

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 114/2025 FILED ON 8TH DECEMBER 2025

BETWEEN

NORTHERN HYDRO PUMPS LIMITEDAPPLICANT

AND

CHIEF EXECUTIVE OFFICER,

MANDERA WATER AND SEWERAGE COMPANY 1ST RESPONDENT

MANDERA WATER AND SEWERAGE COMPANY 2ND RESPONDENT

SHARUS CONSTRUCTION & SUPPLIES LTD INTERESTED PARTY

Review against the decision of the Accounting Officer, Mandera Water and Sewerage Company in relation to Tender No. KE-MANDERA-502101-CW-RFB-LOT 2 - Construction, Rehabilitation and Expansion of Groundwater – Based Rural Water Supply Systems in Mandera County.

BOARD MEMBERS PRESENT

Mr. George Murugu FCIArB & IP - Chairperson
Mr. Stanslaus Kimani - Member
Mr. Joshua Kiptoo - Member

IN ATTENDANCE

Mr. Philemon Kiprop - Board Secretary



PRESENT BY INVITATION

APPLICANT

NORTHERN HYDRO PUMPS LIMITED

Mr. Edwin Nyanyuki

Advocate, Nyanyuki & Company Advocates

RESPONDENTS

**CHIEF EXECUTIVE OFFICER,
MANDERA WATER AND SEWERAGE
COMPANY
MANDERA WATER AND SEWERAGE
COMPANY**

Mr. Mohamud Sheikh

Advocate, Sheikh & Shariff Advocates

INTERESTED PARTY

**SHARUS CONSTRUCTION & SUPPLIES
LTD**

Mr. Andrew Mwango

Advocate, Sisule & Sisule Company Advocates

BACKGROUND OF THE DECISION

The Tendering Process

1. The Mandera Water and Sewerage Company (hereinafter referred to as "the Procuring Entity") invited eligible tenderers to submit bids for Tender No. KE-MANDERA-502101-CW-RFB-LOT 2 - Construction, Rehabilitation and Expansion of Groundwater – Based Rural Water Supply Systems in



Mandera County (hereinafter referred to as “the subject tender”). The tender was scheduled to close and be opened on 19th September 2025.

Addenda/Clarifications

2. According to the confidential documents submitted to the Public Procurement Administrative Review Board (hereinafter referred to as “the Board”) by the Procuring Entity pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act (hereinafter referred to as “the Act”), no addenda and/or clarifications were issued in respect of the subject tender.

Submission of Bids and Tender Opening

3. According to the Tender Opening Minutes dated 19th September 2025, submitted as part of the confidential documents, a total of four (4) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Northern Hydro Pumps Ltd
2.	Soo and Sons Ltd
3.	Sharus Construction & Supplies Ltd
4.	Safe Roads Construction Ltd



Evaluation of Tenders

4. According to the Evaluation that took place 8th – 17th October, 2025 (hereinafter referred to as "the Evaluation Report"), the Tender Evaluation Committee (hereinafter referred to as "the Evaluation Committee") convened to evaluate the tenders submitted. The evaluation process was undertaken in three stages, as set out below:
 - i. Preliminary Evaluation;
 - ii. Technical Evaluation
 - iii. Financial Evaluation.

Preliminary Evaluation

5. At the Preliminary Evaluation stage, the Evaluation Committee was obligated to examine all tenders against the criteria prescribed under ITB 11.1 as read together with the Bid Data Sheet. Any tender that failed to meet the stipulated requirements on completeness at this stage was, by operation of the tender document, liable to be declared non-responsive.
6. Upon conclusion of the Preliminary Evaluation, two tenders were found to be non-responsive and were consequently disqualified from further consideration. The remaining two tenders, including those submitted by the Applicant and the Interested Party, were found to be responsive and therefore qualified to proceed to the Technical Evaluation stage.



Technical Evaluation

7. At the Technical Evaluation stage, the Evaluation Committee evaluated the tenders for compliance with the technical requirements set out under ITB 35.1, as read together with the provisions of Section III – Evaluation and Qualification Criteria of the Tender Document.
8. Upon conclusion of the Technical Evaluation, the Applicant was found not to have met the evaluation and qualification criteria and was consequently declared non-responsive. The Interested Party, having satisfied the said criteria, was found to be responsive and was accordingly advanced to the Financial Evaluation stage.

Financial Evaluation

9. At the Financial Evaluation stage, the Evaluation Committee was mandated to assess the tenders in accordance with the criteria set out under ITB 35.2.
10. Upon conclusion of the Financial Evaluation, the Evaluation Committee determined that the Interested Party, Sharus Construction & Supplies Limited, submitted the lowest evaluated bid.



Evaluation Committee's Recommendation

11. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder, at a total sum of KES 391,739,388.09 subject to due diligence.

Due diligence

12. Pursuant to the Due Diligence Report dated 11th November 2025 (hereinafter "the Due Diligence Report"), the Evaluation Committee conducted due diligence on the Interested Party. The report confirmed that the Interested Party possessed the requisite financial and technical capacity to undertake the construction, rehabilitation, and expansion of groundwater-based rural water supply schemes – Batch 1, Lot 2 in Mandera County, encompassing the Daidai, Degmarer, Rhamu Dimtu, Rhamu Giriza, and Shirshir schemes.

Professional Opinion

13. In an undated Professional Opinion (hereinafter referred to as "the Professional Opinion"), the Procuring Entity's Supply Chain Manager, Mr. Issack Salad Ibrahim, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's



recommendations to award the subject tender to the Interested Party. The Professional Opinion was subsequently approved by the 1st Respondent.

Notification of Award

14. The tenderers were notified of the outcome of the evaluation for the subject tender through letters dated 25th November, 2025.

REQUEST FOR REVIEW

15. On 8th December 2025, the Applicant, through the firm of Nyanyuki & Company Advocates, filed a Request for Review dated 5th December 2025 of the same date, accompanied by a Supporting Affidavit sworn on 5th December 2025 by Mr. Omar Abdullahi Sheikh, the Applicant's Director (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

- a. **An ORDER setting aside and or nullifying the Notification of Intention to Award letter sent out by the Procuring Entity on 25th November 2025 which awarded the bid to M/s Sharus Construction & Supplies Limited;**

- b. **An ORDER directing the Respondents to award Tender No. KE-MANDERA-502101-CW-RFB-LOT 2; Construction, Rehabilitation and Expansion of Groundwater – Based**



Rural Water Supply Schemes - Batch 1 Schemes in Mandera County to the Applicant given that the Applicant's bid was the most responsive hence qualified for letter of award.

c. An ORDER that the Respondents do pay costs of this Application; and

d. Any other relief that the Board deems just and expedient.

16. In a Notification of Appeal and a letter dated 8th December 2025, Mr. Philemon Kiprop, the Board Secretary notified the Respondents of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the 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 instant Request for Review together with confidential documents concerning the subject tender within five days from 8th December 2025.
17. On 18th December 2025, the Board Secretary issued a Hearing Notice dated the same day to the parties, notifying them that the hearing of the Request for Review would be held virtually on 23rd December 2025 at 11:00 a.m. via the provided link.



18. On 19th December 2025, the Respondents, through the firm of Sheikh & Shariff Advocates, filed their Memorandum of Response together with a Notice of Preliminary Objection, both dated the same day. On that date, the Respondents also submitted the confidential documents to the Board in compliance with Section 67(3)(e) of the Act.
19. On 22nd December 2025, the Interested Party, through the firm of Sisule & Associates LLP, filed a Replying Affidavit sworn by Mustafa Aligey Hassa, the Interested Party's Managing Director, together with a Notice of Preliminary Objection, both dated the same day.
20. On 22nd December 2025, the Applicant filed a Supplementary Affidavit sworn on 21st December 2025 by Omar Abdullahi Sheikh, together with its Written Submissions dated 22nd December 2025.
21. On 22nd December 2025, the Respondents filed their Written Submissions dated the same day.
22. On 23rd December 2025, the Interested Party filed its Written Submissions dated the same day.
23. When the Board convened for hearing on 23rd December 2025, the respective Advocates appeared for the parties. The Board read out the filed documents and inquired whether service of the said documents had been effected on the other parties. Counsel for the Applicant and Counsel



for the Respondents indicated that they had not been served with the Interested Party's Written Submissions. The Board directed Counsel for the Interested Party to effect service of the Written Submissions forthwith. Thereafter, the Board sought confirmation from Counsel for the Respondents and the Interested Party that service had been effected, and both confirmed and stated that they were ready to proceed. The Board then allocated time for the Advocates to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

24. The Applicant's Counsel submitted that the Respondent's Preliminary Objection does not meet the legal threshold of a valid preliminary objection, as it is not founded on a pure point of law capable of disposing of the matter without interrogation of facts. Reliance was placed on **Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696**, where the court defined a preliminary objection as one raising a pure point of law argued on the assumption that all pleaded facts are correct, and which should not require ascertainment of facts or the exercise of discretion. Counsel further relied on **Hassan Nyanje Charo v Khatib Mwashetani & 3 Others [2014] eKLR**, where the court reaffirmed that a preliminary objection can only be sustained where facts are uncontested and the legal issue leads to only one conclusion.



25. On jurisdiction, Counsel submitted that the Board's jurisdiction can only be ousted under the Act where the procurement falls within the limited exemption relating to bilateral or multilateral agreements involving the Government of Kenya and a foreign government, agency, entity, or multilateral agency. In support of this position, Counsel cited **Republic v Public Procurement Administrative Review Board & Another ex parte Athi Water Services Board & Another [2017] eKLR (Misc. Application No. 402 of 2016 consolidated with Misc. Application No. 405 of 2016)**, where Odunga J held that for the exemption to apply, the Government of Kenya must be a direct party to the procurement, and the other party must be a foreign government or multilateral agency. It was emphasized that a parastatal or procuring entity, distinct from the Government of Kenya, cannot on its own invoke the exemption.
26. Counsel further submitted that this Board has previously adopted a similar interpretation. Reliance was placed on **PPARB Application No. 41 of 2020**, where the Board held that, in the absence of a demonstrated bilateral agreement between the Government of Kenya and a multilateral financier, the Act remained applicable and the Board's jurisdiction was not ousted. Counsel argued that no such bilateral agreement had been produced in the present matter, and therefore the Respondent's reliance on the exemption under the Act was misplaced.
27. In response to the issue raised by the Respondents in their Notice of Preliminary Objection regarding the allegation in the Request for Review



that the license to operate as a qualified water resource contractor was time-barred, Counsel contended that the same is not time barred. Counsel argued that the Notification of Award was received on 25th November 2025, and the Request for Review was filed on 8th December 2025, which is within the timelines prescribed under Section 167 of the Act.

28. In response to the Interested Party's Preliminary Objection, Counsel submitted that the Applicant has satisfied the requirements of Section 167 of the Act, and accordingly, the Preliminary Objection ought to be dismissed. Counsel referred the Board to ground no. 2 of the Request for Review, demonstrating that the Applicant has complied with Section 167(1) of the Act by asserting that it stands to suffer loss and damages as a result of the breaches committed by the Respondents.
29. Turning to the merits of the Application, the Applicant's Counsel submitted that the Procuring Entity unlawfully awarded the tender to a bidder whose bid was non-responsive, contrary to the Act. It was argued that responsiveness under the Act requires strict compliance with all mandatory requirements in the tender documents.
30. Counsel contended that the Interested Party failed to meet a mandatory eligibility requirement requiring registration and licensing as a qualified water contractor by the Ministry of Water, Sanitation and Irrigation. It was submitted that an official search confirmed that the Interested Party had not been duly licensed as a qualified water resource contractor, rendering



its bid non-responsive. Counsel further argued that the registration certificate relied upon by the Respondents was obtained only three days before the bid closing date, was not accompanied by a valid contractor's licence, and did not demonstrate compliance with the licensing regime applicable to such works.

31. Additionally, Counsel submitted that the Interested Party did not meet the qualification criteria requiring completion of at least one similar contract within the stipulated period, given the recent its recent registration. It was also argued that the registration certificate limited the bidder to works of a maximum value substantially lower than the tender sum awarded, thereby rendering the award unlawful and contrary to the tender requirements.
32. In conclusion, the Applicant's Counsel submitted that the Procuring Entity breached the Act by awarding the tender to a non-responsive bidder and by failing to adhere to mandatory eligibility and qualification criteria. Counsel urged the Board to find that the Preliminary Objections, as filed by the Respondents and the Interested Party, were without merit, to uphold the Board's jurisdiction, and to allow the Application for Review.

Respondents' Submissions

33. The Respondents' Counsel submitted that the Board lacks jurisdiction to entertain the instant Request for Review on account of both statutory



exclusion and failure by the Applicant to invoke the applicable alternative dispute resolution mechanism. Counsel argued that the subject procurement was financed by the World Bank through the International Development Association (IDA) under a bilateral agreement between the Government of Kenya and a multilateral agency, and was expressly governed by the World Bank Procurement Regulations for IPF Borrowers. In that regard, it was contended that by virtue of the Act and the attendant Regulations, the procurement fell outside the application of the Act, thereby ousting the Board's jurisdiction.

34. Counsel further submitted that the tender documents expressly provided for an alternative inbuilt procurement-related complaint handling mechanism under the World Bank Procurement Regulations, which mechanism the Applicant failed to invoke. It was argued that the Instructions to Bidders and the Bid Data Sheet clearly directed aggrieved bidders to lodge complaints in accordance with the World Bank procedures, and not before the Board. Consequently, the Respondents contended that the Request for Review was improperly before the Board and ought to be struck out.
35. In support of this position, reliance was placed on **Judicial Review Application No. 181 of 2018, Republic v Public Procurement Administrative Review Board & 2 Others**, where the High Court faulted the Board for assuming jurisdiction in a procurement financed through a multilateral funding agreement. The Court held that where a



procurement is undertaken pursuant to a bilateral or multilateral agreement that prescribes applicable procurement procedures and dispute resolution mechanisms, the Act does not apply and the Board's jurisdiction is ousted. The Respondents submitted that the circumstances in the present matter are similar, and the same reasoning should apply.

36. On the issue of limitation, the Respondents' Counsel submitted that the Applicant's claims relating to the alleged requirement for a licence to operate as a qualified water resource contractor, as well as the alleged conflict of interest, were time-barred. Counsel argued that the Act and Regulations impose a strict fourteen-day statutory timeline for filing a Request for Review, which timeline is jurisdictional and cannot be extended by the Board.
37. It was submitted that the tender requirements relating to registration with the Ministry of Water, Sanitation and Irrigation were contained in the tender documents from the outset, and the Applicant, having accessed and submitted a bid without objection, ought to have raised any challenge within fourteen days of becoming aware of the alleged breach. Similarly, it was argued that the alleged conflict of interest should have been raised within fourteen days of tender opening, when the identities of all bidders were disclosed.
38. In support of the plea on limitation, the Respondents relied on **PPARB Application No. 1 of 2023, Afrirock Civil Limited v The Principal**



Secretary, State Department of Housing & Urban Development & 2 Others, where the Board struck out a Request for Review filed outside the statutory timeline, holding that challenges to tender requirements must be brought within fourteen days of the occurrence of the alleged breach, and that the Board lacks jurisdiction to entertain claims filed out of time.

39. Without prejudice to the foregoing jurisdictional objections, the Respondents submitted that the Request for Review was in any event devoid of merit. Counsel contended that the Interested Party duly submitted a valid registration certificate issued by the Ministry of Water, Sanitation and Irrigation as a class 4 contractor, thereby meeting the responsiveness threshold set out in the tender document. It was further submitted that the tender document did not require bidders to submit a licence to operate as a qualified water resource contractor, and therefore no adverse inference could arise from the alleged absence of such a licence.
40. Counsel additionally submitted that the legal framework relied upon by the Applicant regarding licensing had since been overtaken by subsequent regulations, which no longer required gazettement of licence holders. As regards the allegation of conflict of interest, the Respondents maintained that the claim was vague, unparticularised, and unsupported by evidence, and that the Applicant had failed to demonstrate the existence of any conflict or how it affected the procurement process.



Interested Party's Submissions

41. Counsel for the Interested Party commenced by associating himself with the submissions of the Respondents in respect of their Notice of Preliminary Objection and concurred that, indeed, the Board lacked jurisdiction to determine the instant Request for Review.
42. The Interested Party's Counsel submitted that the Request for Review did not meet the statutory threshold under the Act, as the Applicant had neither pleaded nor demonstrated that it had suffered or was at risk of suffering loss or damage as a result of any breach attributable to the Procuring Entity. Counsel emphasized that, under the Act, only a candidate or tenderer who claims such loss or risk thereof has locus to approach the Review Board, and the absence of this foundational pleading was fatal to the Application. Counsel argued that ground no. 2 of the Request for Review as submitted by the Applicant does not meet the requirement of pleading loss and damages to be suffered by the Applicant as a result of the actions by the Respondents. On that basis, it was urged that the Board ought to down its tools and dismiss the Request for Review at the threshold stage.
43. In support of this position, reliance was placed on the Court of Appeal decision in **James Oyondi t/a Betoyo Contractors & Another v Elroba Enterprises Limited & 8 Others (2019) eKLR (Mombasa Civil Appeal No. 131 of 2018)**, where the Court held that pleading and



demonstrating actual or potential loss or damage is a mandatory prerequisite for invoking the Board's jurisdiction under the Act. The Court further cautioned that not every candidate or tenderer is entitled to seek administrative review, as doing so without this threshold would open the floodgates to frivolous applications. Counsel urged the Board to be guided by this authority and dismiss the present Application for want of locus.

44. Without prejudice to the foregoing, the Interested Party's Counsel submitted that, even on the merits, the Application was unsubstantiated. It was contended that the Applicant's sole ground of challenge related to alleged non-compliance with Requirement ITB 11.1(i) of the tender document. Counsel maintained that the Interested Party had duly complied with the stated requirement by submitting its Certificate of Registration with the Ministry of Water, Sanitation and Irrigation, being Certificate Number WDC-KLCWGG/2025, and therefore met the eligibility criteria set out in the tender documents.
45. Counsel further argued that the Applicant's assertion that the Interested Party ought to have submitted an additional licence from the Ministry of Water introduced a requirement that was not stipulated in the tender document. It was submitted that, under the Act, tender evaluation must strictly adhere to the criteria expressly set out in the tender documents, and neither the procuring entity nor the Review Board is permitted to introduce extraneous or unstated criteria during evaluation. On this basis,



the Interested Party contended that the Request for Review was devoid of merit and urged the Board to dismiss it with costs.

Applicant's Rejoinder

46. In rejoinder, Counsel for the Applicant submitted that, under Section 167(1) of the Act, a Request for Review may be filed within fourteen (14) days of receiving the Notification of Award. In the instant case, the Applicant filed the Request for Review within the prescribed statutory timeline.

BOARD'S DECISION

47. The Board has considered each of the parties' cases, documents, pleadings, written submissions, authorities together with confidential documents submitted to the Board by the 1st Respondent pursuant to Section 67(3)(e) of the Act and finds the issues that arise for determination are:

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

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



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

Depending on the determination on the above sub-issue:

ii. Whether the Board's jurisdiction is ousted by virtue of Section 4(2)(f) of the Act.

Depending on the determination on the above sub-issue:

iii. Whether the Request for Review was filed outside the timeline under section 167 (1) of the Act.

Depending on the determination on the above sub-issue:

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

C. What appropriate orders should issue in the circumstances.



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

48. The Interested Party, in its Notice of Preliminary Objection, contended that the Applicant had not pleaded that it stood to suffer loss and damages as a result of the alleged breaches by the Respondents, contrary to the requirements of Section 167(1) of the Act, and that, therefore, the Request for Review is defective. In response, Counsel for the Applicant submitted that the Request for Review is compliant with Section 167(1) of the Act and referred the Board to ground no. 2 of the Request for Review.
49. In their Notice of Preliminary Objection, the Respondents contended that the Board lacks jurisdiction by virtue of Section 4(2)(f) of the Act, a position that was similarly supported by the Interested Party. The Applicant, in rebuttal, argued that the Board's jurisdiction can only be excluded under the Act where the procurement falls within the limited exemptions relating to bilateral or multilateral agreements involving the Government of Kenya and a foreign government, agency, entity, or multilateral organization, a circumstance which, Counsel submitted, does not arise in the present matter.
50. The Respondents further contended that the Applicant's claims regarding the alleged requirement for a licence to operate as a qualified water resource contractor, as well as the alleged conflict of interest, were time-



barred. In response, Counsel for the Applicant submitted that the Applicant received the Notification of Award on 25th November 2025 and filed the Request for Review on 8th December 2025, within the fourteen-day timeline prescribed under Section 167(1) of the Act.

51. The effect of the foregoing issues, if established, would be to deprive the Board of jurisdiction to entertain the present Request for Review. Accordingly, given their preliminary and jurisdictional nature, these issues must be addressed as a matter of priority. The Board is guided by the well-established principle that adjudicative bodies may only determine matters within their jurisdiction. Where a question of jurisdiction arises, it must be resolved as a threshold issue before any further proceedings. Jurisdiction is the cornerstone of adjudication, and in its absence, a court or a tribunal lacks the legal authority to proceed.

52. In **Kenya Hotel Properties Limited v Attorney General & 5 others (Petition 16 of 2020) [2022] KESC 62 (KLR) (Civ) (7 October 2022)**, the Supreme Court reaffirmed that jurisdiction is the cornerstone of any judicial or quasi-judicial process. Where a question of jurisdiction is raised, it must be addressed and resolved at the earliest stage of the proceedings.

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



Chengo [2017] eKLR, that jurisdiction is that which grants a court authority to decide matters by holding;

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

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

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



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

**The functions of the Review Board shall be –
reviewing, hearing and determining tendering and asset
disposal disputes; and to perform any other function
conferred to the Review Board by this Act, Regulations or any
other written law.**

55. The jurisdiction of this Board is established under Part XV – Administrative Review of Procurement and Disposal Proceedings. Specifically, Section 167 of the Act defines the matters that can and cannot be brought before the Board, while Sections 172 and 173 outline the Board's powers in handling such proceedings.

56. In light of the foregoing, the Board is compelled to examine its jurisdiction with reference to the preliminary issues raised by the Respondents and the Interested Party.

Whether the Applicant has locus standi before the Board.

57. The Interested Party contended that the Applicant did not plead that it stood to suffer loss and damages as a result of the alleged breaches by the Respondents, contrary to the requirements of Section 167(1) of the Act, and that, consequently, the Request for Review is defective.



58. In response, Counsel for the Applicant submitted that the Request for Review is compliant with Section 167(1) of the Act and referred the Board to ground no. 2 of the Request for Review.
59. Section 167(1) of the Act provides:

167. Request for a review

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

60. In essence, to properly invoke the jurisdiction of the Review Board under Section 167(1) of the Act, an applicant must satisfy the following conditions:
- (a) they must qualify as either a candidate or a tenderer, as defined under Section 2 of the Act;



(b) they must claim to have suffered, or be at risk of suffering, loss or damage as a result of a breach of a duty imposed on a procuring entity by the Act or its Regulations; and

(c) they must file the request for administrative review within fourteen (14) days from the date of notification of the award or the occurrence of the alleged breach, in accordance with Regulation 203 of the Public Procurement and Asset Disposal Regulations, 2020.

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

“ **It is not in dispute that the appellants never pleaded nor attempted to show themselves as having suffered loss or damage or that they were likely to suffer any loss or damage as a result of any breach of duty by KPA. This is a threshold**



requirement for any who would file a review before the Board in terms of section 167(1) of the PPADA;....

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

.....The Board ought to have ruled them to have no locus, and the learned Judge was right to reverse it for failing to do so. We have no difficulty upholding the learned Judge.[Emphasis]

62. In essence, the Court of Appeal held that for a candidate or tenderer to seek an administrative review before the Board, they must, at the very least, claim to have suffered or to be at risk of suffering loss or damage due to a breach of a duty imposed on a procuring entity by the Act or the Regulations 2020.
63. In the present Request for Review, the central issue for determination under this sub-issue is whether the Applicant, through its pleadings, has asserted that it has suffered, or is at risk of suffering, loss or damage as a result of a breach of duty imposed on the Procuring Entity by the Act or the Regulations, 2020. This determination is pivotal in establishing whether the Applicant possesses the requisite locus standi to bring the matter before the Board.



64. In the case of **Otolo Margaret Kanini & 16 others v Attorney General & 4 others [2022] eKLR**, the Court defined locus standi in the following terms:

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

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

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

66. The import of the above holdings is that locus standi refers to the right to appear and be heard in a court or other proceedings, literally meaning "a place of standing." Consequently, if a party is found to lack locus standi, it cannot be heard, regardless of whether its case has merit. This issue alone may lead to the preliminary dismissal of the Request for Review without delving into its substantive aspects.

67. Turning to the Request for Review at hand, the Board notes that the Applicant referred it to ground no. 2 of the Request for Review. Upon reviewing the said ground, the Board observes that it states as follows:



In view of the above, the Procuring Entity contravened Section 79(1) of the Public Procurement and Asset Disposal Act; and

68. The Board notes that the referenced paragraph do not contain any assertion that the Applicant has suffered, or is at risk of suffering, any loss or damage arising from an alleged breach of a duty imposed on the Procuring Entity by law.
69. In addition, the Board has perused all pleadings filed by the Applicant, including the Request for Review and the Supplementary Affidavit, and finds that, at no point, has the Applicant alleged that it has suffered, or is at risk of suffering, any loss or damage arising from an alleged breach of a duty imposed on the Procuring Entity by law.
70. In view of the foregoing, the Board finds that the Applicant neither pleaded nor demonstrated that it has suffered, or is likely to suffer, any loss as a result of the Respondent's alleged breach. Consequently, guided by the reasoning in the Court of Appeal's decision in **James Ayodi t/a Betoyo Contractors & Another v Elroba Enterprises Ltd & Another**, the Board concludes that the Applicant lacks locus standi. Accordingly, the Board is divested of jurisdiction to entertain the present Request for Review.



71. The Board is therefore satisfied that the Applicant has not met the requirements of Section 167(1) of the Act with respect to pleading loss or damage. As a result, the Board finds that the Applicant lacks locus standi, which in turn deprives the Board of the requisite jurisdiction to hear and determine the matter.
72. In view of the foregoing findings, the Board finds it unnecessary to address the other issues, guided by the well-established principle that, in the absence of jurisdiction, the Board lacks the authority to proceed further. Accordingly, the Board ceases its determination of the instant Request for Review at this stage.

What orders should the Board grant in the circumstances?

73. Having considered the applicants and parties' pleadings, submissions and examined all the evidence on record, the Board finds that the Applicant lacks locus standi, having failed to plead that it stands to suffer loss or damages as a result of the alleged breaches by the Respondents, contrary to Section 167(1) of the Act. Consequently, the Board lacks jurisdiction to entertain the Request for Review.
74. Consequently, the instant Request for Review filed on 8th December 2025, relating to Tender No. KE-MANDERA-502101-CW-RFB-LOT 2 - Construction, Rehabilitation and Expansion of Groundwater – Based Rural Water Supply Systems in Mandera County, is hereby struck out.



FINAL ORDERS

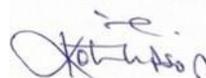
75. In exercise of the powers conferred upon it by Section 173 of the Public Procurement and Asset Disposal Act, No. 33 of 2015, the Board makes the following orders in the instant Request for Review:

- 1. The Interested Party’s Notice of Preliminary Objection dated 22nd December 2025 be and is hereby allowed;**
- 2. The Request for Review dated 5th December 2025 be and is hereby struck out;**
- 3. The Accounting Officer of the Mandera Water and Sewerage Company is hereby directed to proceed with and oversee the tender proceedings for Tender No. KE-MANDERA-502101-CW-RFB-LOT 2 - Construction, Rehabilitation and Expansion of Groundwater – Based Rural Water Supply Systems in Mandera County to their logical and lawful conclusion; and**
- 4. Each party shall bear its own costs of the proceedings.**

Dated at NAIROBI, this 29th day of December 2025.



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CHAIRPERSON
PPARB



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SECRETARY
PPARB

