REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E003 OF 2026

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OFCERTIORARI & 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

VERSUS

PUBLIC PROCUREMENT REGULATORY AUTHORITY.....RESPONDENT

AND

DR. CHARLES NZAI……..……INTERESTED PARTY

AND

BLUE QUADRANT LIMITED …… EX PARTE APPLICANT

JUDGMENT

1. Vide Notice of motion dated 6th January, 2026 filed pursuant to leave granted on 6th January 2026 in JR Miscellaneous Application No. E169 of 2025, the

exparte applicant, **Blue Quadrant Limited** seeks the following judicial Review Orders:

1. ***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.***
2. ***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.***
3. ***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 of Kenya, 2010.***
4. ***A declaration that the Respondent's decision contained in the Notice of Intended Debarment dated 18th December 2025 in Debarment Application No. 9 of 2025 violated the Ex Parte Applicant's right to fair administrative action and is unlawful, unreasonable, irrational, procedurally unfair and unconstitutional,***

for being in breach of Sections 4(1), 4(2), 4(3)(a), (d) and (g), 4(4), 6(1) and 6(2) of the Fair Administrative Action Act, 2015,

5. ***A declaration that the finding of a prima facie case under Regulation 22(5)(a) of the Public Procurement and Asset Disposal Regulations, 2020 is a substantive jurisdictional threshold which cannot lawfully be met in the absence of material capable of sustaining adverse findings if left unanswered.***
6. ***The costs of this application be borne by the Respondent and the Interested Party, jointly and severally.***
7. ***Such further or other orders as this Honourable Court may deem just and expedient in the circumstances.***

2. The notice of motion is predicated on the grounds on the face of the application, statutory statement and Verifying Affidavit of **Shashi Kumar Malleshappa Shirol**, sworn on 30th December, 2025 accompanying the chamber summons for leave to apply.

3. The applicant's case is that by the respondent's decision dated 18th December, 2025, which is Notice of intended Debarment and Directions, following a request for debarment lodged by the interested party herein **Dr. Charles Nzai** in Debarment Application No. 9 of 2025, the respondent found that a *prima facie* case exists against the applicant herein, allegedly, 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 annextures 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 on a prima facie case without requiring evidence in support of alleged unsubstantiated allegations. That as such, the Respondent's decision is irrational, arbitrary, ultra vires and procedurally unfair and that it violates Article 47 of the Constitution.

9. It is asserted by the applicant that by the respondent accepting allegations made by the interested party against the applicant without proof and initiating punitive proceedings, the Respondent violated the Applicant's right to a fair hearing under Article 50(1) and the right to lawful, reasonable and procedurally fair administrative action under Article 47 of the Constitution.

10. Further contention is that the Interested Party lacked the requisite standing contemplated under Regulation 22(1)(b) of the Act, which limits requests for debarment to accounting officers or persons with direct factual knowledge, and that in this case, the interested party appears to have acted as a proxy for undisclosed competitors, as evidenced by the speculative and wide-ranging allegations spanning unrelated tenders across different procuring entities.

11. That the Interested Party further failed to disclose his full particulars, thereby denying the Ex Parte Applicant notice of its accuser and occasioning a fundamental breach of procedural fairness.

12. The applicant maintains that the Debarment Committee abdicated its statutory mandate by failing to investigate, interrogate, or evaluate the allegations against the evidence, contrary to the obligation imposed by Regulation 22 and the principles of fair administrative action.

13. That it is inconceivable, unreasonable and a mockery of due process that all the bare allegations in the request for debarment passed the Respondent's scrutiny for a *prima facie* case without any evidentiary interrogation.

14. The Respondent is said to be under a statutory duty to analyze every request or recommendation for debarment, which duty entails careful examination, study and evaluation, and not a superficial or mechanical acceptance of allegations.

15. According to the applicant, the legislative intent behind granting the Debarment Committee up to thirty (30) days to determine whether a *prima facie* case exists was to facilitate thorough and deliberate scrutiny, not perfunctory rubber-stamping of complaints.

16. The applicant contends that the Debarment Committee operates under relaxed rules of evidence, which empowers it to seek clarification, documents or further material from a complainant. However, that in the instant case, the Respondent failed to exercise this power and instead proceeded, in the absence of evidence to determine that a prima facie case had been established against the applicant, to warrant Notice of intended debarment.

17. Further, that the statutory and regulatory framework governing debarment provides safeguards against abuse, including the requirement that offences such as fraud or misrepresentation be supported by judgments, investigation reports, or other credible material, none of which were presented in this case. The applicant further contends that a further safeguard against abuse is the standing requirement under Regulation 22(1)(b), intended to prevent persons with ulterior motives from triggering debarment proceedings, which safeguard was wholly disregarded by the Respondent.

18. It was asserted that the Interested Party presented documents that were illegally and fraudulently acquired, and which are the subject of pending

proceedings, yet even those documents do not substantiate the serious allegations raised.

19. That the statutory requirement of "analysis" entails examination, investigation and reasoned evaluation, and not a mere glance at allegations and that therefore, the Respondent's failure to undertake such analysis renders its decision unlawful.

20. According to the applicant, no rational tribunal, properly directing its mind to the law and the facts, would have found that a *prima facie* case existed without interrogating the evidentiary foundation of the allegations. That no rational tribunal would have rendered a decision initiating punitive proceeding without requiring evidence in support of such serious and prejudicial allegations.

21. The applicant therefore maintains that the Respondent's decision is irrational, arbitrary, unreasonable, *ultra vires* and procedurally unfair, and violates Article 47 and 50(1) of the Constitution of Kenya 2010 and Sections 4, 6 and 7 of the Fair Administrative Action Act, 2015.

22. Further, that the respondent violated Article 35 of the Constitution and Section 6 of the Fair Administrative Action Act by failing to supply the information, evidence, and reasons forming the basis of the impugned decision and that unless this Honourable Court intervenes, the Applicant risks continuing to suffer irreparable harm, including damage to its

reputation, commercial interests, and constitutional rights, arising from the unlawful administrative process pursued by the Respondent and/or the Interested Party.

23. That it is in the interest of justice, fairness, and the rule of law that this application be allowed as prayed, to prevent further unlawful prejudice to the Applicant, as neither the Respondent nor the Interested Party will suffer any material harm or prejudice should this application be allowed.

24. The above grounds are replicated in the statutory statement providing the factual background of the dispute giving rise to these proceedings.

The Respondent's replying affidavit

25. 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 **8th January, 2026.**

26. The interested party, despite being served with the application, neither entered appearance nor filed any response to the notice of motion.

27. In the said affidavit, the Respondent's deponent gives the legal background to the establishment of the Respondent Regulatory Authority, 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.

28. 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.

29. 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.

30. He asserts on behalf of the Respondent, that the Request for Debarment was considered by the Respondent in accordance with Regulation 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.

31. The Respondent deposes that after considering the Request for Debarment, the Respondent found that there was *a prima facie* case and so, it issued a Notice of Intended Debarment dated 18th December, 2025 to the Applicant together with directions on filing, and more specifically granting the Applicant herein fourteen (14) days to file and serve its written response. The deponent annexes a copy of the said Notice of Intended Debarment.

32. 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.

33. It is therefore contended 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 (is moot) and that therefore, granting the orders sought will be an exercise in futility, with the application already spent.

34. In further deposition, the respondent annexed copy of the request for debarment together with annextures and denies the assertion by the applicant

that the interested party did not have the requisite knowledge of facts that can support the request for debarment.

35. It was deposed that the Regulation gives leeway for public spirited persons to initiate proceedings for debarment, based on information that they have reasonably and practically accessed. Further, that the interested party has made very serious allegations against the applicant giving grounds for seeking the debarment of the applicant from participating in the public procurement and asset disposal in Kenya, which allegations hinge on criminality inter alia, committing an offence under sections 41 (1) (a) and section 176 (1)(i) of the PPAD Act by signing contracts contrary to the mandatory requirements of the Act and Regulations, 2020.

36. Specifically, the respondent contends that there are allegations of the applicant entering into contracts with threshold amounts that are exclusively reserved for citizen contractors despite the applicant being wholly owned by foreign nationals, thereby violating the law on preference and reservations; commission of fraudulent acts by misrepresenting its eligibility status in tender documents and submitting bids and signing contracts reserved for citizen contractors contrary to mandatory preference and reservation regime under section 157(8) (a) of the Act; commission of offence relating to procurement under any other written law contrary to section 41(1)(b) of the Act by acquiring benefits from unlawfully procured contracts which constitutes an offence under section 45(1) (a) of the Anti-corruption and

Economic Crimes Act, 2003 and thereby benefiting from irregularly obtained public resources; and breach of procurement contract including poor performance contrary to section 41(1) (c) of the Act with allegations that the applicant breached three separate contracts for procurement by public entities through persistent and unjustified delays extending between 13months and 24 months beyond agreed delivery periods evidencing poor performance.

37. Further, that the interested party supported his request debarment with detailed justifications and documentary evidence which was analyzed before the respondent determined the existence of a ***prima facie*** case against the applicant.

38. That in any event, under section 42 of the Act, the applicant has a right to request for judicial review of the decision on debarment once the process is completed and that in this case, there is nothing unprocedural to warrant interference at this stage since the interested party had enjoined the interested parties whose contracts with the applicant are under scrutiny, citing the respective tenders.

39. The respondent has extracted parts of the alleged contracts between the applicant and Kenya Airports Authority and Kenya Civil Aviation Authority and contends that the CR 12 for the applicant shows that the shareholders are Indian Nationals hence the contracts were below thresholds as mandated by section 157 (8) (a) of the Act and Regulation 163.

40. 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.

41. It is 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.

42. 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.

43. 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."***

44. 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. The Respondent urged this Court to dismiss the applicant's notice of motion with costs.

The applicant's supplementary affidavit

45. The applicant filed supplementary affidavit sworn on 12th January, 2026 by **Shashikumar Malleshappa Shirol** responding to the replying affidavit responding to the depositions by the Respondent in its replying affidavit and maintaining its initial position.

46. It is deposed that the application does not challenge the final outcome of the debarment proceedings nor is it intended to avoid a hearing but challenges the lawfulness of the threshold decision to initiate the debarment proceedings. That the finding of prima facie case under Regulation 22 is a distinct reviewable administrative decision.

47. That the respondent's argument that the applicant should await the final decision is an invitation to condone a process rooted in illegality from its inception.

48. On whether the interested party has direct or personal knowledge of the allegations contained in the request for debarment, the applicant contends that the allegations in the request are speculative, based on illegally obtained documents and that the interested party lacks a genuine public interest and

appears to be a vexatious litigant or a proxy for a competitor, not a public-spirited informant. This, according to the applicant is evidenced by lack of knowledge of internal procurement processes, tender specifications or performance evaluation by the Interested Party.

49. That the interested party's allegations are legal conclusions based on misinterpretation of the law as opposed to assertions of facts witnessed or known by him hence, he lacked locus and therefore the respondent acted ultra vires in entertaining the request for debarment.

50. The applicant maintains that no proper analysis was undertaken by the respondent to meet the threshold under Regulation 22 (5) (a) as the request bears bare allegations without probative evidence, asserting that the annextures do not establish any ground for debarment.

51. That the respondent equates serious allegations with prima facie case yet the legal threshold is not seriousness of the allegations but a prima facie case where conduct alleged, if left unrebutted could justify debarment.

52. According to the applicant, there is no investigation report, audit finding, performance evaluation or compliance determination was placed before the Board for consideration. That the respondent does not, for example, identify any document that objectively demonstrates fraud, mis representation, illegality or breach.

53. On alleged violation of sections 157(8) and Regulation 163, the applicant deposes that preference and reservation under section 157 are not automatic and that they apply only where a procuring entity expressly invokes and incorporates them into the tender documents.

54. That none of the tender documents which under section 135 (6) form the basis of the procurement contracts were annexed to the request for debarment nor advertisement for the tenders, tender notices, eligibility criteria clause or condition to show that the tenders were reserved or restricted to citizens contractors.

55. That without the tender documents, the respondent could not lawfully tell whether any reservations applied and that therefore its conclusion was speculative, conjecture and unsupported and that the documents annexed to the request for debarment could not establish any prima facie case on alleged breaches.

56. That the CR12 shows the applicant as a Kenyan incorporated company with the respective nationalities of its directors but does not establish any misrepresentation or fraudulent deceptive intent in any tender that the applicant participated in.

57. According to the applicant, Performance Bond and Letter of Intention are standard contractual documents. That a performance bond is a guarantee of future performance, not evidence of past poor performance or delay. That the

Respondent's Affidavit is conspicuously silent on the central allegation of "poor performance," because no completion reports, project monitoring reports, default notices, or liquidated damage claims were ever provided by the Interested Party to substantiate it hence the Committee had nothing to analyze on this point.

58. Further deposition is that the Request for Debarment is fundamentally self-contradictory and contains mutually destructive allegations. On one hand, it asserts that the three contracts were illegally awarded and executed in violation of the mandatory preference and reservation regime (grounds (a), (b) and (c)), rendering them void *ab initio*. On the other hand, it alleges breach of the same contracts through persistent delays in performance (ground (d)). These positions are contested to be legally incompatible and that therefore, the Committee wholly failed to interrogate or resolve this glaring inconsistency.

59. That without the tender documents, no analysis of breach is possible, to establish if the procuring entities invoked the reservation, if the Applicant duly declared its ownership, or if the entities proceeded with full knowledge. The applicant maintains that Respondent's finding of *prima facie* case was without rational basis or reasons, violating Regulation 22(5)(a) and Section 4 of the Fair Administrative Action Act, 2015 and that no reasonable committee could find *prima facie* on bare, unsupported allegations.

60. On judicial intervention, the applicant asserts in deposition that Judicial intervention is justified to prevent irreparable harm which are reputational and commercial damage from ongoing proceedings. Further, that Section 42 on appeal (should be judicial review not appeal), does not bar review of threshold jurisdictional errors.

61. That the response to the notice of intended debarment as filed by the applicant was done under protest and without prejudice to the instant Judicial Review application, to avoid a default judgment in a parallel unlawful process. That participation in a flawed process to mitigate damage does not amount to acquiescence or waive the right to challenge the foundational illegality of that process, noting that in addition to the Memorandum of Response, the applicants also filed a Preliminary Objection which the Respondent calculatedly failed to disclose.

62. That section 42 of the Act on appeal provides a remedy against a final debarment decision while the applicant is challenging the preliminary decision to initiate proceedings, for which no internal appeal is provided hence, Judicial Review is the only and appropriate remedy.

63. The applicant reiterates that the finding of prima facie case was illegal and ultra vires, irrational, laced with procedural unfairness, and was in breach of Constitutional Rights (Articles 47 & 50), subjecting a person to a punitive process based on unsubstantiated allegations and a flawed legal theory,

which is the epitome of unfair administrative action and creates a legitimate apprehension of bias.

64. Finally, it is deposed that the Respondent has failed to demonstrate that its Debarment Committee undertook any lawful, rational, or evidence-based analysis prior to making the impugned finding of a *prima facie* case and that no logical or evidentiary nexus between the allegations contained in the Request for Debarment and the annexures relied upon in support thereof. The Respondent's Affidavit instead discloses a decision-making process that was fundamentally flawed in law, irrational, and procedurally unfair.

Submissions

65. The parties filed written submissions to canvass the application, reiterating the pleadings and depositions. On the part of the applicant, its counsel relied on submissions dated 12th January 2026 restating his client's depositions in the two detailed affidavits as filed and maintained that the finding of prima facie case was illegal and unprocedural and unprocedural and ultra vires. 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.

66. 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.

67. 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.

68. Further, that the interested party appears to be a common applicant in debarment proceedings.

69. The applicant also submitted, relying on the respondent's own Debarment Manual (2022), while not a statutory instrument, but argues that it constitutes a published policy guideline governing the lawful exercise of its debarment mandate. It relied on Sections 4 and 5 of the Manual which consistently require the existence of "sufficient evidence" capable of supporting the statutory grounds for debarment under Section 41 of the Public Procurement and Asset Disposal Act, 2015. That by departing from its own published

policy without explanation or justification, the Respondent acted unreasonably and arbitrarily, contrary to settled principles of administrative law. The rest of the submissions mirror th depositions by the applicant's deponent.

The Respondent's submissions

70. On behalf of the respondent, reliance was placed on the written submissions and list of authorities dated 14th January, 2026. It was submitted that this is not the right forum to ventilate merits or otherwise of the request for debarment. 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 of intended debarment proceedings as directed by the Board, this application is an academic exercise as it is overtaken by events.

71. Reliance was placed on **Republic v PPARB and another exparte Express DDB Kenya Ltd [2018] e KLR** where it was held inter alia that judicial review plays a supervisory role, is concerned with decision making and not an appeal. Further reliance was placed on **Judicial Review No. 55 of 2022: Republic v Public Procurement Regulatory Authority & another; Auditor General & another (Interested Party)** on the supervisory role of judicial review.

72. It was submitted that the respondent examined the request for debarment in accordance with Regulation 22 before finding that a prima facie case exists and that these proceedings are premature since the request is not yet heard for the applicant to file a challenge under section 42 of the Act.

73. That there is no illegality in the conduct of the respondent hence its mandate should not be interfered with. It cited the case of **KPC Ltd Hyosung Ebara Co. Ltd and 2 others [2012] e KLR** to argue that specialized bodies should not be interfered with in exercise of statutory mandate and that the court will only exercise its supervisory role over them if the decision or administrative action is tainted with illegality, irrationality or procedural impropriety.

74. The respondent urged this court not to interfere with the mandate of the Board arguing that the Constitution has allocated certain powers and functions to various bodies and tribunals hence 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, citing the locus classicus case of **Speaker of the National Assembly v Karume [1992] eKLR.**

Analysis and determination

75. I have considered the application and the response thereto together with respective parties' written submissions and the constitutional, statutory and case law cited. The main issues distilled for determination are:

a. ***Whether the applicant's application is moot, the applicant having filed a response to the Notice of Debarment***
b. ***Whether this application was premature, ripe or justiciable***
c. ***Whether the interested party lacked standing and had no knowledge of particulars***
d. ***Whether this Court should find that the determination by the respondent that a prima facie case had been established to warrant notice of intended debarment to issue against the applicant was unlawful, unreasonable or procedurally unfair***
e. ***Is the applicant entitled to the reliefs sought?***
f. ***What orders should this court make including an order on costs.***

76. The above issues are discussed together in the determination of the question of whether the determination by the respondent that it had established a prima facie case to warrant Notice of intended debarment was unlawful, irrational and procedurally unfair, to warrant interference by this Court.

77. To begin with, it is important to appreciate the Statutory framework for Debarment proceedings which is Section 41 of the Public Procurement and Asset Disposal Act, 2015 (PPADA) (The Act) while the procedural aspect is Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020. Section 41 of the Act provides:

41. Debarment

(1) The Board shall debar a person from participating in procurement or asset disposal proceedings on the ground that the person—

(a) has committed an offence under this Act;

(b) has committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction;

(c) has breached a contract for a procurement by a public entity including poor performance;

(d) has, in procurement or asset disposal proceedings, given false information about his or her qualifications;

(e) has refused to enter into a written contract as required under section 135 of this Act;

(f) has breached a code of ethics issued by the Authority pursuant to section 181 of this Act or the code of ethics of the relevant profession regulated by an Act of Parliament;

(g) has defaulted on his or her tax obligations;

(h) is guilty of corrupt or fraudulent practices;

(i) is guilty of a serious violation of fair employment laws and practices; or

(j) is determined by the Review Board to have filed a request that is

frivolous or vexatious or was made solely for the purpose of delaying the procurement proceeding or a performance of a contract.

(2) Without limiting the generality of subsection (1) the Board may debar a person from participating in any procurement process if that person—

(a) has breached the requirements of the tender securing declaration form in the tender documents; or

(b) has not performed according to professionally regulated procedures.

(3) The Authority, may also debar a person from participating in procurement or asset disposal proceedings—

(a) on the recommendation of a law enforcement organ with an investigative mandate;

(b) on grounds prescribed by the Authority in Regulations.

(4) A debarment under this section shall be for a specified period of time of not less than three years.

(5) The procedure for debarment shall be prescribed by Regulations.

78. On the other hand, Regulation 22(5) of the 2020 Regulations made under the Act 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.

79. This Court will first appreciate what a prima facie case is, and in what context, without necessarily determining whether a prima facie case was established by the respondent. The term ***prima facie*** or ***a prima facie case*** is not defined under the Public Procurement and Asset Disposal Act or Regulations. However, this term has been used and defined in contexts of both criminal and civil cases. The **Legal Information Institute (LII)** which is a non-profit public service of **Cornell Law School** that provides no-cost

access to current American and international legal research sources online defines ***prima facie*** as follows:

> ***"Prima facie is Latin for "at first sight," or "on the face of it."***
>
> ***Prima facie is used in court to indicate that there is sufficient or adequate evidence to support a claim. More simply put, a prima facie case means that the claim being presented to a court has merit, when taken at face value.***
>
> ***A prima facie case is the establishment of a legally required rebuttable presumption. In other words, a prima facie case is a cause of action or defense that is sufficiently established by a party's evidence to justify a verdict in their favor, provided such evidence is not rebutted by the other party.***
>
> ***Prima facie evidence/claims are used in criminal courts, as well as civil courts, most commonly in tort law. In fact, various torts will typically have prima facie cases attached to them. In a prima facie tort claim, the plaintiff first provides evidence that a tort was committed by the defendant, then the burden of proof shifts to the defendant to disprove they committed the tort."***

80. In judicial circles, in the case of **Republic v Abdi Ibrahim [2013] EKLR,** *a prima facie* case was defined as follows:

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

81. In **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** *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."

82. 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, <u>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</u>. 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."[emphasis added]

83. As earlier stated, the Act and Regulation 22(5)(a) and (b) made under the Act do not define what a ***prima facie*** case is. The definition in the ***MRAO (supra)*** case has been applied across various administrative and regulatory contexts. In **Judicial Service Commission v Gladys Boss Shollei [2014] eKLR,** Nduma Nderi J of ELRC (as he then was) stated used the term *prima facie* case to suggest an arguable case which has not been tested 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:

"<u>There is an arguable case though not tested at this stage</u>, 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 <u>a prima facie</u> case in this respect has been made out by the Applicant."

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

85. In determining the issues identified in this case, it is important to note that a Court will not typically substitute its own opinion for that of the Board or the Authority. In other words, the court cannot act as an appellate court by weighing the evidence itself to determine if a ***prima facie*** case exists or does not exist.

86. Applying the definition and usage of ***prima facie*** 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*** threshold would, in my view, be sufficient evidence to raise a presumption, requiring a response, as outlined in Regulation 22(5)(a) and (b) of the Public Procurement and Asset Disposal Regulations, 2020.

87. The Regulation 22 (5) (a) and (b) mandate the Regulatory Authority or the Board which acts on behalf of the Authority in debarment proceedings, to ***analyse*** the request for debarment and ***only if it finds*** that a ***prima facie*** case exists would it then issue notice of intended debarment.

88. That being the case, the Court will intervene only where it is demonstrated that the decision to issue the notice of intended debarment is so illogical that no reasonable tribunal would have made it; or that the Board or Authority failed to follow statutory procedures (e.g., failure to provide proper notice or opportunity to respond to the notice) or where the decision is based on no evidence at all or on information that does not satisfy the statutory grounds for debarment as listed in Section 41 of the Act. Section

89. 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, which involve exclusion from public procurement and asset disposal for a defined period of time being not less than three years as provided for in section 41(4) of the Act that a debarment under this section shall be for a specified period of time of not less than three years.

90. Additionally, I have no doubt in my mind that where the law requires ***a threshold to*** be met as a condition precedent, as is the case herein, before adverse action is taken, that threshold must be demonstrably satisfied.

91. On whether evidence must exist before issuance of the notice of intended debarment, Regulation 22(5)(a) requires the Board to analyse the material in support of the request for debarment and only if (b) the analysis establishes a ***prima facie*** case for debarment that the Board would issue the notice of intended debarment.

92. My reading of the Regulation 22 (5) (a) (b) reveals that the Regulation does not permit the Board to issue a notice of intended debarment first and go look for evidence later, nor should the Board rely solely on mere allegations to issue such notice. This is because, the Board has the necessary machinery to investigate the allegations of wrongdoing and satisfying itself that there is sufficient evidence, if not controverted, to find an adverse result thereby justifying a debarment. As correctly stated by the applicant, allegations alone, however serious, which are not supported, cannot constitute evidence.

Similarly, serious allegations is not synonymous with a prima facie case which follows an analysis contemplated in the Regulation 22.

93. Some wrongdoing or breaches as alleged border on criminality. The Board or the Authority could therefore, upon receipt of a request for debarment containing such allegations, engage investigators or experts in analyzing the material placed before it to enable it reach its independent decision that a *prima facie* case exists or that the threshold for a *prima facie* case has not been met. What Regulation 22 stipulates is that a Notice of intended debarment must not be based on conjecture or mere suspicion without any evidentiary foundation.

94. Accordingly, the existence of a Response Memorandum to the Debarment Notice by the Applicant cannot be a bar to initiating judicial review proceedings since the threshold for ***prima facie*** case is in itself, a matter that can be challenged and such response would not cure what would otherwise be an initial jurisdictional defect if the notice itself was issued without the requisite evidentiary basis or where the respondent has not followed the procedure contemplated in Regulation 22 in determining whether a prima facie case exists before issuing the notice of intended debarment.

95. Thus, the Regulation mandates that the Board or the Authority, before issuing a notice of intention to debar, to analyses the material placed before it by an applicant or if it has initiated the process of debarment on its own motion, the evidence that it has gathered must be sufficient evidence to

demonstrate a *prima facie* case against the person sought to be debarred. This requirement is backed by the wordings of section 41 which mandates debarment where there is violation or breach. Noting that most of the violations or breaches which are grounds for debarment are criminal in nature.

96. As aptly put by Nyakundi J in **Republic v Khalumi & another (Criminal Case E002 of 2024) [2024] KEHC 10145 (KLR) (12 August 2024) (Ruling):**

> ***12…At a prima facie stage, the court asks the question whether a reasonable tribunal or judge in a bench trial crediting the prosecution testimony and drawing all rational inference in the prosecution's favour could find every element of the offence of murder proved beyond reasonable doubt. The court has to test the sufficiency of the evidence by reviewing it and this is essentially to address the issue whether the prosecution's case is that which has met the threshold of a prima facie case or is one which is so lacking that it should not be allowed to proceed to the defence stage. The Constitution requires proof of guilty beyond reasonable doubt. As a consequence, the constitutionally required standard is founded under the right of presumption of innocence until the contrary is proved. The due process clauses in Art 50 requires that each element of a crime be proved beyond reasonable doubt. It is a requirement of the law for the court not to reserve a ruling***

of a prima facie case at the close of the prosecution case. The judge must make a judicial determination of the legal sufficiency of the prosecution's case before asking the accused to put in a defence.

13.In the case of R vs. Galbraith (1981) 1 WLR 1039, the court laid down the test which must apply in answering the issues around prima facie case and a submission of no case to answer thus:

"The difficulty (for the court) arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence –

a. Where the judge comes to the conclusion that the prosecution's evidence taken at its height, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

a.Where however the prosecution evidence is such that its strengths or weaknesses depend on the view to be taken of a witness' reliability, or other matters which are generally within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, the then judges should allow the matter to be tried by the jury but for our case, is for the case to proceed further to the defence to offer evidence in rebuttal or elect to keep quiet. [emphasis added]."

97. In my view, Regulation 22 (5) (a) and (b) imposes a jurisdictional precondition being the existence of necessary evidence disclosing a *prima facie* case before a notice of intended debarment can lawfully issue. The Authority or the Board as the case may be, at this stage, upon receipt of the request as was the case herein, is not expected to merely restate what the applicant has said but to ask for more information including evidence of alleged fraud, misrepresentation, illegality or breach and in the notice of intended debarment, demonstrate that that is the material that it examined and was satisfied that a prima facie case has been established.

98. 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 respondent capable of demonstrating a prima facie case. It is argued that the issuance of the notice of intended debarment 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.*

99. 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 Board under Regulation 22; 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.

100. On exhaustion of remedies, it is important to note that the applicant in its prayers for leave to apply sought for exemption under section 9(4) of the Fair Administrative Action Act and this Court addressed that question in the chamber summons for leave to apply, exempting the applicant from resorting to internal dispute resolution mechanisms thereby paving way for these proceedings.

101. Therefore, on whether this Court may intervene at the initiation Stage, while the doctrine of exhaustion generally requires parties to first pursue statutory mechanisms, exhaustion does not apply where the impugned action is taken without jurisdiction. In this case, the applicant asserts that the mandatory statutory precondition of analysis of the request for debarment to establish a *prima facie* case has not been satisfied. 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."

102. In this Court's view, where a public body is alleged to have acted in excess of jurisdiction or in breach of statutory or procedural requirements, the court is entitled to intervene notwithstanding the availability of alternative remedies. This intervention ensures that statutory bodies strictly comply with the condition's precedent to the exercise of their powers.

103. I have already stated that Regulation 22(5)(a) and (b) is such a condition precedent and the applicant also sought for exemption of exhaustion of internal review mechanisms which prayer this court granted at the leave stage. Therefore, on alleged prematurity and or want of ripeness of this application and or being overtaken by events, my finding is that **t**he fact that the Applicant responded to the notice of intended debarment does not render these proceedings moot or overtaken by events. This is because, a response is dictated by timelines and therefore the fact of the applicant having filed a reply does not oust this court's jurisdiction to entertain a challenge to the claim that the notice of intended debarment was issued without the analysis of the request for debarment as mandated under Regulation 22(5). It follows that exhaustion applies only where the impugned process is lawfully initiated. Therefore, where initiation itself is being challenged for allegedly

being unlawful, this Court is entitled to intervene and investigate the allegations.

104. That is a totally different process from a process where an aggrieved party following the hearing and determination of debarment proceedings files judicial review proceedings under section 42 of the Act.

105. The applicant has also challenged the locus standi of the interested party and whether he has any knowledge of the facts surrounding the alleged violations or breaches and or misrepresentation or breach of contracts or poor performance by the applicant herein, leading to the request for debarment of the applicant. This allegation by the applicant was not controverted by the interested party who chose to remain non-participatory in these proceedings despite being served with the application.

106. However, this silence on the part of the interested party initiator of the request for debarment in itself is not to say that this Court can grant the orders sought simply because the interested party who initiated the request for debarment proceedings has chosen to stay on the fence. This is so, considering that this Court is not in the process of determining and will not be expected to determine the merits of the Notice of intended debarment and therefore the application herein cannot be allowed solely on the basis of non-appearance by the interested party who filed the request for debarment.

107. It is incumbent on the Board to determine whether to proceed and determine the request for debarment in the absence of the initiator of the

request, bearing in mind decisions of this Court that the Board cannot prosecute such request on behalf of an initiator who has not appeared to prosecute the request for debarment. See **Waaso Construction Limited v Judiciary & 2 others [2025] eKLR** This is so, because, parties to legal proceedings need to engage with the legal process to protect their position. Failing to do so can be construed to mean that they are busybodies harboring ill motives and or gangs for hire by competitors to malign or damage reputation of others.

108. In the same vein, it is not for this court to determine whether the evidence or material supplied by the interested party were illegally obtained evidence, that being a matter that is pending before another court vide Milimani **CMCOM CC E1474 of 2025**. This finding is informed by the fact that in some instances, it may be the Board or the Authority that may initiate the debarment process based on reports of investigating agencies.

109. Having said all that, a reading of section 41 of the Act does not envisage debarment to be imposed based merely on allegations but on proof of the violations or breaches stated therein.

110. In this case, from the Notice of intended debarment served on the applicant dated 18th December, 2025, there is no evidence of an analysis of the material placed before the Board. The respondent simply stated that it had considered the request for debarment and established that there is a prima facie case for debarment. It then at paragraph 4 stated that the detailed

particulars of the request for debarment are captured in the request for debarment Form DCI annexed to the notice together with the annextures thereto.

111. Therein is no disclosure as to what annextures the respondent was referring to and whether the respondent had verified the material which was filed by the interested party to satisfy itself as to the existence of the alleged offences under section 41(1) of the Act including allegations of fraudulent acts and breach of procurement contracts including poor performance in contracts with the two interested parties.

112. As stated above, the respondent cannot issue a debarment notice and seek to verify evidence of breaches. There is no material to show that the respondent verified from the two interested parties Kenya Airports Authority and Kenya Civil Aviation Authority, to the request for debarment, the allegations made by Dr Charles Nzai, the interested party in these proceedings and initiator of the request for debarment.

113. Whereas the *prima facie* threshold does not amount to proof of culpability beyond reasonable doubt, and neither can this court in exercise of judicial review jurisdiction determine whether the threshold for *prima facie* case was met as that is a matter for the Board, it is important that the Board, where it is acting on a request by other persons other than on its own motion under Regulation 22(1) (b) which empowers the Director-General on his or her own motion based on findings from investigations, inspections, or

reviews to initiate debarment proceedings against any person to request for debarment, the Board must undertake an analysis and demonstrate that it is following the analyses of the request, that it established a *prima facie* case to warrant notice of intended debarment.

114. Additionally, under Regulation 22 (2) debarment proceedings may be commenced on the recommendation of a law enforcement agency with an investigative mandate, or by an investigator duly appointed by the Authority on its own motion, and in such a case, the regulation places a duty on the Board to notify the person of the intended debarment ***and provide details of the findings of the investigator or law enforcement agency.***

115. This Regulation places a higher duty on the Authority, a duty equivalent to the requirements under Article 50(2) (c) and (j) of the Constitution which guarantees the accused person the right to a fair trial, and in that regard, to have adequate time and facilities to prepare a defence and to be supplied with evidence which the prosecution intends to rely on in the prosecution of the accused and to have reasonable access to that evidence; to enable the accused adequately mount his or her defence.

116. It follows that if the Board simply copied the complaint without an independent analysis of the documents, as seen from the notice of intended debarment served on the applicant herein, then the respondent failed in its duty to guarantee the applicant the right to a fair administrative action.

117. I am persuaded that the respondent purely took the request for debarment on its face value and the documents submitted to it without first analyzing them to establish a ***prima facie case.*** This is evidenced from the face of the Notice of intended debarment which begins with the establishment of the prima facie case first before stating the grounds upon which the request is predicated, without stating that the Board had analyzed the material allegations and reached a finding that there was sufficient reason to believe that the applicant be subjected to the debarment process.

118. Since this is the first time that the question of the process of determining if a prima *facie case* is established is before this Court, it is important to lay some ground that may assist the Authority or the Board in its future handling of request for debarment by public spirited individuals who may not have investigative powers.

119. In my humble view, it is expected that the Authority or the Board follows and adopts a clear process and criteria for establishing *prima facie* case and this can be done by analyzing the requests initiated by an accounting officer, the person with knowledge of the procurement process, the Director-General, or a law enforcement agency, to determine if they present sufficient evidence of a breach of Section 41 of the Act. This involves reviewing initial documents such as Evaluation Committee reports, alleged forged certificates, or audit reports. Contracts, performance evaluation reports, evidence of breach of contracts advertisements for tenders to establish whether the

tenderers were restricted to citizens only or certain categories of tenderers, performance bonds among others.

120. The analysis must link the evidence to grounds for debarment, including evidence of giving false information about qualifications, corruption or fraud, or breach of contract/poor performance. In cases of alleged fraud, particulars must be given in detail with documentation to support the allegations. The Board must then have a checklist to review documentation to support allegations.

121. The *prima facie* standard is a low threshold that, if met, justifies initiating formal proceedings and issuing a Notice of Intended Debarment. This notice must outline the grounds, facts and potential consequences. This is in line with Clause 12(1) (c) of the **PUBLIC PROCUREMENT AND ASSET DISPOSAL DEBARMENT PROCEEDINGS MANUAL** which is the respondent's own policy documents readily available online and which provides:

> ***(c) The notice of intended debarment shall contain the grounds for debarment, a brief statement of the facts in support of debarment and the consequences that may arise from the debarment;***
>
> **…..**

122. This is in recognition that Debarment is a regulatory action that disqualifies suppliers, contractors or service providers from participating in public procurement for a specified period due to unethical or unlawful

practices. Debarment is used to uphold fairness and transparency, deter fraud and malpractice and to ensure only compliant firms do business with government entities. It is a protective measure that ensures that only ethical suppliers participate in public procurement.

123. In the instant case, the impugned notice of intended debarment does not even comply with the Authority's own set standards stipulated in Clauses 4 and 5 of the manuals referred to hereinabove. The clauses state as follows:

> ***4. Information to support a Request for Debarment.***
>
> ***(1) In support of a Request for Debarment, the Applicant shall present any one or a combination of the following information for consideration by the Committee;***
>
> ***(a) Sufficient evidence or information to support breach of any grounds for debarment as stated in Section 41 of the Act;***
>
> ***(b) Investigation report from an organization with an investigative mandate;***
>
> ***(c) Audit report from the Office of the Auditor General or a body mandated to undertake audits on public bodies;***
>
> ***(d) Approved inspection or review or assessment report;***
>
> ***(e) Court judgement;***
>
> ***(f) Recommendation from bodies with an oversight mandate over public bodies;***

(g) A determined decision by the Review Board or a relevant professional body.

(h) Any other information or documents containing sufficient evidence to support the grounds for debarment.

5. Grounds that may warrant initiation of a debarment proceeding

(1) The Debarment Committee shall debar a person from participating in procurement or asset disposal proceedings due to any of the following grounds;

Table 1: Grounds for Debarment

#	Grounds for Debarment	Information to support the Request for Debarment
a.	Has committed an offence under the Act;	• Judgement/decree of a court of law of competent jurisdiction; • Any other relevant documents and information that the applicant may deem necessary to support their case.
b.	Has committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction;	• Judgement/decree of a court of law of

competent jurisdiction;

• Any other relevant documents and information that the applicant may deem necessary to support their case.

c. Has breached a contract for a procurement by a public entity including

poor performance;

• Copy of the contract entered into between the Procuring Entity and the Respondent;

• Inspection reports;

• CIT report for complex and specialized projects

• Payment claims by the Respondent;

• Payment details and evidence of amount paid to the Respondent;

• Notice of intention to terminate; or

• Notice of termination of a contract;

• All correspondences made with the Respondent relating to the contract;

• Any other document that the applicant may deem necessary to support their case.

d. Has, in procurement or • Tender document issued to Bidders; asset disposal proceedings, given false information about his or her qualifications;

• Original bid document submitted by the Respondent containing false information;

• Minutes of the tender opening committee;

• Evaluation report;

• Professional opinion;

• Correspondences between the Procuring Entity and the Respondent relating to the issue in question;

• Any other document that the applicant may deem necessary to support their case.

e. Has refused to enter into a written contract as required under the Act;

• Tender document issued to Bidders;

• Original bid document submitted by the tenderer;

• Minutes of the tender opening committee;

• Evaluation report;

• Professional opinion;

• Letter of Award made to the Respondent;

• A copy of the Contract the respondent has refused to execute;

• Correspondence made with the Respondent relating to the issue in question;

• Any other document that the applicant may deem necessary to support their case.

f. Has breached a code of ethics issued by the Authority pursuant to Section 181 of the Act or the code of ethics of the relevant profession regulated by an Act of Parliament;

• Copy of decision by the Authority relating to the breach of the code of ethics;

• Copy of the findings of the investigation report;

• Copy of decision made by the relevant professional body;

• Correspondences made with the Respondent relating to the matter;

• Any other document that the applicant may deem necessary to support their case.

g. Has defaulted on his or her tax obligations;

• Copy of documents/correspondence relating to the default from the Kenya Revenue Authority or anybody responsible for the assessment, collection and accounting for tax;

• Any other document that the applicant may deem necessary to support their case.

h. Is guilty of corrupt or fraudulent practices;

• Judgement/decree of a court of law of competent jurisdiction;

• Any other document that the applicant may deem necessary to support their case.

i. Is guilty of a serious violation of fair employment laws and practices;

• Judgement/decree of a court of law of competent jurisdiction;

• Any other document that the applicant may deem necessary to support their case.

<u>j. Is determined by the Review Board to have filed a request that is frivolous or vexatious or was made solely for the purpose of delaying the procurement proceeding or performance of a contract;</u>

• Copy of the decision of the Review Board;

• Any other document that the applicant may deem necessary to support their case.

<u>k. Has breached the requirements of the tender securing declaration form in the tender document;</u>

• Tender document issued to bidders;

• Original bid submitted by the bidder;

• Minutes of the tender opening committee;

• Evaluation report;

• Professional opinion;

• Correspondences made with the bidder

relating to the issue in question;

• Any other document that the applicant

may deem necessary to support their case.

<u>l. Has not performed according to professionally regulated procedures.</u>

• Tender document issued to bidders;

• Copy of opinion/decision from the professional body regarding the failure to perform according to professionally regulated procedures;

• Original bid submitted by the Respondent;

• Minutes of the tender opening committee;

• Evaluation report;

• Professional opinion;

• Report from the Inspection and Acceptance Committee or the Contract Implementation Team;

• Correspondences made with the Respondent relating to the issue in question;

• Any other document that the applicant may deem necessary to support their case.

<u>m. On the recommendation of a law enforcement organ with an investigative mandate;</u>

• Copy of the investigation report from the law enforcement entity;

• Any other document that the applicant may deem necessary to support their case.

(2) Information submitted to support the grounds for debarment shall be authenticated by the Author of the documents or an officer with power of authority to authenticate documents within an organization

124. Therefore, without deciding the debarment itself, or whether a *prima facie* case was established, this Court finds that it has the jurisdiction to

check if the respondent conducted an analysis of the material placed before it by the interested party before finding that a *prima facie* case existed.

125. In my view, the Debarment Manual above provides a super guide since the Act and Regulations do not provide a standard procedure for analysing the request for debarment.

126. I am satisfied that the Board did not analyze the information supplied by the interested party before issuing the notice of intended debarment.

127. Accordingly, I have no hesitation in concluding that Board's finding of a *prima facie* case was rushed and lacked the mandatory analysis required by the Regulations under regulation 22(5) (a) and (b) of the Regulations and the procedure stipulated in the Authority's own procurement and Debarment Manual.

128. Therefore, on whether the reliefs sought are available to the applicant, in view of my findings above, i find that the applicant has satisfied the court that the notice of intended debarment was premature and is amenable for quashing. Accordingly, judicial review order of certiorari is hereby issued removing into this court for purposes of quashing and I hereby quash the notice of intended debarment and directions dated 18th December, 2025, in Debarment Application No. 9 of 2025.

129. Having quashed the notice of intended debarment, there is nothing to be prohibited. Furthermore, to prohibit the Board would unduly fetter its statutory mandate in a matter where it has the power to initiate debarment

proceedings on its own motion or on request by any other investigative agency or the procuring entity.

130. A declaration is hereby issued that the finding of a *prima facie* case under Regulation 22(5)(a) and (b) of the Public Procurement and Asset Disposal Regulations, 2020 is a substantive jurisdictional threshold which cannot lawfully be met in the absence of material capable of sustaining adverse findings.

131. The respondent is directed to analyze the request for debarment placed before it by the interested party, afresh to determine whether the same meets the *prima facie* threshold, applying the standard procedures contained in its Procurement and Debarment Manual, before deciding whether to issue a fresh notice of intended debarment. The analysis will take 30 days from the date of this judgment, the period stipulated in Regulation 22(5) (a) of the Public Procurement and Asset Disposal Regulations, 2020.

132. On costs, these are public interest proceedings. I order that each party bear their own costs of these judicial review proceedings.

133. This file is closed.

134. I so order.

Dated, Signed & Delivered virtually at Nairobi this 13th Day of February, 2026

R.E. ABURILI

JUDGE