

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD
APPLICATION NO. 24/2026 FILED ON 19TH FEBRUARY 2026

BETWEEN

OKOTH & KIPLAGAT ADVOCATES..... APPLICANT

VERSUS

THE ACCOUNTING OFFICER,

THE NATIONAL TREASURY.....1ST RESPONDENT

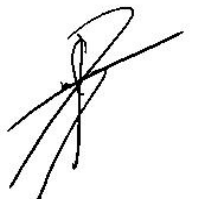
THE NATIONAL TREASURY.....2ND RESPONDENT

G & A ADVOCATES LLP.....INTERESTED PARTY

Review against the decision of the Accounting Officer, The National Treasury in relation to Tender No. TNT/SPP/RT/010/2025-2026 for Procurement of Legal Services of Local Counsel in Respect to the Matter of an Arbitration Under the LCIA Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya.

BOARD MEMBERS PRESENT

- | | | |
|-------------------------------|---|------------------|
| Mr. George Murugu FCIArB & IP | - | Chairperson |
| Ms. Alice Oeri | - | Vice Chairperson |
| Mr. Stanslaus Kimani | - | Member |



IN ATTENDANCE

Mr. Robert Mwangi

- Holding Brief for Board Secretary

PRESENT BY INVITATION

APPLICANT

Mr. Karuthui Kamau

Advocate, Gerivia Advocates LLP

Ms. Susan Munene

Advocate, Gerivia Advocates LLP

OKOTH & KIPLAGAT ADVOCATES

RESPONDENTS

**THE ACCOUNTING OFFICER,
THE NATIONAL TREASURY**

THE NATIONAL TREASURY

Mr. Kenneth Korir

Principal Supply Chain Management
Officer, The National Treasury

Mr. Justus Nzioka

The National Treasury

Ms. Josephine Mogaka

The National Treasury

INTERESTED PARTY

G & A ADVOCATES

Mr. Moses Kipkogei


Advocate, G & A Advocates LLP

Mr. Elias Ouma

Advocate, G & A Advocates LLP

Mr. Ken Melly

Advocate, G & A Advocates LLP



BACKGROUND OF THE DECISION

The Tendering Process

1. The National Treasury (hereinafter referred to as "the Procuring Entity") invited eligible bidders to submit tenders through a Specially Permitted Procurement Procedure for Tender No. TNT/SPP/RT/010/2025-2026 for Procurement of Legal Services of Local Counsel in Respect to the Matter of an Arbitration Under the LCIA Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya (hereinafter referred to as "the subject tender"). The tender was scheduled to close and be opened on 16th January 2026.

Submission of Bids and Tender Opening

2. According to the Tender Opening Minutes dated 16th January, 2026, submitted to the Board as part of the confidential documents, a total of two (2) tenders were received in response to the subject tender. The tenders were recorded as follows:

Bid No.	Name of Bidder
1.	Okoth & Kiplangat Advocates
2.	G&A Advocates LLP



Evaluation of Tenders

3. According to the Tender Evaluation Report dated 23rd January 2026 (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

4. At the Preliminary Evaluation stage, the Evaluation Committee was required to examine each tender against the mandatory requirements set out under the Preliminary/Mandatory Evaluation criteria of the Tender Document. Any tender that failed to satisfy these requirements was to be declared non-responsive.
5. Upon conclusion of the Preliminary Evaluation, both bids were found to be responsive and were accordingly advanced to the Technical Evaluation stage.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes, located in the bottom right corner of the page.

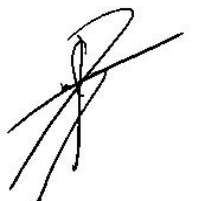
Technical Evaluation

6. At the Technical Evaluation stage, the Evaluation Committee assessed the tenders for compliance with the technical requirements set out in the Technical Evaluation criteria of the Tender Document. To qualify for progression to the financial evaluation stage, a tender was required to attain a minimum technical score of seventy percent (70%).
7. Upon conclusion of the Technical Evaluation stage, all the tenders attained scores exceeding the prescribed minimum threshold and were consequently advanced to the Financial Evaluation stage.

Financial Evaluation

8. At the Financial Evaluation stage, the Evaluation Committee was required to evaluate the tenders in accordance with the Financial Evaluation criteria set out in the Tender Document, including the determination of the lowest evaluated bidder.
9. Upon conclusion of the Financial Evaluation stage, the bids that had progressed to this stage were ranked, as shown below:

S/No.	Bidders Name and Address	Form of Tender Amount
1.	M/s Okoth & Kiplagat advocates	380,000,000.00
2.	M/s G&A Advocates LLP	358,000,000.00




19. Bidder 2, M/s G&A Advocates LLP, the Interested Party herein was found to have quoted the lowest price at their quoted total cost of KES 358,000,000.00 (Kenya Shillings, Three Hundred and Fifty-Eight Million Only) G&A Advocates LLP, and therefore emerged as the lowest evaluated responsive bidder.

Evaluation Committee's Recommendation

20. The Evaluation Committee recommended award of the subject tender to the Interested Party, having been determined to be the lowest responsive evaluated bidder.

Professional Opinion

21. In a Professional Opinion dated 2nd February 2026 (hereinafter referred to as *the Professional Opinion*), Mr. Kenneth Korir, reviewed the procurement process, including the evaluation of the tenders, and concurred with the Evaluation Committee's recommendation to award the tender to the lowest evaluated bidder at their quoted price of KES 358,000,000.00 (Kenya Shillings, Three Hundred and Fifty-Eight Million Only). The Professional Opinion was subsequently approved by the 1st Respondent on 3rd February 2026.



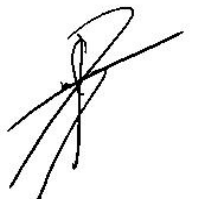
Notification of Award

22. The tenderers were notified of the outcome of the evaluation for the subject tender through letters of Notification of Intention to Award dated 4th January 2026.

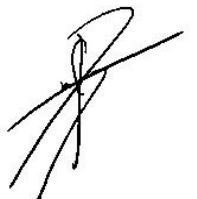
REQUEST FOR REVIEW NO. 24 OF 2026

23. On 19th February 2026, the Applicant, through the firm of Gerivia Advocates LLP, filed a Request for Review dated 19th February 2026, accompanied by a Statement/Affidavit in Support of the Request for Review sworn on even date by Dr. Kenneth Kiplagat, the Applicant's Partner, (hereinafter collectively referred to as "the Request for Review"), seeking the following reliefs:

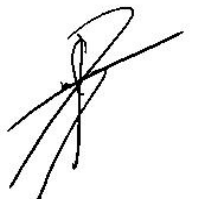
a. The 1st Respondent's decision awarding Tender Number: TENDER NO. TNT/SPP/RT/010/2025-2026 For Procurement of Local Counsel In Respect to The Matter of An Arbitration Under The Lcia Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya to the Interested Party be annulled and set aside;



- b. The Respondents Letter of Regret erroneously dated 4th January 2026 (instead of 4th February 2026) and sent to the Applicant on 5th February 2026, Letter Ref. TNT/SPP/RT/010/2025 – 2026 notifying the Applicant that it had not been successful in Tender Number: TENDER NO. TNT/SPP/RT/010/2025–2026 For Procurement of Local Counsel In Respect to The Matter of An Arbitration Under The Lcia Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya) and notifying the Interested Party as the successful bidder be annulled and set aside.***
- c. A declaration that the Procuring Entity failed to evaluate the Applicant’s bid at the Financial Evaluation stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at Sections 80 and 86 of the Act;***
- d. A declaration that the Procuring Entity failed to evaluate the Interested Party’s bid at the Technical Evaluation stage in accordance with the criteria and procedures under the Tender Document and the provisions of the Act at Sections 80 (2) and (3) and 86 and the provisions of Regulation 76 of the Regulations;***

A handwritten signature in black ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

- e. The Interested Party be disqualified from further evaluation having failed to meet the minimum threshold of 70% at the technical stage to enable progression to the financial evaluation stage;***
- f. In the alternative, the Procuring Entity be directed to re-admit the Interested Party's bid at the technical evaluation stage and re-evaluate it in strict compliance with the technical criteria in the Tender Document, including the scores, keeping in mind the facts raised in this matter regarding the Interested Party's experience;***
- g. The Procuring Entity be directed to re-admit the Applicant bid for re-evaluation and having met all mandatory requirements and technical requirements, proceed to undertake the financial evaluation, in line with the tender document;***
- h. The Board in exercise of its discretion, to give directions to the Respondents to redo or correct anything within the entire procurement process found to not have been done in compliance with the law;***
- i. The Respondents be compelled to pay to the Applicant the costs arising from/and incidental to this Application; and***

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

j. The Board to make such 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.

24. In a Notification of Appeal and a letter dated 19th February 2026, 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 19th January 2026.
25. On 25th February 2026, the Respondents filed a Statement of Response, sworn by Mr. Kenneth Korir on the same date. In compliance with section 67(3)(e) of the Act, the Respondents also submitted to the Board the confidential documents pertaining to the subject tender.
26. On 27th February 2026, 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 4th March 2026 at 2:00 p.m. via the provided link.


A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

27. On 3rd March 2026, the Interested Party filed a Memorandum of Response, together with an Index and Bundle of Documents, both dated 26th February 2026.
28. On 3rd March 2026, the Applicant filed a Further Affidavit, sworn on 2nd March 2026 by Dr. Kenneth Kiplagat, together with their Written Submissions and List of Authorities, both dated 2nd March 2026.
29. On 4th March 2026, the Interested Party filed its Submissions dated 3rd March 2026.
30. When the Board convened for hearing on 4th March 2026, Counsel for all parties were present. The Board reviewed the filed documents and inquired whether service had been effected on all parties. All Counsel confirmed that service had been duly effected and indicated their readiness to proceed. The Board then allocated time for each party to present and highlight their respective submissions.

PARTIES' SUBMISSIONS

Applicant's Submissions

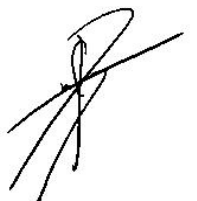
31. The Applicant's Counsel submitted that the dispute before the Board arises from the interpretation and application of Technical Evaluation Criteria No. 1 (a) and 1 (b) of the Tender Document, particularly whether the Respondents lawfully evaluated the Interested Party's bid in accordance



with the stated criteria. Counsel submitted that the Tender Document required proof of the Firm's specific experience in dispute resolution in Public International Law and International Commercial and Investment Treaty Arbitrations for not less than twenty years and evidence that the Firm had directly and successfully handled such disputes under applicable international dispute resolution mechanisms.

32. Counsel submitted that the Tender Document clearly distinguished between Firm-level experience and the qualifications of individual staff, noting that Technical Evaluation Criteria No. 1 dealt with the institutional experience of the bidding firm, whereas Technical Criteria C separately evaluated the qualifications, experience, and academic credentials of the key staff proposed for the assignment. According to Counsel, the use of the term "bidders" under Criterion 1 referred to the law firm as the bidding entity, and not to the personal experience of individual lawyers within the firm.

33. The Applicant's Counsel submitted that Clause 35.1 of the Instructions to Tenderers expressly required the Procuring Entity to evaluate tenders strictly in accordance with the criteria and methodologies set out in the Tender Document and prohibited the use of any other evaluation criteria. Counsel further referred to Clause 39.2 of the Instructions to Tenderers which required the evaluation to be based solely on the documentary evidence submitted by the tenderer and specifically prohibited consideration of the qualifications or experience of other firms such as



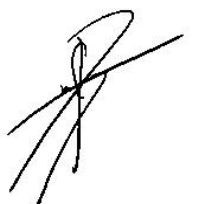
subsidiaries, affiliates, or other entities different from the tenderer that submitted the bid.

34. Counsel submitted that the Respondents' interpretation that the experience of individual partners could be treated as the experience of the Firm was inconsistent with the express wording of the Tender Document. In that regard, Counsel relied on the statutory definition of the term "firm" under the Registration of Business Names Act, which defines a firm as a partnership arrangement through which partners carry on business for profit, thereby underscoring that a firm is a distinct business arrangement separate from the individual professional histories of its members.

35. The Applicant's Counsel further submitted that the Interested Party is registered as a Limited Liability Partnership, which under Section 6 of the Limited Liability Partnerships Act enjoys a separate legal personality distinct from its partners. Counsel argued that, as a result, professional experience attributable to the LLP must be demonstrated as having been undertaken in the name and capacity of the LLP itself and cannot be derived from work performed by partners in other firms prior to joining the LLP. In support of this proposition, Counsel cited the decision in ***Victor Mabachi & Another vs Nurturn Bates Ltd, Civil Appeal No. 247 of 2005 [2013] eKLR***, where the Court of Appeal affirmed the principle that a corporate entity has a separate legal identity distinct from its shareholders, directors or agents.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

36. The Applicant's Counsel submitted that the Respondents' evaluation must be guided strictly by the wording of the Tender Document and relied on the High Court decision in ***Minet Kenya Insurance Brokers Limited v Public Procurement Administrative Review Board & 2 Others; Liaison Healthcare Limited (Interested Party) Judicial Review Application E092 of 2025 [2025] KEHC 6478 (KLR)*** which cited with approval ***Republic vs Public Procurement Administrative Review Board & Another ex parte Gibb Africa Ltd [2016] eKLR***, where the Court held that a procuring entity is bound to comply with the evaluation criteria expressly stated in the tender documents and that any deviation or addition thereto is illegal and invalid.
37. Counsel also cited the United Kingdom decision in ***Harmon CFEM Facades (UK) Ltd v Corporate Officer of the House of Commons [1999]*** for the proposition that contracting authorities must act transparently and cannot alter evaluation criteria during the procurement process. It was therefore submitted that interpreting the Tender Document in a manner that allows individual partner experience to substitute the Firm's institutional experience amounts to the introduction of an unstated evaluation criterion, contrary to procurement law.
38. The Applicant's Counsel further relied on the Board's decision in ***PPARB Decision No. 71 & 75 (Consolidated) Himilo Construction & Supply Limited & Another v Kenya Pipeline Company Limited***, where the Board held that a tender document must be interpreted as a

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

whole and not in isolation. Counsel submitted that when Technical Evaluation Criteria No. 1 is read together with Technical Criteria C, it becomes evident that the Tender Document deliberately separated institutional experience of the firm from the personal qualifications of key staff, thereby demonstrating that the two criteria served different evaluative purposes.

39. Counsel submitted that the Applicant therefore agreed with the Respondents' decision not to award the Interested Party any marks under Technical Evaluation Criteria 1(a), arguing that the Interested Party had not demonstrated the requisite institutional experience of the firm. Counsel contended that awarding marks to the Interested Party under Criterion 1(b) based on the experience of an individual partner would render the structure of the evaluation criteria superfluous and would undermine the requirement under Section 80(3) of the Act that evaluation criteria must be objective, quantifiable, and measurable.
40. The Applicant's Counsel submitted that the Respondents' actions breached Article 227(1) of the Constitution and Section 80 of the Act, which require procurement processes to be conducted in a manner that is fair, equitable, transparent, competitive and cost-effective and that evaluation must strictly follow the procedures and criteria set out in the tender documents.



41. Counsel relied on the decision in ***Republic vs Public Procurement Administrative Review Board Ex parte Meru University of Science & Technology; M/S Aaki Consultants Architects and Urban Designers (Interested Party) [2019] eKLR***, where the Court held that bidders have a legitimate expectation that procuring entities will adhere to the tender conditions and ensure that all bidders compete on an equal footing.
42. Further reliance was placed on ***PPARB Decision No. 32 of 2025 Peesam Limited vs Kenya Airports Authority & Another***, where the Board emphasized the principle of competitive fairness, noting that procurement processes must provide all qualified bidders with an equal opportunity to compete without bias or favoritism. Counsel also cited ***PPARB Decision No. 52 of 2025 Jubilee Health Insurance vs Kenya Wildlife Service & Others***, where the Board held that strict adherence to evaluation criteria is essential to safeguard transparency, accountability and integrity in public procurement.
43. The Applicant's Counsel submitted that the Respondents failed to demonstrate the basis upon which the Interested Party was awarded full marks under Criterion 1(b). Counsel argued that the evidence on record showed that the Interested Party relied on the participation of one of its partners in ***ICSID Case No. ARB/15/29 Cortec Mining Kenya Limited***, which experience was acquired while the partner was working at a different law firm, namely Iseme Kamau and Maema Advocates, prior

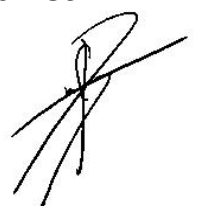
A handwritten signature in black ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

to joining the Interested Party LLP. Counsel contended that treating such experience as experience of the Interested Party LLP was contrary to Clause 39.2 of the Tender Document which prohibits reliance on the qualifications or experience of other firms.

44. The Applicant's Counsel relied on the decision in ***Republic vs Public Procurement Administrative Review Board ex parte Guardforce Group Limited; Pwani University & 2 Others (Interested Parties) [2021] eKLR***, where the Court emphasized that strict compliance with mandatory tender requirements promotes fairness, transparency, equal treatment and accountability in public procurement. Counsel submitted that by conflating the individual experience of the Interested Party's partner with the institutional experience of the Firm, and by failing to demonstrate adherence to the express evaluation criteria, the Respondents introduced subjectivity and opacity into the evaluation process in violation of the law and the principles governing public procurement.


Respondents' Submissions

45. The Respondents, through Mr. Kenneth Korir, submitted that the procurement of legal services was necessitated by urgent international arbitration proceedings under the London Court of International Arbitration Rules (LCIA) between M/s Jamhuri Holdings Limited and the Attorney General of the Republic of Kenya, on behalf of the Cabinet

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Secretary to the National Treasury of Kenya and the Government of Kenya. The Office of the Attorney General & State Department for Justice advised and approved the engagement of external counsel consisting of an international barrister and two local law firms with requisite experience in international commercial and investment arbitrations.

46. The Respondents submitted that the procurement followed a Specially Permitted Procurement Procedure (SPP) pursuant to Section 114A(1) and (2)(c) of the Act and Regulation 107(1) of the Public Procurement and Asset Disposal Regulations, 2020, due to the urgency of the matter and the risk of financial exposure for the Government of Kenya. The procedure allowed the Supply Chain Management Unit to expedite the process, including tender preparation, evaluation, and contract signing.
47. The Respondents submitted that the Restricted Tendering Procurement Method was used pursuant to Section 102(1)(a) of the Act, limiting competition to prequalified tenderers proposed by the Attorney General's office. The National Treasury invited M/s G & A Advocates LLP and M/s Okoth & Kiplagat Advocates, both prequalified, to participate. The tenders were evaluated by appointed Tender Opening and Evaluation Committees. Both bidders were found responsive at the preliminary and technical stages, achieving scores above the minimum pass mark of 70%, and proceeded to the Financial Evaluation stage.



48. The Respondents submitted that M/s G & A Advocates LLP emerged as the lowest evaluated bidder with a tender sum of KES 358,000,000.00, compared to the Applicant's KES 380,000,000.00. The Applicant's claim of having submitted a compliant and well-priced bid was therefore incorrect. The award was made in accordance with the tender document (page 30), which required award to the lowest evaluated bidder rather than combined technical and financial scores.
49. The Respondents submitted that the Applicant's allegations regarding improper evaluation under section 80 of the Act were baseless. In particular, the Applicant contended that M/s G & A Advocates LLP did not meet the requirement of 20 years' experience; however, the firm had 19 years' existence, and the Evaluation Committee did not award marks for the unfulfilled part of the criterion. Further, the firm demonstrated extensive experience in handling International Commercial and Investment Treaty Arbitration disputes, including the ICSID case No. ARB/15/29 CORTEC Mining Kenya Limited, which satisfied the technical evaluation criteria.
50. The Respondents submitted that the timely engagement of the international barrister was crucial due to strict procedural timelines and the risk of financial exposure, as advised by the Solicitor General. The procurement process and evaluation were conducted in a fair, transparent, competitive, and equitable manner. The Respondents did not breach section 167 of the Act or any other specific duty.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

Interested Party's Submissions

51. The Interested Party's Counsel submitted that the tender opening was conducted on 22nd January 2026 in compliance with Section 78 of the Act, with representatives of both parties present. All tenders and their total sums were publicly read, and the Interested Party's financial proposal of KES 358,000,000.00 was duly noted against the Applicant's KES 388,000,000.00. Following this, the Evaluation Committee undertook preliminary evaluation under Section 74 of the Act to confirm eligibility, compliance with submission requirements, and completeness. Both parties met these mandatory requirements and were advanced to the technical evaluation stage. Counsel referred to ***Legend Management Limited v Kenya Pipeline Company Retirement Benefits Scheme & 2 others, PPARB Application No. 31 of 2023, and Sinopec International Petroleum Service Corporation vs Public Procurement Administrative Review Board & 3 others [2024] KECA 184 (KLR)***, to emphasize that responsiveness to mandatory criteria is the initial threshold in tender evaluation.
52. On technical evaluation, the Interested Party's Counsel submitted that the Applicant's challenge was confined to two grounds: alleged non-compliance with Section 1(a) and 1(b) of the Technical Evaluation Criteria concerning (i) at least twenty years' experience in international arbitration, and (ii) direct handling of international commercial and investment treaty disputes. Counsel argued that these allegations are baseless, internally



inconsistent, and exemplify approbation and reprobation. The Applicant sought to discredit experience in ***ICSID Case No. ARB/15/29 Cortec Mining Kenya Limited, Cortec (PTY) Limited and Stirling Capital Limited v Republic of Kenya***, while simultaneously citing ***World Duty Free Company Limited vs Republic of Kenya*** to inflate his own credentials. Counsel emphasized that the firm, as a juristic person, operates through its partners and key personnel, whose experience is properly attributable to the firm.

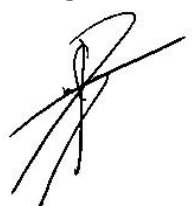
53. Counsel further submitted that the Interested Party provided detailed curricula vitae and supporting documentation demonstrating sustained expertise in public international law and international arbitration, exceeding the twenty-year threshold. Notably, the technical submission included: Mr. Eric Gumbo (Managing Partner) with over 22 years of practice; Mr. Ken Melly, FCI Arb, lead counsel with extensive international arbitration experience; Mr. Moses Kipkogei, experienced in human rights and arbitration; and Mr. Michael Sullivan, external counsel called to the Bar of England and Wales. The Interested Party successfully represented the Republic of Kenya at ICSID Case No. ARB/15/29 and the Independent Electoral and Boundaries Commission before the East African Court of Justice (Reference Nos. 56 of 2022 and 39 of 2022). Counsel submitted that prior experience of advocates is relevant under Section 17(2) of the Advocates Act and cannot be disregarded merely because of firm restructuring, citing ***Ukwala Supermarket vs Jaideep Shah &***



Another [2022] KEHC 2207 (KLR) on the principle of corporate personality being operational through human expertise.

54. On financial evaluation, Counsel submitted that Part C of the Evaluation Criteria required comparison of quoted prices with market rates and selection of the lowest evaluated price among responsive tenders. The Interested Party's offer of KES 358,000,000.00 was KES 30,000,000.00 lower than the Applicant's, demonstrating cost-effectiveness and prudent management of public funds. Counsel cited ***James Oyondi t/a Betoyo Contractors vs Public Procurement Administrative Review Board***, and ***PPARB Application Nos. 3 of 2026 China Civil Engineering Construction Corporation vs Managing Director, Kenya Railways Corporation & Others*** and ***PPARB Application No. 11 of 2026 Pelican Insurance Brokers (K) Limited v Kenya Ports Authority & Another***, to underline that financial evaluation must consider value for money, transparency, and adherence to the tender document and Section 86 of the Act.

55. On whether the tender was lawfully awarded, Counsel submitted that the Interested Party met mandatory, technical, and financial criteria and was awarded the tender through a Notification of Award dated 4th February 2026, consistent with Section 3 of the Act and Article 227(1) of the Constitution. The evaluation adhered to Sections 80, 87(1)-(3) of the Act and relevant Regulations, ensuring transparency, competitiveness, fairness, and compliance with statutory and constitutional standards. The

A handwritten signature in black ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

Applicant's claims were described as internally contradictory, misrepresenting the competence of the Interested Party's personnel and applying double standards.

Applicant's Rejoinder

56. In rejoinder, Counsel for the Applicant submitted that it is insufficient merely to assert that a tender price was low; what matters is whether a bidder has met all the requirements. Counsel further submitted that the Respondents have outlined their actions but have not addressed the grievances raised in the Request for Review. It was emphasized that the evaluation criteria were clear, and that the bids ought to have been evaluated in accordance with the criteria set out in the Tender Document.

BOARD'S DECISION

57. 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 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.

B. What appropriate orders should issue in the circumstances.

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.


58. The Applicant's Counsel submitted that the dispute before the Board arises from the interpretation and application of Technical Evaluation Criteria No. 1 (a) and 1 (b) of the Tender Document, particularly whether the Respondents lawfully evaluated the Interested Party's bid in accordance with the stated criteria. Counsel submitted that the Tender Document required proof of the Firm's specific experience in dispute resolution in Public International Law and International Commercial and Investment Treaty Arbitrations for not less than twenty years and evidence that the Firm had directly and successfully handled such disputes under applicable international dispute resolution mechanisms.
59. Counsel submitted that the Tender Document clearly distinguished between Firm-level experience and the qualifications of individual staff, noting that Technical Evaluation Criteria No. 1 dealt with the institutional

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

experience of the bidding firm, whereas Technical Criteria C separately evaluated the qualifications, experience, and academic credentials of the key staff proposed for the assignment. According to Counsel, the use of the term "bidders" under Criterion 1 referred to the law firm as the bidding entity, and not to the personal experience of individual lawyers within the firm.

60. The Applicant's Counsel submitted that Clause 35.1 of the Instructions to Tenderers expressly required the Procuring Entity to evaluate tenders strictly in accordance with the criteria and methodologies set out in the Tender Document and prohibited the use of any other evaluation criteria. Counsel further referred to Clause 39.2 of the Instructions to Tenderers which required the evaluation to be based solely on the documentary evidence submitted by the tenderer and specifically prohibited consideration of the qualifications or experience of other firms such as subsidiaries, affiliates, or other entities different from the tenderer that submitted the bid.


61. Counsel submitted that the Respondents' interpretation that the experience of individual partners could be treated as the experience of the Firm was inconsistent with the express wording of the Tender Document. In that regard, Counsel relied on the statutory definition of the term "firm" under the Registration of Business Names Act, which defines a firm as a partnership arrangement through which partners carry on business for

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract mark.

profit, thereby underscoring that a firm is a distinct business arrangement separate from the individual professional histories of its members.

62. The Applicant's Counsel further submitted that the Interested Party is registered as a Limited Liability Partnership, which under Section 6 of the Limited Liability Partnerships Act enjoys a separate legal personality distinct from its partners. Counsel argued that, as a result, professional experience attributable to the LLP must be demonstrated as having been undertaken in the name and capacity of the LLP itself and cannot be derived from work performed by partners in other firms prior to joining the LLP.

63. The Applicant's Counsel submitted that the Respondents' evaluation must be guided strictly by the wording of the Tender Document. It was submitted that interpreting the Tender Document in a manner that allows individual partner experience to substitute the Firm's institutional experience amounts to the introduction of an unstated evaluation criterion, contrary to procurement law. Counsel submitted that when Technical Evaluation Criteria No. 1 is read together with Technical Criteria C, it becomes evident that the Tender Document deliberately separated institutional experience of the firm from the personal qualifications of key staff, thereby demonstrating that the two criteria served different evaluative purposes.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

64. Counsel submitted that the Applicant therefore agreed with the Respondents' decision not to award the Interested Party any marks under Technical Evaluation Criteria 1(a), arguing that the Interested Party had not demonstrated the requisite institutional experience of the firm. Counsel contended that awarding marks to the Interested Party under Criterion 1(b) based on the experience of an individual partner would render the structure of the evaluation criteria superfluous and would undermine the requirement under Section 80(3) of the Act that evaluation criteria must be objective, quantifiable, and measurable.
65. The Applicant's Counsel submitted that the Respondents failed to demonstrate the basis upon which the Interested Party was awarded full marks under Criterion 1(b). Counsel argued that the evidence on record showed that the Interested Party relied on the participation of one of its partners in ***ICSID Case No. ARB/15/29 Cortec Mining Kenya Limited***, which experience was acquired while the partner was working at a different law firm, namely Iseme Kamau and Maema Advocates, prior to joining the Interested Party LLP. Counsel contended that treating such experience as experience of the Interested Party LLP was contrary to Clause 39.2 of the Tender Document which prohibits reliance on the qualifications or experience of other firms.
66. In response to the foregoing, the Respondents submitted that the procurement followed a Specially Permitted Procurement Procedure (SPP) pursuant to Section 114A(1) and (2)(c) of the Act and Regulation 107(1)

A handwritten signature in black ink, consisting of several overlapping, fluid strokes, located in the bottom right corner of the page.

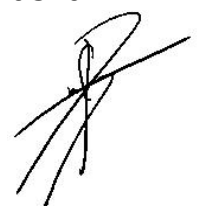
of the Public Procurement and Asset Disposal Regulations, 2020, due to the urgency of the matter and the risk of financial exposure for the Government of Kenya. The procedure allowed the Supply Chain Management Unit to expedite the process, including tender preparation, evaluation, and contract signing.

67. The Respondents submitted that the Restricted Tendering Procurement Method was used pursuant to Section 102(1)(a) of the Act, limiting competition to prequalified tenderers proposed by the Attorney General's office. The National Treasury invited M/s G & A Advocates LLP and M/s Okoth & Kiplagat Advocates, both prequalified, to participate. The tenders were evaluated by appointed Tender Opening and Evaluation Committees. Both bidders were found responsive at the preliminary and technical stages, achieving scores above the minimum pass mark of 70%, and proceeded to the Financial Evaluation stage.

68. The Respondents submitted that M/s G & A Advocates LLP emerged as the lowest evaluated bidder with a tender sum of KES 358,000,000.00, compared to the Applicant's KES 380,000,000.00. The Applicant's claim of having submitted a compliant and well-priced bid was therefore incorrect. The award was made in accordance with the tender document (page 30), which required award to the lowest evaluated bidder rather than combined technical and financial scores.



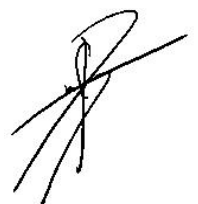
69. The Respondents submitted that the Applicant's allegations regarding improper evaluation under section 80 of the Act were baseless. In particular, the Applicant contended that M/s G & A Advocates LLP did not meet the requirement of 20 years' experience; however, the firm had 19 years' existence, and the Evaluation Committee did not award marks for the unfulfilled part of the criterion. Further, the firm demonstrated extensive experience in handling International Commercial and Investment Treaty Arbitration disputes, including the ICSID case No. ARB/15/29 CORTEC Mining Kenya Limited, which satisfied the technical evaluation criteria.
70. The Respondents submitted that the timely engagement of the international barrister was crucial due to strict procedural timelines and the risk of financial exposure, as advised by the Solicitor General. The procurement process and evaluation were conducted in a fair, transparent, competitive, and equitable manner. The Respondents did not breach section 167 of the Act or any other specific duty.
71. For the Interested Party, Counsel submitted that the Applicant's challenge was confined to two grounds: alleged non-compliance with Section 1(a) and 1(b) of the Technical Evaluation Criteria concerning (i) at least twenty years' experience in international arbitration, and (ii) direct handling of international commercial and investment treaty disputes. Counsel argued that these allegations are baseless, internally inconsistent, and exemplify approbation and reprobation. Counsel emphasized that the firm, as a



juristic person, operates through its partners and key personnel, whose experience is properly attributable to the firm.


72. Counsel further submitted that the Interested Party provided detailed curricula vitae and supporting documentation demonstrating sustained expertise in public international law and international arbitration, exceeding the twenty-year threshold. Notably, the technical submission included: Mr. Eric Gumbo (Managing Partner) with over 22 years of practice; Mr. Ken Melly, FCI Arb, lead counsel with extensive international arbitration experience; Mr. Moses Kipkogei, experienced in human rights and arbitration; and Mr. Michael Sullivan, external counsel called to the Bar of England and Wales. The Interested Party successfully represented the Republic of Kenya at ICSID Case No. ARB/15/29 and the Independent Electoral and Boundaries Commission before the East African Court of Justice (Reference Nos. 56 of 2022 and 39 of 2022). Counsel submitted that prior experience of advocates is relevant under Section 17(2) of the Advocates Act and cannot be disregarded merely because of firm restructuring, citing ***Ukwala Supermarket vs Jaideep Shah & Another [2022] KEHC 2207 (KLR)*** on the principle of corporate personality being operational through human expertise.

73. On financial evaluation, Counsel submitted that Part C of the Evaluation Criteria required comparison of quoted prices with market rates and selection of the lowest evaluated price among responsive tenders. The Interested Party's offer of KES 358,000,000.00 was KES 30,000,000.00



lower than the Applicant's, demonstrating cost-effectiveness and prudent management of public funds. Counsel cited ***James Oyondi t/a Betoyo Contractors vs Public Procurement Administrative Review Board***, and ***PPARB Application Nos. 3 of 2026 China Civil Engineering Construction Corporation vs Managing Director, Kenya Railways Corporation & Others*** and ***PPARB Application No. 11 of 2026 Pelican Insurance Brokers (K) Limited v Kenya Ports Authority & Another***, to underline that financial evaluation must consider value for money, transparency, and adherence to the tender document and Section 86 of the Act.

74. On whether the tender was lawfully awarded, Counsel submitted that the Interested Party met mandatory, technical, and financial criteria and was awarded the tender through a Notification of Award dated 4th February 2026, consistent with Section 3 of the Act and Article 227(1) of the Constitution. The evaluation adhered to Sections 80, 87(1)-(3) of the Act and relevant Regulations, ensuring transparency, competitiveness, fairness, and compliance with statutory and constitutional standards. The Applicant's claims were described as internally contradictory, misrepresenting the competence of the Interested Party's personnel and applying double standards.
75. The starting point in determining this issue is Article 227 of the Constitution, which outlines the objective of public procurement, ensuring

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.

the provision of quality goods and services within a framework that upholds the principles enshrined therein. Article 227 states as follows:

227. Procurement of public goods and services

(1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented and may provide for all or any of the following –

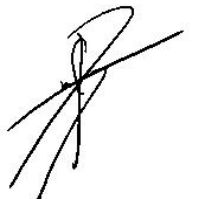
a...

b...

c...

d...

76. The above section of the law provides that, inter alia, when a State organ or public entity procures goods or services, the process must adhere to

A handwritten signature in black ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

specific standards, one of which is competitive fairness. In this context, competitive fairness means that the procurement process must offer all qualified suppliers an equal opportunity to compete for the contract. It ensures that no bidder is unfairly advantaged or disadvantaged and that selection is based on objective criteria. This fosters integrity, value for money, and public trust in the procurement system.

77. The Board observes that the legislation referred to in Article 227(2) of the Constitution is the Act. Section 80 of the Act provides guidance on the evaluation and comparison of tenders by a Procuring Entity as follows:

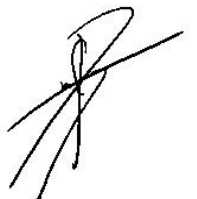
80. Evaluation of Tender

(1) The evaluation committee appointed by the accounting officer pursuant to section 46 of the Act shall evaluate and compare the responsive tenders other than tenders rejected.

(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and,...

(3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2)-

(a) The criteria shall, to the extent possible, be

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

objective and quantifiable;

(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and

(4)

78. Section 80(2) of the Act mandates the Evaluation Committee to evaluate and compare tenders fairly, using the procedures and criteria outlined in the Tender Document. The Board interprets a fair evaluation system as one that ensures equal treatment of all tenders based on transparently defined criteria in the Tender Document.

79. In addressing this issue, the Board has carefully perused the pleadings on record together with the confidential documents submitted to it and notes that the Applicant's contention arises from the manner in which the Technical Evaluation stage was conducted, specifically with regard to Clauses 1(a) and 1(b) of the Technical Evaluation criteria, which provide as follows:

No	Description	Maximum score
1	Specific Experience of the Firm related to the assignment (40 Marks)	
	a) Bidders should be reputed Lawyers with	40 Marks



	<p>demonstrable extensive expertise and experience in dispute resolution in Public International Law generally, and International Commercial and Investment Treaty Arbitrations disputes in particular for not less than 20Years. (20 Marks)</p> <p>b) The firm should directly and successfully have personal handled International Commercial and Investment Treaty Arbitrations disputes under applicable international dispute resolution mechanism. (20 Marks)</p>	
--	---	--

80. The Board understands the above criteria to mean that a bidder must demonstrate that it is a reputable law firm possessing substantial expertise and experience in dispute resolution within the field of Public International Law, with particular emphasis on International Commercial and Investment Treaty Arbitration, for a period of not less than twenty (20) years. Further, the criteria require the firm to establish that it has directly and successfully handled disputes relating to International Commercial and Investment Treaty Arbitrations under recognized international dispute resolution mechanisms, thereby evidencing practical involvement and proven capability in conducting such proceedings.

81. In determining this issue, the Board perused the confidential documents, specifically the Evaluation Report, and notes that under the above criterion



the Applicant was awarded 40 marks while the Interested Party was awarded 20 marks. The Board further notes that, overall, the Applicant attained a total of 98 marks in the Technical Evaluation, whereas the Interested Party attained a total of 76 marks. The Board also notes that the Tender Document, at page 29, provided that a bidder was required to score a minimum of 70 marks in order to proceed to the Financial Evaluation stage. In the present case, both bidders scored above the prescribed threshold and were therefore advanced to the Financial Evaluation stage.

82. The Board notes that the Applicant contended that the Interested Party should not have been awarded the full 20 marks under Clause 1(b) of the Technical Evaluation criteria. The Applicant argued that the evidence on record demonstrated that the Interested Party relied on the participation of one of its partners in **ICSID Case No. ARB/15/29 Cortec Mining Kenya Limited**. This experience, however, was acquired while the partner was employed at a different law firm, namely Iseme Kamau and Maema Advocates, prior to joining the Interested Party LLP. Counsel submitted that treating such experience as that of the Interested Party LLP was contrary to Clause 39.2 of the Tender Document, which prohibits reliance on the qualifications or experience of other firms.

83. The Board notes that the Applicant's argument was opposed by both the Respondents and the Interested Party. In light of the conflicting submissions, the Board carefully examined the confidential documents,



including the bids submitted by the parties, in order to ascertain the true position.

84. Upon reviewing the Interested Party's bid, the Board notes that the Interested Party submitted evidence of prior experience to satisfy the requirement under Clause 1(b) of the Technical Evaluation. Specifically, this evidence is found on pages 135, 136, 184, and 185 of the bid, which demonstrates, *inter alia*, that Mr. Ken Melly, while employed at Iseme Kamau & Maema Advocates, acquired the requisite experience prior to joining the Interested Party's firm.
85. In view of the foregoing, the Board notes that the issue narrows to whether the experience acquired by Mr. Ken Melly while at a different firm can be attributed to the Interested Party. The Board finds that an advocate's experience remains with the individual regardless of their transfer from one law firm to another. Experience is personal to the advocate and is not extinguished upon changing firms; accordingly, when an advocate moves to a new firm, they retain the professional experience acquired at their previous firm.
86. The Board finds that the Respondents cannot be faulted for awarding the Interested Party the 20 marks under Clause 1(b) of the Technical Evaluation criteria. It is not disputed that Mr. Ken Melly is currently employed by the Interested Party, and, accordingly, the Interested Party




may be regarded as possessing the requisite experience by virtue of having him as one of its advocates and partners.

87. By way of analogy, a law firm may be seen merely as a vehicle, while the actual experience resides with the advocates who practice within it, which Advocates for purposes of legitimately carrying on the practise of law are required to individually take out annual practicing certificates and together, it is only these qualified and duly licensed advocates that then serve as a foundation of a firm's collective experience. In contrast, a law firm is not required to renew its registration certificate annually. Accordingly, the experience remains with the individual advocate, so that if an advocate moves from one firm to another, their professional experience moves with them.

88. Accordingly, the Board finds that the Respondents properly evaluated the Interested Party's bid in accordance with the law. The Interested Party met the minimum threshold for progression to the Financial Evaluation stage and was correctly advanced. Ultimately, the Interested Party was determined to be the lowest evaluated bidder, having submitted a financial proposal lower than that of the Applicant.

89. In light of the foregoing, the Board finds that the evaluation of the Interested Party's bid was conducted in accordance with the law and the provisions of the Tender Document. Accordingly, the award of the subject tender to the Interested Party was lawful and proper.



What orders should the Board grant in the circumstances?

90. Having considered the parties' submissions and examined the evidence on record, the Board finds that the evaluation of the Interested Party's bid was conducted in accordance with the law and the Tender Document, as the Interested Party correctly met the minimum marks at the Technical Evaluation stage and was therefore duly qualified to proceed to the Financial Evaluation stage.
91. Consequently, the instant Request for Review, filed on 19th February 2026, relating to Tender No. TNT/SPP/RT/010/2025-2026 for Procurement of Legal Services of Local Counsel in Respect to the Matter of an Arbitration Under the LCIA Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya is hereby disallowed.

FINAL ORDERS

92. 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 Request for Review dated 19th February 2026 be and is hereby dismissed;




2. The Accounting Officer of the National Treasury is hereby directed to oversee the tender proceedings for Tender No. TNT/SPP/RT/010/2025-2026 for Procurement of Legal Services of Local Counsel in Respect to the Matter of an Arbitration Under the LCIA Arbitration Rules, 2020 Between Jamhuri Holdings Limited vs The Attorney General of The Republic of Kenya, on Behalf of The Cabinet Secretary to The National Treasury of Kenya to their logical and lawful conclusion; and

3. Each party shall bear its own costs of the proceedings.

Dated at NAIROBI, this 9th day of March 2026.


.....
CHAIRPERSON
PPARB


.....
SECRETARY
PPARB

