IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 39 OF 2025-2026

BETWEEN

GODFREY JOHNSON LEMILYA .... APPELLANT

AND

TIB DEVELOPMENT BANK LIMITED......................1ST RESPONDENT

DANIEL B. WELWEL (Receiver and Manager of Tanzania Flowers Limited – Under Receivership) .... 2ND RESPONDENT

RULING

CORAM

1. Ms. Florentina Sumawe	- Ag. Chairperson
2. Dr. Gladness Salema	- Member
3. Dr. William Kazungu	- Member
4. Mr. James Sando	- Secretary

SECRETARIAT

1. Ms. Florida Mapunda	- PALS Manager
2. Ms. Violet Limilabo	- Senior Legal Officer
3. Mr. Venance Mkonongo	- Legal Officer

FOR THE APPELLANT

1. Mr. Braysoni Shayo	- Advocate, Brass Attorneys
2. Ms. Belinda Batinamani	- Advocate, Brass Attorneys
3. Mr. Godfrey Lemilya	- Business Manager

4. Eng. Gerald Malima - Consultant
5. Mr. Hairu Malinga - Legal Officer, Brass Attorneys
6. Mr. Daniel Siqhis - Legal Officer, Brass Attorneys

FOR THE 1ST RESPONDENT

1. Mr. Ayoub Sanga - Senior State Attorney, OSG
2. Mr. Boaz Msoffe - State Attorney, OSG
3. Ms. Beatrice Manyori - State Attorney, OSG
4. Mr. Menson Ngahatilwa - Director of Legal Services, TIB

FOR THE 2ND RESPONDENT

Mr. Daniel B. Welwel - Receiver & Manager

This appeal was lodged by Godfrey Johnson Lemilya (hereinafter referred to as **"the appellant"**) against TIB Development Bank Limited (hereinafter referred to as **"the 1st respondent"**) and Daniel B. Welwel, Receiver and Manager of Tanzania Flowers Limited (hereinafter referred to as **"the 2nd respondent"**).

Based on the record of appeal filed before the Public Procurement Appeals Authority (hereinafter referred to as **"the Appeals Authority"**), the background to this matter may be summarised as follows:

On 10th March 2006, the 1st respondent advanced to Tanzania Flowers Limited (hereinafter referred to as **"the mortgagor"**) a long-term loan facility amounting to Tanzania Shillings Seven Billion Five Hundred Million (TZS 7,500,000,000) only. As a security for the repayment of the said facility, the mortgagor executed a Mortgage Deed in favour of the 1st respondent over its parcel of land measuring approximately 55.4 acres, registered under Certificate of Title No. 19889, situated on the East Bank of the Maji ya Chai River in Arumeru District, Arusha Region (hereinafter referred to as **"the mortgaged property"**).

Upon default in repayment of the loan facility, on 25th February 2026, the 2nd respondent published an Invitation for Sealed Bids for the sale of the mortgaged property in Mwananchi Newspaper. Pursuant to the advertisement, the appellant submitted a bid of Tanzania Shillings Two Billion Five Hundred Million (TZS 2,500,000,000) only. However, the initial bidding process did not yield satisfactory results, as the bids received were deemed unsatisfactory. Consequently, the 2nd respondent re-advertised the tender on 21st April 2026 in the Guardian Newspaper and on 22nd April 2026 in the Daily News.

Following the re-advertisement, the appellant submitted another bid of Tanzanian Shillings Three Billion Five Hundred Million (TZS 3,500,000,000). Upon bid opening conducted on 30th April 2026, the appellant emerged as the highest bidder. Thereafter, the 2nd respondent invited the two highest ranked bidders, including the appellant to submit improved bids. In response, the appellant submitted an improved bid of Tanzania Shillings Four Billion One Hundred Million (TZS 4,100,000,000) only and again emerged as the highest bidder during the opening of the improved bids held on 12th May 2026.

Despite the foregoing, the 2nd respondent neither awarded the tender nor issued a notice rejecting the appellant's bid. Instead, by its letter dated 19th May 2026, it invited the appellant to submit a further improved bid.

The appellant objected to the repeated requests for bid improvement, contending that the bidding process ought to have been concluded in accordance with the law. Following the appellant's rejection on 21st May 2026, the 2nd respondent cancelled the bidding process and subsequently informed the appellant that it was not obliged to accept the highest bid or any bid unless a formal letter of award had been issued.

Dissatisfied with the cancellation, the appellant lodged a complaint to the 1st Respondent on 29th May 2026, which was dismissed on the ground that the bids received were unsatisfactory and that the tender had been cancelled. Aggrieved by that decision, on 10th June 2026 the appellant lodged the present appeal before the Appeals Authority.

Upon receipt of this appeal, the Appeals Authority notified the respondents on the filed appeal and required them to submit their replies. In response, both respondents raised preliminary objections (hereinafter referred to as **"POs"**) on points of law to wit:

a) The Appeals Authority has no jurisdiction to entertain this Appeal in terms of Section 112 of the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as **"the Act"**).

b) The Appeals Authority has no jurisdiction to entertain this Appeal in terms of Section 112 of the Act against the 2nd respondent.

c) The property intended to be sold through the impugned tender is not a "public asset" within the meaning of section 3 of the Act, and its acquisition by the title holder was not financed by public funds.

d) The 2nd respondent was appointed pursuant to powers conferred under the relevant debentures, mortgages, and the Companies Act, Cap. 212 [R.E. 2023], and is neither an Accounting Officer nor a Public Officer as defined under section 3 of the Act.

e) Tanzania Flowers Limited – Under Receivership is not a public entity.

When the matter was called on for hearing, the Appeals Authority found it pertinent to determine the POs before embarking on the substantive merits of the appeal. Accordingly, the following issues were framed for determination:

1.0 Whether the appeal is properly before the Appeals Authority; and

2.0 What reliefs if any are the parties entitled to?

SUBMISSIONS BY THE 1ST RESPONDENT ON THE P.O

The 1st respondent's submissions were made by Mr. Ayoub Sanga, Senior State Attorney, who began by praying that the 1st Respondent's Statement of Reply together with its annexures to be adopted as part of his submissions.

Addressing the first point of PO, Mr. Sanga submitted that the Appeals Authority lacks jurisdiction to entertain this appeal, as the dispute does not arise out of a public procurement process.

He argued that the Act, under section 3 defines a "public asset" as a property, tangible or intangible, owned by a public body. In this appeal, the land in contention is not owned by the 1st respondent, rather, the latter merely holds the certificate of title as security since the property was offered as a collateral for a loan advanced to Tanzania Flowers Limited.

He emphasized that under the equitable principle of the right of redemption, mere possession of a title deed for a property offered as collateral for a loan does not transfer ownership from the mortgagor to the mortgagee. The mortgagee acquires only a proprietary security interest to secure repayment of the loan, while ownership remains vested in the mortgagor. He contended that under the doctrine of redemption, collateral retains its character as security and does not become the property of the mortgagee merely by holding a title deed.

Mr. Sanga further submitted that the legal relationship between the mortgagor and the mortgagee was governed by a mortgage agreement under the Land Act and the Mortgage Financing (Special Provisions) Act. In this case, Tanzania Flowers Limited was the mortgagor and the 1st respondent the mortgagee. The mortgage agreement created a charge over the property as a security for the loan, and upon default, the mortgagee acquired the statutory powers of sale under sections 136 to 138 of the Land Act.

He further submitted that clause 1 of the mortgage deed clearly provides for the mortgagor's obligation to repay the loan secured by the mortgage. He contended that clause 2 of the mortgage deed sets out the remedies available to the mortgagee in event of default by the mortgagor. According to him, the contents of clause 2 substantially mirror the remedies provided under sections 136, 137 and 138 of the Land Act, which prescribe the legal remedies available to a mortgagee upon the mortgagor's default.

He reiterated that the 1st respondent was not the owner of the mortgaged property, but merely held the title deed as collateral. Following the default by Tanzania Flowers Limited, the 1st respondent exercised its rights as mortgagee by appointing the 2nd respondent as a receiver to dispose of the property in accordance with the mortgage deed and the Land Act.

Mr. Sanga submitted that the appellant was misguided in treating the mortgaged property as a public asset, thereby assuming its disposal was subjected to the Act. He clarified that disposal of public assets follows procedures distinct from those applicable to a mortgaged property. Since the property in question was not public asset, the Act was inapplicable and the appeal is untenable for contravening section 112(6) of the Act.

On the second PO, Mr. Sanga submitted that the 2nd respondent cannot properly be sued in the present appeal, as it is not a procuring entity. He explained that the 2nd respondent was appointed by the 1st respondent solely in its capacity as Receiver for purposes of disposing the mortgaged property. Accordingly, its role as receiver does not confer upon it the status of a public entity, and therefore it is not a proper party to this appeal.

In support of this argument, Mr. Sanga cited ***PPAA Appeal Case No. 13 of 2025-26 between M/S Vunjabei (T) Group Limited versus Tanzania Local Government Workers Union (TALGWU)*** where the Appeals Authority held that it has no jurisdiction to determine appeals or complaints against private entities.

He further emphasized that the POs raised are purely points of law, as are consistent with the principles established in ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*** (1969) E.A 696 and the case of ***Moto Matiko Mabanga v Ophir Energy and Six Others***, Civil Appeal No. 119 of 2021, Court of Appeal of Tanzania at Dar es Salaam, (unreported). Both authorities affirm that a preliminary objection must be on a pure point of law, determinable from the pleadings without extensive factual inquiry.

This position, he added, was further reinforced in ***Ali Shabani and 48 others versus Tanzania National Roads Agency and another,*** Civil Appeal No. 261 of 2020, Court of Appeal of Tanzania at Tanga (unreported). He noted that the same principle has been consistently adopted by the Appeals Authority in the ***PPAA Appeal Case No. 20 of 2025-26*** between ***M/S Favorite Group versus PSSSF.***

In view of the foregoing submissions, Mr. Sanga prayed that the appeal be dismissed with costs.

SUBMISSIONS BY THE 2ND RESPONDENT ON THE PO

The 2nd respondent's submissions were made by Mr. Daniel Welwel, Receiver and Manager of Tanzania Flowers Limited.

Mr. Welwel began by adopting his Statement of Reply as part of his submissions. He submitted that the property in dispute, "Dolly Farm", is privately owned by Tanzania Flowers Limited, a private company. He explained that the company obtained a loan from the 1st respondent and Dolly Farm was deposited as a collateral under the mortgage deed.

He clarified that the legal relationship between Tanzania Flowers Limited and the 1st Respondent was governed exclusively by the mortgage deed and the provisions of the Land Act. He emphasized that sections 117 and 120 of the Land Act expressly provide that a mortgage merely creates a security for a loan and does not transfer ownership of the mortgaged property to the mortgagee. Thus, despite the mortgagee holding legal title as security, ownership remains vested in the mortgagor.

Mr. Welwel further argued that section 135 of the Land Act abolished the remedy of foreclosure. Consequently, a mortgagee does not automatically acquire ownership of mortgaged property merely because it was offered as collateral. He maintained that the mortgagee's rights are limited to the remedies provided under the Mortgage deed and the Land Act.

He explained that he was appointed as a receiver and manager after Tanzania Flowers Limited defaulted on repayment of the loan. He contended that his appointment was made in accordance with the mortgage deed, the Land Act and the Companies Act. He added that his powers emanated from the mortgage deed, and sections 136 to 138 of the Land Act, which authorize the appointment of a receiver and the sale of the mortgaged property upon default by mortgagor. Accordingly, both his appointment and the disposal of the property were governed by mortgage deed and the Land Act.

Mr. Welwel further submitted that the Tanzania Flowers Limited is neither a public body nor a procuring entity within the meaning of the Act. He maintained that the company remained a private entity and that there was no evidence suggesting Dolly Farm had been acquired by the 1st respondent using public funds or constituted a public asset. He therefore argued that the present appeal does not fall within the ambit of section 112(6) of the Act, as neither the 2nd respondent nor Tanzania Flowers Limited are subject to the country's procurement regime.

In conclusion, Mr. Welwel prayed that the PO be upheld, the appeal be struck out for want of jurisdiction and costs be awarded to the Respondents.

REPLY BY THE APPELLANT ON THE PO

The appellant's reply on the P.O was made by Mr. Braysoni Shayo, learned Advocate.

Mr. Shayo submitted that the subject matter of the advertised tender involved a public asset and therefore its disposal was required to comply with the provisions of the Act. He acknowledged that Dolly Farm was mortgaged by Tanzania Flowers Limited to the 1st respondent as security for a loan. Although the certificate of title remained registered in the name of Tanzania Flowers Limited, the original title deed was deposited with the 1st respondent as collateral. He argued that upon advancing the loan from public funds and creating of the mortgage, the 1st Respondent acquired an enforceable proprietary interest over the property, thereby rendering the Dolly Farm a public asset.

He referred to section 2 of the Tanzania Investment Bank (Repeal and Transitional Provisions) Act [R.E 2023], which defines "assets" to include contractual and proprietary rights acquired by the 1st respondent. He contended that the mortgagee's interest over the mortgaged property, though intangible, constituted a public asset because it arose from public funds advanced by the 1st Respondent in the discharge of its statutory functions.

Mr. Shayo further submitted that the definition of a public asset under section 3 of the Act extends to both tangible, intangible property, including proprietary rights. He emphasized that the definition does not require an asset to be registered in the name of a public entity to qualify as a public asset. He averred that since the 1st respondent held the title deed of Dolly Farm, it automatically acquired proprietary rights over the property. He therefore maintained that once the 1st respondent decided to realize those rights through a public tender process, the disposal was required to comply with the Act and its Regulations.

He added that, being a public institution established by the statute, the 1st respondent could not evade its statutory obligations under the Act. He argued that the appointment of the 2nd respondent as a receiver was intended to dispose of Dolly Farm outside the framework prescribed by the Act and its Regulations, despite the property being a public asset. He contended that the acts performed by the 2nd respondent as receiver were, the acts of the 1st Respondent and thus subject to the procurement regime.

Mr. Shayo further submitted that section 2(4) of the Act gives overriding effect over any inconsistent provisions of other laws, including the Land Act and the Companies Act, where its applicability is at stake. He therefore argued that the respondents' arguments that Dolly Farm was merely mortgaged property and thus subject to disposal under the mortgage deed and the Land Act was untenable, as the Act and its Regulations take precedence in disposal of public assets by tender.

In support of his position, Mr. Shayo relied on sections 2, 3, 5, 49 and 50 of the Act, sections 4 and 7 of the Public Finance Act, and section 2 of the Tanzania Investment Bank (Repeal and Transitional Provisions) Act. He submitted that these provisions clearly stipulate those assets, including intangible proprietary rights acquired through public funds, constitute public assets whose disposal must comply with the Act. He argued that permitting disposal outside the procurement framework would defeat the purpose of the Act.

Regarding the 1st respondent's argument that the POs raised were pure point of law, Mr. Shayo submitted that the issues could not properly be determined without ascertainment of facts, including the nature and extent of the mortgagee's proprietary rights, the terms of the mortgage deed, and the scope of the 2nd respondent's authority as receiver. He argued that these matters required evidence and could not be resolved at the preliminary stage. He further contended that the authorities relied upon by the 1st respondent, including PPAA Appeal Cases No. 13 and 20 of 2025-2026, were distinguishable from the present appeal.

In conclusion, Mr. Shayo urged the Appeals Authority to dismiss the PO, and proceed to determine the appeal on merits.

REJOINDER BY THE 1ST RESPONDENT

The 1st respondent's rejoinder was made by Mr. Boaz Msoffe, State Attorney.

Mr. Msoffe submitted that the appellant had failed to properly distinguish between a mortgaged property and a public asset. He explained that

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proprietary rights claimed by the appellant could not arise from a mortgaged property, as such rights are founded on exclusive ownership. He emphasized that the Tanzania Flowers Limited remained the legal owner of the Dolly Farm, while the 1st respondent merely acquired a security interest to secure repayment of the loan. He further averred that the 1st respondent acquired only an equitable interest in the mortgaged property, not ownership. Consequently, the 1st respondent was required to comply with the provisions of the Land Act and the mortgage deed before exercising its statutory power of sale.

Mr. Msoffe reiterated that the 1st respondent had not acquired ownership of the mortgaged property but had merely entered into a mortgage relationship governed by the mortgage deed and the Land Act. He contended that the mortgaged property did not constitute a public asset. In his view, had Parliament intended mortgaged property to fall within the definition of a public asset under the Act, it would have expressly provided so. He referred section 142(3) of the Land Act, which grants a mortgagee the power of sale over the mortgaged property, noting that the provision does not create exceptions for the public institution.

On the appellant's reliance on the Tanzania Investment Bank (Repeal and Transitional Provisions) Act, Mr. Msoffe submitted that the said law did not establish the 1st respondent. Rather, it was enacted to govern the transition period and empowered the Minister to facilitate the incorporation of the 1st respondent. He explained that the Bank was subsequently incorporated under the Companies Act, with its certificate of Incorporation dated 16th January 2002. He therefore maintained that the provisions of the Tanzania Investment Bank (Repeal and Transitional Provisions) Act relied upon by the appellant were inapplicable to the present appeal.

Mr. Msoffe further submitted that the provisions cited by the appellant, including regulation 350 of the Regulations relating to the disposal of public assets, were misplaced, as they do not apply for the realization of security under a mortgage. He maintained that the transaction in issue was governed exclusively by the mortgage deed, the Land Act and the Companies Act.

In conclusion, Mr. Msoffe prayed that the Appeals Authority uphold the PO for the reasons advanced in the respondents' submissions in chief.

REJOINDER BY THE 2ND RESPONDENT

In his rejoinder, Mr. Welwel submitted that the appellant had shifted the basis of its case by introducing the argument that Dolly Farm was acquired through public funds. He emphasized that the Statement of Appeal principally challenged the procurement process relating to the sale of the mortgaged property, and not the manner in which the property was originally acquired. He therefore argued that the issue of acquisition was irrelevant to the appeal and should be disregarded.

Mr. Welwel further contended that his duty as receiver did not arise from any factual arrangement but was imposed by law, specifically section 143(1) of the Land Act. He explained that his powers and obligations were statutory in nature and are governed exclusively by the Land Act, rather than the Act.

Lastly, Mr. Welwel submitted that, notwithstanding the appellant's reliance on section 2(4) of the Act and other provisions, the Appeals Authority could only exercise the jurisdiction conferred upon it by law. He maintained that the Appeals Authority could not assume jurisdiction where none existed, and that no quasi-judicial body may entertain a matter founded on a legal regime inapplicable to the dispute.

Accordingly, he prayed that the PO be upheld and the appeal be struck out for want of jurisdiction, with costs awarded to the respondents.

ANALYSIS BY THE APPEALS AUTHORITY

Whether the appeal is properly before the Appeals Authority

The Appeals Authority began its analysis by addressing the appellant's proposition that the PO raised is not a pure point of law because its determination requires factual ascertainment. We acknowledged the principle established in ***Mukisa Biscuit Manufacturing Co. Ltd*** (supra) cited by the 1st Respondent. In that case, the court held that: -

> *"A preliminary objection is in nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct, it cannot be raised if any fact is to be ascertained".*

The Appeals Authority is also mindful of the decision in ***Ali Shabani and 48 others v Tanzania National Roads Agency and Another,*** Civil Appeal No. 261 of 2020, Court of Appeal of Tanzania at Tanga (unreported) which held that: -

> *"It is clear that an objection as it were on the account of time bar is one of the preliminary objection which courts have held to be based on the pure point of law whose determination does not require ascertainment of facts or evidence.* ***At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence***".
>
> (Emphasis supplied)

We hold that since the POs determination would be based on the plain facts on the pleadings, the PO before the Appeals Authority is a pure point law and we proceed to determine it as hereunder:

In determining this PO, we considered parties' arguments. The respondents contended that the appeal is improperly before the Appeals Authority because it arises from the disposal of mortgaged property, which, in their view, does not constitute a public asset within the meaning of the Act. They argued that the sale of Dolly Farm was governed by the mortgage deed, the Land Act, and the Companies Act, as it resulted from Tanzania Flowers Limited's failure to repay a loan advanced by the 1st Respondent, for which Dolly Farm had been mortgaged as security. Accordingly, they submitted that the transaction in dispute concerns the enforcement of mortgage rights arising from the mortgage deed executed between Tanzania Flowers Limited and the 1st respondent, rather than the disposal of a public asset under the Act.

Conversely, the appellant argued that the appeal is properly before the Appeals Authority because the mortgage interest acquired by the 1st respondent after advancing a loan to Tanzania Flowers Limited constitutes a public asset, the loan having been financed from public funds. The appellant contended that, by virtue of the mortgage deed, the 1st respondent acquired proprietary rights over Dolly Farm within the meaning of section 3 of the Act. Therefore, the appellant emphasized that the disposal of Dolly Farm was required to comply with the provisions of the Act governing the disposal of public assets.

In determining the rival submissions, we reviewed the record of Appeal and observed that the dispute arose from the disposal of Dolly Farm, which had been mortgaged as collateral for the loan advanced by the 1st respondent.

We examined section 3 of the Act, which defines the term "public asset" as follows:

> *"s. 3 In this Act, unless the context otherwise requires-*
> ***"public asset"*** *means any tangible and intangible property owned by a public body, and includes physical property, land, shares or proprietary rights."*
>
> (Emphasis Added)

The above definition makes it clearly that a public asset may consist of tangible and intangible property owned by a public body, and may take various forms, including physical property, land, shares or proprietary rights.

According to the record of appeal, Dolly Farm is owned by Tanzania Flowers Limited and was mortgaged to the 1st respondent as security for the advanced loan. We reviewed section 120(1) of the Land Act, Cap. 113 [R.E. 2023], which provides:

> *"s. 120 (1) On and after the date of the commencement of this Act,* ***a mortgage shall have effect as a security only and shall not operate as a transfer of any interests or rights in the land from the mortgagor to the mortgagee*** *but the mortgagee shall have, subject to the provisions of this Part, all the powers and remedies in case of default by the mortgagor and be subject to all the obligations that would be conferred or implied in a transfer of an interest in land subject to redemption."*
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> (Emphasis Added)

This provision expressly states that a mortgage created over property as security for a loan operates only as security and does not transfer ownership of the mortgaged property to the mortgagee. Applying this provision to the facts of this Appeal, we observed that Dolly Farm was mortgaged to the 1st respondent solely as security for the repayment of the loan advanced to Tanzania Flowers Limited. Accordingly, the creation of the mortgage did not transfer ownership of Dolly Farm to the 1st respondent; rather, it merely conferred upon the 1st respondent a security interest over the property for purposes of securing repayment of the loan.

We considered the appellant's contention that a mortgaged property confers proprietary rights upon the mortgagee, thereby altering ownership from the mortgagor to a mortgagee. To ascertain the validity of this argument, we find it prudent to define the term "proprietary rights". According to the ***Black's Law Dictionary edited by the Publisher's Editorial Staff, West Publishing Co., St. Paul, Minnesota, Fourth Edition***, the term "proprietary rights" are defined as "rights enjoyed by an owner by virtue of ownership of the property."

Since Tanzania Flowers Limited remained the registered owner of the property throughout the mortgage tenure, the proprietary rights remained vested in it. The 1st respondent only held the titled deed as a security interest and not as an owner.

We further considered the appellant's reliance on section 2(a) of the Tanzania Investment Bank (Repeal and Transitional Provisions) Act, Cap. 81 [R.E. 2023], which defines "asset" to include real and personal property of every kind, including rights arising under contracts and agreements. While this definition provides a broad scope of the term assets, it does not, by itself, determine ownership of property subject to a mortgage. Since the creation, nature and legal effect of mortgages over land are governed by the Land Act, the question of whether ownership of mortgaged property passes to the mortgagee must be determined in accordance with the Land Act, which clearly recognizes ownership to remain with the mortgagor, while the mortgagee acquires only a security interest for repayment of the loan.

Having established that the mortgaged property remains to be the property of mortgagor, with mortgagee holding only security interest, we found it pertinent to consider the status of a mortgagee in event of default by the mortgagor. We reviewed sections 136, 137 and 138 of the Land Act, which set out the remedies available to a mortgagee upon default. These provisions empower the mortgagee, subject to compliance with the prescribed legal requirements, to enforce the mortgage through remedies such as appointing a receiver, taking possession of the mortgaged land, leasing the property or exercising the power of sale. These remedies are intended to enable the mortgagee to recover the outstanding debt through the security and do not confer automatic ownership of the mortgaged property upon the mortgagee.

Applying these provisions to the facts of this Appeal, we observed that the default by Tanzania Flowers Limited entitled the 1st respondent to exercise remedies available under the Mortgage Deed and the Land Act, including appointing the 2nd respondent as receiver to realize loan recovery. The exercise of such remedies did not convert Dolly Farm into property owned by the 1st respondent but amounted to enforcement of the security interest created by the mortgage. Accordingly, the subsequent disposal of Dolly Farm was undertaken in enforcement of the mortgage security for purposes of recovering the outstanding debt, and not as a disposal of an asset owned by the 1st respondent.

We further considered the Appellant's contention that, since the 1st respondent is a public institution and the loan advanced to Tanzania Flowers Limited originated from public funds, Dolly Farm thereby became a public asset. Based on the Land Act, particularly section 120, we are unable to agree with this contention. The source of funds advanced as a loan does not, by itself, determine or alter ownership of property offered as security for repayment of the loan. Under the Land Act, the creation of a mortgage merely confers upon the mortgagee a security interest over the mortgaged property and, upon default, entitles the mortgagee to exercise the remedies provided under sections 136, 137 and 138 of the Land Act, without transferring ownership of the mortgaged property to the mortgagee.

We further reviewed sections 2 and 112(6) of the Act which provide 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).*
>
> *s. 112 (6) **The Appeals Authority shall have original jurisdiction to hear and determine complaints or disputes or complaints against procuring entities***

where a procurement or disposal contract is already in force and appeals arising from administrative decisions in the procurement process made by the accounting officer."

(Emphasis supplied)

The above quoted provisions vest jurisdiction in the Appeals Authority to determine appeals arising from procurement and disposal proceedings conducted under the Act. Having found that the mortgaged property in dispute was not a public asset, that the rights acquired by the 1st respondent under the mortgage deed were merely security rights and not proprietary ownership rights, and that the disposal in question arose from the exercise of statutory mortgage remedies under the Land Act rather than a procurement process under the Act, we are satisfied that the present dispute falls outside the jurisdiction conferred upon this Appeals Authority.

Given the findings that the disputed property is not a public asset and its disposal is governed by the mortgage deed and Land Act, we are of the settled view that the appeal is not properly before the Appeals Authority. Accordingly, we uphold the PO and the appeal is hereby dismissed. We make no order as to costs.

It is so ordered.

This Ruling is binding and enforceable in accordance with section 121(7) of the Act.

The right of Judicial Review, as provided under section 125 of the Act, has been explained to the parties.

This Ruling is delivered in the presence of the appellant and virtual presence of both respondents this 9th day of July 2026.

MS. FLORENTINA SUMAWE

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Ag. CHAIRPERSON

MEMBERS:

1. **DR. WILLIAM KAZUNGU**..
2. **DR. GLADNESS SALEMA**..