

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 110/2025 OF 25TH NOVEMBER 2025

BETWEEN

DRAGOME CONSTRUCTION COMPANY LIMITED APPLICANT

AND

CHIEF REGISTRAR OF THE JUDICIARY 1ST RESPONDENT

THE JUDICIARY OF KENYA 2ND RESPONDENT

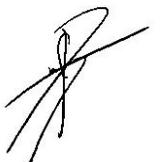
Review against the decision of the Chief Registrar of the Judiciary, The Judiciary in relation to Tender No. JUD/OT/014/2025-2026 for Proposed Completion of Habaswein Law Courts

BOARD MEMBERS PRESENT

1. Mr. George Murugu, FCI Arb, I.P - Chairperson
2. QS. Hussein Were - Member
3. Ms. Jessica M'mbetsa - Member
4. Eng. Lilian Ogombo - Member

IN ATTENDANCE

1. Ms. Godana Dokatu Holding brief for Board Secretary
2. Ms. Evelyn Weru Secretariat



PRESENT BY INVITATION

APPLICANT **DRAGOME CONSTRUCTION COMPANY
LIMITED**

Mr. Justus Omollo

h/b for Mr. Lesaigor - Advocate, Hashim & Lesaigor Associates Advocates

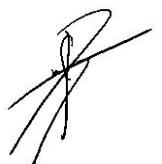
RESPONDENT **CHIEF REGISTRAR OF THE JUDICIARY & THE
JUDICIARY OF KENYA**

Mr. Kennedy Oguto - Legal Counsel, Office of the Chief Registrar of the
Judiciary

BACKGROUND OF THE DECISION

The Tendering Process

1. The Judiciary (hereinafter referred to as "the Procuring Entity") invited on 11th November 2025 sealed tenders in response to Tender No. JUD/OT/014/2025-2026 for Proposed Completion of Habaswein Law Courts (hereinafter referred to as the "subject tender"). The advertisement was placed on My Gov Publication, on the Procuring Entity's website www.tenders.go.ke, and on the Public Procurement Information Portal (PIIP) website www.tenders.go.ke where the blank tender document for the subject tender issued to tenderers (hereinafter referred to as the 'Tender Document') was available for download. The



subject tender's submission deadline was on 25th November 2025 at 10.00 a.m.

Submission of Tenders and Tender Opening

2. According to the Tender Opening Minutes dated 25th November 2025 which were part of confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter referred to as the 'Board') by the 1st Respondent pursuant to Section 67(3)(e) of the Act, a total of six (6) tenders were submitted in response to the subject tender. The six (6) tenders were opened in the presence of tenderers' representatives present at the tender opening session, and were recorded as follows:

Bidder No.	Name
1	Precision International Ltd
2	Gargar Construction Company Ltd
3	Shyam General Merchant Ltd
4	Hawaii Venture Ltd
5	LED Power Technology (EA) Ltd
6	F & A Trading Company Ltd



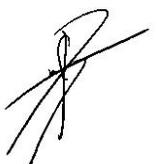
3. Before the tenders submitted in the subject tender could proceed for evaluation, the procurement proceedings were suspended pursuant to Section 168 of the Act following filing of Request for Review No. 110 of 2025.

REQUEST FOR REVIEW NO. 110 OF 2025

4. On 25th November 2025, Dragome Construction Company Limited, the Applicant herein, filed a Request for Review dated 25th November 2025 together with a Statement in Support of the Request for Review sworn on even date by Farah Keinan, its director (hereinafter referred to as the 'instant Request for Review') through the firm of Hashim & Lesaigor Associates Advocates seeking the following orders from the Board that:

a) The public procurement proceedings commenced by the Respondents through the PROPOSED COMPLETION OF HABASWEIN LAW COURTS – TENDER NO: JUD/OT/014/2025-2026 be and are hereby annulled in entirety and set aside.

b) The Chief Registrar of the Judiciary be and is hereby directed to comply with the obligations under section 44 of the Public Procurement and Asset Disposal Act by ensuring that all existing contractual obligations of the Judiciary under tender number JUD/OT/008/2022-2023 in relation to HABASWEIN LAW COURTS are complied

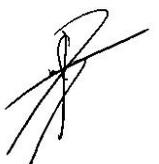


with before commencing new procurement proceedings.

c) Any other relief that the Board may deem fit and just to grant.

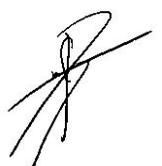
d) Costs of the Review.

5. In a Notification of Appeal and a letter dated 25th November 2025, Mr. Philemon Kiprop, the Secretary of the Board notified the 1st and 2nd Respondents of the filing of the Request for Review and the suspension of the procurement proceedings, while forwarding to the said Respondents a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020. Further, the Respondents were requested to submit a response to the Request for Review together with confidential documents concerning the matter within five (5) days from 25th November 2025.
6. On 3th December 2025, the 1st and 2nd Respondents filed *via* email through Kennedy Ogutu Advocate the 1st and 2nd Respondents' Replying Affidavit. Physical copies were filed on 4th December 2025 together with the confidential documents concerning the subject matter pursuant to Section 67(3)(e) of the Act.
7. *Vide* a Hearing Notice dated 5th December 2025, the Board Secretary, notified parties and all tenderers in the subject tender of an online



hearing of the Request for Review slated for 10th December 2025 at 11.00 a.m., through the link availed in the said Hearing Notice.

8. *Vide* emails of 9th and 10th December 2025, the Board Secretary notified parties that the hearing of the instant Request for Review had been rescheduled to 11th December 2025 at 12.00 noon due to unavoidable circumstances.
9. On 10th December 2025, the Applicant filed an Applicant's Further Affidavit sworn on 9th December 2025 by Farah Keinan.
10. At the hearing on 11th December 2025 at 12.00 noon, the Board read out pleadings filed parties and proceeded to allocate time within which each party was required to proceed and highlight their respective cases. The Board also directed that the hearing of the jurisdictional issues raised by the Respondents would be heard as part of the substantive Request for Review. This was in accordance with Regulation 209(4) of the Public Procurement and Asset Disposal Regulations, 2020 (hereinafter referred to as 'Regulations 2020') which grants the Board the discretion to hear preliminary objections as part of a substantive request for review and deliver one decision.
11. Thus, the matter proceeded for virtual hearing as scheduled.

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PARTIES' SUBMISSIONS

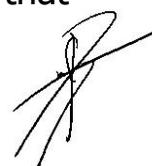
Applicant's case

12. In his submissions, Mr. Omollo for the Applicant placed reliance on the Applicant's pleadings filed before the Board.

13. Mr. Omollo submitted that the Applicant was seeking orders for annulment of the procurement proceedings in the subject tender on the reason that the floating of the subject tender offends Section 3 and 44 of the Act as regards the principles of public procurement and Article 201 of the Constitution as regards the principles of public finance.

14. Counsel submitted that from the admission of the Respondent, there is an existing service provider that was retained arising from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts whose contract is valid until 8th December 2025 as per the public information available on the Public Procurement Information Portal.

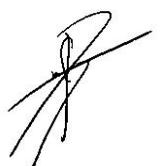
15. It is the Applicant's case that floating of the subject tender on 11th November 2025 without first fulfilling and complying with obligations under the existing and valid procurement contract arising from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts is contrary to Section 44(2)(e) of the Act as read with Section 68(2)(d) , 147(a),&(d), 148, and 149 of the Public Finance Management Act for failure to (i) ensure that all contracts entered into by the Procuring Entity are lawful and complied with, (ii) ensure that



all applicable accounting and financial controls, systems, standards, laws, and procedures are followed when procuring for the works at Habaswein Law Courts, (iii) promote and enforce transparency, effective management and accountability with regards to use of public finances, and (iv) ensure proper management and control of, and accounting for, the finances of the Procuring Entity in order to promote the efficient and effective use of budgetary resources for procurement of works at Habaswein Law Courts.

16. Mr. Omollo submitted that the Applicant had demonstrated that the Procuring Entity is having budgetary constraints in implementing the contract that is in place yet it had floated the subject tender while the budget available as per the Government of Kenya Development Budget 2025/2026 is Kshs. 500,000. He pointed out that it is trite that before any public procurement is undertaken, it has to be on the basis of sufficient budgetary provision otherwise bidders will be engaged in procurement proceedings that are bound to be terminated under Section 63 of the Act for inadequate budgetary provision.

17. On the preliminary objection raised by the Respondents, Mr. Omollo submitted on the Applicant's alleged lack of *locus standi* and referred the Board to Section 2 of the Act which defines a candidate as a party who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity. Counsel pointed out that the Applicant had downloaded the tender documents on 12th November

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2025, a day after the tender was advertised, and therefore qualifies as a candidate within the meaning of the Act.

18. He further pointed out that pursuant to Section 167(1) of the Act, a candidate or tenderer who claims to have suffered or risk suffering loss or damage due to breach of a duty imposed on a procuring entity may seek review. He indicated that in line with the Court of Appeal's holding in *Mombasa James Oyondi t/a Betoyo Contractors & Another vs Elroba Enterprises Limited & Others (2019) eKLR Mombasa Civil Appeal No. 131 of 2018*, the Applicant had pleaded that it risks suffering loss by participating in an unlawful tender process that violates the principles of public procurement and that the tender had not closed at the time of filing the instant Request for Review where the Applicant qualifies and continues to qualify as a candidate.

19. On whether the contention in the instant Request for Review had been determined by the High Court in the judicial review proceedings initiated by the initial contractor in Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts in *Nairobi HCJR Misc. No. E154 of 2025 Republic v The Judiciary & The Attorney General ex parte Canaries Holdings Ltd*, Mr. Omollo submitted that it is quite clear that the issue for determination before the Board is a breach of obligations arising from floating of the new tender and that the Applicant before the Board was not the same party in the judicial review proceedings. He further submitted that the said judicial review



proceedings cannot strip the Board of its jurisdiction as envisioned under Section 167 and 173 of the Act.

20. As to whether there is collision between the Applicant and Canaries Holdings Ltd, the contractor in Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts, Mr. Omollo argued that no material had been placed before the Board to support this allegation and this was just the Respondents' mere speculation that does not in any way strip the Board of its jurisdiction to hear and determine the instant Request for Review.

21. Counsel urged the Board to allow the instant Request for Review as prayed.

Respondents' case

22. In his submissions, Mr. Ogutu counsel for the Respondents placed reliance on the pleadings and confidential documents submitted to the Board by the Respondents.

23. As to whether the Procuring Entity is floating a new tender before fulfilling its obligations in the existing contract emanating from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts, Mr. Ogutu pointed the Board to the Respondents' Exhibit marked as GOO1 being a copy of the contract signed between the Procuring Entity and Canaries Holdings Ltd and indicted that the same was to lapse on 6th April 2025. He indicated that the Procuring Entity

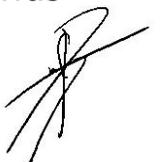


had held a meeting with Canaries Holdings Ltd on 3rd April 2025 where it was requested to make a request for extension of the contract though by the time the contract lapsed, it had not requested for the extension and that the letter of 24th June 2025 referred to by the Applicant came more than two (2) months after the timeline for extension had lapsed.

24. Mr. Ogutu submitted that a dead contract cannot be revived and nothing could be done as to the requested extension after lapse of the contract hence the reason why the Procuring Entity took steps to initiate a new tender for the works to be completed. He reiterated that there was no contract in existence at the time the subject tender was being floated.

25. Counsel submitted that the Applicant in the instant Request for Review was seeking to compel the Procuring Entity through the Review Board to fulfil its obligations under the contract that was signed between the Procuring Entity and Canaries Holdings Ltd. He argued that the said contract is self-contained to the extent that it has provisions that either party can resort to if aggrieved by an action of the other party. He further argued that it is not for the Applicant to approach the Review Board with the aim of compelling it to fulfil its obligations with Canaries Holdings Ltd.

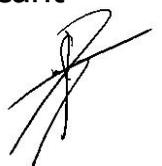
26. It is the Respondents case that the Applicant has no *locus standi* to file the instant Request for Review before the Board for reasons that by the time the subject tender closed on 25th November 2025, it was

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not one of the bidders who participated in the tender and it was hence not a candidate or a tenderer within the meaning of Section 167 of the Act. Further, that the Applicant has not claimed that it has suffered or risks to suffer any loss or damage but is simply seeking fulfilment of a contract for the benefit of a third party.

27. The Respondents contend that given that the substratum of the dispute is the signed contract between the Judiciary and Canaries Holdings Ltd, the Board lacks jurisdiction to hear and determine the instant Request for Review in light of Section 167(4)(c) of the Act.

28. Mr. Ogutu submitted that Canaries Holdings Ltd filed *Nairobi HCJR Misc. No. E154 of 2025 Republic v The Judiciary & The Attorney General ex parte Canaries Holdings Ltd*, seeking orders stopping the Procuring Entity from proceeding with the subject tender and that the Attorney General had responded to the judicial review application by way of a preliminary objection arguing that the dispute is a matter falling within the jurisdiction of the Review Board. He pointed out that the very next day after the said preliminary objection was filed, the instant Request for Review was lodged by the Applicant seeking for orders related to those sought before the High Court in the judicial review application. He further pointed out that in a ruling delivered on 2nd December 2025, the High Court dismissed the judicial review application lodged by Canaries Holdings Ltd on grounds that the matter falls within the jurisdiction of the Board. Counsel indicated that there is every indication that there is collusion between the original contractor and the Applicant



herein to use multiple avenues and abuse the review process to achieve the same outcome of frustrating the subject tender.

29. Counsel urged the Board to dismiss the instant Request for Review with costs.

Applicant's Rejoinder

30. In a rejoinder, Mr. Omollo submitted that the statutory timelines provided under Section 167(1) of the Act is 14 days and that time began to run in the instant matter when the tender notice was published being on 11th November 2025 and as such, the Applicant file the instant request for review within the statutory timelines and this cannot be speculated as an attempt by the Applicant to collude with the existing service provider who in any event could have filed its review application.

31. He reiterated that the Applicant's application is not for enforcement of the contract between the Judiciary and Canaries Holdings Ltd but a challenge to the legality of the procurement proceedings initiated through the subject tender which falls squarely within the jurisdiction of the Board under Section 167 and 173 of the Act.

32. He pointed out that from the Applicant's annexures, the request for extension of the existing contract was made within the stipulated timelines and that the law prohibits the Procuring Entity from making a parallel procurement process when existing obligations under a



contract have not been performed. He urged the Board to allow the instant Request for Review as prayed.

33. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 25th November 2025 was due to expire on 16th December 2025 and that the Board would communicate its decision on or before 16th December 2025 to all parties to the Request for Review via email.

BOARD'S DECISION

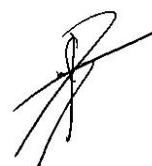
34. The Board has considered all documents, submissions, and pleadings together with confidential documents submitted to it pursuant to section 67 (3)(e) of the Act and finds the following issues call for determination:

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

In determining the first issue, the Board will consider the following sub-issues:

- i. Whether the Applicant has the requisite *locus standi* to approach the Board by dint of Section 167(1) of the Act read with Section 2 of the Act.

Depending on the outcome of sub-issue (i);



- ii. Whether in line with Section 135 of the Act, there is an existing executed contract touching on the procurement proceedings in the subject tender thereby ousting the Board's jurisdiction pursuant to Section 167(4)(c) of the Act.

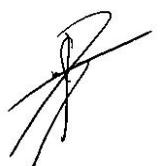
Depending on the outcome of Issue A;

B. Whether the Procuring Entity had adequate budgetary provision to lawfully initiate the procurement proceedings in the subject tender.

C. What orders should the Board grant in the circumstances?

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

35. The Respondents contend that the Board's jurisdiction to hear and determine the instant Request for Review is ousted on two fronts; the first being that the Applicant lacks requisite *locus standi* before the Board since at the tender submission deadline, it was not one of the bidders who participated in the tender and is therefore not a candidate or tenderer within the meaning of Section 167 (1) of the Act; and the second being that the substratum of the dispute herein is the signed contract between the Procuring Entity and Canaries Holdings Ltd hence the Board's jurisdiction is ousted in light of Section 167(4)(c) of the Act.



36. In response, the Applicant submitted that it downloaded the Tender Document in the subject tender a day after issuance of the Tender Notice by the Procuring Entity thus qualifying as a candidate in the subject tender. It further submitted that its claim in the instant Request for Review is not for the enforcement of the contract between the Procuring Entity and Canaries Holdings Ltd but a challenge to the legality of the procurement proceedings initiated through the subject tender while obligations under an existing contract remain unfulfilled contrary to various provisions of the Constitution, the Act, and the Public Finance Management Act.

37. The Board notes that the objections raised regarding whether the Applicant has *locus standi* before it and whether its jurisdiction to hear and determine the instant Request for Review has been ousted under Section 167(4)(c) of the Act, if established, would divest the Board of jurisdiction to entertain the instant Request for Review. Given the objections' preliminary and jurisdictional nature, the Board must therefore address these issues as a matter of priority noting that it is trite law that courts and decision-making bodies should only act in cases where they have jurisdiction and when a question of jurisdiction arises, a Court or tribunal seized of a matter must as a matter of prudence enquire into it before taking any further steps in the matter.

38. The celebrated Court of Appeal decision in **The Owners of Motor Vessel "Lilian S" v Caltex Oil Kenya Limited [1989] eKLR;**

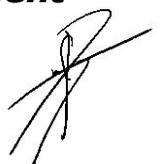
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Mombasa Court of Appeal Civil Appeal No. 50 of 1989 underscores the centrality of the principle of jurisdiction. In particular, Nyarangi JA, decreed:

"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 evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction."

39. The Supreme Court added its voice on the source of jurisdiction of a court or other decision making body in the case **Samuel Kamau Macharia and another v Kenya Commercial Bank Ltd and 2 others [2012] eKLR; Supreme Court Application No. 2 of 2011** when it decreed that;

"A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with Counsel for the first and second Respondent



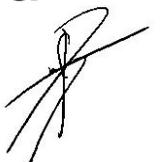
in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction the Court cannot entertain any proceedings."

40. In the persuasive authority from the Supreme Court of Nigeria in the case of **State v Onagoruwa [1992] 2 NWLR 221 – 33 at 57 – 59** the Court held:

"Jurisdiction is the determinant of the vires of a court to come into a matter before it. Conversely, where a court has no jurisdiction over a matter, it cannot validly exercise any judicial power thereon. It is now common place, indeed a well beaten legal track, that jurisdiction is the legal right by which courts exercise their authority. It is the power and authority to hear and determine judicial proceedings. A court with jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based."

41. In the case of **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR**, the Court of Appeal emphasized on the centrality of the issue of jurisdiction and held that:

"...So central and determinative is the issue of jurisdiction that it is at once fundamental and over-



arching as far as any judicial proceedings is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain...."

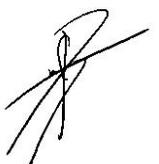
42. The jurisdiction of a court, tribunal, quasi-judicial body or an adjudicating body can only flow from either the Constitution or a Statute (Act of Parliament) or both.

43. This Board is a creature of statute owing to the provisions of 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."

44. Further, Section 28 of the Act provides for the functions and powers of the Board as follows:

***"(1) The functions of the Review Board shall be—
(a) reviewing, hearing and determining tendering and asset disposal disputes; and***



(b) to perform any other function conferred to the Review Board by this Act, Regulations or any other written law.”

45. The above provisions demonstrate that the Board is a specialized, central independent procurement appeals review board with its main function being reviewing, hearing and determining tendering and asset disposal disputes.

46. The jurisdiction of the Board is provided for and also limited under Part XV – Administrative Review of Procurement and Disposal Proceedings and specifically in Section 167 of the Act which provides for what can and cannot be subject to proceedings before the Board and Section 172 and 173 of the Act which provides for the Powers of the Board.

47. Turning to the instant Request for Review, the Respondents challenged the jurisdiction of the Board to hear and determine the instant Request for Review as follows:

i. As to whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) of the Act read with Section 2 of the Act.

48. It is the Respondents' case that the Applicant does not have the requisite *locus standi* to approach the Board in the instant Request for

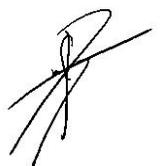


Review since it was not one of the bidders who participated in the procurement proceedings in the subject tender and as such, it is not a candidate or tenderer within the meaning of Section 167 (1) of the Act.

49. In response, the Applicant deponed at paragraph 12 of its Further Affidavit that it is a candidate within the meaning assigned by Section 2 as read with 167(1) of the Act having obtained the Tender Document in the subject tender on 12th November 2025 which was one day after the same was advertised by the Procuring Entity on 11th November 2025.

50. Having considered parties pleadings and submissions, the we note that it is not just any and every person that may move the Board or invoke its jurisdiction under Section 167(1) of the Act which provides as follows:

"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."



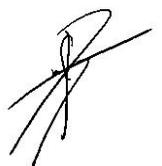
51. On the other hand, Section 2 of the Act defines a candidate as follows:

"Candidate" means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity"

52. The question of whether or not the Applicant was a candidate in the subject tender's procurement proceedings, rests solely on the interpretation of the term "candidate" under Section 2 of the Act. According to that provision, for one to be a candidate, such a person must have obtained a tender document from a public entity pursuant to an invitation notice by a procuring entity. It therefore means that a candidate is a person who has obtained a tender document from a public entity in accordance with an invitation notice by a procuring entity.

53. In **PPARB Application No. 30 of 2016, Achelis Material Handling Limited v. County Government of Kitui (hereinafter referred to as the County Government of Kitui's case)** the Board explained the import of the term "candidate" under Section 2 of the Act as follows:

"The law is therefore clear that a party to a Request for Review must first demonstrate that it made an attempt to participate in the procurement process by first and foremost obtaining the tender document. This is necessary to avoid a situation where anyone may choose to interfere with a procurement process in jest or as an afterthought or to just

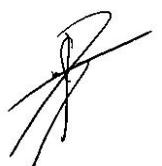


settle scores. The threshold for candidature in this tender as set out by the law is that one must demonstrate they intended to participate in the tender by obtaining the tender document."

54. Further, in **PPARB Application No. 1 of 2020, Energy Sector Contractors Association v. Kenya Power & Lighting Company Limited & Another**, the Board held that:

"From the above decisions, the Board notes that the Courts were alive to the fact that it is only candidates (persons who have obtained a procuring entity's tender document) and tenderers (persons who participate in the tendering process) that may approach this Board. From the definition provided in section 2 of the Act, for one to be a candidate in a procurement proceeding or asset being disposed, what that person has to do is to obtain the tender documents from a public entity pursuant to an invitation notice by a procuring entity.

The Procuring Entity in this instance provided two methods that any person could have used to obtain the tender document, and the Applicant chose to exercise one of the two, that is, to download a copy of the Bidding Document applicable to the subject tender from the Procuring Entity's Official Website.

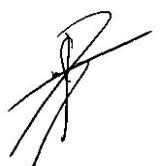


In all the scenarios cited by the Procuring Entity, the Board observes that none of them affect the jurisdiction of the Board to hear and determine an application before it where the Applicant has demonstrated it was a candidate in procurement proceedings initiated under the Act. The Applicant herein filed a copy of the Bidding Document and upon perusal, the same is a copy of the Bidding Document issued by the Procuring Entity in so far as the subject procurement process is concerned.

Accordingly, the Board finds that the Applicant has the locus standi as a candidate to file a Request for Review before this Board as required under section 167 (1) of the Act read together with section 2 of the Act.”

55. From the above holdings, the Board found that a candidate must demonstrate its intention to participate in the tendering process and this would be by first and foremost obtaining the tender document.

56. Turning to the instant Request for Review, we note that the Procuring Entity issued a Tender Notice on My Gov Publication on 11th November 2025 inviting sealed bids from eligible bidders with regard to the subject tender and further indicated that the Tender Document was available on its website and on the Public Procurement Information Portal.

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57. We further note that the Applicant deponed at paragraph 3 of its Statement in Support of the Request for Review that in compliance with the tender advert, it downloaded the Tender Document on 12th November 2025 making it a candidate in the subject tender within the meaning of Section 2 of the Act. It also attached a bundle of documents marked FK-01 in support of its averments which comprise of the Tender Document issued by the Procuring Entity in the subject tender which we have established to be the same as the copy issued by the Procuring Entity and submitted to the Board as part of the confidential documents.

58. Accordingly, we find that the Applicant has *locus standi* as a candidate to approach the Board and institute the instant Request for Review by dint of Section 167(1) of the Act read with Section 2 of the Act.

ii. As to whether in line with Section 135 of the Act, there is an existing executed contract touching on the procurement proceedings in the subject tender thereby ousting the Board's jurisdiction pursuant to Section 167(4)(c) of the Act.

59. Section 167(4)(c) of the Act expressly stipulates that in instances where a contract is signed in accordance with Section 135 of the Act, such a matter shall not be the subject of review proceedings before this Board. It reads:

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167. Request for a review

.....

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

(1)-

(a)

(b); and

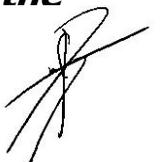
(c) where a contract is signed in accordance with section 135 of this Act.

60. Section 167(4)(c) of the Act imposes a condition that the Board's jurisdiction can only be ousted where a contract is signed in accordance with Section 135 of the Act which provides for creation of procurement contracts and where a contract is signed in accordance with Section 135 of the Act, the Board is divested of its jurisdiction by dint of Section 167 (4) (c) of the Act. It reads:

135. Creation of procurement contracts

(1) The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.

(2) An accounting officer of a procuring entity shall enter into a written contract with the person submitting the



successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.

(3) The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period.

(4) No contract is formed between the person submitting the successful tender and the accounting officer of a procuring entity until the written contract is signed by the parties.

(5) An accounting officer of a procuring entity shall not enter into a contract with any person or firm unless an award has been made and where a contract has been signed without the authority of the accounting officer, such a contract shall be invalid.

(6) The tender documents shall be the basis of all procurement contracts and shall, constitute at a minimum—

(a) Contract Agreement Form;

(b) Tender Form;

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(c) price schedule or bills of quantities submitted by the tenderer;

(d) Schedule of Requirements;

(e) Technical Specifications;

(f) General Conditions of Contract;

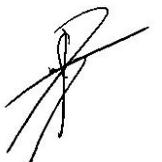
(g) Special Conditions of Contract;

(h) Notification of Award.

(7) A person who contravenes the provisions of this section commits an offence.”

61. In essence, a procurement contract must be in writing, signed by an accounting officer or an officer authorized in writing by an accounting officer of a procuring entity and the successful tenderer and signed within the tender validity period but not earlier than fourteen days have elapsed following the giving of a notification of award.

62. The Respondents contend that the Board has no jurisdiction to determine the instant Request for Review since the Applicant's contention concerns the fulfilment of a contract between the Procuring Entity and Canaries Holdings Ltd emanating from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts which is a question for determination either in the High Court Commercial Division or through the dispute resolution clauses set out



in the said contract. They argued that given that at the substratum of the instant Request for Review is the signed contract between the Procuring Entity and Canaries Holdings Ltd, the Board is divested of jurisdiction to entertain the instant Request for Review by dint of Section 167(4)(c) of the Act.

63. The Respondents further argued that the substantive questions raised in the instant Request for Review were heard and determined by the High Court in its ruling delivered on 2nd December 2025 in *Nairobi HCJR Misc. No. E154 of 2025 Republic v The Judiciary & The Attorney General ex parte Canaries Holdings Ltd*, which ruling is binding on this Board.

64. In response, the Applicant submitted that contrary to the averments by the Respondents, it was not seeking for enforcement of the contract between the Judiciary and Canaries Holdings Ltd but rather challenging the legality of the procurement proceedings initiated through the subject tender while obligations under the existing contract emanating from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts remain unfulfilled contrary to various provisions of the Constitution, the Act, and the Public Finance Management Act.

65. The Applicant further submitted that the ruling delivered on 2nd December 2025 in *Nairobi HCJR Misc. No. E154 of 2025 Republic v The Judiciary & The Attorney General ex parte Canaries Holdings Ltd* does not preclude the instant proceedings since, *inter alia*, (i) it was not a party in the said judicial review proceedings, (ii) the cause of action



was different, (iii) the High Court in the judicial review proceedings found that the dispute between the Procuring Entity and Canaries Holdings Ltd was essentially contractual and ought to be resolved through arbitration as provided in the contract, and (iv) the High Court did not determine the substantive question before the Board on whether the Respondents breached the procurement law by floating the subject tender while the obligations under an existing contract emanating from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts remain in force and unfulfilled.

66. The Board is cognizant of the holding by the Court of Appeal in **Civil Appeal E1009 of 2023 [2024] KECA 79 eKLR Public Procurement Administrative Review Board v Four M Insurance Brokers Limited & 3 others** where it held as follows:

"...

44. The bone of contention between the parties on this issue is twofold. The first one is the tabulation of the fourteen day period and the second one is the validity of the signed contract...

.....

48. On the second limb of jurisdiction relating to the existence of a signed contract, we note that the learned Judge of the superior Court held as follows on this issue:-

"... 217. In Republic vs. Public Procurement Administrative Review Board ex parte Madison General Insurance Kenya Limited; Vice Chancellor Kenyatta



***University & Another (Interested Parties) (2022) eKLR
where Justice Ngaah held as follows:-***

"it could be that indeed the contract was invalid, but in my humble view, considering the provisions of Section 167(4)(c) once a contract has been signed, the appropriate forum before which the question of validity of a signed contract can be determined is this Honorable Court. It does not necessarily follow that an aggrieved party is left without a remedy merely because a contract is signed. Grievances arising out of a signed contract will certainly be addressed but not before the Public Procurement Administrative Review Board. They will be addressed before the court which only has the jurisdiction to determine such disputes related to the alleged grievances."

218. The Board lacked jurisdiction to hear and determine the application by the 2nd Respondent under Section 167(4) of the Act, to entertain the application given that there was already a signed contract – signed on 2nd October 2023, between the ex-parte Applicant and the 3rd and 4th Respondent.

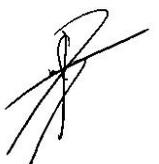
219. Given that the Contract was executed between the Applicant and the 4th Respondent, on 2nd October



2023, the Board lacked jurisdiction to adjudicate over any request for review filed after the execution of a contract pursuant to the provisions of Section 167(4)(c) of the Act and I so hold...”

49. As already observed, the appellant’s jurisdiction emanates from Section 167(1) of the Act. Section 167(4) provides matters that shall not be subject to the jurisdiction of the appellant and, Section 167(4) (c) of the Act specifically, ousts the appellant’s jurisdiction where a contract is signed in accordance with Section 135 of the Act. Section 135 in this regard sets out various requirements to be met in the creation and signing of procurement contracts, and an ordinary and purposive interpretation of section 167(4) is that the appellant is required to inquire into whether a procurement contract has been signed in accordance with section 135 of the Act when deciding on whether it has jurisdiction to hear and determine a request for review filed before it in cases where a contract has already been signed, and its jurisdiction is only ousted once this preliminary inquiry establishes that the provisions on creation of a procurement contract under Section 135 of the Act have been met, or where it makes an error as to the existence of this statutory precondition.

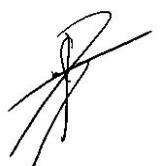
.....”



67. In order for the Board to establish if its jurisdiction to entertain the instant Request for Review is ousted by dint of Section 167(4)(c) of the Act in view of the existing contract emanating from Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts, we have examined both the Applicant's and Respondents' pleadings, annexures, and confidential documents submitted to the Board and note as follows:

68. The Procuring Entity floated Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts which was awarded to Canaries Holdings Ltd and a procurement contract executed on 8th December 2022. Pursuant to Addendum No. 1 to Contract No. JUD/OT/008/2022-2023 being the Contract for Proposed Construction of Habaswein Law Courts, the duration of the contract was 24 months running from 6th April 2023 to 5th April 2025 at a contract sum of Kshs. 77,998,210.00. Both the Procuring Entity and Canaries Holdings Ltd were bound by the conditions of contract contained therein. The existence of this contract is not disputed. Indeed, its enforcement is in sharp focus as shall be seen hereunder.

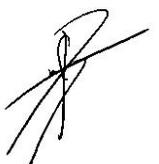
69. A consultative meeting was held between the Procuring Entity and Canaries Holdings Ltd on 3rd April 2025 as evidenced by the Notes of the Consultative Meeting between DBS and the Proposed Habaswein Law Courts Contractor held on Thursday, 3rd April 2025 at DBS Offices annexed and marked as 'GOO3'. The agenda items of this consultative

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meeting included, *inter alia*, discussion on renewal of Canaries Holdings Ltd.'s performance security and expiry of the contract duration.

70. As regards the expiry of the contract duration, we note from the said notes that Canaries Holdings Ltd was notified that its contract duration was almost lapsing on 6th April 2025 and it ought to consider applying for an extension of time. In response, we note that Canaries Holdings Ltd is indicated to have been reluctant to resume works on site for concrete casting of the raft since it was not assured of receiving payment for the works in the current financial year. Subsequently, the project manager is indicated in the said notes to have made a commitment to ensure that Canaries Holdings Ltd is paid in the financial year once the casting of the raft is completed and further, that both parties were willing to put more efforts to continuing with the project though there was a contemplation to terminate the contract in the future on grounds of frustration as a result of macro-economic issues such as insufficient budgetary allocation.

71. Following the consultative meeting, we note that the Procuring Entity issued Canaries Holdings Ltd with a letter dated 3rd April 2025 annexed at page 13 of the bundle of documents produced in the Applicant's Further Affidavit where it undertook to pay the value of works done in the concreting of the raft foundation in the current financial year and gave an assurance that the internal payment processes would be concluded within 30 days. Interestingly, the reference of this letter

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reads 'Proposed Completion of Habaswein Law Courts Contract No. JUD/OT/008/2022-2023.'

72. We further note that Canaries Holdings Ltd vide email dated 16th June 2025 addressed to the Procuring Entity's Directorate of Building Services communicated on its preparation to resume concrete casting on 24th June 2025 and requested for concurrence from the Procuring Entity's technical team on the planned works and confirmation of the grounds team's availability to support the exercise.

73. In a twist of events, the Procuring Entity proceeded to advertise the subject tender on 11th November 2025 which appears to be a continuation of Tender No. JUD/OT/008/2022-2023 for Proposed Construction of Habaswein Law Courts in the sense that it is framed as Proposed Completion of Habaswein Law Courts.

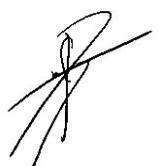
74. The Board observes that it is this decision by the Procuring Entity which led Canaries Holdings Ltd to approach the High Court for redress in Judicial Review Misc. Application No. E154 of 2025 where it sought orders, *inter alia*, for the High Court to quash the decision of the Procuring Entity in advertising the subject tender.

75. Both the Applicant and the Procuring Entity in the instant Request for Review pointed the Board to the Ruling on Preliminary Objection Dated 24/11/2025 delivered on 2nd December 2025 by Hon. Justice R. E. Aburili in Judicial Review Misc. Application No. E154 of 2025 where the

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Learned Judge in considering if the High Court was devoid of jurisdiction to entertain the said judicial review application noted at paragraph 40 of its ruling that it was clear that Canaries Holdings Ltd was lamenting that the Respondents had re-advertised a tender for completion of a court house which it was in the process of constructing as agreed despite the financial challenges leading to the delay in meeting the completion timeline as agreed in the contract. The Court then proceeded to note at paragraph 41 of its ruling that the dispute in the matter was purely a contractual dispute which judicial review could not resolve.

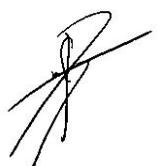
76. On its own motion, the Court identified at paragraph 50 of its ruling a jurisdictional issue pertaining to dispute resolution as laid out at Clause 20.0-20.10 of the Contract for Proposed Construction of Habaswein Law Courts which stipulates that in the event of a dispute, parties will first attempt amicable settlement and where they fail to agree, resort to arbitration which is binding to the parties to the contract. At paragraph 59, the Court proceeded to state that if Canaries Holdings Ltd wanted to obtain interim injunctive reliefs in the matter where the Procuring Entity was allegedly breaching the terms of the contract by readvertising the subject tender, it had the remedy of seeking relief from the commercial court and not by way of judicial review. Further, at paragraph 63, the Court held the view that the Procuring Entity's decision to readvertise the impugned tender is a decision that hinges on an alleged breach of contract, and it subsequently proceeded to down its tools.



77. From the foregoing, the Board notes that the High Court clearly set out the dispute in the judicial review application by Canaries Holdings Ltd pertaining to advertisement of the subject tender by the Procuring Entity to be pegged on allegations of breach of the existing Contract for Proposed Construction of Habaswein Law Courts. It is not in contest that the Applicant was not a party to these judicial review proceedings before the High Court.

78. However, a cursory examination of the Applicant's grounds of review reveals that the instant Request for Review raises issues touching on the undischarged Contract for Proposed Construction of Habaswein Law Courts between Canaries Holdings Ltd and the Procuring Entity which is the main reason behind the prayers sought by the Applicant in this instant Request for Review where it urges the Board to annul the subject tender and order the 1st Respondent to ensure that all existing contractual obligations of the Procuring Entity under Tender No. JUD/OT/008/2022-2023 in relation to Habaswein Law Courts are complied with.

79. To this end, the Board finds that there is an existing procurement contract for the construction of Habaswein Law Courts that had been signed in accordance with Section 135 of the Act by the Procuring Entity and Canaries Holdings Ltd.

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80. In the circumstances, the Board finds that pursuant to Section 167(4)(c) of the Act, it is divested of jurisdiction to hear and determine the instant Request for Review by dint of the existence of the Contract for Proposed Construction of Habaswein Law Courts which was signed in line with Section 135 of the Act.

81. We therefore decline jurisdiction to entertain this matter and accordingly, we proceed to down our tools at this juncture and shall not proceed to consider the other issues framed for determination.

What orders should the Board grant in the circumstances?

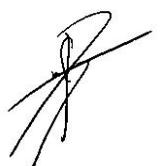
82. Having considered the parties' submissions and examined all the evidence on record, the Board has established that the Applicant has *locus standi* as a candidate to institute the instant Request for Review by dint of Section 167(1) as read with Section 2 of the Act.

83. The Board has further established that it lacks jurisdiction to hear and determine the instant Request for Review by dint of Section 167(4) (c) of the Act.

84. The upshot of our finding is that the instant Request for Review is for striking out for want of jurisdiction.

FINAL ORDERS

85. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:



A. The Request for Review dated 25th November 2025 and filed on even date be and is hereby struck out for want of jurisdiction.

B. In view of our findings above, each party shall bear its own costs in the Request for Review.

Dated at NAIROBI this 16th Day of December 2025.



.....
CHAIRPERSON
PPARB



.....
SECRETARY
PPARB

