

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 13 OF 2025-2026**

**BETWEEN**

**M/S VUNJABEI (T) GROUP LIMITED..... APPELLANT**

**AND**

**TANZANIA LOCAL GOVERNMENT**

**WORKERS UNION (TALGWU)..... RESPONDENT**

**RULING**

**CORAM**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Mr. Raphael Maganga            | - Member      |
| 3. Dr. Gladness Salema            | - 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. John Lingopola  | - Advocate - Jelis Law<br>Chambers |
| 2. Mr. Laurian Cholobi | - Director of Business             |



3. Mr. James Francis

- Development Manager –  
Dodoma Branch

4. Mr. Sixmund Mbepera

- Accountant

### **FOR THE RESPONDENT**

1. Mr. Twaha Mtengera

- Legal Officer

2. Mr. Waziri Nachungulu

- Procurement Officer

This appeal, filed by **M/S Vunjabei (T) Group Limited** (hereinafter referred to as "**the appellant**") against **Tanzania Local Government Workers Union**, abbreviated as **TALGWU** (hereinafter referred to as "**the respondent**"), pertains to tender No. **TALG/PROC/0031/2025** for the **Distribution of T-Shirts and Caps** (hereinafter referred to as "**the tender**").

Based on the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this appeal may be summarized as follows: -

The tender was done through the National Competitive Tendering procedures in accordance with the TALGWU Procurement Manual of 2018. On 25<sup>th</sup> July 2025, the respondent issued an invitation to eligible tenderers to participate in the tender through its official website.

By the submission deadline, ten (10) tenders, including of the appellant's, were received and subsequently evaluated by the respondent. Thereafter, the Evaluation Committee recommended awarding the tender to M/S Mr. Cap Company Limited (hereinafter referred to as "**the proposed awardee**").



On 12<sup>th</sup> September 2025, the respondent issued a notice of intention to award, informing the appellant of its intention to award the contract to the proposed awardee. It further stated that the appellant's tender was disqualified due to failure to attach a certificate of incorporation and copies of three recent contracts of a similar nature.

Dissatisfied with the disqualification, on 18<sup>th</sup> September 2025, the appellant filed a complaint to the respondent. In its decision dated 25<sup>th</sup> September 2025, the respondent rejected the complaint. Then, on 29<sup>th</sup> September 2025, the appellant wrote to the respondent alleging that the decision was flawed, inconsistent, lacked legal basis, violated principles of fairness, transparency and equality. Subsequently, on 1<sup>st</sup> October 2025, the appellant filed this appeal to the Appeals Authority.

In this appeal, the appellant challenges the disqualification based on the alleged failure to demonstrate experience of a similar nature and value. The appellant asserts compliance with the experience criterion, having submitted six contracts like the tender under appeal. Amongst them were contracts with Simba Sports Club Company Ltd with a value of TZS 12 billion and Chama cha Walimu Tanzania valued at over TZS 6 billion. Despite this, the respondent disqualified its tender.

The appellant further complained that in its response to the complaint raised, the respondent introduced a new reason for the disqualification to wit; that the appellant's submitted sample T-shirt failed to comply with the requirement of the artwork provided. It was the appellant's contention that the tender document did not specify the required artwork. It was the appellant's argument that the disqualification on this criterion contravened clause 10 of the Tender Data Sheet (**TDS**) and

Handwritten signature or initials in black ink, consisting of stylized letters and a flourish.

clause 11.1(h) of the Instructions to Tenderers (**ITT**) by including artwork in the T-shirt sample submitted by the appellant.

The appellant questioned the respondent's issuance of the notice of intention to award on different dates while granting all tenderers an equal seven-day period to file complaints. The appellant expounded that although the notice was dated 12<sup>th</sup> September 2025, it was communicated to the appellant on 13<sup>th</sup> September 2025 and to SUMA JKT on 22<sup>nd</sup> September 2025, yet both were allowed a seven-day window to file complaints from their respective receipt dates.

In response, the respondent argued that the contracts submitted by the appellant did not sufficiently demonstrate experience of a similar nature and value. Specifically, the contracts with Simba Sports Club Company Ltd, Police Tanzania Football Club and Fountain Gate Academy lacked disclosed contract values as required, while the other contracts were of a lesser value than the tender under dispute. Therefore, the respondent maintained that the appellant was fairly disqualified for failing to submit three contracts of a comparable nature and value as stipulated in the tender document.

During hearing, the Appeals Authority, *suo motu*, raised a preliminary objection on a point of law for determination to wit: "*whether the Appeals Authority has jurisdiction to entertain the appeal.*" This question aimed to clarify whether the respondent qualifies as a procuring entity under the Public Procurement Act and whether the tender in dispute was government-financed. The Appeals Authority requested the parties to address this jurisdictional point and adjourned the hearing to allow an hour for preparation.



Upon resumption, the parties presented their arguments on this issue as follows: -

### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Mr. John Lingopola, learned advocate, assisted by Mr. Laurian Cholobi, Director of Business. Mr. Lingopola submitted that the appellant is not a government entity but receives contributions from local government employees to support its daily activities. Since these contributions were from government employees, the respondent effectively uses government funds, making the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**") applicable to its procurement processes.

On his part Mr. Cholobi stated that clause 5.1 of the General Conditions of Contract (GCC) specifies that the laws of Tanzania shall govern tender processes and contract execution. Given that the Act governs procurement in Tanzania, it follows that the respondent's tender process was also governed by the Act and its regulations.

He further stated that Item 3 of the invitation to tender indicates that the TALGWU Procurement Manual of 2018 were the governing rules for the tender. However, this was not reflected in the Tender Data Sheet (TDS) which contained specific requirements for the tender. Since the TALGWU Procurement Manual was neither known to tenderers nor made available to them, and given the TDS's silence on the applicable law, the governing law for this tender is the Act, being one of Tanzania's laws.



Based on these submissions, Mr. Lingopola concluded that the Appeals Authority has jurisdiction to entertain the appeal and therefore prayed that the appeal be heard on its merits.

### **REPLY BY THE RESPONDENT**

The respondent's reply submissions were presented by Mr. Twaha Mtengera, Legal Officer. He submitted that the respondent is not a procuring entity under the Act, and therefore, the Appeals Authority lacks jurisdiction to entertain this appeal. He expounded that the respondent is a trade union governed by its constitution, last revised in 2024. That the respondent is registered under section 49(5)(b) of the Employment and Labour Relations Act, Cap. 366 [R.E. 2023], and holds a certificate of registration issued in compliance with Regulation 25 of the Employment and Labour Relations (General) Regulations, GN. No. 47 of 2017.

Mr. Mtengera stated that the respondent's daily operations are governed by its constitution which was approved by the Registrar of Trade Unions. He submitted that Articles 2.5.1, 2.5.2 and 2.5.3 clearly state that funds for its daily operations would be derived from monthly contributions of its members and other donations as would be directed by the union leadership. He concluded this point by emphasizing that the respondent does not receive government funds.

He argued that contributions from local government employees cannot be classified as government funds because of the voluntary nature of its membership. Contributions are solely from employees who have chosen to join the union, and these are categorically not public funds.



Mr. Mtengera added that in this tender; item 3 of the Invitation to Tender specified that the tender process would follow the TALGWU Procurement Manual of 2018. He contended that if the appellant was unaware of these guidelines, it ought to have sought clarification from the respondent, however, it failed to do so, instead it assumed that the Act and its Regulations apply.

He pointed out that section 2 of the Act provides the circumstances under which the Act applies, including procurement by procuring entities, non-government entities for procurement financed by public funds, private partnership projects and certain security organs. He argued that the respondent's office does not fall within these categories, and thus, the Act was therefore not applicable in this tender.

Based on the above submissions, Mr. Mtengera concluded by praying that the appeal be dismissed by the Appeals Authority for lack of jurisdiction.

### **ANALYSIS BY THE APPEALS AUTHORITY**

#### **1.0 Whether the Appeals Authority has jurisdiction to entertain the appeal**

To resolve this issue, we reviewed section 2(1) of the Act which reads as follows: -

*"s. 2(1) This Act shall apply to-*

*(a) all procurement, supply management and disposal of assets by tender undertaken by a procuring entity except where it is provided otherwise in this Act;*



*(b) non-Government entities, for procurement financed by public funds;*

*(c) Public-private partnership projects, in their relevant stages; and*

*(d) defence and security organs subject to subsections (2) and (3)."*

(Emphasis added)

This provision stipulates that the Act applies to procurement undertaken by procuring entities, non-governmental entities for procurement financed by public funds, public-private partnership projects and defence and security organs.

Additionally, we reviewed the definition of the term "*procuring entity*" set out in section 3 of the Act which reads as follows: -

*"s. 3. Procuring entity means a public body and any other body, or unit established and mandated by the government to carry out public functions".*

(Emphasis added)

To determine whether the respondent qualifies as a procuring entity, we reviewed Article 1.2 of its Constitution and observed that it is established as a voluntary trade union for local government employees, with the purposes of protecting their rights, dignity and welfare. Therefore, it is not a public body or unit which is mandated to perform public functions.

We further reviewed clause 2.1 of the ITT in conjunction with clause 2 of the TDS, which provide as follows:





## **"2.- Source of Funds**

**2.1 The Union has set aside sufficient funds for the operations during the Financial Year indicated in the TDS.** It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the supply of goods as described in the **TDS**.

<b>TDS Clause Number</b>	<b>ITT Number</b>	<b>Amendments of, and Supplements to, Clauses in the Instruction to Tenderers</b>
<b>2</b>	<b>2.1 &amp; 2.2</b>	<i>Financial year for the operations of the PE: 2026</i>  <i>Name of Project Manufacturing of Caps for May day 2026</i>  <b>Name of financing institution: TANZANIA LOCAL GOVERNMENT WORKERS UNION"</b>

*(Emphasis added)*

These clauses prove that the funds for the tender in dispute will come from the respondent's union proceeds, meaning the project is not government-financed.

We also examined article 2.5, 2.5.1 and 2.5.2 of the respondent's 2024 Constitution, which reads as follows: -

**"Article 2.5.- Ada na Michango ya Uanachama.**

**2.5.1 Ada ya kila mwezi**



*Kila mwanachama atalipa ada ya kiasi cha asilimia mbili (2%) kutoka katika mshahara wake wa kila mwezi.*

#### *2.5.2 Michango*

*Pale itakapolazimu kufanya hivyo Wanachama wa TALGWU watatoa michango maalum kwa ajili ya kuchangia maendeleo ya Wafanyakazi na Chama chenyewe. Kamati ya Utendaji ya Taifa itaweka utaratibu na viwango vya michango vitakavyotolewa na wanachama."*

In terms of the above article, the respondent's revenues are from members' contributions and donations as determined periodically by the union's leadership.

Considering article 2.5.1 and 2.5.2 of the respondent's Constitution read together with clause 2 of the TDS, it is evident that the respondent has its own funding sources, with some of its proceeds intended to finance the contract under the tender.

Regarding the appellant's contention that member contributions are government funds since they are deducted from local government employees' salaries, we clarify that once the government pays salaries to its employees, they become employees' personal money, and no longer subject to the government's expenditure rules. Furthermore, government follows its own procedures when disbursing funds to private entities, so it is incorrect to claim that deductions from employee salaries constitute government funds.



On the appellant's claim that the tender is governed by the Act and its Regulations since clause 5.1 of the GCC establishes the governing laws for the tender as the country's laws, a review of clause 5.1 of the GCC read together with clause 5 of the Special Conditions of the Contract (SCC) confirmed that the contract emanating from the tender would be governed by the laws of Tanzania.

We reviewed item 3 of the Invitation to Tender which reads as follows: -

**"Tendering will be conducted through the National Competitive Tendering procedures specified in the TALGWU Procurement Manual of 2018 and is open to all Tenderers".**

(Emphasis supplied)

We applied clause 5 of the SCC and item 3 of the Invitation to Tender to the facts of this appeal and find that the tendering procedures for the tender under appeal were governed by the TALGWU Procurement Manual of 2018. Accordingly, we reject the appellant's assertion that the tender was governed by the Act and its Regulations.

Regarding the appellant's contention that it was neither aware nor provided with a copy of the TALGWU Procurement Manual of 2018, we state that if the appellant required access to the manual, it ought to contact the respondent before the tender submission deadline to confirm its availability. Therefore, unfamiliarity with the manual does not justify disregarding its applicability in the tender process.

Given the above findings, we conclude that the respondent is neither a public procuring entity nor did it receive government funds for the procurement in question.



Under these circumstances, we find that we lack the jurisdiction to entertain the appeal. We therefore dismiss the appeal for want of jurisdiction. Each party is ordered 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 parties this 5<sup>th</sup> day of November 2025.

**HON. JUDGE (rtd) AWADH BAWAZIR**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. DR. GLADNESS SALEMA.....**



**2. MR. RAPHAEL MAGANGA.....**

