public Procurement Regulatory Authority (PPRA), (the Authority). On 30th August 2024, the 3rd respondent received a letter from the Authority dated 28th August 2024 citing receipt of letters of complaint dated 1st and 2nd August 2024 from the appellant on, amongst other grounds, that the appellant had established that the successful firm did not have a valid NSSF Compliance Certificate. The 3rd respondent in its letter dated 5th September 2024, informed the Authority that a debrief letter was sent to the appellant on 30th July 2024 disclosing all the reasons for disqualification of the appellant’s tender and asserted, in relation to the appellant’s allegations on validity of the successful bidder’s NSSF Compliance Certificate, that the appellant was usurping the mandate of the evaluation committee of the procuring entity by purporting to evaluate the tender of the successful tenderer.
6. By its letter to the 3rd respondent dated 3rd October 2024, the Authority provided guidance on the application of evaluation criteria at Clause 8 of the Preliminary Mandatory Requirements (MR8) as well as the necessity to conduct a due diligence to ascertain the validity of the successful tenderer’s NSSF Compliance Certificate and the authenticity of the Automobile Association membership documentation submitted by bidder number 2 and the appellant. In a letter to the Authority dated 9th October 2024, it was indicated that the 2nd and 3rd respondents had fully complied with the requirements of the *Public Procurement and Asset Disposal Act* and the regulations thereunder in the initiation and conduct of the subject procurement proceedings. By its letter dated 21st November 2025, the Authority, while noting the Procuring Entity’s significant compliance with the substantive and procedural requirements of the law in initiating and conducting the subject procurement proceedings, including the execution of a procurement contract in accordance with section 135 of the Act, insisted that the 3rd respondent submits to it documentary evidence relating to the authenticity of Automobile Association of Kenya membership documents of bidder number 2 and the appellant as well as proof of authenticity of the successful bidder’s NSSF Compliance Certificate.
7. Consequently, the 2nd and 3rd respondents, by the letter dated 5th December 2024, sought, from Automobile Association of Kenya, confirmation of authenticity of proof of membership of bidder number 2 and the appellant and at the same time, sought information from the NSSF seeking confirmation of authenticity of the NSSF Compliance Certificate submitted by the interested party. The Automobile Association of Kenya, through a letter dated 6th December 2024, informed the 3rd respondent that bidder number 2 and the appellant were valid members of Automobile Association of Kenya. The Procuring Entity also informed by NSSF, through the letter dated 6th December 2024,



that the NSSF Compliance Certificate issued to the interested party was authentic and valid as at 2nd July 2024.

8. The Authority, through its letter to the 3rd respondent dated 11th December 2024 directed the 3rd respondent to review the decision(s) made regarding the processing of the subject tender, taking into consideration the observations made in PPRAs letter of 11th December 2024 and to previous correspondence. In a letter dated 20th December 2024, the 3rd respondent communicated to the Authority the outcome of the exercise and also sought advice and further guidance on the contract noting that the interested party still emerged the successful tenderer.
9. Vide its letter dated 2nd January 2025, the Authority observed that the 3rd respondent's recommendation to award the tender to the interested party was in accordance with procurement laws, and the 3rd respondent was directed to proceed with the procurement process to its conclusion. On 14th January 2025, the 3rd respondent informed the appellant of the outcome of their complaint to Authority, and in compliance with Authority's directive to conclude the procurement process, issued new letters of notification dated 13th January 2025 to all tenderers, including the appellant, via email on 15th January 2025, in accordance with section 87 of the Act. These notifications were also uploaded to the Public Procurement Information Portal (PPIP) as directed by the Authority in its letter dated 2nd January 2025.
10. On 27th January 2025, the appellant filed a Request for Review Application No.5 of 2025 before the 1st respondent and vide its decision dated 17th February 2025, the 1st respondent dismissed the Request for Review Application No. 5 of 2025 on the grounds that it was time barred under section 167(1) of the Act, as it was filed nearly six months after the appellant became aware of the interested party's alleged NSSF compliance issue. In addition, it was found that the procurement contract had already been properly concluded, thereby removing the 1st respondent's jurisdiction under section 167(4)(c). The 1st respondent further observed that since the Request for Review was based on a decision arising from a complaint to the Authority, it could only be addressed through judicial review. The 1st respondent also noted that it did not have supervisory authority over the Authority's investigative actions, further ousting its jurisdiction under section 39 of the Act.
11. That is the decision that provoked the proceedings before the High Court. Those proceedings were commenced by the Originating Motion dated 28th February 2025, expressed to have been brought pursuant to the provisions of Articles 10, 22, 23(3)(f),47, 48, 50 (1) and 227 of *the Constitution*, section 175(1) of the *Public Procurement and Asset Disposal Act*, sections 7, 9 and 11 of the Fair Administrative Actions Act and rule 11(2) of the Fair Administrative Action Rules, 2024. In that Motion, the appellant sought the following orders:
 1. THAT this Honourable Court be pleased to issue an order of CERTIORARI, to remove into the High Court and quash and/or set aside the Decision of the Public Procurement Administrative Review Board (the 1st Respondent) dated 17th February 2025 in Public Procurement Administrative Review Board Application No. 5 of 2025, Amazon Transporters Limited vs. Accounting Officer Kenya National Bureau of Statistics, Kenya National Bureau of Statistics and Jennygo Enterprises Limited, in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis, and to remit the matter for reconsideration by the 1st Respondent and issuance of appropriate and effective relief(s) on merit within 21days, taking into consideration the Judgment of this Honourable Court.



2. THAT this Honourable Court be pleased to issue an order of PROHIBITION, directed at the 2nd and 3rd Respondents, prohibiting them from implementing the Decision of the 1st Respondent Dated 17th February 2025 by proceeding to oversee the procurement proceedings in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis to its logical conclusion.
3. THAT this Honourable Court be pleased to issue an order of PROHIBITION, directed at the 2nd and 3rd Respondents and the interested party, prohibiting them from proceeding with the implementation and performance of the Contract dated 14th August 2024 entered into between the 2nd and 3rd Respondents and the interested party in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis.
 4. THAT in the alternative, this Honourable Court be pleased to issue an Order for DECLARATION, to declare the Contract dated 14th August 2024 entered into between the 2nd and 3rd Respondents and the interested party in respect of Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis null and void.
 5. THAT pending the hearing and determination of the substantive Originating Motion, that this Honourable Court be pleased to issue AN INTERIM ORDER FOR STAY, to stay the Execution and/or Implementation of the Decision of the Public Procurement Administrative Review Board (the 1st Respondent) Dated 17th February 2025 in Public Procurement Administrative Review Board Application No. 5 of 2025, Amazon Transporters Limited vs. Accounting Officer Kenya National Bureau of Statistics, Kenya National Bureau of Statistics and Jennygo Enterprises Limited, with Respect to Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis.
 6. THAT pending the hearing and determination of the substantive Originating Motion, that this Honourable Court be pleased to issue AN INTERIM ORDER FOR STAY, to stay the Implementation of any Contract and/or any Procurement Proceedings between the 2nd and 3rd Respondents and the interested party with Respect to Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis subject of these proceedings.
 7. THAT the costs of these proceedings to be provided for.
 8. Such other, further, incidental and/or alternative relief(s) as this Honourable Court may deem just and expedient.
12. In the judgement, the learned Judge found: that the appellant had sufficient knowledge of breach as at 1st August 2024 and instead of filing a request for review to the Review Board, it opted to file a complaint to the Authority; that the appellant's Request for Review challenging the decision of the 3rd respondent to award the tender ought to have been filed 14 days from 1st August 2024 when the appellant learnt of the breach which was the alleged ineligibility of the interested party on account of an invalid NSSF Compliance Certificate; that the appellant did not have to wait for the Authority to address the complaint; that a challenge to the decision of the Authority is to the High Court by way



- of judicial review; and that the request for review dated on 27th January 2025 was filed far outside the statutory period, spanning several months beyond the 14-day limit, reflects the appellant's failure to act promptly.
13. In arriving at the said decision, the learned Judge cited this Court's findings in *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* [2024] KECA 79 (KLR) and held that the appellant's Request for Review was indeed time-barred, and that the "new cause of action" was not new at all, bearing in mind that the appellant learnt of the breach on 1st August 2024.
 14. On whether the 1st respondent had jurisdiction to hear and determine the Request for Review given the execution of the procurement contract on 14th August 2024, the learned Judge cited section 167(4) (c) of the Act and found that the contract was signed on 14th August 2024, within the validity period of the tender. The learned Judge, while appreciating this Court's sentiments in the case of *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* supra found that in this case, the 1st respondent complied with the threshold for determining whether the contract entered into was compliant with section 135 of the Act before finding that it was divested of jurisdiction. Further the learned Judge held that the 1st respondent's decision that the Authority's decision could only be challenged before the High Court through a judicial review application was correct as the 1st respondent did not have the power to supervise the Authority's exercise of its investigative function and that its jurisdiction was also ousted in this regard pursuant to section 39 of the Act.
 15. It was, therefore, held that the 1st respondent's decision dismissing the appellant's Request for Review on account of jurisdiction was in accordance with law and dismissed the application dated 28th February 2025.
 16. Dissatisfied with that decision, the appellant moved to this Court in this appeal and by the Memorandum of Appeal dated 16th April 2025, contends that:
 1. The Learned Judge erred in law and in fact by finding that the Request for Review was time barred and that there was no new cause of action notwithstanding the fact that the Notification of Regret that was received by the Appellant on 15th January 2025, which Notification of Regret was as a consequence of a re-evaluation exercise that gave rise to a new cause of action.
 2. The Learned Judge grossly misdirected herself by disregarding the provisions of Sections 167(1) of the *Public Procurement and Asset Disposal Act* (hereinafter referred to as Act) that granted the 1st Respondent Jurisdiction to hear and determine the Appellant's Request for Review Application that was filed within 14days after the receipt of the Notification of Regret.
 3. The Learned Judge erred in law and in fact by making a finding that departs from the well- established principles and test to be applied in cases of when time starts running for purposes of the 14 days stand still period provided in Section 167(1) of the Act read with Regulations 203(2)(c)(iii) of Regulations 2020 thus setting a dangerous precedent with significant ramifications on determinations by the 1st Respondent's duty to sit, review, hear and determine tendering and asset disposal disputes and exercise its functions and wide powers under Sections 28, 167(1), 172 and 173 of the Act.



4. The Learned Judge erred in law by disregarding the provisions of Sections 167 (4) (c) of the Act that granted the 1st Respondent Jurisdiction to hear and determine the Appellant's Request for Review Application where a Contract is not signed in accordance with Section 135 of the Act.
 5. The Learned Judge erred in law and in facts in making a finding that the Appellant lacked jurisdiction to hear and determine the request for review by the Appellant under Section 167(4)(c) of the Act, given that there was an already signed Contract dated 14th August 2024 without establishing whether such a contract was signed in accordance with Section 135 of the Act.
 6. The Learned Judge erred in law and fact in finding that the Contract dated 14th August 2023 was regularly concluded in blatant disregard of the Appellant's pleadings and submissions to the effect that the interested party was ineligible to bid under Section 55(5) of the Act, was not a successful tenderer under Section 86(1)(a) of the Act, could not be awarded the tender in line with Section 87(1) of the Act, and ought to have been disqualified from entering into a procurement contract pursuant to Section 66(1) and (3)(a) of the Act.
 7. The Learned Judge erred in law and in fact by making a finding that departs from the well- established principles and test to be applied in cases touching on the jurisdiction of the 1st Respondent where a procurement contract has been signed in accordance with Section 135 of the Act thus setting a dangerous precedent with significant ramifications on determinations by the 1st Respondent's duty to sit, review, hear and determine tendering and asset disposal disputes and exercise its functions and wide powers under Sections 28, 167(1), 172 and 173 of the Act.
 8. The Learned Judge misrepresented the facts to the effect that the Appellant was aggrieved by the finding of the Public Procurement Regulatory Authority notwithstanding the fact that the Appellant expressly pleaded that the Request for Review before the 1st Respondent was against the decision of the 2nd Respondent as per the Notification of Regret that was received by the Applicant on 15th January 2025, and consequently arriving at an erroneous finding that Section 39 of the Act ousted the Jurisdiction of the 1st Respondent to hear and determine the Request for Review.
 9. The Learned Judge erred in law and in fact in relying on extraneous matters or considerations which were never pleaded or adduced in evidence by the parties, to draw an erroneous conclusion, with far-reaching effects to the 1st Respondent's exercise of its jurisdiction and wide powers under Section 173 of the Act.
 10. The Learned Judge erred in law and fact by making a finding that the 1st Respondent lacked jurisdiction to hear and determine the Appellant's Request for review, which is contrary to the doctrine of precedents and hierarchical structure of our country's judicial system.
17. The appellant prays: that this appeal be allowed; that the Judgement and Order of the High Court dated and delivered on the 9th day of April 2025 in Judicial Review Application Number E025 of 2025



- be set aside; that the decision of the 1st respondent, delivered and dated at Nairobi on 17th February 2025 in Request for Review filed in Public Procurement Administrative Review Board Application No.5 of 2025 - Amazon Transporters Limited vs Accounting Officer Kenya National Bureau of Statistics, Kenya National Bureau of Statistics and Jennyngo Enterprises Limited - with respect to Tender No. KNBS/ONT/30/2023-2024 for Provision of Car Hire Services on As and When Required (AWR) Basis, be set aside, and the matter be remitted back to the 1st respondent for purpose of re-consideration and issuance of appropriate and effective relief(s) on merits taking into consideration the judgment of this Court; and that the costs of this appeal be provided for.
18. We heard this appeal on 5th May 2025 when learned counsel, Ms Desma Nungo, appeared for the appellant, learned counsel, Mr Kariuki, appeared for the 1st respondent, learned counsel, Mr Barasa, appeared for the 2nd and 3rd respondents and learned counsel, Mr Omollo, appeared for the interested party. Counsel relied on their respective written submissions which they briefly highlighted.
 19. On behalf of the appellant, three issues were identified and these were: whether the 1st respondent had jurisdiction to hear and determine the Request for Review No. 5 of 2025 pursuant to the provisions of Section 167(1) of the *Public Procurement and Asset Disposal Act*; whether the 1st respondent had jurisdiction to hear and determine the Request for Review No. 5 of 2025 pursuant to the provisions of Section 167(4)(c) of the *Public Procurement and Asset Disposal Act*; and whether section 39 of the *Public Procurement and Asset Disposal Act* ousted the jurisdiction of the 1st respondent to hear and determine the Request for Review No. 5 of 2025.
 20. It was submitted: that the appellant having exercised its options by filing a complaint with the Authority, the outcome of the appellant's complaint being a re-evaluation of the tenders followed by a notification of regret, the first notification became inconsequential and was overtaken by events; that prior to 15th January 2024 when the Notification of Regret was received by the appellant, the appellant would not have been aware that the award would be made to the interested party in order for it to file any procurement related complaint and neither did the appellant have information relating to fake communication from NSSF which communication informed the decision in the Notification of Regret; that in the Notification of Regret received on 15th January 2025, as compared to the first notification issued in July 2024, there was a variation of the reasons why the appellant was not awarded the tender and the former notification confirmed that a re-evaluation of the tender was done and that the contract was awarded to the interested party; that the said notification expressly granted the appellant a standstill period of 14 days within which to file any complaint arising therefrom; that the re-evaluation that gave rise to the Notification of 13th January 2025 that was received by the appellant on 15th January 2025, constituted a fresh/new cause of action and the appellant was within its legal rights to file any procurement related complaint challenging the decision to award the contract to the interested party; that despite the fact that the appellant had earlier on complained to the Authority, the breach persisted in the award of the tender to the interested party, which recurrence of the breach the appellant learnt on 15th January 2025; that the fact that the appellant had raised a complaint before the Authority did not prevent the 1st respondent from exercising its jurisdiction under section 167(1) of the Act; that since the Authority did not make any decision to award the subject tender to the interested party, there was no reason for the appellant to seek redress against the Authority; that the appellant's alleged knowledge of the interested party's NSSF compliance status on 1st August 2024, which knowledge was acted upon by the appellant through the Authority pursuant to the Act, cannot be the sole reason to divest the 1st respondent of jurisdiction on account of lapse of time in a case where the breach continues to persist; and that based on the decisions in *Republic v Public Procurement Administrative Review Board & 2 Others ex parte Kemotrade Investments Limited* [2018] eKLR and *Sinopec International Petroleum Service Corporation v Public Procurement Administrative Review*



- Board & 3 Others [2024] KECA 184, we should find that the 1st respondent had jurisdiction to hear and determine the Request for Review No. 5 of 2025 pursuant to the provisions of section 167(1) of the Act.
21. As regards the 1st respondent's jurisdiction pursuant to section 167(4)(c) of the Act, it was submitted: that in Public Procurement Administrative Board v Four M Insurance Brokers Limited & 3 Others [2024] KECA 79, this Court expressly stated that section 135 of the Act was meant to address the obvious mischief that procuring entities could, in bad faith, sign unlawful or contested procurement contracts with the aim of ousting the jurisdiction of the 1st respondent hence the learned Judge erred in failing to check on compliance with section 135 of the Act; that the contract dated 14th August 2024 was not concluded in accordance with section 135 of the Act since the interested party was ineligible to bid under section 55(5) of the Act, was not a successful tenderer under section 86(1)(a) of the Act, could not be awarded the tender in line with section 87(1) of the Act, and ought to have been disqualified from entering into a procurement contract pursuant to section 66(1) and 3(a) of the Act; and that the learned Judge ignored the appellant's pleadings and evidence that demonstrated that the contract dated 14th August 2024 was signed in breach of section 135 of the Act.
 22. On the issue whether section 39 of the Act ousted the jurisdiction of the 1st respondent, it was submitted: that that the appellant was not aggrieved with the decision of the Authority but with the decision of the 2nd respondent contained in the Notification of Regret received on 15th January 2025 since the Authority did not make any decision to award the tender to the interested party; that the letter by the Authority to the 2nd and 3rd respondents dated 2nd January 2025 was neither addressed or copied to the appellant who only came to learn of the same during the proceedings before the 1st respondent; that the letter did not constitute a decision but was an advise to the 2nd and 3rd respondents to notify the appellant and other bidders of the correct position after re-evaluation which the 2nd and 3rd respondent did vide the Notification of Regret received on 15th January 2025 which constituted the decision of the 2nd respondent; that there was no occasion by the appellant to move the High Court under section 39 of the Act; that the judgement of the High Court was based on a misconstrued understanding of the Request for Review before the 1st respondent; and that the High Court failed to take into account relevant considerations and/or took into account inaccurate and irrelevant factors and arrived at a judgement that was in breach of section 39 of the Act.
 23. Based on the foregoing submissions we were urged to allow the appeal.
 24. In opposing the appeal the 1st respondent submitted: that the appellant was already aware of the interested party's alleged NSSF compliance status as of 1st August 2024, as evidenced by its complaint to the Authority hence nothing stopped the appellant from invoking the 1st respondent's time bound jurisdiction as at that date when making the complaint to the Authority; that in those circumstances, pursuant to section 167(1) of the Act and the decision in Kemorade Case (supra), the 1st respondent was divested of jurisdiction by reason of time lapse; that given that the procurement contract was signed between the 2nd & 3rd respondents and the interested party on 14th August 2024, 22 days after the notification of award was issued and that the tender validity period ran until 5th November 2024, the contract was signed within the tender validity period hence, pursuant to section 167(4)(c), the 1st respondent was divested of jurisdiction; and that the learned Judge did not err in finding that the 1st respondent complied with the threshold for determining whether the contract was entered into in compliance with section 135 of the Act as per the requirements set out by this Court in Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others (supra) before finding that the 1st respondent was divested of jurisdiction.



25. On behalf of the 2nd and 3rd respondents, it was submitted: that section 167 of the Act prescribes the timelines for filing a Request for Review by an aggrieved party which is within fourteen (14) days from the date of the notification of the award or from the date of the occurrence of the alleged breach of the procurement process; that the main ground upon which the Request for Review before the 1st respondent was premised was the authenticity of the interested party's NSSF's compliance certificate which was alleged to be false and not authentic; that the appellant was duly notified of the outcome of the procurement process on 23rd July 2024; that the appellant had 14 days from that date to file the Request for Review with the 1st respondent but failed to do so; that alternatively, the appellant had 14 days from the date of discovery of the alleged breach of procurement process to file the Request for Review for the alleged breach of procurement which in this case was the alleged lack of valid NSSF compliance certificate by the interested party; that the appellant lodged a complaint with the Authority on 1st August 2024 and 2nd August 2024 on the ground that the interested party did not have a valid NSSF Compliance Certificate; that it is apparent that the appellant had knowledge about the status of the interested party's NSSF compliance certificate all along from 1st August 2024; that in those circumstances, the appellant had 14 days from 1st August 2024 to file the request for review with the 1st respondent which ought to have been on or before 15th August 2024; that the time to institute a Request for Review with the 1st respondent commenced running on 23rd July 2024 when it was notified of the successful bidder or on 1st August 2024 when it was aware of the alleged breach and in this regard reliance was placed on the case of *Uniplex (UK) Ltd vs NHS Business Services Authority (2010) 2 CMLR* where the timelines in respect of allegations of breach of procurement proceedings was extensively discussed; that instead of filing the Request for Review, the appellant chose to pursue a complaint with the Authority; that the appellant's pursuit of the said complaint did not freeze the statutory timelines for lodging a Request for Review; that the 3rd respondent's review of its decision to award the tender to the interested party as directed by the Authority and the subsequent issuance of notification dated 13th January, 2025 did not constitute a new cause of action as alleged by the appellant; that the Request for Review by the appellant on 27th January 2025 before the 1st respondent following the issuance of the fresh letters of notification was premised on the status of the interested party's compliance certificate, the same alleged procurement breach the appellant had knowledge of since 1st August 2024; that the Request for Review did not in any way constitute a new cause of action as the same was not based on any new grounds and/or breach of the procurement process; that therefore the Request for Review was made out of time and contrary to sections 167 of the Act and the 1st respondent lacked jurisdiction to entertain it as held in *Republic v Public Procurement Administrative Review Board and 2 Others [2015] eKLR*.
26. On whether the 1st respondent was divested of the jurisdiction on the signing of the procurement contract, it was submitted: that there is a policy rationale for the timelines; that from a true reading of section 167(4)(c) of the Act the 1st respondent lacks jurisdiction to adjudicate over any Request for Review filed after the execution of a contract; that the 3rd respondent entered into a procurement contract with the interested party, which was the successful bidder, on 14th August 2024 in compliance with section 135 of the Act; that the appellant has not demonstrated how the said contract was entered into in violation of section 135 of the Act hence the 1st respondent lacked jurisdiction to review the procurement proceedings; that issues regarding the validity of the said contract can only be taken up with the appropriate court as held in *Republic v Public Procurement Administrative Review Board exparte Madison General Insurance Kenya Limited; Vice Chancellor Kenyatta University & Another (Interested Parties) (supra)*; that in any event, before the 1st respondent declined jurisdiction, it complied with the required threshold for determining whether the contract entered into complied with section 135 of the Act; and that the appeal ought to be dismissed with costs to the 1st respondent.



27. The interested party submitted: that since the application was lodged by way of Originating Motion dated 28th February 2025 as stipulated by the Fair Administrative Action Rules, 2024, the appellant failed to comply with the essential steps for institution of an appeal as stipulated in rule 31 of the Fair Administrative Action Rules, 2024; that the judgement was delivered on 9th April 2025; that on 15th April 2025 the appellant lodged a purported Notice of Appeal of the same date; that contrary to rule 31(2) of the Fair Administrative Action Rules, 2024, the Notice of Appeal did not identify the source of the right of appeal, did not precisely set out the grounds of appeal, did not precisely set out the reliefs sought and did not request for the appeal to be set down for hearing in the appropriate registry; that consequently the appellant failed to take an essential step; that in accordance with the decision of the Supreme Court in *Sawe v Independent Electoral & Boundaries Commission (IEBC) & 4 Others* [2015] KESC 7, the effect of non-compliance with filing of a proper Notice of Appeal is that the court's jurisdiction is not properly invoked; that pursuant to the doctrine of implied repeal expressed in the Latin maxim *leges posteriores priores contrarias abrogant*, the provisions of rule 31(1), (2) and (3) of the Fair Administrative Action Rules which is specific in applications arising from judicial review under the *Fair Administrative Action Act* takes precedence over rules 77, 84 and 88 of the Court of Appeal Rules which apply to appeals generally; and that the interested party had lodged an application to strike out the Notice and Record of Appeal.
28. It was further submitted: that as held by this Court in *United Millers Limited v Kenya Bureau of Standards & 5 Others* [2021] eKLR, judicial review orders are discretionary and the appellant has not justified this Court's interference with the decision of the High Court; that the appellant failed to demonstrate that the learned Judge misdirected herself in law, misapprehended the facts, took into account considerations which she should not have taken into account, failed to take account of considerations which she ought to have taken into account or that the decision is plainly wrong; and that the appeal ought to be dismissed with costs.
29. We have considered the submissions made before us in this appeal. Before dealing with the merits of the appeal, the interested party raised issues going to the competency of the appeal. It was contended that the Notice of Appeal filed by the appellant did not comply with the requirements set out under the Fair Administrative Action Rules, 2024. It is not in doubt that the application before the High Court was brought under the Fair Administrative Action Rules which rules are made pursuant to section 10(2) of the *Fair Administrative Action Act*. That section provides that:
- The Chief Justice may make rules of practice for regulating the procedure and practice in matters relating to judicial review of administrative action.
30. Pursuant to that rule, the Fair Administrative Action Rules, 2024 were made. Rule 31 thereof provides that:
1. An appeal under section 9(5) of the Act shall be filed within seven days after the date of the judgment or award.
 2. An appeal under section 9(5) of the Act shall be initiated by Notice of Appeal in Form JR 10.
 3. A notice of appeal under sub-rule (2) shall identify the judgment from which the appeal is based and shall, in separate serially numbered paragraphs—
 - a. specify whether all or part of the judgment is being appealed and, if part of the judgment, which part;
 - b. identify the source of the right of appeal and basis for the jurisdiction of the court to determine the appeal;



- c. precisely set out the grounds of the appeal;
 - d. concisely state the relief sought;
 - e. provide the appellant's address for service and state the names and addresses of all persons intended to be served with the notice of the appeal; and
 - f. request that the appeal be set down for hearing in the appropriate registry.
4. Where it is intended to appeal against a decree, it shall not be necessary to extract the decree before lodging the notice of appeal.
 5. A court may grant a stay of execution or an injunction pending an appeal or review of its decision on such conditions as the court may deem fit.
31. Clearly, this rule is different from rule 77 of the Court of Appeal Rules which states that:
1. A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
 2. Each notice under sub-rule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
 3. Each notice of appeal under sub-rule (1) shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—
 - a. specify the part complained of;
 - b. the address for service of the appellant; and
 - c. the names and addresses of the persons intended to be served with copies of the notice.
 4. When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such leave or certificate before lodging the notice of appeal.
 5. Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.
 6. A notice of appeal shall be substantially in Form D as set out in the First Schedule and signed by or on behalf of the appellant.
32. The marked differences between a Notices of Appeal filed under the Fair Administrative Action Rules and one filed under the Court of Appeal Rules are: the timelines for filing the Notices of Appeal which are 7 days and 14 days respectively; and the contents of the Notices of Appeal in that whereas under the former, the Notice of Appeal is required to incorporate, inter alia, the grounds of appeal as well as the reliefs sought while under the latter, the grounds of appeal and the reliefs sought are contained in a separate document, the memorandum of appeal. The Fair Administrative Action Rules is not the only instrument that prescribes a procedure for filing of the Notice of Appeal in respect to an appeal to this Court that is different from that prescribed under the Court of Appeal Rules. Rule 8 of The Court of Appeal (Election Petition) Rules provides that:
1. Unless otherwise provided by statute, all election petition appeals shall be initiated by notice of appeal.



2. A person who desires to appeal to the Court against a decision of the High Court in an election petition shall, within seven days of the date of the decision appealed against, lodge a notice of appeal.
 3. A notice of appeal shall identify the judgment from which the appeal is based and shall, in separate numbered paragraphs—
 - a. specify whether all or part of the judgment is being appealed and, if a part, which part;
 - b. identify the source of the right of appeal and the basis for the jurisdiction of the Court to determine the appeal;
 - c. precisely set out the grounds of the appeal;
 - d. concisely state the relief sought;
 - e. provide the address for service of the appellant and state the names and addresses of all persons intended to be served with copies of the notice; and
 - f. contain a request that the appeal be set down for hearing in the appropriate registry.
 4. Where it is intended to appeal against a decree, it shall not be necessary that the decree be extracted before lodging notice of appeal.
 5. A notice of appeal shall be substantially in the Form EPA 1 set out in the Schedule and shall be signed by or on behalf of the appellant.
33. It is clear that the Fair Administrative Action Rules mirror The Court of Appeal (Election Petition) Rules. The rationale for this is not difficult to discern. Whereas the Court of Appeal Rules provide for the general procedures for appeals to the Court of Appeal, Fair Administrative Action Rules and The Court of Appeal (Election Petition) Rules are designed to provide for special procedures for appeals arising from specific processes whose timelines for hearing and determination of appeals are different from the timelines for hearing and determination of the general appeals. Rule 34(1) of the Court of Appeal Rules prescribes the period for delivery of judgements and rulings in the following terms:
- The Court may give judgments and rulings at the close of the hearing of an appeal or application or reserved for delivery within one hundred and twenty days, unless the Court for reasons to be recorded orders otherwise.
34. However, when it comes to fair administrative actions, for example, the timelines for hearing and delivery of decisions is provided under the [Fair Administrative Action Act](#) which provides in section 8 as follows:
- An application for the review of an administrative action or an appeal under this Act shall be determined within ninety days of filing the application.
35. The wording of the above section does not distinguish between the applications and the appeal in so far as the timelines for their determination is concerned. It prescribes a blanket timeline for determining applications and appeals as within ninety days of filing the application. In our view, it is these restrictive timelines that informs the combination of the contents of what ordinarily ought to be in the memorandum of appeal in the notice of appeal. To this extent we agree with the interested party that a notice of appeal filed in respect of proceedings initiated in accordance with the provisions of the Fair Administrative Action Rules ought to comply with rule 31 of those Rules. We agree that the general law is that unless otherwise expressly stated, the provisions of a special Act are regarded as



exceptions to those of a general Act. See the decision of the Supreme Court of Uganda in Attorney General v Silver Springs Hotel Ltd and Others SCCA No. 1 of 1989 [1992] V KALR 43.

36. We must, however, keep in mind that striking out a process ought to be resorted to in plain and clear cases and in deciding whether or not to strike out the process, the Court ought to ascertain the rationale behind the promulgation of the provisions of the special Act. Having determined the rationale, the Court should then determine whether there is material derogation of the intention of the provisions in the matter before it. Our understanding is that the provisions of rule 31 of the Fair Administrative Action Rules were meant to achieve a speedy determination of applications and appeals within the period prescribed under the *Fair Administrative Action Act*. The next question is whether the appellant, by not complying with rule 31 of the Fair Administrative Action Rules materially and substantively derogated from the said object. In this case, the Notice of Appeal was filed on 15th April 2025 while the Memorandum of Appeal was filed the following day on 16th April 2025. It is not in doubt that the information omitted from the Notice of Appeal was contained in the Memorandum of Appeal. It is also not in doubt that both the Memorandum of Appeal and the Notice of Appeal were filed within the period prescribed for the filing of the Notice of Appeal. In those circumstances, we find that the omission to incorporate in the Notice of Appeal the material set out in rule 31 of the Fair Administrative Action Rules was not fatal as the omission was cured by the filing of the Memorandum of Appeal incorporating the omitted material and filed within the period prescribed for the filing of the Notice of Appeal. Accordingly, the objection to the appeal based on its competency is unmerited and is dismissed.
37. We agree with the appellant that the issues for determination in this appeal are: whether the 1st respondent had jurisdiction to hear and determine the Request for Review No. 5 of 2025 pursuant to the provisions of section 167(1) of the *Public Procurement and Asset Disposal Act*; whether the 1st respondent had jurisdiction to hear and determine the Request for Review No. 5 of 2025 pursuant to the provisions of Section 167(4)(c) of the *Public Procurement and Asset Disposal Act*; and whether section 39 of the *Public Procurement and Asset Disposal Act* ousted the jurisdiction of the 1st respondent to hear and determine the Request for Review No. 5 of 2025.
38. Section 167(1) of the *Public Procurement and Asset Disposal Act* provides that:
- Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.
39. Clearly there are two stages at which a candidate or tenderer may challenge the procurement process. This can be done within 14 days of the date of the occurrence of an alleged breach of the procurement process. This means that the candidate or tenderer does not have to wait until the procurement process comes to an end and that if the breach is discovered after the notification of the award but before the contract is validly entered into, a candidate or a tenderer is not precluded from making a Request for Review. That was the view of this Court in *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* (supra) where the following pronouncements were made:
- “
- “45. We are constrained to have a broader interpretation of the words “or date of occurrence of the alleged breach at any stage of the procurement process” as set out in section 167(1) of the Act. This provision in our view, encompassed



situations such as the appellant's where allegations of breach arise or become known after the lapse of time for notification of award. A narrow construction of the jurisdiction of the appellant will have untold ramifications in the sense that it will leave the litigants aggrieved with no obvious recourse.

46. Specifically with respect to procurement disputes, the question of how the date of occurrence of a breach is to be determined, was the subject of the persuasive decision by Elias JA of the English Court of Appeal in *SITA vs Manchester Waste Management Authority* (2011) EWCA Civ 156 wherein while applying the decision of the European Court of Justice in *Uniplex (UK) Ltd vs NHS Business Services Authority* (2010) 2 CMLR 47 extensively discussed when time starts to run with respect to a breach in procurement proceedings as follows:

“.....In *Uniplex*, the Court of Justice decided to adopt a test of discoverability, not a test which would result in time running from the happening of an event of which the victim might not know. The paragraphs of the judgment in *Uniplex* which I wish to emphasize are paragraphs 30 and 31:

“30 However, the fact that a candidate or tenderer learns that its application or tender has been rejected does not place it in a position effectively to bring proceedings. Such information is

insufficient to enable the candidate or tenderer to establish whether there has been any illegality which might form the subject-matter of proceedings.

31. It is only once a concerned candidate or tenderer has been informed of the reasons for its elimination from the public procurement procedure that it may come to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings.

46. The threshold therefore in determining the date of occurrence of a breach is the date of actual or constructive knowledge of the breach by an applicant. This indeed is one of the key reasons for the notification and stand still requirements in the award of tenders, so as to allow for informed and effective challenges to award decisions before the contracts are concluded.

47. The answer then to the question of the date of occurrence can only be answered with reference to the 2nd respondent's knowledge of the alleged breach, and it is our view that the learned Judge of the superior Court in this respect erred in finding that time should start running from 7th September 2023 when the 1st respondent was notified of the award, and ought to have considered the averments by the 2nd respondents that it only came to learn of the developments on 28th September 2023. We accordingly find that the time for filing the request for review under Section 167(1) of the Act started running a day after the 28th September 2023 when the record reflects that the 2nd respondent became aware of the breach, and that the Request for Review was filed within the 14 days standstill period in consonance with Section 167(1) of the Act read with Regulation 203 (2)(c)(iii) of Regulations 2020. The appellant therefore had jurisdiction to hear and determine the Request for Review.”



40. The second option is upon the notification of the award. In this case, it is clear that the appellant did not challenge the process before the notification of the award to the interested party, Jennygo Enterprises Limited, on 23rd July 2024. By a letter dated 25th July 2024, the interested party accepted the tender award and pursuant to section 135(3) of the Act, a contract was, on 14th August 2024 during the tender validity period, signed between the 3rd respondent and the interested party during the tender validity period.
41. Upon receipt of this information, the appellant, after raising its issues with the 3rd respondent, filed a complaint against the 2nd and 3rd respondents on 1st August 2024 at the Public Procurement Regulatory Authority, in which it alleged, inter alia, that:
- “the successful firm did not have a valid NSSF Compliance Certificate which was under the technical capability evaluation criteria No. 89(e) and that their tender sum had an arithmetic error which was not taken into consideration during the evaluation process.”
42. It is apparent that the appellant was, as at 1st August 2024, aware that there was an issue with the interested party’s NSSF compliance status. So that the appellant could have lodged its Request for Review within 14 days of 23rd July 2024 or within 14 days from 1st August 2024, assuming that was the day it occurred to it that there was an issue with the interested party’s NSSF Compliance Certificate. While the appellant contended that it only came to know of the full picture regarding the interested party’s NSSF compliance status, the fact that it lodged a complaint with the Authority on that issue militates against its position that it was not aware of the extent of that non-compliance.
43. The Authority’s powers under section 8 of the Act includes the power to:
- “investigate and act on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative review.”
44. It is important to note that under section 174 of the Act:
- “The right to request a review under this Part is in addition to any other legal remedy a person may have.”
45. Clearly, therefore, the fact that a candidate or tenderer has exercised another option that is available, does not freeze the time for making a Request for Review to the Review Board since the remedies are not stated to be alternatives. It follows that the time limited for making a Request for Review to the Review Board cannot be frozen by the mere fact that a complaint is filed instead of a Request for Review since a party cannot avoid the strictures of the timelines prescribed for making a Request for Review, by making a complaint instead. A party who complains to the Authority without making Request for Review to the Review Board takes the risk that the time limited for requesting for review may run out before the complaint is resolved. The appellant had 14 days from 23rd July 2024 or at latest within 14 days of 1st August 2024 to make a Request for Review. The Request for Review, in this case was filed on 27th January 2025 which was way out of time in so far as the notification of 23rd July 2024 was concerned.
46. The appellant argues that the notification of award that was issued subsequent to the decision of the Authority constituted a new cause of action against which they could lodge request for Review. According to them, they discovered that the appellant’s NSSF Compliance Certificate was fake. Whereas one may argue that where a decision is arrived at by the procuring entity pursuant to the



directions given by the Authority, which decision reveals fresh violations of the tender process, a party claiming to have suffered as a result thereof, may lodge a Request for Review, it is our view that where the grounds upon which the Request for Review is made are the very same grounds upon which the complaint to the Authority was made, there would be no new cause of action to warrant the filing of a fresh Request for Review. Public procurements are, by their nature, required to be dealt with in a manner that promotes the constitutional principles in Article 227 of fairness, equity, transparency, competitiveness and cost-effectiveness. Apart from those principles, public procurements ought to be expedited for the benefit of the public. A procedure that lends itself to multiple and endless challenges would defeat the very objective of public procurement. Where a party to a tender challenges the process by way of a complaint and arising from the determination thereof, files another complaint or, as in this case, falls back on the very grounds upon which the complaint was made, to lodge a Request for Review, the efficiency in carrying out public procurements would not be achieved or achieved within the time for which the procurement was initiated. In determining whether a Request for Review was made within the prescribed time, the provisions of the *Public Procurement and Asset Disposal Act* must be considered holistically including the purpose and object of public procurement. The fact that the very issues that were the subject of the complaint were also the subject of the Request for Review clearly comes out in the appellant's submissions in which it is contended that:

“despite the fact that the appellant had earlier on complained to the PPR, the breach persisted and/or recurred when the Accounting Officer made its stated decision. The appellant learnt of this recurrence of breach on 15th January 2025 vide Notification of Regret.”

47. Having considered the above issues, we find no reason to fault the learned Judge in her finding that pursuant to section 167(1) of the Act, the Request for Review in this case was filed out of time. Accordingly, the 1st respondent had no jurisdiction to entertain the Request for Review. It matters not that the 3rd respondent purported, in the notification, to grant the appellant a standstill period of 14 days within which to file any complaint arising therefrom.

48. The second issue for determination is whether whether the 1st respondent had jurisdiction to hear and determine the Request for Review pursuant to the provisions of section 167(4)(c) of the *Public Procurement and Asset Disposal Act*. Section 167(4) of the Act provides:

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

- a. the choice of a procurement method;
- b. a termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and
- c. where a contract is signed in accordance with section 135 of this Act.”

49. Section 135 of the Act provides that:

“(1) The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.



2. An accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.
3. The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.
4. No contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.
5. An accounting officer of a procuring entity shall not enter into a contract with any person or firm unless an award has been made and where a contract has been signed without the authority of the accounting officer, such a contract shall be invalid.
 6. The tender documents shall be the basis of all procurement contracts and shall, constitute at a minimum—
 - a. Contract Agreement Form;
 - b. Tender Form;
 - c. price schedule or bills of quantities submitted by the tenderer;
 - d. Schedule of Requirements;
 - e. Technical Specifications;
 - f. General Conditions of Contract;
 - g. Special Conditions of Contract;
 - h. Notification of Award.
 7. A person who contravenes the provisions of this section commits an offence.”
50. For section 167(4)(c) to be successfully invoked in order to divest the 1st respondent of its jurisdiction to entertain a Request for Review, the contract in question must have been entered into in accordance with section 135 of the Act and includes the entry of the contract during the tender validity period. The 1st respondent and the High Court in judicial review, are enjoined to investigate whether the contract was entered into in accordance with said section. That was the position of this Court in *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* (supra) where it expressed itself as follows:

“As already observed, the appellant’s jurisdiction emanates from Section 167(1) of the Act. Section 167(4) provides matters that shall not be subject to the jurisdiction of the appellant and, Section 167(4)

 - (c) of the Act specifically, ousts the appellant’s jurisdiction where a contract is signed in accordance with Section 135 of the Act. Section 135 in this regard sets out various requirements to be met in the creation and signing of procurement contracts, and an ordinary and purposive interpretation of section 167(4) is



that the appellant is required to inquire into whether a procurement contract has been signed in accordance with section 135 of the Act when deciding on whether it has jurisdiction to hear and determine a request for review filed before it in cases where a contract has already been signed, and its jurisdiction is only ousted once this preliminary inquiry establishes that the provisions on creation of a procurement contract under Section 135 of the Act have been met, or where it makes an error as to the existence of this statutory precondition...section 164(7) implies a jurisdiction on the part of the appellant to entertain an application as to whether a contract is signed in accordance with Article 135, and is meant to address the obvious mischief of the signing of illegal procurement contracts so as to oust the jurisdiction of the appellant. The Learned Judge of the superior Court therefore adopted a restrictive interpretation of the provisions of Section 167(4) (c) of the Act and erred in not appreciating and considering the existence of the condition- precedent to the ouster of the appellant's jurisdiction where a contract has been signed. Accordingly, it is our finding that that the Learned Judge erred in law in holding that the appellant had no jurisdiction solely on the basis that a procurement contract had been signed without checking on compliance with Section 135 of the Act."

51. The learned Judge, after considering the 1st respondent's decision found that the 1st respondent complied with the threshold for determining whether the contract entered into was compliant with section 135 of the Act as per the requirements set out in the Court of Appeal decision *Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others* (supra). The appellant's contention that the contract was not validly entered into seems to stem from the very grounds which ought to have been the subject of the Request for Review. Having not made that Request within the prescribed time, those issues cannot be the subject of challenging the contract before the 1st respondent. We have no reason to interfere with the finding by the learned Judge which we find both legally and factually sound.
52. We, therefore, find that the learned Judge did not err in finding that pursuant to section 167(4)(c), the 1st respondent had no jurisdiction to entertain the Request for Review.
53. The last issue is whether section 39 of the *Public Procurement and Asset Disposal Act* ousted the jurisdiction of the 1st respondent to hear and determine the Request for Review No. 5 of 2025. Section 39 of the Act states that:

"The procuring entity and any other person who was entitled to be given an opportunity to make representations under section 38 (2) may request for Judicial Review against an order of the Director- General to the High Court within fourteen days after the order is made."

54. In dealing with this issue, the learned Judge expressed herself as hereunder:

"The Review Board at paragraph 125 of its decision also rightfully went to great lengths to state that the decision of the Public Procurement Regulatory Authority could only be challenged before the High Court through a judicial review application at the Review Board did not have the power to supervise the Authority's exercise of its investigative function and that its jurisdiction was also ousted in this regard pursuant to section 39 of the Act."



55. According to the appellant, it was not aggrieved by the decision of the Authority. Its grievance stemmed from the manner in which the 2nd and 3rd respondents conducted themselves pursuant to the Authority's directive. We agree with the appellant that the issue of the decision of the Authority being challenged did not arise. However, in light of our findings above, nothing turns on this issue.

56. Consequently, this appeal fails and is dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY, 2025.

F. TUIYOTT

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

G. V. ODUNGA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

