

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO. 118/2025 OF 23RD DECEMBER, 2025

BETWEEN

SULTAN LIMITEDAPPLICANT

AND

KENYA POWER AND LIGHTING COMPANY PLC.....RESPONDENT

Review against the decision of the Kenya Power and Lighting Company Plc in relation to Tender No. KPI /9A.2/OT/001/PJT/25-26(RFX NO. 1000002942) For The Provision Of Labour And Transport Services.

BOARD MEMBERS PRESENT

1. Mr. Jackson Awele - Panel Chairperson
2. Eng Lilian Ogombo - Member
3. Mr. Stanslaus Kimani - Member

IN ATTENDANCE

Mr. Philemon Kiprop - Board Secretary

PRESENT BY INVITATION

APPLICANT

SULTAN LIMITED

Mr. Kinyua Machina

Advocate, Machina & Company Advocates

RESPONDENT

**KENYA POWER AND LIGHTING COMPANY
PLC**

Mr. Ann Mulela

Advocate, Kenya Power and Lighting Company
Plc

BACKGROUND OF THE DECISION

The Tendering Process

1. Kenya Power and Lighting Company Plc, the Procuring Entity together with the Respondent herein, invited electronic submission of tenders in response to Tender No. KPI/9A.2/OT/001/PJT/25-26 (RFX NO.1000002942), Tender For Provision Of Labour And Transport Services (hereinafter referred to as "the subject tender") using the open tender method and was published on 28th October 2025 with the commencement date set for 29th October 2025.
2. It was required that all prospective bidders register for E-Procurement to enable them to access the KPLC Portal under "New Supplier Registration" which was to be found under the Tenders Tab.
3. The completed tenders were to be submitted in the KPLC e-Procurement website portal so as to be received on and not later than the closing date which had been set for 18.11.2025. however, it was also required that all prospective tenderers visit the portal from time to time for revised closing dates and addendums.

The Respondent extended the tender submission deadline on multiple occasions, initially from 18th November 2025 to 26th November 2025, subsequently from 26th November 2025 to 3rd December 2025, and ultimately to 10th December 2025.

Submission of Tenders and Tender Opening

4. According to the Tender Opening Minutes dated 10th December 2025, as submitted under the Confidential File by the Procuring Entity, a total of three hundred and forty six (346) tenderers were recorded as having submitted their tenders in response to the subject tender by the prescribed submission deadline.

Evaluation of Tenders

5. At the time material to this Request for Review, the Respondent had neither commenced nor undertaken the evaluation of the subject tender, nor notified the bidders of the outcome thereof.

REQUEST FOR REVIEW

6. On 23rd December 2025, the Applicant through the firm of Machina & Company Advocates, filed a Request for Review dated 22nd December, 2025 supported by a statement and a Supporting Affidavit sworn on 22nd December, 2025 by **KEFA KAMAU MUNDATI**, the Applicant's Director, seeking the following orders from the Board in verbatim:

- a) An order be and is hereby issued compelling the Respondent to consider the applicant's pre-qualification application as submitted***
- b) An order be and is hereby issued compelling the Respondent to prequalify the applicant.***
- c) That in the alternative, an order be and is hereby issued compelling the Respondent to re-advertise for the pre-qualification and amend its pre-qualification documents accordingly.***
- d) That the Respondent be ordered to pay costs of and incidental to these proceedings.***
- e) A grant of any further orders as the Board may deem fit.***

7. In a Notification of Appeal and a letter dated 23rd December, 2025 Mr. Philemon Kiprop, the Board Secretary of the Public Procurement Administrative Review Board (hereinafter referred to as "Board") notified the Respondent of the filing of the instant Request for Review and the suspension of the procurement proceedings for the subject tender, while forwarding to the said Respondent a copy of the Request for Review together with the Board's Circular No. 02/2020 dated 24th March 2020, detailing administrative and contingency measures to mitigate the spread of COVID-19. Further, the Respondent 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.

8. On 29th day of December, 2025, the Respondent, through Ann Mulela-Advocate filed a Memorandum of Response dated 29th day of December,

2025. The Respondent also forwarded to the Board the confidential documents in the subject tender pursuant to Section 67(3)(e) of the Act.

9. On 29th December 2025, the Board Secretary issued a Hearing Notice to the parties, notifying them that the hearing of the instant Request for Review would be conducted by way of an online hearing on Wednesday, 7th January 2026 at 2.00 p.m. The hearing was, however, subsequently rescheduled to 8th January 2026 at 2.00 p.m., to be conducted through the link provided in the said Hearing Notice.
10. On 7th day of January, 2025, the Respondent filed Written Submissions of dated 6th January, 2025.
11. On 8th January, 2026 at 2:09 p.m., the parties joined the scheduled online hearing session through their respective Advocates.
12. On the, 8th January 2024, the Applicant filed its Written Submissions of even date at 11.29am.
13. The Board directed the parties to indicate the documents that each had filed and served on the other party. In response, the Respondent indicated that it had not received the Applicant's submissions, and the Board accordingly directed that the same be served. The Board further clarified that the purpose was to confirm the filings so that all parties were on the same page, and requested the parties to confirm receipt of the documents filed and served by the opposing counsel. Counsel for both the Respondent and the Applicant confirmed receipt of the respective documents and indicated that they were ready to proceed with the hearing.

14. Accordingly, the Board issued the following hearing directions on the order of address: the Applicant was to commence by presenting its case, together with a response to the preliminary objection raised by the Respondent, followed by submissions from the Respondent. The Board further directed that the Applicant would be granted additional time to offer a rejoinder to the arguments advanced by the Respondent, limited strictly to points of law.

PARTIES SUBMISSIONS

Applicant's Submission on their Request for Review and the Preliminary Objections.

15. The Applicant, through Counsel, Machina & Company Advocates, stated that this Request for Review arises from the pre-qualification of Tender No. KPI 982/0 OT/001/PJT/25-26 for the provision of labour and transport services. The Applicant filed the review on 22nd December 2025 pursuant to Section 167 of the Public Procurement Asset and Disposal Act, 2025 .
16. In its submissions, the Applicant tackled both the substantive and preliminary objection in his submissions. On the issue of jurisdiction, Mr. Machina Counsel for the Applicant submitted that the preliminary objection raised by the Respondent was not meritorious. Counsel referenced ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Limited [1969] EA 696***, submitting that for a preliminary objection to be meritorious, it must be a pure question of law and must not raise issues of fact. The Applicant contended that the Respondent's objection on grounds of incompetence, prematurity, and locus standi

involved factual matters, and therefore could not sustain a preliminary objection.

17. Counsel referred to the supporting affidavits filed by the Applicant, particularly paragraphs 14, 15, and 16, which demonstrate that the Respondent's failure to respond to correspondence was deliberate and intended to deny the Applicant fair administrative action. The Applicant further stated that Paragraph 15 contains an averment that the Applicant was seriously aggrieved due to the Respondent's acts and omissions, while paragraph 16 states that unless the orders sought are granted, the Applicant will suffer loss.
18. The Applicant submitted that it had clearly set out the breaches of the law and the rights that it had been denied, with loss expressly stated in the averments. He submitted that in ***PPARB Application No. 6 of 2025 between Awelo Investments Ltd v Accounting Officer, Ugenya TVC & Mijosh Enterprises Ltd***, paragraph 90, the Board held that an averment of loss in a supporting affidavit was sufficient pleading of loss or risk of damage due to the Respondent's actions.
19. The Applicant placed reliance in **PPARB Application No. 100 of 2025 – Fresquare Investments Company Limited v Managing Director KAA** for its submission that it had been aggrieved, disenfranchised, prejudiced, and discriminated against as a result of the manner in which the Respondent carried out the procurement process. In that decision, the Board held that these words meant the Applicant suffered or stood to suffer loss or damage.

20. Mr. Machina further relied on ***PPARB Application No. 96 of 2024 – Estrust Solutions Limited v Director General/Accounting Officer Parliamentary Joint Services & Others***, where the Board stated that the term “aggrieved” denotes a claim by the Applicant of a grievance in the procurement proceedings emanating from a breach of duty imposed upon the Respondent by the Act, and that the Applicant’s legal rights were adversely affected. This decision according to the Applicant was cited in PPARB Application No. 100 of 2025.
21. On the merits of the Application the Applicant placed reliance on Article 227 of the Constitution which requires procurement of goods and services to be undertaken in a system that is fair, equitable, transparent, competitive, and cost-effective. The Applicant submitted that unilaterally marking its bid as withdrawn, refusing access to the tender register, and withholding information constituted a violation of these constitutional principles.
22. The Applicant referred to screenshots and an RFX number (4000082722) annexed to its supporting affidavit showing that its bid was submitted by the 10th December 2025 deadline. The Applicant avers that the Respondent did not deny submission but alleged that the bid was withdrawn. Counsel submitted that the annexure on page 737 of the Applicant’s bundle clearly demonstrates timely submission.
23. The Applicant submitted that under Section 76 of the Act , a bidder may withdraw a tender only by written notice. The Applicant further submitted that Section 78(7) of the Act bars the Procuring Entity from disqualifying a bidder during tender opening. The Applicant accordingly submits that it never issued a withdrawal notice, and the Respondent has produced no

evidence of withdrawal as alleged. The Applicant avers that marking its bid as withdrawn was arbitrary, unlawful, and procedurally unfair. Counsel relied on ***Civil Appeal No. E012 of 2024 – Sinopec International Petroleum Service Corporation v PPARB***, where according to the Applicant the Court of Appeal emphasized that Section 78(7) of the Act protects bidders from being unfairly rejected.

24. The Applicant submitted that the Respondent failed to communicate whether the bid was received or considered despite repeated requests. This amounted to a blatant disregard for Article 227 of the Constitution, which provides for fairness, transparency, competitiveness, and equity in public procurement.
25. The Applicant's Director averred in paragraph 13 of the supporting affidavit that he wrote to the Respondent on 19th December 2025, requesting a copy of the Tender Opening Register (annexure KK-3, page 740) but that the same was never availed. Under Section 78(8) of the Act and Regulation 57(11) of the 2020 Regulations, bidders are entitled to a copy of the register upon request. Failure to provide it constituted a violation of statutory provisions.
26. The Applicant submitted that it had established multiple constitutional and statutory violations by the Respondent and urged the Board to grant the reliefs sought in the Request for Review. Counsel urged the Board to find that there were egregious violations of Article 227 of the Constitution, as well as Sections 76 and 78(7) of the Act.
27. Counsel further requested that the Board consider **PPARB Application No. 4 of 2025 – Ismax Security Limited v Accounting Officer**

KENGEN and grant the reliefs sought by the Applicant in the Request for Review.

**Respondent's Submission Jurisdiction and Locus Standi
And on the Request for Review .**

28. Miss Mulela, Counsel for the Respondent, averred that the Honourable Board lacks jurisdiction to entertain the Applicant's Request for Review pursuant to Section 167(1) of the Public Procurement and Disposal Act (PPADA). She states that Section 167(1) of the Act clearly provides that only a candidate or tenderer who claims to have suffered or is at risk of suffering loss or damage due to a breach of duty by a procuring entity may seek administrative review.
29. Miss Mulela submitted that in the present case, the Applicant did not participate in the tender opening for Tender No. KPI 982/0 OT/001/PJT/25-26. She avers that the Respondent did not receive any bid documents from the Applicant prior to the tender opening, and therefore owed no duty to the Applicant.
30. She further states that the Applicant has failed to demonstrate that it suffered or risked suffering any loss or damage arising from the alleged breaches. Miss Mulela submits that this is a threshold requirement under Section 167(1) of the PPADA, as consistently interpreted in ***James Ayodi t/a Betoya Contractors & Another v Elroba Enterprises Ltd & Another [2019] eKLR***, where the Court of Appeal held that only tenderers claiming actual or potential loss have locus standi.

31. Miss Mulela further cited **Republic v Public Procurement Administrative Review Board & 2 others; MFI Document Solutions Limited [2024] KEHC 9582**, and **HCJRMISC Case No. E069 of 2025 – Peesam Limited vs KPLC** both of which re-affirmed the position that that the applicant lacked locus standi for failing to plead loss or risk of loss.
32. She therefore submitted that in the absence of evidence of loss or risk of loss, the Applicant's Request for Review is incompetent, and the Board ought to dismiss it.

Substantive application

33. On the Substantive application, Miss Mulela stated that without prejudice to the preliminary objection, Article 227 of the Constitution mandates public procurement to be fair, equitable, transparent, competitive, and cost-effective, and that the 2nd Respondent complied by providing clear tender requirements, specifications, and submission procedures.
34. She averred that the tender was advertised on the 2nd Respondent's official website and the MyGov portal in accordance with Section 102(10)(c) & (d) of the Act and Regulation 89(8) of the 2020 Regulations and contended that only compliant, conforming tenders were considered, as confirmed in **Republic v PPARB & another; PVQS Ltd (Ex parte Tuv Austria Turk) [2020] eKLR**, which emphasized that consideration must be given only to responsive tenders to ensure fairness, competition, and objectivity.

35. Counsel stated that the tender document required submission ONLINE on or before the specified date and time and that the Applicant failed to comply as its bid was marked as "**withdrawn**" by the system and that the said marking was consistent with system records. She further contends that the Applicant never submitted a written notice of withdrawal, as required under Section 76 and Section 78(7) of the Act and consequently that the claim that the bid was unfairly excluded is untenable. According to Counsel, the Applicant's screenshots of bid submission do not override official system records indicating withdrawal.
36. She submitted that any subsequent attempt to resubmit does not create a legal duty for the Respondent to consider the bid outside established procedures. She asserts that the Respondent maintained procedural fairness and transparency at all stages, including timely communication of addenda and extensions.
37. In conclusion, Miss Mulela, Counsel for the Respondent, prays that the Honourable Board be pleased to declare the procurement process lawful and that the same ought to progress

Applicant's Rejoinder

38. In rejoinder, the Applicant reiterated that the preliminary objection does not meet the required threshold as a preliminary objection must only raise a pure point of law and not questions of fact. Counsel asserts that the issues of prematurity and incompetence raised by the Respondent involve factual determinations and are therefore inappropriate for consideration at this stage.

BOARD'S DECISION

39. 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:

I. ***Whether the Board lacks jurisdiction to hear and determine the instant Request for Review***

In considering this issue of Jurisdiction, the Board shall determine:

a) Whether the Applicant pleaded suffering or risk of suffering loss and damage

b) Whether the failure to join the Accounting Officer of the Procuring Entity to the proceedings divests the board of jurisdiction.

Depending on the determination

II. ***Whether the Applicant was unfairly or unlawfully excluded from the procurement process with respect to subject Tender.***

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

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

40. The Respondent in Response to the Request for Review dated 22nd December, 2025 and filed with the Board on 23rd December, 2025 took judicial notice that, at the hearing of the Request for Review dated 22nd December 2025, raised a preliminary objection on the grounds that the Request for Review is incompetent and, at best, premature and ought to be struck out.

41. This Board recognizes the well-established principle that adjudicatory bodies can only entertain matters within their jurisdiction. Accordingly, whenever a question of jurisdiction arises, it is incumbent upon the Court, tribunal, or specialized body such as the Public Procurement Administrative Review Board, as acknowledged by the courts, to examine and determine its authority over the matter before taking any further action.

42. 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."

43. On its part, Halsbury's Laws of England (4th Ed.) Vol. 9 defines jurisdiction as:

"...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 decision."

44. The locus classicus case on the question of jurisdiction is the celebrated case of ***The Owners of the Motor Vessel "Lillian S" -v- Caltex Oil Kenya Ltd (1989) KLR 1*** where Nyarangi J.A. made the oft-cited dictum:

"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 draws tools in respect of the matter before it the moment it holds that it is without jurisdiction."

45. In the case of ***Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others [2013] eKLR***, the Court of Appeal emphasized 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...."

46. This Board is a statutory body, established in accordance with 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."

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

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."

48. The Board will now examine, separately, the grounds raised in the Notices of Preliminary Objection by the Respondent, as well as those it considers *suo motu*, in order to determine whether it has jurisdiction to entertain the present Request for Review:

Whether the Applicant has the requisite locus standi to approach the Board by dint of Section 167(1) of the Act on the question of pleading loss and damage:

49. The Respondent that the Applicant lacks the requisite locus standi under section 167(1) of the Act, as the Applicant has neither pleaded nor demonstrated that it has suffered, or is likely to suffer, any loss or damage

as a result of the alleged breach of duty by the Procuring Entity (the 2nd Respondent), as imposed by the act and the applicable Procurement Regulations.

50. The Applicant opposed the preliminary objection and submitted that loss and damage had been adequately pleaded in the Request for Review and its accompanying pleadings, specifically in paragraphs 14 to 16 of the supporting affidavit of the Applicant's Director.
51. Section 167(1) of the Act specify the criteria that an Applicant must satisfy to be eligible to file a Request for Review before the Board, in the following terms;

Section 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

52. From Section 167(1) of the Act above, a party seeking administrative review before the Board must be a tenderer or a candidate claiming to have suffered or at the risk of suffering loss or damage attributable to a Procuring Entity's breach of duty imposed by the Act or Regulations.
53. The Superior Courts in this jurisdiction have previously addressed the requirements for pleading loss or damage under Section 167(1) of the Act. The Court of Appeal in ***James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] eKLR*** considered an appeal against a Decision of the High Court that had quashed a Decision by this Board as having been made without

jurisdiction on account of absence of a plea of loss or damage or risk of loss or damage. In upholding the Decision of the High Court, the Court of Appeal decreed that an Applicant who fails to plead loss or risk of loss or damage is fatal in a Request for Review before the Board, lack the locus standi to bring the Request and the Board is divested the jurisdiction to hear the Request:

"...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 result of any breach of duty by KPA. This is a threshold requirement for anyone 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 list claim to have suffered or to be at risk of suffering loss or damage. It is not every candidate or tenderer who has the 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 to do so..."

54. From the aforementioned decision, which is binding on this Board, it is clear that an Applicant seeking administrative review under Section 167 of the Act must, at a minimum, allege that they have suffered, or are at risk of suffering, loss or damage arising from a breach of a statutory duty imposed on a Procuring Entity.

55. Guided by the above decision, the Board will now interrogate the Request for Review as filed by the Applicant to establish whether their suffering or risk of loss or damage was pleaded.
56. This Board acknowledges the need of a court or decision-making body to exercise its discretion with the utmost care when confronted by an application to strike out a pleading for being defective. This is because such an action bears the consequence of slamming the door of justice on the face of one party without affording it an opportunity to be heard.
57. Further, Article 159(2)(d) of the Constitution of Kenya, 2010 commands bodies exercising judicial authority to overlook procedural technicalities.
58. The Board has carefully and independently examined the Applicant's Request for Review dated 22nd December 2025, filed on 23rd December 2025, together with the accompanying affidavit. While the statement of the Request for Review initially appeared not to plead or demonstrate any actual or potential loss or damage, the Board notes that in the supporting affidavit of Kefa Kamau Mundati, sworn on 22nd December 2025 and filed with the Board on 23rd December 2025, paragraph 16 provides that:

"16. THAT unless the orders the Applicant seeks are granted, the Applicant will suffer loss."

This clearly places the Applicant within the scope of Section 167(1) of the Act.'

59. Accordingly, having made the observation in paragraph 65 above, the Board finds that the Applicant has complied with the requirements of

Section 167 of the Act. Consequently, The preliminary objection filed by the Respondent is therefore disallowed,

The Board shall then proceed to consider the second sub issue on Jurisdiction.

Whether the instant Request for Review is fatally defective for failing to join Accounting Officer of the Procuring Entity is breach of Section 170 (b) of the Act .

60. In the Request for Review dated 22nd December 2025 and filed with the Board on 23rd December 2025, the Applicant, Sultan Limited, joined Kenya Power and Lighting Company Limited as the Respondent. However, the Accounting Officer of Kenya Power and Lighting Company Limited, who is the accounting officer responsible for the subject tender, was not joined as a party to the Request for Review.

61. Section 170 of the Act sets out the parties who are required to be named and participate in a Request for Review before the Board, in the following terms:

170. Parties to review

The parties to a review shall be—

(a) the person who requested the review;

(b) the accounting officer of a procuring entity;

(c) the tenderer notified as successful by the procuring entity;

and

(d) such other persons as the Review Board may determine.

62. The interpretation and application of the above provision has been litigated and settled in various decisions of this Board and the Superior Courts of Kenya. In ***El Roba Enterprises Limited & 5 others v James Oyondi t/a Betoyo Contractors 5 others [2018] eKLR*** the High Court affirmed that the non-joinder of the Accounting Officer of a Procuring Entity in a Request for Review is a fatal defect, rendering the Request for Review incompetent. It stated thus;

34. The Public Procurement and Asset Disposal Act 2015 came into operation on 7th January 2016. Prior to this the Public Procurement and Disposal Act, 2005 was in effect. Section 96 of the repealed Act read as follows:

96. The parties to a review shall be— (a) the person who requested the review; (b) the procuring entity; (c) if the procuring entity has notified a person that the person's tender, proposal or quotation was successful, that person; and (d) such other persons as the Review Board may determine. This provision did not require the accounting officer of a procuring entity to be a party to a review. However, under the current Public Procurement and Asset Disposal Act, the accounting officer is named as a party to the proceedings before the Review Board.

35. In my view, there must be a reason as to why Parliament saw it fit to introduce the accounting officer of the procuring entity as a necessary party to the review. A keen reading of Section 170 of the Act reveals that the term "shall" is used. According to the Black's law dictionary the term "shall" is

defined as "has a duty to; more broadly, is required". As such the provision should be read in mandatory terms that the accounting officer of a procuring entity must be a party to a review.

37. Parties form an integral part of the trial process and if a party is omitted that ought not to be omitted then the trial cannot be sustained. In this case, the omission of the accounting officer of the procuring entity from the applications filed before the 5th Respondent is not a procedural technicality. The Applicants (the 1st and 2nd Respondents herein) in the review applications ought to have included the accounting officer of the procuring entity in the proceedings before the 5th Respondent. The failure to do so meant that the 5th Respondent could not entertain the proceedings before it. The 5th Respondent ought to have found review applications No. 76 of 2017 and 77 of 2017 to be incompetent and dismissed the applications...." (Emphasis ours)

63. The above position was affirmed by the Court of Appeal in ***James Oyondi t/a Betoyo Contractors & another v Elroba Enterprises Limited & 8 others [2019] eKLR*** thus:

"It is clear that whereas the repealed statute named the procuring entity as a required party to review proceedings, the current statute which replaced it, the PPADA, requires that the accounting officer of the procuring entity, be the party. Like the learned Judge we

are convinced that the amendment was for a purpose. Parliament in its wisdom elected to locate responsibility and capacity as far as review proceedings are concerned, on the accounting officer specifically. This, we think, is where the Board's importation of the law of agency floundered. When the procuring entity was the required party, it would be represented in the proceedings by its officers or agents since, being incorporeal, it would only appear through its agents, though it had to be named as a party. Under the PPADA however, there is no such leeway and the requirement is explicit and the language compulsive that it is the accounting officer who is to be a party to the review proceedings. We think that the arguments advanced in an attempt to wish away a rather elementary omission with jurisdictional and competency consequences, are wholly unpersuasive. When a statute directs in express terms who ought to be parties, it is not open to a person bringing review proceedings to pick and choose, or to belittle a failure to comply.

64. Flowing from the foregoing pronouncements of the High Court and the Court of Appeal, which are binding on this Board, the settled and binding legal position therefore is that the failure to enjoin the Accounting Officer of a Procuring Entity in a Request for Review is a fatal omission that renders the Request for Review incompetent.

65. The Board is cognizant that this ground of objection was not raised by the Respondent or any party, as part of its preliminary object but we

hasten to add that this being a jurisdictional issue, the Court on its own motion can take up the issue and make a determination thereon without the same being pleaded. In ***Nasra Ibrahim Ibren v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR***, Supreme Court of Kenya held the view that a court can raise the issue of jurisdiction suo moto. That Court, while citing Odunga J, as he then was, stated thus:

“A jurisdictional issue is fundamental and can even be raised by the court suo moto, as was persuasively and aptly stated by Odunga J in Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B” [2008] 1 EA 367 stated thus:

25.” What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...”

66. Consequently, while the parties have not given this limb of the jurisdictional issue the premium that it deserves, upon evaluation of the matter before us, it is our considered opinion that the issue of jurisdiction of this Board to hear and determine this Request for Review warrants determination as we have done hereinabove.

67. In the event, this Board lacks jurisdiction to hear and determine this Request for Review due to the Applicant's failure to enjoin the Accounting Officer as required by law. The Board must in the circumstances down its tools and cannot proceed to consider any of the other issues framed for determination.

What orders the Board should grant in the circumstances?

68. On the first preliminary issue concerning the alleged failure to plead loss and damage, the Board finds that the Applicant has sufficiently pleaded loss and damage and has therefore complied with the requirements and dictates of Section 167 of the Act.

69. On the second preliminary issue relating to jurisdiction, the Board finds that the Applicant failed to enjoin the Accounting Officer of the Procuring Entity, thereby contravening Section 170(b) of the Act. Consequently, the Board is divested of jurisdiction to hear and determine the instant Request for Review.

70. In the light of the foregoing findings, the Board makes the following orders with respect to the Request for Review dated 22nd December 2025, in respect of Tender No. KPI/9A.2/OT/001/PJT/25-26 (RFX No. 1000002942) for the Provision of Labour and Transport Services:

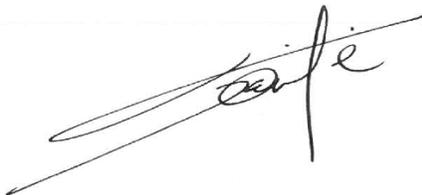
FINAL ORDERS

71. 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 Request for Review dated 22nd December,2025:

- 1. The Request for Review dated 22nd December 2025, and filed with the Board on 23rd December 2025, in respect of Tender No. KPI/9A.2/OT/001/PJT/25-26 (RFX No. 1000002942) for the Provision of Labour and Transport Services, is hereby struck out for want of jurisdiction.**
- 2. The Respondent be and is hereby directed to proceed with Tender No. KPI/9A.2/OT/001/PJT/25-26 (RFX No. 1000002942) for the Provision of Labour and Transport Services to its logical and lawful conclusion.**
- 3. Each party shall bear its own costs in the Request for Review.**

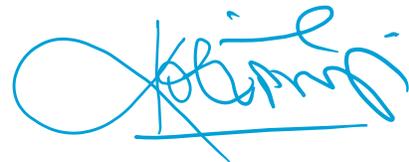
Dated at NAIROBI, this 12th Day of January 2026.



.....

PANEL CHAIRPERSON

PPARB



.....

SECRETARY

PPARB