

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 03 OF 2024 - 2025

BETWEEN

**M/S KAPEMALA ENGINEERING AND
GENERAL TRADERS COMPANY LTD.....APPELLANT**

AND

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

**TANZANIA RURAL AND URBAN ROADS
AGENCY – TABORA.....2ND RESPONDENT**

DECISION

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Mr. Rhoben Nkori | - 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

- | | |
|--------------------------|---------------------|
| 1. Eng. Selemani Malambo | - Managing Director |
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FOR THE 1ST RESPONDENT

- | | |
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| 1. Mr. Mathew Fuko | - State Attorney, Office of Solicitor General |
| 2. Mr. Hilmar Danda | - Principal Legal Officer |

FOR THE 2ND RESPONDENT

- | | |
|-----------------------|-----------------|
| 1. Ms. Salama Kambona | - Legal Officer |
| 2. Mr. Rustick Mtama | - Legal Officer |

This Appeal was lodged by **M/S Kapemala Engineering and General Traders Company 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 **Tanzania Rural and Urban Roads Agency – Tabora** commonly known by its acronym as "**TARURA – TABORA**" (hereinafter referred to as "**the 2nd Respondent**").

The Appeal is in respect of the debarment order issued by the 1st Respondent against the Appellant for submission of two letters purporting to have been issued by the Contractors Registration Board (CRB) as a proof of registration of a Joint Venture (JV). The said letters were submitted by the Appellant to the 2nd Respondent when submitting its tender with respect to Tender No. AE.092/WB-RISE-P164920/379001/2023/24/W/01 for Construction of Box Culverts and Approach Roads along Nzega Town and Nzega District Roads in Tabora Region and Tender No. AE.092/WB-RISE-P164920/379060/2023/24/W/01 for Construction of Box Culverts,



Approach Roads and Rise Embarkment along Uyui, Sikonge and Kaliua District Roads in Tabora Region (hereinafter referred to as "**the Tenders**").

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 4th January 2024, the 2nd Respondent floated the Tenders through National e-Procurement System of Tanzania (NeST). The referred Tenders were conducted under 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 Appellant in a JV with M/S McDavid Tanzania Company Ltd participated in the Tenders advertised by the 2nd Respondent. As a proof of registration of the JV, the Appellant attached to its tenders letters with Reference No. JVC5/3984 and No. JVC5/3985 which were dated 15th January 2024. According to the Appellant, the letters were issued by CRB Southern Zonal Office. The letters indicated that the Appellant and M/S McDavid Tanzania Company Ltd were both registered as class V Civil Works Contractors. The two firms formed a JV for purposes of execution of the Tenders.



The record of Appeal indicates that after receipt of tenders by the deadline for submission, the 2nd Respondent subjected all the received tenders to evaluation. During the evaluation process, the 2nd Respondent observed that the Appellant had attached two letters from CRB to substantiate the registration of its JV. To ascertain if the attached letters were valid, the 2nd Respondent through letters dated 04th April 2024 with Reference Nos. CEA.343/396/01/21 and CEA.343/396/01/17 inquired from CRB Southern Zonal Office about the authenticity of the registration of the JV. CRB Southern Zonal Office through letters dated 12th April 2024, with Reference Nos. CRB-52/ENF/VOL1/2023-24/16 and CRB-52/ENF/VOL1/2023-24/15, denied having registered the Appellant's JV. CRB Southern Zonal Office informed the 2nd Respondent that the two letters attached to the Appellant's tenders were not issued by it and therefore were forged.

On 25th April 2024, the 2nd Respondent submitted a debarment proposal to the 1st Respondent against the Appellant for the reason that the purported registration of JV between the Appellant and M/S McDavid Tanzania Company Ltd was forged.

Upon receipt of the debarment proposal, on 14th May 2024 the 1st Respondent issued the notice of intention to debar to the Appellant and its JV partner M/S McDavid Tanzania Company Ltd. The said firms were required to show cause why they should not be debarred from participating in public procurement for submitting

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two letters purported to have been issued by CRB Southern Zonal Office while the same were forged.

On 28th May 2024, the 1st Respondent received a written defense from the Appellant and M/S McDavid Tanzania Company Ltd. On one hand, the Appellant denied to have forged the CRB letters and claimed that the letters attached to its tenders were previously used by it in applying for tender No. TR36/005/2023/2024/W/11 advertised by TANROADS-Iringa. The Appellant contended that it previously formed a JV with M/S McDavid Tanzania Company Ltd for purposes of securing a tender from TANROADS-Iringa. However, they failed to secure the said tender. The Appellant stated that due to insufficient time, it decided to use the same letters in applying for the Tenders in question without informing M/S McDavid Tanzania Company Ltd.

On the other hand, M/S McDavid Tanzania Company Ltd denied having formed a JV with the Appellant and participating in Tenders floated by the 2nd Respondent. In support of its argument M/S McDavid Tanzania Company Ltd attached a letter written by the Appellant apologizing for using M/S McDavid Tanzania Company Ltd's name in forming the JV without its consent. M/S McDavid Tanzania Company Ltd also denied being aware of all the transactions in the referred letters as the same were processed by the Appellant without its knowledge and consent.

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The record of Appeal indicates that after reviewing the Appellant's written defense, the 1st Respondent was satisfied that M/S McDavid Tanzania Company Ltd was not involved in the forgery, thus it was found not liable. However, the 1st Respondent did not agree with the Appellant's defense. Therefore, on 18th June 2024, the 1st Respondent issued a debarment decision against the Appellant. The Appellant was debarred from participating in public procurement for a period of 10 years.

The Appellant claimed to have received the debarment decision on 24th June 2024. Being aggrieved by the debarment decision, on 9th July 2024, the Appellant lodged this Appeal before the Appeals Authority.

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

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

2.0 What reliefs if any are the parties entitled to?

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Eng. Selemani Malambo, the Managing Director. He commenced on the first issue by stating that the Appellant is dissatisfied with the 1st Respondent's decision of debarring its company from participating in public procurement for a period of ten (10)



years. Eng. Malambo submitted that the Appellant's company is new and was registered in 2021. Since its establishment the Appellant has applied for three tenders only. One was advertised by TANROADS-Iringa and the other two were advertised by the 2nd Respondent which led to the debarment.

Eng. Malambo submitted that the Appellant has been complying with all legal requirements such as payment of taxes to TRA, annual fees to CRB, Business License, Service Levy and annual fees to PPRA. The Appellant also paid for the Tenders advertised by the 1st Respondent through NeST. In addition, Eng Malambo stated that the Appellant had been incurring office running costs which including costs for tender application and other related costs. Thus, the debarment order against it resulted in a natural death of the Appellant's company.

Eng. Malambo stated that by the time the 2nd Respondent advertised the Tenders, he was on site discharging other activities. Thus, he instructed IT experts to prepare the tenders on its behalf. In so doing, the IT experts attached letters for registration of the JV which showed that the same were issued by CRB Southern Zonal Office while that was not the case. Eng. Malambo apologized for what happened and requested to be pardoned and not to be penalized for the first mistake which occurred because the company is still new in navigating in this regulatory system. He stated that the Appellant has been earnestly striving to familiarize itself with its complexities and to adhere to all guidelines and protocols. He contended that the oversights which led to the debarment were unintentional and

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arose due to lack of knowledge in operating or using NeST. Eng. Malambo requested for consideration of its case emphasizing its company's dedication to rectify the mistake promptly and implement rigorously internal controls to prevent recurrence. He asked for pardon and begged for mercy.

Eng. Malambo concluded his submissions by stating that the Appellant was not accorded a right to be heard before the 1st Respondent issued its debarment decision against it. He stated that had the 1st Respondent accorded the Appellant a right to be heard, it would have understood the Appellant's circumstances and the alleged acts that were committed unintentionally. Hence, it would not have debarred the Appellant.

Finally, the Appellant prayed for the following reliefs: -

- a) That, the debarment decision issued by the 1st Respondent be quashed;
- b) That, the Appellant be accorded the right to be fairly heard;
- c) A declaration that the Respondents failed to consider the weight of the Appellant's issue as they concluded it harshly without considering it being junior in the practice.

RESPONDENTS' REPLY

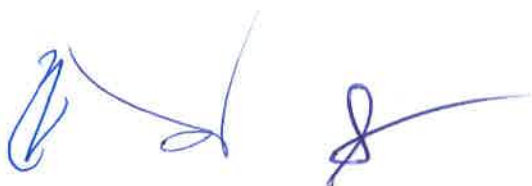
The Respondents' submissions were made by Mr. Mathew Fuko, learned State Attorney from the Office of the Solicitor General. He commenced on the first issue by adopting the Written Statement of Reply. The learned State Attorney submitted that during the hearing of this Appeal the



Appellant conceded that the debarment was done justly as it submitted forged letters purporting to have been issued by CRB Southern Zonal Office. The Appellant requested to be forgiven as the mistakes were committed unintentionally. The learned State Attorney cited a latin maxim that "*fiat justitia ruat caelum*" which means let justice be done though the heaven falls. Since the Appellant has conceded to the forgery, it should be debarred from participating in public procurement despite the alleged circumstances.

The learned State Attorney submitted further that the 1st Respondent rightly debarred the Appellant for submitting forged letters from CRB as a proof of registration of a JV entered between it and M/S McDavid Tanzania Company Ltd when participating in the floated Tenders by the 2nd Respondent. He stated that the 2nd Respondent submitted a debarment proposal to the 1st Respondent after finding that the Appellant had attached to its tenders two forged letters purported to have been issued by CRB Southern Zonal Office. After reviewing the debarment proposal and its attachment from the 2nd Respondent, the 1st Respondent was satisfied that the Appellant had committed fraudulent acts by forging JV registration letters from CRB. Thus, the Appellant made false representation to the 2nd Respondent during the tendering process.

The learned State Attorney expounded that after receipt of the debarment proposal from the 2nd Respondent, the 1st Respondent accorded the Appellant an opportunity to be heard as it was given a notice to show



cause why a debarment order should not be issued against it. And in the realm of *audi alteram partem*, it duly submitted its written representation.

Regarding the Appellant's contention that it is a junior company and therefore it should be pardoned, the learned State Attorney submitted that being a junior or a senior company in the sector has never been an excuse to exempt a person from complying with the laws governing public procurement proceedings. He stated that the fraudulent acts committed by the Appellant are grave mistakes in public procurement. Hence, the same cannot be condoned.

The learned State Attorney submitted further that the Appellant's contention that it has been paying taxes, service levy and other charges does not *ipso facto* exempt it from being liable as the committed acts have no connection whatsoever with the stated issues. The learned State Attorney added that the Respondents have noted the Appellant's admission that it committed a fraudulent act for the first time. However, the same does not mean that the Appellant will not go unpunished.

The learned State Attorney submitted that the debarment decision issued by the 1st Respondent is fair and just as it comprised of three items which are crucial for any debarment decision. These are: -

a) Reasonability of the punishment

The 1st Respondent's decision was fair and reasonable. This was because the Appellant had attached to its tenders two letters for the registration of the JV purported to have been issued by CRB Southern Zonal Office.



However, after the 2nd Respondent sought confirmation of the authenticity of the letters, CRB denied having issued the two letters for registration of the JV attached to the Appellant's tenders. Thus, it was found that the letters were forged. The Appellant also conceded to have submitted the letters for JV registration which were not issued by CRB.

The learned State Attorney stated that Section 62(3)(a) of the Act read together with Regulation 93(3)(a) of the Regulations provide the circumstances that may lead to a debarment of a tenderer. The circumstances include fraudulent acts. The Appellant was found to have committed a fraudulent act by submitting forged letters purported to have been issued by CRB Southern Zonal Office. Thus, the debarment decision issued against it is reasonable and in accordance with the law.

In support of his argument, the learned State Attorney cited ***PPAA Appeal Case No. 09 of 2023-24 between M/S Dezo Contractors Company Limited and another versus Public Procurement Regulatory Authority and another.*** In the referred case, this Appeals Authority upheld the 1st Respondent's decision of debarring a tenderer for submitting a forged document. Thus, the learned State Attorney urged the Appeals Authority to apply the same position in this Appeal as the circumstances are the same. The learned State Attorney added that since the Respondent has conceded to have submitted letters which were not issued by CRB Southern Zonal Office, the Respondents have proved their case on a balance of probabilities.



b) Harshness of the decision

The learned State Attorney submitted that the debarment decision issued by the 1st Respondent was fair and not harsh as contended by the Appellant. The Appellant's debarment was based on Section 62(3)(a) of the Act and Regulation 93(3)(a) of the Regulations as it submitted fraudulent documents during tender proceedings. Thus, since the Appellant has conceded to have submitted fraudulent documents, the 1st Respondent's debarment decision is fair and reasonable.

c) Right to be heard

The learned State Attorney submitted that before the 1st Respondent issued a debarment decision it accorded the Appellant a right to be heard. The Appellant was served with the notice of intention to debar and in response thereof the Appellant submitted its written representation which was received by the 1st Respondent within the stipulated time limit. Thus, the Appellant's argument that it was not accorded the right to be heard is unfounded, the learned State Attorney contended.

Finally, the Respondents prayed for the following reliefs that: -

- i. A declaration that the Appeal lacks merit and therefore the same should be dismissed with costs; and
- ii. The Debarment Order be upheld accordingly.

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ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the Appellant's debarment was justified and was in accordance with the law.

In resolving this issue, the Appeals Authority reviewed the record of Appeal. It observed that the debarment decision was issued by the 1st Respondent following the submission of the debarment proposal by the 2nd Respondent. The debarment proposal was attached with letters from CRB Southern Zonal Office denying to have issued the letters attached to the Appellant's tenders as a proof of registration of the JV.

The Appeals Authority observed further from the record of Appeal that, after receipt of the debarment proposal, the 1st Respondent issued the notice of intention to debar to the Appellant and its JV partner, M/S McDavid Tanzania Company Ltd. The notice required the two firms to show cause why they should not be debarred from participating in public procurement. In response to the 1st Respondent's notice, the Appellant denied having forged the CRB letters. The Appellant instead asserted that the said letters were issued by CRB as a proof of registration of the JV that was entered between the Appellant and M/S McDavid Tanzania Company Ltd when applying for the tender advertised by TANROADS – Iringa. Thus, the Appellant decided to use the same letters for the Tenders advertised by the 2nd Respondent.

The Appeals Authority discerned that in response to the 1st Respondent's Notice, M/S McDavid Tanzania Company Ltd denied having



knowledge of the CRB forged letters and contended that it did not form any JV with the Appellant. To support its assertion, M/S McDavid Tanzania Company Ltd attached a letter written by the Appellant apologizing for using its name without its consent. M/S McDavid Tanzania Company Ltd further stated that the referred letters and all transactions were processed by the Appellant without M/S McDavid Tanzania Company Ltd's knowledge and consent.

In view of the written defense by the Appellant and M/S McDavid Tanzania Company Ltd, the 1st Respondent was satisfied that M/S McDavid Tanzania Company Ltd did not participate in the alleged forgery. Thus, the 1st Respondent found it not liable of the fraudulent act. However, the Appellant was found liable of the fraudulent act and therefore debarred from participating in public procurement for a period of ten years.

During the hearing of this Appeal, the Appellant conceded to have submitted letters for JV registration which were not issued by CRB Southern Zonal Office. However, the Appellant requested to be pardoned as it was the first mistake committed by a newly established company that lacked procurement knowledge and technical know-how in using NeST. The Appellant emphasized that it had already put in place several measures to ensure that the committed mistake will not recur in the future.

The Appellant conceded to have committed the fraudulent acts, however it prayed to be pardoned and the debarment order issued against it be



quashed. The Appeals Authority finds it prudent to enlighten the parties on the requirements of the law. In so doing, the Appeals Authority reviewed Section 62(3)(a) of the Act read together with Regulation 93(3)(a) of the Regulations. The referred provisions read as follows: -

*"62(3) A tenderer shall be debarred and blacklisted from participating in public procurement or disposal proceedings if-
(a) **fraud** or corrupt practices is established against the tenderer in accordance with the provisions of this Act;*

*93(3) Subject to the provisions of the Act, **a tenderer shall be debarred from participating in public procurement or disposal proceedings if-***

*(a) corrupt, **fraudulent**, collusive, coercive or obstructive practices or inducement **is established against the tenderer, in which case he shall be barred for a period of ten years**".*

(Emphasis supplied)

The above quoted provisions clearly state that a tenderer may be debarred from participating in public procurement if it would be established against it, that it has been involved in fraud or corrupt practices in the procurement proceedings.

In view of the requirements of Section 62(3)(a) of the Act read together with Regulation 93(3)(a) of the Regulations, the Appeals



Authority is of the firm view that the Appellant has committed a fraudulent act which according to the cited provisions of the law is liable for debarment for a period of ten years.

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 observed that the Appellant was duty bound to comply with the requirements of the law when participating in public tenders. Thus, its act of submitting letters as proof of registration of JV which were forged proves that it intended to deceive the 2nd Respondent.

The Appeals Authority is of the considered view that the Appellant was required to comply with the requirements of the law despite being new and having insufficient knowledge in public procurement. It is a maxim of the law that "*ignorance of the law is no defense*". Thus, the Appeals Authority is of the settled view that the Appellant cannot defend its actions by claiming that it did not know the law. Therefore lack of knowledge of the laws that govern public procurement cannot exonerate the Appellant from liability.

The Appeals Authority considered the Appellant's contention that it was not accorded a right to be heard prior to the issuance of the debarment decision. In ascertaining the validity of the Appellant's contention in this regard, the Appeals Authority reviewed the record of Appeal. It observed that after the 1st Respondent received the



debarment proposal from the 2nd Respondent, it required the Appellant and its JV partner, M/S McDavid Tanzania Company Ltd to show cause why they should not be debarred from participating in public procurement. The Appellant accordingly submitted its written representation. The Appellant was therefore accorded a right to be heard. In view of this fact, the Appeals Authority rejects the Appellant's contention in this regard.

Given the circumstances, the Appeals Authority finds the 1st Respondent's act of debarring the Appellant for the period of ten years to be proper and in accordance with Section 62(3)(a) of the Act and Regulation 93(3)(a) of the Regulations.

In view of the above findings, the Appeals Authority concludes the first issue in the affirmative that the Appellant's debarment was justified and was in accordance with the law.

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

Taking cognizance of the above findings by the Appeals Authority, the Appeal is hereby dismissed and the debarment decision issued by the 1st Respondent is upheld.

We make no order as to costs. It is so ordered.

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

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

This decision is delivered in the presence of the Respondent and in absence of the Appellant though duly notified on this 15th day of August 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. MR. RHOBEN NKORI



2. DR. WILLIAM KAZUNGU

