

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 48 OF 2024-25

BETWEEN

M/S BASAI GENERAL SUPPLIES LTDAPPELLANT

AND

PUBLIC PROCUREMENT REGULATORY

AUTHORITY 1ST RESPONDENT

TANZANIA NATIONAL ROADS

AGENCY2ND RESPONDENT

RULING

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Eng. Lazaro Loshilaari | - Member |
| 3. Dr. Gladness Salema | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |



FOR THE APPELLANT

- | | |
|------------------------|--|
| 1. Adv. Elias Machibya | - Advocate, Machibya
Professional Attorneys |
| 2. Mr. Baraka Ulimboka | - Managing Director |
| 3. Mr. Dickson Njinga | - Manager |
| 4. Mr. Frank Mihambo | - Legal Officer |

FOR THE 1st AND 2ND RESPONDENTS

- | | |
|-------------------------|--|
| 1. Mr. Ayoub Sanga | - Senior State Attorney, Office of
the Solicitor General (OSG) |
| 2. Mr. Mathew Fuko | - State Attorney - OSG |
| 3. Ms. Careen Masonda | - State Attorney – OSG |
| 4. Mr. Hilmar Danda | - Principal State Attorney
- Public Procurement Regulatory
Authority |
| 5. Mr. Daudi Makendi | - Senior Legal Officer - PPRA |
| 6. Mr. Roosebert Nimrod | - Legal Officer - PPRA |
| 7. Ms. Beatrice Tonya | - Legal Officer - PPRA |
| 8. Ms. Inna Salum | - State Attorney - TANROADS |
| 9. Mr. Mwita Joram | - Senior Engineer - TANROADS |
| 10. Ms. Angela Mollel | - Legal Intern - TANROADS |

This Appeal was lodged by **M/S Basai General Supplies Ltd** (hereinafter referred to as "**the Appellant**") against the **Public Procurement Regulatory Authority** known by its acronym "**PPRA**" (hereinafter referred to as "**the 1st Respondent**") and the **Tanzania National Roads Agency**



known by its acronym **"TANROADS"**, Kigoma Regional Office (hereinafter referred to as **"the 2nd Respondent"**).

Based on the documents provided to the Public Procurement Appeals Authority (hereinafter referred to as **"the Appeals Authority"**), the background of this appeal may be summarized as follows: -

The Appeal is in regard to the debarment decision by the 1st Respondent against the Appellant for making a false representation about its qualifications in Tender No. TR36/008/2023/2024/W/24 for Rehabilitation of Bulimba - Lubalisi along Unpaved Simbo - Ilagala - Kalya, Rufubu JNC - Ugaraba - Mwese, Kalya-Sibwesa Harbour Port Regional Roads (hereinafter referred to as **"the Tender"**).

The Tender was guided by the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as **"the Act"**) which was repealed and replaced by the Public Procurement Act, No.10 of 2023 with effect from 17th June 2024. Additionally, it was governed by the Public Procurement Regulations, GN. No. 446 of 2013 (hereinafter referred to as **"the Regulations"**), which were repealed and replaced by the Public Procurement Regulations, GN. No. 518 of 2024, effective from July 1, 2024.

On 8th September 2023, the 2nd Respondent floated the said Tender through the National e-Procurement System of Tanzania (NeST) and by 22nd September 2023, the deadline for submission of tenders, it received three tenders including the Appellant's. Having completed the evaluation process, the Appellant was awarded the Tender at the contract price of Tanzania



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The record of appeal indicates that the 1st Respondent carried out an investigation on the 2nd Respondent's various tenders and contracts' implementation for the financial years 2022-2023 and 2023-2024. The investigation established that the Appellant made a false representation of its qualification with respect to the Tender. In view of this finding, on 8th April 2025, the 1st Respondent issued a Notice of Intention to debar the Appellant from participating in public procurement. The Notice was served to the Appellant through its registered official email address. It was claimed by the 1st Respondent that the Appellant did not submit its written defense within the time prescribed under the law.

On 22nd May 2025, the 1st Respondent issued a debarment decision and sent it to the Appellant through its registered official email. Aggrieved with the debarment decision, on 10th June 2025, the Appellant filed the present Appeal to the Appeals Authority.

In this Appeal, the Appellant challenges its debarment on the following grounds: -

- i) The notice to show cause and the subsequent debarment decision were based on the repealed law,
- ii) The notice of intention to debar did not use the format provided in the Debarment Guidelines,
- iii) The 1st Respondent failed to disclose to the Appellant the investigation findings,

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- iv) The 1st Respondent did not consider the written defense submitted by the Appellant; and
- v) Lastly, that the debarment decision was signed by a person who lacked authority.

In their joint reply to the grounds of Appeal, the Respondents stated that the Appellant's debarment was just and fair as the debarment proceedings were in accordance with the repealed procurement laws in use when the Tender leading to the Appellant's debarment was floated. In addition, they argued that the Appellant was accorded the right to be heard by being served with the Notice of Intention to debar that was issued in accordance with the then applicable laws. However, they submitted that the Appellant failed to submit its written defence as required by the law.

They stated further that the investigation by the 1st Respondent was in accordance with the law and it was not duty bound to inform tenderers about the same or findings thereof. The 1st Respondent claimed to have informed the Appellant about the relevant findings leading to the issuance of the Notice of Intention to debar. It was the Respondents' concluding submission that the debarment proceedings were in accordance with the law and the debarment is justified.

When the matter was called on for hearing, the following issues were framed for determination, namely: -

- 1.0 Whether the Appellant's debarment was justified and in accordance with the law; and**
- 2.0 To what reliefs, if any, are the parties entitled to?**



Before commencement of the hearing, Mr. Ayoub Sanga, learned Senior State Attorney from the office of the Solicitor General, for the Respondents, informed the Appeals Authority that when reviewing the record of Appeal in preparation for this hearing, it was observed that the Appellant had submitted a written defense in response to the Notice of Intention to debar. He stated that the said response was received by a different department within the 1st Respondent's office which did not deal with debarment issues.

Mr. Sanga elaborated that since the relevant department did not see the written defense, it was not considered when the 1st Respondent issued the debarment decision. He said this position was clearly indicated under paragraph 5 of the 1st Respondent's debarment decision. He went on to say that it is a cardinal principle of the law that parties to a dispute must be given the right to be heard and the submitted pleadings, documents and all evidence must be considered before a decision is given.

The counsel went on to aver that in the circumstances of this Appeal, it is undisputed that the Appellant's written defense was not considered by the 1st Respondent before issuing the debarment decision. In view of this position, Mr. Sanga stated that if the Appeals Authority proceeds with determination of this Appeal, it would be required to consider the Appellant's written defense at the appellate level while the same was not considered when the matter was before the 1st Respondent. It was his view that this would be in contravention of the cardinal principle of the right to be heard.

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Given this position Mr. Sanga prayed that the Appeal be struck out and the matter be returned to the 1st Respondent for consideration of the Appellant's written defense. In the alternative, he stated that in the interest of justice and for purposes of saving time, if the Appellant's grounds of Appeal are the same as in its written defense, he prayed the Appeals Authority to proceed with hearing of the substantive merits of the Appeal.

On his part Adv. Elias Machibya, for the Appellant, averred that since the Respondents conceded to have failed to consider the Appellant's written defense before issuance of the debarment decision, it means they have conceded to the Appeal. He stated that as per the practice in ordinary courts of law, if a defense was not considered, it meant the right to be heard was not accorded to a party to the proceedings. Hence, any decision thereof would be invalid for contravening the principle of the right to be heard.

He further averred that since the Appellant's written defense was not considered by the 1st Respondent before issuance of the debarment decision, it cannot now be considered at the appellate level.

In view of the Respondents' admission and the requirements of the law that parties should be given the right to be heard, the learned counsel prayed that the 1st Respondent's debarment decision be nullified for being issued in contravention of the law.

Having heard the parties' submissions on this point, we reviewed Article 13(1), (6)(a) of the Constitution of the United Republic of Tanzania of 1977 as amended which reads: -

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"13 (1) *All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.*

(6) *To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:*

(a) ***when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned***".

(Emphasis supplied)

In terms of the above provisions, all persons are entitled to protection and equality before the law and when the rights of a person are to be determined by a court or any other agency, he is entitled to a fair hearing which includes the basic tenet of the right to be heard.

This right is fortified by case law. In ***Kumwandumi Ndemfoo Ndosi versus Mtei Bus Services Limited***, Civil Appeal No. 257 of 2018, Court of Appeal of Tanzania, at Arusha (unreported), the Court referred to the case of ***Abbas Sherally and Another versus Abdul S.H.M Fazalboy***, Civil Application No. 33 of 2002 (unreported) where the Court observed that: -

"The right of a party to be heard before adverse action is taken before such a party has been stated and emphasized by courts in

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numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had a party been heard, because the violation is considered to be a breach of natural justice'.

(Emphasis supplied)

In the instant Appeal, the Respondents conceded that the 1st Respondent did not consider the Appellant's written defence before issuing the debarment decision. This is to say, the Appellant was not accorded the right to heard. Based on the requirement of Article 13(1), (6)(a) of the Constitution of the United Republic of Tanzania and the Respondents' own admission, we find the 1st Respondent's debarment decision invalid for failing to consider the Appellant's defense.

In view of this position, we find the 1st Respondent's omission of not considering the Appellant's defense, despite the alleged circumstances, to have occasioned a miscarriage of justice to the latter. Consistent with Article 13(1), (6)(a) of the Constitution, the findings of the 1st Respondent in the debarment decision cannot be allowed to stand.

Consequently, we find the debarment decision by the 1st Respondent to be a nullity in the eyes of the law. We, therefore, quash the debarment decision issued by the 1st Respondent.

It is so ordered. Each party to bear its costs.



This Ruling is binding and can be enforced in accordance with section 121(7) of the Act.

The Right of Judicial Review as per section 125 of the Act is explained to the parties.

This Ruling is delivered in the presence of parties this 04th day of July 2025.



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JUDGE (rtd) AWADH BAWAZIR
CHAIRPERSON

MEMBERS:

1. DR. GLADNESS SALEMA



2. ENG. LAZARO LOSHILAARI

