IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 49 OF 2024-25

BETWEEN

M/S GOPA CONTRACTORS TANZANIA LIMITED .....APPELLANT

AND

PUBLIC PROCUREMENT REGULATORY AUTHORITY .....1ST RESPONDENT

TANZANIA NATIONAL ROADS AGENCY .....2ND RESPONDENT

DECISION

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. Mr. James Kasusura - Advocate, Kasubagi Attorneys

2. Mr. Godfrey Mogellah - Managing Director

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. Boaz Msoffe - State Attorney - OSG
5. Mr. Hilmar Danda - Principal State Attorney - Public Procurement Regulatory Authority -PPRA
6. Mr. Daudi Makendi - State Attorney - PPRA
7. Mr. Roosebert Nimrod - State Attorney - PPRA
8. Ms. Beatrice Tonya - State Attorney - PPRA
9. Ms. Inna Salum - State Attorney - TANROADS
10. Mr. Mwita Joram - Senior Engineer - TANROADS
11. Ms. Angela Mollel - Legal Intern - TANROADS

The Appeal has been lodged by **M/S Gopa Contractors Tanzania 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 about the debarment decision by the 1st Respondent against the Appellant for failure to implement contract No. AE/001/2022-23/KG/W/06 for Construction of Gungu Subway along Kigoma-Kidahwe Trunk Road (Phase II) (hereinafter referred to as "**the Contract**").

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was guided by the Public Procurement Act No. 7 of 2011 as amended (hereinafter referred to as **"the Act"**) which was repealed and replaced by the Public Procurement Act, No.10 of 2023 with effect from 17th June 2024.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**"), repealed and replaced by the Public Procurement Regulations, GN.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

According to the record of Appeal, on 18th August 2022, the Appellant and the 2nd Respondent signed a contract valued at Tanzania Shillings Three Hundred Forty-Nine Million Three Hundred Fourteen Thousand Nine Hundred Fifty-Two and Fifty cents only (TZS. 349,314,952.50) for the implementation period of 210 days, to be completed by 23rd April 2023.

The record of Appeal indicates further that on 17th February 2023, the 2nd Respondent issued to the Appellant a notice of Intention to terminate the contract as the one hundred- and forty-five-day period had lapsed without commencement of the work. Through a letter dated 23rd April 2023, the Appellant applied for extension of time to the 2nd Respondent after failing to start the work due to another contractor executing other assignments on the same site. The 2nd Respondent through a letter dated 19th April 2023 granted extension of time from 25th April 2023 to 12th October 2023. But oddly, the 2nd Respondent terminated the

contract through a letter dated 29th May 2023, as up to 23rd April 2023 physical progress of the work done was 0%.

The record reveals that the 1st Respondent investigated the 2nd Respondent and discovered that the Appellant failed to implement the contract. On 8th April 2025, the 1st Respondent issued a notice of intention to debar the Appellant which required it to submit its written defense within fourteen days. The Notice was sent to the Appellant through e-mail address gopagg@gmail.com and info@gati.co.tz.

The 1st Respondent claimed that the Appellant did not submit its written defense as required. Thus, on 22nd May 2025, the 1st Respondent issued a debarment decision debarring the Appellant from participating in public procurement for a period of one year, effective from 20th May 2025. Aggrieved with this decision, on 12th June 2025 the Appellant filed this Appeal to the Appeals Authority.

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

1.0 Whether the debarment of the Appellant was justified and in accordance with the law; and

2.0 To what reliefs, if any, are the parties entitled to?

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. James Kasusura, learned counsel. He submitted on the first issue by stating that in this Appeal, the Appellant challenges its debarment on the following points:

Firstly, that it was not accorded the right to be heard. The learned counsel submitted that on 29th May 2025 the Appellant received a debarment decision from the 1st Respondent through its postal address

which showed that the Appellant had been debarred for failure to implement the contract. It further stated that the Appellant failed to submit its written defense despite being issued with a notice of intention to debar which was sent to its official email address.

The learned counsel averred that the Appellant never received the said notice of intention to debar from the 1st Respondent. He elaborated that the email info@gati.co.tz which the 1st Respondent purported to have sent a notice of intention to debar, is not the Appellant's. He stated further that the other email gopagg@gmail.com which the 1st Respondent claimed to have also sent a debarment Notice had not been working at that time as it was full.

The learned counsel stated further that the 1st Respondent had obtained the Appellant's email address from the NeST as indicated in its Reply to the Appellant's Statement of Appeal. He argued that the correct emails for purposes of communication in the contract under dispute were those contained in the ELI- 1.1: Tenderer Information Form whereby the Appellant provided particulars of the designated representative, and the specified email addresses for the contract were info@gctl.co.tz and mdceo@gctl.co.tz. Based on this fact, it was his submission that the notice to debar was sent to different emails than those contained in the Tenderer Information Form. Thus, it was his view, that the notice to debar was not served to the Appellant.

The learned counsel argued that if the 1st Respondent had good intentions, it would have contacted the Appellant to obtain the correct email address for communication. It was his submission that the 1st Respondent's sending of the notice of intention to debar using different email addresses than those provided by the Appellant in the Tenderer

Information Form indicates that it had an ill motive, by ensuring that the Appellant should not receive the said notice. Consequently, it was his view that the 1st Respondent's act in this regard contravened regulation 100(1), (6)(b) and (c) of the Regulations.

The learned counsel went on to submit that although the debarment decision indicates that the Appellant's debarment resulted from an investigation by the 1st Respondent, the Appellant was neither informed nor contacted about the same. He averred that it is a general principal of law that a party likely to be affected by an investigation should normally be contacted. However, this was not done. In view of his argument that the Appellant was neither served with the Notice to debar nor contacted during investigation, the learned counsel urged the Appeals Authority to nullify the debarment due to the glaring procedural irregularity of the failure to afford the Appellant the right to be heard.

In support of this ground, the learned counsel cited the case of ***Mbeya - Rukwa Autoparts and Transport Ltd versus Jestina Gerge Mwakyoma***, Civil Appeal No. 101 of 1998, Court of Appeal of Tanzania, at Mbeya, [2003] TLR, where the court held that: -

> *"It is a cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard: audi alteram partem. In Ridge v. Baldwin (5), the leading English case on the subject, it was held that a power which affects rights must be exercised judicially, ie fairly."*

To fortify his argument, Mr. Kasusura also cited the case of ***Gurmit Singh versus Meet Singh and Another***, Civil Appeal No. 256 of 2018, Court of Appeal of Tanzania, at Arusha and ***Lugano Alfred***

Mwakasangula versus Stephania Roekeme Rami and Two Others, Civil Revision No. 44 of 2019, High Court of the United Republic of Tanzania, Dar es Salaam District Registry, at Dar es Salaam.

Secondly, the learned counsel challenges the 1st Respondent's debarring of the Appellant by invoking its powers under section 62(3)(c) of the Act and regulations 93(3)(c) and 98(1)(c) of the Regulations for failure to implement the contract. Mr. Kasusura claimed that the Appellant had fully performed its contractual obligation in accordance with the terms and conditions of the contract, contrary to the 1st Respondent's claims. And that in lieu thereof, the 2nd Respondent fully effected due payments to the Appellant.

The learned counsel elaborated that during execution of the contract, the Appellant had never received any warning or termination letter from the 2nd Respondent. He further averred that during execution of the contract, the Appellant requested for extension of time and the same was granted by the 2nd Respondent. Thereafter it executed its work as required and on 20th June 2024, it was issued with a substantial completion payment certificate.

He observed that regulation 314(1) of the Regulations requires payment to be made after ensuring that all terms and conditions of the contract have been performed. He said, the 2nd Respondent effected four instalment payments to the Appellant after being satisfied with the executed work. He was thus, perplexed as to how the 1st Respondent made a finding that the executed works was zero percent to justify the Appellant's debarment. In view of the requirements of the law, the learned counsel averred that the debarment of the Appellant was improper as it was based on unfounded facts.

Thirdly, the learned counsel submitted that the Appellant is dissatisfied with the debarment decision as the 1st Respondent has not considered that the Appellant is a locally owned company whose growth is important. He stated that before issuing a stiff punishment, the 1st Respondent was required to consider that the company has over 150 employees whose livelihoods depend on the company to continue as a going concern. Therefore, it was his argument, that the decision is punitive and has already affected the company's chances of winning other tenders.

In concluding his submissions, the learned counsel prayed for the following reliefs: -

(i) The debarment decision issued by the 1st Respondent be quashed; and

(ii) The Appellant be reinstated to its earlier status and be allowed to participate in public procurement.

REPLY BY THE RESPONDENTS

The Respondent's joint reply submissions were made by Mr. Ayoub Sanga, learned Senior State Attorney. He began by adopting the Statement of Reply as part of his submission.

In reply to the first ground of Appeal, he submitted that the Appellant had been fairly debarred by the 1st Respondent for failure to execute the contract. He said that the Appellant's default was found during investigation of the 2nd Respondent's office. He averred that in such an investigation, the 1st Respondent is not required to notify tenderers who might be affected by the findings, as no punishment would be issued at this stage. He elaborated that in carrying out the investigation, the

Respondent adhered to regulation 97(1), (2) and (3) of the Regulations. And further averred that under the procurement law, tenderers are afforded the right to be heard before any punishment is meted.

The learned state attorney submitted that the Appellant was accorded the right to be heard by being issued with the notice of intention to debar sent to it through the registered e-mail addresses in NeST namely; gopagg@gmail.com and info@gati.co.tz. He contended that in this regard, the 1st Respondent complied with regulation 100 (6) (c) and (d) of the Public Procurement Regulations GN. No. 518 of 2024.

The learned state attorney went on to submit that in ensuring that emails were properly sent to the Appellant, it was discovered that the email info@gati.co.tz did not belong to the Appellant as it was wrongly written. However, the email gopagg@gmail.com belonged to the Appellant as it was registered in NeST and is also on its letterhead. He averred further that the email gopagg@gmail.com was used in various communications between the Appellant and the 2nd Respondent during implementation of the impugned contract. He added that the same email has been indicated in the Appellant's Statement of Appeal as one of the means of communication. Furthermore, the same email was used to communicate the debarment decision which the Appellant acknowledged to have received but through the post office. The counsel noted that the dispatched letters could not have reached the Appellant in the postal system within such a short time from the date of dispatch.

The learned state attorney rejected the Appellant's contention that its email was full when the notice to debar was sent, since the 1st Respondent did not receive a notification of delivery failure. He stated further that if the Appellant's email was not working, it was its own

responsibility to ensure that there was no breakdown of communication between it and other parties. Furthermore, if the Appellant had decided to use a different email address, it ought to have informed the relevant authorities on the change of particulars, including NeST. Thus, it was his view, since the Appellant has failed to do so, it should not shift the blame to other parties.

The learned state attorney submitted further that the Appellant has introduced a new fact that the correct email addresses for communication were those contained in the Tenderer's Information Form. He said that if the particulars in the Tenderer's Information Form were to be used for communication, they would have been indicated in the Statement of Appeal. Thus, he urged the Appeals Authority to desist from considering the Appellant's argument on this point. In view of his submissions, the learned state Attorney confirmed that the Appellant was duly served with the notice of intention to debar but it failed to submit its written defense. Hence, it was not denied the right to be heard as contended.

In support of his submissions, the learned state attorney cited PPAA Appeal Case No. 46 of 2024-2025 between ***M/S One Stop General Supply Company Ltd versus Public Procurement Regulatory Authority and Another***, whereby the Appeals Authority stated that according to the Electronic Transactions Act, Cap 442 R.E. 2022, information in an electronic form is deemed to have been communicated when it enters the computer system outside the computer of the originator. The Appeals Authority further found that the email address used to communicate the debarment decision was the one registered in

the NeST and used as a means of communication. Thus, in law, it concluded that the debarment notice was properly communicated.

Regarding the cases cited by the Appellant, the learned state attorney submitted that all the cases are distinguishable to the circumstances of this Appeal. In those cases, parties were denied the right to be heard while in the current Appeal the Appellant was given that right by being served with the notice of intention to debar but it failed to submit its written defense.

In response to the second ground of Appeal, the learned state attorney submitted that the Appellant abandoned the site and did not execute the intended works. After proving that the Appellant was not on site, the 2nd Respondent through letters dated 6th December 2022 and 2nd January 2023, reminded the former to start mobilization and commence the required work. He averred further that since there were no changes on the Appellant's side, on 17th February 2023, the 2nd Respondent issued a notice of intention to terminate the contract to the Appellant. On 16th April 2023, the Appellant sought for extension of time from the 2nd Respondent. On 19th April 2023, the 2nd Respondent granted the extension of time for a period of six months from 25th April to 12th October 2023. Despite the granted extension, the Appellant was not seen on the site. And hence on 29th May 2023, the 2nd Respondent terminated the contract through a termination letter sent to the Appellant vide its email address gopagg@gmail.com on 30th May 2023.

The learned state attorney elaborated further that in its routine activities, the 1st Respondent investigated the 2nd Respondent from November 2023 until 9th January 2024. The ensuing investigation report was approved by the 1st Respondent's management team in March 2024

and the Board of Directors on 8th May 2024. He averred that up to the time the investigation was completed, there was zero works done at the site. He contended that after realising that an investigation was underway, the Appellant mobilized and executed the contract within two months through its subcontractor named Kanweb Contractors. The learned State Attorney admitted that the 2nd Respondent effected payment and issued a completion certificate to the Appellant.

Eng. Joram Mwita from the 2nd Respondent's office averred that after realizing that the Appellant had resumed on the site, it allowed the Appellant to complete the contract and effected payment of all four raised certificates since its interest was to ensure that the project was completed. Moreover, the 2nd Respondent deducted the liquidated damages as directed by the 1st Respondent. He added that the only remaining payment was the retention amount.

After, Mr. Mwitta's, testimony, Mr. Sanga, learned senior state attorney submitted that since the 2nd Respondent had decided to proceed with execution of the contract and effected payment after termination of the contract, the 1st Respondent found such an act to be invalid in law and that disciplinary and other measures would be taken against the 2nd Respondent's employees. He added that the 2nd Respondent's continued implementation of the contract and settling payment did not affect the debarment process initiated by the 1st Respondent.

He argued further that the Appellant and the 2nd Respondent had contravened the requirements of regulation 314(1) of the Regulations by effecting payment despite being established that the Appellant had failed to complete the project within the time specified under the contract or even after the extension.

In support of his submissions, the learned state attorney relied on PPAA Appeal Case No. 03 of 2024-2025, between ***M/S Kapemala Engineering and General Traders Company Ltd versus Public Procurement Regulatory Authority and Another***, whereby the Appeals Authority considered the Appellant's contention that it should be pardoned as it was a mistake that was committed for the first time and unintentionally. The Appeals Authority held that the Appellant was duty bound to comply with the requirements of the law when participating in public tenders

Responding to the third ground of Appeal, the learned state attorney was of the view that the 1st Respondent fairly debarred the Appellant for a period of one year, the minimum punishment which complied with section 62 (3) (d) of the Act and regulations 93 (3) (c) and 98 (1) (c) of the Regulations. He expounded that the referred provisions allow for a maximum penalty of five years and thus, the punishment was not punitive as contended. He rejected the Appellant's argument that since the company was fully owned by Tanzanians and had over 150 employees, it should not be debarred. He argued these claims could not stand as the base of immunity for committing procurement malpractices.

In view of the above submissions, the learned state attorney prayed for dismissal of the Appeal for lack of merit and the debarment decision be upheld accordingly.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the debarment of the Appellant was justified and in accordance with the law

In resolving this issue, that is whether the Appellant's debarment was justified and in accordance with the law, we considered part of the Respondents submissions on the second ground of Appeal in regard to when the investigation was done, approval of the investigation report by the management and the board of directors and issuance of the debarment notice.

In so doing, we reviewed the record of Appeal and noted that the Appellant and the 2nd Respondent signed the contract which should have been completed by 23rd April 2023. However, due to delays on implementation of the project, on 17th February 2023, the 2nd Respondent issued to the Appellant a notice of intention to terminate the contract. Then, through a letter dated 23rd April 2023, the Appellant requested for an extension of time. The 2nd Respondent through a letter dated 19th April 2023 granted the request by extending time from 25th April 2023 to 12th October 2023. Thereafter, the 2nd Respondent through a letter dated 29th May 2023, terminated the contract on the reason that the progress of work was 0% after a month of extension.

During its routine investigations, the 1st Respondent investigated the 2nd Respondent and observed that a contract between the Appellant and 2nd Respondent was terminated for the former's failure to implement the contract. The investigation report was approved by the 1st Respondent's Board of Directors on 8th May 2024.

During the hearing, the Respondents' counsel stated that from 8th May 2024 when the 1st Respondent's Board of Directors approved the investigation report, no measures were taken as there were changes on the 1st Respondent's management team. The 1st Respondent issued the

notice of intention to debar on 8th April 2025. And the Appellant was required to submit its written defense within fourteen days from the date of receipt of the notice. The Appellant denied having received such a notice while the Respondents insisted that the notice was received but the former failed to submit its written defense.

We reviewed regulations 93(1) and 96(1) (3) and (4) of the Regulations which read as follows: -

> *r. 93. -(1)* ***Debarment proceedings may be initiated by the Authority as a result of audit or investigation conducted by the Authority*** *or where a debarment proposal is submitted to it, by any person.*
>
> *r. 96. -(1)* ***Where the Authority determines that there are grounds for debarment on the basis of the produced information, documents and evidences, the Authority shall, within twenty one days from the date of receiving the evidence, issue to the respective tenderer a notice of debarment.***
>
> *(3) The notice shall require the tenderer to make written representation showing cause why he should not be debarred from participating in public procurement for a period specified pursuant to the Act and these Regulations.*

(4) The tenderer shall respond to the notice referred to in sub- regulation (3) of this regulation within fourteen days from the date of receiving the notice.

(Emphasis supplied)

The above provisions state clearly that debarment proceedings may be initiated by the 1st Respondent because of audit or investigation or where a debarment proposal is submitted by any other person. And if the 1st Respondent has determined that there are justifiable grounds for debarment based on the available information, documents or evidence, it would be required to issue a debarment notice within twenty-one days to a respective tenderer. A tenderer is required to submit its written defense within fourteen days from the date of receipt of the notice.

We applied the above provisions to the facts of this Appeal and observed that the investigation findings which contained a proposal for the Appellant's debarment were approved by the 1st Respondents Board of Directors on the 8th of May 2024. However, no steps were taken by the 1st Respondent until on 8th April 2025, a year later when the 1st Respondent communicated the Notice of Intention to debar the Appellant.

Regulation 96(1) of the Regulations requires the 1st Respondent after determining that there are sufficient grounds for debarment based on the submitted information, documents and evidence to, within twenty one days, issue the notice of intention to debar the respective tenderer and require it to submit a written defense.

During the hearing, the learned state attorney submitted that the requirement of regulation 96(1) of the Regulations is inapplicable when

the debarment arises out of an investigation initiated by the 1st Respondent. He argued that there is no time limit for issuing a debarment notice when the debarment is the outcome of an investigation by the 1st Respondent. He contended that the notice of intention to debar issued by the 1st Respondent is proper as it has not contravened the law.

After reviewing regulations 93 and 96 of the Regulations, we are of the settled view that a debarment notice referred under regulation 96(1) of the Regulations does not exclude debarment proceeding arising out of an investigation initiated by the 1st Respondent. The debarment notice covers all the scenarios leading to a debarment as stated under regulation 93(1) of the Regulations. An investigation report is considered as a document or evidence which amounts to a sufficient ground for debarment.

In view of this position, we find the 1st Respondent's issuance of a debarment notice a year after the investigation report was approved by the 1st Respondent's Board of Directors to be improper and contrary to regulation 96(1) of the Regulations. Given this fact, we find the 1st Respondent's debarment proceedings have been marred with irregularities that contravene the law. Since the debarment procedures were not adhered to, we find the debarment decision to be improper in the eyes of the law.

Under these circumstances, we hereby nullify the debarment decision issued by the 1st Respondent for irregularities on its procedures.

Given the above findings, we find it sufficient to dispose of this appeal and we need not belabor on the remaining grounds.

Having said all and done, we conclude the first issue in the negative that the Appellant's debarment was not in accordance with the law.

2.0 To what reliefs, if any, are the parties entitled to?

Taking cognizance of the above findings, we hereby uphold the Appeal and quash the debarment decision issued by the 1st Respondent against the Appellant. We make no order as to costs.

It is so ordered.

This Decision 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 Decision is delivered in the presence of the parties this 10th day of July 2025.

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JUDGE (rtd) AWADH BAWAZIR

CHAIRPERSON

MEMBERS:

1. ENG. LAZARO LOSHILAARI .....

2. DR. GLADNESS SALEMA .....