

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 31 OF 2024 - 2025

BETWEEN

M/S SUPREME INTERNATIONAL LIMITED.....APPELLANT

AND

**DAR ES SALAAM WATER SUPPLY AND SANITATION
AUTHORITY (DAWASA).....RESPONDENT**

RULING

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Souda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Dr. William Kazungu | - 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. Vedastus Lufano | - Managing Director |
| 2. Mr. Ernest Kabahise | - Accountant |



FOR THE RESPONDENT

- | | |
|------------------------|--|
| 1. Mr. Boaz Msoffe | - State Attorney - Office of the Solicitor General (OSG) |
| 2. Ms. Asia Killaghai | - State Attorney - OSG |
| 3. Mr. Amos Masala | - State Attorney - DAWASA |
| 4. Mr. Emil Ntangwa | - Director of Procurement Management Unit (DPMU) |
| 5. Mr. Denis Cleoplace | - Procurement Officer |

This Appeal was lodged by **M/S Supreme International Limited** (hereinafter referred to as "**the Appellant**") against the **Dar es Salaam Water Supply and Sanitation Authority**, commonly known by its acronym as "**DAWASA**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR158/2023/2024/NC/28 for Provision of Security Services for Unarmed Area Zone 1, 2 and 3 (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: -

According to the record of Appeal, the Tender under appeal was advertised twice. The first 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**"). The second Tender was conducted



according to the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**").

On 10th January 2024, the Respondent through National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was set on 26th January 2024. On the deadline, nine tenders were received by the Respondent including that of the Appellant.

The received tenders were then subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to M/S Kigemu Security Services. On 12th April 2024, the Tender Board directed that due diligence be conducted to the lowest evaluated tenderer to verify its previous experience.

On 24th May 2024, the Respondent requested tenderers to extend the bid validity period from 26th May 2024 to 20th June 2024. The record of Appeal indicates that some of the tenderers extended the bid validity period as requested. There is no record which indicates that the Appellant extended the bid validity period.

According to the record of Appeal, the Respondent re-evaluated all tenders and disqualified them for being found non-responsive to the requirements of the Tender Document. The Tender Board approved rejection of all tenders and ordered for re-advertisement of the Tenders through its meeting held on 13th June 2024. On 28th June 2024, the Tender was re-advertised through NeST and the opening of tenders took place on 12th July 2024. Twelve tenders including that of the Appellant were submitted.



The received tenders were subjected to evaluation. After completion of evaluation process, the Evaluation Committee recommended award of the Tender to M/S Yange Security Guards Company Ltd. The recommended contract price was Tanzania Shillings Two Billion One Hundred Fifty Million One Hundred Ninety Four Thousand Three Hundred and Eight cents only (TZS 2,150,194,300.8) VAT Inclusive.

According to the record of Appeal, the Respondent issued a letter to the Appellant on 19th July 2024. The letter informed it that all tenders were rejected for being non-responsive to the requirements of the Tender Document.

The Tender Board approved the award of the Tender as recommended by the Evaluation Committee through Circular Resolution No. DWS/CR/2024-2025/29 of 2024/2025 dated 5th September 2024. Negotiations were conducted on 23rd September 2024 and 21st January 2025. The proposed successful tenderer reduced the contract price from TZS 2,150,194,300.8 VAT Inclusive to TZS 1,440,780,000.00 VAT Inclusive and TZS 1,221,000,000.00 VAT Exclusive.

On 6th November 2024, the Respondent requested tenderers to extend the bid validity period to allow it to finalize the Tender process. The proposed successful tenderer extended the bid validity while the Appellant did not extend the bid validity as requested.

On 21st January 2025, the Respondent issued the Notice of Intention to award the Tender. The Notice stated that the Respondent had proposed award of the Tender to M/S Yange Security Guards Company Ltd at the contract price of TZS 1,809,000,000.00 VAT Exclusive. In addition, the



Notice indicated that the Appellant's tender was not considered for award as it submitted a bid bond from Bucico Insurance Company Ltd instead of a Bank Guarantee as specified under Clause 19.1 of the Instructions To Tenderers (ITT).

Dissatisfied with the decision, on 29th January 2025, the Appellant applied for administrative review to the Respondent. The Respondent indicated that the application for administrative review was received on 3rd February 2025. Consequently, the Respondent did not entertain it as it was submitted out of the prescribed time limit.

On 30th January 2025, the Appellant received the Respondent's letter dated 28th January 2025 which required it to hand over the site, since the contract was expiring on 31st January 2025. On 30th January 2025, the Appellant responded to the Respondent's letter by indicating that it had no objection to hand over the site. However, it had not been informed to whom the site was to be handed over to.

On 1st February 2025, the Appellant received the second Notice of Intention to award from the Respondent. The Notice stated that the Respondent intended to award the Tender to M/S Yange Security Guards Company Ltd at the contract price of TZS 1,221,000,000.00 VAT Exclusive. Aggrieved further, on 10th February 2025, the Appellant filed this Appeal to the Appeals Authority.

The Appellant's Appeal centers on the grounds that the Respondent erred in law for re-advertising the Tender and proceeding with the Tender process after it had rejected it. Further, the Respondent erred in law for failure to communicate officially the Tender results to the Appellant. The



Appellant stated further that the Respondent's act of requesting extension of the bid validity period and disqualifying the Appellant on the Tender that had already been rejected contravened the requirements of the law. Furthermore, the Respondent's act of issuing two Notices of Intention to award without revoking the first notice contravened the law.

Upon receipt of the Appeal, the Appeals Authority notified the Respondent and required it to submit a Statement of Reply. In its Statement of Reply, the Respondent stated that the Tender was re-advertised on 28th June 2024, after the previous Tender was rejected by the Tender Board after finding that all tenders were non-responsive to the requirements of the Tender Document. The Respondent stated further that it communicated the Notice of Intention to award to all tenderers including the Appellant. Before the bid validity period of 120 days had expired, the Respondent requested tenderers to extend the bid validity, but the Appellant did not extend the bid validity as requested.

On its Statement of Reply, the Respondent also raised Preliminary Objections (POs) on points of law to the effect that: -

- 1. The Appellant has no *locus standi* to appeal to the Appeals Authority as its tender effectiveness terminated on 17th November 2024, following its failure to extend the bid validity contrary to Regulation 191(5) of the Public Procurement Regulations, GN. No. 446 of 2013;**
- 2. The Appeal is untenable in law for the Appellant's failure to submit a complaint within five (5) working days to the**



Respondent contrary to Section 120 of the Public Procurement Act, No. 10 of 2023;

- 3. The Appeals Authority has no jurisdiction to determine the alleged termination of Contract No. AE/033/2021-2022/NCS/01-B which is not subject of Tender No. 158/2023/2024/NC/28 hence contravening Sections 120 and 121 of the Public Procurement Act, No. 10 of 2023.**

When the matter was called on for hearing and before framing up of the issues, Mr. Boaz Msoffe, learned State Attorney prayed to amend the first PO to read that "*The Appellant has no locus standi to appeal to the Appeals Authority as its tender effectiveness was terminated, following its failure to extend the bid validity contrary to Regulation 191(5) of the Public Procurement Regulations, GN. No. 446 of 2013.*" The Appellant also prayed for the withdrawal of contentions relating to termination of the contract. Based on that the learned State Attorney also prayed to withdraw the third PO.

Following that development the following issues were framed namely: -

1.0 Whether the Appeal is properly before the Appeals Authority;

- (a) Whether the Appeal is untenable in law for the Appellant's failure to submit a complaint within five (5) working days to the Respondent contrary to Section 120 of the Act; and*
- (b) Whether the Appellant has locus standi to appeal to the Appeals Authority as its tender effectiveness was terminated,*



following its failure to extend the bid validity contrary to Regulation 191(5) of the Regulations.

2.0 Whether the disqualification of the Appellant's tender was justified; and

3.0 What reliefs, if any, are the parties entitled to?

Having framed the issues, the Appeals Authority required the parties to address the first issue which relates to the point of law before embarking on the substantive merits of the Appeal.

SUBMISSIONS BY THE RESPONDENT ON THE PO

1.0 Whether the Appeal is properly before the Appeals Authority

(a) Whether the Appeal is untenable in law for the Appellant's failure to submit a complaint within five (5) working days to the Respondent contrary to Section 120 of the Act.

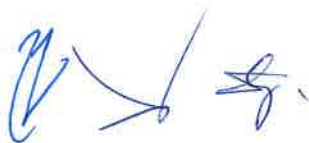
Mr. Boaz Msoffe, learned State Attorney, prayed to adopt the Respondent's Statement of Reply to form part of its submissions. He also commenced his submissions on the first sub-issue by stating that the Notice of Intention to award was issued to the Appellant and other tenderers through NeST on 21st January 2025, as clearly conceded by the Appellant. The learned State Attorney emphasized that upon receipt of the Notice of Intention to award, the Appellant was required to submit its application for administrative review to the Respondent within five working days in compliance with Section 120(4) of the Act. Counting from 21st January 2025, the five working days within which the Appellant ought to have



submitted its application for administrative review expired on 28th January 2025. To the contrary, the Appellant's letter dated 29th January 2025 was received by the Respondent's office on 3rd February 2025, as indicated by its official stamp. The Respondent did not entertain the Appellant's application for administrative review as it was submitted four (4) days beyond the prescribed time limit.

The learned State Attorney elaborated that the Appellant's application for administrative review was not entertained by the Respondent for being time barred. Therefore, the Appeal to the Appeals Authority has been filed contrary to the requirements of Section 121 of the Act. Mr. Msoffe submitted that even if it could be presumed that the Appellant's application for administrative review was submitted on 29th January 2025, the same was still submitted out of time for one day contrary to the requirement of Section 120(4) of the Act.

Mr. Msoffe expounded that the Respondent noted that the Notice of Intention to award issued on 21st January 2025, had the wrong contract price of TZS 1,809,000,000.00 VAT Exclusive instead of the correct negotiated contract price of TZS 1,221,000,000.00 VAT Exclusive. Based on that the Respondent made amendment in the NeST and communicated the second Notice of Intention to award to tenderers on 1st February 2025. The Appellant did not submit an application for administrative review on the second Notice. Mr. Msoffe stated that the Appellant had not complied with the time required for submitting an application for administrative review. Therefore, Mr. Msoffe prayed that the Appeal be dismissed with



costs for being improperly before the Appeals Authority as it was filed contrary to the requirement of the law.

In support of his submissions, Mr. Msoffe relied on PPAA **Appeal Case No. 15 of 2020-2021, between M/S Creditinfo Tanzania Ltd versus TPB Bank PLC**. In the said Appeal the Appeals Authority dismissed the Appeal for being not properly before it as the Appellant filed an Appeal to the Appeals Authority before filing an application for administrative review to the Respondent within the required time limit.

(b) Whether the Appellant has locus standi to appeal to the Appeals Authority as its tender effectiveness was terminated, following its failure to extend the bid validity contrary to Regulation 191(5) of the Regulations.

Mr. Msoffe submitted on the second sub-issue by stating that the Tender that was re-advertised on 28th June 2024 had a bid validity of 120 days. However, on 6th November 2024 before expiry of the initial validity period, the Respondent requested tenderers to extend the bid validity period. The Appellant did not extend the bid validity as requested by the Respondent, due to that the effectiveness of its tender was terminated after the expiry of the initial bid validity period. The learned State Attorney stated that at the time of filing this Appeal the Appellant was no longer a tenderer as its tender validity period expired in November 2024.

In support of his submissions, Mr. Msoffe cited the Case of **John M. Litondo and Two Others versus Fatuma Amri Masika, Civil Appeal No. 229 of 2020**, (CAT) at Moshi (unreported) page 7, where the court



stated that "*locus standi is a principle which is governed by common law according to which, a person bringing a matter to court should be able to show that his or her right has been breached or interfered.*" Mr. Msoffe elaborated that since the Appellant was no longer a tenderer then it had no right or interest in the disputed Tender that could have conferred it a *locus standi* to file this Appeal.

Mr. Msoffe concluded his submissions on the first issue by praying that the Appeal be dismissed with costs for being improperly before the Appeals Authority as clearly elaborated hereinabove.

SUBMISSIONS BY THE APPELLANT ON THE PO

The Appellant's submissions on the first issue were made by Mr. Vedastus Lufano, Managing Director of the Appellant. He commenced his submissions on the first sub- issue by stating that the Appellant received the Notice of Intention to award on 21st January 2025. It submitted its application for administrative review to the Respondent on 29th January 2025, within the required seven working days in compliance with the previous Act which was used in advertising the Tender in dispute. However, after the Appellant was informed on the requirement of five working days as provided under Act No. 10 of 2023, the Appellant conceded to the PO raised by the Respondent.

ANALYSIS BY THE APPEALS AUTHORITY ON THE Pos

1.0 Whether the Appeal is properly before the Appeals Authority

- (a) *Whether the Appeal is untenable in law for the Appellant's failure to submit a complaint within five (5) working days to the Respondent contrary to Section 120 of the Act.*

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In resolving this sub- issue, the Appeals Authority took cognizance of the fact that the Appellant conceded to the POs raised by the Respondent. Nevertheless, the Appeals Authority finds it appropriate to enlighten the parties on the requirements of the law in applying for administrative review to the Respondent and filing an Appeal to the Appeals Authority.

The Appeals Authority reviewed Sections 120(1), (4) and 121(2)(a) of the Act which read as follows: -

"120.- (1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets and award of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reason for his decision.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within five 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.

121- (2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if-



(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision."

[Emphasis Added]

The above quoted provisions indicate that a tenderer is required to submit an application for administrative review to the accounting officer within five working days from the date of becoming aware of the circumstances giving rise to the complaint. In addition, the accounting officer is prohibited from entertaining a complaint submitted to it beyond the stipulated time limit. Furthermore, where the accounting officer has failed to issue a decision within time specified under the law, a tenderer may submit a complaint directly to the Appeals Authority. A tenderer can do this as long as its complaint has been submitted within five working days after expiry of the period within which the accounting officer ought to have issued a decision.

The Appeals Authority related the provisions of the law quoted hereinabove with the facts of the Appeal. It observed that the Appellant after receipt of the Notice of Intention to award dated 21st January 2025 was required to apply for administrative review to the Respondent within five working days in compliance with Section 120(4) of the Act. Counting from 21st January 2025, the five working days for submission of an application for administrative review expired on 28th January 2025. The Appellant stated that it applied for administrative review to the Respondent on 29th January



2025 while the Respondent stated that the Appellant's application was received on 3rd February 2025. From the above facts, it is evident that the Appellant's application for administrative review was submitted to the Respondent beyond the prescribed five working days. Therefore, according to Section 120(4) of the Act, it was proper for the Respondent not to entertain the Appellant's application for administrative review.

The Appeals Authority observed from the record of Appeal that the Appellant filed the Appeal directly to the Appeals Authority on 10th February 2025 without complying with the requirements provided under Section 120(4) (supra). An Appeal could be filed directly to the Appeals Authority, if the Appellant had submitted its application for administrative review to the Respondent within the prescribed time. However, if the Respondent had failed to issue a decision within five or seven working days if it had formed independent review team as specified under Section 120(6) of the Act, the Appellant would have a right to submit its Appeal directly to the Appeals Authority in compliance with Sections 120(8) and 121(2)(a) of the Act. An Appeal cannot be filed directly to the Appeals Authority after the Appellant's failure to apply for administrative review within the time specified under the law. Therefore, from the above observations, the Appeals Authority is of the firm view that the Appeal is untenable in law for the Appellant's failure to comply with the requirements provided under the law.

Under the circumstances, the Appeals Authority concludes the first sub-issue in the negative that the Appeal is untenable in law for the Appellant's failure to submit a complaint within five working days. Since the first sub-



issue is sufficient to conclude that the Appeal is not properly before the Appeals Authority, therefore, the Appeals Authority will not delve into the second sub-issue.

The Appeals Authority hereby dismiss the Appeal for being improperly before it. Each party to bear its own costs.

It is so ordered.

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 the Respondent and in the absence of the Appellant though duly notified this 28th day of February 2025.

HON. JUSTICE (rtd) SAUDA MJASIRI


.....
CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO

2. DR. WILLIAM KAZUNGU