

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**APPLICATION NO. E023 OF 2025**

**BETWEEN**

**REPUBLIC..... APPLICANT**

**AND**

**PUBLIC PROCUREMENT**

**REGULATORY BOARD ..... RESPONDENT**

**AND**

**SERAPH ENGINEERING LIMITED ..... EXPARTE APPLICANT**

**AND**

**KENYA PIPELINE COMPANY .....INTERESTED  
PARTY**

**JUDGMENT**

1. The Application before this Court is Notice of Motion dated 10<sup>th</sup> February, 2025. The Application is brought Pursuant to Sections 1A, 3A, of the Civil Procedure Act, Order 53 Rule 3of the Civil Procedure Rules, 2010; Section 41 of the Public Procurement and Asset Disposal Act (Cap. 412C); Section 11 of the Fair Administrative Actions Act, 2015 and all other enabling provisions of the law. It seeks the following orders;

- (a) An order of certiorari to remove into this Honourable Court and quash the entire decision of the Respondent herein in Debarment Application No. 7 of 2024, dated 20th January 2025 and which was delivered on 21st January, 2025.***
  - (b) An order of Prohibition to prohibit and/or restrain the Respondent and/or its agents and any other persons from implementing the decision delivered in Debarment Application No. 7 of 2024, dated 20th January, 2025 which was delivered on 21st January, 2025.***
  - (c) A declaration that the Respondent's Decision dated 20th January, 2025 was unlawful, irrational, unfair.***
  - (d) Such other further order and/ or incidental orders or directions as this Honorable Court shall deem just and expedient;***
  - (e) Costs of this Application in any event be awarded to the Exparte Applicant.***
- 2.** The Application is supported by a Verifying Affidavit by Fredrick Okello Orawo sworn on 3<sup>rd</sup> January, 2024 and statutory statement on even date.
  - 3.** It is the Applicant's case that on 8th October, 2024, the Interested Party, Kenya Pipeline Company Limited (KPC), instituted a Request

for Debarment against the Applicant, Seraph Engineering Limited. Upon consideration of the said request in accordance with Regulation 22(5)(a) of the Public Procurement and Asset Disposal Regulations, 2020, the Public Procurement Regulatory Board's Debarment Committee (hereinafter "the Committee") determined that a prima facie case for debarment had been established and accordingly issued a Notice of Intended Debarment dated 6<sup>th</sup> November, 2024. In response thereto, the Applicant filed a Replying Affidavit sworn on 21<sup>st</sup> November, 2024, by its Managing Director and sole beneficial owner, Mr. Fredrick Okello Orawo.

4. Subsequently, by a Hearing Notice dated 3<sup>rd</sup> December, 2024, the Respondent scheduled the hearing for 16<sup>th</sup> December, 2024. When the matter came up for hearing, the Applicant raised a Preliminary Objection challenging the Committee's jurisdiction on the grounds that there existed a subsisting injunction order over the subject matter and that the issues raised in the debarment request were sub judice, being the subject of ongoing proceedings in **HCCOMM/027/2023; Patrick Mwetii Kailikia v. Fredrick Okello Orawo & Seraph Engineering Limited & Kenya Pipeline Company Limited**, which concerned the same contract and parties. The Applicant contended that the High Court, in the said matter (formerly E174 of 2022), had issued injunctive orders on 15<sup>th</sup> November, 2022 restraining performance of the contract in dispute.
5. On the said hearing date, the Interested Party, Kenya Pipeline Company, did not attend. The Applicant applied for dismissal of the debarment request for want of prosecution, which Application the

Committee declined. The Committee further directed that the Preliminary Objection be heard together with the main Application on a date to be communicated. The hearing was subsequently rescheduled to 13<sup>th</sup> January, 2025, but commenced later than the scheduled time. At 3:51 p.m., the Applicant's counsel wrote to the Committee requesting dismissal of the debarment proceedings for delay and want of prosecution. Shortly thereafter, at around 3:55 p.m., the hearing proceeded, and both parties were heard. The Committee reserved its decision and later, on 21<sup>st</sup> January, 2025, communicated to the parties its determination dated 20<sup>th</sup> January, 2025, de-barring the Applicant from participating in public procurement for a period of three years.

6. The Applicant faults the said decision as being tainted with illegality, irrationality and procedural impropriety. It is the Applicant's contention that the Committee conducted the hearing and rendered its decision outside the statutory timelines prescribed under Regulation 22(5)(e) of the Public Procurement and Asset Disposal Regulations, 2020, which requires a hearing to be concluded within twenty-one (21) days. The Applicant asserts that both the hearing dates of 16<sup>th</sup> December, 2024 and 13<sup>th</sup> January, 2025 fell outside the permissible period, rendering the process and decision unlawful. Further, the Applicant contends that the Committee exceeded its jurisdiction by entertaining and determining issues relating to performance of a contract that is the subject of an active High Court dispute, thereby contravening Section 6 of the Civil Procedure Act and the doctrine of sub judice.

7. The Applicant argues that the Committee's decision was made in disregard of subsisting injunctive orders issued by the High Court in **HCCOMM/027/2023 (formerly E174 of 2022), Patrick Mweti Kailikia v. Kenya Pipeline Company Limited, Fredrick Okello Orawo, and Seraph Engineering Limited**, which restrained performance of the contract in question. The Applicant maintains that by proceeding with the debarment request, the Committee effectively sanctioned disobedience of the High Court's orders and rewarded the Interested Party's own illegality. It is further contended that the Committee's decision punishes the Applicant for obeying lawful court orders, an action that is contrary to the principles of legality and good governance as emphasized in **Republic v Public Procurement Administrative Review Board & 2 Others Exparte Pesa Print Limited [2018] eKLR and Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others [2012] eKLR**.
8. The Applicant further avers that the Committee's decision relied on extraneous considerations, including issues between the Applicant and its subcontractor, Aveva Software Middle East FZ LLC, which were irrelevant to the debarment proceedings. It is also alleged that the Committee relied on erroneous submissions that the project stood at 40% completion, contrary to KPC's own reports to the National Treasury showing progress at 60%. The Applicant thus asserts that the Committee's reliance on such inaccurate and irrelevant material rendered its decision irrational and unreasonable in the Wednesbury sense.

9. In the circumstances, the Applicant prays that this Honourable Court finds that the decision of the Respondent, communicated on 21st January, 2025, was unlawful, irrational, and procedurally improper. The Applicant submits that unless the impugned decision is stayed or quashed, the Respondent may proceed to implement it by publishing the Applicant as a debarred entity, thereby inflicting irreparable harm to its business and reputation and rendering it incapable of participating in public procurement for a period of three years. The Applicant therefore urges this Court to intervene in the interests of justice, fairness, and adherence to the rule of law.
10. The Application was canvassed by way of written submissions dated 3<sup>rd</sup> June, 2025.
11. It is submitted that the impugned decision of the Public Procurement Regulatory Board's Debarment Committee (the Committee) is vitiated by illegality, irrationality, and procedural impropriety, thus falling within the established principles in **Pastoli v Kabale District Local Government Council & Others (2008) 2 EA 300**, where the Court held that judicial review remedies lie where a decision is tainted by any of these three grounds.
12. The Applicant further asserts that although a hearing had been fixed for 16<sup>th</sup> December, 2024, none took place on that date due to the non-attendance of the Interested Party. The Committee declined to dismiss the matter for want of prosecution and instead adjourned it to 13th January, 2025, when both parties were heard. It is contended that the proceedings of 13th January, 2025, were a nullity, the

Committee having acted without jurisdiction and in contravention of the mandatory statutory timelines. The Applicant relies on the Court of Appeal's pronouncements in **Aprim Consultants v Parliamentary Service Commission & another (Civil Appeal E039 of 2021) [2021] KECA 1090 (KLR)**, as reaffirmed in **Kenya Ports Authority v Public Procurement Administrative Review Board & 2 others (Civil Appeal 347 of 2017) [2024] KECA 1099 (KLR)**, to argue that statutory timelines are binding and jurisdictional. The Applicant submits that once the Committee failed to conduct the hearing within the prescribed period, its jurisdiction ceased, and any decision rendered thereafter was void.

13. The Applicant underscores that the Public Procurement and Asset Disposal Act (PPADA) and the accompanying Regulations are time-sensitive instruments that impose strict procedural compliance, and deviation therefrom renders proceedings illegal. Reliance is placed on **Chelashaw v Attorney General & Another [2005] 1 EA 33**, as cited in **Mwawasi v Shako (Civil Application E053 of 2023) [2024] KECA 632 (KLR)**, where the Court of Appeal emphasized that adherence to procedural rules is indispensable to the orderly administration of justice.
14. The Applicant also cites **Onjula Enterprises Ltd v Sumaria [1986] KLR 651** and **Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others [2013] eKLR**, to stress that procedural timelines must be strictly observed and cannot be disregarded under the guise of Article 159 of the Constitution.

15. Further, the Applicant avers that the Committee exceeded its jurisdiction by adjudicating on issues concerning the performance of the contract that were sub judice before the High Court in **HCCOMM/027/2023 (formerly E174 of 2022), Patrick Mweti Kailikia v Kenya Pipeline Company Limited, Fredrick Okello Orawo, and Seraph Engineering Limited**. In that matter, the High Court had issued injunctive orders on 15<sup>th</sup> November, 2022, restraining the parties from performing the subject contract. The Applicant maintains that these orders were in force and had not been vacated, yet the Committee ignored them and proceeded to determine matters directly related to the restrained contract. The Applicant contends that this amounted to a blatant disregard of lawful court orders and constituted an illegal and contemptuous exercise of power, punishing the Applicant for complying with judicial directives.
16. The Applicant invokes Section 6 of the Civil Procedure Act, which bars concurrent proceedings over the same subject matter, and cites the Supreme Court's reasoning in **Kenya National Commission on Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR**, where the Court held that the sub judice rule prevents parallel proceedings on identical issues between the same parties to avoid conflicting decisions and abuse of court process. It is thus submitted that the Committee's proceedings were sub judice, and it was incumbent upon the Committee to stay its proceedings pending the final determination of the High Court matter.

17. Additionally, the Applicant contends that the Committee's decision aided and abetted illegality on the part of KPC, whose request for debarment was itself unlawful. The Interested Party terminated the subject contract on 4<sup>th</sup> June, 2024, without first seeking legal advice from the Office of the Attorney General, as required under Regulation 141(5) of the Public Procurement and Asset Disposal Regulations, 2020. The Applicant points out that KPC only sought the Attorney General's advisory after the termination—via a letter dated 12th June, 2024, received on 14th June, 2024—thereby acting in breach of the Regulations. The advisory subsequently issued on 15th July, 2024, recommending debarment, was therefore tainted by illegality, having been procured through an unlawful process.
18. In view of the foregoing, the Applicant asserts that the entire debarment process and the ensuing decision dated 20<sup>th</sup> January, 2025, were made without jurisdiction, in contravention of express statutory timelines, in disobedience of subsisting court orders, and in violation of the principles of natural justice and procedural fairness. It is thus the Applicant's prayer that this Honourable Court intervenes and issues appropriate judicial review orders quashing the impugned decision, as its continued enforcement would result in grave prejudice, reputational harm, and commercial loss to the Applicant.

### **Respondent's Case;**

19. The Respondents oppose the Application through the Replying Affidavit of Raphael Muia Ngalatu, the Acting Secretary of the

Debarment Committee of the Public Procurement Regulatory Board sworn on 17<sup>th</sup> April, 2025.

- 20.** According to the Respondent, it acted within its statutory mandate under section 41 of the Public Procurement and Asset Disposal Act, 2015 and Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020 in de-barring the Applicant, Seraph Engineering Limited, for a period of three years.
- 21.** The Respondent avers that on 8<sup>th</sup> October, 2024, it received a Request for Debarment from the Interested Party, Kenya Pipeline Company Limited (KPC), arising from a breach of contract for the design, supply, installation, configuration, testing, and commissioning of a SCADA system upgrade, contract number KPC/PU/OT-038/I&C/NBI/21-22, valued at USD 3,976,033, of which USD 1,590,413.20 had been paid to the Applicant. Upon analysis of the Request pursuant to Regulation 22(5)(a), the Committee found that a prima facie case for debarment existed and accordingly issued a Notice of Intended Debarment dated 6<sup>th</sup> November, 2024. The Applicant responded by filing a Replying Affidavit on 21<sup>st</sup> November, 2024, and the matter was subsequently fixed for hearing on 16<sup>th</sup> December, 2024, later rescheduled to 13<sup>th</sup> January, 2025, during which the Applicant fully participated without objection. The Respondent maintains that by its conduct, the Applicant acquiesced to the proceedings and cannot now claim procedural impropriety.

- 22.** The Respondent further contends that the debarment decision was based on clear evidence of the Applicant's failure to perform its contractual obligations, including non-delivery of critical hardware components, misrepresentation to the Interested Party regarding factory acceptance testing in Abu Dhabi, and inability to meet extended deadlines despite several time extensions. It argues that the Applicant's reliance on injunctive orders issued in **HCCOMM/027/2023: Patrick Mwetii Kailikia v Fredrick Okello Orawo & Seraph Engineering Limited & Kenya Pipeline Company Limited** was misplaced, as both parties continued to transact after the issuance of the said orders, thereby estopping the Applicant from relying on them. The Respondent asserts that it was not a party to the said suit and that no order existed staying its proceedings. It maintains that the doctrine of acquiescence applied, given that the Applicant did not act to enforce the alleged court orders or to stay the debarment proceedings.
- 23.** The Respondent filed written submissions dated 18<sup>th</sup> June, 2025.
- 24.** It is submitted that its actions were lawful, rational, and procedurally sound, having been conducted within the jurisdiction conferred upon it by statute. It urges the Court to refrain from interfering with its decision, arguing that judicial review is concerned with the process, not the merits of the decision. Reliance is placed in **Republic v Public Procurement Administrative Review Board & Another Ex-parte Express DDB Kenya Limited [2018] eKLR**, where it was held that judicial review is supervisory and not appellate in nature, and that courts should not substitute their judgment for

that of specialized tribunals acting within their lawful mandate. It also relies on **Kenya Pipeline Company Limited v Hyosung Ebara Company Limited & 2 Others [2012] eKLR**, where the Court of Appeal emphasized that specialized statutory bodies, being better equipped to handle procurement disputes, should not be lightly interfered with, and on Speaker of the **National Assembly v James Njenga Karume [1992] eKLR**, which underscored that where a statute provides a specific procedure for redress, it must be strictly followed.

25. The Respondent further invokes **Republic v Public Procurement Regulatory Authority & Another; Auditor General & Another (Interested Party) [2022]**, in which Justice Ndung'u reaffirmed that judicial review is limited to examining whether power was lawfully exercised, not whether the court would have reached a different conclusion. Accordingly, the Respondent contends that its decision was reached within statutory limits, after full participation by the parties, and with due regard to fairness and public interest. It therefore prays that the Applicant's Notice of Motion be dismissed with costs for lack of merit.

#### **The Interested Party's Case;**

26. The Interested Party oppose the Application through the Replying Affidavit of Elizabeth Rop, the Chief Legal Officer (Property and Contracts) of the Kenya Pipeline Company Limited (KPC) sworn on 9<sup>th</sup> May, 2025.

- 27.** According to the Interested party, the Applicant’s Application is frivolous, vexatious, and devoid of merit, as the Respondent acted lawfully and within its statutory mandate under section 41 of the Public Procurement and Asset Disposal Act, 2015 (the Act) and the Public Procurement and Asset Disposal Regulations, 2020 (the Regulations).
- 28.** The Interested Party avers that the procurement in issue concerned the design, supply, installation, configuration, testing, and commissioning of a SCADA System Upgrade under Tender No. KPC/PU/OT-038/I&C/NBI/21-22, a vital national infrastructure project intended to ensure real-time monitoring and safe operation of petroleum pipelines across Kenya and the wider East African region. Following evaluation, the Applicant’s bid price was found to exceed the approved budget, necessitating a lawful variation to USD 3,976,033.00, which the Applicant accepted before entering into a contract on 29th June 2022, later varied on 24th August 2022 to designate it as the main contractor, with Aveva Software Middle East FZ LLC as subcontractor. The Applicant was contractually obligated to supply key hardware components, including servers, routers, and switches, which were indispensable for project execution.
- 29.** According to the Interested Party, the Applicant’s performance was consistently deficient, marked by repeated delays, non-delivery of essential hardware, and misrepresentation of progress despite receiving substantial milestone payments. The progress review meetings of 11th April and 12th September 2023 confirmed that the Applicant had failed to submit the required ICT hardware stacking

diagrams and work program. The purported invitation to Factory Acceptance Testing (FAT) in Abu Dhabi in October 2023 was misleading, as no hardware was available for inspection. Consequently, the Contract Implementation Team recommended termination, and after following due process, the Interested Party issued a Notice of Intention to Terminate on 16th May 2024 and formally terminated the contract on 4th June 2024 under Clause 41.2.2 for supplier's default, pursuant to Regulation 141 of the Regulations. Thereafter, the Interested Party sought legal advice from the Attorney General, who advised that debarment proceedings be commenced. Acting on this advice, KPC filed a Request for Debarment on 8th October 2024 under Debarment Application No. 7 of 2024, citing poor performance, misrepresentation, and breach of contract.

30. The Interested Party maintains that the Applicant's reliance on the injunctive orders issued in **HCCOMM No. 027 of 2023: Patrick Mweti Kailikia v Fredrick Okello, Seraph Engineering Ltd, Kenya Pipeline Company Limited & Aveva Software Middle East FZ LLC** is misplaced. It contends that the said case pertained to an internal shareholding dispute among the Applicant's directors and bore no relation to the Applicant's contractual performance vis-à-vis KPC. Moreover, KPC was lawfully withdrawn from those proceedings by a Notice of Withdrawal dated 3rd October 2024. In any event, under Order 40 Rule 6 of the Civil Procedure Rules, 2010, the interim injunction granted on 11<sup>th</sup> November 2022 lapsed after twelve months, on 11<sup>th</sup> November 2023, as it was never extended. The Interested Party further argues that the Applicant's subsequent

conduct—such as requesting extensions of time, seeking issuance of a letter of credit, and attending project meetings—constituted clear acknowledgment of its contractual obligations, thereby estopping it from relying on the lapsed injunction to justify non-performance.

31. The Interested party filed written submissions dated 19<sup>th</sup> June, 2025.
32. It is the Interested Party's position that the Respondent's decision dated 20<sup>th</sup> January 2025 was lawful, rational, and procedurally fair, being firmly anchored in section 41(1)(c) of the Act, which empowers the Public Procurement Regulatory Board to debar a contractor who has breached a public procurement contract through poor performance. The Interested Party asserts that the Applicant was represented by counsel, participated fully in the debarment proceedings, raised no objection to jurisdiction or timelines, and is thus estopped from raising those issues at this stage. The Respondent, it argues, confined itself strictly to determining non-performance under the contract and did not trespass into matters of a commercial nature. In support of its position, the Interested Party relies on **Republic v Public Procurement Administrative Review Board & Another Exparte Express DDB Kenya Limited [2018] eKLR** and **Speaker of the National Assembly v James Njenga Karume [1992] eKLR**, for the principle that statutory bodies must be permitted to discharge their mandates without unwarranted judicial interference where due process has been followed.

**33.** In conclusion, the Interested Party avers that the Applicant’s failure to deliver critical hardware for the SCADA upgrade jeopardized national infrastructure, forcing reliance on an obsolete monitoring system and thereby exposing the petroleum pipeline to grave operational, environmental, and safety risks. It maintains that the Respondent’s decision was made in accordance with the law, that the Applicant’s Application discloses no illegality, irrationality, or procedural impropriety, and that the judicial review proceedings amount to an abuse of court process. The Interested Party accordingly urges the Court to dismiss the Application with costs.

**Analysis and Determination;**

**34.** In the English case of Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410. In that case, Lord Diplock set out the three heads which he described as “the grounds upon which administrative action is subject to control by judicial review”. These grounds are illegality, irrationality and procedural impropriety. While discussing susceptibility of administrative actions to judicial review and, in the process defining these grounds, the learned judge stated as follows:

*“My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can*

*conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality,” the second “irrationality” and the third “procedural impropriety.” That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of “proportionality” which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.*

*By “illegality” as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*

*By “irrationality” I mean what can by now be succinctly referred to as “Wednesbury unreasonableness” (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by*

*their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.*

*I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all."*

- 35.** In this application, this court is only concerned with the question whether the 1<sup>st</sup> Respondent's decision dated 15 September 2021 is tainted by illegality and procedural impropriety.

- 36.** In considering whether the Applicant deserves the exercise of this Honourable Court’s discretion in its favour, the questions that this court must ask is whether, in arriving at the impugned decision the 1<sup>st</sup> Respondent understood correctly the law that regulates its decision-making power and whether it gave effect to it. If it did not, the decision would be tainted by illegality.
- 37.** Secondly, the court shall consider whether the 1<sup>st</sup> Respondent observed rules of natural justice or acted with procedural fairness towards the Applicant in the proceedings that culminated in the impugned decision.
- 38.** Regulation 22 of the PPAD Regulations prescribes, among other things, how a request for debarment proceedings should be conducted .It reads as follows:

(1) A request for debarment may be initiated—

- a) by the accounting officer of a procuring entity, or any other person with knowledge of facts that may support one or more grounds for debarment;
- b) by the Director-General on his or her own motion based on findings from investigations, inspections, or reviews;  
or
- c) on the recommendation of a law enforcement agency with an investigative mandate.

(2) Where the request for debarment is initiated through the recommendation of a law enforcement agency with an investigative mandate, or by an investigator duly appointed by the Authority on its own motion, the Board shall notify the person of the intended debarment and provide details of the findings of the investigator or law enforcement agency.

(3) The request for debarment shall be made in the format provided in the First Schedule.

(4) The Board shall constitute a debarment committee to hear and determine debarment requests that have been submitted to the Authority.

(5) For purposes of section 41(5) of the Act and this regulation, debarment procedures shall be as follows—

- a) 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;
- b) 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;
- c) the notice of intended debarment issued under paragraph (b) shall contain the grounds of debarment, a brief

statement of the facts in support of debarment and the consequences that may arise from the debarment;

- d) the Respondent shall within fourteen days of receipt of a notice of intended debarment, file a written response with the Board;
- e) where the facts of the intended debarment are contested, the debarment committee shall within twenty-one days of receipt of the response in paragraph (d) hold a debarment hearing to determine the disputed facts;
- f) a seven (7) days' notice shall be given to the parties to appear before the debarment committee;
- g) the debarment committee shall prepare a report of its findings and recommendations, and make a determination on the request for debarment within thirty days from the date of hearing;

- 39.** In the instant suit, on 8th October, 2024, the Interested Party, Kenya Pipeline Company Limited (KPC), instituted a Request for Debarment against the Applicant, Seraph Engineering Limited.
- 40.** After that the matter was heard with all parties getting an opportunity to present their case in line with Regulation 22 and Article 50 of The Constitution which provide the legal and Constitutional framework within which the right to fair hearing is anchored.

41. The decision of the Respondent herein in Debarment Application No. 7 of 2024, dated 20<sup>th</sup> January 2025 was delivered on 21st January, 2025.
42. This means the determination of the debarment took over 90 days thereby offending Regulation 22 (g) of the PPAD Regulations which stipulates in very clear terms that the debarment committee shall prepare a report of its findings and recommendations, and make a determination on the request for debarment within thirty days from the date of hearing.
43. The debarment decision was issued in contravention of Regulation 22 (g).The decision is in the circumstances illegal and of no legally binding effect.
44. The court is satisfied that on this account the Applicant has proven that its case falls within the grounds allowing the grant of the order of certiorari as enunciated in the case of Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410 (Supra).
45. The court is further guided by the principles that have been settled by Court of Appeal in **Aprim Consultants v Parliamentary Service Commission & another (Civil Appeal E039 of 2021) [2021] KECA 1090 (KLR)**, as reaffirmed in **Kenya Ports Authority v Public Procurement Administrative Review Board & 2 others (Civil Appeal 347 of 2017) [2024] KECA 1099 (KLR)**, to argue that statutory timelines are binding and jurisdictional.

46. Once the Committee failed to conduct the hearing within the prescribed period, its jurisdiction ceased, and any decision rendered thereafter was void. It is so in this case.
47. The Applicant also raised an issue that the Applicant avers that the Committee exceeded its jurisdiction by adjudicating on issues concerning the performance of the contract that were sub judice before the High Court in **HCCOMM/027/2023 (formerly E174 of 2022), Patrick Mwetii Kailikia v Kenya Pipeline Company Limited, Fredrick Okello Orawo, and Seraph Engineering Limited**. In that matter, the High Court had issued injunctive orders on 15<sup>th</sup> November, 2022, restraining the parties from performing the subject contract. The Applicant maintains that these orders were in force and had not been vacated.
48. According to the Respondent, it argues that the Applicant's reliance on injunctive orders issued in **HCCOMM/027/2023: Patrick Mwetii Kailikia v Fredrick Okello Orawo & Seraph Engineering Limited & Kenya Pipeline Company Limited** was misplaced, as both parties continued to transact after the issuance of the said orders, thereby estopping the Applicant from relying on them. The Respondent argued that it was not a party to the said suit and that no order existed staying its proceedings. It maintained that the doctrine of acquiescence applied, given that the Applicant did not act to enforce the alleged court orders or to stay the debarment proceedings.

- 49.** On its part, The Interested Party maintains that the Applicant’s reliance on the injunctive orders issued in **HCCOMM No. 027 of 2023: Patrick Mwetikailikia v Fredrick Okello, Seraph Engineering Ltd, Kenya Pipeline Company Limited & Aveva Software Middle East FZ LLC** is misplaced. It contends that the said case pertained to an internal shareholding dispute among the Applicant’s directors and bore no relation to the Applicant’s contractual performance vis-à-vis KPC. Moreover, KPC was lawfully withdrawn from those proceedings by a Notice of Withdrawal dated 3rd October 2024. It argued that in any event, under Order 40 Rule 6 of the Civil Procedure Rules, 2010, the interim injunction granted on 11th November 2022 lapsed after twelve months, on 11th November 2023, as it was never extended.
- 50.** The Interested Party further argued that the Applicant’s subsequent conduct—such as requesting extensions of time, seeking issuance of a letter of credit, and attending project meetings—constituted clear acknowledgment of its contractual obligations, thereby estopping it from relying on the lapsed injunction to justify non-performance.
- 51.** Where a court order is in force, a party cannot argue that the Applicant did not bring the issue up during the debarment hearing.
- 52.** The Respondent and the interested party were fully aware of the existence of the orders. A debarment decision that is based on such a backdrop amounts to an illegality and I so hold.
- 53.** The Applicant also seeks that an order be issued to Prohibition do issue to prohibit and/or restrain the Respondent and/or its agents

and any other persons from implementing the decision delivered in Debarment Application No. 7 of 2024, dated 20<sup>th</sup> January, 2025 which was delivered on 21<sup>st</sup> January, 2025 is hereby issued.

54. In order to determine this issue, I am guided by the case of **Republic v Principal Kadhi, Mombasa Ex-parties Alibhai Adamali Dar & 2 others; Murtaza Turabali Patel (Interested Party) [20221 eKLR**, where the Court rendered itself thus:

*“The Order of "Prohibition" issues where there are assumptions of unlawful jurisdiction or excess of jurisdiction. It's an order from the High Court directed to an inferior tribunal or body as in this case the Kadhi's Court. Its functions is to prohibit and/or forbids encroachment into jurisdiction and further to prevent the implementation of orders issued when there is lack of jurisdiction.*

*"Although prohibition was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by prohibition. Certiorari and prohibition frequently go hand in hand, as where certiorari is sought to quash the decision and prohibition to restrain its execution. But either remedy may be sought by itself.”*

55. The court is satisfied that the Applicant has made a case for the grant of the order.

**Costs;**

Costs follow the event and the Applicant shall be entitled to costs.

**Determination;**

56. The Application has merit.

**Order;**

- a. *An order of certiorari to remove into this Honourable Court and quash the entire decision of the Respondent herein in Debarment Application No. 7 of 2024, dated 20th January 2025 and which was delivered on 21st January, 2025 is hereby issued.*
- b. *An order of Prohibition to prohibit and/or restrain the Respondent and/or its agents and any other persons from implementing the decision delivered in Debarment Application No. 7 of 2024, dated 20th January, 2025 which was delivered on 21st January, 2025 is hereby issued.*
- c. *A declaration that the Respondent's Decision dated 20th January, 2025 was unlawful, irrational, unfair is hereby issued.*

*d. Such other further order and/ or incidental orders or directions as this Honorable Court shall deem just and expedient;*

*e. Costs to the Applicant.*

**Dated, signed and delivered at Nairobi this 11<sup>th</sup> day of November, 2025.**

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**J.M. CHIGITI (SC)  
JUDGE**