

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 29 OF 2025-2026**

**BETWEEN**

**M/S SONGORO MARINE TRANSPORTATION LTD..... APPELLANT**

**AND**

**PUBLIC PROCUREMENT REGULATORY AUTHORITY  
(PPRA)..... RESPONDENT**

**DECISION**

**CORAM**

- |                          |                   |
|--------------------------|-------------------|
| 1. Ms. Florentina Sumawe | - Ag. Chairperson |
| 2. Ms. Sarah Bisanda     | - Member          |
| 3. Mr. Raphael Maganga   | - Member          |
| 4. Mr. James Sando       | - Secretary       |

**SECRETARIAT**

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

**FOR THE APPELLANT**

- |                         |  |
|-------------------------|--|
| 1. Mr. Reginald Martin  | - Advocate - Martin & Raphael<br>Advocates |
| 2. Mr. Major Songoro    | - Managing Director                        |
| 3. Mr. Filbert Ndunguru | - Public Relations Officer                 |



## **FOR THE RESPONDENT**

1. Mr. Ayoub Sanga - Senior State Attorney - Office of the Solicitor General (OSG)
2. Mr. Boaz Msoffe - State Attorney -OSG
3. Mr. Wankyo Mkono - Litigation Manager - PPRA
4. Mr. Mathew Fuko - State Attorney - OSG
5. Ms. Neema Sarakikya - State Attorney - OSG
6. Mr. Daudi Makendi - Senior State Attorney - PPRA
7. Mr. Roosebrt N Nimrod - State Attorney - PPRA
8. Ms. Beatrice Tonya - State Attorney - PPRA
9. Ms. Sumayi Sweya - State Attorney -PPRA
10. Mr. Nestory Mwakipesile - NeST Expert - PPRA

This appeal was lodged by **M/S Songoro Marine Transportation Limited** (hereinafter referred to as "**the appellant**") against the **Public Procurement Regulatory Authority**, abbreviated as "**PPRA**" (hereinafter referred to as "**the respondent**").

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

The appeal concerns the debarment decision issued by the respondent against the appellant on the ground of false representation regarding its key personnel in respect to Tenders No. X8/2023/2024/W/53 for the Major Rehabilitation of the MV Kigamboni Ferry, Operating along the Magogoni -

Kigamboni crossing in the Dar es Salaam Region, and No. X8/2023/2024/W/55 relating to Major Rehabilitation of the MV Pangani II Ferry (hereinafter referred to as "**the tenders**").

The tenders were done in accordance with the International Competitive Tendering and National Competitive Tendering Methods, as prescribed under the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 9<sup>th</sup> June 2024 and 14<sup>th</sup> June 2024, the Tanzania Electrical Mechanical and Electronics Services Agency (TEMESA), through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to participate in the tenders. By the submission deadline, the respondent received the Appellant's bids for both tenders. The tenders were evaluated and the contract was subsequently awarded to the appellant.

The record of appeal indicates that the respondent was informed by the whistleblower about false representation by the appellant concerning the two tenders. Consequently, the respondent investigated and established that the appellant made false representation regarding its qualification for the tenders.

The respondent through a letter dated 17<sup>th</sup> February 2026, issued a Notice of Intention to debar the appellant, requiring it to submit a written defence within fourteen days, showing cause why it should not be debarred from participating in public procurement. The ground for debarment was false representation during tendering, specifically that the appellant submitted a

Curriculum Vitae (CV) of one of its key personnel, Mr. William Deogratus Basiga, who was no longer employed by the appellant. The notice was sent to the appellant through the email addresses [hamad@songoromarine.com](mailto:hamad@songoromarine.com), [happinessj224@gmail.com](mailto:happinessj224@gmail.com) and [ventusbujimu@gmail.com](mailto:ventusbujimu@gmail.com).

On 1<sup>st</sup> March 2026, the appellant submitted its written defence, stating that the inclusion of Mr. Basiga's CV was due to inadvertent administrative and clerical errors, which were promptly disclosed and rectified in good faith before award of the contracts.

The respondent was not persuaded by the appellant's defence, subsequently on 31<sup>st</sup> March 2026, debarred the appellant from participating in public procurement for a period of two years. The debarment decision was communicated to the appellant on 2<sup>nd</sup> April 2026.

Aggrieved by this decision, the Appellant filed this appeal to the Appeals Authority on 17<sup>th</sup> April 2026.

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

- 1. Whether the appellant's debarment was justified and in accordance with the law; and**
- 2. What reliefs, if any, are the parties entitled to?**

#### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Mr. Reginald Martin, learned counsel. His submissions on the first issue were divided into two parts: first, the appellant's denial of a right to be heard, and second, lack of justification for debarment.



On the first part the learned counsel submitted that the appellant was denied the right to be heard on two limbs. First, the appellant was served with a Notice of Intention to debar, which stated the ground for debarment as false representation arising from the inclusion of the CV of Mr. William Basiga as its key personnel. The appellant submitted its written defence based on the grounds specified in the Notice. However, the respondent's decision departed from this stated ground and instead relied on NeST's audit trail records, including creation, removal and re-creation of user accounts, as well as findings from a forensic analysis. These matters were neither disclosed during the investigative stage nor included in the Notice of Intention to debar. The learned counsel contended that relying on new issues without affording the appellant a right to be heard breached the principle of natural justice by denying the appellant a fair and adequate opportunity to counter the allegations forming the basis of his debarment.

Second, the learned counsel argued that the respondent introduced, for the first time allegations relating to email manipulation and results of a purported forensic analysis. To buttress this, the learned counsel referred to the respondent's Statement of Reply at page 19, paragraph (b), where the respondent acknowledged that the matters concerning NeST manipulation and the use of a corporate email address were new but justified considering that they arose from the appellant's written defence.

The learned counsel argued that even if these matters emerged from the appellant's pleadings, the respondent was legally obliged to accord the appellant an opportunity to be heard on these new issues before relying on them in its final decision. Failure to do so constitutes a clear violation of

the principles of natural justice, particularly the *audi alteram partem* rule. Consequently, the learned counsel maintained that the respondent's decision, having been reached in breach of the appellant's right to be heard, is procedurally flawed and thereby null and void in law.

In support of his position, he cited **Kumbwandumi Ndemfoo Ndossi versus Mtei Bus Services Ltd**, Civil Appeal No. 257 of 2018 (CAT), at page 5-7, the court stated that, "*parties were not accorded the right to be heard and address the court on the new issue on the applicability of the principle of vicarious liability which was raised by the learned High Court Judge when composing the judgement.*" The court of appeal quashed the decision and referred the matter to the High Court. The learned counsel urged the Appeals Authority to apply the same principle in this appeal as the respondent had composed its debarment decision without affording the appellant a right to be heard on matters relating to NeST findings and forensic evidence.

The learned counsel also cited the case of **National Microfinance Bank PLC and one another versus Lello Laurent Sawe**, Consolidated Civil Appeals Nos. 385, "A" & 339 of 2021, (CAT) Unreported, at page 23. The court stated that "*in the instant case, the learned trial judge raised a new issue suo motu in the course of composing her judgement and determined it without affording the parties the right to be heard. On the authorities above cited, the learned trial judge's judgement cannot be left to stand. It is nullity*"



Learned counsel concluded on this ground by asserting that the appellant's debarment was not effected in accordance with the law, due to the respondent's failure to accord it a fair hearing, notwithstanding that the matters arose from the appellant's written defence. Hence, the debarment decision is bad in law for violating the principle of natural justice.

On lack of justification for debarment, the learned counsel argued that the respondent erred in law and fact by finding false representation without considering material defence but rather relied on speculation which resulted in disproportionate sanction.

He submitted that the appellant indicated clearly in its reply to the Notice of Intention to debar that, during tender submission, it included Mr. William Deogratus Basiga as key personnel and attached his CV, but upon noting an error, it acted immediately in good faith to rectify it.

He argued that, in rectifying an error, the appellant immediately removed Mr. Basiga's name and CV from the NeST on 5<sup>th</sup> July 2024, disclosed the matter to TEMESA during the negotiation meeting on 8<sup>th</sup> July 2024 and formally communicated its intention to substitute Mr. William Deogratus Basiga with Mr. Major S. Songoro by a letter dated 10<sup>th</sup> July 2024. TEMESA accepted the changes and proceeded to award the tenders to the appellant.

According to him, these actions demonstrated transparency and good faith, as the corrective measures were taken before award of the tenders. He stated that the respondent erred in law and fact by disregarding these

material circumstances and concluding that the appellant has committed a false representation without concrete evidence to prove bad intention.

He further submitted that the respondent's finding of false representation was based on its review of NeST activities conducted prior to the evaluation. But, since tenderers are not informed of the evaluation schedule, they are unable to align their disclosure accordingly. However, the appellant disclosed and rectified the error before the award of the contracts, and TEMESA accepted the correction and proceeded to award the tenders to the appellant. Therefore, the respondent erred in concluding false representation.

Learned counsel further argued that the inclusion of Mr. Basiga's CV did not confer any advantage to the appellant, as the tender document required five key personnel with artisan academic certificates and having three years' experience. The CV attached by the respondent in its Statement of Reply as OSG 3, neither demonstrated the requisite academic qualifications nor evidenced the minimum three years' experience. Thus, its inclusion has not added value or influence the evaluation outcome and cannot constitute false representation capable of affecting the tender process.

He emphasized that the respondent rejected the appellant's written defence without reasons, inferring misconduct from the system-generated logs without establishing actual deception, or intent. The email address [hamad@songoromarine.com](mailto:hamad@songoromarine.com) is a corporate email used by multiple personnel for tender administration and is not Mr. Hamad Songoro's personal email. The domain "@songoromarine.com" denotes official



company communication used for coordination and management purposes within the company and cannot be construed as evidence of bad intention. Accordingly, the respondent erred by basing its decision on assumption without proper evidence.

The learned counsel further submitted that to prove false representation, there must be evidence that a party gained an advantage through deception. Here, the respondent failed to establish any benefit derived by the appellant from including Mr. Basiga's CV. Since no advantage was gained, the inclusion should be regarded as a clerical error corrected in good faith.

In support of his submissions, the learned counsel cited the case of ***Ndunguru Petro versus Republic*** [1971], High Court Digest, at page 108 where the court held that fraud must be proved with clarity and sufficient evidence. Since the respondent failed to establish fraud or false representation, the Appeals Authority should apply this principle and set aside the debarment.

The learned counsel further submitted that the two-year debarment period is disproportionate to the alleged false representation. The respondent failed to prove fraud or false representation, considering the appellant rectified the errors before award and TEMESA accepted the correction. Furthermore, the appellant has executed the contracts without any complaint or evidence of non-compliance.

He added that the appellant, a corporate entity employing over 300 employees and a compliant taxpayer, would suffer severe consequences from two-year debarment, affecting both the company and its employees.

Therefore, the sanction is excessive and disproportionate if the offence is proved.

Based on the above made submissions, the learned counsel prayed for the following:-

- a) The appeal be allowed in its entirety;
- b) The respondent's debarment decision issued against the appellant be set aside;
- c) An immediate order of lifting the debarment;
- d) In the alternative, should any misconduct be found, review and reduce the period of debarment to a reasonable and proportionate duration; and
- e) Any other relief as may be just and equitable.

### **REPLY BY THE RESPONDENT**

The respondent's submissions were made by Mr. Ayoub Sanga, Senior State Attorney from the Office of the Solicitor General assisted by Mr. Wankyo Mkono, Litigation Manager from the respondent. Mr. Sanga commenced by adopting the Respondent's Statement of Reply and its annexures as part of his submissions.

On the first issue, Mr. Sanga submitted that paragraphs 4, 5 and 6 of the Notice of Intention to debar (page 2) clearly outline the background leading to the appellant's debarment. He noted that the debarment decision letter at paragraph 11 reiterates the same background. Matters relating to NeST manipulation and use of a corporate email address arose during the analysis and were contained in the appellant's written defence.



He argued that the appellant was afforded the right to be heard, having been served with the Notice of Intention to debar through a letter dated 17<sup>th</sup> February 2026 and having submitted its written defence on 1<sup>st</sup> March 2026. The defence, particularly on page 2 and 3, clearly justified the use of a corporate email address in tenders. The respondent then conducted an audit trail to verify the appellant's information. Therefore, no new issues were introduced by the respondent, contrary to the appellant's claim.

According to him, the case of **Kumbwandumi Ndemfoo Ndossi versus Mtei Bus Services Ltd**, (supra) at page 5-7, relied upon by the appellant is distinguishable to the facts of this appeal. In the referred case, the new issue was raised *suo motu* by the court while in this appeal, the alleged new issue was raised by the appellant's own written defence at (page 3, paragraph 2), where it elaborated the use of corporate email. The respondent verified this information, which led to the discovery of creation, removing and re-creation of Mr. Basiga's user account in NeST. This implicated the appellant in false representation, justifying debarment proceedings.


Similarly, Mr. Sanga distinguished the case of **National Microfinance Bank PLC and one another versus Lello Laurent Sawe**, (supra) where the new issue was raised by the court *suo motu*, obliging it to accord the parties a right to be heard. But in instant appeal, the issues arose from the appellant's written defence, requiring verification by the respondent, hence the cited case is also inapplicable.

Mr. Sanga concluded that the appellant was given a right to be heard, no new issues were raised by the respondent and the grounds in the Notice of Intention to debar were consistent with those in the final debarment decision. Therefore, the appellant's allegation of denial of a right to be heard lacks merit.

On the justification of the debarment decision, Mr. Sanga referred to section 3 of the Act, which defines "**false representation**" as a misrepresentation of fact made by one party to another with intent to deceive and with the knowledge of its falsity. He emphasised that establishing false representation requires proving both an intent to deceive and knowledge of the falsity.

Mr. Sanga argued that, the appellant acknowledged including Mr. Basiga's CV in its tenders though it disputes intent or knowledge to deceive. The appellant claims the inclusion was inadvertent and that it notified TEMESA which accepted the substitution of key personnel before award the tenders. However, an intent to deceive can be inferred from circumstances.

He clarified the circumstances that, Mr. Basiga resigned effectively from 31<sup>st</sup> January 2023, yet on 11<sup>th</sup> November 2023, appellant created a NeST account for him using the email [wbasiga@songoromarine.com](mailto:wbasiga@songoromarine.com). Since NeST required tenderers to upload current employee's details after TANEPS was discontinued, the appellant was expected to provide accurate information. Creating an account for a former employee demonstrates a bad faith and intent to deceive.

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Further, the NeST Audit Trail of 19<sup>th</sup> February 2024 shows the appellant initially created Mr. Basiga's account, removed it, then recreated it with a different email address [hamad@songoromarine.com](mailto:hamad@songoromarine.com). Mr. Sanga condemned this conduct as it indicates deliberate deception since the new email would prevent Mr. Basiga from accessing the account. If the initial creation was a genuine mistake, the appellant would simply have removed the profile without recreating it under a different email address.

He also noted that the appellant only corrected the details on 5<sup>th</sup> July 2024, over a year after his resignation, further evidencing intent to deceive. Mr. Sanga cited regulation 11 of the Regulations, which obliges tenderers to ensure all NeST information is accurate and holds them liable for misuse.

Regarding the appellant's assertion of notifying TEMESA during negotiations on 8<sup>th</sup> July 2024, Mr. Sanga clarified that, this related only to Tender No. X8/2023-2024/W/55 and not to Tender No. X8/2023-2024/W/53. Moreover, the appellant had already effected the changes in the NeST on 5<sup>th</sup> July 2024 without TEMESA's consent, further indicating bad faith.

He also submitted that the appellant's letter dated 10<sup>th</sup> July 2024 to TEMESA, citing unforeseen circumstances for replacing Mr. Basiga, concealed the fact that Mr. Basiga had already resigned from employment effective 31<sup>st</sup> January 2023, prior to the submission of the tenders. TEMESA through its letter dated 25<sup>th</sup> July 2024, approved the substitution without knowledge of this concealment.

Three handwritten signatures in blue ink are located at the bottom of the page. The first signature is a stylized 'B' with a horizontal line through it. The second is a circular scribble. The third is a more complex, dense scribble.

Regarding the appellant's contention that substitution occurred before the award of the contracts, Mr. Sanga submitted that changes were done during negotiation after evaluation and identification of the successful tenderer. Since the evaluation considered Mr. Basiga's CV, the appellant benefited from it while knowing he was no longer its employee since 31<sup>st</sup> January 2023. Therefore, the false representation occurred at tender submission and is material to the procurement process. Corrections made post-submission do not cure the false representation.

Mr. Sanga submitted that, under Item 3 of Section IV of the Qualification and Evaluation Criteria as provided in the tender document, the tender required submission of five key personnel, but the appellant submitted only four, including Mr. Basiga, who had resigned, thus meeting only three valid personnel. Hence, the appellant failed to comply with mandatory tender requirements and should not have been awarded the tenders.

Mr. Sanga concluded that the appellant's conduct clearly demonstrates intent to deceive TEMESA regarding key personnel qualifications at tender submission.

Mr. Sanga further distinguished the case of **Ndunguru Petro versus Republic** (supra), stating, that it concerns with fraud not false representation, and thus it is inapplicable. The appellant's debarment was based on false representation under section 72(3) (d) of the Act and regulation 97(3)(d) of the Regulations as it arose from false representation and not section 72(3)(a) of the Act or regulation 97(3)(a) of the Regulations which relates to fraud and other offence.

He added that, the debarment decision was based on the appellant's written defence, the investigation report, NeST audit trail, evaluation process, and information received from Mr. Basiga, all substantiating false representation. Therefore, there was no speculation or disregard of evidence as alleged.

In support of his submissions, Mr. Sanga cited the case of **Joseph Mapema versus Republic** [1986] TLR, 148. In this case, the court referred **Re London and Globe Finance Corporation [1903] 1 Ch.728, Buckley, J.**, where intent to deceive and an intent to defraud was defined as hereunder "*to deceive is I apprehend, to induce a man to believe that a thing is true which is false, and which a person practicing the deceit knows and believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his own injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.*"

On his part, Mr. Wankyo submitted that section 72(3)(d) of the Act and regulation 97(3)(d) of the Regulations prescribe sanctions for false representation, with a minimum debarment of one year and a maximum of ten years. Considering the appellant's status as an employer with many employees and a taxpayer to the country, the respondent imposed a two-year debarment as proportionate sanction.

In conclusion, Mr. Sanga prayed that the appeal be dismissed with costs and the debarment order be upheld accordingly.

## **REJOINDER BY THE APPELLANT**

In his brief rejoinder, the appellant's learned counsel reiterated his submissions in chief on the right to be heard, emphasizing that the written defence only referred to the use of a corporate email address for confirmation purposes and did not address matters relating to creation, removing and re-creation of user accounts. Therefore, if the respondent considered these as concerns, it was obliged to accord the appellant a right to be heard before issuing the debarment decision.

He concluded that the respondent should have treated the submission of Mr. Basiga's CV as an administrative error without any intention to deceive.

## **ANALYSIS BY THE APPEALS AUTHORITY**

### **1. Whether the appellant's debarment was justified and in accordance with the law.**

Having considered parties' arguments, we would first determine whether the appellant's debarment was in accordance with the law before determining if the same was justified.

The appellant challenges the debarment on the basis that it was denied a right to be heard, particularly regarding new allegations of NeST manipulation, including the creation, removing and re-creation of user accounts, as well as forensic analysis findings. These matters, the appellant contends, were neither disclosed during the investigation nor included in the notice of intention to debar the appellant.

The respondent denied any denial of the right to be heard, stating that the appellant was served with a notice of intention to debar and submitted a written defence. The appellant's defense raised matters of using a corporate email address for tender confirmation. To verify this, the respondent reviewed NeST audit trail and email logs, which revealed the creation, removing and re-creation of user accounts. These findings were incorporated into the debarment decision as they arose directly from the appellant's defence. Therefore, there were no new matters introduced by the respondent.

In ascertaining the parties' rival arguments, we reviewed the record of appeal and observed that the respondent received a whistleblower information alleging that the appellant used Mr. William Basiga's CV without his consent in various tenders. To verify this, the respondent investigated, including seeking clarification from Mr. Basiga on his employment status at the appellant's company. In response Mr. Basiga, confirmed by a letter dated 26<sup>th</sup> September 2024 that he was no longer an employee of the appellant from 31<sup>st</sup> January 2023 and did not consent to the use of his CV in tenders submitted to TEMESA.

Following the investigation, the respondent issued the notice of intention to debar on 17<sup>th</sup> February 2026, requiring the appellant to submit a written defence. The appellant submitted its written defence on 1<sup>st</sup> March 2026 and was received by the respondent on 2<sup>nd</sup> March 2026. This defence included a justification for using company's email addresses for confirmation purposes in NeST.

From the above facts, we observe that, since the appellant introduced the use of the company's email address in its written defence, the respondent was entitled to verify this information. The audits trail in NeST revealed that on 16<sup>th</sup> November 2023 at 08:42:12 hrs, the appellant's NeST administrator, Hamad Aweso Mkomwa, created a user account for Mr. Basiga using the personal email address [wbasiga@songoromarine.com](mailto:wbasiga@songoromarine.com), despite knowing that Mr. Basiga had ceased employment on 31<sup>st</sup> January 2023.

Furthermore, on 19<sup>th</sup> February 2024, the audit trail discloses that the appellant's NeST administrator removed Mr. Basiga's profile and shortly thereafter re-created it, substituting the personal email with [hamad@songoromarine.com](mailto:hamad@songoromarine.com). On 5<sup>th</sup> July 2024, the account was updated by substituting Mr. Basiga's name with Major Songoro. The account was further updated on 20<sup>th</sup> September 2024.

This review confirms that the centralized corporate email address was used not only for official NeST communication but also to create, remove and modify user accounts, including that of Mr. Basiga. Because the audit trail review was prompted by the appellant's written defence, we find the appellant to have not been denied a right to be heard, as there were no new grounds which formed the basis of the debarment decision.

We examined the appellant's cited cases: **Kumbwandumi Ndemfoo Ndossi versus Mtei Bus Services Ltd**, and **National Microfinance Bank PLC and One Another versus Lello Laurent Sawe** (supra) and found them distinguishable. In those cases, the courts raised new issues *suo motu* during judgment composition, whereas in this appeal the

appellant's written defence raised matters relating to use of corporate email address which the respondent merely verified.

Given this finding, we proceed to determine whether the debarment is justified. In so doing, we considered the appellant's argument that the respondent erred in law and fact by finding false representation without properly considering material defense and relying on speculation which resulted to issuing of disproportionate sanction. The appellant contended that the inclusion of Mr. Basiga as key personnel in its tenders submitted to TEMESA was an inadvertent error, promptly corrected once discovered, and that TEMESA accepted the substitution of the key personnel.

The respondent, however, maintained that the appellant's act of including Mr. Basiga as key personnel in tenders advertised in June 2024, despite his resignation which was effective from 31<sup>st</sup> January 2023, constituted false representation justifying debarment.

To assess justification, we reviewed section 72 (3) (d) of the Act and regulation 97(3)(d) of the Regulations which provide:

*"s. 72 (3) A tenderer shall be debarred from participating in public procurement or disposal proceedings if –  
(d) the tenderer **makes false representation about his qualification during tender proceedings.**"*

*r. 97 (3) subject to the provision of the Act, **debarment shall be for a period -***



***(d) of not less than one year and not exceeding ten years, where the tenderer makes false representation about his qualifications during the tender proceedings."***

*(Emphasis supplied)*

These provisions clearly establish that a tenderer may be debarred if it is proven to have made false representation regarding its qualification during the procurement proceedings.

We further examined the statutory definition of "false representation" under section 3 of the Act:

***"s. 3 false representation means a misrepresentation of fact made by one party to another with intent to deceive and with the knowledge that it is false."***

*(Emphasis Added)*

This definition requires two essential elements for debarment being a false statement of fact and knowledge of its falsity coupled with intent to deceive.

In this appeal, the appellant does not dispute inclusion of Mr. Basiga's CV as key personnel but contends that this was inadvertent error and was corrected immediately upon discovery.

Reviewing the sequence of events, Mr. Basiga resigned effective from 31<sup>st</sup> January 2023. The tenders in dispute were advertised on 9<sup>th</sup> and 14<sup>th</sup> June 2024 with tender openings on 27<sup>th</sup> June 2024 and 1<sup>st</sup> July 2024. The

appellant was the sole tenderer that responded to the advertised tenders. Following evaluation process, negotiation occurred on 8<sup>th</sup> July 2024, during which the appellant requested to substitute Mr. Basiga with Major Songoro. This request was formalized in a formal letter dated 10<sup>th</sup> July 2024, and TEMESA accepted the substitution on 25<sup>th</sup> July 2024, subsequently awarding the tenders to the appellant.

The record of appeal reveals further that the respondent received a whistleblower information alleging that the appellant had submitted false information during tendering, including using Mr. Basiga's CV without his consent. Investigation confirmed that Mr. Basiga's resignation was effective from 31<sup>st</sup> January 2023. Also he did not grant permission for his CV to be used by the appellant. The appellant was issued with a Notice of Intention to debar and required to submit its defense, which raised the use of a central corporate email for NeST confirmations.

After receipt of the written defence, the respondent reviewed NeST audit trail and found that on 16<sup>th</sup> November 2023 at 08:42:12 hrs, the appellant's NeST administrator, created an account for Mr. Basiga using the personal email address [wbasiga@songoromarine.com](mailto:wbasiga@songoromarine.com). Subsequently, on 19<sup>th</sup> February 2024 at 00:34 hrs, the appellant's NeST administrator removed Mr. Basiga's account, and at 1:34 hrs re-created it with the email address [hamad@songoromarine.com](mailto:hamad@songoromarine.com). On 5<sup>th</sup> July 2024, the account was updated by substituting Mr. Basiga's name with Major Songoro.

From the record of Appeal, it is evident that the appellant knowingly included Mr. Basiga's CV despite his resignation over a year prior to the

tender advertisement. Given that NeST came into use in September 2023, well after Mr. Basiga's resignation, it is implausible that his details were mistakenly included from NeST records. The appellant was responsible for ensuring all tender information was accurate and current. Therefore, the act of including Mr. Basiga's CV was intentional, not inadvertent, and the appellant's assertion is rejected.

The creation and manipulation of Mr. Basiga in NeST account on 16<sup>th</sup> November 2023 at 08:42:12 hrs by the appellant's administrator further demonstrates intent to deceive TEMESA regarding key personnel qualifications. The sequence of creating, removing, re-adding with a different email, and eventually substituting the account reflects deliberate conduct inconsistent with a mere administrative error.

Although the appellant eventually corrected the irregularity by substituting Major Songoro for Mr. Basiga, these corrections occurred first in NeST on 5<sup>th</sup> July 2024 without TEMESA's consent and were only formalized by a letter on 10<sup>th</sup> July 2024. Such post-facto correction does not negate the initial false representation or the appellant's intent to deceive. In addition, the Appellant's letter to TEMESA on substitution of Mr. Basiga did not disclose Mr. Basiga's resignation from the appellant's company, but stated his unavailability was due to unforeseen circumstances while knowing he had resigned for over nineteen months. This clearly depicts an intention to deceive.

Applying the statutory definition of false representation under Section 3 of the Act to the facts of this Appeal, it is clear that the appellant made a false statement with knowledge of its falsity and intent to deceive.

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The Appellant submits that Mr. Basiga's CV did not meet the academic and experience qualifications, and therefore its inclusion conferred no advantage. We are not persuaded. The statutory definition of false representation under section 3 of the Act focuses on the misrepresentation of fact, intent to deceive, and knowledge of falsity, not on whether the misrepresentation was successful in conferring an advantage. The offence is complete upon the act of making the false statement with the requisite intention. Whether or not the deception ultimately succeeded does not exonerate the maker.

Regulation 11 (9) of the Regulations requires every NeST users to ensure confidentiality and accountability for all activities involving their account. As the appellant controlled the NeST accounts, it bears responsibility for the accuracy of information and actions taken therein.

We further considered the appellant's argument on proportionality of the sanction and observe that the punishment was issued pursuant to section 72(3)(d) of the Act and regulation 97(3)(d) of the regulations which provides minimum and maximum punishment for false representation. From our above findings, we are of the settled view that the debarment punishment of two years is proportionate to the appellant's committed misconduct. Thus, we reject the appellant's argument on this point.

Based on these findings, we are of the settled view that the appellant had intention to deceive, hence its debarment on false representation is justified.

Accordingly, we conclude the first issue in the affirmative that the appellant's debarment was justified and in accordance with the law.

**2.0 What reliefs, if any, are the parties entitled to?**

In light of the above, we dismiss the appeal and uphold the respondent's debarment decision 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 both parties this 8<sup>th</sup> day of May 2026.



.....  
**MS. FLORENTINA SUMAWE**

**Ag. CHAIRPERSON**

**MEMBERS:**

**1. MS. SARAH BISANDA** .....  


**2. MR. RAPHAEL MAGANGA** .....  
