

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 32/2025 FILED ON 19TH MARCH 2025

BETWEEN

PEESAM LIMITED APPLICANT

AND

**THE ACCOUNTING OFFICER,
KENYA AIRPORTS AUTHORITY 1ST RESPONDENT**

KENYA AIRPORTS AUTHORITY 2ND RESPONDENT

AND

HANNANELI SUPPLIERS LIMITED.....INTERESTED PARTY

Review against the decision of the Accounting Officer, Kenya Airports Authority, in relation to TENDER NO. KAA/OT/MIA/0043/2024-2025 – Provision of Cleaning Services for Washrooms at Moi International Airport.

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP Chairperson

Mr. Joshua Kiptoo Member

Mr. Alexander Musau Member



IN ATTENDANCE

Ms. Sarah Ayoo

Holding brief for Acting Board
Secretary

Mr. Erickson Nani

Secretariat

PRESENT BY INVITATION

APPLICANT

PEESAM LIMITED

Mr. Karugu Mbugua

Advocate, Karugu Mbugua & Company
Advocates

Samuel Mburu Nganga

Director, Peesam Limited

RESPONDENTS

THE ACCOUNTING OFFICER, KENYA AIRPORTS AUTHORITY

KENYA AIRPORTS AUTHORITY

Mr. Chris Mulili

Advocate, Kenya Airports Authority



BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Airports Authority (hereinafter referred to as the "Procuring Entity"), in collaboration with the Accountant of the Procuring Entity (hereinafter referred to as the "1st Respondent"), invited tenders through the open tendering method in response to TENDER NO. KAA/OT/MIA/0043/2024-2025 – Provision of Cleaning Services for Washrooms at Moi International Airport (hereinafter referred to as the "subject tender"). In accordance with the instructions contained on page 5 of the Tender Document, bidders were required to submit their bid documents online on or before 28th November 2024 at 11:00 A.M.

Addenda

2. The Procuring Entity issued a series of four Addendums and one Clarification, dated 6th January 2025, to provide updates on the tender process. Addendum No. 1, dated 28th November 2024, extended the tender submission deadline from 28th November 2024 to 5th December 2024 at 11:00 A.M. Addendum No. 2, dated 29th November 2024, provided various clarifications but upheld the original tender submission deadline. Addendum No. 3, dated 4th December 2024, offered further clarifications and extended the tender submission deadline to 9th January 2025 at 11:00 A.M. Addendum No. 4, dated 2nd January 2025, issued additional clarifications while maintaining the tender submission deadline. Lastly, Clarification No. 1, dated 6th January 2025, provided further clarifications, also maintaining the tender submission deadline.



Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes and the Tender/Quotation Register, both dated 9th January 2025, which were submitted to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the Respondents in accordance with Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as the 'Act'), a total of six (6) tenders were submitted in response to the subject tender. The tenders were recorded as follows:

NO.	Tenderer
1.	Joymacx Enterprises
2.	Glacier East Africa Limited
3.	Jajijole Real Movers Enterprises
4.	Magic Edge Ventures Limited
5.	Hannaneli Suppliers Limited
6.	Peesam Limited

Evaluation of Bids

4. According to the Evaluation Report dated 4th February 2025, the Tender Evaluation Committee (hereinafter referred to as the 'Evaluation Committee') convened to assess the tenders. The evaluation process was conducted in three stages, as outlined below:

- a. Preliminary Evaluation
- b. Technical Evaluation
- c. Financial Evaluation



Preliminary Evaluation

5. The Evaluation Committee was tasked with assessing the tenders for responsiveness based on the criteria outlined in Section III – Evaluation and Qualification Criteria, located on pages 30 to 32 of the Tender Document. Only those tenders that met all mandatory requirements at this stage were eligible to proceed to the Technical Evaluation.
6. At the conclusion of this evaluation stage, three (3) tenders were deemed non-responsive, while three (3) tenders, including the Applicant's, met the requirements and were declared responsive. Only the responsive tenders advanced to the Technical Evaluation stage.

Technical Evaluation

7. The Evaluation Committee was tasked with assessing the tenders for responsiveness based on the Technical Evaluation Criteria set out in Section III – Evaluation and Qualification Criteria, located on pages 33 to 34 of the Tender Document.
8. At the conclusion of this evaluation stage, all three (3) tenders were deemed responsive and, therefore, proceeded to the Financial Evaluation stage.

Financial Evaluation

9. The Evaluation Committee was tasked with assessing the tenders based on the Financial Evaluation criteria outlined in Section III – Evaluation and Qualification Criteria, located on page 34 of the Tender Document. The bidder, among those qualified in the previous evaluation stage, with the lowest evaluated tender price, as submitted and read out



during the tender opening, will be recommended for award, subject to due diligence.

10. The Evaluation Committee conducted a financial comparison of the three bidders, as outlined below:

Bidder No.	Bidder Name	Total Amount Inclusive of 16% VAT	Ranking
1	Joymacx Enterprises	95, 501, 222.45	3
5	Hannaneli Suppliers Ltd	91, 767, 323.40	1
6	Peesam Ltd	94, 377, 889.80	2

Evaluation Committee's Recommendation

11. The Evaluation Committee recommended awarding the subject tender to the Interested Party, Hanneli Suppliers Limited, as the lowest responsive evaluated bidder, with a tender sum of Kenya Shillings Ninety-One Million Seven Hundred Sixty-Seven Thousand Three Hundred Twenty-Three and Forty Cents (KES 91,767,323.40). The Evaluation Report further indicates that this recommendation is subject to due diligence.

Due diligence

12. In a Due Diligence Report dated 24th February 2025, submitted as part of the confidential documents, the Evaluation Committee made findings and recommendations to the effect that the tender be awarded to the



Interested Party as the lowest evaluated bidder.

Professional Opinion

13. In a Professional Opinion dated 4th February 2025 (hereinafter referred to as the 'Professional Opinion'), the General Manager – Procurement & Logistics of the Procuring Entity, Mr. Vincent Korir, reviewed the procurement process, including the evaluation of tenders, and concurred with the Evaluation Committee's recommendations regarding the award of the subject tender to the Interested Party.
14. The Professional Opinion was approved by the Acting Managing Director of the Procuring Entity, Mr. Nicholas Bodo, on 4th March 2025.

Notification to Tenderers

15. Tenderers were notified of the evaluation outcome of the subject tender by letters dated 4th March 2025.

REQUEST FOR REVIEW

16. On 19th March 2025, the Applicant, through the firm of Karugu Mbugua & Company Advocates, filed a Request for Review dated 18th March 2025. The application was accompanied by a Supporting Affidavit sworn on the same date by Samuel Mburu Nganga, the Applicant's Director. The Applicant sought the following orders:

a) The Letter of Award addressed to M/s Hannaneli Suppliers Limited with respect to the tender for Provision of Cleaning Services for Washrooms at Moi International



Airport Tender No. KAA/OT/MIA/0043/2024/2025 (hereinafter the 'tender') by the First respondent be annulled in it's entirety;

- b) The Honourable Board be pleased to re-evaluate the bids Joymacx Enterprises to ascertain their further affiliation;**
- c) The First Respondent be directed to strike of the interested party and Joymacx Enterprises from the procurement proceedings;**
- d) The Procuring Entity be directed to bring the procurement process to it's logical conclusion by awarding the tender to the second lowest evaluated bidder;**
- e) The 1st Respondent be directed to issue letters of intention to award contract to all participating bidders in the approved template with all details of the firms that participated with details of the successful bidder and at least one reason of rejecting the other bids;**
- f) The Board to recommend to the Director General PPRA to debar the two firms of Hannaneli Suppliers Limited and Joymacx Enterprises from tendering for giving false information against provisions of Competition Act 2010, regarding collusive practices; and**
- g) Any other orders that the Honorable Board may deem just**



and fit in the circumstances.

17. In a Notification of Appeal and a letter dated 19th March 2025, Mr. James Kilaka, the Acting Secretary of the Board notified the Respondents of the filing of the Request for Review and the suspension of the procurement proceedings of the subject tender, while forwarding to the said Procuring Entity a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th 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 Request for Review together with confidential documents concerning the subject tender within five (5) days from 19th January 2025.
18. On 25th March 2025, the Respondents jointly filed a Reply by the Procuring Entity, dated 24th March 2025. On the same day, they also submitted the Confidential Documents to the Board in accordance with Section 67(3) of the Act.
19. On 28th March 2025, the Acting Board Secretary issued a Hearing Notice dated 28th March 2025 to the parties, notifying them that the hearing of the Request for Review would be held virtually on 2nd April 2025 at 14:00 PM via the provided link.
20. On 31st March 2025, due to unavoidable circumstances, the Board issued a notice to all parties informing them that the hearing had been rescheduled from 2nd April 2025 to 3rd April 2025 at 2:00 P.M.



21. On 3rd March 2025, when the Board convened for the hearing, the Secretariat informed the Board that the Interested Party had been notified of the Request for Review only about an hour before the hearing. The Secretariat explained that this delay was due to a clerical error and expressed deep regret.
22. In light of the foregoing, the Board issued directions to adjourn the hearing to 7th April 2025 at 3:00 P.M. to allow the Interested Party to file any necessary documents. The Board also granted leave for the Applicant and the Respondent to file responses, if necessary, to the documents to be filed by the Interested Party.
23. On 7th April 2025, the Applicant filed a Further Affidavit sworn by Samuel Mburu Nganga, the Applicant's Director, on the same date. On the other hand, the Interested Party did not file any documents, despite being informed of the Request for Review and being given time to submit a response.
24. When the Board convened for the hearing on 7th April 2025 at 3:00 PM, the Applicant was represented by Mr. Karugu Mbugua, while the Respondents were jointly represented by Mr. Chris Mulili. The Board read out the pleadings filed by the parties, who confirmed that the documents had been duly filed and exchanged. The Secretariat informed the Board that the Interested Party had not filed any documents, despite being notified about the Request for Review.
25. The Board notified the parties that the Reply by the Procuring Entity had raised a preliminary objection regarding the jurisdiction of the



Board, on the grounds that the Request for Review had been filed outside the time limits set by Section 167(1) of the Act. However, Mr. Mulili informed the Board that they wished to withdraw the preliminary objection, having confirmed that the Request for Review was, in fact, filed within the required time. Consequently, the preliminary objection was withdrawn. The Board then allocated time to the parties for their respective submissions.

PARTIES SUBMISSIONS

Applicant's Submissions

26. Counsel for the Applicant, Mr. Mbugua, submitted that the Interested Party, as the successful tenderer, breached Section 66(1) of the Act, as it is an affiliate of Joymacx Enterprises, a bidder for the subject tender. This affiliation, he argued, provided the Interested Party with a competitive advantage over the Applicant and other bidders, contrary to Paragraph 3, Part A of the Tender Document.
27. Counsel contended that the Interested Party and Joymacx Enterprises are related, specifically pointing out that the two entities share staff. He submitted that, due to their relationship, the Procuring Entity should not enter into a contract with the Interested Party.
28. Counsel specifically referred the Board to paragraph 9 of the Supporting Affidavit sworn on 18th March 2025, which stated that one of the directors of the Interested Party is an employee of Joymacx Enterprises. This was based on the fact that the director had served as a witness in a garbage truck lease agreement between an entity named Gledix



Limited and Joymacx Enterprises.

29. Counsel further referred the Board to the Interested Party's Search Certificate (CR 12) and contended that the individual who signed as a witness in the garbage truck lease agreement for Joymacx Enterprises is also listed as a director of the Interested Party. Counsel submitted that the person who signed as a witness, Ann Ngugi, is the same individual listed on the Interested Party's CR 12 as Ann Wambui Ngugi.
30. Counsel submitted that both the Interested Party and Joymacx Enterprises share the same office, where Ann Ngugi serves as the office manager for both firms. Counsel further argued that this arrangement increases the likelihood of collusion to gain an unfair advantage over other competitors.

Respondent's Submissions

31. Mr. Mulili submitted that the Procuring Entity complied with the law in evaluating the bids. He further contended that, regarding the issue of collusion, the Applicant should have joined Joymacx Enterprises to the present proceedings.
32. Counsel submitted that the Applicant had not discharged its burden of proving collusion through the documents it had produced, asserting that the documents were insufficient. Counsel argued that the garbage truck lease agreement, as presented, had not been properly introduced before the Board, as it is a confidential document, and the Applicant had failed to explain how it obtained the document.



33. Counsel contended that the CR 12 and CR 13 documents produced by the Applicant show that the two companies have different directors. Therefore, Counsel argued that there is no evidence to establish any connection between the companies.

Applicant's Rejoinder

34. Mr. Mbugua submitted that, regarding the issue of the joinder of Joymacx Enterprises, the said Joymacx Enterprises was a bidder in the subject tender.
35. Counsel further submitted that the issue of how the garbage truck lease agreement was obtained is explained in paragraph 9 of the Supporting Affidavit. Counsel stated that the agreement was served upon the Applicant by Joymacx Enterprises in a different court matter.

CLARIFICATIONS

36. The Board sought clarification from the Applicant's Counsel regarding the directors of Joymacx Enterprises Ltd and the Interested Party, as well as how the two entities are legally related.
37. In response, Counsel for the Applicant stated that Joymacx Enterprises is a sole proprietorship, with its proprietor being Joyce Oyaro, while the directors of the Interested Party are Anna Wambui Chege and Ann Wambui Ngugi.
38. Counsel further clarified that, legally, the two entities are not related. However, Counsel stated that affiliation through third parties could create a conflict of interest.



39. The Board further sought clarification from the Applicant's Counsel on how third parties could create a conflict of interest.
40. In response, the Applicant's Counsel stated that the two entities share the same staff, as Ann Ngugi serves as the office manager for both. Counsel further argued that two affiliated entities should not bid separately for the same tender.
41. The Board sought clarification from the Respondents on whether the Procuring Entity had noted any concerns regarding the Interested Party and Joymacx Enterprises sharing the same staff.
42. In response, Mr. Mulili stated that both evaluation and due diligence had been conducted, and nothing was noted regarding collusion.
43. The Board further sought clarification from the Applicant's Counsel on whether it was aware that the two firms were affiliated with each other by the tender opening time, considering that the Applicant already had the garbage truck lease agreement and the judgment in which it was a party, along with the other firms.
44. In response, the Applicant stated that they were not aware of any affiliation between the two firms at the time the tenders were opened. Their suspicions arose only after receiving the notification letter, at which point they decided to conduct a search and subsequently obtained the CR-12.
45. The Board sought clarification from the Applicant's Counsel on how the



CR-12 and CR-13 demonstrate that the two entities are affiliated. The Board further inquired whether the Applicant wanted the Board to infer collusion based solely on the fact that a person named Ann Ngugi witnessed the garbage truck lease agreement and is also listed as Ann Wambui Ngugi on the CR-12. The Board specifically sought clarification on whether the Applicant had any evidence to justify this inference.

46. In response, the Applicant's Counsel stated that the documents annexed are the ones the Applicant seeks to rely on.

BOARD'S DECISION

47. The Board has considered all documents, submissions, and pleadings, including the confidential documents submitted pursuant to Section 67(3)(e) of the Act. Accordingly, the following issues arise for determination:

A. Whether there is sufficient evidence to establish the existence of collusion or any other practice prohibited under Section 66 of Act, between Joymacx Enterprises and the Interested Party.

B. What orders the Board should issue in the circumstance.

Whether there is sufficient evidence to establish the existence of collusion or any other practice prohibited under Section 66 of Act, between Joymacx Enterprises and the Interested Party.

48. The Applicant contended that the Interested Party, as the successful



tenderer, breached Section 66 of the Act by being an affiliate of Joymacx Enterprises, one of the bidders in the subject tender, thus gaining a competitive advantage over the Applicant and other bidders, contrary to Paragraph 3, Part A of the Tender document.

49. In support of its case, the Applicant produced a garbage truck lease agreement between Joymacx Enterprises and Gledix Limited, which was witnessed by a lady named Ann Ngugi. Counsel contended that Ann Ngugi is a director of the Interested Party, and to support this, a CR-12 for the Interested Party was produced, listing Ann Wambui Ngugi as one of the directors.
50. The Applicant further contended that the Interested Party and Joymacx Enterprises share both office space and staff. Counsel submitted that Ann Ngugi serves as the office manager for both firms, thereby creating the likelihood that they may collude to gain an unfair advantage over other competitors.
51. The Applicant further argued that both the Interested Party and Joymacx Enterprises are under common control, thereby creating a conflict of interest as contemplated under Clause 4.3 of the Tender document.
52. In response to the Request for Review, the Respondents argued that the procurement proceedings for the subject tender were conducted in strict compliance with the provisions of the Act and other applicable laws.
53. The Respondents further argued that the Applicant had not discharged



its burden of proving collusion through the documents it had produced.

54. Having considered the parties' submissions, we note that the central issue in this Request for Review is whether there was any collusion between the Interested Party and Joymacx Enterprises, in accordance with Section 66 of the Act.

55. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement—ensuring the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

227. Procurement of public goods and services

(1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –

a...



b...

c...

d...

56. The above Article of the Constitution provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to specific standards, one of which is **competitive fairness**. Competitive fairness in this context means that the procurement process must give all qualified suppliers an equal opportunity to compete for the contract without bias or favoritism. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This promotes integrity, value for money, and public trust in the procurement system.

57. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 66(1) and (3) of the Act, which forms the basis of the Applicant's case, provides that:

66. Corrupt, coercive, obstructive, collusive or fraudulent practice, conflicts of interest

(1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding.



(2) ...

(3) Without limiting the generality of the subsection (1) and (2), the person shall be—

(a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

(b) if a contract has already been entered into with the person, the contract shall be voidable.

58. The above section of the Act provides that a person to whom the Act applies shall not engage in any corrupt, coercive, obstructive, collusive, or fraudulent practices, or participate in procurement or asset disposal proceedings where there is a conflict of interest. Such conduct undermines the core principles of procurement, particularly competitive fairness, by distorting equal opportunity, impairing merit-based evaluation, and eroding public confidence in the integrity of the process. Ensuring a level playing field for all participants is essential to uphold fair competition and achieve value for public resources.

59. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

80. Evaluation of Tender

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders



rejected.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and,...

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-

(a) The criteria shall, to the extent possible, be objective and quantifiable;

(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and

(4)

60. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document. Furthermore, the Board interprets fairness in evaluation as one where no bidder colludes with others to the disadvantage of the other competitors.

61. During the hearing of the Request for Review, the Applicant contended that there was collusion between the Interested Party and Joymacx



Enterprises, one of the bidders for the subject tender, which disadvantaged the Applicant and other bidders. In support of its case, the Applicant's Counsel referred the Board to Paragraph 3, Part A of the Tender document and Clause 4.3(a) of the Tender document.

62. The Board has thoroughly reviewed the Tender document, specifically Paragraph 3, Part A, and Clause 4.3(a) of the Tender document, which have been reproduced below:

PART 1 – TENDERING PROCEDURE

SECTION 1 – INSTRUCTIONS TO TENDERERS

A. General

1.....

2....

3. Fraud and Corruption

3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), Section 62 'Declaration not to engage in corruption'. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.



3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the 'Certificate of Independent Tender Determination' annexed to the Form of Tender.

3.3 Unfair Competitive Advantage – Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the TDS and make available to all the firms together with this tender document all information that would in that respect gives such firm any unfair competitive advantage over competing firms.

3.4 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The Procuring Entity shall indicate in the TDS firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or



controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

4 Eligible Tenderers

4.1...

4.2...

4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

**(a) Directly or indirectly controls, is controlled by
or is under common control with another
Tenderer; or**

(b) ...

63. The sections of the Tender document cited above explicitly prohibit any form of fraud and corruption. They further stipulate that the tendering process should remain unaffected by any unfair competitive advantage. Additionally, they outline scenarios that may constitute a conflict of interest, one of which includes situations where a Tenderer directly or indirectly controls, is controlled by, or is under common control with



another Tenderer.

64. The Board observes that the provisions of the Tender document, when read together with section 66 of the Act, form the basis of the Applicant's allegations. Specifically, the Applicant contends that these provisions were violated by the Interested Party and Joymacx Enterprises, to the detriment of the Applicant and other bidders.
65. In determining the central issue, the Board highlights the mandatory provisions of Article 227(1) of the Constitution, which require that any procurement by a state organ or public entity for goods or services must be fair, transparent, and competitive. Failure to identify collusion between some bidders to the disadvantage of others would render the procurement process inconsistent with Section 66 of the Act.
66. In support of its case, the Applicant produced a garbage truck lease agreement between Joymacx Enterprises and Gledix Limited, which was witnessed by an individual named Ann Ngugi. The Applicant argued that this Ann Ngugi is a director of the Interested Party. In an attempt to substantiate this claim, the Applicant submitted the Interested Party's CR-12, which listed Ann Wambui Ngugi as one of its directors.
67. The Applicant further stated that the Interested Party and Joymacx Enterprises share an office, where Ann Ngugi serves as the office manager for both entities.
68. The Board has carefully examined the garbage truck lease agreement between Joymacx Enterprises and Gledix Limited, and confirms that it



was witnessed by a lady named Ann Ngugi. Additionally, the Board has reviewed the Interested Party's CR 12, which lists Anna Wambui Chege and Ann Wambui Ngugi as its directors. The Board has also perused the Search Certificate for Joymacx Enterprises and notes that the proprietor of the entity is Joyce Moraa Oyaro.

69. The Board notes that it is undisputed that the ownership of Joymacx Enterprises is not connected in any way to the ownership of the Interested Party. In fact, during the hearing, the Applicant's Counsel confirmed that, legally, there is no nexus between the ownership of the two entities.
70. Having stated the above, the Board now focuses on the issue of whether Ann Ngugi is the same person as Ann Wambui Ngugi. On this specific issue, the Board finds it difficult to accept that Ann Ngugi and Ann Wambui Ngugi are one and the same person. This is because the Applicant provided little to no evidence to substantiate the claim that Ann Ngugi and Ann Wambui Ngugi are indeed the same individual.
71. The Board is mindful of the provisions of Section 107(1) of the Evidence Act, which states that:

107. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

72. The above provision of the law indicates that any party seeking a



judgment regarding a legal right or liability that depends on the existence of certain facts bears the burden of proving those facts. In the context of procurement proceedings, this principle ensures competitive fairness by requiring that allegations, such as claims of collusion, must be substantiated with credible evidence.

73. It is a well-established principle of law that he who alleges must prove. In the present Request for Review, the Board finds that the Applicant has failed to substantiate any claims of collusion between the Interested Party and Joymacx Enterprises. In reaching this conclusion, we note that during the hearing, the Applicant's Counsel acknowledged that the evidence presented was limited, and instead urged the Board to infer collusion based on the available information.
74. The Board also notes that the allegations regarding Ann Ngugi being an employee of Joymacx Enterprises and simultaneously serving as a director of the Interested Party were not substantiated. The Applicant failed to present any supporting evidence, such as an employment contract, or any other relevant document, to demonstrate the existence of an employment relationship between Ann Ngugi and Joymacx Enterprises.
75. Furthermore, with regard to the claim that the Interested Party and Joymacx Enterprises share an office, the Board finds that this assertion is unsubstantiated, as the Applicant failed to provide any evidence to support it.
76. The weight of an allegation lies not in its sound, but in the strength of the proof behind it—he who asserts must carry the burden of evidence.



In the present Request for Review, the Board finds that the Applicant has failed to discharge this burden in relation to the allegations raised.

77. In light of the foregoing observations, the Board concludes that there is insufficient evidence to establish that collusion occurred between the Interested Party and Joymacx Enterprises, as prohibited under Section 66 of the Act.

What orders the Board should issue in the circumstance.

78. The Board finds that there is no evidence of collusion between the Interested Party and Joymacx Enterprises, as prohibited under Section 66 of the Act. Furthermore, the Board determines that the Procuring Entity conducted the evaluation and subsequent awarding of the subject tender to the Interested Party in compliance with the applicable procurement laws.
79. Consequently, the Request for Review dated 18th March 2025, concerning TENDER NO. KAA/OT/MIA/0043/2024-2025 – Provision of Cleaning Services for Washrooms at Moi International Airport, is hereby dismissed on the following specific grounds:

FINAL ORDERS

80. In the exercise of the powers conferred upon it by section 173 of the Act, the Board makes the following orders in the Request for Review dated 18th March 2025:

- 1. The Request for Review dated 18th March 2025 is hereby**



dismissed;

- 2. The 1st Respondent, the Accounting Officer, Kenya Airports Authority be and is hereby directed to proceed with and oversee the tender proceedings in respect to TENDER NO. KAA/OT/MIA/0043/2024-2025 – Provision of Cleaning Services for Washrooms at Moi International Airport to their logical and lawful conclusion;**
- 3. Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 9th day of April, 2025.



.....
CHAIRPERSON
PPARB



.....
SECRETARY
PPARB

