



Lavington Security Limited v Public Procurement Administrative Review Board; Kenya Roads Board & 3 others (Interested Parties) (Judicial Review 182 of 2024) [2025] KEHC 11901 (KLR) (Judicial Review) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW 182 OF 2024

JM CHIGITI, J

JULY 31, 2025

BETWEEN

LAVINGTON SECURITY LIMITED APPLICANT

AND

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD RESPONDENT

AND

KENYA ROADS BOARD INTERESTED PARTY

THE ACCOUNTING OFFICER, KENYA ROADS BOARD INTERESTED PARTY

VICKER SECURITY INTERESTED PARTY

HOUNSLOW SECURITY LIMITED INTERESTED PARTY

RULING

1. Before this court for determination is the Preliminary Objection dated 18th February, 2025 challenging the jurisdiction of this court to determine the Notice of Motion dated 18th November, 2024.
2. It advances the following grounds;
 1. That the matter concerns the Public Procurement Administrative Review Board (PPARB), an independent body established under Section 25 of the Public Procurement and Assets Disposal Act.



2. That the cited contemnor, Mr. Patrick Wanjuki, is the Director General of the Public Procurement Regulatory Authority and a stranger to the proceedings.
3. That the cited contemnor is improperly joined in these proceedings, as he is not in a position to direct the Public Procurement Administrative Review Board (PPARB), which is an independent body.
4. That the contempt of court Application against the Director General of the Public Procurement Regulatory Authority, Mr. Patrick Wanjuki, is misconstrued and constitutes an abuse of Court process.

The Respondent's Submissions;

3. The Respondent herein was served with a contempt of court Application dated 18th November 2024 seeking to cite the Director General of the PPRA for Public Procurement Regulatory Authority for Contempt of court.
4. In response, The Respondent filed a Notice of Preliminary Objection dated 18th February 2025 on the grounds that the said contempt of court Application was not properly grounded on the Law.
5. On the 4th of March 2025, the court directed that the Respondents Preliminary Objection be heard first and the same be disposed by way of written submissions.
6. Reliance is placed in, the case of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696 is notorious on the issue of what constitutes a Preliminary Objection. The court observed thus: - "... a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit."
7. In the case of Hassan Ali Joho & another v Suleiman Said Shabal & 2 others SCK Petition No 10 of 2013 [2014] eKLR held that: - "A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit."
8. It is the Respondent's case that there exists the Public Procurement Regulatory Authority and the Public Procurement Review Board.
9. The Public Procurement Regulatory Authority has a board which the Applicant herein is referring to and is misleading the court that it is the same as the public procurement review board. It is a totally different entity which is a tribunal that hears public procurement disputes.
10. Section 8 of the Public Procurement and Assets Disposal Act establishes the public The Public Procurement Regulatory Authority as a body corporate.
11. Section 9 of the Act provides for its numerous functions which include inter alia monitoring, assessing and reviewing the public procurement and asset disposal system to ensure that they respect the national values and other provisions of *the Constitution*, including Article 227 and make recommendations for improvements.
12. The Public Procurement Administrative Review Board (PPARB), is an independent body established under Section 27 of the Public Procurement and Assets Disposal Act. The review board hears Public Procurement disputes.
13. The cited alleged contemnor, Mr. Patrick Wanjuki, is the Director General of the Public Procurement Regulatory Authority and as such a stranger to the proceedings.



14. He is not in a position to direct the Public Procurement Administrative Review Board (PPARB), which is an independent body established under the public procurement regulatory Authority.
15. The contempt of court Application against the Director General of the Public Procurement Regulatory Authority, Mr. Patrick Wanjuki, is misconstrued and constitutes an abuse of Court process.
16. This matter concerns the Public Procurement Administrative Review Board (hereinafter PPARB).
17. The PPARB is an independent body established under Section 27 of the *Public Procurement and Asset Disposal Act*. The Review Board is mandated to review, hear and determine tendering and asset disposal disputes.
18. The Office of the Director General of the PPRA is established under Section 15 of the *Public Procurement and Asset Disposal Act*.
19. The main function of the Director General under Section 17 of the *Public Procurement and Asset Disposal Act* is the day today management of the affairs of the Authority and not the review board as the Exparte Applicant would want the court to believe.
20. It is its case that The Public Procurement Regulatory Authority has a board which the Exparte Applicant herein has obviously misconstrued/ misapprehended to be the review board which is a tribunal/quasi-judicial body.
21. It submits that when a state organ such as the PPARB is alleged to have committed contempt of court the proper officer to be cited as the contemnor is the “accounting officer” of that state organ.
22. Section 67(2) of the *Public Finance Management Act*, 2012 states that;

...the person responsible for the administration of a Constitutional Commission or institution of Independent Office shall be the accounting officer responsible for managing the finances of that commission institution or Independent Office.
23. This was the holding in the case of Tom v Director of Public Prosecution & 2 others; Kenya National Highways Authority & another (Interested Parties) [2022] KEHC 151 (KLR) where the court stated at para 11 that:

“Unless a statute expressly stated otherwise, the accounting officer was the person responsible for managing the finances of a public entity.”
24. It is its case that Mr. Patrick Wanjiku being the Director General of PPRA is its Accounting Officer and not the accounting officer of PPARB.
25. Article 249 of *the Constitution* establishes the independence of commissions and independent offices by providing that they are subject only to *the Constitution* and the law and are not to be directed or controlled by any person or authority.
26. The High Court in the case of Judicial Service Commission v Salaries and Remuneration Commission & another (Petition 274 of 2016) [2018] KEHC 4765 (KLR) had the following to say about article 249 of *the Constitution* at para 44:

“The import of article 249(2) is to the effect that constitutional commissions are independent in the execution of their mandate and should not take directions from any person or authority. That is; they are neither under the control of any person or authority in the



performance of their duties and discharge of their functions nor should they receive direction in the performance of their duties.”

27. The Supreme Court underscored the Independence of Commissions and Independent Offices, in the matter of Interim Independent Electoral Commission [2011] eKLR stating at para 59;

“It is a matter of which we take judicial notice that the real purpose of the “independence clause”, with regard to Commissions and independent offices established under the Constitution, was to provide a safeguard against undue interference with such Commissions or offices, by other persons, or other institutions of government. Such a provision was incorporated in the Constitution as an antidote, in the light of regrettable memories of an all-powerful Presidency that, since Independence in 1963, had emasculated other arms of government, even as it irreparably trespassed upon the fundamental rights and freedoms of the individual. The Constitution established the several independent Commissions, alongside the Judicial Branch, entrusting to them special governance-mandates of critical importance in the new dispensation; they are the custodians of the fundamental ingredients of democracy, such as rule of law, integrity, transparency, human rights, and public participation. The several independent Commissions and offices are intended to serve as people’s watchdogs# and, to perform this role effectively, they must operate without improper influences, fear or favour: this, indeed, is the purpose of the “independence clause”.

28. In the case of Communication commission of Kenya & 5 Others v Royal Media Services limited & 5 others [2014] eKLR the Supreme Court again stated with regard to independence contemplated by the Constitution;

“Independence is a shield against influence or interference from external forces. In this case, such forces are the Government, political interests, and commercial interests. The body in question must be seen to be carrying out its functions free of orders, instructions, or any other intrusions from those forces.”

29. The PPARB is an independent office thus the cited contemnor is not in a position to direct the PPARB.

30. The Court of Appeal in Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 others Civil Appeal No. 25 of 2002 (2009) eKLR 229, in dealing with the principle of abuse of Court process stated as follows: -

“The term abuse of Court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in bona-fides and frivolous, vexatious or oppressive.”

31. It is the Respondent’s submission that the contempt of court Application against the Director General of the PPRA, Mr. Patrick Wanjuki, is misconstrued and an abuse of the court process. Mr. Patrick Wanjuki is not in any position to direct the PPARB which is an independent body

The Exparte Applicant’s Case;

32. The Applicant filed submission related, to both the Application dated 18th November 2024 the Notice of Preliminary Objection.



33. The Applicant submits that the Respondent is in contempt of this Honorable's court decision of 8th October 2024, directing the Respondent to re-hear the Exparte Applicant request for Review.
34. It argues that the Contemnor is cited as the Director General of the Public procurement Regulatory Authority, whose main function under section 17 of the [Public Procurement and Asset Disposal Act](#) is responsible for the day to day management of the affairs of the Authority.
35. It is the Applicant's case that despite the Public Procurement Regulatory Authority under section 28(3) being mandated to provide Secretariat and Administrative service to the 1st Respondent, it has deliberately ignored and/or neglected to do so in so far as ensuring compliance of this court's orders.
36. It submits that contempt of court is that conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:
- “The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”
37. Reliance is placed in the case of Republic vs Ahmad Abolfathi Mohammed: Petition number 39 of 2018 at paragraph 27 and 28 where it was stated inter alia that;
- “There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court's authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice...”
38. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt so as to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts.
39. It submits that without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice.
40. It places reliance in T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor [2006] 5 SCC, where the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:
- “Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.”
41. It submits that this Honourable Court has Jurisdiction to entertain the Application and is properly seized of the same.



42. It refers the court to Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17, which expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:
- i. The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
 - ii. The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
 - iii. The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)
43. It is argued that in the instant case it’s clear from the court record that the contemnor’s representative, who are the Respondent’s Secretariat, at all material times deponed to affidavits in this proceedings, and despite having been dully represented by the Attorney General at the time of the Delivery of Judgment, they have failed and or ignored to ensure compliance thus putting the Honour of this Court in ridicule and undermining the rule of law of this Country in so far as organizing for a re-hearing of the Request for review.
44. It reiterates the fact that the Contemnor is cited as the Director General of the Public procurement Regulatory Authority, whose main function under Section 17 of the Public procurement and Asset Disposal Act is responsible for the day to day management of the affairs of the Authority. Despite the Public Procurement Regulatory Authority under Section 28(3) being mandated to provide Secretariat and Administrative service to the 1stRespondent, it has deliberately ignored and/or neglected to do so in so far as ensuring compliance of this courts orders.
45. It submits that the Contemnor cannot claim to be unaware of the said court’s decisions for the following reasons;
- i. He was dully represented by his secretariat who deponed affidavits.
 - ii. He had counsel on record being the Attorney General.
 - iii. It is trite law and provided under section 175 of the public procurement and Asset Disposal Act that upon lodging a Judicial Review to the High court, the High Court have 45 days to make a decision, decision that the Contemnor and its secretariat failed to make follow ups.

Analysis and determination;

46. The Law on Preliminary Objection is well settled in the case of Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributors Limited [1969] EA696, Newbold,V.P. observed as follows;

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does



nothing but unnecessarily increase cost and, on occasion, confuse issues. This improper practice should stop.”

47. This court is satisfied that the Notice of Preliminary Objection raises fundamental questions of law that go to the jurisdiction of this court.

48. Section 67(2) of the *Public Finance Management Act*, 2012 states that;

...the person responsible for the administration of a Constitutional Commission or institution of Independent Office shall be the accounting officer responsible for managing the finances of that commission institution or Independent Office.

49. This was the holding in the case of Tom v Director of Public Prosecution & 2 others; Kenya National Highways Authority & another (Interested Parties) [2022] KEHC 151 (KLR) where the court stated at para 11 that:

“Unless a statute expressly stated otherwise, the accounting officer was the person responsible for managing the finances of a public entity.”

50. Mr. Patrick Wanjiku being the Director General of PPARA is its Accounting Officer and not the accounting officer of PPARB and cannot be held to be in contempt.

51. The Application does not accord with Section 67(2) of the *Public Finance Management Act*, 2012 and the same cannot succeed.

52. The Preliminary Objection is meritorious.

Costs;

53. The Supreme Court in the case of Jasbir Singh Rai & Others vs. Tarlochan Rai & Others observed that;

“In the classic common law style, the courts have to proceed on a case by case basis, to identify “good reasons” for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”

54. The Respondent is successful in as a result of which it is entitled to costs and I so hold.

Disposition;

55. The Preliminary Objection dated 18th February 2025 has merit.

Order;

1. The Preliminary Objection dated 18th February 2025 is upheld.
2. The Contempt of Court Application dated 18th November 2024 is struck out with cost.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

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J. CHIGITI (SC)

JUDGE

