

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 36 OF 2023-24

BETWEEN

M/S AFRITRUST GROUP LTD.....APPELLANT

AND

PUBLIC PROCUREMENT

REGULATORY AUTHORITY.....1ST RESPONDENT

RURAL WATER SUPPLY AND SANITATION

AGENCY2ND RESPONDENT

ORDER

CORAM

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| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Dr. William Kazungu | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

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| 1. Mr. Elvalson Maro | - Advocate - Maro & Company
Advocates |
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| 2. Eng. Joachim Metta | - Managing Director
M/S Afritrust Group Ltd |
| 3. Eng. Yunis Maonyesho | - Zone Manager - CRB |
| 4. Mr. Thomas Kessy | - Advocate - Maro & Company
Advocates |
| 5. Mr. Christopher Malinga | - Advocate - Kwiz Attorneys |

FOR THE RESPONDENTS

- | | |
|----------------------------|---------------------------------|
| 1. Mr. Boaz Msoffe | - State Attorney - OSG |
| 2. Mr. Deusdedith Bishweko | - State Attorney - PPRA |
| 3. Mr. Kelvin Mugashe | - State Attorney - PPRA |
| 4. Ms. Aissa Mapigi | - Procurement Officer
RUWASA |

The Appeal was lodged by **M/S Afritrust Group Ltd** (hereinafter referred to as "**the Appellant**") against the **Public Procurement Regulatory Authority** commonly known by its acronym as "**PPRA**" (hereinafter referred to as "**the 1st Respondent**") and the Rural Water Supply and Sanitation Agency commonly known by its acronym as "**RUWASA**" (hereinafter referred to as "**the 2nd Respondent**"). The Appeal is in respect of the debarment decision issued by the 1st Respondent against the Joint Venture (JV) partners, namely, M/S Archeng Company Ltd and M/S Afritrust Group Ltd. The debarment decision was in relation to a false representation of a certificate issued by the Contractors Registration Board (CRB) to the 2nd Respondent during the tendering process of Tender No. AE-102/2021-2022/KGR/W22 (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: -

On 19th January 2022, the 2nd Respondent through the Tanzania National electronic Procurement System (TANePS) invited eligible tenderers to participate in the Tendering process. 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 as to "**the Regulations**").

After completion of the internal processes, the 2nd Respondent awarded the Tender to the JV partners. On 29th August 2022, M/S Archeng Company Limited, the lead partner and the JV's legal representative for the Tender, signed the contract with the 2nd Respondent. The value of the signed contract was Tanzania Shillings Two Billion Seven Hundred Eighty One Million Ninety Six Thousand Seven Hundred Thirty Six and Cents eleven only (TZS 2,781,096,736.11) VAT inclusive.

The record of Appeal indicates that the 2nd Respondent through a letter dated 4th December 2023, requested the CRB to avail it with registration classes of the JV partners due to failure to execute the signed contract. On 7th December 2023, the CRB responded to the 2nd Respondent's letter by indicating that the Appellant is currently registered as class two civil works

contractor and M/S Archeng Company Limited has been registered as class six civil works contractor.

After receipt of CRB's response on the registration of the JV's partners, the 2nd Respondent reviewed the documents that were submitted by the said JV during the tendering process on TANePS. It observed that M/S Archeng Company Limited had attached a CRB's registration certificate which indicated that it had been registered as a class four civil works contractor while the firm was registered as class six civil works contractor. M/S Archeng Company Limited also attached a letter from CRB which gave the JV a temporary registration dated 8th February 2022. The letter uploaded on TANePS indicated that both M/s Archeng Company Limited and the Appellant were registered as class four civil works contractors. Whereas the original CRB letter on the same date indicated that M/s Archeng Company Limited and the Appellant were registered as class six and four civil works contractors respectively.

Following the above findings, on 11th December 2023, the 2nd Respondent submitted a debarment proposal to the 1st Respondent based on the reason that the JV partners made a false representation of their qualification during the tendering process that led to underperformance of the awarded contract.

After receipt of the debarment proposal and having found that there were sufficient reasons for debarment, the 1st Respondent required each JV partner to submit its written representation on the debarment proposal against them. The JV partners submitted

their defence. Having considered the debarment proposal *vis-a-vis* the submitted defence, the 1st Respondent debarred the JV partners from participating in public procurement for a period of 10 years starting from 7th March 2024 to 6th March 2034. The 1st Respondent's decision was served to the Appellant on the same date of 7th March 2024. Aggrieved with the 1st Respondent's debarment decision, on 14th March 2024, the Appellant filed this Appeal to the Appeals Authority.

When the matter was called on for hearing and before framing up of the issues, the learned State Attorney from the Office of the Solicitor General, Mr. Boaz Msoffe who represented the 1st and 2nd Respondents conceded to the Appeal to the extent of the Appellant's debarment. The learned State Attorney stated that after thorough investigation, it became clear to them that the Appellant was not involved in the submission of the forged CRB's certificate during the tendering process.

The learned State Attorney elaborated that prior to the deadline for submission of tenders, the Appellant entered into a JV agreement with M/S Archeng Company Limited. The JV agreement was given a temporary registration with CRB. The JV agreement and the CRB's temporary registration both indicated that the Appellant was registered as a class four civil works contractor and M/S Archeng Company Limited was registered as class six civil works contractor. However, M/S Archeng Company Limited being a lead partner and legal representative for the JV in the Tender, uploaded CRB certificate and the joint venture

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agreement which indicated that M/S Archeng Company Limited was registered as class four civil works contractor contrary to the CRB's registration certificate and letter dated 8th February 2022.

The learned State Attorney elaborated that since the Tender was processed on TANEPS, only the authorized legal representative was able to submit and access all the documents that were submitted for the Tender. That is to say, M/S Archeng Company Limited being a JV's lead partner was also appointed the legal representative who had access to all the submitted information. Thus, the Appellant could not verify in any way if the submitted documents were the same as those issued by the relevant issuing authority, like CRB. The Appellant was not responsible for the false representation leading to the debarment.

In view of the above, the learned State Attorney conceded to the Appeal to the extent that the debarment of the Appellant was not proper as it was not involved in the submission of the forged documents during the tendering process. Thus, its debarment was therefore unjust. Under the circumstances, the learned State Attorney prayed that the debarment order against the Appellant be uplifted and each party should bear its own costs.

Mr. Elvalson Maro, learned counsel for the Appellant, did not object to the Respondent's act of conceding to the Appeal. He stated that in the interest of justice it would be proper to uplift the debarment decision issued by the 1st Respondent against the Appellant. The learned counsel prayed that the 1st Respondent be ordered to publish the uplifted debarment order in the same manner as the debarment decision.

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Given the development that the Respondents conceded to the Appeal to the extent that the debarment of the Appellant was not proper, the Appeals Authority hereby orders the 1st Respondent to uplift the debarment decision issued against the Appellant. The 1st Respondent is also ordered to publish the uplifting of the debarment decision against the Appellant as the debarment decision was published.

It is so ordered.

This Order is delivered in the presence of the parties this 28th day of March 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS:

1. ENG. STEPHEN MAKIGO



2. DR. WILLIAM KAZUNGU

