



Precision Experts Limited v Public Procurement Administrative Review Board & 3 others (Civil Appeal E301 of 2025) [2025] KECA 976 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KECA 976 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E301 OF 2025
SG KAIRU, J MOHAMMED & AO MUCHELULE, JJA
MAY 23, 2025**

BETWEEN

PRECISION EXPERTS LIMITED APPELLANT

AND

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

**ACCOUNTING OFFICER, KENYA BUREAU OF STANDARDS 2ND
RESPONDENT**

KENYA BUREAU OF STANDARDS 3RD RESPONDENT

QUALITY INSPECTION SERVICES, JAPAN (QIS) 4TH RESPONDENT

*(Being an appeal from the judgment and decree of the High Court at Nairobi
(J. Chigiti, J.) dated 11th April 2025 in Misc. Appl. No. E041 OF 2025)*

JUDGMENT

1. On 25th January 2025, the Kenya Bureau of Standards (the 3rd respondent) advertised an invitation for the prequalification for provision of Pre-Export Verification of Conformity (PVOC) to Standards, the year 2025-2028. It was Tender No. KEBS/PRE- Q/T006/2025/2028. This interested the appellant (Precision Experts Limited) who obtained the pre-qualification document from the 3rd respondent's website. The deadline for the submission of bids or tenders was 3rd March 2025. During the period afforded for preparation of bids, the 3rd respondent published 6 addenda on its website, clarifying or amending the terms of the pre-qualification documents. On 25th February 2025 the appellant lodged a request for review before the Public Procurement Administrative Review Board (the 1st respondent), in PPARB Application No. 21 of 2025, challenging the terms of procurement as set out in the prequalification document. The basis for the challenge was that the document was discriminatory,



exclusionary, unreasonably restrictive and skewed to unfairly and unlawfully disqualify local or citizen contractors.

2. Quality Inspection Services Inc. Japan (QIST) (the 4th respondent) raised grounds of opposition dated 13th March 2025 to say that the appellant lacked locus standi to institute and continue the administrative proceedings, and that it, 1st respondent, lacked requisite jurisdiction to hear and determine the request. The appellant responded to the grounds of opposition. The parties were heard by the 1st respondent on 14th March 2025.
3. On 20th March 2025, the 1st respondent delivered its decision which was sent electronically to the parties at 8.26pm. The 4th respondent's grounds of opposition were dismissed; the 3rd respondent was directed to proceed with the tender to conclusion; and each party was asked to bear own costs.
4. The appellant was not satisfied. It moved to the High Court at Nairobi by way of a chamber application dated 4th April 2025 seeking leave to apply for orders of certiorari to quash the proceedings and decision of the 1st respondent. The 4th respondent filed a preliminary objection dated 8th April 2025 challenging the jurisdiction of the High Court on the ground that the application was time-barred as the same had been filed outside the time stipulated under section 175(1) of the *Public Procurement and Asset Disposal Act*, 2015 (PPADA); that under the provision, the appellant was required to file the application for judicial review in the High Court within 14 days of the decision of the 1st respondent.
5. The High Court (J. Chigiti, J.) heard the parties on the preliminary objection. On 11th April 2025 it rendered a decision sustaining the preliminary objection; it found that the decision of the 1st respondent having been delivered on 20th March 2025, the 14 days ended on 3rd April 2025 and therefore the judicial review application filed on 4th April 2025 was time-barred by one day.
6. The appellant was aggrieved, and filed this appeal to challenge the findings by the High Court. With the appeal was filed a notice of motion dated 17th April 2025 under Rule 5(2)(b) of the Court of Appeal Rules, 2022, seeking the stay of any further proceedings in respect of the tender until the appeal is heard and determined.
7. The record of appeal had the following three grounds:
 - “1) The learned Judge of the High Court erred in fact and in law, in his interpretation of section 171(1) of the Procurement and Asset Disposal Act, 2015 and in his finding that for the subject Request for Review Application (No. 21 of 2015) lodged on February 28, 2025 before the Public Procurement Administrative Review Board, the time for the Review Board to deliver its decision lapses on March 20, 2025, and any delivery of decision on the next date (March 21, 2025) would have resulted in a nullity having been delivered outside the 21 days statutory period.
 2. The learned Judge of the High Court erred in fact and in law, in his interpretation of section 175(1) of the *Public Procurement and Asset Disposal Act*, 2015, particularly in the computation of time where the decision of the Review Board is delivered outside normal working days and hours, as specified in Regulation 211 of the PPADA Regulations.
 3. The learned Judge of the High Court erred in fact and in law in dismissing the Ex-parte applicant's chamber summon application dated April 04, 2025,



with costs, for want of jurisdiction, on the basis of flawed interpretation of provisions of law.”

8. In the notice of motion, the appellant’s contention was the High Court’s findings regarding the computation of time raised an arguable point to be considered by this Court, and that it was apprehensive that if stay is not granted the procuring entity would proceed to conclude the tendering process and make an award that would leave the determination of the appeal being an academic exercise. This, it was deponed, would gravely prejudice the appellant.
9. The Accounting Officer, Kenya Bureau of Standards (the 2nd respondent) and the 3rd respondent filed a joint replying affidavit to state that the notice of motion had not disclosed any arguable ground, and neither had it been shown that the appeal would be rendered nugatory, if the motion was not allowed. Further that, there was an overwhelming public interest in not granting stay, as the refusal would ensure speedy conclusion of the tendering process to bring a new Pre-Export Verification Conformity (PVOC) on board as the current PVOC contract would expire on 8th May 2025.
10. On its part, the 4th respondent raised a preliminary objection seeking to have the entire appeal struck out. Its grounds were that, the appellant’s judicial review application, having been struck out at leave stage, leave was required to appeal. Since no leave had been sought or obtained, this Court did not have jurisdiction to hear or determine this appeal. It was pleaded that the appellant’s appeal did not fall within any of the categories of appeals that lie as of right under section 75 of the Civil Procedure Act or Order 43 of the Civil Procedure Rules.
11. On 5th May 2025, these matters came before us for hearing. We gave direction that the notice of motion by the appellant will be subsumed in the appeal so that we deal with the question whether the High Court was correct in its interpretation on time. The preliminary objection raised by the 4th respondent touches on our jurisdiction, but we agreed with the parties that it be argued together with the appeal. It was on this basis that we were addressed by learned counsel Mr. Mwangi (holding brief for learned counsel Mr. Sisale) for the appellant, learned counsel Ms. Esther Gachagua for the 2nd and 3rd respondents and learned counsel Mr. Justus Omolo for the 4th respondent. Learned counsel had each filed written submissions which they were allowed to highlight. There was no response or appearance for the 1st respondent. A hearing notice had been duly served on the respondent.
12. In the submission by learned counsel for the appellant, there were two issues for determination:
 - a. whether an appeal from the decision of the High Court delivered on 11th April 2025 required leave; and
 - b. whether the learned Judge erred and misdirected himself in computation of time for the purposes of sections 171 and 175 of the PPADA, 2015.
13. In urging us to find that the appellant had the right to appeal the decision of the learned Judge, learned counsel referred us to section 175(4) of PPADA which provides as follows:-

“ A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decision and the Court of Appeal shall make a decision within forty-five days which decision shall be final.”

Learned counsel argued that the provision advanced to his client the right to appeal and that no limit or other requirement had been imposed on the right.
14. Referring to section 75 of the Civil Procedure Act and Order 43 of the Civil Procedure Rules, it was submitted that the High Court decision had ousted its jurisdiction and had resulted into a decree in



respect of which an appeal lies as a right, and no leave was required. Counsel made reference to section 2 of the Civil Procedure Act that defines a decree as follows:-

“decree” means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—

- a. any adjudication from which an appeal lies as an appeal from an order; or
- b. any order of dismissal for default: Provided that, for the purposes of appeal, “decree” includes judgment, and a judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of such judgment may not have been drawn up or may not be capable of being drawn up.”

On that basis, it was submitted that a finding that the High Court lacked jurisdiction on account of effluxion of time was a formal expression of adjudication which had conclusively determined the rights of the parties with regard to the matter in controversy. The same was a decree and, pursuant to sections 2 and 66 of the Civil Procedure Act, the same required no leave to appeal to this Court.

15. Learned counsel referred us to *Kenya Commercial Bank Limited v Manaseh Esipeya* [1999] eKLR in which it was held that where a preliminary objection on the question of lack of jurisdiction, misjoinder, limitation or res-judicata fails and the suit is allowed to proceed to hearing, no preliminary decree arises but only an order; and therefore, the unsuccessful party has a right of appeal but with leave. The Court was relying on the decision in *G.R. Mandavia v Ratian Singh* [1965] EA 118 in which Law, JA held as follows:-

“The position is, in my opinion, clear: when a suit is disposed of on a preliminary point of, an appeal will be from the decree dismissing the suit, and where such an issue such as liability is tried as a preliminary issue and finally disposed of at first instance, a preliminary decree arises from which an appeal lies; but where a preliminary issue alleging misjoinder, limitation, lack of jurisdiction or res-judicata fails, no preliminary decree arises from which the unsuccessful has a right of appeal.”

16. On the second issue, regarding the computation of time, learned counsel submitted that the learned Judge had fallen into error in finding that judicial review application had been filed late by a day. It was pointed out to us that, under section 175(1) of the PPADA, a person aggrieved by a decision of the 1st respondent was required to seek judicial review in the High Court within 14 days. In this case, the 1st respondent had delivered its decision on 20th March 2025 at 8.26pm. Under Regulation 211 of the Public Procurement and Asset Disposal Regulations, the business hours of the 1st respondent were between 8.00am and 5.00pm. on normal working days. Under Article 259(5)(a) of the Constitution, section 57(a) of the Interpretation and General provisions Act and Order 50 rule 8 of the Civil Procedure Rules, it was contended that the day on which the event happens is excluded from the computation of time. Consequently, learned counsel submitted that –

“where the date in which the event happens is not considered for the computation of time, time started to count as of March 22, 2015 and the period stipulated under section 175(1) PPAD Act lapsed on April 04, 2025. In view of this, the Chamber Summons Application



lodged in Nairobi High Court Misc. Application No. E041 of 2025 was not lodged out of time, having been filed on April 04, 2025.”

17. Learned counsel urged us to adopt a purposive approach to legislative interpretation as had been guided by the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others*, Supreme Court Petition No. 26 of 2014 [2014] eKLR), and adopted by this Court in *Public Procurement Administrative Review Board v Four M. Insurance Brokers Limited & 3 Others* [2024] KECA 79 KLR in which it was stated as follows:-

“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(a) of the Act. This provisions in our view, encompassed situations such as the appellant’s where allegation of breach arise or become known after the lapse of the time for notification of award. A narrow construction of the jurisdiction will have untold ramifications in the sense that it will leave the litigants aggrieved with no obvious recourse.”
18. Lastly, regarding the application, learned counsel for the appellant submitted that, the arguable point was whether a decision delivered electronically outside a regular working day and hours had an impact on computation of time under section 175(1) of the Act. On the nugatory aspect, it was submitted that the procurement process was already at an advanced stage and that, if not stayed, the procurement entity would proceed to issue notices of award and proceed to enter into contracts to the exclusion of the appellant. The appellant will not have an opportunity to challenge the discriminatory terms of the procurement process as the same will have concluded.
19. Learned counsel Ms. Gachagua for the 2nd and 3rd respondent opposed the application and the appeal. In her submission, the appellant failed to satisfy the conditions attendant to the grant of stay under Rule 5(2)(b) of the Court of Appeal Rules. She argued that the appeal was not arguable because the High Court had been approached on the 15th day when section 175(1) of the PPADA provided that the judicial review application should have been filed within 14 days. It was submitted that the Act having guided on time, the appeal had no chance of success, and therefore stay could not be granted. Learned counsel went on that, the application and appeal had serious public interest considerations. This was because the subject procurement was for pre-verification of conformity services whose ultimate desire is to strengthen the capacity of the 2nd and 3rd respondents to inspect imported products; that the previous contract was due to expire on 8th May 2025 and therefore it was important that the matter be expedited; and in the meantime, stay was not appropriate. If the procurement was not allowed to proceed, it was argued, there would be gaps in inspection of imprinted goods which will lead to the undermining of the realization of consumers’ rights under Article 46 of *the Constitution*.
20. Without a competent appeal, Ms. Gachagua proceeded, the issue of the appeal being rendered nugatory will not arise.
21. In the submission by learned counsel Mr. Omolo for the 4th respondent, the ruling that the appellant appealed against was in respect of a preliminary objection that it had raised in the High Court contending that the court did not have the jurisdiction to hear and determine the dispute. That being the case, learned counsel went on, an appeal did not lie as a matter of right; that the appellant ought to have sought for, and obtained, leave before appealing. Reference was made to the decision in *Mary Maru v Wafula* [2024] KECA 537 (KLR).
22. Having not obtained leave, learned counsel submitted, the jurisdiction of this Court had not been properly invoked and therefore both the notice of motion for stay and the appeal were not properly grounded, and could not succeed (see *Nyaga Muvake v Joseph Mutunga* [2015] KECA 475 (KLR)).



23. We have considered the notice of motion, the appeal, the preliminary objection and the rival submissions.
24. We shall determine the question whether leave was necessary before the appellant came before this Court on the application and the appeal. The second question shall be whether the learned Judge erred on the question of computation of time.
25. Under section 175(4) of the PPADA –
- “A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decision, and the Court of Appeal shall make a decision within forty-five days which decision shall be final.”
26. It appears quite clear that section 175(4) grants the right of appeal to a person aggrieved by any decision of the High Court to the Court of Appeal in regard to any dispute relating to public procurement and asset disposal under the Act. The section does not impose any requirement or impediment on the right. It does not state that any leave will be required under the circumstances before the aggrieved party can approach the Court of Appeal on appeal.
27. In urging the objection, learned counsel Mr. Omolo cited to us section 75 of the *Civil Procedure Act* and Order 43 of the Civil Procedure Rules and submitted that under the provisions an appeal from ruling on a preliminary objection does not lie as a matter of right and that there was to be leave sought and obtained before the appeal is filed.
28. Section 5(1) of PPADA provides as follows:-
- “
- “(1) This Act shall prevail in case of any inconsistency between this Act and any other legislation or government notices or circulars, in the 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.”
- This section is headed “Conflicts with other Acts.” In our considered view, in so far as section 75 of the *Civil Procedure Act* and Order 43 of the Civil Procedure Rules appear to impose an impediment or a condition on a person’s right to appeal the decision of the Court to the Court of Appeal in a dispute relating to public procurement and asset disposal, this would bring the proceedings into conflict with the PPADA. In that case, the provisions of the PPADA would prevail. More specifically, the person would waive section 175(2) of the PPADA and say that he has unimpeded right of appeal to the Court of Appeal.
29. In the Principal Secretary/Accounting Officer Ministry of Defence v Public Procurement Administrative Review Board and Others, Civil Appeal No. 195 of 2025 at Nairobi, the appellant sought to rely on section 57 of the *Interpretation and General Provisions Act* (Cap. 2) and Order 50 Rule 4 of the Civil Procedure Rules to exclude Christmas recess when computing the period under section 175(1) of the PPADA that provides as follows:-
- “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.”



This Court found that section 175(1) of the PPADA prevailed in the matter and that section 57 of CAP 2 or Order 50 Rule 4 of the Civil Procedure Rules would not be relied on in computing the 14 days. The Court relied on the 5-bench decision of this Court in *Kenya Ports Authority v Public Procurement Administrative Review Board & 2 Others* [2024] KECA 1099 (KCR) in which it was emphasized that sections 175(3) and (5) of the PPADA were intended to ensure that –

“disputes touching on a critical aspect of the national economy are resolved within stipulated time.”

31. Our determination is that, section 175(4) of the PPADA does not provide for leave in case a person has been aggrieved by the decision of the High Court and seek to appeal the decision to the Court of Appeal. It follows that the preliminary objection raised by the 4th respondent is not merited and is not sustained.
31. On the question of computation of time, there is no dispute that the 1st respondent rendered its decision on 20th March 2025. Under section 175(1) of PPADA, the appellant had 14 days to challenge the decision by way of judicial review to the High Court. 14 days ended on 3rd April 2025. The chamber application seeking leave to apply for judicial review orders was filed on 4th April 2025. It was filed on the 15th day. The learned Judge found that the application was filed out of time, as time had ended on 3rd April 2025 at midnight. The appellant had sought to rely on Regulation 211 of the Public Procurement and Asset Disposal Regulations, 2020 which provided that the business hours of the 1st respondent were between 8.00am and 5.00 pm; and that the 1st respondent had rendered its decision on 3rd April 2025 at 8.26pm, which was outside the hours. It was argued that the same ought to have been deemed to be delivered on 21st March 2025 at 8.00am, and therefore the 14 days had lapsed on 4th April 2025. Learned counsel asked us to consider the provisions of section 57(a) of CAP. 2, and also Article 259(5)(a) of *the Constitution* and be purposive in our interpretation of time as was indicated in the Supreme Court decision of *Gatirau Peter Munyua v Dickson Mwenda Kithinji & 2 Others* [2014]eKLR.
31. Section 175 of PPADA is quite elaborate on timelines. The 1st respondent has to determine a review referred to it within 21 days. A person aggrieved has to seek justice in the High Court within 14 days. The High Court has 45 days to hear the application and make a determination. If the person is further aggrieved he has to appeal to the Court of Appeal within 7 days. The Court of Appeal has 45 days to hear and determine the appeal. The decision shall be final.
31. The decisions of this Court in *Aprim Consultants v Parliamentary Service Commission & Another* [2021] KECA 1090 (KIR), *Al Ghurair Printing and Publishing LLC v Coalition for Reforms and Democracy & 2 Others* [2017] eKLR, *ADK Technologies Limited in Consortium with Computer Technologies Limited v Public Procurement Administrative Review Board & 4 Others* [2022] KECA 407 (KLR), and many others, are unanimous that Parliament had the intention under section 175 to constrict time in all matters relating to the filing, hearing and determination of public procurement disputes with the sole purpose of having such matters being expeditiously determined. As indicated in the foregoing, the appellant cannot be heard to be placing reliance on either Order 50 Rule 4 or section 57(1) of Cap. 2 to say that, because the decision by the 1st respondent was electronically delivered on 20th March 2025 at 8.26pm, time be counted from the following day of 21st March 2025.
31. Indeed, so that there is no further dispute relating to computation of time, the Chief Justice in the Practice Directions in Electronic Case Management in Gazette Notice No. 2357 of 2020, in paragraph



14 provided that the dateline (deadline?)for filing of time for purposes of computation of time is 11.59.59pm in the standard Kenyan time.

31. For those reasons, we find that the learned Judge was right in finding that the appellant’s chamber summons dated 4th April 2025 seeking leave to apply for orders of certiorari to quash the decision and the proceedings of the 1st respondent was time barred. The decision to strike it out was sound in law and cannot be faulted.
32. Consequently, the notice of motion seeking stay and the substantive appeal are found not merited. They are dismissed with costs to the 2nd, 3rd and 4th respondents. The preliminary objection by the 4th respondent is dismissed with each party being asked to pay own costs.
31. For avoidance of doubt, the interim orders issued by this Court on 5th May 2025 are vacated.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2025.

S. GATEMBU KAIRU, FCIArb.

JUDGE OF APPEAL

.....

JAMILA MOHAMMED

JUDGE OF APPEAL

.....

A.O. MUCHELULE

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

