

FOR THE RESPONDENT

1. Mr. Mvano Mlekano
2. Mr. Linus Silayo

- Legal Counsel - Civil Litigation
- Senior Procurement Specialist

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M/S KIC Security Services Company Limited (hereinafter referred to as "**the Appellant**") has preferred this appeal against M/S **NMB Bank PLC** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender for Request for Proposal for "*Provision of Guarding and Response Services for NMB Bank Limited, The Capital Markets Department*".

that there would be no renewal of the extended contract. According to the Appellant, before the Tender results were issued, on 1st October 2024 the Respondent required the Appellant to hand over the sites to SUMA JKT.

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The Appellant got aggrieved. Through a letter dated 2nd October 2024 the

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ot received any
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Appellant submitted its complaint to the Respondent.
challenged the Respondent's act of awarding the Tender
while the firm did not even bid for the Tender. The
shows that there was no response from the Respondent on
complaint. Hence, through a letter dated 9th October 202
filed a second complaint to the Respondent. Having n
responses from the Respondent, on 15th October 2024
lodged this Appeal.

floated the first
er results of the
d May 2024 and
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hout issuing the
award made to

In this Appeal, the Appellant states that the Respondent
tender on 15th July 2023. However, before issuing the tend
said tender, the Respondent floated another tender on 2ⁿ
proceeded to award the same to SUMA JKT. The Appellan
Respondent's act of awarding the Tender to SUMA JKT wit
Tender results. The Appellant therefore, contends that the
SUMA JKT is marred with irregularities.

stated that the

In response to the grounds of Appeal, the Respondent

by the Appellant. The invitation issued in July 2023 was for pre-
qualification of vendors. pre-qualified tenderers, including the Appellant
were on 2nd May 2024, issued with the RFP for the Tender, the award of



which is the subject of this Appeal. The Respondent stated further that it

the jurisdiction of the Appeals Authority has two limbs. In the first limb the Respondent's concern is that being a private entity the provisions of the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to

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as "**the Act**") do not apply to tenders floated by it. Much as the Act has been repealed and replaced by the Public Procurement Act, No.10 of 2023 with effect from 16th June 2024, it is still applicable for tenders floated before the new law came into force by virtue of Section 131(2) of the new Act. The second limb is that the Appeal has been filed out of time prescribed by the law.

Submitting on the first limb the learned counsel referred to Section 2(1) (a), (b) and (c) of the Act. According to the learned counsel, the Act applies to all procurement and disposal by tender undertaken by a procuring entity, non-Government entities for procurement financed from specific public finances and to public-private partnership projects in their relevant stages. The Respondent is neither a procuring entity nor a non-government entity that had received finances from the Government for the Tender, the learned counsel contended. It was also submitted that the Tender does not relate to public - private partnership project, either.

The learned counsel also referred the Appeals Authority to Section 3 of the Act, the definition section. In this section the word "procuring entity" is defined to mean a public body and any other body or unit established and mandated by the Government to carry out public functions. He stated further that Section 3 of the Act has also defined the word "public body" to

any company registered under the Companies Act in which the Government or an agency of the Government is in the position to influence the policy of the company.



The learned counsel submitted that the Respondent is among private companies which are publicly listed in the Dar es Salaam Stock Exchange and Capital Markets and Securities Authority. He expounded that the Respondent's shareholding structure is held by the shareholders as follows:

dividends.

The learned counsel submitted that since the Respondent has its own procurement procedures, any disputes which arise out of the procurement

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proceedings are resolved in accordance with the procedures established by the Respondent not under the Act. The Act vests powers to the Appeals Authority to determine procurement disputes arising out of the tender proceedings conducted in accordance with the Act. The Appeals Authority therefore, lacks jurisdiction to entertain this Appeal.

In further support of his proposition, the learned counsel cited PPAA Appeal No. 23 of 2023 -24 between ***M/S Alltime Technology and Korosho Co-operative Joint Enterprise Limited*** and PPAA Appeal Case No. 31 of 2020-21 between ***M/S Star Media (T) Limited and Tanzania Football Federation***. According to the learned counsel, in both Appeals the Appeals Authority ruled that it is not seized with jurisdiction to entertain appeals brought against private entities. The learned counsel urged the Appeals Authority to apply the same principle in this Appeal and dismiss it with costs.

In the second limb of the PO, the learned counsel submitted that the Appellant has stated in paragraph 3(c) of the Statement of Appeal that it became aware of the circumstances giving rise to this Appeal on 1st October 2024, when it was required to hand over the guarding sites to SUMA JKT. It was submitted that according to Rule 8 of the Public Procurement Appeals Rules, GN No. 411 of 2014 as amended (hereinafter referred to as "**the Appeals Rules**") an Appeal to this Appeals Authority must be filed within seven days from the date the Appellant became aware of the circumstances giving rise to the Appeal.

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The learned counsel submitted that counting from 1st October 2024, the seven days within which the Appellant was required to file its Appeal lapsed on 9th October 2024. The Appellant has filed this Appeal on 15th October 2024, six (6) days late. Thus, the Appeal was filed in contravention of Rule 8 of the Appeals Rules. Hence, should be dismissed for being time barred, the learned counsel contended.

REPLY BY THE APPELLANT ON THE PO

The Appellant's submissions in reply, were made by its managing director, Mr. Paul Malima. He commenced by addressing the second limb of the PO. He stated that it became aware of the circumstances giving rise to this Appeal on 1st October 2024, after being required by the Respondent to hand over the sites to SUMA JKT. Mr. Malima submitted that the Appellant was aggrieved by the Respondent's decision of awarding the Tender to SUMA JKT. Hence, it submitted a complaint to the Respondent on 4th October 2024. He stated that the complaint letter was submitted to the Respondent through its official email.

Mr. Malima submitted that having not received response from the Respondent on 6th October 2024, the Appellant lodged a second complaint

In the first limb of the PO Mr. Malima submitted that the Government owns 31.8% of shares in the Respondent's company. He stated that through the



shares that the Government owns in the Respondent's company the Respondent qualifies to be a government entity. Mr. Malima stated that since the Respondent is a government entity, it cannot be left out to freely

of service of the Appellant's complaints that has been produced to the Appeals Authority. The learned counsel urged the Appeals Authority to

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*(D) anybody corporate or statutory body or authority
established by the Government any company
registered under the Companies Act*

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- (c) being a company in which the Government or an agency of the Government, is in the position to influence the policy of the company; or***
(d) any local government authority".

(Emphasis provided)

According to the above quoted provisions the Act applies to procurement undertaken by procuring entities; procurement conducted by non governmental entities in procurement financed by public funds; and procurement in public private partnership projects. According to Section 3, a procuring entity is a public body or unit mandated by the Government to carry out its functions. Public body has also been defined to mean an entity that has been statutorily established by the law to discharge a particular function or a company in which the government or its agency has the position to influence its policy.

In ascertaining whether the Respondent is a public body or procuring entity in terms of the Act and or whether it is a public corporation in terms of the

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peals Authority reviewed the Respondent's Respondent was initially established under Bank Limited Incorporation Act of 1997 old National Bank of Commerce by an Act ee new entities that were created by the s Limited (b) National Bank of Commerce Microfinance Bank Limited.

that in 2005, the Government privatized ng 49% of its shares to a consortium led aiffeisen-Boerenleenbank B.A. ('Rabobank B the Government sold 21% of its shares.

Public Corporations Act, the Ap website. It observed that the the National Microfinance Bank following the break-up of the of Parliament. There were three law, namely: (a) NBC Holdings (1997) Limited and (c) National

The available record indicates the Respondent's bank by selling by the Coöperative Centrale R Group'). Furthermore, in 2008

From the contents of Section 2 of the Act it is apparent that for the Act to apply, an entity which floats a Tender must be a procuring entity or

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public body or a non-government entity which received public funds for the Tender. It is also apparent from the record of Appeal that the government is among the minority shareholders. In terms of the definition of the word "public body" under Section 3 of the Act, for an entity to be considered as a public body the same must be established by the law, or the government should have the mandate to influence the policy of the company. In addition, according to Section 3 of the Public Corporations Act, for an entity to be considered as a public corporation, the Government or its agent must own majority of the shares owned by

jurisdiction to entertain this Appeal. In the circumstances, the Appeals Authority hereby sustains the PO. Having found that it has no jurisdiction

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to entertain this Appeal, the Appeals Authority would not delve into the other limb and the merits of the Appeal.

Therefore, the Appeals Authority hereby dismiss the Appeal. Each party is to bear its own 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

2. MR. RHOBEN NKORI