



**DETERMINANTS OF PUBLIC PROCUREMENT LEGAL FRAMEWORK ON THE PERFORMANCE OF PUBLIC INSTITUTIONS IN KENYA. A CASE OF JUDICIAL SERVICE COMMISSION**

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**ABSTRACT**

*A legal framework encompasses the laws, regulations and policies that are put in place to govern an organization or an activity. The public procurement legal framework clearly covers the whole scope of public procurement, all stages of the procurement process, methods of procurement, ethics and transparency. Procurement laws and rules lead to procurement efficiency or inefficiency depending on the type of government and environment within which the system is operated. Studies reveal that even after the enactment of the regulations, there are losses of public funds that can be attributed to compliance to these regulations. This study sought to find the determinants of public procurement legal framework on the performance of public institutions in Kenya. The following objectives guided the study; To establish the extent to which Public Procurement and Asset Disposal Act 2015 influence the performance of the Kenyan Judiciary and to determine the influence of policy formulation on the performance of the Kenyan Judiciary. This study employed a survey research design because it could conveniently conduct through interviews or questionnaire instruments, or both. The source of information was employees and management of Judicial Service Commission in Kenya. A sample of 80 respondents was used for this study. The study used questionnaires for data collection because they were economical; they ensured anonymity, permitted use of standardized questions, ensured uniform procedures, provided time for subject to think about responses and were easy to administer and score. Analysis was done by use of statistical techniques and results generated were presented in form of frequency graphs and tables. Analysis of Variance (ANOVA) showed that the influence was statistically significant. Therefore, the study concluded that the main determinants of public procurement legal framework on the performance of public institutions in Kenya include; Public Procurement and asset disposal Act 2015 and Policy Formulation.*

**Key Words:** *Public Procurement & Asset Disposal act 2015, Policy Formulation, Performance of Public Institutions*

## INTRODUCTION

Public procurement has a long history. Written on a red clay tablet, found in Syria, the earliest procurement order dates from between 2400 and 2800 B.C. The order was for “50 jars of fragrant smooth oil for 600 small weight in grain” (Coe, 1989, p. 87). Other evidence of historical procurement includes the development of the silk trade between China and a Greek colony in 800 B.C. In the United States, state legislatures began to create boards or bureaus responsible for purchasing in the late 1800s, but central purchasing was hardly a practice at that time. At the federal level, the first purchasing action occurred in 1778 when the Continental Congress approved the appointment of purchasing commissionaires, whose purchasing work was compensated by two percent of the value of their disbursements in support of the Continental army. But by the end of the year, as this arrangement led to excessive costs and possibilities of fraud, the purchasing officers were placed on salary.

In 1792, the U.S. Congress passed a purchasing-related act that authorized the Departments of War and Treasury to make purchases in the name of the United States. The first significant procurement, made in 1794, was for a group of six large frigates for the new U.S. Navy. However, bad early experiences with this procurement procedure led to the 1795 passage of the first comprehensive procurement legislation, the Purveyor of Public Supplies Act, which became the basis for military procurement. Misconducts and abuses in federal procurement again led to an Act Concerning Public Contracts of 1808, prohibiting members of Congress from benefiting from government contracts and the Procurement Act of 1809, requiring competition in government procurement. Since then, a series of legislation and executive orders were passed or issued (Thai, 2001).

According to Stiglitz (2000) the government is involved in four major economic activities which include; providing the legal framework for all economic activities and purchasing goods, services and capital assets. In 1914, the Rockefeller Foundation funded a series of intensive studies regarding problems of public administration. Government procurement, as one of four major economic activities of government, was also included in the study. As a result, a 275-page book, *Principles of Government Purchasing*, was published in 1919. Since then, there have been many developments in government procurement practices, including numerous government procurement reforms (Thai, 2001).

Public procurement refers to the government activity of purchasing goods and services needed to perform its functions (Arrowsmith, 2010). According to Odhiambo and Kamau (2003), PP is broadly defined as the purchasing, hiring or obtaining by any contractual means, goods, construction works and services by the public sector. It is the acquisition of goods and services by government or public organizations (Hommen & Rolfstam, 2009). In developing countries, public procurement is increasingly recognized as essential in service delivery (Basheka & Bisangabasaija, 2010) and it accounts for a high proportion of total expenditure. For example, public procurement accounts for 70 per cent in Uganda (Basheka & Bisangabasaija, 2010), 60 per cent in Kenya (Akech, 2005), 58 per cent in Angola, 40 per cent in Malawi and Vietnam (OECD 2006b), and 70 per cent in Ghana (Adjei, 2006). This is very high when compared with a global average of 12-20 per cent (Froystad et al., 2010). According to Schulten et al., (2012), the European Union public procurement accounts for between 10.5 percent of the GDP in Cyprus and 30.6 percent in the Netherlands.

The importance of public procurement in terms of size relative to world GDP and world trade is

highlighted by an OECD report (OECD, 2001 quoted by Odhiambo and Kamau, 2003). In this report, the value of the contestable government procurement market was estimated at over \$2 000 billion which is equivalent to 7 percent of world GDP and 30 percent of world merchandise trade. Trionfetti, (2000) estimates the size of public procurement to be between 5 and 8 per cent of GDP in most industrialized countries. For the Middle East and Africa, the magnitude of central government purchases ranges between 9 and 13 per cent. Kipchilat (2006) noted that procurement in Kenya absorbs 60 percent of government expenditure. The concept of PP involves procurement planning, contract placement and contract administration (Arrowsmith, 2010). Hughes (2005) observes that acquisition follows five main steps of: assessing needs, service design, supplier short listing, supplier selection, and supplier performance evaluation. According to PPOA (2009), acquisition process starts with identification of need, procurement planning and definition of requirements, determination of source, evaluation and selection of vendor, contract award, contract implementation, storage, payment and lastly disposal.

Public procurement addresses a wide range of objectives (Uyarra & Flanagan, 2009). It delivers goods and services to the constituents of a particular government administration, used to achieve socioeconomic objectives such as stimulating economic activity; protecting national industries from foreign competition; improving the competitiveness of certain industrial sectors; and remedying national disparities (Thai, 2006). Arrowsmith (2010) contends that the objectives of PP are achieved through the legal and regulatory framework.

A legal framework encompasses the laws, regulations and policies that are put in place to govern an organization or an activity. The public procurement legal framework clearly covers the whole scope of public procurement, all stages of the

procurement process, methods of procurement, ethics and transparency (Thai, 2009). Robert (2003) states that a good public procurement legal framework is based on the principles of openness and transparency, fair competition, impartiality, and integrity. According to American Bar Association (2000), a sound public procurement system needs to have good procurement laws and regulations. In practice and theory, public procurement laws and rules have been considered as one of the most important pillars of a sound procurement system (Thai, 2009). Procurement laws and rules lead to procurement efficiency or inefficiency depending on the type of government and environment within which the system is operated. In a country where no government democracy exists, the procurement system cannot be transparent and integral (OECD, 2006).

### **Problem Statement**

Public procurement is not only a budget implementation strategy but it can also be used to achieve targeted socio-economic goals. The Government is the single largest buyer in any economy. In Kenya, public procurement deals are estimated to be worth about Ksh. 1.6 trillion involving supply of goods, services and works to government offices, projects and in all counties. However, the procurement process in Kenya is shrouded in secrecy, inefficiency, corruption and undercutting which results in huge amounts of resources going to waste (Wahu *et al.*, 2015). It is estimated that weaknesses in public procurement, including vulnerability to corruption, are a global problem with approximately \$400 billion (Kshs 34.9 trillion) reported as being lost to bribery and corruption in procurement globally. In 2007 the Public Procurement Oversight Authority (PPOA) estimated that procuring entities were buying at an average of 60% above the prevailing market price, an indicator that public procurement in Kenya does

not receive the benefit of competitive procurement (Chebet & Kwasira, 2016).

The budget for the Judiciary increased from Kshs.3 billion in 2010/11 financial year to Kshs.16 billion in the financial year 2012/13. Parliament's desire to have an efficient administration of justice led to increased budgetary allocation but this was undermined by apparent financial mismanagement, weak internal controls, and refusal/failure to follow public procurement laws, guidelines and regulations by the Judiciary. The Judicial Service Commission had been involved in operational activities and/or failed to carry out certain basic activities; for example, the failure to keep minutes of meetings, approval of payment to suppliers, payment vouchers, irregular direct procurements, approval of irregular allowances among others cited in this Report. Procurement was done in a manner that flouted provisions of the Public Procurement and Disposal Act, 2005 and regulations. This was noted from irregularly constituted tender committees; direct procurements; purchase of second hand goods; acquisition of a house for the Chief Justice; pre-fabricated court premises; lease of office space at Rahimtulla Towers, Elgon Place and Mayfair Court Centre (Maina, 2015).

According to Ombuki *et al.* (2014), the aim of the Public Procurement Regulations of 2006 was to promote fairness, transparency and non-discrimination in procurement in public institutions with the aim of ensuring efficient use of public funds. However, studies reveal that even after the enactment of the Regulations, there are losses of public funds that can be attributed to compliance to these regulations (Chemoiywo, 2014; Nyagah & Mugambi, 2014; Onyinkwa, 2014; Mbaya, 2013; Migosi *et al.*, 2013). Review of this studies shows that there is no empirical evidence on the determinants of public procurement legal framework on the performance of public

institutions in Kenya, and in particular in the Judiciary.

### **Objectives of the Study**

The general objective of the study was to find the determinants of public procurement legal framework on the performance of public institutions in Kenya. A case of Judicial Service Commission. The specific objectives were:-

- To establish the extent to which Public Procurement and asset disposal Act 2015 influence the performance of the Kenyan Judiciary.
- To determine the influence of policy formulation on the performance of the Kenyan Judiciary.

## **LITERATURE REVIEW**

### **Theoretical Review**

#### **Principal Agent Theory**

Agency theory was expounded by Alchian and Demsetz (1972) and further developed by Jensen and Meckling (1976). The theory defines the relationship between the principals, such as shareholders and agents or company executives and managers. In this theory, shareholders who are the owners of the company, hire the agents to perform work. Principals delegate the running of business to the managers, who are the shareholders' agents (Clarke, 2004).

According to Rungtusanatham *et al.* (2007), two parties have an agency relationship when they cooperate and engage in an association wherein one party delegates decisions or work to another to act on its behalf. The important assumptions underlying agency theory are that: potential goal conflicts exist between principals and agents; each party acts in its own self-interest; information asymmetry frequently exists between principals and agents; agents are more risk averse than the principals; and efficiency is the effectiveness

criterion (Zu & Kaynak, 2012). The theory deals with situations in which the principal is in a position to induce the agent, to perform some task in the principal's interest, but not necessarily the agent's (Heath & Norman, 2004).

Accounting officers and procurement managers in state corporations play the agent role for the government and the organization stakeholders. Compliance with procurement rules and regulations may be as result of principal-agent problem (Langevoort, 2002). Kenya Public Procurement and Disposal Act (2005) bestows the responsibility of compliance with public procurement legal framework on the Accounting Officers of the public entities. Theory was useful in explaining the relationship between the government and the judiciary in compliance to the legal framework.

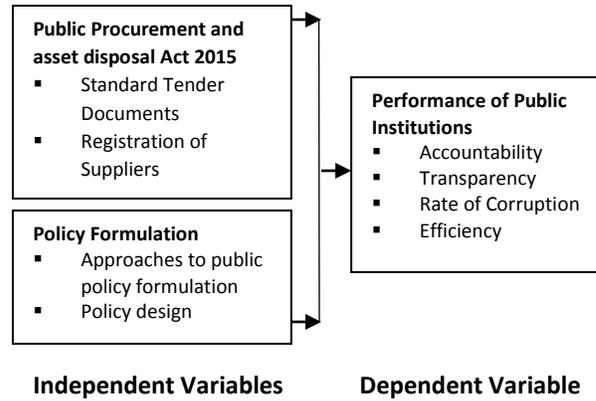
**Legitimacy Theory**

Legitimacy theory derived from the concept of organizational legitimacy, was defined by Dowling and Pfeffer (1975) as a condition or status which exists when an entity's value system is congruent with the value system of the larger social system of which the entity is a part (Guthrie, Cuganesan & Ward, 2008). When a disparity, actual or potential, exists between the two value systems, there is a threat to the entity's legitimacy. Legitimacy theory posits that organizations continually seek to ensure that they operate within the bounds and norms of their respective societies.

According to Wilmshurst and Frost (2000) the legitimacy theory postulates that the organization is responsible to disclose its practices to the stakeholders, especially to the public and justify its existence within the boundaries of society. This theory, which focuses on the relationship and interaction between an organization and the society, provided a sufficient and superior way for

understanding state corporations procurement practices (Shu Hui *et al.*, 2011).

**Conceptual Framework**



**Figure 1: Conceptual Framework**

**Empirical Review**

**Public Procurement and asset disposal Act 2015**

Kenya Public Procurement and asset disposal Act (2015) under basic rules of procurement and about standard tender documents states that, the Authority shall issue standard procurement and asset disposal documents and formats as prescribed for use by procuring entities. A procuring entity shall use standard procurement and asset disposal documents prescribed under subsection, in all procurement and asset disposal proceedings. The tender documents used by a procuring entity pursuant to subsection shall contain sufficient information to allow fair competition among those who may wish to submit tenders. An accounting officer of a procuring entity shall be responsible for preparation of tender documents in consultation with the user and other relevant departments. A procuring entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents.

About registration of suppliers, Public Procurement and asset disposal Act (2015) maintains that the head of procurement function shall maintain and

continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. The head of procurement function shall maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. An application to be included in the list of the procuring entity may be made at anytime, at no cost and shall contain proof of the following — (a) eligibility criteria as prescribed in this Act; and (b) capability criteria that defines necessary qualifications, experience, resources, equipment and facilities to provide what is being procured. A tenderer may seek clarification from the candidate or relevant government agency on eligibility but not on capability. The lists shall be applied on the alternative procurement methods as specified and appropriate and the list shall— (a) be generated through portal, websites and people submitting hard copies of their intention to supply; (b) allow for continuous applications and hence updating; (c) be evaluated leading to registration on a biannual basis; (d) be generated through market knowledge and survey; and (e) be as may be prescribed.

### **Policy Formulation**

The economic development of a country depends on the quality of its policy framework, the decisions taken, especially the processes involved in formulating each decision. It is clear also that developing countries throughout the world vary considerably in their ability, and perhaps their willingness to formulate and implement policies that will generate improved development performance (Corkery, Land & Bossuyt, 1995). In public policy world, the policy formulation is part of the pre-decision phase of policy making. This task includes the crafting identification of a set of public policy alternatives to address the socio-economic problems, and selection process by narrowing that

set of solution in preparation for the final policy solutions for the next stage.

In Cochran and Malone (2010) the policy formulation is to deal with the problem, goals and priorities, solution options for the achievement of policy objectives, cost benefit analysis, negative and positive externalities are associated with each alternative. These stages embedded into the policy cycle which is now popular in developing world. However, the specification of policy alternatives does not follow neatly from the agenda setting process not lead neatly into implementation in Sidney (2007) which is reflected the policy formulation in developing countries. Thus, the policy formulation is a function rather than a stage where dominant actors and set ideas shaping significantly during their course of actions. Apparently, the function is more relevant for the developing countries where there are weak institutions, regulatory capacity, accountability and participation and responsibility of subsystem of government, so the formulation is the continuous process. The attention of policy formulation is also embedded in work on subsystem, advocacy coalition, networks, and policy communities (Borrás & Edquist, 2013).

It is apparent that identifying the policy actors, understanding their beliefs and motivations, their judgments of feasibility, and their perceptions of the political context which is relevant for developing world (Hunja, 2003). Thus, the policy formulation is the function of the policy making. It is really the practice oriented policy making in developing world. Also, the policy formulation within the policy communities and policy networks is reflected the actual policy in developing countries because the policy making in development work in environment with weak institutions and capacity within the communities and networks.

Most of policy sciences have known that the policy formulation uses the concept of policy design to emerge in response to implementation studies of policy systems which responsible for policy failure in 1970s-1980s. Most of policy design theorists given that the causal chain is the main cause of policies success or failure because the policy designs contribute to policy outcomes (Neshkova & Guo, 2012). Firstly, the policy design will need to specify the lists of policy instruments, institution-building (Weimer, 1998). Continuously, Fischer and Miller (2006) and Rixecker (1994) provided that the innovation and creativity are often raised from attention to the voices that contribute to the policy dialogue. Some other scholar focuses on policy discourse and dominant ideas. It consists of competing efforts to make meaning as much as to win votes. Indeed, the pursuit and exercise of power includes constructing images and stories, and deploying symbols (Fischer & Forester, 1993; Rochefort & Cobb, 1994; Ingram, Schneider & DeLeon, 2007).

Due to technical endeavor, leading them to characterize policies as “well” or “poorly” designed (e.g., Ingraham, 1987; Linder & Peters, 1985); this technical matter are popular in developing countries. The scholars described a policy as well-designed if a careful analysis of means-end relationships. Thus, they tend to understand policy design as a political process preceding every policy choice (Bobrow & Dryzek, 1987). However, the options that address policy goals and instrument types require the injection of some new ideas and thinking into policy deliberation (Howlett & Ramesh, 2003). Proposals for policy and program changes tend to arise from new actors in existing policy process, while changes relating to instrument types and components tend to develop among existing actors as their preferences change (ibid).

In policy formulation, the relevant actors are usually restricted to members of policy subsystems, since a requirement of participation at this stage of the process is some minimal level of knowledge in the subject area, allowing an actor to comment, at least hypothetically, on the feasible of options put forward to resolve policy problems (Howlett & Ramesh, 2003). This is necessary for developing countries to define the policy regime as the dominant actor is belonged to state, but not from the civil society; the limitation of participation of the civil society is popular.

## **RESEARCH METHODOLOGY**

This study adopted a survey research design. The source of information was employees and management of Judicial Service Commission in Kenya. A stratified sampling was employed in such a way that the target population was divided into, Top Level Management, Middle Level Management and Lower Level Management. The study used questionnaires for data collection. Upon carrying out data organization, analysis was done by use of statistical techniques. Computer packages such as Microsoft excel and Statistical Package for Social Sciences (SPSS) was used to facilitate analysis as they have in-built formulas.

## **DATA ANALYSIS, RESULTS AND DISCUSSION**

The study targeted employees and management of Judicial Service Commission in Kenya especially the ones who were working in the procurement department. Out of the 80 questionnaires that were issued to the respondents for filling, 69 were duly filled and returned. This translated to a response rate of 86.3%. The study sought to find out the education qualification of the respondent. 57.9% of the respondents had a bachelor’s degree, 28.9% had a Diploma level of education, 10.5% had a Certificate level of education and 2.6% had a Postgraduate degree. The study sought to establish

the number of years the respondents had worked with JSC. From the findings 16.4% of the respondents had worked with JSC for between 1 and 5 years, 34.3% of the respondents had worked with JSC for between 6-10 years, 28.4% of the respondents had worked with JSC for between 11-15 years and 20.9% had worked with JSC for over 16 years.

### **Descriptive Statistics for Public Procurement and asset disposal Act 2015**

The respondents were asked the extent to which they agreed with the statements in Table 1 on the influence that Public Procurement and asset disposal Act 2015 has on Performance of JSC. From

**Table 1: Descriptive Statistics for Public Procurement and asset disposal Act 2015**

<b>Statement</b>	<b>Strongly disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly agreed</b>
At JSC there is an accounting officer responsible for preparation of tender documents in consultation with the user and other relevant departments	0.0%	8.5%	6.4%	53.2%	31.9%
JSC uses standard procurement and asset disposal documents whenever carrying out any procurement	0.0%	2.1%	10.6%	48.9%	38.3%
JSC maintains and continuously updates lists of registered suppliers, contractors and consultants as required by Public Procurement and asset disposal Act (2015)	2.1%	6.4%	12.8%	34.0%	44.7%
The tender documents used by JSC contains sufficient information to allow fair competition among those who may wish to submit tenders	0.0%	2.1%	25.5%	29.8%	42.6%

The study findings show that a majority of the respondents agreed or strongly agreed with the statements on the usefulness of Public Procurement and Disposal Act in improving performance of JSC. In similar study by Gachoka (2016) on Public Procurement Oversight Authority: An assessment of its effectiveness in fighting corruption and

the table, 53.2% agreed that at JSC there is an accounting officer responsible for preparation of tender documents in consultation with the user and other relevant departments, 48.9% agreed that JSC uses standard procurement and asset disposal documents whenever carrying out any procurement, 44.7% strongly agreed that JSC maintains and continuously updates lists of registered suppliers, contractors and consultants as required by Public Procurement and asset disposal Act (2015), while 42.6% strongly agreed that the tender documents used by JSC contains sufficient information to allow fair competition among those who may wish to submit tenders.

promoting ethical practices in public procurement in Kenya, the author observed that it was encouraging to note that at least 87% of the Suppliers were aware of the existence of the Public Procurement and Disposal Act and that it had created an appeal mechanism which had given aggrieved bidders an avenue to lodge their

grievances and if they are confident in the appeal mechanism, more cases were bound to be reported.

### Descriptive Statistics for Policy Formulation

The respondents were asked the extent to which they agreed with the statements on Policy Formulation on the statements below. The findings are in Table 2 below. From the table, 48.9% agreed that procurement policies formulated at JSC provide for effective service delivery and therefore

**Table 2: Descriptive Statistics for Policy Formulation**

Statements	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Procurement policies formulated at JSC provide for effective service delivery	0.0%	8.5%	17.0%	48.9%	25.5%
Policies formulation by JSC is not affected in any way by the political instability	0.0%	6.4%	12.8%	36.2%	46.8%
Procurement policies at JSC have a strong implementation and monitoring mechanism	0.0%	0.0%	17.0%	51.1%	31.9%
Procurement policies at JSC provide for consistency and continuity in formulation and implementation	2.1%	4.3%	6.4%	53.2%	34.0%
Procurement policies at JSC are formulated in consultation with all stakeholders	0.0%	6.4%	14.9%	29.8%	48.9%

The findings show that generally, the respondents agreed with the statements on policy formulation implying that they were happy with the laid procedures for policy formulation which lead to better performance. This findings concurred with those of El-Gayed (2013) who found that achieving the balance of retaining front line services for citizens and keeping staff whilst making economies fit for purpose in the long term is a challenging task for most economies. However, formulation of better procurement policies can have a substantial role in achieving this. Vogel (2009) adds that sound public procurement policies brings immediate tangible macroeconomic benefits where more cost-

performance, 46.8% strongly agreed that policies formulation by JSC is not affected in any way by the political instability, 51.1% agreed that procurement policies at JSC have a strong implementation and monitoring mechanism, 53.2% agreed that procurement policies at JSC provide for consistency and continuity in formulation and implementation, while 48.9% strongly agreed that procurement policies at JSC are formulated in consultation with all stakeholders.

effective procurement relaxes the budgetary pressure and creates fiscal space.

### Descriptive Statistics for Performance of JSC

The researcher generated a descriptive statistics table from SPSS Program and presented the results in Table 3. From the table, 63.6% of the respondents agreed that there is high level of transparency, integrity, ethics honesty, decency, trustworthiness which have led to better performance, 56.8% strongly agreed that there has been improved efficiency and accountability when awarding of tenders to vendors, while a majority (54.5%) of the respondents agreed that the

magnitude of corruption has reduced significantly at

JSC as a result of the legal framework in place.

**Table 3: Descriptive Statistics for Performance of JSC**

	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neutral</b>	<b>Agree</b>	<b>Strongly Agree</b>
There is high level of transparency, integrity, ethics honesty, decency, trustworthiness which have led to better performance	4.5%	2.3%	2.3%	63.6%	27.3%
There improved efficiency and accountability when awarding of tenders to vendors	2.3%	4.5%	4.5%	31.8%	56.8%
The magnitude of corruption has reduced significantly at JSC as a result of the legal framework in place	4.5%	2.3%	6.8%	54.5%	34.1%

**SUMMARY, CONCLUSION AND RECOMMENDATIONS**

The general objective of the study was to find the determinants of public procurement legal framework on the performance of public institutions in Kenya. This chapter presents summary of the findings, the conclusions and the recommendations of this study.

In the first objective, the researcher sought to establish the extent to which Public Procurement and asset disposal Act 2015 influence the performance of the Kenyan Judiciary. The researcher found that 53.2% agreed that at JSC there is an accounting officer responsible for preparation of tender documents in consultation with the user and other relevant departments, 48.9% agreed that JSC uses standard procurement and asset disposal documents whenever carrying out any procurement, 44.7% strongly agreed that JSC maintained and continuously updated lists of registered suppliers, contractors and consultants as required by Public Procurement and asset disposal Act (2015), while 42.6% strongly agreed that the tender documents used by JSC contained sufficient information to allow fair competition among those who may wished to submit tenders. Further, correlation analysis between the dependent

variable (performance of the Kenyan Judiciary) and Public Procurement and asset disposal Act 2015 showed that a positive correlation existed between the dependent variable (performance of the Kenyan Judiciary) and Public Procurement and asset disposal Act 2015 and that the correlation was statistically significant because p-value was less than 0.05 (Sig. = .000).

In the second objective, the researcher sought to determine the influence of policy formulation on the performance of the Kenyan Judiciary. The findings showed that 48.9% agreed that procurement policies formulated at JSC provide for effective service delivery and therefore performance, 46.8% strongly agreed that policies formulation by JSC was not affected in any way by the political instability, 51.1% agreed that procurement policies at JSC had a strong implementation and monitoring mechanism, 53.2% agreed that procurement policies at JSC provide for consistency and continuity in formulation and implementation, while 48.9% strongly agreed that procurement policies at JSC are formulated in consultation with all stakeholders. Additionally, correlation analysis between the dependent variable (performance of the Kenyan Judiciary) and policy formulation showed that there was a positive correlation between the dependent variable

(performance of the Kenyan Judiciary) and policy formulation and that the correlation was statistically significant since p-value was less than 0.05 (Sig. = .000).

### **Conclusions of the study**

From the study findings Public Procurement and Disposal Act had a statistically significant positive influence on performance of JSC and to a large extent as was indicated by both correlation and regression analysis. In a similar study by Gachoka (2016) on Public Procurement Oversight Authority: An assessment of its effectiveness in fighting corruption and promoting ethical practices in public procurement in Kenya, the author observed that it was encouraging to note that at least 87% of the Suppliers were aware of the existence of the Public Procurement and Disposal Act and that it had created an appeal mechanism which had given aggrieved bidders an avenue to lodge their grievances and if they are confident in the appeal mechanism, more cases were bound to be reported.

From the findings, the researcher concluded that better policy formulation lead to better performance at JSC and the vice versa was true. These findings concurred with those of El-Gayed (2013) who found that achieving the balance of retaining front line services for citizens and keeping staff whilst making economies fit for purpose in the long term is a challenging task for most economies. However, formulation of better procurement

policies can have a substantial role in achieving this. Vogel (2009) added that sound public procurement policies brings immediate tangible macroeconomic benefits where more cost-effective procurement relaxes the budgetary pressure and creates fiscal space.

### **Policy Recommendations**

The general objective of the study was to find the determinants of public procurement legal framework on the performance of public institutions in Kenya. The study recommends that JSC should use determinants of public procurement legal framework established in the findings of this study which include; Public Procurement and asset disposal Act 2015 and Policy Formulation as being key to improve its performance.

### **Recommendations for further research**

The general objective of the study was to find the determinants of public procurement legal framework on the performance of public institutions in Kenya. The study used JSC as its case study. A similar study can be carried out using a different case study. Moreover, the study used Public Procurement and asset disposal Act 2015 and Policy Formulation as its variables. Therefore, a similar study can be carried out using different variables especially considering that 37.2% was not explained by this study. Moreover, a similar study can be carried out in different geographical location outside the realm of this study.

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