

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**NOTICE MOTION DATED 23<sup>RD</sup> FEBRUARY 2023 FILED IN**

**APPLICATION NO.55/2022 DATED 29<sup>TH</sup> JUNE 2022**

**BETWEEN**

**RENTCO AFRICA LIMITED ..... APPLICANT**

**AND**

**THE ACCOUNTING OFFICER,**

**KENYA ELECTRICITY TRANSMISSION CO. LTD ... 1<sup>ST</sup> RESPONDENT**

**KENYA ELECTRICITY TRANSMISSION CO. LTD ... 2<sup>ND</sup> RESPONDENT**

Notice of Motion dated 23<sup>rd</sup> February 2023 in Request for Review against Review with respect to Tender No KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model.

**BOARD MEMBERS PRESENT**

1. Mrs. Njeri Onyango - Panel Chairperson
2. Mrs. Irene Kashindi - Member
3. QS. Hussein Were - Member

**IN ATTENDANCE**

Philemon Kiprop - Holding Brief for Acting Secretary to the Board

## **BACKGROUND TO THE DECISION**

The Respondents invited interested candidates to submit their Expression of Interest for Provision of a Commercial Tier IV Data Centre Solution and five (5) firms submitted their responses. These were;

- i. Canovate Electronics
- ii. El Sewedy Technology-Egypt
- iii. MTN Business (K) Limited
- iv. RENTO Africa Limited in Partnership with China Mobile Limited, China Communication Services and iXAfrica Data Centre.
- v. Sterling and Wilson Pvt Limited

The Respondents only determined two (2) tenderers/firms as being responsive to the Expression of Interest (EOI). These were El Sewedy Technology-Egypt and RENTCO Africa Limited in Partnership with China Mobile Limited, China Communication Services and iXAfrica Data Centre. The Respondents subsequently issued the two (2) tenderers/firms with blank tender documents for Tender No KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model (hereinafter referred to as the 'subject tender') and only RENTCO Africa Limited in Partnership with China Mobile Limited, China Communication Services and iXAfrica Data Centre responded to the Request for Proposal.

## **REQUEST FOR REVIEW NO.55 OF 2022**

Rentco Africa Limited, the Applicant herein, lodged the Request for Review No.55 of 2022 with respect to the subject tender seeking for the Board to:

- 1. Extend the tender validity period which expires on 29<sup>th</sup> June 2022 and to extend the same for a further Sixty (60) days from 29<sup>th</sup> June 2022 to enable the Applicant undertake the subject tender according to the criteria set out in the Tender Document, the Public Procurement and Asset Disposal Act 2015, the Regulations thereunder and the Constitution.***
- 2. Make no order as to costs.***

The Board considered the parties' pleadings, documents, written submissions, the list and bundle of authorities together with the confidential documents submitted by the Respondents to the Board pursuant to Section 67(3) (e) of the Public Procurement Asset and Disposal Act, 2015 (hereinafter referred to as the 'Act') and found the following issues called for determination:

- 1. Whether the Respondent terminated the subject tender's procurement proceedings in accordance with Section 63 of the Act on account that material governance issues were detected to divest the Board of its jurisdiction by dint of Section 167(4)(b) of the Act;**
- 2. Whether the Board could extend the tender validity period;**

**3. Whether the Applicant had locus to file the instant Request for Review having submitted its Tender in a partnership.**

Depending on the determination of the first issue;

**4. Whether the tender validity period of the subject tender had expired; and**

**5. What were the appropriate orders the Board should grant in the circumstances.**

On the first issue framed for determination, this Board found the substantive and procedural statutory pre-conditions under Section 63(1) (e), (3) and (4) of the Act were not satisfied when terminating the procurement proceedings of the subject tender thus the termination was not proper and could not oust the Board's jurisdiction by dint of Section 167(4) (b) of the Act.

On the second issue framed for determination, this Board found it had wide powers under Section 173 of the Act and could extend the tender validity period as many times as possible and could not therefore shy away from extending validity period where it is due rightly, and before the tender validity had lapsed.

On the third issue framed for determination, this Board noted that the 2<sup>nd</sup> Respondent apart from raising a Preliminary Objection on locus, did not



support its Preliminary Objection and therefore, in the absence of such proof the Board proceeded to disallow the preliminary objection.

On the fourth issue framed for determination, this Board found the tender validity period for the subject tender lapsed on 28<sup>th</sup> May 2022 and any subsequent extension was null and void.

On the fifth issue framed for determination, this Board having found that the tender validity had expired declined to extend an already expired tender validity.

On 20<sup>th</sup> July 2022 and in exercise of the powers conferred upon it under the Act, the Board made the following orders with respect to the Request for Review No.55 of 2022 dated 29<sup>th</sup> June 2022:

- 1. The Request for Review dated 29<sup>th</sup> June 2022 in regard to the subject tender is hereby dismissed.***
- 2. Given the findings of the Board in this decision, each party shall bear its own costs in this Request for Review.***

**NAIROBI HIGH COURT JUDICIAL REVIEW MISCELLANEOUS  
APPLICATION NO.E100 OF 2022**

Dissatisfied with the Decision of the Board dated 20<sup>th</sup> July 2022, the Applicant sought judicial review by the High Court in Nairobi wherein Justice A.K.

Ndungu allowed the same while making the following orders on 21<sup>st</sup> September 2022:

- 1) An order of certiorari be and is hereby issued to bring to the Honourble court for purposes of quashing the decision of the 1<sup>st</sup> Respondent (the Board) dated 20<sup>th</sup> July 2022 and issued on 2<sup>nd</sup> August 2022 dismissing the Applicant's Request for Review in PPARB NO.55 of 2022.***
- 2) An Order of Mandamus to compel the 1<sup>st</sup> Respondent to exercise its powers under Section 173(b) to extend the tender validity period of the subject tender for a period of 60 days or such period that it deems necessary for the 2<sup>nd</sup> Respondent to conclude the subject tender process.***
- 3) A declaration be and is hereby issued that the 2<sup>nd</sup> Respondent's failure to conclude the due diligence and award the contract is an abuse of the procurement process and their power thus in contravention of the provisions of Article 227(1) of the Constitution and the Public Procurement and Asset Disposal Act NO.33 OF 2015.***
- 4) Each Party to bear their own costs.***

**FINAL ORDER BY THE BOARD DATED 27<sup>TH</sup> SEPTEMBER 2022 IN REQUEST FOR REVIEW NO.55 OF 2022**

Pursuant to the order of mandamus compelling this Board to exercise its powers under Section 173(b) of the Public Procurement and Asset Disposal Act, 2015, to extend the tender validity period of Tender No KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model for a period of 60 days or such period that the Board deems necessary for the 1<sup>st</sup> Respondent to conclude the tender process, issued by Judge A.K. Ndungu as Order 2) in Judicial Review Miscellaneous Application No.E100 of 2022 Republic v Public Procurement Administrative Review Board and The Accounting Officer, Kenya Electricity Transmission Company Limited; Ex Parte Rentco Africa Limited the Board, on 27<sup>th</sup> September 2022, **ORDERED**;

***1. THAT the tender validity period of Tender No KETRACO-ST 009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model be and was thereby extended for a period of 182 days from 28<sup>th</sup> May 2022.***

#### **NAIROBI COURT OF APPEAL CIVIL APPEAL NO.E755 OF 2022**

Dissatisfied with the Decision of Justice A. K. Ndungu of 21<sup>st</sup> September 2022, the 1<sup>st</sup> Respondent appealed to the Court of Appeal in Nairobi wherein Justices D. K. Musinga, Dr. K. I. Laibuta and M. Gachoka struck out the appeal for being incompetent on 21<sup>st</sup> December 2022.



## **NOTICE OF MOTION DATED 3<sup>RD</sup> JANUARY 2023**

On 3<sup>rd</sup> January 2023, Rentco Africa Limited, the Applicant herein, filed before the Board a Notice of Motion Application dated 3<sup>rd</sup> January 2023 with respect to the subject tender seeking the following orders:

1. ***THAT this Honourable Review Board be pleased to extend the tender validity period of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model for a period of 30 days or such period that it deems necessary for the conclusion of the subject procurement process.***
2. ***THAT this Honourable Review Board be pleased to direct and compel the 1<sup>st</sup> Respondent to issue the Applicant with a letter of award and a procurement contract in respect of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model within 7 days of the date of Review Board decision.***
3. ***THAT this Honourable Review Board be pleased to issue such other or further relief as it may deem just and expedient to grant.***
4. ***THAT the costs of and incidental to this application be provided for.***



The Board considered the parties' pleadings, documents, written submissions, the list and bundle of authorities and found the following issues called for determination:

- 1. Whether the Board is *functus officio* and bereft of jurisdiction to entertain the Notice of Motion Application on grounds that in its Decision dated 20<sup>th</sup> July 2022, it dismissed Request for Review No.55 of 2022 and the proceedings herein was wholly determined in July 2022 respectively;**

Depending on the determination of the first issue;

- 2. Whether the Board should grant the orders sought in the Notice of Motion application.**

Before proceeding to address the issues framed for determination, the Board noted that it was constrained to entertain and make a determination on the allegation of failure by the Applicant to rely a law in filing the application nor there being no law that supports filing of such an application because doing so would contravene the rules of natural justice that require the Applicant to be heard on the same before the Board makes a determination.

On the first issue framed for determination, this Board found that the Notice of Motion application had more to do with moving the file towards closure and making the Decision of Justice A.K. Ndungu dated 21<sup>st</sup> September 2022

as complied with by the Board vide the Decision of the Board dated 27<sup>th</sup> September 2022 final rather than re-opening the dispute for determination on the merits and declined to hold that it was *functus officio* or bereft of jurisdiction to entertain the Notice of Motion application on grounds that the Board in its non-existent Decision dated 20<sup>th</sup> July 2022 dismissed Request for Review No.55 of 2022 and the proceedings therein were wholly determined in July 2022 respectively.

On the second issue framed for determination, this Board granted orders directing the 1<sup>st</sup> Respondent to award the subject tender to the Applicant and issue a contract for the same to the Applicant.

Further to ensure that its orders in the Notice of Motion Application dated 3<sup>rd</sup> January 2023 were complied with by the Respondents, the Board directed that a copy of its decision be shared with the Director General of the Public Procurement Regulatory Authority to ensure compliance.

On 24<sup>th</sup> January 2023 and in exercise of the powers conferred upon it under the Act, the Board made the following orders with respect to the Notice of Motion Application dated 3<sup>rd</sup> January 2023:

- 1. The tender validity period of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and**

***Commercial Operation of Tier IV Data Centre on a Revenue Share Model be and is hereby extended for a further period of 90 days from 26<sup>th</sup> November 2022 to enable the Respondents conclude the subject tender's procurement proceedings taking into account the findings of the Board in this decision.***

- 2. The 1<sup>st</sup> Respondent be and is hereby directed to award and notify the Applicant of such an award of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model in accordance with Section 86 and 87 of the Act respectively within 7 days of the date of this decision.***
- 3. The Respondents be and are hereby directed to enter into a procurement contract with the Applicant with respect to Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model in accordance with Section 135 of the Act and before the expiry of the tender validity that has been further extended for a period of 90 days from 26<sup>th</sup> November 2022.***
- 4. Given the findings of the board in this decision, each party shall bear its own costs in the Notice of Motion application dated 3<sup>rd</sup> January 2023.***



## **NOTICE OF MOTION DATED 23<sup>RD</sup> FEBRUARY 2023**

On 23<sup>rd</sup> February 2023, Rentco Africa Limited, the Applicant herein, filed before the Board a Notice of Motion Application dated 23<sup>rd</sup> February 2023 (hereinafter referred to as "the Notice of Motion application") together with a Supporting Affidavit sworn on 23<sup>rd</sup> February 2023 by Robert Nyasimi, the Managing Director of the Applicant, through the firm of Caroline Oduor & Associates Advocates seeking the following orders:

- 1. THAT this Honourable Review Board be pleased to extend the tender validity period of Tender No. KETRACO-ST-009-2021 for Request for Proposals for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model for a further period of 90 days or such period that it deems necessary for the conclusion of the subject procurement process.***
- 2. THAT this Honourable Review Board be pleased to issue such other or further relief as it may deem just and expedient to grant.***
- 3. THAT the cost of and incidental to this application be provided for.***

In letters dated 24<sup>th</sup> February 2023, the Acting Board Secretary, Mr. James Kilaka, notified the Respondents of, *inter alia*, the existence of the Notice of



Motion application while forwarding to the Respondents a copy of the Notice of Motion application together with the Board's Circular No. 02/2020 dated 24<sup>th</sup> March 2020, detailing administrative and contingency measures to mitigate the spread of Covid-19. Further, the Respondents were requested to submit a response to the instant Notice of Motion application together with confidential documents concerning the subject tender within five (5) days from 24<sup>th</sup> February 2023.

On 1<sup>st</sup> March 2023, parties filed with the Board Secretary a Consent dated 28<sup>th</sup> February 2023 executed by Samwel Rambo, advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Caroline Oduor & Associates Advocate for the Applicant.

### **APPLICANT'S CASE**

The Applicant states that the respondents have since complied with the Board's Order number 2 issued on 24<sup>th</sup> January 2023 in its decision in Notice of Motion Application dated 3<sup>rd</sup> January 2023 and have issued the Applicant with a Notification of Award dated 1<sup>st</sup> February 2023.

The Applicant further states that accepted the Award by a letter dated 9<sup>th</sup> February 2023 though parties are yet to sign a contract in relation to the subject tender.

The Applicant avers that it made verbal inquiries from the Respondent on the status of the procurement contract and in respect of which the Respondent indicated that it was in the process of seeking external legal assistance to prepare the requisite contract in view of the complex nature of the subject tender.

It is the Applicant's case that whereas the Board had extended the tender validity period by 90 days as per order number 1 in its decision in Notice of Motion Application dated 3<sup>rd</sup> January 2023 issued on 24<sup>th</sup> January 2023, the actual time frame available to parties was in fact 30 days noting that the extension was backdated to commence on 26<sup>th</sup> November 2022.

As such, the Applicant believes that the Respondent are keen on ensuring full compliance with the Board's orders and avers that it is necessary to extend the tender validity period of the subject tender to allow completion of the procurement process in accordance with provisions of section 135 of the Act. Further, the Applicant avers that an extension by 90 days will accord parties sufficient time to complete the procurement process without having to revert to the Board once again.

The Applicant asserts that the Board is empowered by provisions of section 173 of the Act to issue the prayers sought.

**PARTIES CONSENT TO THE APPLICANT'S NOTICE OF MOTION  
DATED 23<sup>RD</sup> FEBRUARY 2023**

The Consent dated 28<sup>th</sup> February 2023 (herein after referred to as "the consent") states as follows:

".....

***CONSENT***

**(Applicant's Notice of Motion dated 23<sup>rd</sup> February 2023)**

***By consent of the parties:***

- 1. The Tender The Tender Validity period of Tender No. KETRACO-ST-009-2021 for request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on Revenue Share Model be and is hereby extended for a further period of 90 days from 27<sup>th</sup> February 2023 to 26<sup>th</sup> May 2023 for the conclusion of the subject procurement process.***
- 2. The matter be marked as settled and each party bears its own costs.***

***Dated at Nairobi this 28<sup>th</sup> February 2023***

***.....signed.....***

***SAMWEL RAMBO 28.02.2023***

***ADVOCATES FOR THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENT***

.....*signed & stamped*.....

***CAROLINE ODUOR & ASSOCIATES***

***ADVOCATES FOR THE APPLICANT    "***

### **BOARD'S DECISION**

The Board has considered the Applicant's pleadings and parties' consent and finds the following issue calls for determination:

**Whether the Board should grant the orders sought in the Notice of Motion application.**

The Applicant seeks for an order of extension of the subject tender's tender validity for a period of 90 days or such period that the Board deems necessary for the conclusion of the subject tender's procurement process. At ground c) of the Notice of Motion application and paragraph 5 of the Supporting Affidavit sworn by Robert Nyasimi on 23<sup>rd</sup> February 2023, the Applicant states that the Respondents have since complied with the Board's Order No. 2 issued on 24<sup>th</sup> January 2023 in Notice of Motion Application dated 3<sup>rd</sup> January 2023 in that the Respondents have since issued it with a Notification of Award dated 1<sup>st</sup> February 2023 which was annexed and marked as Exhibit RN1.



Further at ground d) of the Notice of Motion application and paragraph 6 of the Supporting Affidavit sworn by Robert Nyasimi on 23<sup>rd</sup> February 2023, the Applicant states that it subsequently accepted the award through a letter dated 9<sup>th</sup> February 2023 which was annexed and marked as Exhibit RN2.

The Applicant contends that a further extension of the tender validity period is necessary to ensure that parties act within the law for purposes of executing the procurement contract for the subject tender and argues that an extension of 90 days will accord the parties sufficient time to complete the procurement process without having to revert to the Board once again.

We note that the gist of the Notice of Motion application is on extension of the tender validity period of the subject tender for a further period of 90 days for the conclusion of the procurement process. We are cognizant of the provisions of section 88 of the Act which provides for extension of tender validity period as follows:

***"88. Extension of tender validity period***

- (1) Before the expiry of the period during which tenders shall remain valid the accounting officer of a procuring entity may extend that period.***

- (2) The accounting officer of a procuring entity shall give in writing notice of an extension under subsection (1) to each person who submitted a tender.**
- (3) An extension under subsection (1) shall be restricted to not more than thirty days and may only be done once.**
- (4) For greater certainty, tender security shall be forfeited if a tender is withdrawn after a bidder has accepted the extension of bidding period under subsection (1).**

In essence, the accounting officer of a procuring entity (a) may extend the tender validity period before expiry of such period; (b) give a written notice to tenderers of the extension of the tender validity period; (c) is restricted to extending the tender validity period for not more than thirty (30) days; and (d) is restricted to only extending the tender validity period once.

Section 173 of the Act donates wide discretionary powers to the Board and provides:

**"173. Powers of Review Board**

***Upon completing a review, the Review Board may do any one or more of the following—***

- (a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings,***

- including annulling the procurement or disposal proceedings in their entirety;*
- (b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;*
  - (c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;*
  - (d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and*
  - (e) order termination of the procurement process and commencement of a new procurement process."*

The Court of Appeal in ***Civil Appeal No. 510 of 2022 Chief Executive Officer, the Public Service Superannuation Fund Board of Trustees v CPF Financial Services Limited & 2 others [2022] KECA 982 eKLR*** referred to the decision of **Onyiego, J. in Republic v Public Procurement Administrative Review Board; Rhombus Construction Company Limited (Interested Party) Ex Parte Kenya Ports Authority & Another [2021]** in addressing the power of the Board to direct a procuring entity to extend the validity period of the tender and held that:

***"39. The crux of the issue in controversy is whether the Respondent (Review Board) has powers in law to order or direct the accounting officer of the Ex-parte Applicant as a***



*procuring entity to extend the validity period of the subject tender more than once. Section 88 of the Act (PPDA) provides for the extension of the tender validity period...*

- 40.** *What was the intention of the drafters of this legislation and in particular the inclusion of Section 88? In my view, this provision was intended to guard against any possible mischief or abuse of office or power by accounting officers especially where uncontrolled timelines will give them a free hand to temper with the tendering process to favour their friends or closely related persons. In other words, once the already extended validity period for a period of 30 days lapses, the tendering process in respect of that tender becomes moot or rather it extinguishes (sic). Upon lapsing, the Procurement entity is at liberty to re-advertise for fresh tendering and the process then follows the full circle like it was never tendered for before.*
- 41.** *Therefore, the foregoing provision permits extension of a tender validity period by an accounting officer only once and that extension must be made before the expiry of the already stipulated tender validity period. It is common knowledge that one cannot extend time that has already lapsed...*



48. *From the plain reading of that Section, it is only applicable and binding on the accounting officer and nobody else. Nothing would have been easier than [for] the legislators to include or provide the Review Board's mandate under that section. To that extent, I do agree with counsel for the I/Party that Section 88(3) of the Act does not bar the Review board from making decisions that are deemed to be necessary for the wider attainment of substantive justice...*
49. *Under section 173(a)(b) & (c) of the Act, the Board has wide discretionary powers for the better management of tendering system to direct the doing or not doing or redoing certain acts done or omitted from being done or wrongly done by the accounting officer. Although the Act does not expressly limit the powers of the Board from extending tender validity period more than once, one can imply that the powers conferred upon the Review board includes powers to extend validity period to avert situations where the accounting officer can misuse powers under Section 88 to frustrate tenderers or bidders not considered favourable."[Emphasis ours]*

The import of the aforementioned Court of Appeal case is that the Board has power to extend the tender validity period in order to meet the ends of justice, depending on the circumstances.

We have taken note of the consent by the parties as reproduced above. We do not believe that the law allows or envisages that the parties can enter to such a consent to extent the tender validity given the provisions of the Act as considered with judicial precedent. As such, we will not make any orders adopting the consent as an order of this board save to note that the consent signifies that the application is not contested by the Respondents.

Taking into account the grounds given by the Applicant in support of the application, and there being no contest by the Respondents, and also bearing in mind the applicable statutory provisions and judicial precedent, the Board believes it is necessary to extend the subject tender's validity period for a further ninety (90) days to enable the Respondents comply with the Orders of the Board issued on 24<sup>th</sup> January 2023 by signing a contract with the Applicant in line with provisions of section 135 of the Act.

The Board therefor allows the application for interest of justice, in order to allow the completion of the procurement process.

We note that the subject tender's validity period was supposed to expire on 26<sup>th</sup> February 2023 after the Board extended it. The Notice of Motion application having been filed on 23<sup>rd</sup> February 2023 was filed three (3) days before expiry of the subject tender's validity period.

We note that the subject tender's validity period was supposed to expire on 26<sup>th</sup> February 2023 after the Board extended it. The Notice of Motion application having been filed on 23<sup>rd</sup> February 2023 was filed three (3) days before expiry of the subject tender's validity period.

In the circumstance, we deem it fit and just to extend the subject tender's validity period by a further ninety (90) days from 26<sup>th</sup> February 2023 and to direct the 1<sup>st</sup> Respondent ensure that it completes the procurement process within this period.

Accordingly, the Notice of Motion application succeeds in terms of the final orders issued hereinafter.

### **FINAL ORDERS**

In exercise of the powers conferred upon it under the Act, the Board grants the following orders in the Notice of Motion application dated 3<sup>rd</sup> January 2023 :-

- 1. The tender validity period of Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model be and is hereby extended for a further period of 90 days from 26<sup>th</sup> February 2023.**

2. The Respondents be and are hereby directed to ensure that a contract with respect to Tender No.KETRACO-ST-009-2021 for Request for Proposal for Design, Construction and Commercial Operation of Tier IV Data Centre on a Revenue Share Model is signed in accordance with Section 135 of the Act before the expiry of the tender validity that has been further extended for a period of 90 days from 26<sup>th</sup> February 2023.
3. Given the findings of the Board in this decision, each party shall bear its own costs in the Notice of Motion application dated 23<sup>rd</sup> February 2023.

Dated at Nairobi this 16<sup>th</sup> Day of March 2023.

  
.....  
**VICE CHAIRPERSON**  
**PPARB**

  
.....  
**SECRETARY**  
**PPARB**