



Waaso Construction Limited v Judiciary & 2 others (Judicial Review Miscellaneous Application E153 of 2025) [2025] KEHC 8367 (KLR) (Judicial Review) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E153 OF 2025**

RE ABURILI, J

JUNE 16, 2025

**IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET
DISPOSAL ACT AND REGULATIONS AND THE PUBLIC PROCUREMENT
AND ASSET DISPOSAL DEBARMENT PROCEEDINGS MANUAL, 2022**

AND

**IN THE MATTER OF ALLEGED VIOLATION OF
THE APPLICANT'S CONSTITUTIONAL RIGHTS**

AND

**IN THE MATTER OF THE PUBLIC PROCUREMENT REGULATORY
BOARD DEBARMENT APPLICATION NO. 2 OF 2025**

BETWEEN

WAASO CONSTRUCTION LIMITED APPLICANT

AND

THE JUDICIARY 1ST RESPONDENT

**PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA) 2ND
RESPONDENT**

PUBLIC PROCUREMENT REGULATORY BOARD 3RD RESPONDENT

RULING

1. This ruling determines the applicant's Notice of Motion dated 12th June, 2025 supported by the statutory statement and verifying affidavit sworn by Ahmed Ismail Mohamed on 12th June, 2025.



2. The applicant seeks leave of court to apply for judicial review orders of certiorari to remove into this court and quash the entire decision of the 3rd respondent herein in debarment application No. 2 of 2025 dated 29th May 2025.
3. The applicant also seeks leave to apply for judicial review order of prohibition to prohibit and or restrain the 2nd and 3rd respondents their agents or servants or any other persons from implementing the decision delivered on 29th May 2025 in Debarment Application No. 2 of 2025.
4. The other prayer is that the leave so granted do operate as stay of implementation of the said debarment decision and finally, that costs be borne by the respondents.
5. The applicant's case is that it bid for the tender No. JUD/OT/031/2023-2024 and was declared unsuccessful. That the 1st respondent procuring entity nonetheless went ahead and conducted due diligence of the applicant and obtained a letter from Manderu County Government which revealed that the applicant had not executed any projects with the said County Government contrary to the disclosures in the bid documents. The 1st respondent then applied to have the applicant be debarred for giving false information to the procuring entity concerning qualifications contrary to section 41 (1) (d) of the *Public Procurement and Asset Disposal Act*.
6. The applicant alleges that the decision to debar it was irrational, illegal, irregular and was marred with procedural improprieties. That the decision was based on incomplete request contrary to Clauses 5 and 11 of the Debarment Manual and that the request should have been rejected by the Debarment Committee.
7. Further, that the request for debarment was malicious and intended to deny the applicant business opportunities and that the letter from Manderu County Government could not be relied on as the office bearers had since changed from the time the applicant did business with them in 2028 which was 6 years ago hence the debarment committee should not have accepted the letter denying that the applicant had done business with the said County Government.

Determination

8. I have considered the application, grounds, statutory statement and verifying affidavit together with the annexures thereto. The issue is whether the orders sought for leave to apply and stay are merited.
9. Under Order 53 Rule 1 of the Civil Procedure Rules (CPR), No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
10. The requirement for leave is intended to serve as a filtering mechanism to ensure that only those applications with a reasonable prospect of success and brought promptly proceed to full hearing.
11. The threshold for granting leave is however, not high. All the applicant needs to show is an arguable or prima facie case deserving of full investigation by the Court. In the case of Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996, the Court held that leave is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.
12. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was explained by Lord Bingham in Sharma vs Brown Antoine (2007) 1 WLR 780, that a ground of



challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success.

13. Additionally, leave is intended to prevent frivolous and vexatious claims from clogging the judicial process while allowing meritorious cases to be heard.
14. In the instant matter, the Applicant alleges that the decision to debar it for three years was tainted with procedural irregularities and breaches of natural justice, including alleged illegalities. The Applicant has filed the application within the 14 days of the date of the decision thus satisfying the requirement of promptness as required under section 42 of the [Public Procurement and Asset Disposal Act](#) which provides that:
 42. Judicial Review

A party to the department may seek Judicial Review from the decision of the Authority to the High Court within fourteen days after the decision is made
15. The applicant has also filed copy of the impugned decision dated 29th May 2025. As to the merits thereof, the court can only delve into it at the substantive stage if it grants leave to apply.
16. Turning to the question of stay, Order 53 Rule 4 of the Civil Procedure Rules provides that:
 - (4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.
17. Although the grant of leave under Order 53 does not automatically operate as a stay of execution, the Court has inherent discretion to grant such relief where the circumstances warrant it.
18. The overriding consideration is to prevent irreparable harm and preserve the status quo pending determination of the substantive application.
19. In this case, the Applicant faces the prospect of serious and irreparable injury if the debarment is allowed to take effect before judicial scrutiny. Debarment from tendering contracts for a three-year period is likely to cause significant damage to the Applicant's business interests and reputation. The balance of convenience favors preserving the status quo pending the Court's full consideration of the matter.
20. Further, the public interest is engaged in ensuring that administrative decisions, especially those with serious financial and reputational consequences, comply with the law and principles of fairness. It would be inimical to justice to allow potentially unlawful administrative action to take effect unchallenged.
21. This Court's power to grant interim relief, including stay, is intended to protect applicants from irreparable harm pending final determination, in order to safeguard substantive rights.
22. Therefore, in exercise of its discretion, this Court finds that the Applicant has met the threshold for grant of leave and that the circumstances justify a stay of the implementation of the Debarment Committee's decision of 29th May 2025, pending the full hearing and determination of the substantive judicial review application to be filed by close of business on 17th June, 2025 and in a separate file.



23. As the applicant had erroneously paid court fees for the substantive motion in the Miscellaneous file for leave, before such leave could be granted, it shall not pay other fees for the substantive motion. This file shall be placed in the substantive file once the Motion is filed.
24. Accordingly, this Court grants leave to apply for judicial review orders of certiorari and mandamus as sought in the application dated 12th June 2025.
25. The leave so granted shall operate as stay of implementation of the decision Debarment Committee dated 29th May 2025 until the substantive motion once filed is heard and determined on merit.
26. Owing to the strict timelines for determination of these proceedings, once the substantive motion is filed, the applicant to serve upon the respondents forthwith and within 24 hours. The respondents shall file and serve their responses within 24 hours of the time of service. The Court will give directions on the mode of prosecution of the motion once filed on 19th June, 2025 in the main motion.
27. The applicant is however reminded that in future, applications for leave should be by way of chamber Summons as stipulated in Order 53 of the Civil procedure Rules which stipulates:
 1. 2. An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by —
 - a. statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
 - b. affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.
28. The Notice of motion is a requirement after leave to apply is granted. This is what Order 53 Rule 3 of the Civil Procedure Rules stipulates that:
 3. Application to be by notice of motion Order 53, rule 3
 - (1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
29. However, as the digression by the applicant is a procedural lapse which does not go t the substance of the case, it is excused.
30. I make no orders as to costs.
31. The Registry to notify the applicant's counsel forthwith as he was not present when the ruling was delivered in the virtual court session at 3pm as scheduled earlier in the morning after the hearing.
32. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 16TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

