

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
HCJR CASE NO. E199 OF 2024

Filed electronically by
Hamilton Harrison & Mathews on
Date: 17/9/24 Time: 4:25pm

KENYA HUMAN RIGHTS COMMISSION1ST EX PARTE APPLICANT
LAW SOCIETY OF KENYA.....2ND EX PARTE APPLICANT

Versus

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT
AIRPORTS INFRASTRUCTURE PLC.....2ND RESPONDENT
GLOBAL AIRPORTS OPERATOR LLC.....3RD RESPONDENT
ADANI ENTERPRISES LIMITED4TH RESPONDENT
ADANI AIRPORT HOLDINGS LIMITED.....5TH RESPONDENT
KENYA AVIATION WORKERS UNION.....1ST INTERESTED PARTY
TRANSPORT WORKERS UNION.....2ND INTERESTED PARTY

GROUND OF OPPOSITION

TAKE NOTICE that the 2nd, 3rd, 4th and 5th respondents (the **Respondents**) herein will at or before the hearing of the application dated 10th September 2024 (the Application), raise a Preliminary Objection to the petition in its entirety on the grounds that this honourable Court lacks jurisdiction to entertain this matter on the following grounds;

1. The jurisdiction to hear and determine any complaint arising from a PIP lies with the Public Private Partnership Petition Committee established under section 75 of the Public Private Partnerships Act. This point will be taken by way of preliminary objection.
2. The application violates provisions of Section 75 of the Public Private Partnerships Act, 2021 (the Act) having regard to the following:
 - i. Section 75(1) of the Act establishes the Petition Committee with jurisdiction to hear and determine any petitions regarding the decisions of the Public Private Partnership Committee, the Directorate of Public Private Partnerships or a contracting authority.
 - ii. Section 75(2)-(7) provides an elaborate process of challenging the decision of a contracting authority before the Petition Committee.
 - iii. Section 75(8) provides that an appeal from the decision of the Petition Committee shall be lodged in the High Court.
3. The applicants have failed to exhaust the dispute resolution mechanism stipulated in the law and therefore this court lacks jurisdiction to hear and determine this matter. (*See Speaker of the National Assembly v James Njenga Karume [1992] eKLR*)
4. The Respondents are private entities. The orders of judicial review sought against the Respondents privately-initiated proposal ("PIP") dated 1st March 2024 cannot issue.

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5. The proposal is in its negotiation and due diligence stage in compliance with the provisions of Public Private Partnerships Act. The orders sought to declare the PIP a nullity or prohibit the parties from proceeding with the project as set out in the Act are premature and without basis.
6. There is no jurisdiction to issue a declaration in the circumstances of the case or at all.
7. Judicial review remedies are discretionary and the court ought not to exercise its discretion in the applicants' favour having regard to the facts.
8. Mandamus is not available to the applicants in view of Article 35 of the Constitution of Kenya, 2010.
9. Certiorari and prohibition are employed primarily to control decision makers. They lie in cases of excess of jurisdiction, error on the face of the record and exceptional circumstances. They ought not to issue to stop a process initiated in accordance with the law.
10. None of the orders sought is available in the circumstances of the case or at all.

DATED at **NAIROBI** this 16th day of September 2024



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