



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola & Ouko SCJJ)

PETITION (APPLICATION) NO. E019 OF 2025

-BETWEEN-

HATARI SECURITY GUARDS LIMITED..... PETITIONER

—VERSUS—

VICKERS SECURITY SERVICES LIMITED.....1ST RESPONDENT

KENYA REVENUE AUTHORITY2ND RESPONDENT

ACCOUNTING OFFICER,

KENYA REVENUE AUTHORITY3RD RESPONDENT

PUBLIC PROCUREMENT

ADMINISTRATIVE REVIEW BOARD.....4TH RESPONDENT

(Being an application for stay of execution of the decree/order of the Court of Appeal (W. Karanja, M’Inoti & Achode, JJA) in Civil Appeal No. E143 of 2025 as consolidated with Civil Appeal No. E150 of 2025 dated 11th April 2025; an application to strike out the Petition of appeal; and Preliminary Objections)

Representation:

Fred Ngatia, SC, Edwin Mukele & Elizabeth Karanja for the Petitioner.
(Ngatia & Associates & Mukele Moni & Company Advocates)

Issa Mansur & Samuel Mbatai for the 1st Respondent.
(Issa & Company Advocates)

Leparan Lemiso for the 2nd & 3rd Respondent.
(Elisha Nyapara, Leparan Lemiso Advocates)

Fred Ragui Kariuki for the 4th Respondent.
(Office of the Attorney General)

RULING OF THE COURT

[1] This ruling disposes of two Notices of Motion and two Preliminary Objections arising from the petition, all of which are related in tenor and substance. The first Motion, filed by the petitioner (Hatari Security Guards Ltd), seeks a stay of execution of the order made by the Court of Appeal on 11th April 2025. The first Preliminary Objection is filed by the 2nd & 3rd respondents (Kenya Revenue Authority/ KRA) in response to the petitioner's application for stay of execution and challenges this Court's jurisdiction to hear and determine the petitioner's Notice of Motion aforesaid and the petition. The second Preliminary Objection is filed by the 1st respondent and challenges the Court's jurisdiction to hear and determine the petition. Similarly, the 1st respondent (Vickers Security Services Ltd) filed an application to strike out the Petition of Appeal dated 19th April 2025, on the ground that the present appeal does not lie to this Honourable Court as a matter of right under Article 163(4)(a) of the Constitution; and

[2] UPON READING the petitioner's Notice of Motion brought under Article 163(4)(a) of the Constitution, Sections 15 and 24 of the Supreme Court Act, and Rules 3, 23 and 26 of the Supreme Court Rules, 2020, for orders *inter alia* that:

- i. *pending the hearing and determination of this Motion, interim conservatory orders be issued to stay implementation of the Order made by the Court of Appeal on 11th April 2025 directing the 2nd & 3rd respondents to forthwith award Tender No. KRA/HQS/NCB-002/2024-2025-LOT 1 – Provision of Security Guarding Services to the 1st respondent;*
- ii. *pending the hearing and determination of the Appeal, interim conservatory orders be issued to stay implementation of the Order made by the Court of Appeal on 11th April 2025 directing the 2nd & 3rd respondents to forthwith award Tender No. KRA/HQS/NCB-002/2024-2025-LOT 1 – Provision of Security Guarding Services to the 1st respondent;*
- iii. *Costs of this application be provided for; and*

[3] UPON CONSIDERING the supporting affidavit sworn on 19th April, 2025 by Stephen Mwangi, the Managing Director of the petitioner, together with the

written submissions dated 19th April, 2025; the supplementary affidavit of Stephen Mwangi sworn on 4th May, 2025 and the supplementary submissions dated 4th July 2025, wherein it is contended that: the Court of Appeal erred in overturning the High Court's decision which had upheld the 4th respondent's (PPARB)'s nullification of the tender award; the Court of Appeal did not consider that it lacked jurisdiction to award the tender to the 1st respondent, the prerogative of the 3rd respondent as provided for by Article 227 of the Constitution as read together with Section 84(3) and 85 of the Public Procurement and Asset Disposal Act, CAP. 412C (PPADA); the procurement process violated Articles 10, 47, 201 and 227 of the Constitution regarding fairness, transparency and public finance principles; the appeal raises substantial constitutional questions that warrant this Court's intervention; and

[4] FURTHER CONSIDERING that the petitioner is apprehensive that unless the order of stay is granted, the appeal, if it were to succeed would be rendered nugatory; that it is in the public interest that the order of stay be granted; and that the purported execution of the contract by the 1st respondent on 23rd April, 2025 does not preclude this Court from interrogating whether award of the subject Tender to the 1st respondent complied with provisions of Article 227 of the Constitution as read together with the PPADA. To support its averments on the nugatory aspect, it cites the Court of Appeal's decision in *Sinopec International Petroleum Service Corporation Vs Public Procurement Administrative Review Board & 3 others* (Civil Appeal E012 of 2024) [2024] KECA 184 (KLR); and

[5] UPON REVIEWING the replying affidavit sworn on 30th April 2025, by Abdikadir Sheikh Abdullahi, the Director of the 1st respondent, as well as submissions dated 30th April 2025, in opposition to the petitioner's Motion to the effect that: the petitioner's appeal is improperly before this Court as it does not meet the threshold under Article 163(4)(a) of the Constitution; the appeal is not arguable; the dispute involves purely factual procurement matters without raising questions of constitutional interpretation; the issues for determination at the Court of Appeal did not involve the interpretation or application of the Constitution; mere listing by the petitioner of purported substantial questions of

law that it intends to urge this Court does not place this appeal under Article 163(4)(a) of the Constitution; the Court of Appeal's decision is final under Section 175(4) of the PPADA; and

[6] NOTING the affidavit of Titus Kilonzo Mwele sworn on 30th April 2025, on behalf of the 2nd and 3rd respondents (KRA), which avers that: following the decision of the Court of Appeal on 11th April 2025, the 2nd & 3rd respondents awarded the tender to the 1st respondent; the contract with the 1st respondent was duly executed on 23rd April 2025, disrupting the contract would jeopardize critical security services for KRA; and

[7] TAKING INTO account the Preliminary Objection dated 30th April 2025 filed by KRA in response to the petitioner's Notice of Motion and submissions dated 30th April, 2025 contending that the Petition of Appeal and application dated 19th April, 2025 offend the express provisions of Section 175(4) of the Public Procurement and Assets Disposals Act, 2015; and

[8] FURTHER TAKING into account the Notice of Preliminary Objection dated 12th May 2025 filed by the 1st respondent urging that the same be heard *in limine* on the grounds that the petition of appeal does not lie as a matter of right under Article 163(4)(a) of the Constitution; the appeal before the Court of Appeal was made pursuant to Section 175(4) of the PPADA and did not involve the application or interpretation of the Constitution; the petitioner failed to seek certification from the Court of Appeal under Article 163(4)(b) of the Constitution and Section 15B of the Supreme Court Act; the appeal has been filed contrary to the express provisions of Section 175(4) of the PPADA being an appeal arising out of a procurement dispute and there is a statutory bar to an appeal to the Supreme Court; and that the Court does not have any jurisdiction to hear and determine procurement appeals and the appeal is a gross abuse of the court process; and

[9] CONSIDERING the petitioner's rejoinder in the further affidavit sworn on 4th May 2025, by Stephen Mwangi maintaining that: the Court of Appeal substantively engaged with constitutional provisions; public procurement inherently involves constitutional interpretation; the Court of Appeal extensively interpreted and applied Articles 50(1), 167(1) and 227 of the Constitution in its

judgment and that the issues in the present appeal were considered and determined by the High Court and the Court of Appeal as such, the appeal falls squarely within this Court's jurisdiction under Article 163 (4) (a) of the Constitution and the PPADA's finality clause cannot oust this Court's jurisdiction; and

[10] UPON READING the Notice of Motion dated 19th June 2025, filed by the 1st respondent (Vickers Security Services Ltd) seeking to strike out the Petition of Appeal for want of jurisdiction, supported by the affidavit of Abdikadir Sheikh Abdullahi, Director of the 1st respondent, sworn on 19th June 2025, and written submissions dated 19th June 2025, to the effect that: this Court does not have jurisdiction to hear and determine the petition of appeal citing this Court's decisions in ***Lawrence Nduttu & 6000 Others Vs Kenya Breweries Ltd & Another*** [2012] KESC 9 (KLR). The 1st respondent also cites the Court of Appeal's decision in ***Aprim Consultants Vs Parliamentary Service Commission & Another*** [2021] KECA 1090 (KLR) to argue that the legislative intent of Section 175 of the PPADA was that procurement disputes are resolved expeditiously and within strict timelines with no recourse to the Supreme Court; and

[11] UPON REVIEWING the replying affidavit by Stephen Mwangi sworn on 4th July 2025, on behalf of the petitioner and submissions dated 4th July 2025, in opposition to the 1st respondent's Motion to the effect that: the issues raised in the 1st respondent's application with respect to this Court's jurisdiction to hear and determine the Petition of Appeal pursuant to the provisions of Article 163(4)(a) of the Constitution and Section 175 of the PPADA are pending ruling therefore the 1st respondent's application is *sub judice*. The petitioner posits that its application is properly before this Court as the proceedings in the matter relate to interpretation and application of the Constitution and places reliance on this Court's decisions in ***Okiya Omtatah Okiiti Vs. Portside Freight Terminals Limited & 13 Others*** [2025] KESC 44 (KLR) where it was held that the license in question was awarded against the Constitution and that the Court of Appeal erred in sanctioning the said award; and

[12] COGNIZANT OF the attendances by counsel before the Hon. Deputy Registrars of the Court on 5th May 2025 in respect of the petitioner's application dated 19th April 2025 as well as the preliminary objection dated 30th April 2025 filed in response thereto and on 20th June 2025 to confirm compliance in respect of the Petition of Appeal in which the Notice of Preliminary Objection dated 12th May 2025 had been filed; on 8th July 2025 in respect to the application by the 1st respondent dated 19th June 2025; the attendance before the Hon. Deputy Registrar of the Court on 8th July 2025 in which counsel for the 2nd and 3rd respondents orally supported the application dated 19th June 2025; and the resulting directions, respectively, in which directions were issued that the parties had complied and that the applications and objections will be placed before Court.

[13] HAVING CONSIDERED all the foregoing, **WE NOW OPINE** as follows:

- i. In response to the petitioner's application and to the appeal, our jurisdiction has been challenged both by way of Preliminary Objections and by an application to strike out the appeal. The petitioner has had ample opportunity to respond to and indeed responded to the jurisdictional challenge.
- ii. A number of legal arguments and constitutional issues as well as whether this is a matter solely pertinent to procurement have been raised before the Court. It will be remembered that all these matters are raised at this interlocutory stage, but the crux of the petitioner's application filed with the petition of appeal is the grant of interim conservatory orders to stay implementation of the order made by the Court of Appeal.
- iii. Perhaps, so that this matter is put in context, a short narration of events is necessary. The Court of Appeal's impugned judgment was delivered on 11th April 2025. The petitioner's application dated 19th April 2025 for the grant of interim conservatory orders by the Court was filed on 23rd April 2025. The same was placed before a single Judge of this Court (*Ibrahim J.*) for directions on 24th April 2025. The learned Judge certified the application as urgent directing that the same be placed before the Hon Chief Justice and President of the Court to constitute a bench to hear and determine the same. On 25th April 2025, the Chief Justice and President

of the Court issued directions on service, filing of responses and submissions, rejoinder and supplementary submissions. The Chief Justice and President of the Court also directed that the matter be mentioned before the Registrar / Deputy Registrar on 5th May 2025 to confirm compliance.

- iv. Accordingly, the 1st respondent on one hand and the 2nd and 3rd respondents on the other all filed replying affidavits sworn by Abdikadir Sheikh Abdullahi and Titus Kilonzo Mwele, respectively, all dated 30th April 2025. In their replies, the respondents confirmed that the Notification of Award had been issued to the 1st respondent and had been accepted through a letter of acceptance with the resulting contract being executed between the 1st and 3rd respondents. What is clear is the fact that pursuant to the judgment of the Court of Appeal dated 11th April 2025, there was a Notification of Award done by the 3rd respondent on 15th April 2025, which was accepted on 17th April 2025 by the 1st respondent and the contract was signed on 23rd April, 2025.
- v. By the time the matter was placed before this Court on 24th April 2025, therefore, it had been overtaken by events. We further note that even the petitioner conceded at paragraph 9 of the supporting affidavit sworn by Stephen Mwangi, in support of the application for interim conservatory orders, that, *inter alia*, “a reversal of that contract will be impracticable”.
- vi. In the circumstances, there is nothing left to stay and so the application before us has been overtaken by events and is one for striking out. Similarly, the Petition of Appeal cannot stand and must also be struck out.
- vii. On costs, the award of the same is discretionary and follows the principle we set out in ***Jasbir Singh Rai & 3 other vs. Tarlochan Singh Rai & 4 others***, SC Petition No. 4 of 2012; [2014] eKLR that costs follow the event. Noting that the Court of Appeal awarded costs to the 1st to 3rd respondents for the proceedings before it and the High Court, we see no reason to disturb that. In the exercise of our discretion, we award costs to the 1st to 3rd respondent as against the petitioner.

[14] CONSEQUENTLY, for reasons aforesaid, we make the following orders:

- (i) *The Preliminary Objection dated 30th April 2025, by the 2nd and 3rd respondents, is upheld.*
- (ii) *The Notice of Motion dated 19th April 2025 by the Petitioner is struck out for being overtaken by events.*
- (iii) *The Preliminary Objection dated 12th May 2025 and filed by the 1st Respondent is upheld.*
- (iv) *The Notice of Motion dated 19th June 2025, is allowed;*
- (v) *The Petition of Appeal dated 19th April 2025 and filed on 23rd April 2019 be and is hereby struck out for being overtaken by events.*
- (vi) *Costs are awarded to the 1st respondent, Vickers Security Services Limited and the 2nd and 3rd respondents (Kenya Revenue Authority).*
- (vii) *The sum of Shs.6,000/- deposited as security in be released to the petitioner.*

Orders accordingly.

DATED and DELIVERED at NAIROBI this 24th day of March, 2026.

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M. K. KOOME
CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE
PRESIDENT OF THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA

