



**Republic v Judiciary & 2 others; Waaso Construction Limited
 (Ex parte) (Judicial Review Application E162 of 2025)
 [2025] KEHC 10847 (KLR) (Judicial Review) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10847 (KLR)

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

JUDICIAL REVIEW APPLICATION E162 OF 2025

RE ABURILI, J

JULY 23, 2025

BETWEEN

REPUBLIC APPLICANT

AND

JUDICIARY 1ST RESPONDENT

PUBLIC PROCUREMENT REGULATORY AUTHORITY 2ND RESPONDENT

PUBLIC PROCUREMENT REGULATORY BOARD 3RD RESPONDENT

AND

WAASO CONSTRUCTION LIMITED EX PARTE

JUDGMENT

1. Pursuant to leave granted by this Court on 16th June 2025 in JR MISC. E153/2025, the Ex parte Applicant Waaso Construction Limited filed the substantive Notice of Motion dated 17th June 2025 seeking the following judicial review reliefs:

1. That this Honourable Court be pleased to grant an order of certiorari to remove into this Honourable Court and quash the entire decision of the 3rd Respondent herein in Debarment Application Number 2 of 2025, dated 29th May, 2025.
2. That this Honourable Court be pleased to grant an order of Prohibition 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 2 of 2025, dated 29th May, 2025.



3. The costs of this application be awarded to the Applicant.
2. The Notice of Motion is verified by the affidavit of Ahmed Ismail Mohamed sworn on 12th June 2025 and a statutory statement of even date, together with annexures.
3. The Ex parte Applicant's case is that the 1st Respondent, the Judiciary, lodged a Request for the exparte applicant's debarment on 21st February 2025 on the basis of bid No. JUD/OT/031/2023-2024, in which the Judiciary accused the exparte Applicant of giving false information concerning the exparte applicant's qualifications in the procurement proceedings.
4. Following the request for debarment, the 3rd Respondent proceeded to determine the request vide Debarment Application NO. 2 OF 2025, between The Judiciary vs. WAASO Construction Limited, which the Applicant has challenged through these judicial review proceedings
5. According to the Ex parte Applicant, during the hearing of the subject Debarment Application No. 2 of 2025, it expressed its lack of faith and the fact that it could not get justice before the 3rd Respondent as regards Debarment Application No.2 of 2025, for reasons that the Request for Debarment was predicated on the exparte Applicant's bid/ Judiciary tender, Tender No. JUD/OT/031/2023-2024, information that is confidential under section 67(1)(b), (c) and (d), (3) and (4) of the *Public Procurement and Asset Disposal Act* and which the exparte applicant could not lawfully access. The exparte Applicant also claims that the 2nd and 3rd Respondents having relied on the flimsy evidence, had condoned wastage of the Tribunal's time and resources in violation of their respective mandates under the Act.
6. The exparte Applicant further asserts that the 1st Respondent's Request for Debarment is incomplete as the information supporting grounds for debarment (which must accompany a Request for Debarment) were not authenticated as required by Clause 5(2) of the Debarment Manual and judgements/ decrees of Courts of competent jurisdiction were not provided by the 1st Respondent to prove the grounds of its request for debarment contrary to Clauses 5(1) (a), (b) and (h) of the Debarment Manual.
7. It is further claimed by the exparte applicant that the 2nd and 3rd Respondents should have rejected the Request for Debarment at the outset under Clause 11(1)(e) of the Debarment Manual for its incompleteness. That their failure to reject the request for debarment, without giving any reasons or justification whatsoever, is irrational, unreasonable, arbitrary, illegal, irregular and renders the entire debarment proceedings null and void.
8. Equally, the exparte applicant claims that the 3rd Respondent failed in its duty to objectively analyze the Request for Debarment as required of it before finding that that the request for debarment set out a prima facie case for the debarment of the exparte Applicant for which the 3rd respondent issued a Notice of Intended Debarment, a duty that it was to diligently perform under Clauses 12(1) (a) and (b) of the Debarment Manual.
9. The Ex parte Applicant further states that as captured in paragraph 20 of the Debarment Decision, the 3rd Respondent established two (2) grounds for determination being whether the Respondent (exparte applicant herein) falsified information about its qualifications, and whether the said Respondent (exparte applicant) should be debarred as a result of its actions.
10. The exparte applicant avers that the alleged letter from Mandera County Government relied upon by the 1st respondent herein in the impugned debarment application and proceedings is dated 2018, a period of over six (6) years ago, yet, according to the exparte applicant, the said County Government's Administration and Office bearers have since changed, rendering the letter unreliable and irrelevant.



Further, that the debarment has been commenced without due process or regard for the rule of law that is guaranteed by Article 10(2) (a) of the Constitution.

11. According to the ex parte Applicant, the unintended or indirect consequence is to deny the consumers an opportunity to choose suppliers from an array of competent suppliers hence, that by entrenching monopolies in public contracts, this has the net effect of violating or limiting consumer rights of those who import inter alia used motor vehicles into Kenya, rights that are guaranteed under Article 46 of the Constitution.
12. The Applicant also filed written submissions dated 20th June 2025 in support of its notice of Motion.
13. In the said submissions, the Ex parte Applicant argues that the Respondents violated the Debarment Manual by entertaining an incomplete and unauthenticated Request for Debarment; Failing to reject the request as required under Clause 11(1)(e) and also finding a prima facie case contrary to the objective analysis required under Clause 12. These actions, according to the Ex parte Applicant, render the proceedings unlawful, irrational and a nullity. The Ex parte Applicant relies on the case of Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 for the definition of the irrationality as a ground for judicial review.
14. The Applicant also relies on the case of Republic vs. Public Procurement Administrative Review Board & 2 Others Ex parte Syner-Chemie Limited [2016] eKLR where the court is said to have emphasised that decisions based on flawed processes cannot be upheld.
15. The Ex parte Applicant submits that it was subjected to a biased and predetermined process lacking transparency and legality, thereby violating its constitutional rights. The Applicant also places reliance on the case of Pastoli v Kabale District Local Government Council and Others [2008] 2 EA 300) to support the position that Judicial review remedies are appropriate where a tribunal has acted outside its jurisdiction or contrary to the law. It also relies on the case of Republic v Kenya Revenue Authority Ex Parte Yaya Towers Ltd [2008] eKLR where the court is said to have held that a decision made without jurisdiction or in breach of rules of natural justice must be quashed.
16. Further that the Respondents' actions meet the threshold in the Yaya Towers (supra) case and the decision therefore ought to be quashed and its implementation prohibited.
17. The 1st respondent, the Judiciary, who was the applicant in the debarment proceedings did not file any response to the Notice of Motion. Neither did it participate in these proceedings nor the debarment proceedings, apart from filing the application for debarment against the ex parte applicant herein.
18. The 2nd and 3rd Respondents on 23rd June 2025 filed a replying affidavit sworn on 23rd June 2025 and written submissions dated 23rd June 2025.
19. The 2nd and 3rd Respondents' case is that the 3rd Respondent is empowered under section 41 of the Act as read together with regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020 to debar persons who commit breaches stipulated in section 41 of the Act. That it received a Request for Debarment of the Applicant from the 1st Respondent herein on 21st February 2025 and the same was considered in accordance with Regulations 22 (5) (a) and (b) which provides that upon receipt of a request for debarment, the Board shall analyze the case within thirty days to determine whether there is a prima facie case for debarment and if the analysis establishes a prima facie case for debarment, the Board shall issue a notice of intended debarment to the party, who shall be the subject of the debarment proceedings requiring him or her to file a written response with the Board.



20. The 2nd and 3rd Respondents urge that after analysis of the Request for Debarment, the 3rd Respondent found that there was a prima facie case and issued a Notice of Intended Debarment dated 25th March, 2025 to all the parties involved with directions on disposal of the Request for Debarment.
21. That in compliance with this notice, the Applicant filed its Reply via a Memorandum of Response on 9th April, 2025 subsequent to which the 3rd Respondent issued a Hearing Notice dated 16th April, 2025 requiring the parties to appear before it on the 29th April, 2025 for the hearing failure to which the 3rd Respondent would proceed and issue such orders as it deemed fit notwithstanding the absence of either party. That the 1st Respondent did not appear on the said date but that the Applicant was represented by counsel during the hearing.
22. That upon consideration of the filed pleadings and the oral submissions of the Applicant herein, the 3rd Respondent in its decision issued on 29th May 2025 found that the Applicant had falsified documents whilst participating in the tender by the 1st Respondent Tender No. JUD/OT/031/2023-2024 for the Partitioning and Refurbishment of the Judiciary Office in Upperhill and the Applicant was debarred for a period of three (3) years.
23. It is also contended that the Request for Debarment by the 1st Respondent was properly made and that, as a quasi-judicial body, the Debarment Committee is not bound by strict rules of evidence or procedure. Further, that the Debarment Committee acted independently and lawfully in handling the matter based on the unique circumstances of the case. That the allegations by the Applicant that the evidence was illegally obtained and that the Respondents acted outside their mandate are denied.
24. The 2nd and 3rd Respondents maintain that the proceedings were conducted procedurally and lawfully, and that therefore there is no basis for this Court to intervene. They place reliance in the case of Republic v Public Procurement Administrative Review Board & Another Ex-parte Express DDB Kenya Limited [2018] eKLR where the court is said to have observed that as long as the process followed by the decision maker was proper the court ought not to interfere. Further reliance is also placed in the Court of Appeal case of Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 others [2012] eKLR where the court is said to have reiterated that where the Review Board makes a decision within its jurisdiction the same should not be lightly interfered with.
25. The 2nd and 3rd Respondents submit that it has been stated time and again that where the Constitution has allocated certain powers and functions to various bodies and tribunals it is important that these bodies and tribunals be given leeway to discharge the mandate bestowed upon them by the Constitution so long as they comply with the Constitution and national legislation. The case of Speaker of the National Assembly v James Njenga Karume [1992] eKLR is relied on where the court is said to have held that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or Statute the same ought to be strictly followed.
26. They also rely on the case of Republic v Public Procurement Regulatory Authority & another; Auditor General & another (Interested Party) Judicial Review No. 55 of 2022 where the court is said to have observed that the court's role in judicial review remains strictly supervisory and that it would be an error for the court to overturn the decision simply on the basis that it would have decided the matter differently.

Analysis and Determination

27. Having considered the application, affidavit and evidence in support of the application, the response and written submissions by the parties, one issue falls for determination and that is whether the Ex



parte Applicant has made a case for the grant of the orders sought. There are, however, some ancillary questions that this Court will endeavor to answer as it determines this sole issue.

28. It is expected that the Ex parte Applicant may query why this Court has taken into consideration the response filed by the 2nd and 3rd Respondents. It is not in dispute that the Ex parte Applicant filed before this Court an application dated 12th June 2025 seeking leave to apply for judicial review orders of certiorari and prohibition.
29. Vide this Court's ruling dated 16th June 2025, leave was granted to the Ex parte Applicant to apply for the orders sought in the Chamber Summons and the Court further directed that the leave so granted do operate as a stay. Owing to the strict timelines within which such matters must be determined, this Court directed that the substantive motion be filed and served by close of business on 17th June 2025 and the Respondents were to file and serve their responses within 24 hours. The Court further set 19th June 2025 as the date for directions on the mode of prosecution of the motion.
30. When the matter came up on 19th June 2025, this Court noted that the Respondents had not filed any responses to the substantive motion as earlier directed. The Court then directed the Ex parte Applicant to file an affidavit of service demonstrating service of the motion upon the Respondents and for it file and serve its written submissions by close of business on 20th June 2025.
31. The Ex parte Applicant complied and filed an Affidavit of Service sworn on 20th June 2025 by one Benard Clinton Kimanzi. The Applicant also filed written submissions on the same date.
32. The said Affidavit of Service reads in part as follows:

“That on 19th June, 2025 at around 7:56 AM, I send an email to the 1st Respondent, the Judiciary, via registrarhighcourt@court.go.ke, chiefregistrar@court.go.ke, and to the 2nd Respondent, Public Procurement Regulatory Authority info@ppra.go.ke, attaching the Judicial Review Substantive Motion, the statutory statement, and the supporting affidavit, attaching the Ruling of 16/06/2025 in JR E153/2025, to their official emails.

That service through WhatsApp was done pursuant to the Civil Procedure (Amendment) Rules, 2020 and [Legal Notice No. 22 of 2020](#) (see paragraph 11 of the said Legal Notice).”

33. Having considered the circumstances, the Court finds it necessary to address the question of whether the 2nd and 3rd Respondents' response, filed outside the Court's set timelines, should be considered.
34. It is indeed true that the said Respondents did not comply with the direction requiring them to file and serve their responses within 24 hours of service of the motion.
35. However, the Affidavit of Service filed by the Applicant reveals that although the substantive motion was filed on 17th June 2025, service upon the Respondents was only effected on 19th June 2025 at 7.56 am, the same day the matter came up for directions. In essence, the Applicant did not comply with the requirement of contemporaneous service and failed to serve the application promptly upon filing of the same.
36. Moreover, the Court notes that the Applicant only effected service upon the 1st and 2nd Respondents and did not serve the Public Procurement Regulatory Board, which is a distinct legal entity from the Public Procurement Regulatory Authority. The failure to serve all Respondents in a timely and proper manner as directed by this Court in the orders granting leave and stay contributed, in part, to the delay in their filing of responses.



37. In the circumstances, and in the interest of substantive justice and access to justice as envisioned under Article 48 of the *Constitution*, that this Court is inclined to exercise its discretion in favour of allowing the documents filed by the 2nd and 3rd Respondents, albeit filed out of time. The Court is satisfied that no party will suffer prejudice that cannot be remedied by an appropriate order as to costs. I further observe that it was only upon this Court directing that an affidavit of service be filed into court that it emerged that the applicant only served upon the respondents on 19th June, 2025. This Court cannot allow any party to steal a march on the other parties. Justice demands that each party be accorded an opportunity and sufficiently so, to be heard before they can be condemned.
38. The grounds upon which judicial review orders such as an order of certiorari and prohibition may be granted were clearly articulated in the Ugandan case *Pastoli v Kabale District Local Government Council & Others* [2008] 2 EA 300 where the court while citing with approval the case of *Council of Civil Unions v Minister for the Civil Service* [1985] AC 2 and *Re Application by Bukoba Gymkhana Club* [1963] EA 478 at 479 held that:
- “In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety....illegality is when the decision - making authority commits an error of law in the process of taking or making the Act, the subject of the complaint Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.....irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards procedural impropriety is when there is a failure to act fairly on the part of the decision – making authority in the process of taking a decision. The unfairness may be its none observance of the Rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision.”
39. These grounds of illegality, irrationality and procedural impropriety are ordinarily regarded as the traditional grounds for judicial review. The court will intervene and grant the remedy for judicial review if any of them is proved to exist. However, the list is by no means exhaustive.
40. The *Fair Administrative Action Act*, 4 of 2015 has to a greater degree codified these grounds of judicial review. It states in section 7 as follows:
7. Institution of proceedings.
- (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to-
- (a) a court in accordance with section 8; or
- (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.
- (2) A court or tribunal under subsection (1) may review an administrative action or decision, if-
- (a) the person who made the decision-



- (i) was not authorized to do so by the empowering provision;
 - (ii) acted in excess of jurisdiction or power conferred under any written law;
 - (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - (iv) was biased or may reasonably be suspected of bias; or
 - (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action or decision was procedurally unfair;
 - (d) the action or decision was materially influenced by an error of law;
 - (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
 - (f) the administrator failed to take into account relevant considerations;
 - (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
 - (h) the administrative action or decision was made in bad faith;
 - (i) the administrative action or decision is not rationally connected to-
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator; or
 - (iv) the reasons given for it by the administrator;
 - (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
 - (k) the administrative action or decision is unreasonable;
 - (l) the administrative action or decision is not proportionate to the interests or rights affected;
 - (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
 - (n) the administrative action or decision is unfair; or
 - (o) the administrative action or decision is taken or made in abuse of power. [emphasis added]

41. Courts have on several occasions reaffirmed this position as seen in the Court of Appeal decisions of *Webb Fontaine Group FZ – LLC v Public Procurement and Administrative Review Board & 3 others* [2020] eKLR, *Henry Asava Mudamba v Institute of Certified Public Accountants of Kenya* [2015]



KECA 171 (KLR) and Pharmacy and Poisons Board v George Wang'anga & 5 others [2020] KECA 775 (KLR).

42. From the material placed before the Court, it is evident that the 3rd Respondent acted pursuant to a Request for Debarment submitted by the 1st Respondent and, in compliance with Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020, conducted a preliminary analysis, found a prima facie case, issued a notice of intended debarment and subsequently held a hearing where the exparte Applicant was represented. The process culminated in the impugned decision which set out the factual basis for the finding that the Applicant had submitted falsified documentation in a public tender.
43. In line with the Court of Appeal's guidance in Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others [2012] eKLR, a court must exercise deference to decisions of specialized statutory bodies, particularly where such bodies have acted within their jurisdiction and followed due process. The 3rd Respondent, a quasi-judicial body established under the PPADA, is specifically tasked with determining matters of debarment, and the Court should not readily substitute its own opinion for that of the Board merely because the Applicant disagrees with the outcome.
44. In the instant case, however, this court has established that the 1st respondent who was the applicant for the debarment of the exparte applicant did not participate in the proceedings before the Debarment Committee. After filing its application, it left it for the Debarment Committee and the exparte applicant to battle it out. The question is whether the decision by the Debarment Committee can stand. To answer this question, I will give some brief factual background, though repetitive but necessary.
45. The 1st respondent herein, the judiciary, filed a complaint before the Debarment Committee seeking the debarment of the exparte Applicant, claiming that the exparte applicant had submitted false information concerning its qualifications to participate in the tendering process for the subject tender namely: No. JUD/OT/031/2023-2024. The complaint was duly served, and the Applicant filed a response opposing the application.
46. The Debarment Committee, upon determining that a prima facie case had been established to warrant a hearing, issued directions requiring both parties to file submissions. The exparte Applicant complied and filed its submissions; however, the 1st respondent herein took no further steps. No submissions were filed by the complainant, and there was no appearance at any subsequent stage.
47. Notwithstanding the non-participation of the complainant, the Debarment Committee proceeded to consider the matter and rendered a decision in favour of the complainant, debarring the exparte Applicant herein for three years.
48. It is this decision that is now under challenge before this Court.
49. The big question that I must answer is:

Whether the Debarment Committee acted within its jurisdiction and in accordance with the law, in determining the merits of the application for debarment yet the applicant did not prosecute the application/complaint; and therefore, what is the effect of such determination on the exparte applicant's right to fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act.



50. Article 47(1) of the Constitution provides that:
- “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”
51. Section 4(3) of the Fair Administrative Action Act, 2015 which Act implements Article 47 further requires that where an administrative action is likely to adversely affect the rights of any person, the person must be accorded an opportunity to be heard and to present their case.
52. The judicial review jurisdiction of this Court is not concerned with the merits of a decision, but with the legality and propriety of the process leading to that decision. See: *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR.
53. Thus, a decision by a judicial or quasi-judicial body may be removed into this Court and be quashed for either being illegal, for being laced with procedural impropriety where there is a failure to follow the rules of natural justice, or for irrationality, as articulated in the *Wednesbury* principle (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).
54. In the instant matter, and from the decision of the Debarment Committee as impugned herein, it is clear that the complainant failed to prosecute the application for debarment. In essence, the applicant for debarment abandoned its application after filing the same against the *ex parte* applicant herein. No submissions were filed, no attendance recorded and no argument advanced beyond the initial statement of complaint.
55. The Debarment Committee, despite this abandonment, proceeded to render a decision adverse to the *ex parte* Applicant. This raises serious procedural concerns as discussed below.
56. The principle that pleadings are not evidence, and that a court or tribunal cannot convert pleadings into evidence or determine a matter solely based on them is a fundamental rule of procedural and substantive justice. It promotes fair adjudication, respect for the adversarial system and the separation between assertion and proof.
57. Pleadings are formal written statements by the parties setting out their respective cases. These include complaints, statements of claim, defences, applications by way of Notices of Motion, Chamber Summons, Originating Motion or Originating Summons and petitions. The primary function of pleadings is to define the issues in dispute and provide notice of the case a party intends to present.
58. Order 2 Rule 6(1), Civil Procedure Rules provides that:
- “Every allegation of fact in a complaint, if not denied specifically... shall be taken to be admitted.”
59. This rule governs admission by default, not the evidentiary status of pleadings. The burden of proving facts alleged in pleadings still rests with the party making the allegations and such facts must be proved through admissible evidence. This is the principle codified in the Evidence Act Cap 80 Laws of Kenya. Section 107(1) of the Evidence Act, Cap 80 provides:
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”



60. Section 108 further provides:
- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
61. The combined effect of these provisions is that the burden of proof lies with the party who makes an allegation or claim, not on the respondent to disprove it, unless there is an admission of the facts or the law provides otherwise.
62. In the case of *Isaiah Ondiba Bitange v & 3 others v Institute of Engineers of Kenya another* [2017] eKLR, the court stated that:
- “The starting point is that whoever desires any court to give judgement as to any legal right or liability, dependent on the existence of fact which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
63. In other words, the burden of proof lies on the party who would fail if no evidence at all were led on either side. It is only after the party on whom the burden lies has discharged it that the burden shifts, or unless the facts presented or pleaded are expressly admitted by the adverse party. That legal burden is always static and remains on the claimant throughout the trial. The standard of proof in civil or quasi civil cases as the one before me is on a balance of probabilities.
64. It follows therefore that tribunals or courts cannot impose on respondents a duty to prove their innocence where the claimant has not first discharged the primary burden of proof.
65. In the instant case, it is clear that the applicant seeking the debarment of the ex parte applicant did not discharge any burden of proof. It only filed the complaint and left it to the ex parte applicant/respondent and the Debarment Committee to battle it out and establish whether the claim was well founded in law or in fact or not.
66. A quasi-judicial tribunal is an impartial arbiter between disputing parties. It is not a party to the dispute. In this case, by allowing the application for debarment in the absence of any prosecutorial input from the complainant, the Debarment Committee effectively stepped into the shoes of the complainant and prosecuted the case on their behalf. In the humble view of this Court, the Debarment Committee improperly assumed a Prosecutorial Role of being the complainant, the prosecutor and the adjudicator. In other words, the Debarment Committee became a judge in its own Cause.
67. Tribunals, like courts, must operate within the bounds of the law and the rules of natural justice. While they are not bound by strict rules of evidence, the foundational principles of the *Evidence Act* and fair trial must still guide their decisions. For example, a tribunal cannot assume the burden of proving facts in dispute; require a respondent to defend themselves against unproven allegations; and or shift the evidentiary burden where there is no prima facie case made.
68. Thus, where a party fails to prosecute a complaint, the tribunal cannot unilaterally take over the burden of proof and determine the complaint on merit.
69. It is also a cardinal principle of adjudicative justice that a party who initiates proceedings must actively prosecute their case. It is not open to a party to file a complaint or application and thereafter withdraw from participation, leaving the burden of prosecution to the adjudicator or to the adverse party to



- battle it out. In other words, a party cannot adopt a "wait-and-see" approach and expect a decision on their complaint.
70. The administration of justice is a shared responsibility between the courts or tribunals and litigants. A party who initiates proceedings bears the obligation to actively and diligently prosecute the claim or complaint. It is contrary to the principles of justice and judicial economy for a party to file a complaint, only to abandon or neglect it, expecting the court or tribunal to carry the burden of progressing the matter on their behalf.
 71. The legal maxim "vigilantibus non dormientibus jura subveniunt", the law aids the vigilant and not those who sleep on their rights, encapsulates this doctrine. A party must not only allege but must prosecute their claim with diligence. This also underscores the court's expectation that litigants must prosecute matters promptly and without unnecessary delay. Furthermore, litigation is a matter of the parties and the court or tribunal expects each party to take steps to progress their cause. A party who sits back after filing a claim does so at their own peril.
 72. In the context of quasi-judicial proceedings, the applicant bears the primary responsibility to substantiate and argue their case. The tribunal cannot become both adjudicator and advocate. The complainant in this case adopted a "wait-and-see" attitude, by filing the application for debarment and then disengaging entirely. This left the Debarment Committee in the untenable position of making a decision in the absence of prosecutorial input, contrary to the principles of procedural fairness.
 73. Such conduct on the part of the Debarment Committee undermines the integrity of adjudicative processes and offends the principles of natural justice, particularly the rule that parties must be afforded an equal and fair opportunity to present their cases.
 74. More so, although the *ex parte* Applicant submitted to the proceedings and filed responses and submissions, those submissions were not challenged. The decision by the Debarment Committee failed to consider the uncontroverted material or justify why the complaint seeking debarment of the *ex parte* applicant, abandoned as it was, could succeed.
 75. The failure to afford the *ex parte* Applicant a decision based on properly tested evidence and adversarial balance amounts to procedural unfairness and a violation of Article 47 of the *Constitution*. It is worth repeating that a claimant who fails to prosecute their case risks dismissal for want of prosecution as the court or tribunal cannot be expected to marshal evidence, compel action or revive abandoned claims in the absence of initiative by the party complaining.
 76. It is also worth noting that in these judicial review proceedings, the first respondent who was the complainant/ applicant for debarment of the *ex parte* applicant herein, has not participated despite service of the application for judicial review being served upon it. In other words, the 1st respondent has equally taken no steps to defend the impugned decision.
 77. While the Debarment Committee may still defend its record, the total absence of a contradicting position, especially where the decision was already procedurally flawed, only fortifies the *ex parte* Applicant's case before this Court. as earlier stated, Justice is for the active and not for the indolent, and the law places the primary burden of prosecuting a claim on the party who brings it. Filing a case is not an end in itself. Where a claimant fails to take proactive steps to advance their case, they forfeit the right to expect judicial intervention and the court may properly dismiss such a claim in the interests of justice, efficiency and fairness to the opposing party.
 78. In view of the foregoing, this Court finds that the decision of the Debarment Committee made on 29th May 2025, debaring the *ex parte* applicant from participating in public procurement process, was



made in breach of the rules of natural justice, violated Article 47 of the Constitution and amounted to procedural impropriety and unreasonableness.

79. Accordingly, this Court makes the following orders:

- a. An order of certiorari is hereby issued, removing into this Court for purposes of quashing and I hereby quash the decision of the Debarment Committee rendered on 29th May, 2025 in Debarment Application number 2 of 2025, purporting to debar the exparte Applicant for three years for allegedly giving false information concerning its qualifications to participate in procurement proceedings regarding bid No. JUD/OT/031/2023-2024.
- b. The said decision is declared null and void ab initio.
- c. As the impugned decision has been quashed, there remains nothing capable of being implemented hence the prayer for prohibition is superfluous and is declined.
- d. There shall be no order as to costs, noting that the 1st respondent did not participate in these proceedings and had abandoned the original complaint before the Debarment Committee.
- e. This file is closed.

**DATED, SIGNED AND DELIVERED, VIRTUALLY VIA MICROSOFT TEAMS AT NAIROBI
THIS 23RD DAY OF JULY 2025**

R.E. ABURILI

JUDGE

