



Awino v Megascop Healthcare (K) Ltd & 2 others; Ethics and Anti-Corruption Commission & another (Interested Parties) (Petition E119 of 2023) [2024] KEHC 3124 (KLR) (Civ) (20 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3124 (KLR)

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

CIVIL

PETITION E119 OF 2023

LN MUGAMBI, J

MARCH 20, 2024

BETWEEN

FRANCIS AWINO PETITIONER

AND

MEGASCOPE HEALTHCARE (K) LTD 1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF HEALTH 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS INTERESTED PARTY

RULING

1. The notice of preliminary objection by the 1st Respondent is dated 16th May, 2023. It challenges the competency of the petitioner’s petition dated 14th April, 2023 on jurisdictional grounds. This Notice was objected to by the petitioner through its written submissions dated 30th June 2023.
2. Njoroge Regeru and Company Advocates for the 1st respondent raised the following grounds in the preliminary objection:
 - i. This Honorable Court has no jurisdiction to entertain, hear or determine the petition.



- ii. From the facts pleaded in the petition it is blatantly clear that the dispute herein in fact and in substance concerns public procurement under the [Public Procurement and Asset Disposal Act](#) Number 33 of 2015.
- iii. The issues in dispute herein have not been subjected to the Dispute Resolution Mechanisms stipulated under Sections 167 and 175 of the Act and the same are therefore not ripe for reference to this Honourable Court. Therefore, this Court does not have jurisdiction to determine the issues raised in the petition herein or to grant the orders sought therein.
- iv. Additionally, the petition concerns debarment of the 1st respondent by its directors, or through its agents or representatives, or any person claiming through them, from transacting any business with the Government of Kenya. Debarment is a creature of Section 41 of the [Public Procurement and Asset Disposal Act](#) and the procedure for debarment is prescribed by Public Procurement and Asset Disposal Regulations 2020.
- v. In regard to debarment, this Honourable Court is only granted Appellate jurisdiction pursuant to Section 42 of the [Public Procurement and Asset Disposal Act](#).
- vi. The petitioner has failed to exhaust all remedies available in the Public Procurement and Asset Disposal Regulations, 2020 and has also failed to demonstrate any exceptional circumstances or grounds upon which it can be exempted from pursuing mechanisms for redress and alternative remedies in accordance with Section 9 (4) of the Fair Administrative Actions Act.
- vii. In the premises, the issues raised in the petition ought to first be dealt with in the Dispute Resolution Mechanisms mandatorily prescribed thereunder.
- viii. The petition is fatally and incurably defective as the Court has no jurisdiction to direct the 3rd respondent to initiate any investigations or prosecutions against any person or body pursuant to Article 157(4) and Article 157(10) of [the Constitution](#) which provides that the Office of the Director of Public Prosecutions is not subject to the directions of any person or body in the discharge of its mandate.
- ix. This petition is thus premature, mischievous, vexatious and an abuse of the Court process as the Court's jurisdiction has not accrued.
- x. No exemption from the mandatory Dispute Resolution Mechanism under said Acts have been obtained and neither has such exemption been sought by the petitioner.
- xi. The Court ought to apply the doctrines of avoidance and ripeness, and decline to entertain or hear this Petition.
- xii. For want of jurisdiction and in the interest of proper administration of justice, the petition herein ought to be dismissed with costs.

1st Respondent's Submissions

- 3. Counsel filed two sets of submissions and a list of authorities dated 9th June 2023 and 3rd July 2023 respectively in support of its preliminary objection. In the first set of submissions Counsel sought to address the objections raised in the Notice.
- 4. To begin, Counsel submitted that the petition does not raise any constitutional issues. That it merely questions tendering and procurement process as provided under the Public Procurement and Assets



Disposal Act, No. 33 of 2015 (The Act) where the 1st respondent was awarded the contract to supply 37 CT scan machines.

5. Counsel pointed out that the Act provides the legal procedure to resolve any dispute arising out of the tendering and procurement process. He submitted that the petitioner ought to have raised his grievances with the Public Procurement Regulatory Authority as prescribed under Sections 9(h) and 35(2) of the Act. Moreover, the petitioner ought to have articulated his concerns through the Public Procurement Administrative Review Board (PPARB) under Section 167 of the Act.
6. It was further submitted that the petitioner's prayer for an injunction to restrain the 1st respondent, would result in debarment of the 1st respondent which action is well provided for under Section 41 of the Act and whose exercise is reserved for the PPARB or the Public Procurement Regulatory Authority (PPRA), not this Court. This was supported by the case of *Auto Terminal Japan Limited v Auditor General & 5 others* [2022]eKLR where it was held that:

“29. Debarment is a creature of Section 41 of the *Public Procurement and Asset Disposal Act*. The Act was enacted to give effect to Article 227 of *the Constitution*; to provide procedures for efficient public procurement and for assets disposal by public entities; and for connected purposes.”

7. Comparable reliance was placed on the cases of *Republic v Public Procurement Regulatory Authority & another; Auto Terminal Japan Limited (Ex parte Applicant); Auditor General & another (Interested Parties) Judicial Review 55 of 2022* [2022] KEHC 10782 (KLR) *Judicial Review* (27 May 2022) *Judgment* and *Republic v Public Procurement Regulatory Authority Ex parte EAA Company Limited (Formerly East Africa Automobile Services Co. Ltd)* [2021] eKLR.
8. Counsel submitted that this Court's authority to entertain disputes arising from the Act can only be invoked once these procedures have been exhausted as stated under Section 175 of the Act vide an application for judicial review. Counsel further relying on the doctrine of avoidance as espoused in the case of *Council of County Governors v Attorney General & 12 Others* [2018] eKLR urged the Court to decline assuming jurisdiction over matters where there exist remedies under the statutorily prescribed bodies being the PPARB or the PPRA.
9. It was as well stated that the petitioner had failed to adduce any evidence of having exhausted the existing dispute mechanisms. Counsel relying on the case *Ezekiel Otieno v Funds Account Manager, Mathare National Constituency Development Fund & 2 others; Public Procurement Review Board & 12 others (Interested Parties)* [2022]eKLR which is comparable to the instant petition quoted as follows:

“30. What this court is trying to stress is that once a dispute resolution process has been put in place the same must be exhausted first before parties run for court. The Court of Appeal emphasized the importance of exhausting the available statutory remedies before invoking the court's jurisdiction in *Speaker of the National Assembly vs. Karume* [1992] KLR 21, and further clarified the doctrine under the current constitutional dispensation in *Geoffrey Muthinja Kabiru & 2 others Vs. Samuel Munga Henry & 1756 others* [2015] eKLR as follows:

It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be a fora of last resort and not



the first port of call the moment a storm brews ... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside the courts. The Ex parte Applicants argue that this accords with Article 159 of *the Constitution* which commands court to encourage alternative means of dispute resolution."

31. Once a procedure is prescribed by the law one must use it unless for any other good reason he/ she is not able to do so..."
10. Further reliance was placed on the cases of Constitutional Petition No. 359 of 2013, Diana Kethi Kilonzo & Another Vs. IEBC and 10 Others (2013) eKLR, Speaker of the National Assembly v James Njenga Karume (1992) eKLR, Jennifer Shamalls v Law Society of Kenya and 15 others(2017) eKLR and Stanley Mungathia Daudi and 4 others v Hon. Cyprian Kubai and others, Meru Petition No. 5 of 2013.
11. Counsel in view of the cited arguments submitted that matters which are filed before exhaustion of the existing mechanisms are premature and hence not ripe for determination before the Court. Additionally, that the petitioner had not sought exemption from compliance with the mechanisms provided in the Act as required under Section 9(4) of the Fair Administrative Actions Act,2015. To buttress this point reliance was placed on the case of Mark Ndungu Ndumia v The Law Society of Kenya & 20 Others, Petition 94 of 2019 Consolidated with Kimani Waweru & Another v Law Society of Kenya & 7 Others, Petition No. 93 of 2019 where it was held that:
 - “26. It is settled principle that "Ripeness" of a case is a matter, that must be ventured into before a Court proceeds to analyze and determine a matter before it on merits; and more so, where there exists available, efficient and effective internal dispute resolution mechanism with the Respondent society, which the Petitioners could have had recourse to before invoking the court's jurisdiction...
 27. the Petitioners have not sought exemption and having not met the conditions under the Fair Administrative Actions Act, 2015 for exemption from obligation to exhaust alternative dispute resolution mechanism have come to court prematurely."
12. It was also submitted that this Court could not compel the 2nd interested party to investigate and prosecute the respondents' officials as sought by the petitioner. This is since it would be contrary to the dictates of Article 157 of *the Constitution* which provides that the 2nd interested party cannot be directed by anyone in performance of its duties while the 1st interested party is also independent in carrying out its mandate.
13. Counsel submitted that this Court in the cases of Republic v Director or Public Prosecution and another Ex parte Ense Ltd; David Gikaria and 4 others (interested parties) (2021)eKLR and Maina and 4 others v Director of Public Prosecutions and 4 others(Constitutional Petition E106 and 160 of 2021(Consolidated) (2022) KEHC 15 (KLR) (Constitutional and Human Rights) (27 January 2022) declined to issue such orders against the 2nd interested party.



14. Counsel thus summed up that this Court has no jurisdiction to entertain this matter since the petition is prematurely before it and the principle of avoidance applies. He urged the Court to be guided by the classic case of Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (1989) KLR 1 and Advisory Opinion Reference No.2 of 2013, Speaker of Senate and another Vs the Attorney General and others on the issue of jurisdiction.
15. This position was correspondingly emphasized in the 1st respondent’s further submissions which opposed the petitioner’s submission on jurisdiction owing to the multifaceted issues in the petition. To buttress this point reliance was placed on the Supreme Court decision of Benson Ambuti Adegwa and 2 others v Kibos Distillers Limited and 5 others(2020)eKLR where it was held that:

“(49) It would therefore seem that the Superior Court, determined, quite incorrectly, that it had the power or jurisdiction to hear and determine the Petition, which although raised issues that were clearly within its purview, were also intertwined with other issues which were rather obviously not within its jurisdiction, and which could have been effectively determined by another legislatively established tribunal, in this instance two bodies, the National Environmental Tribunal and the National Environmental Complaints Committee.”

Petitioner’s Submissions

16. Written submissions dated 30th June 2023 were filed by the firm of Wachira and Mumbi Advocates together with a list of authorities. The Petitioner’s Counsel strongly contested the 1st respondent’s argument on the doctrine of exhaustion of the available mechanisms and submitted that this doctrine only applies where there is clear procedure for redress of any particular grievance. In this regard Counsel cited the case of Supreme Court case of NGOss Coordination Board v EG and 4 others; Katiba Institute (Amicus curiae) (Petition 16 of 2019) (2023)KESC 17(KLR) where it was held that:

“It is necessary to emphasize that an Act of Parliament must clearly provide for an internal dispute resolution mechanism before an aggrieved party can be bound by such a mechanism.”
17. Like reliance was placed on the case of William Odiambo Ramogi and 3 others v Attorney General and 4 others; Muslims for Human Rights and 2 others (Interested parties) (2020) eKLR.
18. Counsel accordingly asserted that there is no clear procedure in the Act for redress of the issues raised in the petition. This is because the petition raises other issues other than procurement issues. In particular, Counsel submitted that the petition questions the constitutionality of the whole process that led to the creation of the contract between the 1st and 2nd respondents for the supply of the 37 computed tomography (CT) scan machines. The petition as such deals with the National Government’s budgetary process and the use of public funds under Article 201, 206 and 220 of *the Constitution* which is argued to have been breached by the respondents. Consequently, if the budgetary process is found to be constitutionally flawed the same will result in the procurement process also being flawed.
19. Counsel as such was certain that these budgetary issues cannot be resolved under the dictates of the *Public Procurement and Asset Disposal Act* but the *Public Finance Management Act*, 2012. Nonetheless Counsel pointed out that the Public Management Act does not provide a dispute resolution mechanism hence the petitioner’s only recourse was this Court.



20. On the flipside, the petitioner admitted that *Public Procurement and Asset Disposal Act* had, in reference to the dispute relating to procurement process provided a dispute resolution mechanism. Nonetheless, Counsel submitted that even if the petitioner had sought to resolve the matter under the Act, the same would have been futile as he was neither a candidate nor tenderer within the meaning of Section 167 and 175 of the Act, leaving him with no recourse under the Act. In this regard he relied on the Court of Appeal case of *Fleur Investments Limited v Commissioner of Domestic Taxes & another* [2018] eKLR where it was held that:

“23. For the reasons we have given earlier and others that will become apparent, there were definitely exceptional circumstances that existed in this case that were outside the ambit of the Income Tax Tribunal which called for intervention by way of judicial review. Whereas courts of Law are enjoined to defer to specialized Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

21. Correspondingly, Counsel argued that the petition also concerns the interpretation and application of *the Constitution*. In light of this arguments Counsel submitted that this Court has jurisdiction to entertain and determine the petition.
22. On the issue of the alleged prayer asking this Court to compel the 2nd interested party, Counsel submitted that the 1st respondent had misconstrued the prayer. This is because the sought order is primarily to the 1st interested party to conduct investigations over the issues raised herein then submit its findings to the 2nd interested party. Counsel noted that this is well provided for under Section 11(d) of the *Ethics and Anti-corruption Commission Act, 2011*.
23. On the sustenance of the preliminary objection, Counsel submitted that owing to the case made out the 1st respondent’s preliminary objection was not capable of disposing the petition in its entirety as observed in the case of *Mukisa Biscuit Manufacturing Company Limited Vs. West End Distributors* (1969) EA 696. The Court in this case observed 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. Counsel to this end urged the Court to dismiss the 1st respondent’s Notice of preliminary objection dated 16th May 2023 and award costs to the petitioner.

Analysis and Determination

The preliminary objection raises two issues:

- i. Whether the preliminary objection has met the threshold.
- ii. Whether the preliminary objection dated 16th May 2023 is merited - The doctrine of exhaustion of remedies



i. Whether the preliminary objection has met legal the threshold

24. The legal threshold of a preliminary objection was laid down in famous Court of Appeal case of Mukisa Biscuit Manufacturing Co. Ltd(supra) where it was held thus:

“...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”

25. The Court further stated:

“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 preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”

26. In *Dismas Wambola v Cabinet Secretary, Treasury & 5 others* (2017)eKLR the Court reiterated:

“...a preliminary objection may only be raised on a “pure question of law.” To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.”

27. It is clear to me that the instant objection does not in any way contest the facts that have been stated by the Petitioner. The only point of departure between the parties is mainly the application of the relevant legal principles to the facts as stated. Further should the court find the exhaustion of remedies doctrine applies in this case, that would stop further progress of this matter before this Court.

28. Clearly therefore, the two important ingredients that need to be satisfied by a preliminary objection have been met and hence the legal threshold thereof.

ii. Whether the doctrine of exhaustion of remedies applies in the instant Petition.

29. The preliminary objection protests jurisdiction of this Court based on the doctrine of exhaustion of remedies. The 1st respondent argued that the petitioner did not exhaust the available statutory remedies under the *Public Procurement and Asset Disposal Act* Number 33 of 2015 before instituting this Petition.

30. The petitioner on the other hand asserted the issues raised in the petition are varied and are not solely about the procurement process. Further that the dispute resolution mechanisms alluded to by the 1st Respondent are not adequate to resolve the present dispute since the petitioner was not a tenderer so as to benefit from the provisions of the said Act hence the only recourse was to approach this Court for redress.



31. Black's Law Dictionary Tenth Edition defines "exhaustion of remedies doctrine" as follows: "The doctrine that if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine purpose is to maintain comity between the courts and administrative agencies and ensure that courts will not be burdened by cases in which judicial relief is unnecessary..."
32. In *Geoffrey Muthinja Kabiro v Samuel Muguna Henry* [2015] eKLR the Court of Appeal made the following remarks in regard to the doctrine:
- “ ... It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution ...”
33. Nevertheless, the doctrine is not without exceptions as was held by the Court of Appeal in the case of *William Odhiambo Ramogi & 3 others* (supra). The Court stated:
- “ 59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Ex Parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:
- What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)
60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.



61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR."
34. In matters where the exhaustion remedies principle is raised, the bottom line is not that the Court lacks jurisdiction in the strict sense, but rather what the Court appreciates is that it must give deference to other institutions which have been legally established and given the primary jurisdiction to resolve such disputes.
35. The question to consider therefore is whether the doctrine of exhaustion remedies applies in the instant petition. The 1st Respondent argued that the Petition does not raise any constitutional issues but alleged irregularities and illegalities on the tendering process which could be dealt with under the provisions of the Public Procurement and Assets Disposal Act, No. 33 of 2015 which the Petitioner had deliberately overlooked.
36. The petitioner on the other hand contended that there are no clear mechanisms in the Public Procurement and Assets Disposal Act and the assumption the Petition only raises matters of procurement is erroneous.
37. The first issue to deal with is whether this Petition is principally about matters of procurement or not. To decide this question, I need to examine the prayers in the Petition. The prayers are seven in total. They include- declaratory orders to the following effect:
- i. there was no valid contract between the 1st Respondent and 2nd Respondent for supply of the 37 computed Tomography (CT) scan machines (my view is this prayer is procurement related);
 - ii. declaring that the award of contract to the 1st Respondent for supply of 37 computed Tomography (CT) Scan machines by the 2nd Respondent was in violation of *the Constitution* (this too is procurement related);
 - iii. declaration that the 1st, 2nd and 3rd Respondent failed to safeguard the public interest and the common good by ensuring the procurement for 37 computed Tomography (CT) Scan machine was done according to the law (although there is addition of 2nd and 3rd Respondent in this prayer, this addition does not change the intrinsic character of this prayer as procurement related);
 - iv. An order declaring the tender awarded to the 1st Respondent and consequent procurement of the CT scan machine was not procured through competitive bidding as required by laws of Kenya (this prayer is unmasked, it is purely procurement related);
 - v. An order restraining the 1st Respondent, by its Directors or through its agents or representatives, or any person claiming through them from transacting any business with the Government of Kenya (reading this in context, it is related to the substance of the Petition hence it is also based on procurement related business, not any other business);
 - vi. An order compelling the 1st interested Party to criminally investigate and, if culpable, instruct the 2nd interested party, to criminally investigate any public officers, including officers and



officials of the 1st, 2nd and 3rd Respondent who were involved in the shambolic and fraudulent procurement process. (In the performance of his functions, the DPP cannot be directed or controlled by any person, it is thus not possible for the court to direct the DPP to prosecute hence the order as framed is faulty).

- vii. This prayer is general, it asks the the Court to give any other orders required to advance the cause of justice and the rule of law.
 - viii. Finally, is prayer for costs.
38. Consequently, despite spirited denials by the Petitioner that his Petition is not based on procurement related complaint, the analysis of the prayers gives sufficient indication that this is indeed the case. The Petition is founded on complaints concerning a specific tender that was awarded to the 1st Respondent.
39. In that regard, the Petitioner cannot escape from the provisions that regulate procurement related complaints under the Procurement and Assets Disposal Act No. 33 of 2015. Considering that the Petition revolves around the need to conduct investigations over alleged irregularities and/or illegalities pertaining to procurement of the said contract awarded to the 1st Respondent, it is my finding that the first port of call should be to look at what the Public Procurement Act requires in regard to lodging such complaints. The Act establishes Public Procurement Regulatory Authority under Section 8 of the Public Procurement and Assets Disposal Act No. 33 of 2015 and gives it powers which under Section 9 (h) include ‘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.’
40. The power to act on such complaints from the members of public is reiterated under Section 35 which is specifically devoted to investigations by the Authority. Under Section 35 (1) as read with Section 35 (2), ‘any person’ may request the Authority in writing to conduct investigations for purposes of determining whether there has been a breach of the Act or regulations made thereunder.
41. I am thus persuaded that the petitioner, being a member of public could lodge his complaint pertaining to the issues raised against the procurement subject of this Petition with the Public Procurement Regulatory Authority first. I would be going against the doctrine of exhaustion remedies if I proceed to deal with this Petition in the wake of express statutory procedures which the Petitioner glaringly disregarded in filing this petition.
42. I uphold this preliminary objection and hereby strike out this Petition. The Petition was filed in public interest considering that the Petitioner does not seek any personal relief. I thus order that each Party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH, 2024.

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L N MUGAMBI

JUDGE

