

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 117/2025 OF 23RD DECEMBER 2025

BETWEEN

BLUE MOUNTAIN MEAT AND LIVESTOCK LIMITED APPLICANT

AND

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR

AGRICULTURE, MINISTRY OF AGRICULTURE AND

LIVESTOCK DEVELOPMENT 1ST RESPONDENT

STATE DEPARTMENT FOR

AGRICULTURE, MINISTRY OF AGRICULTURE AND

LIVESTOCK DEVELOPMENT 2ND RESPONDENT

PRINCIPAL SECRETARY, STATE DEPARTMENT

FOR LIVESTOCK DEVELOPMENT 3RD RESPONDENT

MINISTRY OF AGRICULTURE AND LIVESTOCK

DEVELOPMENT 4TH RESPONDENT

Review against the decisions of the Principal Secretary, State Department for Agriculture, Ministry of Agriculture and Livestock Development in relation to Tender No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine

PPARB NO. 117:
13th January, 2026:



Station; and the Principal Secretary, State Department for Livestock Development, Ministry of Agriculture and Livestock Development in relation to Tender No. MOALD/SDLD/DVS/EOI/001/2025-2026 for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station.

BOARD MEMBERS PRESENT

1. Mr George Murugu, FCI Arb & IP - Chairperson
2. QS Hussein Were - Member
3. Eng. Lilian Ogombo - Member
4. Mrs Njeri Onyango, SC, FCI Arb - Member

IN ATTENDANCE

1. Ms. Dokatu Godana - Holding brief for Board Secretary

PRESENT BY INVITATION

APPLICANT BLUE MOUNTAIN MEAT AND LIVESTOCK LIMITED

1. Ms. Desma Nungo - Advocate, NOW Advocates LLP

RESPONDENTS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR LIVESTOCK DEVELOPMENT, MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT



1. Mr. Ian Leteipan - Counsel for 3rd and 4th Respondents
2. Mr. Don Muyera - Head of Supply Chain, State Department for Livestock Development
3. Mr. Kevin Duki - Senior Supply Chain Management Officer, State Department for Livestock Development

BACKGROUND OF THE DECISION

The Tendering Process

1. The State Department for Agriculture, Ministry of Agriculture and Livestock Development (hereinafter referred to as "the Procuring Entity") on 23rd July 2024 invited bids for Expression of Interest in Tender No. MOALD/SDA/BLQS/IT/01/2024/2025 for Lease of Bachuma Livestock Quarantine Station in Management, Development and Maintenance of Livestock Quarantine Facility for Screening and Shipment of Livestock (hereinafter, 'the first EOI'). According to the confidential documents furnished to the Public Procurement Administrative Review Board (hereinafter, 'the Board') pursuant to Section 67(3)(e) of the Public Procurement and Asset Disposal Act, 2015 (hereinafter, 'the Act'), the first EOI attracted four (4) bidders, being:

- i. M/s Mackinnon Feedlot Farms Limited in JV with Smaed Services Limited
- ii. M/s House of Procurement in JV with Nastaceen Meat Enterprises Limited
- iii. M/s North Green Farm Limited
- iv. M/s Blue Mountain Meat & Livestock Company



2. Upon evaluation of the four bids, the Evaluation Committee recommended that all the four bidders be pre-qualified and invited to submit request for proposal for lease of Bachuma Livestock Quarantine Station.
3. In a Professional Opinion dated 10th September 2024 Mr. Richard Bii, SDD/SCMS concurred with the Evaluation Committee's recommendation of award of the first EOI to which Dr. Kipronoh Ronoh P., the Procuring Entity's accounting officer, directed that the Expression of Interest be re-advertised to attract more contractors.
4. On 17th December 2024, the Procuring Entity invited bids in response to Expression of Interest Tender No. MOALD/SDA/BLQS/IT/02/2024/2025 for Lease of Bachuma Livestock Quarantine Station in Management, Development and Maintenance of Livestock Quarantine Facility for Screening and Shipment of Livestock (hereinafter, 'the second EOI'). The second EOI attracted three (3) bidders, being:
 - i. M/s Miqdad Enterprises Limited
 - ii. M/s Kenmeat EPZ Limited
 - iii. M/s Meat Masters Producers Kenya Limited
5. Upon evaluation of the bids, the Evaluation Committee recommended that all the three bidders be pre-qualified and invited to submit request for proposals for lease of Bachuma Livestock Quarantine Station.



6. In a Professional Opinion dated 6th February 2025, Mr. Richard Bii, SDD/SCMS concurred with the Evaluation Committee's recommendation and Dr. Kipronoh Ronoh P., the Procuring Entity's accounting officer, approved the recommendations.

7. The Procuring Entity invited proposals in response to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station to all shortlisted firms. The tender submission deadline was initially scheduled on 14th March 2025 but later extended to 21st March 2025 at 11.00 a.m.

Submission of Tenders and Tender Opening

8. From the Tender Opening Minutes a total of four tenders were submitted and were recorded as follows:

Bidder No.	Name
1.	Ken Meat EPZ Limited
2.	Miqdad Enterprises Limited
3.	Blue Mountain Meat and Livestock Company Limited
4.	Meat Master Livestock Producers Kenya Limited



Evaluation of Tenders

9. A Tender Evaluation Committee undertook evaluation of the tenders as captured in the Evaluation Report signed on 6th April 2025 and in the following stages:

- i Preliminary Evaluation
- ii Technical Evaluation
- iii Financial Evaluation

Preliminary Evaluation

10. The Evaluation Committee was required to examine tenders for responsiveness using the criteria provided in the blank Tender Document (hereinafter, "the Tender Document"). Tenderers were required to meet all the mandatory requirements at this stage to proceed for Technical Evaluation.

11. At the end of evaluation at this stage, two tenderers were determined non-responsive while two tenders were determined responsive and proceeded to Technical Evaluation.

Technical Evaluation

12. At this stage of evaluation, tenders were required to score a pass mark of 80 marks to progress for financial evaluation.

13. At the end of evaluation at this stage, one tender was determined non-responsive having failed to attain the pass mark while one tender, being



the Applicant's tender, was determined responsive and recommended for Financial Evaluation.

Financial Evaluation

14. At this stage of evaluation, proposals would be ranked according to their combined technical (st) and financial (sf) scores using the stipulated weights in the Tender Document.

15. The Applicant's Financial Proposal was opened on 16th April 2025 and recorded as follows:

<i>Bidder No.</i>	<i>Name of Firm</i>	<i>Financial Proposal</i>
<i>1</i>	<i>Blue Mountain Meat and Livestock Company Limited</i>	<i>15,310,000.00</i>

16. At the end of evaluation at this stage, the Evaluation Committee found as follows:

<i>Bidder No.</i>	<i>Financial Proposal bid price (KES)</i>	<i>T= Weight given to the Technical Proposal</i>	<i>S=StxT%+SfxP%</i>	<i>Rank</i>	<i>Remarks</i>
<i>1</i>	<i>15,310,000.00</i>	<i>90</i>	<i>85.96%</i>	<i>1</i>	<i>Lowest evaluate responsive bidder</i>

Evaluation Committee's Recommendation

17. The Evaluation Committee recommended award of the tender to M/s Blue Mountain Meat and Livestock Company Limited, the Applicant

herein, at a price of Kenya Shillings Fifteen Million, Three Hundred and Ten Thousand (Kshs. 15,310,000.00) per year.

Notification of Award

18. *Vide* letter dated 25th April 2025, the Applicant was notified of award of the tender.

Negotiation

19. According to Negotiation Minutes dated 18th July 2025, the Procuring Entity engaged the Applicant in negotiations whereby, *inter alia*, members present were guided through key provisions of the draft Lease Agreement and comments on the same recorded in addition to agreement in the lease price.

Professional Opinion

20. In a Professional Opinion dated 22nd September 2025 (hereinafter, "the Third Professional Opinion"), the Deputy Director Supply Chain Management, Mr. Jackson Magembe, reviewed the manner in which the procurement process was undertaken and indicated that the process was not undertaken as prescribed. He recommended for termination of the procurement process in line with Section 63(1)(e) of the Act on account of material governance of the procurement process not being adhered to.

21. The Third Professional Opinion was approved by Dr. Kipronoh Ronoh P – CBS on 22nd September 2025.



Notification of Termination of Procurement Proceedings

22. Tenderers were notified of termination of the subject tender *vide* letters dated 22nd September 2025.

REQUEST FOR REVIEW NO. 96 OF 2025

23. On 6th October 2025, Blue Mountain Meat and Livestock Limited, the Applicant herein, filed a Request for Review dated 6th October 2025 through NOW Advocates LLP challenging the decision of the Procuring Entity to terminate the tender.

24. The Board heard the Request for Review and rendered its decision on 27th October 2025 with the following orders:

A. The Request for Review dated 6th October 2025 and filed on even date with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station be and is hereby allowed.

B. The Letters of Notification of Termination of Procurement Proceedings with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station dated 22nd September 2025, issued to the Applicant and all the



other bidders in the subject tender, be and are hereby canceled and set aside.

C. The Professional Opinion with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station dated 22nd September 2025 and approved by the 1st Respondent on even date be and is hereby cancelled and set aside.

D. The 1st Respondent is hereby directed to proceed with the procurement process with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station commencing from the notification of award stage to its lawful conclusion, within 21 days from the date of this decision.

E. To give effect to Order D hereof, the tender validity period with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station, be and is hereby extended up to 26th December 2025.

F. Given that the procurement process is not complete, each party shall bear its own costs in the Request for Review



25. *Vide* a letter dated 11th November 2025, the 1st Respondent informed the Applicant that he was unable to enter into a procurement contract with respect to the subject tender as a result of a Judgment delivered on 23rd October 2025 by E. K. Wabwoto J, in Voi High Court ELC Petition No. E008 of 2024 County Government of Taita Taveta v The Cabinet Secretary, Ministry of Agriculture and Livestock Development and 4 Others (Respondents) and The Council of Governors (Interested Party) while sharing the said Judgment for the Applicant's information.

26. On 9th December 2025, the State Department for Livestock Development, 3rd Respondent herein, issued an International Tender Notice MOALD/SDLD/DVS/EOI/001/2025-2026 New Expression of Interest (EOI) For Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station.

REQUEST FOR REVIEW NO. 117 OF 2025

27. On 23rd December, 2025, Blue Mountain Meat and Livestock Limited, the Applicant herein, filed a Request for Review dated 22nd December 2025 together with an Applicant's Statement in Support of the Request for Review signed by Dr. Mohamed Keinan Hassan on even date through NOW Advocates LLP seeking the following orders from the Board in verbatim:

a. The tender validity period of RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock



Quarantine Station be and is hereby extended for a period of ninety (90) days from the 26th day of December 2025 to enable the Respondents to comply with the Orders of the Public Procurement Administrative Review Board issued in PPARB Application No. 96 of 2025 Blue Mountain Meat and Livestock Limited v The Principal Secretary, State Department for Agriculture, Ministry of Agriculture and Livestock Development and Another;

b. The 4th Respondent's International Tender Notice MOALD/SDL/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station of 9th December 2025, be and is hereby annulled and set aside;

c. The procurement proceedings with respect to International Tender Notice MOALD/SDL/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station, be and is hereby terminated forthwith;

d. The Respondents be compelled to pay to the Applicant the costs arising from, and incidental to, this Request for Review; and

e. The Public Procurement Administrative Review Board to make such and further orders as it may deem fit and appropriate in ensuring that the ends of justice are fully met in the circumstances of this Request for Review.



28. In a Notification of Appeal and a letter dated 23rd December, 2025, Mr. Philemon Kiprop, the Board Secretary, notified the 1st and 2nd Respondents of the filing of the Request for Review and the suspension of the procurement proceedings for the subject tender and forwarded 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 subject tender within five (5) days from 23rd December, 2025.

29. *Vide* a Hearing Notice dated 29th 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 7th January, 2025 at 11am, through the link availed in the said Hearing Notice.

30. *Vide* a letter dated 29th December, 2025, the Board Secretary sent a reminder to the Respondents referring to the Notification of Appeal for the instant Request for Review dated 23rd December, 2025 and notified the Respondents of the provisions under Regulation 205(3) & (4) of the Public Procurement and Asset Disposal Regulations 2020 (hereinafter referred to as "Regulations 2020") with regard to the five (5) days within which it was required to submit a response being on or about 28th December 2025 noting that the operations of the Board are time bound and require matters to be concluded within 21 days.



31. On 6th January 2026, the 3rd Respondents forwarded via email confidential documents concerning the subject tender together with a Response in the Respondents' Replying Affidavit, By HON. JONATHAN Mueke dated 6th January,2026. Hard copies of the said documents were filed on 7th January,2026.
32. *Vide* letters dated 6th January 2026, the Board Secretary notified all tenderers in the subject tender via email, of the existence of the subject Request for Review while forwarding to all tenderers a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020.
33. When the matter came up for hearing on 7th January 2026 at 2:00 p.m., the Board inquired from the Applicant the rationale for enjoining the 1st to 4th Respondents. The Applicant indicated that this was necessitated by the indecision of the 1st and 2nd Respondents and the actions of the 3rd and 4th Respondents. Mr. Letaipan informed the Board that he was appearing for the 3rd and 4th Respondents.
34. At the hearing on 7th January, 2026, the Board read out pleadings filed by parties and having confirmed the same, proceeded to allocate parties time to highlight their respective cases. Thus, the matter proceeded for virtual hearing as scheduled.



PARTIES' SUBMISSIONS

Applicant's Submissions

35. Ms. Desma Nungo, for the Applicant, submitted that the 1st Respondent declined to comply with and implement the orders of this Board on the basis of a judgment delivered by the High Court in Petition No. 8 of 2024 on 23rd October 2025, which judgment was annexed as MKH-4.

36. Ms Nungo submitted further that upon learning of the said High Court decision and upon perusal thereof, the Applicant noted several pertinent issues, most notably, that the High Court judgment was rendered prior to the Board's decision of 27th October 2025, and that while the 1st and 2nd Respondents were parties to the High Court proceedings, the Applicant was not privy to the same. She contended that, for reasons unexplained, the existence of the High Court judgment was not disclosed to the Board at the time it rendered its decision in PPARB Application No. 96 of 2025.

37. Counsel also submitted the Applicant being aggrieved by the High Court judgment filed an application before the High Court on 8th December 2025 seeking review and/or setting aside of the said judgment.

38. The Applicant averred that while it was filing and serving the High Court application on 8th December 2025, the 3rd Respondent, on 9th December 2025, proceeded to issue an Invitation for Expression of



Interest (EOI) in respect of a new tender, annexed as MKH-5 and MKH-6.

39. The Applicant averred further that notwithstanding any differences in wording, the subject matter of the new tender remains the lease, management, and development of the Bachuma Livestock Quarantine Station, which was the same subject matter addressed in the earlier procurement process that was the subject of PPARB Application No. 96 of 2025.

40. Following the Applicant's application, the High Court on 17th December 2025 issued orders staying the judgment of 23rd October 2025, which stay orders were annexed as MKH-7. The Applicant therefore contended that the sole reason advanced by the 1st Respondent for declining to proceed with the procurement process as ordered by the Board has since ceased to exist, the High Court judgment having been expressly stayed by the same court.

41. The Applicant argued that there was consequently no legal or factual impediment restraining the 1st Respondent from complying with and implementing the orders of this Board issued in PPARB Application No. 96 of 2025, which orders are binding upon all parties pursuant to Section 175(1) of the Public Procurement and Asset Disposal Act, 2015.



42. The Applicant averred further that the 1st Respondent was formally notified of the High Court stay orders through the Applicant's letter dated 17th December 2025, annexed as MKH-8, yet the 1st Respondent had neither complied with the Board's orders nor communicated its position to date.

43. In summary, the Applicant stated that the procurement proceedings initiated under the new tender (MKH-5 and MKH-6) were unlawful, as there exists a subsisting procurement process over the same subject matter which remains unresolved. It further stated that the new tender was commenced in defiance of the lawful orders of this Board and in breach of Section 176 of the Act.

44. Accordingly, the Applicant urged the Board to give effect to its orders issued in PPARB Application No. 96 of 2025, and prayed that the Board grants prayers sought in the Request for Review.

45. The Applicant also averred that the challenge to the indecision of the 1st and 2nd Respondents remains unopposed, as the said Respondents did not participate in the proceedings. It added that the responses on record were premised solely on the High Court judgment of 23rd October 2025, which judgment has since been stayed, and that no plausible defence had therefore been advanced.



46. Finally, the Applicant reminded the Board that upon the filing of the Request for Review, the procurement proceedings stood automatically suspended pursuant to Section 168 of the Act, following the Board's notification duly served upon the Respondents.

3rd and 4th Respondents' submissions

47. In his submissions, Mr. Leteipan, counsel for the 3rd and 4th Respondents, submitted that the subject tender had been the subject of Constitutional Petition No. 8 of 2024, filed by the County Government of Taita Taveta, challenging its legality on grounds of lack of public participation, absence of intergovernmental consultation, and non-compliance with the principles of devolution and cooperative governance.

48. He stated that judgment in the said petition was delivered on 23rd October 2025, wherein the High Court found that the procuring entity had acted contrary to Articles 6(2), 10, 174, 186, and 187 of the Constitution, and consequently issued orders of certiorari and inhibition, thereby nullifying the tender process. Counsel explained that at the time the Board rendered its decision in Application No. 96 of 2025, the said judgment had not been brought to the attention of the Accounting Officer, and for that reason, it was neither annexed nor relied upon during the earlier proceedings.

49. According to Mr. Leteipan, upon receipt of the High Court judgment, the State Department for Livestock Development took steps to comply



with the court's orders, particularly with respect to undertaking public participation and consultation with the County Government of Taita Taveta, which had been the basis of the constitutional challenge. He further submitted that by a letter dated 11th November 2025, marked JM2, the Respondents informed the Applicant of their inability to proceed with the contract, citing the High Court judgment of 23rd October 2025.

50. Counsel acknowledged that the Applicant subsequently moved the High Court seeking to be joined as an interested party and to stay and set aside the judgment. However, he submitted that although the High Court issued interim orders, it directed that the substantive application be heard on 21st January 2026, and therefore the court had not conclusively determined the matter. In his view, this placed the Board in a position where the High Court was still seized of the substantive dispute, thereby raising questions as to the nature and extent of reliefs that could properly be issued in the present proceedings.

51. Mr. Leteipan further submitted that the critical issue for determination was whether the Procuring Entity could lawfully proceed to enter into a contract in respect of a matter that was still pending before the High Court. He contended that it would be improper for the Procuring Entity to take such steps while the court remained seized of the substantive dispute.

52. In conclusion, counsel maintained that there had been no breach of the Public Procurement and Asset Disposal Act, as alleged by the



Applicant. He argued that at the material time, the subject tender had been nullified by the High Court, having been declared unconstitutional, and therefore could not form a basis for contractual engagement.

53. Counsel emphasized that the High Court had identified specific constitutional deficiencies in the procurement process, notably the lack of public participation and the failure to involve the County Government of Taita Taveta. He submitted that the State Department for Livestock Development, as the authorized Procuring Entity, was under a legal obligation to address and rectify these deficiencies in order to ensure compliance with the Constitution and to avoid the procurement process being declared null and void for a second time.

54. On that basis, Mr. Leteipan urged the Board to rely on the submissions made on behalf of the 3rd and 4th Respondents and dismiss the Request for Review.

Applicant's Rejoinder

55. In rejoinder, the Applicant, through counsel Ms. Desma Nungo, reiterated that the First Respondent's letter dated 11th November 2025, in which it purported to justify its failure to comply with the Board's orders, was wholly grounded on the High Court Judgment of 23rd October 2025.

56. Counsel stressed that the very judgment relied upon by the Respondents to justify non-compliance was subsequently stayed by the



same High Court that issued it. She submitted that the fact that the stay was granted on an interim basis was immaterial, as the Court, being fully seized of the matter and alive to the nature of public procurement proceedings, expressly deemed it fit to stay its judgment together with its execution and implementation.

57. It was therefore the Applicant's submission that the stay of execution and implementation had the legal effect of also staying the orders of *certiorari* and inhibition which the Respondents alleged prevented them from complying with the Review Board's orders. Consequently, there existed no legal impediment restraining the Respondents from concluding the procurement process in accordance with the Board's decision in Application No. 96 of 2025, within the timelines prescribed by law.

58. Counsel further submitted that the commencement of a second procurement process, now being undertaken by a different Accounting Officer under the State Department for Livestock Development, was unlawful and untenable. She emphasized that the earlier procurement had been initiated by the State Department for Agriculture, and both processes concerned the same subject matter, namely the leasing of the Bachuma Livestock Quarantine Station.

59. The Applicant contended that allowing the new tender to proceed in the prevailing circumstances would offend the principles of legality, certainty, and orderly procurement, particularly given the existence of

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a subsisting procurement process and binding orders of the Review Board.

60. In conclusion, the Applicant urged the Board to allow the Request for Review and to grant the orders sought therein, including the nullification of the new tender and the enforcement of the Board's earlier decision.

61. At the conclusion of the online hearing, the Board informed parties that the instant Request for Review having been filed on 23rd December 2025 was due to expire on 13th January, 2026 and that the Board would communicate its decision on or before 13th January, 2026 to all parties to the Request for Review via email.

BOARD'S DECISION

62. The Board has considered each of the parties' submissions and documents placed before it together with confidential documents submitted to the Board by the Procuring Entity pursuant to Section 67(3)(e) of the Act and finds the issues that call for determination are the following:

- i) Whether the Board has jurisdiction to hear and determine the instant Request for Review in view of the proceedings in the High Court in Constitutional Petition No. E008 of 2024 in regard to the subject tender.*



ii) *Whether the Procuring Entity failed to comply with the orders of the Board issued on 27th October, 2025 in respect of the subject tender in breach of the provisions of Section 175 of the Act.*

iii) *What orders the Board should grant in the circumstances*

As to whether the Board has jurisdiction to hear and determine the instant Request for Review in view of the proceedings in the High Court in Constitutional Petition No. E008 of 2024 in regard to the subject tender.

63. 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 inquire into it before doing anything concerning such a matter.

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

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



65. In essence, by jurisdiction it is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing.

66. The *locus classicus* case on the question of jurisdiction is the celebrated case of **The Owners of the Motor Vessel "Lillians" -v- Caltex Oil Kenya Ltd (1989) KLR 1** where Nyarangi J.A. held:

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

67. In the matter between **Vuyile Jackson Gcaba vs Minister for Safety and Security First & Others Case CCT 64/08 [2009] ZACC 26**, the South African Constitutional Court appreciated that Jurisdiction is determined on the basis of pleadings and not on the substantive merits of the case and held that:



"Jurisdiction is determined on the basis of the pleadings, 13 ... and not the substantive merits of the case... In the event of the court's jurisdiction being challenged at the outset (in limine), the applicant's pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court's competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant's claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognizable only in another court. If however the pleadings, properly interpreted, establish that the applicant is asserting a claim ..., one that is to be determined exclusively by... {another court}, the High Court would lack jurisdiction..."

68. The Supreme Court of Kenya in the case of **Samuel Kamau Macharia and Another v Kenya Commercial Bank Ltd and 2 Others [2012] eKLR** pronounced itself regarding the source of jurisdiction of a court or any other decision-making body as follows:

"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 respondents 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."

69. This Board is a creature of statute owing to its establishment as provided for under Section 27(1) of the Act which provides that:

"(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."

70. Further, Section 28 of the Act provides for the functions of the Board as:

(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."



71. The jurisdiction of the Board is provided for under Part XV – Administrative Review of Procurement and Disposal Proceedings and specific at Section 167 of the Act which provides for what can and cannot be subject to review of procurement proceedings before the Board and Section 172 and 173 of the Act which provides for the powers the Board can exercise upon completing a review as follows:

167. Request for a review

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

172. Dismissal of frivolous appeals

Review Board may dismiss with costs a request if it is of the opinion that the request is frivolous or vexatious or was solely for the purpose of delaying the procurement proceedings or performance of a contract and the applicant shall forfeit the deposit paid.

173. Powers of Review Board



Upon completing a review, the Review Board may do any one or more of the following—

(a) annul anything the accounting officer of a procuring entity has done in the procurement proceedings, including annulling the procurement or disposal proceedings in their entirety;

(b) give directions to the accounting officer of a procuring entity with respect to anything to be done or redone in the procurement or disposal proceedings;

(c) substitute the decision of the Review Board for any decision of the accounting officer of a procuring entity in the procurement or disposal proceedings;

(d) order the payment of costs as between parties to the review in accordance with the scale as prescribed; and

(e) order termination of the procurement process and commencement of a new procurement process.

72. The Board observes that the instant Request for Review has its genesis in the decision dated 27th October, 2025 in ***PPARB No. 96 of 2025*** whose orders have remained unimplemented. In the said decision the Board ordered as follows:

"D. The 1st Respondent is hereby directed to proceed with the procurement process with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land



Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station commencing from the notification of award stage to its lawful conclusion, within 21 days from the date of this decision.

E. To give effect to Order D hereof, the tender validity period with respect to RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative – Leasing of Bachuma Livestock Quarantine Station, be and is hereby extended up to 26th December 2025. "

73. The Procuring Entity failed to comply with the Board's orders in ***PPARB No. 96 of 2025*** on account of a ruling of the High Court as conveyed in the letter dated 11th November, 2025 addressed to M/s Blue Mountain Meat and Livestock Company Limited, the Applicant herein.

74. It is undisputed fact that on 23rd July 2024 the State Department for Agriculture, Ministry of Agriculture and Livestock Development advertised Tender No. MOALD/SDA/BLQS/IT/01/2024-2025 for a 30-year lease of the Bachuma Livestock Quarantine Station (BLQS) to private entities for purposes of livestock quarantine and husbandry under the Land Commercialization Initiative (LCI) policy framework.



75. It is further not in dispute that on or about 11th September 2024, the County Government of Taita Taveta filed a suit at the Environment and Land Court at Taita Taveta, namely VOI ELC PET E008 of 2024 challenging the legality of the subject tender on the grounds that the process was undertaken without consultation or public participation. This action triggered a constitutional review of the tender, the status of the land and intergovernmental relations under the Constitution.

76. It is also not in dispute that the Court delivered a judgment on 23rd October 2025 where it found that the Ministry's advertisement for the lease of Bachuma Livestock Quarantine Station without engaging the County Government was contrary to the principles of devolution, consultation and cooperation between the two levels of government and hence was unconstitutional and that the tender process was null and void. Consequently, the Court issued orders of certiorari and inhibition, nullifying the tender and restraining the Ministry from proceeding with its implementation.

77. Following the Court judgment, the Ministry vide letter dated 11th November 2025 informed the Applicant of their inability to enter into a contract. The letter stated as follows:

**"REF: RFP NO. MOALD/SDA/LCI/RFP/02/2024-2025
LEASING OF BACHUMA LIVESTOCK QUARANTINE
STATION**



The above matter refers.

Reference is made to our letter dated 28th October, 2025 conveying the decision of the procuring entity to enter into a contract after 14 days of our communication but within 21 days as directed by the Public Procurement Administrative Review Board following the outcome of Application No. 96 of 2025 delivered on 27th October, 2025.

We conveyed the decision to our sister State Department for Livestock Development and forwarded all relevant procurement documents in readiness to enter the contract on the stipulated timelines. However, they have conveyed to us their inability to enter into a contract as a result of the Court Ruling No. E008 of 2024 delivered on 23^d October 2025 by the Environment and Land Court at Voi challenging the constitutionality of the Ministry's Proposed Leasing of Bachuma Livestock Quarantine Station.

The court held that the advertisement for the lease was unconstitutional and the tendering process null and void, issuing orders of certiorari and inhibition that nullified the tender and prohibited its implementation.

The purpose of this letter is therefore to inform you that we are unable to implement the decision of the Public Procurement Administrative Review Board to enter into a contract, as Judgment of the Environment and Land



Court; a Superior Court takes precedence and is binding to all parties as matters regard Leasing of Bachuma Livestock Quarantine Station.

***Dr. Kipronoh Ronoh P., CBS
PRINCIPAL SECRETARY"***

78. The Board notes that the Applicant, being aggrieved by the High Court judgment, filed an application before the High Court on 8th December 2025 seeking to be joined as an interested party and to stay and set aside the judgment. The High Court, on 17th December 2025, admitted the Applicant as an interested party and issued orders staying the judgment of 23rd October 2025. Further, the High Court directed that the substantive application will be heard on 21st January 2026.

79. The Ministry of Agriculture and Livestock Development, on 8th December, 2025 advertised an EOI for Tender No. **MOALD/SDLD/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station.** This time the advertisement was done under the State Department for Livestock Development.

80. It is not in doubt that the action of the Procuring Entity of advertising a new tender on 8th December 2025 triggered the filing of the instant Request for Review.



81. A jurisdictional question that confronts the Board is whether it can competently hear and determine this Request for Review in the light of the challenge mounted in the High Court in regard to the subject tender.

82. The Board notes that **Tender No. MOALD/SDLD/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station** was initiated by the State Department for Livestock Development on 8th December 2025 following the Court Judgement of 23rd October 2025 that declared **Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station** as unconstitutional. It is plain on the face of it that the former tender was started principally as an attempt at curing aspects of the latter tender that were found to be unconstitutional. It is therefore reasonable to conclude that the second tender seeks to cure procedural missteps identified in the first tender by the High Court in its Judgment.

83. Having established the above, the question then arises as to whether the Procuring Entity can legally and procedurally commence a second procurement process of a similar tender when the first process is pending as alleged by the Applicant which would be legally untenable if indeed this was factual.



84. It is not in contest that the High Court, on 23rd October 2025 in Petition No. E008 of 2024, nullified the first procurement process of Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station after finding it to be unconstitutional. That had the effect of erasing the entire tender paving the way for the second procurement process to commence without any risk of duplication. In the Board's view, the matter stood settled. The Board further notes that the Applicant has moved the Honorable Court seeking to overturn the Court ruling of 23rd October 2025. A stay vide an interlocutor application is currently in place with the substantive application coming up for hearing on 21st January 2026. However, the Judgement of the court has not been set aside, varied nor tender No Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station been restored and indeed this is pending adjudication before the High Court and as it is, the Judgement of the Honorable Court remains binding until reversed, varied, set aside or corrected in such a manner as to breathe life into Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station.

85. That brings the Board to the examine its authority in respect of Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine



Station (the first procurement process). It is the case that the first procurement process is the subject of an active petition in the High Court. The Board is alive to the doctrine of *stare decisis and subjudice* where, in the hierarchy of judicial precedent, the Board cannot interfere with a decision of or a matter pending before the High Court in Kenya more so a decision of the High Court as in this case where the High Court vide an assertive Judgement nullified the tender subject of this Request for Review being Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station, in Petition No. E008 of 2024. Any action of the Board contrary to the Judgement of the High Court, including directing the implementation of its decision in Request for Review No.96 of 2025 as sought in the present Request for Review, would be per Incuriam as the Board would be essentially sitting in on Appeal of the Judgement of the High Court by reviving a nullified tender, and ordering its implementation, a jurisdiction it does not possess.

86. No grounds have been shown to exist to restrain, stop or interfere with Tender No. MOALD/SDLD/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station

87. Consequently, the Board determines that it is without jurisdiction to hear and determine the instant Request for Review in respect of Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land



Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station. Accordingly, the Board proceeds to down its tools and will not delve further into the rest of the issues in respect to this tender.

The conduct of parties in failing to disclose relevant High Court proceedings

88. The Board notes that the tender subject of this Request for Review was the subject of the Board's proceedings between 6th October, 2025 and 27th October, 2025 in PPARB No. 96/2025. During that period a matter related to the tender was before the High Court under Petition No. E008 of 2024 culminating in the judgment of the Court on 23rd October, 2025. The Board takes great exception to the conduct of the Respondents for failing to bring to the attention of the Board during the hearing of PPARB No. 96/2025 of the existence of the application before the High Court. The Board, being alive to the doctrine of subjudice would have taken appropriate steps to allow the High Court matter to run its course. The conduct of the Respondents was, to say the least, unbecoming of judicial officers and such behaviour will not be tolerated by this Board.

As to what orders should the Board grant in the circumstances

89. The Board has found that it has no jurisdiction to hear and determine the instant Request for Review in respect to Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station.



90. The Board also finds that the Applicant has failed to establish any grounds to warrant the Board to restrain, stop or interfere with Tender No. MOALD/SDLD/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station.

91. The upshot of the Board's finding is that the instant Request for Review fails, subject to the right of any person aggrieved with this decision to seek judicial review by the High Court within fourteen days pursuant to Section 175 of the Act.

FINAL ORDERS

1. 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 22nd December 2025 and filed on 23rd December, 2025 in respect of Tender RFP No. MOALD/SDA/LCI/RFP/02/2024-2025 for Land Commercialization Initiative - Leasing of Bachuma Livestock Quarantine Station - for the State Department for Agriculture, Ministry of Agriculture and Livestock Development be and is hereby struck out.

B. The Request for Review dated 22nd December 2025 and filed on 23rd December, 2025 in respect of Tender Notice



MOALD/SDLD/DVS/EOI/001/2025-2026 Expression of Interest for Lease, Operationalization, Management and Development of Bachuma Livestock Quarantine Station - for the State Department for Livestock Development, Ministry of Agriculture and Livestock Development be and is hereby dismissed.

C. Each party shall bear its own costs in this Request for Review.

Dated at NAIROBI this 13th Day of January, 2026.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

