

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
**APPLICATION NO. 102/2025 FILED ON 5<sup>TH</sup> NOVEMBER 2025**

**BETWEEN**

**SCORELINE INSURANCE BROKERS LIMITED..... APPLICANT**

**AND**

**THE CHIEF OFFICER,**

**PUBLIC SERVICE, DEVOLVED UNITS & ICT;**

**COUNTY GOVERNMENT OF MARSABIT..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF MARSABIT..... 2<sup>ND</sup> RESPONDENT**

Review against the decision of the Chief Officer, Public Service, Devolved Units & ICT in relation to Tender No. MBT-COU-ADMIN/02/2025-2026 for Provision of Comprehensive Medical Cover for the County Government of Marsabit Staff and Dependants.

**BOARD MEMBERS PRESENT**

Mr. George Murugu FC Arb. & IP      Chairperson

Mr. Jackson Awele                      Member

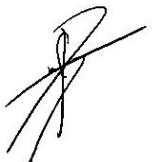
Mrs. Njeri Onyango, FCI Arb        Member

**IN ATTENDANCE**

Ms. Sarah Ayoo                          Holding Brief for Board Secretary

Ms. Christabel Kaunda                Secretariat

PPARB No.102 /2025  
26<sup>th</sup> November, 2025



## **PRESENT BY INVITATION**

### **APPLICANT**

Mr. Salim Omar

### **SCORELINE INSURANCE BROKERS LIMITED**

Advocate, Salim Omar & Co. Advocates

### **RESPONDENT**

Mr. Mwaniki Gachuba

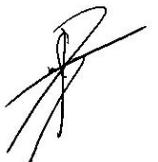
### **THE CHIEF OFFICER, PUBLIC SERVICE, DEVOLVED UNITS & ICT; COUNTY GOVERNMENT OF MARSABIT, & THE COUNTY GOVERNMENT OF MARSABIT**

Advocate, Mwaniki Gachuba Advocates

## **BACKGROUND OF THE DECISION**

### **The Tendering Process**

1. The County Government of Marsabit, the Procuring Entity and 2<sup>nd</sup> Respondent herein, invited sealed tenders in response to Tender No. MBT-COU-ADMIN/02/2025-2026 for provision of Comprehensive Medical Cover for the County Government of Marsabit Staff and Dependants (hereinafter referred to as "the subject tender"). The invitation was by way of an advertisement on 6<sup>th</sup> October 2025 on the Public Procurement Information Portal (PPIP) [www.tenders.go.ke](http://www.tenders.go.ke) where the blank tender document for the subject tender issued to tenderers by the Procuring Entity (hereinafter referred to as the 'Tender Document') was available



for download. The subject tender's submission deadline was scheduled as 13<sup>th</sup> October 2025 at 10.00am.

2. The Procuring Entity thereafter issued one (1) Addendum dated 9<sup>th</sup> October 2025 with respect to the subject tender. A summary of the said Addendum is as follows:

**a)** The Addendum clarified that the total contract costs were to be inclusive of all applicable taxes and the Public Procurement Capacity Building Levy of 0.03%, which was to be factored into the Form of Tender/Total Bid Amount.

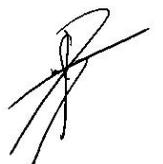
**b)** The Addendum also advised bidders that the Evaluation Criteria had been amended as was indicated therein.

**c)** The Addendum thereafter maintained the subject tender's original closing date and time of 13<sup>th</sup> October 2025 at 10.00am.

3. The Addendum was however cancelled by the 1<sup>st</sup> Respondent *vide* a Notice circulated in the Standard Newspaper dated 11<sup>th</sup> October 2025.

### **Letter from PPRA**

4. The Procuring Entity received a letter dated 13<sup>th</sup> October 2025 from the Public Procurement Regulatory Authority (hereinafter referred to as "PPRA") in relation to the subject tender.



5. In response thereto, the Procuring Entity wrote back to PPRA *vide* correspondence dated 15<sup>th</sup> October 2025.

### **Letters from EACC**

6. The Procuring Entity also received a letter dated 13<sup>th</sup> October 2025 (hereinafter 'the 1<sup>st</sup> Letter') from the Ethics and Anti-Corruption Commission (hereinafter referred to as "EACC").

7. Subsequent to its 1<sup>st</sup> Letter, EACC thereafter wrote to the Procuring Entity on 21<sup>st</sup> October 2025 (hereinafter 'the 2<sup>nd</sup> Letter').

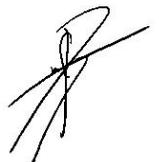
### **Notification to Tenderers**

8. The tenderers were notified *vide* email correspondence that the subject tender had been terminated.

### **REQUEST FOR REVIEW**

9. On 5<sup>th</sup> November 2025, Scoreline Insurance Brokers Limited, the Applicant herein in the instant Request for Review, filed a Request for Review dated the same day; together with a Statement In Support Of The Request For Review sworn on even date by Alfred Randu Hare, its Director. The filing was done through the firm of Salim Omar & Co. Advocates, and the Applicant sought the following orders from the Board (*verbatim*):

**a) *The decision of the Director, Supply Chain Management Services, in terminating the tender for provision of comprehensive medical insurance cover for County***



***Government of Marsabit staff & their dependents under Tender No. MBT/COU/ADMIN/02/2025-2026 be revoked forthwith for being contrary to Section 63 (1) of the Public Procurement and Asset Disposal Act, 2015, and therefore be declared null and void.***

- b) Declare that only the Accounting Officer of the Procuring Entity has the legal authority to terminate a procurement process in accordance with Section 63(1) of the Public Procurement and Asset Disposal Act, 2015.***
- c) A declaration that the addenda dated 9<sup>th</sup> October 2025 be declared null and void.***
- d) Direct the 1<sup>st</sup> Respondent to reinstate the tender process and allow the same to proceed to its logical conclusion guided by the reports of the evaluation committee and award the tenders to the successful bidders in terms of the submitted bids.***
- e) Review the termination decision communicated via email dated 23<sup>d</sup> October, 2025 to the Applicant by the 1<sup>st</sup> Respondent.***
- f) That the Respondents agents be bared from interfering with the procurement process.***



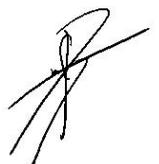
**g) The Board do make such and further orders as it deems fit to ensure that the ends of justice are met in the circumstances of this Request for Review.**

**h) The Respondents be compelled to pay the costs to the Applicant arising from/and incidental to this Application.**

10. In a Notification of Appeal and a letter dated 5<sup>th</sup> November 2025, Mr. Philemon Kiprop, the 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 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 Request for Review together with confidential documents concerning the subject tender within five (5) days from 5<sup>th</sup> November 2025.

11. The Board Secretary then issued an initial Hearing Notice dated 14<sup>th</sup> November 2025 to the parties notifying them that the hearing of the Request for Review would be Wednesday, 19<sup>th</sup> November 2025 between 11.00AM and 12.30PM.

12. The Board Secretary subsequently sent a Reminder to the Respondents dated 17<sup>th</sup> November 2025 reminding them to file with the Board their

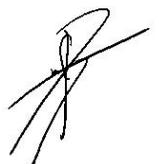


responses as well as original tender document. The Reminder also informed the Respondents that proceedings before the Board were time-bound and had to be concluded within 21 days thus time was of the urgency with them filing their responses.

13. The Board Secretary on 17<sup>th</sup> November 2025 also sent out email correspondence to the parties informing that the hearing of the Request for Review had been rescheduled to Thursday, 20<sup>th</sup> November 2025 before sending out subsequent email correspondence on 18<sup>th</sup> November 2025 informing parties that the hearing time had been moved up to 12noon, 20<sup>th</sup> November 2025.

14. On 18<sup>th</sup> November 2025, the Respondents jointly filed through Mwaniki Gachuba Advocates a Notice of Appointment of Advocates dated 12<sup>th</sup> November 2025 as well as a Respondents' Response to the Request for Review and a Notice of Preliminary Objection both dated 13<sup>th</sup> November 2025.

15. On 19<sup>th</sup> November 2020, the Applicant subsequently filed its Further Replying Affidavit dated the same day in response to both the Respondents' Memorandum of Response to the Request for Review and Notice of Preliminary Objection and sworn by Alfred Randu Hare, its Director.

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16. The Applicant thereafter filed their Written Submissions dated 19<sup>th</sup> November 2025 while the Respondents filed their Written Submissions dated 20<sup>th</sup> November 2025.
17. When the Board convened for the hearing on 20<sup>th</sup> November 2025 at 12:00 p.m., all parties were represented by their respective Advocates on record. The Board reviewed the pleadings filed, and all Counsel confirmed that all pleadings had been duly filed and exchanged.
18. Noting that there was a Notice of Preliminary Objection filed in the matter, the Board directed that the hearing would proceed virtually and thereafter gave parties directions on the order and length of address of issues by parties before it in line with the provisions of Regulation 209 of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter 'the Regulations').

**PARTIES' SUBMISSIONS**

**Applicant's Submissions**

19. The Applicant's Counsel began his submissions by placing reliance on the pleadings that had been filed in the instant Request for Review, being the Request for Review Application and Statement in Support thereof, a Further Replying Affidavit and Written Submissions.
20. Counsel in submission stated that there was a broad nexus between the Applicant's Request for Review Application and the Respondents' Notice



of Preliminary Objection filed in the instant Application given that the same revolved around the provisions of Sections 167(4) and 75(2) of the Act.

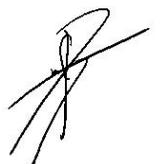
21. Counsel submitted that the Respondents in this instance could not benefit from the provisions of Section 167(4)(b) of the Act given that they had failed to demonstrate that they had satisfied the provisions of Section 63(1) of the Act, which provided substantive and procedural aspects of termination of tender at any stage.

22. Counsel submitted that no proof had been submitted and adduced by the Procuring Entity, , with respect to any of the grounds for termination of the procurement process and proceedings.

23. Counsel submitted that Section 167(4)(b) of the Act only ousted this Honourable Board's Jurisdiction from hearing matters where termination of tender proceedings had been undertaken strictly and in accordance with the provisions of Section 63(4) of the Act.

24. Counsel further submitted that accordingly, it was very clear and evident that the mere and ambiguous notice of termination sent out via email did not meet the threshold.

25. Counsel invited the Board to interrogate whether the said termination met the provided legal threshold as per the provisions of Section 63(3) of the Act as the Board had a statutory duty to examine the validity, reasons



for, procedure and statutory compliance of any purported termination before declining any jurisdiction.

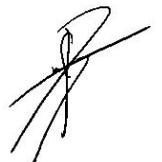
26. Counsel submitted that as per the provisions of Section 63, it was the Accounting Officer who was to issue a termination notice but that in the present circumstances, it was not the Accounting Officer who had issued parties with the said termination notice.

27. Counsel further submitted on the question of whether the said termination was grounded on the provisions of Section 63(1) of the Act by answering in the negative and emphasized that the same had been comprehensively addressed in the Applicant's Written Submissions, which he invited the Board to have a look at.

28. Counsel submitted on the question of whether there was any written report to PPRA by the Procuring Entity in the negative by stating that no such report had been prepared nor provided.

29. Counsel submitted on the question of whether there had been proper notification to all tenderers by stating that whereas the notification had been done, the same was not in compliance with the provisions of Section 63 (1) as the Notice was very ambiguous with no reasons for termination provided.

30. Counsel submitted that the Respondents' Notice of Preliminary Objection was also based on the provisions of Section 75(2) of the Act, which provided for modification of tender documents and stated that the same

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could not be read or employed in isolation of the provisions of Section 75(5) of the Act.

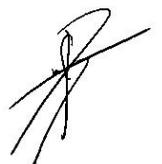
31. Counsel pointed out that Section 75(5) of the Act mandates the Accounting Officer to provide an extension to the tender opening period, in view of the Addendum issued on Thursday 9<sup>th</sup> October, since 10<sup>th</sup> October was a public holiday, hence a clear violation of the provisions of Section 75(5) given that the tender opening date of 13<sup>th</sup> October 2025 remained unchanged.

32. Counsel submitted that it was therefore very clear that the Procuring Entity, acting through the Director of Supply Chain Management, did not adhere to the provisions of Section 75(5) of the Act.

33. Counsel urged the Board to dismiss the Respondents' Notice of Preliminary Objection with costs.

34. On the issue of the Applicant's Request for Review, Counsel submitted that the same was broadly based on the provisions of Section 63 of the Act with the questions for determination being whether the Procuring Entity complied with the procedural and substantive provisions of the same.

35. Counsel reiterated his submissions to the effect that the said termination had been ordered by the Director Supply Chain Manager and not the Accounting Officer, that no reasons for termination were given and that no report to the PPRA was prepared and/or shared.

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36. On the issue of the addendum, Counsel submitted that there were many squabbles on the same. He indicated that whereas the same had been posted online on the system by the Procuring Entity's Accounting Officer, the same Accounting Officer distanced himself from the same *vide* an advertisement in the Standard Newspaper to the effect that the said Addendum did not contain his signature.

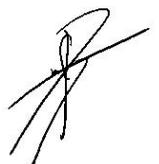
37. Counsel urged the Board in view of the foregoing to find that the said Addendum posted on the portal is null and void, for failure to adhere to the provisions of Section 75(5) of the Act.

38. Counsel in conclusion urged the Board to find that the subject tender's procurement proceedings had not been lawfully terminated and direct that the same continue to its conclusion.

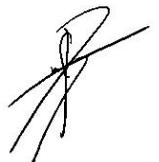
### **Respondents' Submissions**

39. Counsel for the Respondents began his submissions by placing reliance on the pleadings that the Respondents had filed in the matter, being a Memorandum of Response, Notice of Preliminary Objection and Written Submissions.

40. Counsel submitted in response to grounds 3,4,5,6,7,8,9,11 and 13F of the Applicant's Request for Review Application dealing with the Addendum of 9<sup>th</sup> October 2025 and the Applicant's prayer (c) that the same be declared null and void.

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41. Counsel submitted that the first option available to the Applicant which they should have considered was the provisions of Section 75(2) of the Act as read together with ITT7.1 and ITT8 of the blank tender document which allowed the them rights under those provisions as early as 9<sup>th</sup> October 2025 at the point of issuance of the said Addendum.
42. Counsel submitted that the second option available to the Applicant was the right to seek clarification under the provisions of ITT25 of the blank tender document, which the Applicant did not.
43. Counsel submitted that the third option available to the Applicant from 9<sup>th</sup> October 2025 were the provisions of Section 167(1) of the Act as read with the provisions of Regulation 203(2)(c)(i) as read with ITT49(i) of the Tender Data Sheet of the blank tender document. Counsel submitted that the Respondents had given the Applicant and other tenderers several options, which options the Applicant failed to utilize.
44. Counsel therefore submitted that because 14 days from 9<sup>th</sup> October 2025 lapsed on 22<sup>nd</sup> October 2025, any Request for Review based on the Addendum was bad in law, taking into account the provisions of Section 167(1) of the Act and Regulation 203(2)(c).
45. Counsel in referring the Board to the authority ***PPARB Application No. 48 of 2020*** and other High Court authorities as relied on in the Respondents' Written Submissions submitted that the net effect of the Applicant not taking advantage of the pertinent provisions of the law and



the Tender Document was that essentially that they had waived their right to complain against the Addendum. Counsel urged the Board to down its tools with respect to it making a determination on the said issue.

46. Counsel submitted on the issue of collusion and interference with the evaluation process that the same were hinged on various provisions of Sections 65 and 66 of the Act. Counsel further submitted the foregoing sections were penal sections by virtue of the provisions of Section 65(2) and Sections 66(2) and (12) and that breach of the same were criminal offences.

47. Counsel submitted that not only were penal sanctions not included within the Board's scope under the provisions of Section 173 of the Act but that if a party was aggrieved then it should have approached the criminal court over the same.

48. Counsel submitted that of the 19 grounds raised in the Applicant's Request for Review, none pleaded any loss or damages that the Applicant suffered or stood to suffer. Counsel further submitted that by the Applicant's own admission at paragraph 16 of the Applicant's Further Replying Affidavit, actual proof of loss of monetary loss was not a prerequisite for standing before the Board.

49. Counsel submitted that paragraph 17 of the said Applicant's Further Replying Affidavit also introduced a new ground for review, which was not pleaded in the initial Request for Review. Counsel further submitted

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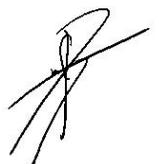
that whereas the Applicant had alleged apprehension on the possible loss of business opportunity and costs incurred in preparing a tender bid, the Applicant actually never pleaded the same in the Request for Review Application but only introduced it in their Further Replying Affidavit.

50. Counsel also referred the Board to the Court of Appeal decision in ***James Oyondi t/a Betooyo Contractors*** relied upon by the Respondents in their Written Submissions in submitting that the Applicant's Request for Review fell short of the expectations of Section 167(1) of the Act.

51. Counsel on the fourth issue raised by the Respondents submitted that the issue in question was whether the Applicant's Request for Review was merited if at all it survived the Notice of Preliminary Objection.

52. Counsel submitted that because the gravamen of the Applicant's Request for Review was the issue of the Addendum and the Termination Notice and having already dealt with the issue of the Addendum, the next step would be to address the issue of the Termination Notice.

53. Counsel submitted that it was incorrect to fault the Head of Procurement for the termination as Regulation 33(3)(q) of the Regulations provided that the Head of Procurement could issue the Termination Notice upon termination by the Accounting Officer. Counsel further submitted that because the subject tender had been terminated, all what the Head of Procurement did was to convey the notice in line with the provisions of

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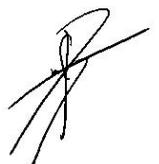
Regulation 33(3)(q) thus the Applicant's Request for Review fell on that ground and in that regard.

54. Counsel on the issue raised by the Applicant that there had been no report raised with the PPRA with respect to the termination submitted that because the instant Request for Review was filed on 5<sup>th</sup> November 2025, time stopped running, which stoppage interfered with the timelines stipulated under Section 63(4) which mandated the Procuring Entity to give reasons for termination within 14 days of termination.

55. Counsel referred the Board to the High Court decision in ***Republic vs PPARB & Kenya Power ex-parte Transcend Media Group*** where the trial court held that once a Request for Review was filed time stopped running and because time had stopped, once a decision has been made and time resumes, the Respondents would still be within time to communicate the reasons for termination.

56. Counsel further submitted that in any event, the Respondents has availed copies of two letters received by the Procuring Entity demonstrating why the subject tender was untenable, with one from PPRA and the other from EACC.

57. Counsel submitted that had the Applicant been keen on the tender then they would have been guided by the provisions of ITT43 of the blank tender document which entitled it to request for a debrief in writing over specific issues or concerns regarding the subject tender but because they



did not, the Respondent did not avail the said reasons. Counsel further submitted that had the Applicant engaged the Respondents on the same then they would have been answered in which case the instant Request for Review would have been unnecessary.

58. Counsel then urged the Board to dismiss the Applicant's Request for Review as the same was frivolous and without merit.

### **APPLICANT'S REJOINDER**

59. Counsel for the Applicant in rejoinder submitted that the Applicant filed their Request for Review on the eve of the lapse of the 14 days within which the Respondents were required to give reasons for the termination with the PPRA thus it was incorrect and misleading for the Respondents to allege that time had run out by the time the Applicant was filing the instant Request for Review.

60. Counsel also submitted on the issue of interference by the EACC and PPRA with respect to purported termination of the subject tender and pointed out that neither of the two organizations at that juncture had any legal or statutory mandate to terminate any tender process. Counsel further submitted that it was very clear in the termination notice issued that the no justification as per Section 63 of the Act.

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## **BOARD'S DECISION**

61. The Board has considered each of the parties' submissions and documents placed before it and finds the following issues call for determination.

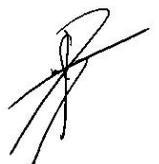
***i) Whether the Respondents' Notice of Preliminary Objection dated 13<sup>th</sup> November 2025 is merited in the circumstances.***

In answering whether the Respondents' Notice of Preliminary Objection is merited, the Board shall make a determination on whether its jurisdiction to listen to and determine the instant Application is ousted by dint of the provisions of Section 167(4) of the Act. The Board shall also make a determination on whether the Applicant has demonstrated suffering or risk suffering loss or damage in line with the provisions of Section 167(1) of the Act.

Depending on the determination of issue (i) hereinabove

***ii) Whether the procurement proceedings in relation to the subject tender were properly terminated in line with the provisions of Section 63 of the Act.***

***iii) What orders the Board should issue in the circumstance.***



**Whether the Respondents' Notice of Preliminary Objection dated 13<sup>th</sup> November 2025 is merited in the circumstances.**

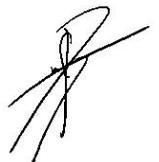
62. The Board notes that the Respondents herein *vide* a Notice of Preliminary Objection dated 13<sup>th</sup> November 2025 (hereinafter 'Preliminary Objection') invite it to make a determination primarily on whether it is clothed of requisite jurisdiction to listen to and thereafter determine the instant Request for Review. The Board notes that it has equally been invited to make a determination on whether the Applicant has demonstrated that it has *locus standi* before it by virtue of it suffering loss or the risk of loss or damage as a result of the alleged breach of duty by the Procuring Entity.

63. Whereas the Respondents herein through the said Preliminary Objection assert that this Board lacks jurisdiction over the instant Application by virtue of citing several provisions of the Act, the key provisions of the Act in question are Sections 167(1) and (4)(b).

64. For ease of reference, Sections 167 (1) and (4)(b) of the Act is hereunder reproduced as follows:

***"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.***

***(4) The following matters shall not be subject to the review of procurement proceedings under subsection (1)—***

***(a) .....***;

***(b) A termination of a procurement or asset disposal proceedings in accordance with section 63 of this Act; and***

***(c) ....."***

65. It is a well-settled principle in law that courts, tribunals or such duly constituted decision-making bodies can only act in cases where they have jurisdiction . When a question on the same arises, the said Court, tribunal or such duly constituted decision-making body must, as a matter of prudence, enquire into the question of jurisdiction before delving into any substantive determination of the same.

66. Black's Law Dictionary, *8th Edition*, defines jurisdiction as:

***"... the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority."***



67. In the celebrated case of ***The Owners of the Motor Vessel "Lillians" -v- Caltex Oil Kenya Ltd (1989) KLR 1*** Nyarangi J.A. (as he then was) while traversing the issue of jurisdiction held that:

***"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."***

68. The Board is aware that the foregoing position was buttressed in later years by the Apex Court in its decision in ***Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022) (Judgment)*** where the Supreme Court stated that:

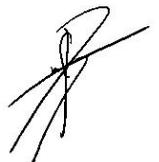
***"On our part, and this is trite law, jurisdiction is everything as it denotes the authority or power to hear and determine judicial disputes. It was this court's finding in In R v Karisa***



***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."***

69. From the foregoing, it is therefore both evident and pertinent that where a question on the jurisdiction is raised, the decision making body, in this instance the Board, preliminarily addresses and thereafter makes a determination on the same and only proceed to delve into the substantive merits of an Application after satisfying itself that is clothes of requisite jurisdiction.



70. The Board understands the Respondents contention *vide* their Notice of Preliminary Objection to be that it lacks jurisdiction to entertain the instant Request for Review for a host of reasons. The first of which, as the Board understands, is with respect to an Addendum dated 9<sup>th</sup> October 2025 which the Applicant joined issue with.

71. The Board understands the Respondents' case to be that in any event, by virtue of the provisions of Section 75(2) of the Act, the Procuring Entity is allowed by law to make modification(s) to a tender document of its own initiative or in response to an inquiry made by a tenderer.

72. On the same, the Board contrarily understands the Applicant's position that the said Addendum as issued by the Respondents was bad in law as it was issued a few days to the original tender opening date without due consideration for extension of time as per the provisions of Section 75(5) of the Act.

73. The Board further understands the Applicant's case to be that in any event, there was confusion with regard to the legality of the said Addendum of 9<sup>th</sup> October 2025 given that according to it, the same document purported to be issued by the 1<sup>st</sup> Respondent was rejected by the same 1<sup>st</sup> Respondent for the reason that it did not bear his signature.

74. The Board notes that at the hearing, parties advanced several arguments touching on the Addendum, including the contents of the same, which the Board noted included an amended Evaluation Criteria. The Board is

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however of the considered view that it will not delve into the substance of the said Addendum insofar as the said Evaluation Criteria is concerned as that would be premature given that the Request for Review before it does not raise issues to do with evaluation of submitted bids.

75. The Board notes from the contents of Paragraphs 4 and 5 of the Respondents' Memorandum of Response dated 13<sup>th</sup> November 2025 that it is not in dispute that the Procuring Entity issued an Addendum dated 9<sup>th</sup> October 2025 which *inter alia* revised a portion of the tender document, *to wit*, the Mandatory and Technical Evaluation Criteria as well as maintained the tender opening date and time.

76. The Board notes that it is also not in dispute that on 11<sup>th</sup> October 2025 *vide* a Notice advertised in the Standard Newspaper, the 1<sup>st</sup> Respondent cancelled the said Addendum, disassociating himself with it by stating that the same did not bear his signature and that as of the Notice, the same stood cancelled.

77. The Board further notes that neither party at the hearing advanced a position contrary thus as far as the Board is concerned, the said Addendum of 9<sup>th</sup> October 2025 stood cancelled and of no effect to proceedings with respect to the subject tender insofar as the instant Request for Review is concerned.

78. The Board thus finds that because the said Addendum of 9<sup>th</sup> October 2025 was cancelled prior to the tender opening then it had no bearing on

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proceedings thus could not form the basis for the instant Request for Review filed after tender opening and is of no legal consequence at this stage of the tender or legal proceedings before the Board.

79. The Board notes that the second limb of the Respondents' Preliminary Objection that it has been tasked to make a determination on is with respect to the Applicant's *locus standi* and particularly on whether the Applicant has demonstrated that it has suffered or is at the risk of suffering loss.

80. The Board understands the Respondents' case being that the Applicant has neither pleaded nor demonstrated the actual loss suffered as was the standard set by the Court of Appeal in the case ***James Oyondi t/a Betooyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] KECA 916 (KLR)*** as the Respondents understood it.

81. The Board further understands the Respondents' case to be that for a party to claim *locus standi* then it must specifically demonstrate the loss it has suffered at the hands of a Procuring Entity whilst in the course of participating in a tender that warrants presenting a case for the Board for determination such that where one does not have any loss suffered then they have no case to present before the Board for determination.

82. Contrarily, the Board understands the Applicant's case to be that *vide* its pleadings and specifically paragraph 11 of its Request for Review



Application, it has established *locus* to the satisfaction of the provisions of Section 167(1) of the Act.

83. The High Court in ***Matemu v Trusted Society of Human Rights Alliance & 5 others (Civil Application 29 of 2014) [2014] KESC 6 (KLR)*** at paragraph 61 of its Decision addressed itself on the issue of *locus standi* as follows:

***"61. Locus standi is defined in Black's Law Dictionary, 9<sup>th</sup> Edition (page 1026) as "the right to bring an action or to be heard in a given forum"."***

84. The Board therefore understands the issue in contention between parties to be whether the Applicant has demonstrated sufficient *locus standi* allowing it to ventilate the instant Request for Review as far as the issue of having loss or damage as a result of the alleged breach of duty by the Procuring Entity is concerned.

85. Paragraph 11 of the Applicant's Request for Review Application, reproduced *verbatim*, reads as follows:

***"11. THAT the Applicant had a legitimate expectation that upon submitting the bid and attending Tender opening, the Evaluation of the bids would follow as expected and as mandated in law this omission may occasion loss and damage"***

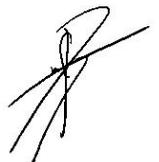


86. The Board has equally had opportunity to look into the ***Betoyo Contractors [supra]*** decision relied upon by the Respondents and highlights the pertinent section of the same as below:

**"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;**

***"(1) subject to the provisions of this part, a candidate or a tender, 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."***

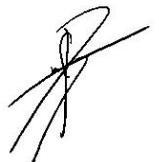
**It seems plain to us that in order to file a review application, a candidate or tenderer must at the very least claim to have suffered or to be at the risk of suffering loss or damage. It is not any and every candidate or tenderer who has a right to file for administrative review. Were that the case,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



*inundated by an avalanche of frivolous review applications. There is sound reason why only candidates or tenderers who have legitimate grievances may approach the Board. In the present case, it is common ground that the appellants were eliminated at the very preliminary stages of the procurement process, having failed to make it even to the evaluation stage. They therefore were, with respect, the kind of busy bodies that section 167(1) was designed of keep out. 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”*

87. From the foregoing, the Board makes the following observations. Firstly, that the Court of Appeal in ***Betoyo Contractors [supra]*** establishes that an Applicant needed to plead or attempt to show that they had actually suffered a loss or damages or were likely to suffer loss or damages.

88. Turning to the matter at hand, as per ***Betoyo Contractors [supra]***, it is imperative that a party either pleads or attempts to demonstrate either loss or damages or the risk of loss or damages. It is therefore the Board’s considered view that the wording of the Applicant’s paragraph 11 of its Request for Review Application dated 5<sup>th</sup> November 2025 sufficiently covers the aspect of risk of damages/loss to the satisfaction of the



condition for *locus* as per the provisions of Section 167(1) of the Act in that the Applicant pleaded potential risk of loss and damages .

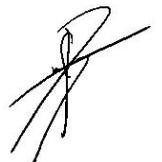
89. The Board therefore finds that the Applicant sufficiently pleaded risk of loss and damages in line with the provisions of Section 167(1) of the Act establishing *locus* of an Applicant. It is therefore the Board's finding that the Respondents' Preliminary Objection fails in that regard.

90. Ultimately, the Board finds that the Respondents' Preliminary Objection fails.

**Whether procurement proceedings in relation to the subject tender were properly terminated in line with the provisions of Section 63 of the Act**

91. The Board notes that the substantive issue before it for determination is on whether the termination of procurement proceedings in the subject tender as communicated to parties, the Applicant inclusive, was in line with the provisions of Section 63 of the Act.

92. The Board is cognizant of the decision of the Court in ***Republic v Public Procurement & Administrative Review Board & 2 others Ex parte Applicant Dar-Yuksel-Ama [2022] KEHC 1172 (KLR)*** where it held as follows at paragraph 53:



***"53 The pertinent question when a dispute over a procurement arises, and specifically the question whether the procuring entity was within the ambit of section 63 when terminating the process, is then, by who and at what stage would the determination be made. In my view section 63 of the Act, if left unchecked, is prone to abuse by rogue accounting officers or procurement entities leading to erosion of the long fought for ethos of accountability in public procurement envisaged under Article 227 of the constitution. Where it is disputed whether the termination was proper, the Board must rise to the occasion and resolve the question within its mandate under Section 167 of the Act. Anything to the contrary would be a carte blanche to procuring entities to seek refuge in section 63 even when not deservedly so."***

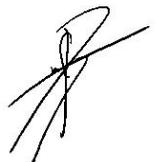
93. Section 63 of the Act speaks to termination of public procurement and asset disposal proceedings in the following terms:

***"(1) An accounting officer of a procuring entity, may, at any time, prior to notification of tender award, terminate or cancel procurement or asset disposal proceedings without entering into a contract where any of the following applies—***

***(a) the subject procurement have been overtaken by—***

***(i) operation of law; or***

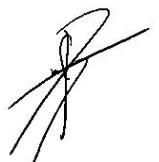
***(ii) substantial technological change;***



- (b) inadequate budgetary provision;***
  - (c) no tender was received;***
  - (d) there is evidence that prices of the bids are above market prices;***
  - (e) material governance issues have been detected;***
  - (f) all evaluated tenders are non-responsive;***
  - (g) force majeure;***
  - (h) civil commotion, hostilities or an act of war; or***
  - (i) upon receiving subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer.***
- (2) An accounting officer who terminates procurement or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.***
- (3) A report under subsection (2) shall include the reasons for the termination.***
- (4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination."***

94. From the foregoing, the Board makes the following observations with respect to valid termination of procurement or asset disposal proceedings:

- i. The termination must be based on any of the grounds under section 63(1) (a) to (i) of the Act;

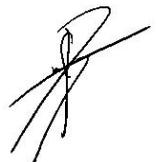


- ii. The Accounting Officer must give a Written Report to the PPRA within 14 days of termination giving reasons for the termination; and
- iii. The Accounting Officer must, within 14 days of termination, give a written notice to the tenderers in the subject tender communicating the reasons for the termination.

95. To quote paragraphs 77 and 78 of this Board's Decision in ***PPARB Application No. 60 of 2025 – Supreme Fortitude Limited vs The Accounting Officer, County Assembly of Kericho & 5 others:***

***"77. In essence, whether there are valid substantive reasons for the termination of procurement proceedings prior to award of a tender is a question of fact that must be made out by sufficient evidence, the onus whereof is on the procuring entity which must show that any of the pre-conditions listed in sub-section (a) to (i) exist. Additionally, Section 63 (2), (3), and (4) outlines the procedure to be followed by a procuring entity when terminating a tender to wit; an accounting officer is required to give PPRA a written report on the termination with reasons and notify all bidders in writing of the termination with reasons within fourteen (14) days of termination.***

***78. In a nutshell, for termination of procurement proceedings to pass the legal muster, a procuring entity must demonstrate***



***compliance with both the substantive and procedural requirements under Section 63 of the Act.”***

96. The Board understands the Applicant’s case to be that the procurement proceedings relating to the subject tender were improperly terminated for the reasons that the said notice was not communicated to it by the Accounting Officer, the said Notice did not give a reason for termination of proceedings, and that to the best of its knowledge, no report to the PPRA was shared.

97. Contrarily, the Respondents assert that the subject tender’s procurement proceedings were validly terminated under the direction of EACC and PPRA because of governance irregularities on the same and that all tenderers were accordingly notified of the same.

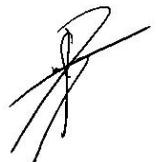
98. The said Termination Notice as received by the Applicant by way of email correspondence, for which the Board is unable to establish when the same was sent out to parties, reads as follows:

***"Re: Termination of Procurement Proceedings***

***Good Afternoon,***

***Kindly note that the tender below has been Terminated.***

***Tender Description: Provision of Comprehensive Medical Insurance cover for County Staff and their Dependents***

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***Tender No: MBT/COU/ADMIN/02/2025-2026***

***Thank you,***

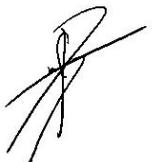
***Francis Kamendi,  
Director Supply Chain Management Services,  
County Government of Marsabit"***

/

99. From the foregoing, the Board notes that whereas the Procuring Entity duly sent out notification to tenderers of the termination of procurement proceedings with respect to the subject tender, the same at face value failed to indicate the reason(s) for termination of the same. The Board finds this to be contrary to the provisions of Section 63(4) of the Act.

100. The Board also notes that upon it perusing the PPRA's portal to that effect, the report contemplated within the provisions of Sections 63(2) and (3) of the Act was neither prepared nor presented in compliance with the said provisions of the Act.

101. The Board followed the argument by the Respondents to the effect that because the Applicant filed the instant Request for Review on 5<sup>th</sup> November 2025, they were still within time to file the said report with the PPRA only that they could not because filing of the instant Application



acted as an injunction over proceedings effectively halting the running of time.

102. The Board however has had sight of the internal memo relied upon and annexed by the Respondents at page 6 of their Memorandum of Response and which is dated 15<sup>th</sup> October 2025, terminating procurement proceedings with respect to the subject tender on its understanding of the advice of correspondence received from PPRA.

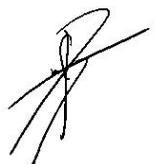
103. If the Board were to take the same as the conclusive date upon which termination of the procurement proceedings actually took place and not 23<sup>rd</sup> October 2025 as the date the same was communicated to parties as per the Applicant's case, then the statutory 14 days within which the Respondents were expected to have prepared and shared the said report started running as of 15<sup>th</sup> October 2025.

104. Section 57 of the Interpretation and General Provisions Act, Cap 2 Laws of Kenya, on the computation of time provides as follows:

***"57. Computation of time***

***In computing time for the purposes of a written law, unless the contrary intention appears—***

***(a) a period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;***

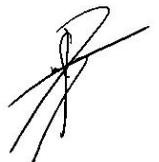


***(b) if the last day of the period is Sunday or a public holiday or all official non-working days (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;***

***(c) where an act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;***

***(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.”***

105. The Board thus surmises that because time for preparation and filing of the said report ought to have started running from 15<sup>th</sup> October 2025 thus the same ought to have been filed on or before 31<sup>st</sup> October 2025, all generosity with respect to computation of the same granted. The Board therefore finds that the action of the Applicant in filing their Request for Review on 5<sup>th</sup> November 2025 ought to have not had any bearing with respect to the timelines on the Respondents to regularize filing of the report with the PPRA.



106. Lastly, it was the Respondents' case that the said Notice was validly sent out by the Director Supply Chain Management Services deputizing and under instruction from the 1<sup>st</sup> Respondent. The Respondents placed reliance on the provisions of Regulation 33(3)(q) of the Regulations.

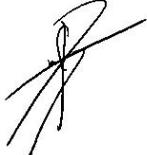
107. Regulation 33(3)(q) of the Regulations reads as follows:

***"(3) The role of the procurement function shall be—***

*.....*

***(q) to implement the decisions of the accounting officer, including disposal committee and coordinating all procurement activities;***

108. The Board is not satisfied that any evidence was adduced by the Respondents that the 1<sup>st</sup> Respondent had authorized such Notice be disseminated to parties by way of any delegated authority to issue such notice from the 1<sup>st</sup> Respondent to the Director Supply Chain Management Services under section 69(1) and (4) of the Act existed to legally sustain such issuance as the Board is categorical that regulation 33(3)q does not grant any power to the Director Supply Chain Management Services, to act as or on behalf of the 1<sup>st</sup> respondent absent delegated authority issued in compliance with section 69 of the Act. The Board is inclined to adopt the said position in light of the events surrounding issuance of the unsigned Addendum of 9<sup>th</sup> October 2025, which Addendum the 1<sup>st</sup> Respondent distanced himself from. In the absence of express delegated authority by the 1<sup>st</sup> Respondent to the Director Supply Chain Management



Services, the Board finds that the responsibility to prepare and circulate such a Notice lay with the 1<sup>st</sup> Respondent and further finds that the same was improperly issued and circulated in violation of section 63(4) of the Act.

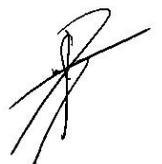
109. It is also important to observe that the PPRA in its letter dated 13<sup>th</sup> October 2025 did not direct termination of the subject tender and the Board was in great difficulty in following this argument as the premise for termination of the subject tender proceedings as advanced by the Respondents in pleadings and submissions.

110. The upshot of the foregoing findings is that the procurement proceedings with respect to the subject tender were improperly terminated and contrary to the provisions of Section 63 of the Act.

**What orders the Board should issue in the circumstances?**

111. The Board finds that the Respondents' Notice of Preliminary Objection dated 13<sup>th</sup> November 2025 fails and the same lacks merit.

112. The Board finds that the procurement proceedings with respect to the subject tender were illegally terminated and contrary to the provisions of Section 63 of the Act.

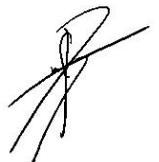
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113. In light of the foregoing findings, the Board finds that the instant Request for Review Application succeeds in terms of the following final orders::

### **FINAL ORDERS**

114. In exercise of the powers conferred upon it by Section 173 of the Act, the Board makes the following orders in the instant Request for Review:

- 1. The Notification of Termination of Procurement Proceedings addressed to the Applicant and other unsuccessful bidders with respect to Tender No. MBT-COU-ADMIN/02/2025-2026 for provision of Comprehensive Medical Cover for the County Government of Marsabit Staff and Dependants be and is hereby nullified and set aside.**
- 2. The Respondents are hereby directed to proceed with tender proceedings concerning Tender No. MBT-COU-ADMIN/02/2025-2026 for provision of Comprehensive Medical Cover for the County Government of Marsabit Staff and Dependants to its lawful and logical conclusion within the thirty days of the date hereof while noting the findings of the Board herein.**



**3. In view of the fact that the procurement process is not complete, each party shall bear its own costs in the Request for Review.**

**Dated at NAIROBI this 26<sup>th</sup> Day of November 2025**

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

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

