



REPUBLIC OF KENYA



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**EAA Company Limited v Nzai & 2 others (Judicial Review Application
E086 of 2025) [2025] KEHC 6027 (KLR) (13 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW APPLICATION E086 OF 2025**

**RE ABURILI, J
MAY 13, 2025**

BETWEEN

EAA COMPANY LIMITED APPLICANT

AND

CHARLES NZAI 1ST RESPONDENT

PUBLIC PROCUREMENT REGULATORY AUTHORITY 2ND RESPONDENT

PUBLIC PROCUREMENT REGULATORY BOARD 3RD RESPONDENT

JUDGMENT

1. Pursuant to leave granted on 2nd April 2025, the Applicant EAA Company Limited Filed a Notice of Motion application dated 4th April 2025 seeking the following Orders:
 - a. An order of certiorari be issued to remove into this Honourable Court and quash the entire decision of the 3rd Respondent herein in Debarment Application Number 9 of 2024, dated 18th March, 2025.
 - b. An order of Prohibition be issued to prohibit and/or restrain the 2nd and 3rd Respondents and/or their agents and any other persons from implementing the decision delivered in Debarment Application Number 9 of 2024, dated 18th March, 2025.
 - c. Such other, further order and/or incidental orders or directions as this Honorable Court shall deem just and expedient.
 - d. Costs of this Application be borne by the Respondents.
2. The Application is premised on the grounds set out in the statutory statement dated 4th April 2025 and the verifying affidavit sworn by Josiah Benedict, the applicant company's Manager on the even date.



3. EAA Company Limited, the Applicant, is an international company offering inspection services and is registered in Japan but does business globally including in and for Kenya.
4. The Applicant challenges its debarment from public procurement in Kenya for three years from 18th March 2025 following contested proceedings before the Public Procurement Regulatory Board (PPRB). The Applicant alleges that the Respondents used the resulting debarment decision to block its participation in public tenders not only in Kenya but also in Tanzania and Uganda.
5. According to the Applicant, the 1st Respondent is a private citizen with no right of access to confidential procurement information and that despite this, he was nonetheless allowed by the 2nd and 3rd Respondents to file a debarment request on 8th March 2021. This request is said to have cited alleged false information in several past tenders being KEBS: EOI/KEBS/3/2010-2011 (January 2011), KEBS/T057/2014-2015(21st November 2017) and KEBS/T010/2019-2021 (3rd December 2019).
6. It is the Applicant's case that on 28th October 2024, the 1st Respondent lodged a second debarment request, this time based on its bid in International Tender No. KEBS/RT/011/2021-2024, in which he presented the same documents as those that had been used to support an earlier debarment. The 1st Respondent's request is said to have led to Debarment Application No. 9 of 2024, Charles Nzai vs. EAA Company Limited, which is the subject of the current judicial review proceedings. It is urged that during the hearing of Application No. 9 of 2024, the Applicant protested its inability to get a fair hearing, arguing that the 1st Respondent's request was unlawfully admitted.
7. The Applicant states that the 1st Respondent's request was based on confidential bid information protected under section 67 of the *Public Procurement and Asset Disposal Act* (PPADA), which Mr. Nzai could not have lawfully accessed and as such, the request was allegedly based on illegally obtained evidence and was a nullity.
8. It is urged that the 2nd and 3rd Respondents condoned this illegality by entertaining the request, issuing a Notice of Intended Debarment dated 18th November 2024 and commencing the debarment proceedings, contrary to their legal obligations under the PPAD Act.
9. The Applicant further avers that the 1st Respondent lacked locus standi under Regulation 22(1)(a) of the Regulations and Clauses 4 and 5 of the Debarment Manual, rendering the request and subsequent notice incompetent.
10. The Applicant also asserts that the debarment request was also incomplete as it lacked authenticated evidence as required under Clause 5(2) of the Debarment Manual, failed to disclose the list of directors of the company and its affiliates as required under Clause 11(1)(b) of the Debarment Manual and was unsupported by court judgments/decrees proving the alleged grounds for debarment, contrary to Clause 5(1)(a), (b), and (h) of the Debarment Manual.
11. The Applicant argues that the 2nd and 3rd Respondents should have rejected the request for debarment against it under Clause 11(1)(e) of the Debarment Manual for incompleteness and that their failure to do so was irrational, unreasonable, arbitrary, illegal, irregular and renders the proceedings null and void.
12. The Applicant further states the Board erred by failing to consider that the Applicant had obtained a stay order from the Nairobi Magistrates Court in CM COMMSU No. E1615 of 2021 on 22nd December 2021, which was still in force when the tender closed on 27th January 2022. This stay order, it is urged, was only lifted on 15th February 2022, thus according to the Applicant, it was not debarred at the time of bidding.



13. The Applicant argues that the 1st Respondent failed to show how he obtained the confidential bid documents, merely stating during the hearing that they came from the Directorate of Criminal Investigations without providing proof or a sworn affidavit. It is the Applicant's case that the same notwithstanding, the 3rd Respondent nonetheless accepted this unverified and illegally obtained evidence in breach of sections 67, 68, and 76 of the PPAD Act.
14. The Applicant also maintains the present debarment proceedings are based on the same facts and documents as the earlier debarment decision of 23rd June 2021, which had already been litigated upon. The Applicant also argues that repeating these grounds specifically regarding the qualifications of its employees, its qualifications and inspection centres, violates the principles of fairness, justice, and lawful application of debarment rules.
15. It also states that the repeated debarment proceedings are oppressive and unconstitutional, violating Article 27 of *the Constitution*. Further, that the debarment process is being abused as is evidenced by the previous debarment decision which was used to bar the applicant from getting business in the entire East Africa.
16. The Applicant claims that the present debarment was initiated contrary to the national values enshrined under Article 10(2)(a) of *the Constitution*. It is also urged that the debarment infringes Article 46 of *the Constitution* by reducing competition and entrenching monopolies in public contracts.
17. In its submissions dated 12th April 2025, the Applicant relies on the case of Fredrick Kimemia Kimani v DPP & Others, Judicial Review No. E062 of 2023 [2024] eKLR, on the grounds for judicial review. It also relies on the case Meixuer & Another v Attorney General (2005) 2 KLR 189, where the Court affirmed that judicial review is concerned with the decision-making process and not the merits of the decision itself.
18. The Applicant further argues that in the impugned debarment proceedings, the 3rd Respondent concluded that the information submitted by the 1st Respondent was not illegally obtained since some of it was accessed in the course of DCI investigations. However, that the 1st Respondent in his Replying Affidavit dated 9th April 2025 is said to have merely deponed that he observed from the documents at the DCI offices that the Applicant had used falsified documents without providing any documentation in support.
19. The Applicant submits that Article 50(4) of *the Constitution* protects every person from the use of evidence obtained in a manner that violates a right or fundamental freedom, where such evidence would render the trial unfair or be detrimental to the administration of justice. The Applicant relies on RC v KKR [2021] eKLR, where the High Court held that the admissibility of allegedly illegal evidence is a matter for the trial court unless it is shown that admitting the evidence would undermine the administration of justice.
20. On the issue of double jeopardy, the Applicant invokes Article 50(2)(o) of *the Constitution*, which prohibits being tried for an offence for which one has already been acquitted or convicted. Reliance is also placed on the case of Mutoka v Judicial Service Commission [2019] KEELRC 1459 (KLR), where the Court is said to have held that retrying a person on matters already determined and in respect of which the party was vindicated constitutes double jeopardy. The Applicant further submits that the 3rd Respondent acted unlawfully in entertaining and determining a second debarment application on the same issues.



21. According to the Applicant, the decision by the 3rd Respondent is tainted with illegality. It is submitted that the Respondents' argument that the orders were issued in Nairobi CMCOMMSU No. E1615 of 2021 without jurisdiction is untenable, as the orders were never set aside. The Applicant relies on the case of *Sang v Keter & 5 Others* (Environment & Land Court E010 of 2023) [2024] KEELRC 2376 (KLR), where, according to the Applicant, the Court emphasized that court orders must be obeyed unless set aside, even if one believes them to be irregular. The Applicant submits that the failure to recognise the stay orders and thereby proceeding with the consequent debarment was illegal and calls for intervention by this Honourable Court.

The 1st Respondents' response

22. The 1st Respondent filed a Replying Affidavit sworn by himself on 9th April 2025. His contention is that following consideration of his request for debarment application, the 2nd and 3rd Respondents found a prima facie case and issued a Notice of Intended Debarment dated 18th November 2024, giving the Applicant fourteen days to respond. That the Applicant filed a Notice of Appearance and a request for particulars on 29th December 2024.
23. In response, Mr. Nzai opposed the request through an affidavit dated 9th January 2025. The Respondents thereafter issued directions on 13th January 2025, granting both parties time to file further pleadings. That the Applicant subsequently filed an Amended Memorandum of Response dated 20th January 2025, refuting the allegations in full, and Mr. Nzai responded with a reply dated 23rd January 2025.
24. The 1st Respondent further contends in deposition that when the matter came up for hearing on 30th January 2025, the Applicant was granted leave to file additional documents and a rebuttal, which it filed on 28th January 2025. It is also stated that a reply to the rebuttal was filed by the complainant on 18th February 2025. Further, that the hearing, initially scheduled for 27th February, was rescheduled to 5th March 2025 at the request of the Applicant. After the hearing on the said date, a determination was rendered on 18th March 2025 and communicated on 19th March 2025.
25. It is the 1st Respondent's case that in the course of these proceedings, the Applicant filed Judicial Review Application No. 154 of 2024 seeking to stop the debarment process however the same was dismissed and the validity of both the application and the notice of debarment were upheld.
26. On whether Mr. Nzai has the locus standi to commence the impugned debarment proceedings, the 1st respondent deposes that Section 41 of the *Public Procurement and Asset Disposal Act* and Regulation 22(1)(a) of the Public Procurement and Asset Disposal 2020 Regulations, permit any person with knowledge of relevant facts that may support one or more grounds for debarment. He also states that the High Court previously affirmed his locus standi in HCJR/067/2021, holding that even private citizens are entitled to initiate debarment proceedings.
27. Addressing the legality of the documents used in support of the debarment application, the 1st Respondent states that while certain tenders, such as KEBS/T010/2019-2021, were excluded from the Board's decision pursuant to a High Court order, the documents related to them had been exchanged and served. He also states that the Auditor General and the National Assembly had found that the Applicant had used forged documents.
28. The 1st Respondent's case is also that he had actively participated in the investigations carried out by the Auditor General and the National Assembly. It is also his case that the documents, including those submitted by the Applicant to Parliament, were public records and had also been filed in prior judicial review proceedings.



29. Mr. Nzai also alleges that during the pendency of Debarment Applications 1 and 2 of 2021, the Directorate of Criminal Investigations launched an inquiry into the Applicant and that in the course of that investigation, he confirmed that the same falsified documents were again used in the impugned tender. As such, he initiated the current application using the previously disclosed materials.
30. According to the 1st Respondent, the Applicant was debarred on 23rd June 2021 and the bid documents in the current tender were issued on 24th November 2021, meaning the Applicant was already debarred and ineligible to participate. It is also his defence that Section 55(1)(e) of the PPADA prohibits debarred entities from participating in procurement, and procurement proceedings are deemed to commence upon issuance of bid documents. Therefore, the Applicant violated the law by merely receiving the bid documents while it was already debarred.
31. The 1st Respondent also urges that the Applicant's reliance on orders issued in CMCOMMSU No. E1615 of 2021 was challenged on several fronts. First, that the orders were issued by a court without jurisdiction over debarment matters, which fall exclusively under the Public Procurement Administrative Review Board and, to the High Court. Second, that the said suit had been filed by an unregistered and unlicensed individual. Moreover, that the orders were issued in a tortious claim and were not applicable to the administrative process of debarment. It is also argued that the Applicant obtained the orders by deceit and misrepresentation.
32. The 1st Respondent also states that the Applicant also failed to disclose to the court that it had also filed JR 154 of 2024 challenging the same debarment process and that application had been dismissed, a fact the Applicant had not disclosed to the court. It is Mr. Nzai's case is that this non-disclosure is material and a further reason why this court should decline to grant the relief sought.
33. On double jeopardy, it is urged that a request for debarment may be brought against a bidder for each public bid/tender that it has participated in, which must be interrogated independently. According to the 1st Respondent, the subject tender KEBS/RT/011/2021-2024 has never been the subject of any debarment. The 1st Respondent also urges that the Applicant reused documents that had already been impeached in previous Tenders. The 1st Respondent also urges that the Applicant has not denied using falsified documents in the impugned tender.
34. The 1st Respondent in his written submissions dated 16th April 2025 on the issue of locus standi relies on the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & Another*, Civil Appeal No. 290 of 2012 where the court observed that *the Constitution* now gives standing to any member of the public who is not a mere busy body and who acts in good faith the right to institute proceedings challenging violations under the Bill of Rights.
35. The 1st Respondent also relies on the case of *Republic v Public Service Commission of Kenya Ex parte James Nene Gachoka* [2013] eKLR where the court is said to have observed that the phrase 'tried for the offence or for any other offence' means that the proceedings must be before a court or judicial tribunal and not mere administrative or civil proceedings.
36. The 1st Respondent also submits that Section 38 of the *Public Audit Act* mandates the Auditor General to conduct procurement audits of the public procurement process carried out by Kenya Bureau of Standards (as a public entity) respecting the Pre-Export Verification of Conformity (PVOC) to standards. Further, that Section 64 of the *Public Audit Act* requires the Auditor General to report fraudulent practices established in the course of its investigations to relevant authorities which include the police, Ethics and Anti-Corruption Commission or the Public Procurement Authority for their action.



37. It is also submitted that pursuant to Section 67(3)(b) PPAD Act, 2015, bids submitted to be used in investigations are exempted from confidentiality requirements. Further, that Section 67(3)(c) PPADA, 2015 also exempts the application of confidentiality provisions to matters under Part IV of the Act which includes debarment proceedings under S.41 *Public Procurement and Asset Disposal Act* 2015.
38. On the issue of jurisdiction, the 1st Respondent relies on the cases of Samuel Kamau Macharia v Kenya Bank Ltd [2012] eKLR and Korir v Chepkwony & another (Environment and Land Appeal 8 of 2022) [2023] KEELC 21671 (KLR) where the courts reiterate that orders issued by a court without jurisdiction are unlawful, unenforceable, irregular, null and void ab initio.
39. The 1st Respondent also states that as was held by the court in the case of Republic v Public Procurement Administrative Review Board & another Ex-parte Express DDB Kenya Limited [2018] eKLR judicial review is concerned with the decision-making process not the merits of the decision. Further that it is trite that specialized bodies should not be interfered with in exercise of statutory mandate and the court will only exercise its supervisory role over them if the decision or administrative action is tainted with illegality, irrationality or procedural impropriety as was held by the Court of Appeal in Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others [2012] eKLR.
40. On the issue of completeness of the debarment application, it is submitted that the same was complete and proper and met all the requirements under the debarment manual and the subsequent debarment notice equally compliant with the law.

The 2nd & 3rd Respondents' Response

41. The 2nd and 3rd Respondents filed a Replying affidavit sworn by Raphael Muia Ngalatu who introduces himself as the Secretary of the Debarment Committee of the 3rd Respondent. The Affidavit is sworn on 8th April 2025.
42. In the affidavit Mr. Ngalatu begins by stating that the 2nd Respondent established under section 8 of the *Public Procurement and Asset Disposal Act*, 2015 has a statutory mandate to ensure compliance with procurement procedures established under the Act.
43. Further, that the 3rd Respondent is the Board of the Public Procurement Regulatory Authority established under section 10 of the Act. It is his averment that in executing its mandate, the 3rd Respondent is empowered under section 41 of the Act, read together with Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020, to debar any person who commits the offences stipulated in section 41 of the Act.
44. He further urges that upon analysis of the 1st Respondent's Request for Debarment received on 28th October 2024, the 3rd Respondent found that there was a prima facie case and issued a Notice of Intended Debarment to the Applicant dated 18th November 2024, granting the Applicant fourteen days to file and serve its written response.
45. That upon service of the notice, the Applicant did not immediately respond but instead filed Judicial Review Application No. E154 of 2024 in the High Court seeking orders to suspend the debarment proceedings. He deposes that the Court, upon hearing the parties, dismissed the application and struck out the suit entirely in a judgment delivered on 20th December 2024. The deponent further states that the Notice of Intended Debarment was timeously served and that the Applicant later on filed its reply on 20th January 2025.



46. In its analysis, the 3rd Respondent is said to have found that the Applicant had participated in the subject tender by submitting its bid dated 27th January 2022 while under debarment and also that the court order obtained by the Applicant in CMCOMMSU No. E1615 of 2021 staying the debarment decision of 23rd June 2021 was obtained fraudulently through misrepresentation. It was also established that the pleadings in the said suit had been drafted by a person who was not an advocate and operated an unregistered law firm, as confirmed by a letter from the Law Society of Kenya dated 8th February 2022.
47. Additionally, that the Magistrate's Court lacked jurisdiction to entertain proceedings under the PPAD Act, since section 42 of the Act clearly vests jurisdiction in the High Court and further, that the case had been filed outside the statutory 14-day timeline, having been instituted on 16th December 2021 against a decision made on 23rd June 2021.
48. That as a result, the 2nd Respondent filed an application under certificate of urgency on 3rd January 2022 seeking to vacate the orders and that the court agreed with the Authority in a ruling delivered on 15th February 2022, vacating the stay orders and striking out the suit for having been filed through misrepresentation by an unauthorized person, in a court without jurisdiction; and outside the statutory prescribed timelines.
49. The 3rd Respondent, it is stated also found that the Applicant had falsified documents regarding its qualifications, including discrepancies in license and car inspection certificate numbers for various key experts and inconsistencies in the dates of birth of the same individuals.
50. On the issue of the documents submitted by the 1st Respondent, it is averred that the 3rd Respondent held that the same were not illegally obtained since some of the documents had been used in previous debarment proceedings and the rest were accessed by the 1st Respondent during DCI investigations. It is urged that this was not disputed by the Applicant, who at paragraph 13 of their Amended Memorandum of Response in the Debarment proceedings acknowledged the source as being the DCI.
51. It is the 2nd and 3rd Respondent's case that the 3rd Respondent further obtained a copy of the Applicant's bid document from the procuring entity and was able to confirm that all the referenced documents had been submitted by the Applicant in its bid. It is deponed that once filed in the debarment application, these documents were in the public domain and could not be considered confidential.
52. The 3rd Respondent, it is stated, also observed that the principle of double jeopardy does not apply in debarment proceedings, which are administrative in nature, and even if it were applicable, the previous debarment related to a different tender. Accordingly, by its decision dated 18th March 2025, the 3rd Respondent debarred the Applicant for a minimum period of three years.
53. The 2nd and 3rd Respondents also challenge the stay orders issued in this matter on grounds that they were obtained through non-disclosure of material facts, specifically, the fraudulent nature in which the Magistrate's Court orders were obtained. It is also urged that the Applicant delayed unreasonably in approaching the court, doing so only on the last day and also that the Application for leave was defective as it was filed under a Notice of Motion rather than a Chamber Summons contrary to Order 53 Rule 2 of the Civil Procedure Rules, 2010.
54. The 2nd and 3rd Respondents in their submissions dated 16th April 2025 further argue that the Applicant's issues, as framed in paragraph 9 of its submissions, mirror those that were already litigated on before the 3rd Respondent, which made its decision on 18th March 2025.



55. On the court's role in judicial review being supervisory, reliance is placed in Civil Appeal No. E327 of 2022 *Auto Terminal Japan Limited v Public Procurement Regulatory Authority and 3 Others* and in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR.
56. It is also submitted that as has been held by the courts in cases such as *Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others* [2012] eKLR and *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, specialized bodies like the Public Procurement Regulatory Authority should be allowed to exercise their statutory mandates without undue interference.
57. That the Court (Ndung'u J) in *Judicial Review No. 55 of 2022: Republic v Public Procurement Regulatory Authority & another (Interested Party)*, is said to have reaffirmed that judicial review is a supervisory process which is concerned with determining whether there has been a lawful exercise of power having regard, in particular, to the terms, scope and purpose of the statute conferring the power.
58. This court was urged to dismiss the application.

Analysis and Determination

59. I have considered the application and verifying affidavit in support, the statutory statement and the annexed documents. I Have given equal consideration to the responses by the respondents and all the parties' respective submissions in support of their positions in this matter.
60. The core issue for determination is whether the Applicant has made a case for the grant of the orders sought. There are, off course, ancillary questions which the court will endeavor to answer in the process of resolving the main issue.
61. It is important to note that the scope of judicial review in Kenya, particularly under *the Constitution* of Kenya, 2010 and the *Fair Administrative Action Act*, 2015, extends beyond procedural issues and can encompass elements of merit, especially where fundamental rights and constitutional values are implicated. This is not to say, however, that this court would convert itself into an appellate court to review merits of administrative decisions. There is a limit to the extent to which the merit review can be delved into as stated below.
62. Under Article 47 of *the Constitution* and its implementing legislation, the *Fair Administrative Action Act*, judicial review is now firmly grounded in *the Constitution*, not merely in common law. This changes its nature in three key ways:

a. Substantive Review

63. Here, courts are now empowered to examine not just how a decision was made (procedure), but also what the decision is (substance), where the decision is irrational, grossly unreasonable, disproportionate, or violates fundamental rights. This includes reviewing whether a decision was logically connected to the evidence, or unjustifiably punitive. In *Republic v Public Procurement Administrative Review Board & 2 others Ex Parte PPOA* [2017] eKLR, it was held that under the *Fair Administrative Action Act*, the court is no longer confined to procedural fairness but may examine the rationality, legality, and reasonableness of the decision.

b. Broader Grounds of Review

64. The court may intervene where there is bad faith, arbitrariness, abuse of discretion, lack of proportionality, or violation of legitimate expectations — all of which are issues that go to merits and fairness, not just process. In *Judicial Service Commission v Mbalu Mutava* [2015] eKLR, the



court stated that administrative decisions that are irrational or disproportionate can be quashed even if procedurally sound.

C. Constitutional Supremacy

65. The remedies available under judicial review are now constitutional in nature, meaning, the court may issue declarations, compensation, or orders for enforcement of rights, not just certiorari, prohibition, or mandamus. In *Suchan Investment Ltd v Ministry of National Heritage & Culture* [2016] eKLR, the Court emphasized that judicial review in Kenya is now rooted in the Constitution and not just common law and courts can examine both legality and merit.

66. The purpose of judicial review was restated by the Court of Appeal in *Kapa Oil Refineries v Kenya Revenue Authority* [2019] eKLR where the court stated that:

“Judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision-making process. See the *Commissioner of Lands –versus Hotel Kunste* [1997] eKLR. The purpose of JR is to ensure that the individual is given fair treatment by the Authority to which he has been subjected. JR as a remedy is available, in appropriate cases, even where there are alternative legal or equitable remedies. See *David Mugo t/a Manyatta Auctioneers –versus Republic – Civil Appeal No. 265 of 1997 (UR)*. JR being a discretionary remedy, it demands that whoever seeks to avail itself/himself/herself of this remedy has to act with candour or virtue and temperance. See *Zakayo Michubu Kibwange –versus Lydia Kagina Japheth and 2 others* [2014] eKLR. JR as a remedy may also be invoked where the issues in controversy as between the parties are contested. See *Zakayo Michubu Kibwange case (Supra)*. The remedy of judicial review is only available where an issue of a public law nature is involved. Further, that a person seeking mandamus must show that he has a legal right to the performance of a legal duty by a party against whom the mandamus order is sought or alternatively, that he has a substantially personal interest and that the duty must not be permissive but imperative and must be of a public nature rather than of a private nature. See *Prabhulal Gulabuland Shah –versus Attorney General & Erastus Gathoni Mlano, Civil Appeal No. 24 of (1985) (UR)*. Following the promulgation of the Kenya Constitution, 2010, judicial review is available as a relief to a claim of violation of the rights and fundamental freedoms guaranteed in the Constitution of Kenya 2010. See *Child Welfare Society of Kenya –versus- Republic and 2 others, Exparte Child in Family Forces Kenya* [2017] eKLR.” [emphasis added]

67. From the above decision, it is trite that this Court’s role is to supervise the exercise of public power to ensure that it is exercised lawfully, in a rational and procedurally fair and proportionate manner.

68. The Applicant challenges the 3rd Respondent’s decision of 18th March 2025 to debar the applicant, alleging illegality, breach of fair administrative action, violation of legitimate expectation, double jeopardy and unlawful reliance on confidential documents, among other grounds.

69. It is not disputed that the Applicant had previously been debarred on 23rd June 2021 following the outcome of Debarment Applications 1 and 2 of 2021. It is also not in dispute that the 1st Respondent’s application for debarment, made on 28th October 2024, is based on the allegation that the same falsified documents that led to the earlier debarment were reused by the Applicant in the subsequent tender process for KEBS/RT/011/2021-2024.



70. The Applicant asserts that as at 24th November 2021, when the bid documents were issued, the earlier debarment had been stayed in CMCOMMSU No. E1615 of 2021, and that the applicant was therefore not under any debarment.
71. On the part of the 2nd and 3rd Respondents, they maintain that the Applicant was, at the material time, debarred owing to several issues that were discussed in the 3rd Respondent's findings. The 2nd and the 3rd Respondents, argue that the 3rd Respondent in arriving at its decision to debar the Applicant afresh, acted within the law and observed procedural fairness.
72. It is apparent from the material placed before this Court in these proceedings, and which I have carefully analyzed, that the 3rd Respondent upon receiving a Request for Debarment filed by the 1st Respondent herein and upon examining the material supporting the request for debarment, it established that there was a prima facie case and it is upon this finding that it issued the Applicant with a Notice of Intended Debarment dated 18th November 2024.
73. Although the Applicant herein initially sought to suspend the said debarment proceedings through Judicial Review No. E154 of 2024, which case was dismissed on 20th December 2024, the record shows that the Applicant ultimately filed its response to the debarment proceedings on 20th January 2025.
74. At paragraph 70 of the Debarment decision, the Applicant herein was given a further 14 days to file a Rebuttal to the 1st Respondent's reply before the Committee and this was on 30th January 2025 which is the date the application was being heard. The Applicant was thus not denied an opportunity to be heard.
75. On the legality of the documents relied upon by the 1st Respondent in the debarment proceedings, this Court observes that at page 23 of the Debarment decision under Issue 2, the Committee addresses the issue 'Whether the Applicant has relied on illegally obtained evidence in filing the Request for Debarment'. Under this issue, the Committee begins by introducing the position stated by each party in regard to the said documents.
76. The Applicant challenges the method by which the 1st Respondent herein obtained the documents forming the basis of the debarment, claiming that those documents are confidential and could only have been accessed through the Applicant before this Court or from the procuring entity.
77. In his defense as seen at paragraph 112 of the Debarment Decision the 1st Respondent herein stated that some of the documents were filed in the previous debarment under Debarment Applications No. 1 and 2 of 2021 in which the Board is said to have found that the Applicant herein had falsified several documents pertaining to the then tender. The 1st Respondent also states that the other documents were furnished to him by the DCI being that he was a person of interest in the investigations.
78. The Committee at paragraph 124 of its decision also observes that the Applicant alludes to the 1st Respondent before this Court obtaining the additional documents from the DCI at paragraph 13 of its Amended Memorandum of Response dated 29th January 2025.
79. The Committee in subsequent paragraphs of the decision outlines what the law provides on evidence obtained in a manner that violates any freedom or fundamental rights. The Committee also relies on decisions of the Court and in its finding on this issue, it observes that the only documents that are common in the proceedings and the Request for Debarment Applications No.1 and 2 of 2021 are the invoices from Success Company Limited which it states became accessible to anyone once the matter was escalated to the High Court.



80. The Committee further observed that although no evidence was provided by the 1st Respondent to illustrate that the other alleged documents were obtained from the DCI, the Applicant herein did not dispute or controvert the said averment. The Committee also indicated that when the Request for Debarment was filed, the Committee requested for a copy of the Respondent's bid from the procuring entity and from there, it was able to confirm that all the documents mentioned in the Request for debarment were actually submitted by the Applicant herein in its bid. For these reasons, the Committee refused to find that the documents in question and as relied on in making its decision to debar the applicant herein were illegally obtained.
81. In light of the foregoing, this Court is satisfied that the Committee gave due consideration to the legality of the documents relied upon and applied the relevant legal principles in determining their admissibility. The Committee carefully weighed the arguments presented by both parties, made reasonable inferences from the uncontested facts and provided a coherent rationale for its findings.
82. Particularly, this Court observes that under Section 67(3)(b) and (c) of the *Public Procurement and Asset Disposal Act*, procurement records may be disclosed or used where required for the purposes of law enforcement or in proceedings related to procurement disputes. In *Republic v Public Procurement Administrative Review Board; Nairobi City Water & Sewerage Company Limited & another (Interested Parties) Ex Parte Fourway Construction Company Ltd* [2018] eKLR, Nyamweya J (as she then was) observed that:

“...Whereas indeed section 67(1)(d) prohibits the disclosure of contents of tenders, proposals or quotation, however the same is subject to subsection 3 which list down the applicable exceptions. The exceptions are wide enough to cover the Applicant's arguments as to enforcement of his right to a fair hearing under *the Constitution*, in addition to the disclosure of the summaries it is allowed for purposes of review.

38. The disclosure of documents relevant to litigation in procurement proceedings arose in the European Court of Justice in *Varec vs Belgian State*, Case C- 450/06 in the context of the European Union procurement law, where three principles were laid down. First, that review bodies must have access to the relevant information to determine the case. Second, that the information that the review body has must not be automatically be disclosed to others, including a tenderer who challenges an award decision, since the review body is under a duty to ensure confidentiality of business information. Third, that the decision whether to disclose particular information must be considered by the review body on a case-by-case basis, by balancing tenderers' interests in having access to information to ensure a fair hearing, with interests of commercial confidentiality.
39. This position was also adopted by the English courts in the cases of *Amaryliss vs HM Treasury (No 2)*, (2009) EWHC 1666 and *Croft House Care vs Durham County Council* (2010) EWHC 909, where it was observed that the aforementioned principles require a balancing exercise as between the right to confidentiality as regards documents that are confidential, and the need for the claims to be disposed of fairly in terms of disclosure of documents which are relevant and necessary to a claim. It was also noted in the *Croft House Care vs Durham County Council* that in making this decision, the Court should consider whether any special measures and safeguards, such as redactions to



make documents anonymous or exclude material which it is not necessary for a claimant to see, or hearings in private should be adopted.

40. A similar position was adopted in the Kenyan case of *Blue Sea Service Ltd -vs- Public Procurement Administrative Review Board* (supra) which was cited by all the parties, where it was held as follows:

“32. If National values and principles including the Rule of Law is an integral principle of Procurement and Asset Disposal, then it goes without saying that a party seeking to challenge a procurement process must be entitled to right to affair hearing. If that be true then such a challenge cannot be reasonably mounted if the procurement entity is allowed to keep next to its chest the records and reasons for awarding a tender to one party in preference to the other. The procuring entity must be seen to act with absolute transparency such transparency only being limited for purposes of protecting healthy competition and genuine privacy and public interest. No wonder section 67 (3) expressly say that disclosure of information is permitted for purposes of enforcement of the law.

I am not in doubt that a party seeking disclosure for purposes of Review or a proceeding challenging decision by the Review board seeks to enforce the law and therefore fits squarely within the constitutional enactment under Article 47.”

83. The Committee’s finding that some of the documents had already been disclosed in previous debarment proceedings and others accessed through lawful investigations by the Directorate of Criminal Investigations, falls within the scope of these statutory exceptions. My finding and holding is buttressed by the decisions, among them is the above case in *Republic v Public Procurement Administrative Review Board; Nairobi City Water & Sewerage Company Limited & another (Interested Parties) Ex Parte Fourway Construction Company Ltd* where the learned Judge emphasized that the confidentiality provisions under Section 67(1) do not bar the application of constitutional principles such as public participation, especially when disclosure is necessary to meet constitutional thresholds. The court recognized that Section 67(3)(b) allows for disclosure for law enforcement purposes, which can include ensuring public participation in procurement processes.
84. It was also held in *R v Independent Electoral and Boundaries Commission ex parte National Super Alliance (NASA)*, [2017] eKLR that confidentiality is not a constitutional principle, and that Articles 10 and 227 of *the Constitution* talks about transparency. Therefore, that in a contest between transparency and confidentiality, confidentiality must give way in favour of transparency. In addition, that public procurement proceedings must be conducted in a manner that the public is able to audit the process for greater transparency, not confidentiality.
85. The Court in the above *R v Independent Electoral and Boundaries Commission ex parte National Super Alliance (NASA)* matter stated as follows:

“185. In our view, in the initial stages, it cannot be said that the principle of confidentiality which kicks in during or after procurement proceedings bars the application of the principle of public participation. This position is supported by the fact that section 67(3)(b) of the said Act expressly excludes from the confidentiality principle disclosure for the purpose of law enforcement. To our mind, an example of such disclosure is where the



application of the provisions of *the Constitution* requires such disclosure in order to meet the constitutional threshold of public participation. We hold the view that where the violation strikes at the heart of our democratic process, which according to the preamble to *the Constitution* is one of the aspirations of the people of Kenya, the issue of the confidentiality cannot be successfully invoked in order to sanitize a process that does not meet the basic tenets of democracy. We are of the view that public participation in direct tendering is a mandatory component of the principles of transparency and accountability acclaimed in Article 227 of *the Constitution*.”

86. In *Okiya Omtatah Okoiti v Central Bank of Kenya (CBK), PPARB, De la Rue International Limited, De La Rue Currency & Security Print Limited and De La Rue Kenya EPZ Limited & 2 others & Attorney General as interested party*, Petition 597 of 2017, the court addressed concerns about the unauthorized release of tender documents, noting that such disclosure could breach confidentiality provisions. However, it acknowledged that Section 67(3)(b) of the PPADA permits disclosure for law enforcement purposes, which may include investigations into procurement irregularities.
87. The above decisions read together, underscore the importance of adhering to constitutional and statutory provisions in public procurement processes. The cases highlight the role of the judiciary in ensuring that public entities conduct their affairs in a manner that is lawful, transparent and accountable to the public.
88. Accordingly, this Court finds no fault in the Committee’s reasoning or its conclusion that the documents in question were not illegally obtained and that therefore there was no breach of confidentiality. There is also no material countering the 1st Respondent’s assertion that the other documents were furnished to him by the DCI being that he was a person of interest in the investigations.
89. On the issue of double jeopardy, the Court agrees with the 2nd and 3rd Respondents that debarment proceedings are administrative in nature and do not attract the constitutional protections applicable to criminal trials. Even if such protections were to be analogously applied, the record demonstrates that the present debarment relates to a distinct tender No. KEBS/RT/011/2021-2024 and is grounded on conduct that occurred after the previous debarment.
90. The reuse of allegedly falsified documents in a separate and subsequent tender when the same documents had been impeached in the earlier tender amounts to a fresh cause of action and the 3rd Respondent was entitled to address that issue independently, without binding itself to the alleged double jeopardy principle.
91. The Black’s Law Dictionary, 9th Edition defines ‘double jeopardy’ as
“... being prosecuted or sentenced twice, for substantially the same offence.”
92. The Supreme Court in *Nyagol v Judicial Service Commission & another* (Petition E015 of 2024) [2024] KESC 69 (KLR) (22 November 2024) (Judgment) observed thus;
“In the Kenyan context, Article 50 (2)(o) of *the Constitution* and Section 138 of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya provide for the plea of *autrefois acquit* and *autrefois convict* which are founded on the doctrine of double jeopardy, that is, one must not be tried for an offence for which they have been previously acquitted or convicted. This doctrine of double jeopardy is based on the Latin maxim *nemo debet bis vexari pro*



una et eadem causa which means that no man shall be put in jeopardy twice for the same offence. It is also founded on public policy that there ought to be an end to the same litigation. The High Court (Odero, J.) in *Nicholas Kipsigei Ngetich & 6 Others vs Republic*, Criminal Case No. 123 of 2010 [2016] KEHC 1507 (KLR) expounded it to be a protection afforded to an accused person from the prejudice of going through a second trial after the State is made privy to his/her entire defence and to also protect citizens from undue oppression by the State. The importance of double jeopardy cannot be overemphasized. In this connection, the High Court (Gikonyo, J.) in *Johnson Kobia M'Impwi vs Director of Public Prosecutions, Criminal Case 333 of 2018*; [2020] KEHC 4685 (KLR) described it not only as a procedural defence but a constitutional protection against subsequent trial based on a prior acquittal or conviction. This Court has also had occasion to weigh in on this discourse in the case of *Steyn vs Ruscone*, SC Application No. 4 of 2012; [2013] KESC11 (KLR) where we posited that a party cannot present their dispute before one forum or court and subsequently present the exact dispute over the same subject matter before another forum, even where both fora have jurisdiction. Further, in *Wetangula & Another vs Kombo & 5 Others*, SC Petition No. 12 of 2014 ;2015] KESC 12 (KLR), we held that Section 87(1) of the *Elections Act* Cap 7 of the Laws of Kenya, allows for electoral malpractice with a criminal underpinning to be prosecuted under the relevant criminal law process. This in itself does not violate double jeopardy since election proceedings are not in the same category of “trial for an offence” and are sui generis nature.

78. Applying the foregoing to the issue at hand, we note that the ELRC, on its part, interpreted the fresh charges of 22nd August 2017 which it found to be dissimilar to those of 4th September 2015, to amount to double jeopardy. We disagree with the ELRC's exposition of double jeopardy. According to our reading and understanding of *the Constitution*, double jeopardy applies when there has been a previous conviction or an acquittal on a charge, not when 2 proceedings over the same cause are subsisting.”
93. This Court also notes that at paragraphs 145 to 151 of the Debarment Decision, the Committee addresses this issue. The Committee confirmed that it was able to ascertain from the bid documents submitted before this court that indeed there were discrepancies in the license and car inspection certificate numbers for various key experts. The committee in the Decision also noted that there were forgeries of the dates of birth for some experts with different dates of birth for the same person appearing on different documents.
94. This according to the Committee, was a clear illustration that the documents were falsified. In its finding on this issue, the Committee observed that double jeopardy was not applicable in debarment proceedings and also that the current debarment proceedings were premised on KEBS/RT/011/2021-2024 whereas the Applicant herein had been previously debarred on the basis of Tender Nos. E01/KEBS/53/2010-2011, KEBS/T057/2014-2015 and KEBS/T019/2017-2020.
95. In my humble view, therefore, double jeopardy does not bar a second debarment if it arises from a separate procurement process or new misconduct, where the alleged misconduct relates to a new incident, even if similar in nature and where the previous debarment has lapsed, and they have since participated in other subsequent tenders. Each debarment must, however, respect the principles of natural justice and due process.
96. The Applicant has also relied on the orders issued in CMCOMMSU No. E1615 of 2021. From the onset, this Court appreciates that Debarment proceedings are conducted by the Public Procurement



Regulatory Board through its Debarment Committee, under Section 41 of the *Public Procurement and Asset Disposal Act* (PPADA), 2015 which provides elaborate grounds for debarment.

97. On the other hand, section 42 provides for judicial review by an aggrieved party to the debarment. The section provides:

42. Judicial Review

A party to the debarment may seek Judicial Review from the decision of the Authority to the High Court within fourteen days after the decision is made.

98. It is clear from the above provision of the law that the court with jurisdiction to hear a challenge against a debarment decision in Kenya is the High Court, specifically exercising its Judicial Review jurisdiction under Article 165(6) and (7) of *the Constitution*, and Section 11 of the *Fair Administrative Action Act*, 2015. Accordingly, the orders issued in CMCOMMSU No. E1615 of 2021 were null and void from the outset and, as such, could not afford the Applicant any legal protection of staying any debarment proceedings.

99. The question of jurisdiction to hear and determine disputes arising from debarment proceedings is well settled. The court (Ngaah J) in the case of *Kilemi v Public Procurement Regulatory Authority Board; Meru university of Science & Technology (Interested Party)* (Miscellaneous Application E139 of 2023) [2024] KEHC 4897 (KLR) (Judicial Review) (26 April 2024) (Ruling) observed as follows:

“ 13. If dissatisfied with the decision, Jofrim E.A. Company Limited would have been entitled to seek judicial review of the decision under section 42 of the *Public Procurement and Asset Disposal Act*. This section reads as follows:

42. Judicial Review

A party to the debarment may seek Judicial Review from the decision of the Authority to the High Court within fourteen days after the decision is made.

14. But the company did not pursue the judicial review within the prescribed time or at all.”

100. Similarly, the court in the case of *Republic v Nzai & 2 others; EAA Company Limited (Exparte Applicant)* (Judicial Review Miscellaneous Application E154 of 2024) [2024] KEHC 16146 (KLR) (Judicial Review) (20 December 2024) (Judgment) reiterated this position.

101. These position echoes the foundational principle set out in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, a party cannot claim legal protection from proceedings filed in a court that lacks jurisdiction from the beginning. This is because Jurisdiction is everything. without it, a court has no power to make any determination.

102. It follows therefore that an order issued by a court with no jurisdiction is incapable of being complied. This is because such an order issued without jurisdiction is null and void from the beginning and has no legal effect. In *Macfoy v United Africa Co. Ltd* [1961] 3 All ER 1169, Lord Denning stated:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad... there is no need for an order of the court to set it aside. It is automatically null and void.” that jurisdiction is the cornerstone of any judicial process and any decision rendered without it is null and void ab initio.”



103. The Supreme Court in *Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others* [2012] eKLR reiterated that:

“ A court’s jurisdiction flows from either *the Constitution* or legislation or both... Without jurisdiction, a court cannot entertain any proceedings.”

104. The record further reveals that the orders in CMCOMMSU No. E1615 of 2021 were obtained in proceedings filed outside the statutory timelines and by a person not qualified to practise law, as confirmed by the Law Society of Kenya in its letter of 8th February 2022. The said orders were later vacated in a ruling delivered on 15th February 2022. This Court cannot, therefore, accord them any weight or legitimacy in the present proceedings.

105. Time limits in administrative and judicial procedures are jurisdictional thresholds, not technicalities. In *Republic v Public Procurement Administrative Review Board & 2 Others ex parte Syner-Chemie Limited* [2016] eKLR, the High Court held that an application for review filed outside the 14-day period under Section 167(1) of the PPADA was statutorily time-barred and thus incompetent.

106. This Court is therefore in agreement with the Committee’s finding at paragraph 119 of its decision that the Applicant before this court indeed participated in the subject tender while under Debarment and being aware of the said debarment.

107. On the Applicant’s challenge that the 3rd Respondent relied on incomplete or defective pleadings, the record shows that the debarment application by the 1st Respondent contained sufficient details and supporting documentation. Upon consideration of the complaint and the response filed, the 3rd Respondent reached a reasoned decision supported by the evidentiary material on record, supported by the law. The Committee at paragraph 153 of its Decision observed as follows;

“ 153. For Debarment to suffice, all the Applicant was required to do was to adduce sufficient evidence to support at least one of the grounds contained in his Request for Debarment to which this Board is satisfied that such evidence was placed before it.”

108. It can therefore not be said that the debarment process was arbitrary or devoid of a legal foundation.

109. The Respondents on the other hand have also raised concerns regarding material non-disclosure by the Applicant, particularly its failure to disclose the existence and outcome of JR No. E154 of 2024 when filing the present application. That application is said to have challenged the same debarment proceedings and was conclusively determined. They argue that the failure by the applicant herein to disclose this fact to this Court is material and, in judicial review proceedings, where good faith is essential, such conduct undermines the integrity of the process. I fully agree.

110. The applicant also challenged the locus standi of the 1st respondent to seek for the applicant’s debarment. The Applicant contended that the 1st Respondent lacked locus standi under Regulation 22(1)(a) of the Regulations and Clauses 4 and 5 of the Debarment Manual, rendering the request and subsequent notice incompetent. The question is, who can file a complaint for debarment.

111. Regulation 22(1)(a) provides for Debarment Initiation and states that a request for debarment may be made by:

- (a) An accounting officer of a public entity;
- (b) The Authority (PPRA) on its own motion;



- (c) Any other person with relevant information;
 - (d) Law enforcement agencies.
112. The Applicant's objection, to the extent that it alleges that the 1st Respondent lacked locus standi under Regulation 22(1)(a) and Clauses 4 and 5 of the Debarment Manual, is in my humble view, fundamentally misconceived and unsustainable in law and fact.
113. Regulation 22(1) of the Public Procurement and Asset Disposal Regulations, 2020 provides for multiple categories of persons who may lawfully initiate debarment proceedings, including:
- (c) a person with relevant information relating to a ground for debarment under the Act or these Regulations.
114. The 1st Respondent, though an individual, qualifies as a person with relevant information within the meaning of Regulation 22(1)(c), having been a person of interest in investigations conducted by the Directorate of Criminal Investigations (DCI) and there is no contrary evidence.
115. In my opinion, the purpose of Regulation 22(1)(c) is to promote accountability and transparency by enabling whistleblowers, aggrieved parties, or concerned citizens with material knowledge to initiate scrutiny of irregular procurement practices. It would defeat the very objective of the debarment framework to limit such standing exclusively to accounting officers or public entities.
116. In any event, Clauses 4 and 5 of the Debarment Manual mirror the Regulations and are subordinate administrative guidelines and cannot override the clear enabling provision of Regulation 22(1)(c), which has the force of law.
117. I therefore find and hold that the debarment request initiated by the 1st Respondent was procedurally competent, lawful, and well within the statutory framework provided under the PPADA and accompanying Regulations. Furthermore, there is no dispute that the 1st respondent was found to have locus standi in HC JR 067 of 2021. Accordingly, the objection on locus standi of the 1st respondent is therefore dismissed.
118. The Applicant also asserts that the debarment request was incomplete as it lacked authenticated evidence as required under Clause 5(2) of the Debarment Manual, failed to disclose the list of directors of the company and its affiliates as required under Clause 11(1)(b) of the Debarment Manual and was unsupported by court judgments/decrees proving the alleged grounds for debarment, contrary to Clause 5(1)(a), (b), and (h) of the Debarment Manual.
119. Clause 11(1) (b) of the Debarment manual is on Processing of the Request for Debarment provides that:
- 11(1) The Request for Debarment shall be processed in the following manner;
- (a) The Request for Debarment, in the format provided in Appendix II, shall be received by the Authority either in physical hard copy or electronic format and an acknowledgement of receipt confirmed by the Debarment Secretariat.
 - (b)) The Applicant shall be required to provide a list of directors of the company and affiliated companies recommended for debarment in the format provided in Appendix VII.
120. I am aware that the requirement to list directors and affiliated companies in a debarment application is designed to close loopholes, strengthen accountability and uphold the integrity of the public



procurement system. It ensures that sanctions are not just symbolic, but practically enforceable against all culpable parties.

121. It therefore follows that unless the applicant seeks debarment of not only the company but also its directors and affiliates, it would not be fatal if there is an omission of the directors and affiliates, noting that companies are legal entities separate from their directors and in any event, that is information which would have easily been available by verifying from the bid tender documents which the applicant herein submitted, as such information could not have missed in the tender documents.
122. In my humble view, this is a procedural clause that does not invalidate the application for debarment where all the grounds for debarment have been established with sufficient evidence, noting that a company is a legal entity separate from its directors and in any case, the applicant EAA COMPANY LIMITED, is an international company offering inspection services and is registered in Japan but does business globally including in and for Kenya, hence the applicant for debarment who is a Kenyan could not have been expected to provide all the names of the directors of the company which, in any event, is not registered in Kenya.
123. In my view, failure to provide a list of directors of the company recommended for debarment does not invalidate the debarment application because in this case, there was no evidence that debarment was sought against both the company and its affiliates/directors. Neither is there evidence that the Debarment Committee debarred any other person or director who was not named, other than the applicant herein which is an incorporated company that had submitted its bids for the tender.
124. On alleged lack of court judgments and decrees, it is not lost to this court that the applicant's earlier debarment was still in force and that there was no order of the court setting aside that debarment. The burden of proof therefore shifted onto the applicant to prove that at the time that it was being debarred the second time, it had been cleared by the Court or the first debarment had since lapsed.
125. Based on my above analysis, this Court is persuaded that the Applicant has not demonstrated any illegality, irrationality, or procedural impropriety in the decision-making process of the 3rd Respondent. The issues raised by the Applicant were canvassed in the debarment proceedings and do not disclose any jurisdictional error or violation of the rules of natural justice warranting the Court's intervention.
126. In conclusion, it is important to appreciate that Debarment is not just a penalty. The policy behind debarment in the public procurement process is rooted in the need to uphold integrity, fairness and accountability in the use of public funds. Debarment serves both preventive and punitive purposes, ensuring that only competent, honest, and reliable suppliers participate in public procurement in the supply of goods, works, or services funded by public resources.
127. Accordingly, the Court finds that the application dated 4th April, 2025 lacks merit. It is hereby dismissed.
128. Costs are in the discretion of the court. In the instant case, although the applicant is unsuccessful, I find that it is in the interest of justice to order that each party will bear their own costs.
129. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MAY 2025

R.E ABURILI

JUDGE

