IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KARANJA, OKWENGU & SICHALE, JJ. A)

CIVIL APPEAL NO. 26 OF 2016

BETWEEN

WEBB FONTAINE GROUP FZ – LLC..APPELLANT

AND

THE PUBLIC PROCUREMENT AND ADMINISTRATIVE

REVIEW BOARD...1ST RESPONDENT

KENYA REVENUE AUTHORITY..2ND RESPONDENT

TRADE MARK EAST AFRICA...3RD RESPONDENT

BULL SAS LIMITED...4TH RESPONDENT

(Being an appeal from the Judgment and Decree of the High Court of Kenya

at Nairobi (Hon. Odunga, J) dated 22nd December 2015

in

Misc. Civil Application No. 250 OF 2015)

****

JUDGMENT OF THE COURT

1. This is an appeal against the judgment of the High Court, (Odunga, J.) dated and delivered on 22nd December, 2015 following the appellant’s motion on notice dated 7th August, 2015 seeking, *inter alia,* judicial review reliefs against the 1st respondent and the 1st, 2nd and 3rd Interested Parties as follows:-

> **‘‘1. An order of certiorari to remove into the High Court and quash the decision made by the Public Procurement Administrative Review Board ("the Review Board") on the 14th day of July, 2015 by which it dismissed the ex parte applicant's Request for Review against the decision of the Kenya Revenue Authority (the "Procuring Entity") and its Agent M/s Trade Mark East Africa to award the tender for the Supply, Installation And Commissioning of an integrated Customs Management System (ICMS) and related modernisation services at Kenya Revenue Authority (KRA) (PO/20130221) to M/s Bull SAS Ltd and directed that the tender process may proceed.**
>
> **2. An order of prohibition directed to the Kenya Revenue Authority and its agent M/s Trade Mark East Africa prohibiting them from negotiating, entering into, applying, enforcing, implementing or continued implementation, in any manner whatsoever, a contract with M/s Bull SAS Ltd, arising from the Tender for the Supply, Installation and Commissioning of an Integrated Customs Management System (ICMS) and related modernisation services at Kenya Revenue Authority (KRA) (PO/20130221).**
>
> **3. An order of mandamus directed to the Public Procurement Administrative Review Board compelling it to proceed with**

the consideration and adjudication of the issues raised in the Request for Review filed before it by the ex parte Applicant on 15th June, 2015.''

2. Upon consideration of the application, the learned Judge dismissed the same and entered judgment in favour of the 1st respondent and the interested parties and also awarded them costs.

3. The genesis of this appeal is a Tender floated by the 2nd respondent for the supply, installation and commissioning of an Integrated Customs Management System (ICMS) and related modernization services at Kenya Revenue Authority (KRA). The same was aimed at rejuvenating the customs revenue collection system in Kenya by increasing its efficiency with a view to substantially increasing revenue collection.

4. The tendering was done on behalf of the 2nd respondent by the 3rd respondent who advertised a Request for Proposals following which the appellant's bid was found responsive hence it's invitation, along with the 4th respondent to the opening of the of the Financial Bids. Ultimately, the 4th respondent was granted the tender as a result of which the appellant was informed that it's bid was unsuccessful and that in light of the same, it was at liberty to lodge a complaint with the 3rd respondent, Trade Mark East Africa (TMEA), within 14 days in line with section 4.8.1. of the latter's policy document.

5. Following this turn of events, the appellant filed a complaint with the 3rd respondent challenging its decision to award the tender to the 4th respondent claiming that the 4th respondent was not technically compliant and did not meet the required threshold set out in the tender documents, and its bid ought to have been found to be unresponsive.

6. Following a letter of acknowledgment dated 19th May, 2015 the 3rd respondent formed a panel to interrogate the said complaint whereupon it found the complaint unmerited and dismissed it. Consequently, on 15th June, 2015, the appellant filed a 'Request for Review' before the 1st respondent, challenging the 3rd respondent's decision that its complaint challenging the tender award was unmerited.

7. During the hearing of the Request for Review, the 2nd respondent raised 3 preliminary objections to the effect that: *it was not the procuring entity and since the subject matter of the procurement was undertaken by the 3rd respondent which is a private company limited by guarantee, the 1st respondent had no jurisdiction to hear and determine the request for review; no public funds would be utilized in the project and; the request for review was time-barred as it was filed outside the 7 day limitation period as prescribed under the Provisions of Regulation 73 of the Public Procurement and Disposal Regulations 2006 as amended by L.N No. 106 of 18th June 2013.*

8. Having considered the preliminary objection, the 1st respondent upheld it and dismissed the appellant's request for review pronouncing itself as follows:-

"FINAL ORDERS

In view of the above findings and in exercise of the powers conferred upon it by the provisions of Section 98 of the Public Procurement and Disposal Act 2005, the board makes the following orders on this request for review: -

a) That the applicant's request for review dated 15th June, 2015 and filed with the Board on the same day is hereby struck out on the ground that it was filed out of time.

b) The Procuring Entity is therefore at liberty to proceed with the Procurement process herein

c) In view of the fact that each party was partly successful on the grounds of Preliminary Objection raised and argued before the Board each party shall bear its own costs of this Request for review."

9. Aggrieved, by the above orders, the appellant (applicant before the High Court) approached the High Court for judicial review reliefs vide **Nairobi Miscellaneous Application No. 250 of 2015**. It was the appellant's case that notice of its unsuccessful bid only came to its attention on the 8th June, 2015 vide the 3rd respondent's letter of even date stating that his complaint against the tender award was unmerited and not vide the letter dated 30th April, 2015 as contended by the respondents. Counsel for the appellant argued that as per the contents of the letter dated 30th April, 2015, the procurement process had not been concluded as there was room for ventilation, hence its subsequent complaint.

10. He urged that without quashing its letter dated 30th April, 2015, the 3rd respondent, vide a letter dated 8th June, 2015 informed the appellant that its complaint was unmerited. In the appellant's view, the letter of 8th June, 2015 crystalized notice of failure of its bid. He maintained that the letter dated 30th April, 2015 was not a clear-cut notification of an unsuccessful bid, but rather a qualified notification and invitation to pursue a complaint, as it was equivocal contrary to the requirement of an unequivocal notice as contemplated under **section 83 of the Public Procurement and Disposal Act** (the Act). Further, that the letter dated 8th June, 2015 was therefore the only valid notice as contemplated by the Act.

11. Counsel submitted that the 1st respondent's failure to consider the request for review on the basis that it was time barred, was a breach of the Constitution and the rule of law and a breach of the appellant's legitimate expectation that both the 1st and 2nd respondents would be guided by the procedure as per the 3rd respondent's policy in entertaining a complaint as it was in process of awarding the tender. That as such the 1st respondent had arrived at an irrational and unreasonable finding that the same was filed out of time and eventually striking it out without consideration of its merits.

12. He maintained that the 1st respondent ought to have considered the applicability of the provisions of the 3rd respondent's policy under section 4.8.1 which provided for a *'standstill'* period of 14 days whose purpose was to provide unsuccessful bidders with feedback of the final status of their submissions hence an opportunity to impugn an outcome.

13. In opposition, counsel for the 1st respondent submitted that the 1st respondent dismissed the appellant's request for review on a legal basis and that it considered all relevant facts in arriving at its decision which was within its mandate under the Act. He argued that the appellant's application was in bad faith and unmerited.

14. He maintained that judicial review only deals with the decision-making process and not the merits and that it is not an alternative to an appeal. He argued that since judicial review orders are discretionary, the Court ought to consider that an individual's rights do not override the public interests and that based on this, the application was an abuse of the process.

15. The 2nd respondent in opposition to the application reiterated the 1st respondent's submissions adding that by virtue of **section 100(4)** of the Act, the application for judicial review had abated as there was no provision for extension of time and therefore the High Court lacked jurisdiction to hear the application. Further, that the orders of the 1st respondent had already taken effect and the judicial review application was therefore moot.

16. The 3rd respondent reiterated the 1st and 2nd respondent's arguments and urged for dismissal of the application.

17. The key issues which fell for determination before the learned Judge were inter alia: whether the High Court had jurisdiction to entertain the judicial review application; whether the 1st respondent acted unlawfully and if so, whether judicial review remedies were available to the appellant and; whether the appellant had a legitimate expectation.

18. Ultimately, dismissing the motion, the High Court found that: the Court had jurisdiction as the ouster clause, **section 100(4)** of the Act, is unconstitutional; the appellant failed to demonstrate that the 1st respondent had acted unlawfully and that judicial review as invoked by the appellant was not available to it as it would involve the Court delving into the merits of the decision in a manner to suggest that it was sitting on appeal on the decision itself which is not within its ambit and; since the TMEA Guidelines were not part of the Request for Proposals and only emerged after the evaluation, they could not be relied upon in order to confer legitimate expectation of the appellant.

19. Dissatisfied with the said orders, the appellant proffered the instant appeal. The appeal is premised on 12 grounds which can be condensed as follows: that the learned Judge erred in law: by improperly exercising his duty as a first appellate Court and; in finding that the 1st respondent's decision to dismiss its Request for Review was within the law hence denying the appellant judicial review reliefs as prayed for and; in awarding costs to the respondents.

20. During the plenary hearing of the appeal, parties were represented by learned counsel: Mr. Kithinji appeared for the appellant, Mr. Wanga held brief for Ms. Mburugu for the 2nd respondent, and also appeared for the 3rd Respondent while Mr. Nyaburi appeared for the 4th Respondent. There was no appearance for the 1st respondent despite being duly served with the hearing notice. The appeal was canvassed through both written submissions and oral highlights.

21. Urging us to allow the appeal, counsel for the appellant submitted that the cardinal issues for determination before the Court are: whether the appellant filed its request for review in time and; whether therefore the same ought to have been heard on its merits.

22. On the first issue he contended that only upon the rejection of its complaint could the appellant possibly move the Public Procurement and Administrative Review Board **(PPARB)** which it did timeously on 15th June, 2015 as envisaged in law. He maintained that the appellant could not possibly have responded to the letter of 30th April, 2015 by Request of Review without first seeking feedback on its proposal or submitting its queries as contemplated in Clause 4.8.1 of the 3rd respondent's policy. He further submitted that it would only have been reasonable to seek clarification first within 14 days prior to requesting for review.

23. On the second issue, counsel challenged the learned Judge's findings that the letter dated 30th April, 2014 is the one that triggered the appellant's right to proceed to the PPARB stating that in fact it is the letter dated 8th June, 2015 which invoked such right.

24. Citing clause 4.8.1 of the 3rd respondent's policy, counsel submitted that at the time of issuing the letter dated 30th April, 2015, all tenderers were made aware of the standing period. Further, that it was therefore clear to all parties that there would be a 14day standstill period from 30th April, 2015 and hence the appellant had to await this period.

25. He maintained that it is only after the lapse of this period that a bidder may deem its bid unsuccessful in the event that they have been informed so and then and only then would the right to move the PPARB arise. He urged therefore, that the appellant could only move the PPARB after the standstill period or immediately after being notified that indeed its attempt to salvage the bid had been unsuccessful.

26. Counsel submitted that onus was on the procuring entity to demonstrate that the letter dated 8th June, 2015 met the requirement of the provisions of **Regulation 73(2) (c) (ii)** of the Public Procurement and Disposal Regulations 2006 (the regulations) to serve as a notification of the unsuccessful bid. He maintained that this was not demonstrated before the High Court and that the learned Judge erred in placing onus on the appellant to demonstrate the same.

27. Placing reliance on the case of **R v. Public Procurement Administrative Review Board Ex-parte Noble Gases International Limited & 2 Others** he submitted that the failure on the part of the 1st respondent to notify the appellant of the unsuccessfulness of its bid did not take away its right to request for review. He maintained that in view of the foregoing, the request for review was filed within time and ought to have been considered by the 1st respondent.

28.On the issue of costs, he submitted that since the error of communication of the status of its bid was the 1st respondent's, then it ought to have borne the costs of the suit. He urged that the learned Judge erred in awarding costs in favour of the respondents. He entreated the Court to allow the appeal.

29. In opposition of the appeal, it was the 2nd respondent's submission that the appeal has been overtaken by events as the ICMS was already operational hence rendering this appeal moot.

30. Urging the Court to dismiss the appeal counsel for the 3rd respondent submitted that the request for review was time barred. Drawing the Court's attention to the letter dated 30th April, 2015 he contended that by virtue of the provisions of **Regulation 73(2) (c) (ii)** of the Regulations , the appellant ought to have filed its request for review within 7 days of receipt of the said letter which was a notification of the award/ decision being challenged.

31. Counsel submitted further that the notice envisaged in **Regulation 73(2) (c) (ii)** of the Regulations was the one contemplated under **section 83** of the Act. He maintained that the 3rd respondent communicated the outcome of the appellant's application vide the letter dated 30th April, 2015 which met the requirements of **section 83** of the Act which provided for an unequivocal notice of the outcome of the bid.

32. Counsel submitted that **section 99** of the Act which was the applicable law stated that the right to a request for review was in addition to any other legal action against the outcome of a bid. He maintained that the appellant's request for review lodged with the 1st respondent did not bar the appellant from challenging the tender award before the 1st respondent.

33. Counsel urged that the 1st respondent's decision to dismiss the appellant's request for review on the grounds that it was time barred was within the law. Further, that under **Regulation 77** of the Regulations, the 1st respondent had the mandate to address and determine preliminary issues before delving into the merits of the request for review. Relying on the case of **Ethics and Anti-Corruption v. Horsebridge Networks Systems (EA) & Another (2017) eKLR** counsel urged on the finality of a review board's decision.

34. Citing among others the case of **M/S Master Systems Limited v. Public Procurement Administrative Review Board & 2 Others (2015) eKLR** counsel urged that the learned Judge could not be faulted for finding that the appellant's request for review was time barred and that it could not delve into matters touching on the findings of fact, as the principles of judicial review are limited to the process of the decision making and that a judicial review application ought not be considered as an appeal. He maintained that the appellant had failed to demonstrate how the learned Judge was misguided in law or had misapprehended the evidence on record hence arriving at a wrong decision. Therefore, that the learned Judge had properly exercised his discretion in declining to grant the judicial review orders as prayed by the appellant. **(See: Lalji Karsan Rabadia & 2 Others v. Commercial Bank of Africa Limited (2015) eKLR).**

35. On costs counsel submitted that the learned Judge awarded costs to the respondents after making a determination that the judicial review application had merit. He argued that the appellant had failed to give a basis for the disturbance of the Court's discretion to award costs. In conclusion he urged that the appeal lacked merit and ought to be dismissed.

36. On his part, in opposition of the appeal, counsel for the 4th respondent relied fully on the 2nd and 3rd respondents' arguments affirming that indeed the 4th respondent had already delivered and had been fully paid for the project, which is the subject matter of the appeal, hence the appeal had been overtaken by events.

37. This being a first appeal, this Court's duty is to subject the whole of the evidence on record through a fresh and exhaustive scrutiny with a view to drawing its own conclusions in regard to the issues raised by the appellant. **(See: Selle & Another –vs- Associated Motor Boat Co. Ltd.& Others (1968) EA 123)**

38. Bearing the above in mind, having considered the record of appeal, both written and oral submissions and the authorities cited by the parties, we discern the main issues falling for determination to be the following:-

> *a) Whether the learned Judge properly exercised his discretion in declining to grant the appellant judicial review reliefs as sought*
>
> *b) Whether the Court erred in awarding costs in favour of the Respondents.*

39. On the first issue, it is axiomatic that in determining whether or not to grant judicial review reliefs, the learned Judge was exercising judicial discretion. Therefore, the guiding principle in that respect is that this Court being an appellate Court will not interfere with exercise of discretion by the trial court unless it is apparent that it misdirected itself, or considered matters it ought not to have considered, or failed to take into account matters it ought to have taken into account, and in so doing arrived at a misguided decision. (See: **Mbogo & Another v. Shah (1968) EA 93** and **United India Insurance Co. Ltd v. East African Underwriters (Kenya) Ltd [1985] E.A 898**).

40. Did the learned Judge exercise his discretion as prescribed by the Mbogo case (supra)? This Court has time without end addressed the scope of judicial review. The law before the new constitutional dispensation was as enunciated by this Court in the case of **Municipal Council of Mombasa vs Republic & Umoja Consultants Limited, Nairobi Civil Appeal No. 185 of 2001** in the following words:-

> ***"The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review."***
>
> See also **Republic vs. Kenya Revenue Authority Ex parte Yaya Towers Limited, (2008) eKLR**

41. There has been a paradigm shift following the coming into force of the Constitution of Kenya 2010, and the courts have in a few

instances questioned merit as can be seen in this Court's decision in **Suchan Investment Limited vs. Ministry of National Heritage & Culture & 3 others, (2016) KLR** where this Court held that **Article 47** of the Constitution as read with the grounds for review envisaged under **section 7** of the Fair Administrative Action Act reveals an inherent shift of judicial review to include elements of merit review of administrative action. That notwithstanding, there is a tenet that the reviewing court has no dictate to substitute its own decision for that of the administrator.

42. In essence, in the matter the subject of this appeal, the duty of the High Court was to ensure that the appellant was given fair treatment by the 1st respondent. In doing so, its part was not to substitute its own decision with that of the 1st respondent which is a body constituted by law to decide the matter in question; the High court was bound by law to limit itself to the decision-making process and not the merits of the decision itself.

43. The learned Judge in deciding the application before him stated as follows:

> ***"110. Judicial review is a constitutional supervision of public authorities involving a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or through a failure for any reason to take into account a relevant matter, or through taking into account an irrelevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. While the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies, it is perfectly clear that in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence. See Reid vs. Secretary of State for Scotland [1999] 2 AC 512."***

44. From the above, it is evident that the learned Judge was well aware of his remit while sitting on judicial review and was properly guided by the well settled principles as enunciated in the **Municipal Council of Mombasa vs Republic & Umoja Consultants Limited,** (supra). The comprehensive grounds for the exercise of judicial review jurisdiction were settled by this Court in the case of **Pastoli v. Kabale District Local Government Council & Others [2008] 2 EA 300 at pages 303 to 304** where it stated:-

> ***"In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, miscellaneous application number 643 of 2005 (UR). Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality….***
>
> ***Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".***
>
> ***Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."*** (Emphasis supplied)

45. The appellant in the instant appeal has to bring itself within the above threshold. Its challenge on the learned Judge's decision is that the learned Judge failed to appreciate that: the 1st and 2nd respondents were bound by the provisions of the TMEA policy and the Public Procurement and Disposal Act as read together with the Public Procurement and Disposal Regulations and; the letter of the 3rd respondent dated 30th April, 2015 was not a competent notice under the provisions of **section 83(2)** of the Act. We shall consider the parameters set out in the Pastoli case (supra) vis a vis the evidence before us as contained in the record and the relevant law.

46. **Section 83** of the Act provides for the communication of the outcome of a proposal in the following terms:-

> ***"The procuring entity shall notify the person who submitted the successful proposal that his proposal was successful.***
>
> ***At the same time as the person who submitted the successful proposal is notified, the procuring entity shall notify all other persons who submitted proposals that their proposals were not successful."***

47. The salient paragraphs of the letter dated 30th April, 2015 read as follows:-

> ***"…We assessed your proposal and regret to inform you that it was unsuccessful. Your combined technical and financial score was not the most economically advantageous tender.***
>
> ***In line with TMEA policy, Section 4.8.1, you have fourteen (14) calendar days commencing today (30th April 2015) till 13th May 2015 (3.00 p.m. local/ Kenya time), to seek feedback on your proposal or submit any queries you may have.***

In the event that you wish to submit a complaint within the above period (from today 30th April 2015 to 13th May 2015, 3.00 p.m. local/Kenya time), ….” (Emphasis supplied)

48. On the other hand, the letter dated 8th June, 2015 read in part:-

> ***“… We have thoroughly investigated your claim, but on the basis of the above, I regret to inform you that the Panel ruled that <u>your complaint cannot be upheld</u>.”***

49. In his determination of the application the learned Judge expressed himself as follows:-

> ***“95. In my view the matter which is central to this application is when the applicant was notified that its proposal was unsuccessful under section 83(2) of the Act because it is that notification that triggers the process of Request for Review under Regulation 73 of the Public Procurement and Disposal Regulations. By a letter dated 30th April, 2015, the 1st interested party, the Procuring Entity, informed the applicant that it had assessed the applicant’s proposal and regretted to inform the applicant that it was unsuccessful since the applicant’s combined technical and financial score was not the most economically advantageous tender. The 3rd interested party has averred that it was similarly notified on the same date that its proposal was successful. <u>Section 83 of the Act</u> <u>provides:</u>***
>
> > ***(1) <u>The procuring entity shall notify the person who submitted the successful proposal that his proposal was successful.</u>***
> >
> > ***(2) <u>At the same time as the person who submitted the successful proposal is notified, the procuring entity shall notify all other persons who submitted proposals that their proposals were not successful.</u>***
>
> ***96. One can therefore say that the letter dated 30th April, 2015 was in compliance with section 83 aforesaid. The letter however did not stop there but proceeded to inform the applicant that it was at liberty to seek feedback on its proposal or submit any queries that the applicant may have in line with TMEA policy section 4.8.1 within 14 days***
>
> ***97. In the premises the Respondent’s decision that it had no jurisdiction to hear and determine the Request for Review due to the statutorily prescribed limitation was correct and cannot be faulted.*** (Emphasis supplied)

50. We find no fault whatsoever with the learned Judge’s finding. It is clear in our minds that the letter of 30th April, 2015 constituted a valid communication to the appellant that it had not been successful in its bid, and further that if it needed any clarification or intended to apply for review, then the fourteen days provided for under the Act started running with effective from that date. There was nothing stopping the appellant from requesting for review within the 14 days even as it sought clarification.

51. In the same notification the appellant was invited to submit comments and views within a ‘standstill period’ of 14 days pursuant to **clause 4.8.1** of the TMEA policy. The appellant contends that by virtue of the foregoing invitation the right to invoke the jurisdiction of the Public Procurement Administrative Review Board only crystalized on 8th June, 2015 when feedback on the complaints and views had been communicated. In our view however, that is not the correct position. The right to invoke the jurisdiction of the Review Board accrued on 30th April, 2015 and not on 8th June, 2015 as urged by the appellant.

52. Having come to the above conclusion, it becomes crystal clear that the appellant’s Request for Review was filed out of time, and there being no provision for extension of time, the Review Board was right in declining to entertain it on grounds of want of jurisdiction. There was no illegality, procedural impropriety, or irrationality in the manner the Board handled the appellant’s Request for Review. We hold the view that the appellant failed to bring its application for Judicial review within the parameters we have discussed above.

53. It follows therefore that the learned Judge considered the relevant law and all the circumstances surrounding the case and exercised his discretion correctly in arriving at the decision now impugned. The upshot of the foregoing findings is that no sufficient basis has been laid to enable this Court interfere with the exercise of discretion by the learned Judge. We find this appeal devoid of merit and dismiss it with costs to 2nd 3rd and 4th respondents.

Dated and delivered at Nairobi this 8th day of May, 2020.

W. KARANJA

....

JUDGE OF APPEAL

HANNAH OKWENGU

....

JUDGE OF APPEAL

F. SICHALE

....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR