

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 67/2025 FILED ON 12TH JUNE 2025

BETWEEN

POLES AND POSTS

TREATMENT PLANT LTD.....APPLICANT

AND

THE ACCOUNTING OFFICER,

KENYA FOREST SERVICE.....RESPONDENT

AND

BROOKSIDE TIMBER LIMITED.....1ST INTERESTED PARTY

EVERGREEN EVER LIMITED.....2ND INTERESTED PARTY

Review against the decision of the Director, Kenya Forest Service, in relation to TENDER NO. KFS/DISP/90/2024-2025 – Disposal of Forest Plantation Materials in Kiambu County (Salvage).

BOARD MEMBERS PRESENT

Ms. Njeri Onyango SC

Panel Chairperson

Ms. Jessica M'mbetsa

Member

Mr. Daniel Langat

Member

IN ATTENDANCE

Ms. Dokatu Godana

Holding brief for Board Secretary

Mr. Erickson Nani

Secretariat

PRESENT BY INVITATION**APPLICANT****POLES AND POSTS TREATMENT PLANT LTD**

Mr. Ongeru

Advocate, Gicheha Kamau & Company
Advocates

RESPONDENT**ACCOUNTING OFFICER,
KENYA FOREST SERVICE**

Mr. Lutta

Advocate, Lutta & Company Advocates

1ST INTERESTED PARTY BROOKSIDE TIMBER LIMITED

Mr. Kisilah

Advocate, Sheth & Wathigo Advocates

2nd INTERESTED PARTY EVERGREEN EVER LIMITED

Mr. Amukhale

Advocate, Amukhale & Company Advocates

BACKGROUND OF THE DECISION

THE TENDERING PROCESS

1. The Kenya Forest Service (hereinafter referred to as "the Procuring Entity") invited tenders through the open tendering method pursuant to Tender No. KFS/DISP/90/2024-2025 for the Disposal of Forest Plantation Materials in Kiambu County (Salvage) (hereinafter referred to as "the subject tender"). According to the Tender Document, interested bidders were permitted to submit bids for various sub-compartments and portions, whether on a large-scale or small-scale basis. The deadline for submission of tenders was specified as 3rd April 2025 at 11:00 a.m.

Addendum

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as "the Board") by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as "the Act"), the Procuring Entity issued Addendum No. 1. The addendum revised the eligibility criteria for sub-compartments Thogoto 11C and Thogoto 12A, initially reserved for bidding by large-scale forest industry investors within and outside Kiambu County. Following the addendum, the said sub-compartments were now reserved for bidding by large-scale plywood investors within and outside Kiambu County.

3. Further, the addendum clarified that sub-compartment Kinale 10P (Portion 1–22), which was initially reserved for bidding by small-scale forest industry investors within and outside Kiambu County, would henceforth be reserved for bidding exclusively by small-scale forest industry investors within Kiambu County. It was further specified that the tender submission deadline would remain as 3rd April 2025.

1st Submission of Bids and Tender Opening

4. According to the Tender Register dated 3rd April 2025, which was submitted as part of the confidential documents, a total of ten (10) tenders were received in response to the subject tender. The tenders were recorded as follows:

NO.	Tenderer
1.	Matharu Sawmill
2.	Ascom Freighters and Logistics Limited
3.	Elwood Ventures
4.	Luchar Ventures
5.	Liton Limited
6.	Westlands Choma Stopover Limited
7.	Brookside Timber Limited
8.	Waranna AO Enterprises
9.	Janwill Enterprises Limited
10.	Evergreen Ever Limited

1st Evaluation of Bids

5. According to the confidential documents submitted to the Board, there was no evaluation report on record, indicating that the evaluation process had presumably not commenced.

REQUEST FOR REVIEW NO. 40 OF 2025

6. On 4th April 2025, the Applicant, through the firm of Gicheha Kamau & Company Advocates, filed a Request for Review dated the same day. The application was accompanied by a Statement in Support of the Request for Review, signed by Judy Muthoni Mwaura, a Director of the Applicant, and similarly dated 4th April 2025. In the said application, the Applicant sought the following orders:

a) Annul and or quash the decision of the procuring entity in the tender BID NO. KFS/DISP/90/2024-2025 dated MARCH 2025 restricting the eligible bidders in the small scale category to only those within Kiambu county.

b) Annul and or quash the decision of the respondent contained in the Tender Addendum No. 1 dated 27th March 2025 altering and restricting the eligible bidders in respect to sub-compartments Thogoto 11 (C) and Thogoto 12 (A) to large scale plywood investors within and outside Kiambu County.

c) Condemn the respondent to pay the cost of this request

for review to the applicant.

d) Such other orders the Honourable board may deem just and expedient.

7. On 25th April 2025, the Board, in exercise of the powers conferred upon it under the Act, issued the following orders in respect of Request for Review No. 24 of 2025:

a. The Respondent's Preliminary Objection dated 23rd April 2025 be and is hereby dismissed.

b. The Addendum No. 1 dated 27th March 2025 issued by the Procuring Entity in relation to TENDER NO. KFS/DISP/90/2024-2025 – Disposal of Forest Plantation Materials in Kiambu County (Salvage) be and is hereby nullified and set aside.

c. The Respondent is hereby ordered to issue a fresh tender submission deadline to the subject tender without the Addendum, to enable all eligible candidates to prepare their bids in accordance with the Act.

d. Each party shall bear its own costs of the proceedings.

2nd Submission of Bids and Tender Opening

8. Pursuant to the Board's decision in Request for Review No. 40 of 2025, the Respondents were directed to issue a fresh tender submission deadline for the subject tender, this time excluding the Addendum, in order to afford all eligible candidates a fair opportunity to prepare their bids in accordance with the provisions of the Act.
9. According to the Evaluation Report dated 30th May 2025 (hereinafter referred to as "the Evaluation Report"), the tender was re-advertised on 28th April 2025 and closed on 13th May 2025 at 11:00 a.m.
10. According to the Tender Opening Minutes dated 13th May 2025, a total of sixty-two (62) tenders were received in response to the subject tender, covering various sub-compartments and portions. The tenders were recorded as follows:

Bidder No	Tenderer's Name	Sub-Compartment	Portion Bided
1	Evergreen ever ltd	Kamae 6k	Whole
2	Warrana AO enterprises	Kamae 6k	Whole
3	Great vision Sawmill	Kinale 10P	12
4	Luchar Ventures	Kinale 10P	22
5	Alsmaf Ltd	Kinale 10P	14
6	Mabrian Abib Agencies	Kinale 10P	12
7	Luchar Ventures	Kinale 10P	23
8	Luchar Ventures	Kinale 10P	10
9	Mali veraki ltd	Kinale 10P	11
10	Luchar Ventures	Kinale 10P	20
11	Mabrian Abib Agencies	Kinale 10P	3

12	Johmung Investment	Kinale 10P	21
13	Gladles Ventures	Kinale 10P	1
14	Ascom Freighters and Logistics Ltd	Kinale 10P	8
15	Timbertec Ltd	Kinale 10P	23 6 20 21 22
16	Mutarakwa timber	Kinale 10P	23 6 17 18 20 21 22
17	Lesma holdings	Kinale 10P	3 12 13 14
18	Wachiuri enterprises Ltd	Kinale 10P	5 7 18
19	Elwood ventures	Kinale 10P	10 11 12 13 14
20	Brookside timber Ltd	Kinale 4(Y)1	Whole
21	S.Tuti Ltd	Kinale 10 P	1 2 3 4 5 7 8
22	Buffloc investment Ltd	Thogoto 11C Thogoto 12A	Whole
23	Buffloc investment Ltd	Kamae 6K	Whole

24	Nasigiwa sawmills	Kinale10P	23 6 17 18 20 21 22
25	Kenti Gen.Construction ltd	Kinale10P	8 11 12
26	Venco enterprises	Kinale 10P	22
27	Joiru timber sawmill	Kinale 10P	4 15 17
28	Olenkapu General Investment ltd	Kinale10P	11
29	Pine tech sawmill investment	Kinale10P	5
30	Olenkapu General Investment ltd	Kinale10P	8
31	Eldoffurn ltd	Thogoto 11C Thogoto 12A	Whole Whole
32	Silkway Supplies ltd	Kinale10P	12 13 14
33	Mutagia Timber yard Enterprise ltd	Kinale 10P	10 11 12 13 14 15 16
34	Luchar Ventures	Kinale 10P	21
35	Wood prime ventures ltd	Kinale 10P	23
36	Eswa enterprises ltd	Kinale 10P	22
37	Pine tech sawmill investment	Kinale 10P	10
38	Prime grade enterprises	Kinale 10P	5 10

			15 21
39	Silver cloud ventures ltd	Kinale 10P	11 13 23
40	Ciakwa Timber Yard	Kinale 10P	4 12 14 22
41	Poles and post treatment plant ltd	Kinale 10P	9 20
42	Poles and post treatment plant ltd	Thogoto 11C Thogoto 12A Kinale 4(Y)1 Kamae 6(K)	Whole Whole Whole Whole
43	Mali veraki ltd	Kinale 10P	2
44	Alsmaf Ltd	Kinale 10P	3
45	Great vision Sawmill	Kinale 10P	1
46	GakunyiYoung Traders	Kinale 10P	2
47	Janwill enterprises	Thogoto 12A	Whole
48	Janwill enterprises	Thogoto 11C	Whole
49	Matharu sawmill	Kinale 10P	4 7 8
50	Liton ltd	Kinale 10P	12
51	Liton ltd	Kinale 10P	13
52	Liton ltd	Kinale 10P	11
53	Prime poles ventures	Thogoto 11C Thogoto 12A	Whole Whole
54	Westlands choma stopover	Kinale 10P	16
55	Westlands choma stopover	Kinale 10P	14
56	Westlands choma stopover	Kinale 10P	15
57	Westlands choma stopover	Kinale 10P	18

58	Westlands choma stopover	Kinale 10P	17
59	Brookside timber	Thogoto 11C	Whole
60	Brookside timber	Thogoto 12A	Whole
61	Bekiko enterprises	Thogoto 12A	Whole
62	Bekiko enterprises	Thogoto 11C	Whole

Addendum

11. According to the confidential documents submitted to the Board, no Addendum was issued, as none formed part of the confidential documents provided.

2nd Evaluation of Bids

12. A Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee"), duly appointed by the Respondent, evaluated the sixty-two (62) tenders as documented in the Evaluation Report, in the following stages:
 - a. Preliminary Stage
 - b. Financial Evaluation

Preliminary Evaluation

13. The Evaluation Committee was tasked with assessing the tenders for responsiveness based on the criteria outlined in the Tender Document. Only those tenders that satisfied all mandatory requirements at this stage were eligible to proceed to the Technical Evaluation stage. The evaluation was conducted on a YES/NO basis.

14. According to the Evaluation Report, a total of thirty-three (33) bids were submitted under the small-scale category, including the Applicant's bid. The Interested Parties did not participate in this category. In the large-scale category, a total of six (6) bids were submitted, among them the bids of the Interested Parties. The Applicant did not submit a bid in this category.
15. At the conclusion of this evaluation stage, one (1) tender in the small-scale category was found to be non-responsive. The remaining thirty-two (32) tenders, including the Applicant's, met the mandatory requirements, were declared responsive, and proceeded to the Financial Evaluation stage. In the large-scale category, one (1) tender was similarly deemed non-responsive, while the remaining five (5) tenders, including those submitted by the Interested Parties, were declared responsive and advanced to the Financial Evaluation stage.

Financial Evaluation

16. The Evaluation Committee proceeded to assess the tenders for responsiveness based on the Financial Evaluation criteria set out in the Tender Document. This assessment involved verifying whether the bidders had paid the required deposit and met the reserve price. The highest bidders per sub-compartment, having met the reserve price, were recommended for award.
17. At the conclusion of the Financial Evaluation stage, different bidders were awarded contracts based on the specific sub-compartments for which they had submitted bids. Specifically, the Applicant was awarded

Kinale 10P Portion No. 9 and Kinale 10P Portion No. 20, both falling under the small-scale category. In the large-scale category, the 1st Interested Party was awarded Kinale 4(Y)1 (whole), among other sub-compartments, while the 2nd Interested Party was awarded Kamae 6(K) (whole).

Evaluation Committee's Recommendation

18. The Evaluation Committee recommended the award of the subject tender to the Applicant for Kinale 10P Portion No. 9 and Kinale 10P Portion No. 20, both within the small-scale category, as well as to other successful bidders in the same category whose awards are not in dispute in the present matter. In the large-scale category, the Committee recommended awarding the tender to the 1st Interested Party for Kinale 4(Y)1 (whole), among other sub-compartments not at issue in this matter, and to the 2nd Interested Party for Kamae 6(K) (whole).

Professional Opinion

19. In a Professional Opinion dated 6th June 2025 (hereinafter referred to as "the Professional Opinion"), and submitted as part of the confidential documents, Mr. John Mburu, a procurement professional within the Procuring Entity, reviewed the procurement process for the subject tender, including the evaluation of tenders and the award recommendations. He concurred with the recommendations made by the Evaluation Committee.

20. The Professional Opinion submitted to the Board did not indicate whether it was approved by the 1st Respondent.

Notification to Tenderers

21. Tenderers were notified of the evaluation outcome through Letters of Notification of Award dated 6th June 2025, which were signed by the 1st Respondent.

REQUEST FOR REVIEW NO. 67 OF 2025

22. On 12th June 2025, the Applicant, through the firm of Gicheha Kamau & Company Advocates, filed a Request for Review dated the same day. The application was accompanied by a Statement in Support of the Request for Review, signed by Judy Muthoni Mwaura, a Director of the Applicant, and similarly dated 12th June 2025. In the said application, the Applicant sought the following orders:

a) Annul and or quash the decision of the Accounting Officer of the Procuring Entity in the tender Bid NO. KFS/DISP/90/2024-2025 issued on 28th April 2025 awarding the tender for Sub-compartments Kinale 4(Y)1 and Kamae 6(K) to the interested parties respectively.

b) Direct the Accounting Officer of the Procuring Entity to award the tender BID NO. KFS/DISP/90/2024-2025 issued on 28th April 2025 for Sub-compartments Kinale 4(Y)1 and Kamae 6(K) to the applicant.

c) Condemn the respondent to pay the cost of this review to the applicant.

d) Such other orders the Honourable board may deem just and expedient.

23. In a Notification of Appeal and a letter dated 12th June 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 12th June 2025.

24. On 26th June 2025, the Acting Board Secretary issued a Hearing Notice, dated the same day, notifying the parties that the hearing of the Request for Review would be conducted virtually on 30th June 2025 at 11:00 a.m. via the provided link.

25. On 30th June 2025, the Applicant filed a Further Statement in support of the Request for Review, dated the same day.

26. On 30th June 2025, the scheduled hearing date, the Respondent was represented by Ms. Martha, in-house counsel for the Procuring Entity,

who sought an adjournment on the grounds that the Respondent required additional time to respond to the Request for Review and to comply with the requirement to file confidential documents in accordance with Section 67(3)(e) of the Act. The Board granted the application and directed that the Respondent file and serve its response to the Application, together with the confidential documents, by close of business on the same day. The Applicant was granted leave to file a response, if necessary. The hearing was adjourned to 1st July 2025 at 2:00 p.m.

27. On 1st July 2025, the Respondent, through the firm of Lutta & Company Advocates, filed a Notice of Appointment of Advocates dated the same day, together with a Response to the Request for Review, a List of Authorities, and a Notice of Preliminary Objection, both also dated 1st July 2025. On the same day, the Respondent submitted the confidential documents to the Board in compliance with Section 67(3)(e) of the Act.
28. On 1st July 2025, the 1st Interested Party, through the firm of Sheth & Wathigo Advocates, filed a Notice of Appointment of Advocates together with a Response to the Applicant's Request for Review, all dated 1st July 2025.
29. On 1st July 2025, the 2nd Interested Party, through the firm of Amukhale & Company Advocates, filed a Notice of Appointment of Advocates, together with a Response to the Request for Review, a List of Documents, and a Preliminary Objection, all dated 1st July 2025.
30. When the Board convened for the hearing on 1st July 2025 at 2:00

p.m., the Applicant was represented by Mr. Onger; the Respondent by Mr. Lutta; the 1st Interested Party by Mr. Kisilah; and the 2nd Interested Party by Mr. Amukhale. The Board reviewed the pleadings filed by the parties, all of whom confirmed that the documents had been properly filed and exchanged. However, Counsel for the 1st and 2nd Interested Parties indicated that they had not been served with the Further Statement in Support of the Request for Review dated 30th June 2025. The Board directed that service be effected immediately, which was duly done. Thereafter, the Board allocated time for each party to make their respective submissions.

PARTIES SUBMISSIONS

Applicant's Submissions on the Request for Review and the Preliminary Objection

31. In opposing the Preliminary Objection, Counsel for the Applicant submitted that the objections were based on Sections 67 and 68 of the Act. He argued that Section 67 deals with confidentiality, and there was no indication in the Preliminary Objections suggesting that the Letter of Notification of Award falls within the scope of the confidentiality provisions.
32. Counsel submitted that Letters of Notification of Award do not fall within the ambit of Section 67(1) of the Act, as they are not among the categories of information listed under sub-sections 1(a) to (d). He further argued that nothing in the content of the Letters of Notification of Award suggests that they are confidential documents. Additionally,

Counsel contended that Section 87 of the Act, which governs notification of award, does not designate such letters as confidential.

33. Counsel further argued that, in any event, Section 67 of the Act provides exceptions to the confidentiality requirement, specifically where disclosure is made for the purpose of a review under Part IV or Part XV of the Act. He submitted that the present application is brought under Section 167 of the Act, which falls under Part XV, thereby qualifying for the exception. With respect to Section 68, Counsel submitted that he could not discern its relevance to the issue at hand.
34. Turning to the substantive application, the Applicant's Counsel submitted that the procurement process commenced with the advertisement of Tender No. KFS/DISP/90/2024-2025 by the Respondent on 15th March 2025 through its public procurement portal. However, on 27th March 2025, the Respondent issued Tender Addendum No. 1, without offering any justification, which altered the eligibility criteria by restricting bidding for Thogoto 11(C) and Thogoto 12(A) to large-scale plywood investors within and outside Kiambu County. This decision, Counsel argued, was arbitrary and discriminatory, prompting the Applicant to challenge it before the Board in PPRB Application No. 40 of 2025, wherein the Board ruled in favour of the Applicant and ordered the re-advertisement of the tender in its original unrestricted form.
35. The Applicant's Counsel further submitted that pursuant to the Board's directive, the Respondent re-advertised the tender on 28th April 2025. The re-advertised tender made all four sub-compartments under the

large category, namely Kinale 4(Y1), Kamae 6(K), Thogoto 11(C), and Thogoto 12(A), open to large-scale forest investors without attaching any restrictive conditions. In response to the new advertisement, the Applicant submitted bids for all four sub-compartments. Counsel emphasized that the Applicant's bids complied fully with the tender requirements and that the Applicant had a legitimate expectation of being evaluated fairly.

36. Counsel submitted that despite the Applicant being the highest bidder for Kinale 4(Y)1, having quoted KES 33,740,000 against a reserve price of KES 25,096,980.60, the award was unlawfully issued to the 1st Interested Party, who was the second highest bidder at KES 25,106,980. Similarly, for Kamae 6(K), Counsel pointed out that the Applicant had submitted the second highest bid of KES 19,679,000, which exceeded the reserve price of KES 15,055,740.60, yet the award was granted to the 2nd Interested Party, the third highest bidder at KES 15,060,740. In both cases, Counsel argued, the Applicant was unfairly and unlawfully bypassed in violation of the principles of transparency and competitiveness.
37. The Applicant's Counsel also submitted that no regret letters were issued to unsuccessful bidders, including the Applicant, and no reasons were provided for the denial of award. This failure, it was argued, violated the Applicant's right to fair administrative action as guaranteed under Article 47 of the Constitution and the Fair Administrative Action Act. Furthermore, Counsel contended that the improper awards occasioned financial loss to the government, amounting to KES 8,633,020 in respect of Kinale 4(Y1) and KES 4,618,260 in respect of

Kamae 6(K), thereby undermining the principle of value for money enshrined in Article 227 of the Constitution.

38. The Applicant's Counsel submitted that the Respondent's actions contravened several legal provisions, including Articles 10, 35(1), 47, 227, and 232 of the Constitution of Kenya, Sections 3 and 79 of the Public Procurement and Asset Disposal Act, and Sections 3, 4, 5, 6, and 7 of the Fair Administrative Action Act. It was further submitted that upon the filing of the present Request for Review, the Board issued a Notification of Appeal in accordance with Section 168 of the Act, which had the effect of automatically suspending the procurement proceedings. The said notification was duly served on the Respondent by email dated 12th June 2025, and a copy was also sent to the Applicant's advocates.
39. Despite the suspension, Counsel asserted that on 15th June 2025, the Applicant discovered that tree felling had commenced in sub-compartments Kamae 6(K) and Thogoto 11A. The Applicant visited the sites and documented the ongoing activities, capturing photographic evidence of felled trees, tractors, and lorries. Counsel submitted that tree harvesting continued unabated, thereby undermining the authority of the Board and the statutory suspension.
40. Further, the Applicant's Counsel submitted that despite being the highest bidder in some compartments and fully compliant in others, the Applicant has never been furnished with reasons for the denial of the tender award.

Respondent's Submissions on the Preliminary Objection and the Request for Review

41. Counsel for the Respondent argued that the Applicant had not explained how it came into possession of the Letters of Notification of Award. He contended that the Applicant failed to demonstrate how it obtained the said documents, particularly in light of the procedures prescribed under Sections 67 and 68 of the Act for accessing such information.
42. The Respondent's Counsel submitted that the Respondent duly advertised Tender No. KFS/DISP/90/2024 on its public portal on 15th March 2025 and subsequently re-advertised the same on 28th April 2025, targeting large-scale forest investors both within and outside Kiambu County. The Respondent received several bids in response. Counsel further submitted that the procurement process was transparent and competitive.
43. The Respondent's Counsel further submitted that the Applicant was disqualified at the preliminary evaluation stage in relation to portions Kinale 4(Y)1 and Kamae 6(K). The disqualification was on account of the Applicant being registered as a small-scale timber trader, whereas the tender had been expressly restricted to large timber traders. Additionally, the Applicant was registered for large-scale trading in treated transmission poles, which the Respondent distinguished from timber, asserting that each forest product category requires separate prequalification.
44. The Respondent's Counsel also submitted that the Applicant was not

prequalified as a large timber trader and was therefore ineligible to participate in the specific tender lots in question. Counsel emphasized that “timber” and “treated transmission poles” fall under distinct forest material classifications. As such, the Applicant's prequalification status in one category could not be used to justify eligibility in another. Counsel argued that all bidders both successful and unsuccessful, were notified on 6th June 2025, and the Applicant collected both a letter of regret and a Notification of Award for a successful bid under a separate tender category.

45. Counsel submitted that the Applicant failed to disclose material facts, specifically that it had been awarded a tender under the small-scale timber category, which undermines the Applicant's claim of being unfairly excluded.

1st Interested Party's Submissions on the Request for Review and the Preliminary Objection

46. Counsel for the 1st Interested Party associated himself with the submissions made by the Respondent. He specifically urged the Board to dismiss the Request for Review and to award costs to the 1st Interested Party.

2nd Interested Party's Submissions on the Request for Review and the Preliminary Objection

47. Counsel for the 2nd Interested Party associated himself with the submissions made by the Respondent. He further submitted that the

current proceedings amounted to a complete ambush, noting that service upon the 2nd Interested Party was effected only after close of business on 30th June 2025. He argued that, prior to that, no notice had been issued regarding the present application, thereby depriving the 2nd Interested Party of sufficient time to respond meaningfully to the allegations raised by the Applicant.

48. Counsel maintained that the Applicant had not demonstrated any constitutional or statutory violation to warrant the Board's intervention. It was submitted that Clause 1.1 of Section II of the tender document restricted eligibility to forest industry investors registered under timber in 2024, particularly those in the large-scale category. The Applicant, being registered under the treated transmission poles category, was not eligible for this tender. Additionally, under Section 16.1, it was a mandatory requirement that tenderers bid within their registered category. As the Applicant was outside the prescribed category, Counsel argued, it was disqualified at the outset and thus lacked legal standing to challenge the award.

Applicant's Rejoinder

49. Counsel submitted that Letters of Notification of Award do not fall within the scope of documents considered confidential under Section 67(1)(a) to (d) of the Act. He further submitted that Counsel for the Respondent had acknowledged that no document had been filed to confirm that the Applicant was notified of the outcome of the tender or declared unsuccessful.

50. Counsel submitted that the Respondent's Counsel had confirmed that harvesting of trees was ongoing despite the Board's notification to the contrary. He further noted that the Respondent had not provided any justification for this disobedience, either in their response to the Request for Review or through any other formal evidence, apart from statements made from the bar during the highlighting of submissions.

CLARIFICATIONS

51. The Board, *suo moto*, raised the issue of its jurisdiction, specifically the requirement under Section 167(1) of the Act that an Applicant must claim that they have suffered or risk suffering loss or damage as a result of a breach of a duty imposed on a Procuring Entity by law. The Board noted that failure to meet this threshold may divest it of jurisdiction. Given that this issue was raised by the Board itself, it directed all Counsel, starting with Counsel for the Applicant, to address the question with reference to the Court of Appeal's decision in ***James Ayodi t/a Betooyo Contractors & Another v Elroba Enterprises Ltd & Another* [2019] eKLR, Mombasa Civil Appeal No. 131 of 2018** and the case of ***Civil Appeal No. E295 of 2023 consolidated with Civil Appeal No. E296 of 2023 Lake Victoria North Waterworks Development Agency v Tobby Civil Engineering Engineering Company***.
52. Counsel for the Applicant submitted that the Applicant is a business entity which participated in the tender with the legitimate expectation that, if successful, it would secure business and subsequently generate profit. Counsel further stated that the Applicant had incurred financial expenses in preparing and submitting its bid, which formed the basis of

its legitimate expectation. The Applicant was aggrieved by what it considered to be an unfair disqualification. In support of this position, Counsel referred the Board to paragraphs 10 and 11 of the Statement in Support of the Request for Review, which also highlight the financial losses being incurred by the Government of Kenya.

53. In response to the issue raised, Counsel for the Respondent stated that he aligned himself with the reasoning of the Court of Appeal as articulated in the aforementioned cases.
54. Counsel for the 1st Interested Party, in response to the issue, submitted that Section 167(1) of the Act is intended to shield the Board from frivolous applications brought by individuals who are unable to demonstrate any actual or potential loss suffered.
55. Counsel for the 2nd Interested Party, in response to the issue raised, submitted that loss must be specifically pleaded. He contended that the Applicant had failed to do so and further emphasized that the Applicant was not bringing the Request for Review on behalf of the Government of Kenya.
56. The Board sought clarification from Counsel for the Respondent on when the unsuccessful bidders were notified of their unsuccessful status.
57. In response, Counsel for the Respondent stated that the regret letters to the unsuccessful bidders were issued in the same manner as the Letters of Notification of Award. Counsel further submitted that all the Letters of Notification of Intention to Award had been submitted to the

Board, and that these documents demonstrate that all bidders were duly notified.

58. The Board sought clarification from the Respondent regarding who is responsible for accessing information on behalf of the Procuring Entity, in light of the Respondent's claim that they received information about the hearing and the Request for Review late.
59. In response, Counsel for the Respondent explained that the documents were served at the Respondent's office when the relevant officer was not present, and as a result, the information did not reach the legal department in time.

BOARD'S DECISION

60. 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 the Board has jurisdiction to hear and determine the instant Request for Review

In determining the first issue, the Board will make a determination on the following sub-issues:

- i. Whether the Applicant has *locus standi* before the Board.

Depending on the finding of the first issue:

B. Whether the Request for Review as filed is pegged on confidential information.

C. Whether the Respondent complied with Section 87 (3) as read together with Regulation 82 of Regulations 2020.

D. Whether the Procuring Entity properly evaluated the Applicant's tender submitted in response to the subject tender in accordance with Section 80 of the Act and the provisions of the Tender Document.

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

Whether the Board has jurisdiction to determine the instant Request for Review.

61. In response to the Request for Review, the Respondent and the 2nd Interested Party filed Notices of Preliminary Objection on the grounds that the Request for Review is based on the Letters of Notification of Award issued to the 1st and 2nd Interested Parties, which they contend are confidential and were obtained by the Applicant in contravention of Sections 67 and 68 of the Act.
62. In response, the Applicant argued that the Letters of Notification of Award are not confidential, as they do not fall within the scope of Section 67(1)(a) to (d) of the Act.

63. Based on the arguments advanced by Counsel, the Board elects to determine this issue at the substantive stage. This is because it requires an assessment of whether the Applicant followed due process in obtaining the said documents—an inquiry that calls for a detailed examination of the pleadings, documents filed by all parties, and the evidence presented. As such, the issue cannot be conclusively determined at the preliminary stage.
64. Further, during the hearing, the Board, *suo moto*, raised the issue of the Applicant's locus standi in light of the provisions of Section 167(1) of the Act, which require an applicant to demonstrate that they have suffered, or risk suffering, loss or damage as a result of a breach of a duty imposed on a Procuring Entity by law.
65. In view of the fact that the issue of locus standi was raised *suo moto* by the Board, all parties were granted an opportunity to comment on the same. In response, Counsel for the Applicant referred the Board to paragraphs 10 and 11 of the Statement in Support of the Request for Review. Counsel for the Respondent, however, submitted that the Applicant had not satisfied the threshold set under the relevant section of the law, a position that was similarly adopted by Counsel for both the 1st and 2nd Interested Parties.
66. The effect of the above issue concerning locus standi, if established, would deprive the Board of jurisdiction to entertain the present Request for Review. Consequently, given the preliminary and jurisdictional nature of the issue, it must be addressed as a matter of priority.

67. The Board is mindful of the well-established legal principle that courts and decision-making bodies may only adjudicate matters that fall within their jurisdiction. Where a question of jurisdiction arises, it must be addressed as a threshold issue before any further proceedings can be undertaken.
68. As a fundamental principle, when the issue of jurisdiction is raised before a court or decision-making body, it must be addressed as a priority before any other matters are considered. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or tribunal lacks the legal authority to proceed further.
69. In ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)***, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In [R v Karisa Chengo](#) [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

"By jurisdiction is meant the authority which a court

has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics...where a court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

70. This Board is a creature of statute, established under Section 27(1) of the Act, which provides:

(1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.

71. Section 28 of the Act outlines the functions of the Board as follows:

The functions of the Review Board shall be –

reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.

72. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 outline the Board's powers in handling such proceedings.
73. Therefore, in light of the foregoing, the Board has no alternative but to examine its jurisdiction by determining whether the Applicant has locus standi and whether the Request for Review was filed outside the mandatory statutory timeline.

Whether the Applicant has *locus standi* before the Board.

74. During the hearing, the Board, *suo moto*, raised the issue of whether the Applicant had pleaded that it had suffered, or was at risk of suffering, any loss or damage arising from an alleged breach of a duty imposed on the Procuring Entity by law. Given that the issue originated from the Board, all Counsel were granted an opportunity to address it, starting with Counsel for the Applicant.
75. In response to the above issue, Counsel for the Applicant submitted that the Applicant is a business entity which participated in the tender

with the legitimate expectation that, if successful, it would secure business and subsequently generate profit. Counsel further stated that the Applicant had incurred financial expenses in preparing and submitting its bid, which formed the basis of its legitimate expectation. The Applicant was aggrieved by what it considered to be an unfair disqualification. In support of this position, Counsel referred the Board to paragraphs 10 and 11 of the Statement in Support of the Request for Review, which also highlight the financial losses being incurred by the Government of Kenya.

76. In response to the issue raised, Counsel for the Respondent stated that he aligned himself with the reasoning of the Court of Appeal as articulated in the case of ***James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another* [2019] eKLR, Mombasa Civil Appeal No. 131 of 2018** and the case of ***Civil Appeal No. E295 of 2023 consolidated with Civil Appeal No. E296 of 2023 Lake Victoria North Waterworks Development Agency v Tobby Civil Engineering Engineering Company***.
77. Counsel for the 1st Interested Party, in response to the issue, submitted that Section 167(1) of the Act is intended to shield the Board from frivolous applications brought by individuals who are unable to demonstrate any actual or potential loss suffered.
78. Counsel for the 2nd Interested Party, in response to the issue raised, submitted that loss must be specifically pleaded. He contended that the Applicant had failed to do so and further emphasized that the Applicant was not bringing the Request for Review on behalf of the Government

of Kenya.

79. Section 167(1) of the Act provides:

167. Request for a review

(1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed.

80. In essence, to properly invoke the jurisdiction of the Review Board under Section 167(1) of the Act, an applicant must satisfy the following conditions:

- (a) they must qualify as either a candidate or a tenderer, as defined under Section 2 of the Act;
- (b) they must claim to have suffered, or be at risk of suffering, loss or damage as a result of a breach of a duty imposed on a procuring entity by the Act or its Regulations; and
- (c) they must file the request for administrative review within fourteen (14) days from the date of notification of the award or the occurrence of the alleged breach, in accordance with Regulation 203 of the Public Procurement and Asset Disposal Regulations, 2020.

81. Superior courts have consistently addressed the requirement to plead

loss or damage under Section 167(1) of the Act. This Board takes cognizance of the Court of Appeal's decision in ***James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another*** [2019] eKLR, Mombasa Civil Appeal No. 131 of 2018 (hereinafter "the *James Ayodi* case"). In that matter, the Court considered an appeal challenging the High Court's finding that the Review Board ought to have held the appellants lacked locus standi, having failed to demonstrate that they had suffered, or were likely to suffer, loss. The Court of Appeal offered clarity on the requirement to plead and demonstrate actual or potential loss in such proceedings.

" *It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;....*

...It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer who has a right to file for administrative review.

.....The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for

failing to do so. We have no difficulty upholding the learned Judge.[Emphasis]

82. In essence, the Court of Appeal held that for a candidate or tenderer to seek an administrative review before the Board, they must, at the very least, claim to have suffered or to be at risk of suffering loss or damage due to a breach of a duty imposed on a procuring entity by the Act or the Regulations 2020.
83. In the present Request for Review, the central issue for determination by this Board is whether the Applicant, through its pleadings, has at least asserted that it has suffered, or is at risk of suffering, loss or damage due to a breach of duty imposed on the Procuring Entity by the Act or the Public Procurement and Asset Disposal Regulations, 2020. This determination is pivotal in ascertaining whether the Applicant possesses the requisite locus standi to bring the matter before the Board.
84. In the case of ***Otolo Margaret Kanini & 16 others v Attorney General & 4 others* [2022] eKLR**, the Court defined *locus standi* in the following terms:

By definition in general, locus-standi is the right to bring an action before a Court of law or any other adjudicatory forum. Such right is an entitlement created by the law.

85. The High Court in ***Alfred Njau and Others v City Council of Nairobi* (1982) KAR 229** described *locus standi* as:

...a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.

86. The import of the above holdings is that *locus standi* refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack *locus standi*, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.
87. Turning to the Request for Review at hand, the Board notes that the Applicant referred it to paragraphs 10 and 11 of the Statement in Support of the Request for Review. Upon reviewing the said paragraphs, the Board observes that they state as follows:

10. THAT during the opening of the tenders, the applicant was the highest bidder for Sub-compartment Kinale 4(Y)1 at Kshs. 33,740,000/= above the reserved price of Kshs. 25,096,980.60 but the award for the sub-compartment has been awarded to Brookside Timber Limited (1st interested party) who was the 2nd Highest bidder at Kshs. 25,106,980/=. (Annexed is a copy of the notification of award marked "JMM 5").

11. THAT the applicant was also the 2nd highest bidder for Sub-compartment Kamae 6(K) at Kshs. 19,679,000/= above the reserved price of Kshs. 15,055,740.60 but the award for the sub-compartment has been awarded to Evergreen Ever Limited who was the 3rd Highest bidder at Kshs. 15,060,740/= and not the applicant who was the 2nd highest bidder at Kshs. 19,679,000/=. The highest bidder

withdrew their bid before award (Annexed is a copy of the notification of award marked "JMM 6").

88. The Board notes that the referenced paragraphs do not contain any assertion that the Applicant has suffered, or is at risk of suffering, any loss or damage arising from an alleged breach of a duty imposed on the Procuring Entity by law.
89. The Board further notes that the Applicant submitted that the above paragraphs should be interpreted from the perspective of what the Government of Kenya stood to lose. The Board has considered this line of argument and finds that the obligation to plead and demonstrate the risk of suffering loss or damage lies squarely with the Applicant, and not with any other party.
90. In view of the foregoing, the Board finds that the Applicant neither pleaded nor demonstrated that it has suffered, or is likely to suffer, any loss as a result of the Respondent's alleged breach. Consequently, guided by the reasoning in the Court of Appeal's decision in ***James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another***, the Board concludes that the Applicant lacks locus standi. Accordingly, the Board is divested of jurisdiction to entertain the present Request for Review.
91. The Board is therefore satisfied that the Applicant has not met the requirements of Section 167(1) of the Act with respect to pleading loss or damage. As a result, the Board finds that the Applicant lacks locus standi, which in turn deprives the Board of the requisite jurisdiction to

hear and determine the matter.

92. Before concluding its determination, the Board wishes to highlight a few concerns regarding the conduct of the Respondent, for the purpose of setting the record straight.
93. The Board notes that, despite being duly informed of the filing of the Request for Review and the requirement to file its response together with the confidential documents in accordance with Section 67(3)(e) of the Act, the Respondent failed to comply. Specifically the board takes note that by a notice of appeal dated 10th June 2025 the board secretary Mr. Kilaka notified the Respondent of the Filing of Application of Review. In that Notification, the Respondent was Notified as follows

" Under Section 167 of the Public Procurement and Asset Disposal Act 2015, The Procurement Proceedings are hereby suspended and no contract shall be signed between the Procuring entity and the Tenderer awarded the contract unless the Appeal has been finalized"

94. As at 30th June 2025, the Respondent had not remitted to the Board the Requisite Confidential Documents nor Filed its Response. The Board takes Notice that in fact a hearing Notice upon the Respondent Notifying him of the Hearing of this matter on 30th June at 2:30pm. This omission necessitated the adjournment of the scheduled hearing. Furthermore, although the Respondent was granted additional time to file the documents by close of business on 30th June 2025, it still failed to do so within the prescribed period.

95. The Respondent's delay in filing its response and the confidential documents directly impacted the operations of the Board. Specifically, the Board was unable to notify the Interested Parties and other bidders of the existence of the Request for Review, as it did not have access to their contact details in the absence of the confidential documents.
96. Further, the Board notes that despite being notified that the tendering process had been suspended pursuant to the filing of the Request for Review, the Respondent permitted the 2nd Interested Parties to proceed with the harvesting of trees. This action constitutes a direct affront to the authority and mandate of the Board.
97. The cumulative effect of the Respondent's actions can only be construed as an attempt to sabotage the mandate of the Board. Such conduct undermines the rights of the Interested Parties and other bidders to participate meaningfully in the proceedings. Moreover, it risks disposing of the subject matter of the dispute in a manner that defeats the ends of justice.
98. The Respondent's blatant disregard of lawful directives, its willful failure to comply with statutory obligations, and its audacious facilitation of procurement activities despite an active review process amount to a direct assault on the rule of law. Such conduct not only undermines the constitutional values of fairness, transparency, and accountability under Article 227 of the Constitution but also betrays the very principles upon which our public procurement system stands. It is an intolerable affront to institutional authority and a reckless attempt to subvert justice by frustrating the due process of review.

99. In View of the foregoing this board finds that it would be appropriate to take action against the Respondent for purposes of ensuring compliance with the requirements of the law. The board therefore directs the board secretary to refer this matter to the director General of Public Procurement Regulatory Authority for further Investigation and necessary action as may be deemed appropriate.

What orders the Board should issue in the circumstance.

100. The Board finds that the Applicant lacks *locus standi* for failing to plead that it has suffered, or is at risk of suffering, any loss as a result of the alleged breach by the Respondents, in accordance with Section 167(1) of the Act. Consequently, the Board finds that it lacks jurisdiction to hear and determine the instant Request for Review.

101. Consequently, the Request for Review dated 12th June 2025, concerning Tender No. KFS/DISP/90/2024-2025 for the Disposal of Forest Plantation Materials in Kiambu County (Salvage), is hereby struck out on the following specific grounds:

FINAL ORDERS

102. 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 12th June 2025:

1. The Request for Review dated 12th June 2025 is hereby

struck out.

- 2. The Accounting Officer of the Kenya Forest Service is hereby directed to oversee the tender proceedings for Tender No. KFS/DISP/90/2024-2025 for the Disposal of Forest Plantation Materials in Kiambu County (Salvage) to their logical and lawful conclusion; and**
- 3. The Secretary of the Board is hereby directed to bring this Decision to the attention of the Director-General, Public Procurement Regulatory Authority for purposes of carrying out an inquiry on the conduct of the Accounting Officer, Kenya Forest Service in regard to the subject tender and recommend appropriate action to be taken.**
- 4. Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 3rd day of July 2025.

.....

**PANEL CHAIRPERSON
PPARB**

.....

**SECRETARY
PPARB**