



Republic v Public Procurement Regulatory Authority; Nzai (Interested Party); Blue Quadrant Limited (Ex parte Applicant) (Judicial Review Miscellaneous Application E169 of 2025) [2026] KEHC 18 (KLR) (Judicial Review) (6 January 2026) (Ruling)

Neutral citation: [2026] KEHC 18 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E169 OF 2025
RE ABURILI, J
JANUARY 6, 2026
IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI & PROHIBITION
AND
IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015
AND
IN THE MATTER OF THE PUBLIC PROCUREMENT
AND ASSET DISPOSAL REGULATIONS, 2020
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015
AND
IN THE MATTER OF ARTICLES 47, 50 AND 165(6)
& (7) OF THE CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF A DECISION BY THE PUBLIC PROCUREMENT
REGULATORY AUTHORITY DEBARMENT COMMITTEE
AND
IN THE MATTER OF PUBLIC PROCUREMENT REGULATORY
BOARD DEBARMENT APPLICATION NO. 9 OF 2025
BETWEEN
REPUBLIC APPLICANT
AND



PUBLIC PROCUREMENT REGULATORY AUTHORITY RESPONDENT
AND
DR CHARLES NZAI INTERESTED PARTY
AND
BLUE QUADRANT LIMITED EX PARTE APPLICANT

RULING

1. This Ruling determines the Chamber Summons dated 30th December, 2025 which seek the following orders:
 1. This application be certified as urgent and heard ex-parte in the first instance.
 2. Leave be and is hereby granted to the Applicant to apply for:
 - i. An order of certiorari- To remove into this Honourable Court and quash the decision of the Respondent contained in the Notice of Intended Debarment dated 18th December 2025 in Debarment Application No. 9 of 2025, and all consequential steps taken thereunder.
 - ii. An order of prohibition- To prohibit the Respondent, whether by itself, its members, officers, servants, or agents, from conducting any further hearings, proceedings, or taking any steps pursuant to or in furtherance of the said unlawful decision.
 - iii. A declaration that the Respondent's decision dated 18th December 2025 is unlawful, irrational, procedurally unfair, ultra vires, and in violation of Articles 27, 35(3), 47, and 50(1) of *the Constitution*.
 - iv. A declaration that a debarment proceeding cannot lawfully be initiated in the absence of sufficient evidence as required by Regulation 22(5)(a).
 3. The grant of leave herein do operate as a stay of the debarment proceedings initiated by the Respondent, including any hearing or further steps under Regulation 22(5)(b)(d) & (e) of the Regulations, pending the hearing and determination of the substantive Judicial Review application.
 4. Leave be granted to the Applicant to commence these Judicial Review proceedings without first exhausting the internal remedies under Regulation 22 of the Regulations, on the grounds that the Respondent's decision is so fundamentally flawed as to render further participation in the debarment process ineffective and prejudicial, pursuant to Section 9(4) of the *Fair Administrative Action Act*, 2015.
 5. Costs of this application be provided for.



6. Such further or other orders as this Honourable Court may deem just and expedient in the circumstances.
2. The chamber summons application is predicated on the Verifying Affidavit of Shashi Kumar Malleshappa Shirol, the Statement of Facts and the grounds set out there in together with the oral submissions made by the applicant's Counsel at the oral hearing this morning.
3. The applicant's case is that by its decision dated 18th December, 2025, the respondent found that a prima facie case exists against the applicant, as lodged by the interested party, without any evidentiary basis. The applicant contends that the allegations contained in the request for debarment are bare, speculative and unsupported by any probative evidence and that the annexures relied upon do not demonstrate any breach of the *Public Procurement and Asset Disposal Act* by the Applicant and that therefore it is unclear how the Debarment Committee found that a prima facie case had been established.
4. The applicant asserts that there is completely no nexus between all the prejudicial allegations in the request for debarment and annexures provided and that the requirement to establish a prima facie case is not a mere statutory or procedural formality but a substantive procedural hurdle that must be demonstrated clearly and with precision. That allowing every allegation to be accepted as established fact without any proof whatsoever violates the right to a fair hearing under *the Constitution* of Kenya, 2010.
5. It is also contended by the applicant that the Interested Party lacks the requisite knowledge or standing contemplated under Regulation 22(1)(b), which limits requests to accounting officers or persons with direct factual knowledge. That the Interested Party appears to be acting as a proxy for competitors or other parties with ulterior motives, as demonstrated by the speculative nature of the allegations spanning three unrelated tenders across two separate entities.
6. Further, that the Interested Party failed to disclose his full particulars, thereby denying the Ex parte Applicant notice of its accuser and occasioning a breach of procedural fairness.
7. It is averred that the Debarment Committee ought to have investigated the allegations in detail and evaluated them against the evidence presented and that having failed to do so, no rational tribunal, properly directing its mind to the allegations contained in the request or recommendation for debarment, would have found that a prima facie case had been established without, at the very least, interrogating the evidence in support of those allegations.
8. The applicant maintains that no rational tribunal, properly directing its mind to the allegations raised, would have rendered a decision without requiring evidence in support of such unsubstantiated allegations. As such, the Respondent's decision is alleged to be irrational, arbitrary, ultra vires and procedurally unfair and that it violates Article 47 of *the Constitution*.
9. The applicant asserts that it has an arguable case with high prospects of success.
10. The above grounds are replicated in the statutory statement providing the factual background of the dispute giving rise to these proceedings.
11. Opposing the application, only the respondent filed a replying affidavit sworn by Raphael Muia Ngalatu the Acting Secretary of the Debarment Committee of the Respondent's Public Procurement Regulatory Board on 5th January, 2026



12. In the said affidavit, the deponent gives the legal background to the establishment of the Respondent under the Public Procurement and Assets Disposal Act and its statutory mandate being, among others, to ensure that procurement procedures established under the Act are complied with.
13. Further deposition is that in executing its mandate, the Respondent's Board is empowered under section 41 of the Act as read together with Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020 (the Regulations) to debar any person (s) who commit the offences stipulated in section 41 of the Act.
14. Mr. Ngalatu explains that the Respondent received a Request for Debarment of the Applicant herein which was filed on 20th November, 2025 by the Interested Party pursuant to the provisions of Regulation 22(1)(a) of the Regulations which provides that "a request for debarment may be initiated 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". He annexes a copy of the Request for Debarment together with its annexures.
15. He asserts that the Request for Debarment was considered by the Respondent in accordance with Regulations 22(5)(a) and (b) of the Regulations which provides that (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.
16. That after analysis of the Request for Debarment, the Respondent found that there was a prima facie case and issued a Notice of Intended Debarment to the Applicant dated 18th December, 2025 together with directions on filing, and more specifically granting the Applicant herein fourteen (14) days to file and serve its written response. He annexes a copy of the said Notice of Intended Debarment.
17. It is averred in deposition that in compliance with the contents of the abovementioned Notice, the Applicant herein filed a Memorandum of Response to the Request for Debarment dated 1st January, 2026 as annexed.
18. It is therefore asserted that in any event, the Applicant herein has already complied with the contents and directions of the Notice of Intended Debarment and constructively, subjected itself to the proceedings of the Respondent hence, the instant application has already been overtaken by events and therefore, granting the leave sought will be an exercise in futility, with the application already spent.
19. It is further deposed that as provided for in section 41 of the Act, the Respondent's Board is the only body empowered with the mandate of hearing debarment proceedings, with its members comprising of persons with diverse expertise in the various fields relevant to debarment proceedings.
20. It was contended that where *the Constitution* and Acts of Parliament have 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 so long as they comply with *the Constitution* and national legislation.
21. Further, that there is nothing which is unprocedural and/or unlawful with the conduct of the Respondent in the impugned debarment proceedings for this Court to find it fit to interfere with its proceedings.
22. That in any event, if any of the parties to the debarment proceedings are aggrieved by the final decision of the Respondent's Board, the aggrieved party has a recourse in judicial review as provided for in



section 42 of the Act that, “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. “

23. That therefore this Court should not interfere with proceedings of the Respondent’s Board at this point, as any aggrieved party will have the right to approach this court once the Respondent’s Board has heard the Parties and rendered its decision.
24. The Respondent urged this Court to dismiss the applicant’s chamber summons for leave with costs.

Oral submissions

25. The parties appeared this morning for the oral submissions on the application and on behalf of the applicant, Mr. Mbugua submitted that there is no evidence that the Board ever scrutinized, analyzed or examined the request for debarment as there was no sufficient evidential material placed before it to warrant a finding of a prima facie case as contemplated in section 41 of the Act and Regulation 22 of the Regulations made under the Act. Further, that the use of the words analyze means studying, examining and scrutinizing the request before making a finding of prima facie case. That the Board was expected to do more than just looking at the face value of the Request for Debarment and that in this case, there is no material placed before the Board to support the allegations of corruption, misrepresentation or poor performance of the tenders awarded, yet not even the tender documents or a report of such poor performance was placed before the Board for scrutiny. It is submitted that the request for debarment must be supported by evidence and not conjecture as was, allegedly, in the present case meaning, the Board considered extraneous which are not within the confines of the law in determining that a prima facie case had been established.
26. In response, Mr. Ngalatu submitted that the Regulatory Board is the one which ought to have been sued and not the Authority. That the applicant was urging debarment proceedings before this court instead of raising those issues with the Board and that having already filed a response to the Notice as directed by the Board, this application is an academic exercise as it is overtaken by events.
27. He submitted that the request for debarment was in respect of three tenders, two with Kenya Airports Authority and that the annexures include notification of award and intention to enter into a contract. That the Board took its time to analyze the documents annexed to the request and reached a decision that a prima facie case had been established and therefore the request was well supported, disclosing violation of the law; and that sufficiency of the evidence is for the Board. That the applicant can wait until the hearing takes place then approach the court with the final decision as stipulated in section 42 of the Act.
28. In a rejoinder, the applicant’s counsel Mr. Mbugua submitted that it is the Authority that has the mandate and the Board only acts on behalf of the Authority, the respondent herein. That even if the respondent continues with the hearing because a response has been filed, the proceedings would be illegal, null and void. Further, that the request for debarment had no tender documents which documents were only provided by the applicant.

Analysis and Determination

29. I have considered the application, grounds, statutory statement and Verifying affidavit. I have also considered the replying affidavit and the respective parties’ Counsel’s oral submissions. The only issue for determination is whether the leave sought should be granted to the applicant to challenge the respondent from proceeding with the debarment proceedings filed by the interested party.



30. There are other questions raised by the parties that this Court will endeavour to resolve in the process of determining the merits of the chamber summons for leave to apply.
31. In determining this sole issue, this Court is aware that it is not determining a challenge to a final determination of debarring the applicant but whether the Court should intervene at the stage where the respondent found that a prima facie case against the applicant had been established.
32. That said, on the question of whether the Board or the Authority should have been sued as raised by Mr. Ngalatu on behalf of the Respondent, Section 2 of the *Public Procurement and Asset Disposal Act* defines the Authority and the Board as follows:

“ Authority” means the Public Procurement Regulatory Authority established under section 8 of this Act;

“Board” means the Public Procurement Regulatory Board established under section 10 of this Act”

33. Section 8 of the Act provides for establishment of the Authority as follows:

8. The Public Procurement Regulatory Authority

- (1) There is established an authority to be known as the Public Procurement Regulatory Authority which shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—
- (a) suing and being sued;
 - (b) acquiring, safeguarding, holding, charging and disposing of moveable and immoveable property; and
 - (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done by a body corporate.
- (3) The Authority may for the purposes of ensuring access to its services in accordance with Article 6 of *the Constitution* establish such offices in regional locations as it may deem necessary for its operations.

34. On the other hand, the Board is established under section 10 of the Act which provides that:

10. Public Procurement Regulatory Board

- (1) The management of the Authority shall vest in a board to be known as the Public Procurement Regulatory Board which shall consist of—
- (a) a chairperson nominated by the Cabinet Secretary and appointed by the President;
 - (b) two members who shall be appointed by the Cabinet Secretary after nomination through a fair process by—
 - (i) the Institute of Certified Public Accountants of Kenya, and
 - (ii) the Kenya Institute of Supplies Management;
 - (c) deleted by Act No. 15 of 2017, s. 55;
 - (d) the Cabinet Secretary or his or her representative;



- (e) the Attorney-General or his or her representative; and
 - (f) four other persons appointed by the Cabinet Secretary.
 - (2) In the appointment of the chairperson and members under this section, the appointing authority shall ensure regional and gender balance.
35. As to who deals with debarment matters, the Board (that is, the Public Procurement Regulatory Authority Board) is the body responsible for debarment proceedings and it may debar a person from participating in procurement or asset disposal proceedings under section 41 of the Act.
36. The Act also permits the Authority (i.e., the Public Procurement Regulatory Authority as a corporate entity) to debar a person on the recommendation of a law enforcement organ or on other grounds in Regulations, but the primary statutory power to debar lies with the Board.
37. As to who can be sued in judicial review proceedings under section 42, Section 42 provides that a party to the debarment may seek judicial review of the decision of the Authority in the High Court within 14 days after the decision is made.
38. Thus, in practice, judicial review is taken against the Authority (Public Procurement Regulatory Authority), because the Authority is the legal entity capable of being sued, as it is established as a corporate body that may sue and be sued.
39. Accordingly, I find that there is no error in the applicant suing the Authority instead of the Board.
40. This Court is also alive to the legal threshold for determining whether to grant leave to apply for judicial review remedies as sought invoking Order 53 of the Civil Procedure Rules and sections 8 and 9 of the [Law Reform Act](#) and therefore it will limit itself to that threshold at this leave stage. Further, that at the leave stage, this Court is not expected to delve deep into the evidence that supports the intended motion, as that would risk determining the merits of the intended motion prematurely.
41. That aside, the Statutory framework for Debarment proceedings is Section 41 of the [Public Procurement and Asset Disposal Act](#), 2015 (PPADA) while the procedural aspect is Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020.
42. Regulation 22(5)(a) provides that:
- “(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.



43. The term prima facie is not defined under the Act or Regulations. However, in *Republic v Abdi Ibrahim* [2013] ECLR, a prima facie case was defined as follows:

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”.

44. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eCLR a prima facie case was defined as:

“A case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

45. In the case of *Nguruman Ltd -v- Jan Bonde Nielsen & Others C.A. Civil Appeal No 77 Of 2012*, the Court of Appeal stated:

“We reiterate that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. The applicant need not establish title. It is enough if he can show that he has a bona fide question to raise as to the existence of the case closely. All that the Court is to see is that on the face of it, the person applying of an injunction has a right which has been or is threatened with isolation. The applicant need not establish title. It is enough if he can show that he has a bona fide question to raise as to the existence of the right which he alleges.”

46. As earlier stated, the Act and Regulations made under the PPAD Act do not define what a prima facie case is under Regulation 22(5)(a). The definition in the MRAO case has been applied across various administrative and regulatory contexts. In *Judicial Service Commission v Gladys Boss Shollei* [2014] eCLR, Nduma Nderi J of ELRC stated as follows:

84. In my ruling on the interlocutory Application that sought reinstatement of the Petitioner pending the hearing and determination of the Petition, I found as follows:

“There is an arguable case though not tested at this stage, that some of the Commissioners of JSC had a personal interest in the removal of the Chief Registrar and that a strategy had been developed through connivance with persons in and out of JSC to implement the strategy. The Court at this stage is satisfied that a prima facie case in this respect has been made out by the Applicant.”

47. Thus, a prima facie case requires evidence which, if uncontroverted, would justify further proceedings.

48. Applied to Regulation 22(5)(a), which makes a prima facie case a condition precedent to issuing of a notice of intended debarment, a prima facie case requires that Some tangible, identifiable evidence; disclosing conduct falling within the statutory grounds for debarment; sufficient to justify subjecting the affected person to the serious consequences of a debarment process.

49. The requirement under the Regulation, is, in my view, not a mere formality, for the reason that Debarment has grave reputational, commercial, and legal consequences, including exclusion from



- public procurement for a defined period of time being three years. Additionally, where the law requires a threshold to be met before adverse action is taken, that threshold must be demonstrably satisfied.
50. On whether evidence must exist before issuance of the notice, Regulation 22(5)(a) requires the Authority to establish the existence of sufficient evidence before issuing the notice of intended debarment. The Regulation does not permit the Authority to issue a notice first and look for evidence later, nor to rely solely on allegations. What this Regulation stipulates is that a Notice of intended debarment must not be based on conjecture or mere suspicion without an evidentiary foundation.
 51. Accordingly, the existence of a response to the Debarment Notice by the Applicant does not cure an initial jurisdictional defect if the notice itself was issued without the requisite evidentiary basis.
 52. Thus, the Regulation mandates the Authority to, before issuing a notice of intention to debar, analyze the material placed before it by an applicant or if on its own motion, the evidence that it has gathered must be scrutinized to establish that there is sufficient evidence to demonstrate a prima facie case against the person sought to be debarred.
 53. In the instant case, from a reading of Regulation 22, it imposes a jurisdictional precondition being the existence of sufficient evidence disclosing a prima facie case before a notice of intended debarment can lawfully issue.
 54. The Applicant contends that the notice of intended debarment was issued in the absence of sufficient evidence and that no material was placed before the Board capable of demonstrating a prima facie case.
 55. It is argued that the issuance of the notice without such evidentiary foundation violates Regulation 22(5)(a) and Article 47 of *the Constitution*, rendering the initiation of the debarment process unlawful ab initio.
 56. The Respondent on the other hand contends that the question whether there exists sufficient evidence or a prima facie case is a matter falling squarely within the mandate of the Debarment Committee under section 41 of the PPADA; that the Applicant has already submitted a response to the notice of intended debarment; and that consequently, these proceedings are premature as they have been overtaken by events.
 57. On exhaustion of remedies, it is important to note that the applicant in its prayers sought for exemption under section 9(4) of the *Fair Administrative Action Act* and this Court will be addressing that question shortly.
 58. On whether this Court may intervene at the initiation Stage, while the doctrine of exhaustion generally requires parties to first pursue statutory mechanisms, courts have consistently held that exhaustion does not apply where the impugned action is taken without jurisdiction; or mandatory statutory precondition has not been satisfied.
 59. In *Republic v Tools for Humanity Corporation (US) & 8 others; Katiba Institute & 4 others (Ex parte Applicants); Data Privacy & Governance Society of Kenya (Interested Party) (Judicial Review Application E119 of 2023) [2025] KEHC 5629 (KLR) (Judicial Review) (5 May 2025) (Judgment)*, this Court stated:

“The High Court may, in exceptional circumstances, where it found that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law, it may permit the suit to proceed before it. The exception to the exhaustion requirement was particularly likely where a party pleaded issues that border on constitutional interpretation especially in virgin areas or where an important constitutional value was at stake.”



60. In this Court's view, where a public body is alleged to have acted in excess of jurisdiction or in breach of statute, the court is entitled to intervene notwithstanding the availability of alternative remedies. This intervention ensures that statutory bodies strictly comply with the conditions precedent to the exercise of their powers.
61. In this case, Regulation 22(5)(a) is such a condition precedent. The applicant has also sought for exemption of exhaustion of internal review mechanisms. I grant the prayer for exemption.
62. The Court would then, at the substantive stage, be entitled to examine whether the threshold for initiating debarment proceedings against the applicant herein was met, without descending into the merits of whether debarment should ultimately be imposed.
63. On alleged prematurity of this application and or being overtaken by events, my finding is that the fact that the Applicant responded to the notice does not render the proceedings moot or overtaken by events. This is because, exhaustion applies only where the impugned process is lawfully initiated. Therefore, where initiation itself is challenged as being unlawful, the Court is entitled to intervene at the threshold stage.
64. The applicant has also challenged the locus standi of the interested party and whether he has any knowledge of the facts surrounding the alleged corruption or misrepresentation or breach of contracts or non-performance by the applicant herein, leading to the request for debarment of the applicant. This allegation was not controverted by the interested party who chose to remain non participatory in these proceedings.
65. In the end I find that the applicant has established an arguable case for consideration on its merits at the substantive stage. I allow the chamber summons dated 30th December, 2025 and grant leave to the applicant to apply for judicial review orders as sought, challenging the decision of the respondent made on 18th December, 2025 issuing Notice of intended debarment of the applicant. The substantive motion shall be filed and served upon all the parties to these proceedings by close of business today.
66. The respondent and the interested party shall file and serve their responses to the application by close of business on 8th January, 2026. Thereafter, the applicant shall have leave to file and serve its further affidavit together with written submissions by close of business on 12th January, 2026. The respondent and interested party shall have leave to file and serve supplementary affidavit, if need be, together with written submissions by close of business on 14/1/2026.
67. These being time bound proceedings, parties must comply with the timelines given to enable this Court write and render a judgment within the 45 days from the date of filing of the application. Accordingly,
68. Additionally, I hereby grant stay of proceedings in Debarment case No. 9 of 2025 until the judicial review proceedings herein initiated are filed, heard and determined on merit.
69. The substantive motion shall be filed in a fresh file, as these proceedings are being conducted in Miscellaneous file. As soon as the substantive motion is filed, and parties comply with the directions given in this matter, the matter shall be brought to this Court's attention to fix a judgment date within the 45 days counting from 30th December, 2025.
70. For avoidance of doubt, time does not stop running in these time bound proceedings and therefore Order 50 of the Civil Procedure Rules on when time does not run, shall not apply
71. Each party to bear their own costs of these proceedings.



72. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF JANUARY, 2026
VIRTUALLY VIA MICROSOFT TEAMS MEETING**

R.E. ABURILI

JUDGE

