IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 20 OF 2023-24

BETWEEN

M/S OKOAMUDA LIMITED.....APPELLANT

AND

MBULU DISTRICT COUNCIL.....RESPONDENT

RULING

CORAM

1. Adv. Rosan Mbwambo - Chairperson
2. Eng. Stephen Makigo - Member
3. Mr. Rhoben Nkori - Member
4. Mr. James Sando - Secretary

SECRETARIAT

1. Ms. Florida Mapunda - Deputy Executive Secretary
2. Ms. Violet Limilabo - Senior Legal Officer

FOR THE APPELLANT

1. Mr. Dickson Tigalyoma - Advocate - Eagle Law Chambers Advocates
2. Mr. Yusuph Nyahori - Managing Director- Okoamuda Ltd

FOR THE RESPONDENT

1. Mr. Joseph Mandoo	- Chairman - MDC
2. Mr. Abubakari Kuuli	- District Executive Director
3. Mr. Crispin Kaijage	- State Attorney
4. Mr. Humphrey Aron	- Head of Procurement Management Unit (HPMU)
5. Mr. Abiud Shayo	- Information Communication Technology Officer (ICTO)
6. Mr. Respicius Kagaruki	- District Finance and Accounts Officer
7. Mr. Isaya Sisya	- District Internal Auditor

This Appeal was lodged by **M/S Okoamuda Limited** (hereinafter referred to as **"the Appellant"**) against the **Mbulu District Council** (hereinafter referred to as "**the Respondent"**). The Appeal is in respect of Tender No. LGA/061/2023-2024/NC/07 for provision of Agency Services for Crops Levy Collection (Huduma ya Wakala wa Ukusanyaji Ushuru wa Mazao) (hereinafter referred to as "**the Tender**").

The background of this Appeal may be summarized from the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") as follows: -

The Tender was conducted through National Competitive Tendering Method as specified in the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 446 of 2013 as amended (hereinafter referred to as "**the Regulations**").

On 22nd May 2023, the Respondent invited tenderers through the Tanzania National electronic Procurement System (TANePS) to participate in the Tender. The deadline for submission of tenders was set on 6th June 2023. On the deadline, four tenders were received including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the evaluation process, the evaluation committee recommended award of the Tender to the Appellant. The proposed contract price was Tanzania Shillings One Billion Three Hundred Seventy Two Million Eight Hundred Thousand only (TZS 1,372,800,000.00) per year. The Appellant would be paid a commission of 13.5% of the collection per month. The Tender Board deliberated and approved the award as recommended by the Evaluation Committee at its meeting held on 26th June 2023.

On 22nd August 2023, the Respondent invited the Appellant to attend negotiation meeting scheduled on 24th August 2023. The negotiations took place on 24th August 2023 as scheduled. In the said negotiations, both the Respondent and the Appellant agreed that performance security in the form of insurance bond of Tanzania Shillings Seventy Million only (TZS 70,000,000.00) should be submitted by the Appellant. Furthermore, it was agreed that the submitted insurance bond should be verified by the Respondent to ensure that it is issued by an insurance firm recognized by the Tanzania Insurance Regulatory Authority.

On 25th August 2023, the Respondent issued an award letter which required the Appellant to submit the performance security in the form of insurance bond of TZS 70,000,000.00. On the same date the Appellant acknowledged the award made to it and submitted the insurance bond.

The Respondent through a letter dated 8th September 2023 invited the Appellant to attend contract signing ceremony scheduled on 14th September 2023. The Appellant claimed to receive the said letter on 13th September 2023. In addition, the letter required the Appellant to deposit TZS 70,000,000.00 as performance security and TZS 30,000,000.00 as a cash float.

On 14th September 2023, the meeting for signing of the contract was convened as scheduled. In the said meeting, various issues were discussed including:- exclusion of garlic, peas and lentils in levy collection, requirement to deposit cash float of TZS 30,000,000.00 and TZS 70,000,000.00 as a performance security before execution of the contract. The minutes of the said meeting indicate that the parties did not reach consensus as the Appellant refused to accept the newly introduced terms. As a result, the contract was not signed.

On 15th September 2023, the Appellant wrote a letter to the Respondent requesting for amicable settlement of the issues that were not settled in the meeting held on 14th November 2023. Meanwhile, the Respondent's Tender Board deliberated and approved the re-advertisement of the Tender at its meeting held on 3rd October 2023 after the Appellant failed to sign the contract.

The Respondent through a letter dated 4th October 2023 informed the Appellant that since it declined to sign the contract, the Respondent has decided to collect crops levy by itself. In addition, the Tender Board approved a recommendation to re-advertise the Tender. Dissatisfied with the Respondent's decision on 16th October 2023, the Appellant filed this Appeal.

The Respondent filed its statement of reply followed by a notice of Preliminary Objections (POs) on two points of law to wit: -

i) *The Statement of Appeal is bad in law as the Appeals Authority has no Jurisdiction to determine this Appeal; and*
ii) *The Statement of Appeal is unmaintainable in law for being time barred.*

When the matter was called on for hearing the Respondent withdrew the POs. Nevertheless, the Appeals Authority *suo moto* drew the attention of the parties on the provisions of sections 96(1), (4) and (6) and 97(1) and (2) (a) and (b) of the Act. Sections 96(1), (4) and (6) and 97(1) and (2) (a) and (b) of the Act read as follows: -

> *"96(1) Any complaints or disputes between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision*

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

(6) The accounting officer shall, within seven working days after the submission of the complaint or dispute deliver a written decision which shall:-

(a) State the reason for the decision; and

(b) If the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

97(1) A tenderer who is aggrieved by the decision of the Accounting Officer may refer the matter to the Appeals Authority for review and administrative decision.

(2) Where-

(a) the accounting Officer does not make a decision within the period specified under this Act;

(b) the tenderer is not satisfied with the decision of the accounting officer

the tenderer may make the complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision".

The parties were asked to address the Appeals Authority on the above provisions with a view to impress upon it whether or not the Appeal complied with the law. After protracted arguments, Mr. Dickson Tigalyoma, learned counsel for the Appellant finally conceded to have not filed an application for administrative review prior to the filing of this Appeal. The learned counsel admitted that upon receipt of the Respondent's letter dated 4th October 2023 on 9th October 2023 and being dissatisfied, the Appellant should have filed an application for administrative review to the Respondent. Conversely, the Appellant filed this Appeal directly. Therefore, the Appeal has failed to comply with the requirements of Section 96 of the Act.

In view of the Appellant's admission that it had not exhausted the available remedy prior to the filing of this Appeal, the Appeals Authority hereby dismiss the Appeal. Since the point of law was raised by the Appeals Authority, we make no orders as to costs.

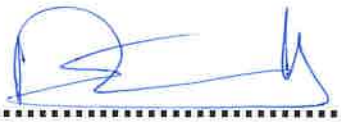
It is so ordered.

This Ruling is binding and can be enforced in accordance with Section 97(8) of the Act.

The Right of Judicial Review as per Section 101 of the Act is explained to the parties.

This ruling is delivered in the presence of the Respondent and in the absence of the Appellant though duly notified this 16th day of November 2023.

ADVOCATE ROSAN MBWAMBO



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Ag. CHAIRPERSON

MEMBERS: -

1. **ENG. STEPHEN MAKIGO**.....
2. **MR. RHOBEN NKORI**.....