

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 13 OF 2023-24

BETWEEN

M/S ASCERICS LIMITED.....APPELLANT

AND

DODOMA CITY COUNCIL.....RESPONDENT

DECISION

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Mr. Pius Mponzi | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 2. Ms. Violet Limilabo | - Senior Legal Officer |

FOR THE APPELLANT

- | | |
|------------------------|----------------------------|
| 1. Ms. Mary Ganga | - In house Advocate |
| 2. Mr. Mathayo Nungu | - Managing Director |
| 3. Mr. Seif Kasori | - Head of Procurement Unit |
| 4. Mr. Elimringi Mosha | - Operation Manager |



FOR THE RESPONDENT

1. Ms. Hellen Njowoka
2. Mr. Vincent L. Odera
3. Mr. Josephat Nyumayo

- State Attorney
- Procurement Officer
- Procurement Officer

This Appeal is in respect of Tender No. LGA/020/2022-2023/NCS/22 for Parking Revenue Collection and Fine for Wrong Parking on Road Reserve Areas at Dodoma City Council ("Wakala wa utozaji Ada ya maegesho ya vyombo vya usafiri kwenye hifadhi za barabara na faini za maegesho kwa wasiozingatia sheria za Barabarani katika maeneo ya Halmashauri ya Jiji la Dodoma") (hereinafter referred to as "**the Tender**"). The Appeal has been lodged by **M/S Ascerics Limited** (hereinafter referred to as "**the Appellant**") against the **Dodoma City Council** (hereinafter referred to as "**the Respondent**").

According to 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 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**").

On 26th May 2023, the Respondent through the Tanzania National electronic Procurement System (TANePS) invited tenderers to participate in the Tender. The deadline for submission of tenders was set on 10th June



2023. On the deadline, the Respondent received six (6) tenders including the Appellant's.

The received tenders were subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to M/S Web Corporation Ltd. The recommended contract price was Tanzania Shillings One Hundred Fifty Million Two Hundred Eighty One Thousand and Forty only (TZS 150,281,040.00) per month. The recommended tenderer is to be paid twenty percent (20%) of the proposed contract price. This is equivalent to Tanzania Shillings Thirty Million Fifty Six Thousand Two Hundred and Eight only (TZS 30,056,208.00) per Month. The Respondent would be remaining with eighty percent (80%) which is equivalent to Tanzania Shillings One Hundred Twenty Million Two Hundred Twenty Four Thousand Eight Hundred Thirty Two only (TZS 120,224,832.00) per Month. The said recommendations were approved by the Tender Board at its meeting held on 17th July 2023.

On 28th July 2023, the Respondent issued the Notice of Intention to award which informed tenderers that it intends to award the Tender to M/S Web Corporation Ltd. Furthermore, the proposed contract price was Tanzania Shillings One Hundred Fifty Million Two Hundred Eighty One Thousand and Forty only (TZS 150,281,040.00) per month. The Notice also informed the Appellant that its tender was disqualified for failure to adhere to the terms and conditions of contract No. AE/092/2021/2022/DSM/NC/08 LOT 2 that was entered between it and Dar es Salaam City Council. Consequently, a



Criminal Case No. 08 of 2023 was instituted against it at the Resident Magistrate's Court of Dar es Salaam, at Sokoine Drive.

Dissatisfied with the reasons given for its disqualification, the Appellant claimed to have applied for administrative review to the Respondent on 8th August 2023. According to the Appellant, the Respondent did not issue its decision as required. Therefore, the Appellant filed this Appeal on 25th August 2023.

The Appeals Authority notified the Respondent about the Appeal and required it to file its statement of reply. In response thereof, the Respondent raised a Preliminary Objection (PO) on a point of law to wit that: -

"The Appeal is premature for being contrary to Regulation 231(9) of the Public Procurement Regulations of 2013, Section 96(1) & (7) and Section 97(1) and (2) of the Public Procurement Act No. 7 of 2011 and its amendment of 2016'.

When the matter was called on for hearing, the Appeals Authority informed the parties that due to the limited time in determination of appeals, it would hear both the PO and the merits of the Appeal. Therefore, the following issues were framed: -

- 1.0 Whether the Appeal is properly before the Appeals Authority;**
- 2.0 Whether the disqualification of the Appellant 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 raised PO that related to the first issue, before embarking on the substantive merits of the Appeal.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The Respondent's submissions were made by Ms. Hellen Njowoka, learned State Attorney from the Respondent's Office. She commenced her submissions by stating that the Appeal before the Appeals Authority has been filed pre-maturely. The Appeal contravenes Regulation 231(9) of the Regulations and Sections 96(1) & (7) and 97(1) and (2) of the Act. The learned State Attorney submitted that these provisions require a tenderer who is dissatisfied with the procuring entity's decision to file its application for administrative review to the accounting officer of the respective procuring entity.

The learned State Attorney stated that upon receipt of the Notice of Intention to award and being dissatisfied with its disqualification, the Appellant should have filed its application for administrative review to the Respondent's Accounting Officer. To the contrary, the Appellant filed this Appeal directly to the Appeals Authority.

The learned State Attorney contended that, had the application for administrative review been lodged as required by the law, the Respondent would have determined the same. As long as there was no application for administrative review that was filed and after a lapse of the seven working days (cool off), the Respondent proceeded to award the Tender. Therefore,



the learned State Attorney prayed that the Appeal be struck out as it was lodged in contravention of the law.

THE APPELLANT'S REPLY ON THE PO

The Appellant's submissions were made by Ms. Mary Ganga, learned advocate from the Appellant's office. She commenced her submissions by stating that the Respondent's PO contravened the principle laid down in the case of ***Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd*** (1969) E.A 696. In the referred case the court stated that:-

"a preliminary objection consists of point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit".

According to the learned counsel, the Respondent's PO is not based on a pure point of law. The ascertainment of facts is necessary for establishing if the Appellant applied for administrative review to the Respondent prior to filing of this Appeal before the Appeals Authority.

Notwithstanding the above, the learned counsel submitted that the Appellant complied with Section 96 of the Act read together with Regulation 231(9) of the Regulations. The provisions require a tenderer to file an application for administrative review upon being dissatisfied with the reason for its disqualification. The learned counsel contended that the Appellant received the Notice of Intention to award on 28th July 2023. After receipt of the said notice and dissatisfied with the reason for its



disqualification, the Appellant filed an application for administrative review to the Respondent on 8th July 2023.

The learned counsel contended that Regulation 105(1) of the Regulations requires a tenderer to file an application for administrative review within seven working days of becoming aware of the circumstances giving rise to the complaint. The Regulation allows a complaint to be in writing and can be submitted physically or electronically. The learned counsel asserted that the Appellant's application for administrative review was submitted to the Respondent through email on 8th July 2023. There was no notification that the sent email was not received by the Respondent. Thus, the application for administrative review was filed within the time stipulated under the law. The Respondent was required to issue its decision thereof within seven working days. However, it failed to do so.

The learned counsel contended that having not received the Respondent's decision, the Appellant filed this Appeal on 25th August 2023, within seven working days as required by the law. In view of the above submissions, the learned counsel prayed that the Respondent's PO be rejected and the Appeal be heard on merits.

ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

1.0 Whether the Appeal is properly before the Appeals Authority

In resolving this issue, the Appeals Authority revisited Sections 95(1), 96(1) and (4), 97(1) and (2) of the Act that provide guidance on submission of

complaints to the Accounting Officer and thereafter an Appeal to the Appeals Authority. The provisions read as follows: -

"Sec. 95(1) Any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity by this Act may seek a review in accordance with sections 96 and 97.

Sec. 96(1) Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

97(1) A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to the Appeals Authority for review and administrative decision

(2) Where-

*(a) **the accounting officer does not make a decision within the period specified under this Act; or***



*(b) the tenderer is not satisfied with the decision of the accounting officer,
the tenderer may make a complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or **upon the expiry of the period within which the accounting officer ought to have made a decision**".*

(Emphasis supplied)

The above quoted provisions indicate clearly that if a tenderer is not satisfied with the procuring entity's acts or omissions, is required to file an application for administrative review to the respective procuring entity. This should be within seven working days of becoming aware of the circumstances giving rise to a complaint. The procuring entity is required to issue its decision within seven working days. If it fails to do so, a tenderer is required to file an Appeal to the Appeals Authority within seven working days.

According to Section 96(4) of the Act quoted hereinabove, an application for administrative review has to be lodged within seven working days of becoming aware of the circumstances giving rise to a complaint. The facts of this Appeal indicate that the Appellant's grievances arose from the Notice of Intention to award dated 28th July 2023. The Appellant was required to submit its application for administrative review within seven working days of receiving such notice. Counting from 28th July 2023, the Appellant was required to file its application for administrative review by 9th August 2023. The record of Appeal indicates that the Appellant submitted



its application for administrative review to the Respondent through email on 8th August 2023.

According to the record of Appeal, the e-mail address of cd@dodomacc.go.tz used by the Appellant to submit an application for administrative review is the Respondent's official email address. This email address is shown on its letter head. The Respondent also confirmed the existence of the referred e-mail address. Having reviewed the Appellant's email to the Respondent, the Appeals Authority observed that it is titled 'MAOMBI YA MAPITIO'. It had several attached documents including a formal application for administrative review. In reviewing further, the referred email, the Appeals Authority observed that the same was delivered to the Respondent. There was no notification that the said email was not delivered.

The Appeals Authority revisited Section 22(1) of the Electronic Transactions Act, Cap 442 R.E 2022 which reads as follows: -

"22(1) Information in electronic form is dispatched when it enters a computer system outside the control of the originator or of the person who sent the electronic communication on behalf of the originator".

(Emphasis supplied)

The above quoted provision entails clearly that information in an electronic form would be deemed to have been communicated when it enters the computer system outside the computer of the originator. That is to say,



information would be deemed to have been communicated when it enters into the recipient's computer.

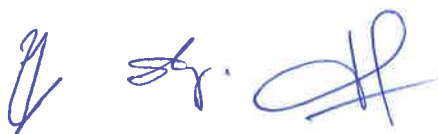
After relating the above quoted provision to the facts of this Appeal, the Appeals Authority is satisfied that the Appellant submitted an application for administrative review through email on 8th August 2023 and was received by the Respondent. Consequently, the Respondent was required to issue its decision thereof in accordance with the law.

According to Section 96(6) of the Act, the Respondent ought to have issued its decision within seven working days from the date the Appellant submitted its application for administrative review. Counting from 8th August 2023, the Respondent ought to have issued its decision by 18th August 2023. However, according to the record of Appeal, the Respondent did not issue any decision thereof.

Section 97(2)(a) of the Act allows a tenderer who has not received the procuring entity's decision within the stipulated time limit, to file an appeal to the Appeals Authority within seven working days from the date the decision ought to have been issued. Counting from 18th August 2023, the Appellant ought to have filed its Appeal by 29th August 2023. The Appellant filed this Appeal on 25th August 2023.

In view of the above observations, the Appeals Authority finds the Appellant's Appeal to be properly before the Appeals Authority. Thus, it has been lodged in accordance with the requirements of the law.

The Appeals Authority considered the Appellant's contention that a preliminary objection should be on a pure point of law and that its



determination should not require ascertainment of facts. The Appeals Authority is of the view that much as it is aware of the principle laid down in the case of **Mukisa Biscuit Manufacturing Co. Ltd** (supra) relied upon by the Appellant, it observed that in the case of **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), the court held as follows:-

*"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"**.*

In view of the above position of the Court of Appeal, the Appeals Authority rejects the Appellant's proposition that the PO should be based on pure point of law without any ascertainment of facts.

Under the circumstances, the Appeals Authority overrules the raised PO and proceeds to determine the Appeal on merits.

SUBMISSIONS BY THE APPELLANT ON MERITS OF THE APPEAL


In this Appeal the Appellant's submissions were made by Ms. Mary Ganga, learned advocate. She commenced her submissions on the second issue



by stating that according to the Notice of Intention to award the Appellant's tender was disqualified for two reasons. These are poor performance in relation to contract No. AE/092/2021/2022/DSM/NC/08 LOT 2 and the existence of Criminal Case No. 8 of 2023.

On the Appellant's poor performance in respect of the aforementioned contract, the learned counsel submitted that the Appellant entered into the said contract with the Tanzania Rural and Urban Roads Agency (TARURA) – Dar es Salaam on 31st August 2021. The contract was for a period of one year from 31st August 2021 to 30th August 2022. When the contract ended and following the changes on the government operations, Dar es Salaam City Council took over the responsibilities from TARURA-Dar es salaam. Then, it extended the aforementioned contract to the Appellant. The contract was extended from 1st September 2022 to 31st December 2022.

The learned counsel contended that during the contract period, the Appellant discharged its responsibilities as the per terms and conditions provided. The learned counsel asserted that had the Appellant failed to execute the referred project the Respondent would have invoked Regulation 243(3), (4) and (6) of the Regulations. The cited Regulation provides guidance on measures to be taken against a tenderer who fails to execute its obligations under the contract. According to Regulation 243(3) of the Regulations, a procuring entity is required to notify a service provider or contractor on any short-comings that may be observed during execution of the contract. The Appellant denied to have received any



notification of poor performance from TARURA – Dar es Salaam or Dar es Salaam City Council when executing the contract in question.

The learned counsel stated further that Regulation 243(4) of the Regulations requires that where the service provider's poor performance could not be rectified, legal proceedings should be instituted against it. The Appellant denied that legal proceedings were instituted against it due to poor performance during the execution of the referred contract.

The learned counsel added that Clause 12 of the said contract allows termination of the contract with a service provider who fails to comply with terms and conditions of the contract. Surprisingly, all these measures were not taken by the Respondent against the Appellant following its underperformance.

The learned counsel submitted that Clause 13.1(ii)(b) of the Instruction To Tenderers (*Maelekezo kwa Wazabuni* hereinafter referred to as "**MKW**") required tenderers to submit a written proof that they had successfully executed a contract of the same nature as the Tender under Appeal. In addition, Clause 13.1(j)(e) of the Bid Data Sheet (*Lohodata ya Zabuni* hereinafter referred to as "**LDZ**") required a tenderer who had been awarded the contract of the same nature as the Tender under Appeal and failed to collect revenues as expected or failed to comply with contract requirements, not to be awarded the Tender.

The learned counsel contended that in ensuring that the Appellant complied with Clause 13.1(ii)(b) of MKW and Clause 13.1(j)(e) of LDZ the Respondent conducted due diligence so as to verify the Appellant's



performance from previous employers. Due diligence was conducted to amongst others TARURA-Dar es Salaam and Dar es Salaam City Council. After receipt of the due diligence findings, the Respondent ought to have verified if the received information was correct. To the contrary, the Respondent failed to execute its obligation in this regard as per the requirements of the law.

The learned counsel expounded that, after receipt of the Appellant's poor performance record from Dar es Salaam City Council, the Respondent ought to have visited the website of the Public Procurement Regulatory Authority (PPRA) in order to verify if the Appellant was among the debarred firms for poor performance. As per the record from the PPRA's website, the Appellant is not among the debarred firm.

The learned counsel asserted that in the absence of proof that the Appellant is among the debarred firm by the PPRA, it was improper for the Respondent to disqualify it from the Tender process for poor performance. The learned counsel stated that PPRA is the only entity vested with powers to debar firms for poor performance of contracts. This is according to Section 62(3)(c) of the Act read together with Regulations 94 to 99 of the Regulations. Since the Appellant has not been debarred by the PPRA, there is no other institution that can substantiate the Appellant's underperformance. Thus, the Respondent ought not to have relied on the information provided by the Dar es Salaam City Council as the same were lies and based on hatred.

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On the existence of Criminal Case No. 8 of 2023, the learned counsel submitted that the referred case does not relate to the Appellant's failure to execute the contract. The case is criminal in nature and has been instituted by the Dar es Salaam City Council on matters other than the Appellant's poor performance. In addition, the said case was dismissed on 27th July 2023 for want of prosecution. Thus, the case was not finally determined. In view of this fact, the learned counsel concluded her submissions on the second issue by stating that the Appellant's disqualification was unfair and unjust.

Finally, the Appellant prayed for the following remedies, that: -

- i. An injunction order be issued on the Tender under Appeal;
- ii. Award of the Tender made to M/S Web Corporation Ltd be nullified; and
- iii. Any other reliefs the Appeals Authority may deem fit to grant.

REPLY BY THE RESPONDENT ON MERITS OF THE APPEAL

Ms. Hellen Njowoka, learned State Attorney from the Respondent's office made the Respondent's submissions in this Appeal. She commenced her submissions on the second issue by stating that when conducting this Tender the Respondent adhered to all the requirements of the Act and its Regulations. The Respondent notified all tenderers its intention to award the Tender to M/S Web Corporation Ltd. The unsuccessful tenderers were also notified on reasons for their disqualification and were accorded seven working days for filing any complaint. She contended that the Respondent having not received complaints from the tenderers and after a lapse of the



seven working days, it proceeded to award the Tender to the proposed successful tenderer.

The learned State Attorney submitted that the Appellant was disqualified from the Tender process for failure to comply with Clause 13.1(j)(e) of the LDZ. The said provision required a tenderer who had previously been awarded the tender of the same nature and had a poor performance record not to be considered for award in this Tender. The learned State Attorney contended that as per the due diligence findings from Dar es Salaam City Council, the Appellant's previous employer, the Appellant continued to operate beyond the contract period without the approval of the procuring entity.

The learned State Attorney stated that Clause 5.10 of the contract that was entered between the Appellant and TARURA-Dar es Salaam required the Appellant to comply with the terms and conditions of the contract. To the contrary, the Appellant failed to comply with the referred provision as it failed to handover the site and equipment for revenue collection after its contract ended.

The learned State Attorney added that during the execution of the contract, the Appellant failed to comply with the directives of its employer as provided through the following letters with reference No. DCC/RL.10/VIII/133 dated 21st June 2023, DCC/RA.57/1/3 dated 28th December 2022, IMC/KW.52/2 dated 17th January 2023 and DCC/CC.21/1/7 dated 23rd January 2023. The referred correspondences led to the institution of Criminal Case No. 8 of 2023 at the Resident

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Magistrate Court of Dar es Salaam, on 26th January 2023, against the Appellant. Thus, the learned counsel contended that the Appellant should not separate the institution of the referred criminal case from its failure to comply with the terms and conditions of the contract.

In relation to the Appellant's argument that it has not been debarred by the PPRA and therefore should not have been considered to have poor performance and be disqualified from the Tender process. The learned State Attorney submitted that the basis for the Appellant's disqualification were the due diligence findings from Dar es Salaam City Council. The findings were sufficient to disqualify the Appellant from the Tender process as it was found to have contravened Clause 13.1(j)(e) of the LDZ.

Finally, the learned State Attorney prayed for the following: -

- i. The Appeals Authority uphold the Respondent's intention to award the Tender to M/S Web Corporation Ltd;
- ii. The Appeals Authority maintain the lawful decision made by the Respondent in respect of the Tender;
- iii. An order that the Appeal be struck out as it has no merits on the face of law and that the Respondent's decision should not be annulled as prayed by the Appellant;
- iv. The Appellant to pay costs of this Appeal; and
- v. Any other relief the Appeals Authority may deem fit to grant thereto.



ANALYSIS OF THE APPEALS AUTHORITY ON THE MERITS OF THE APPEAL

2.0 Whether the disqualification of the Appellant was justified

In resolving this issue, the Appeals Authority reviewed the record of Appeal and observed that the Notice of Intention to award indicates that the Appellant was disqualified for failure to comply with terms and conditions of Contract No. AE/092/2021/2022/DSM/NC/08 LOT 2 that was entered between it and Dar es Salaam City Council. On one part, the Appellant challenged the reason given for its disqualification on the basis that it complied with all terms and conditions of the referred contract. On the other part, the Respondent contended that the Appellant's failure to comply with terms and conditions of the aforementioned contract contravened Clauses 13.1(ii)(b) of the MKW and 10.1(j)(e) of the LDZ. Therefore, its tender was fairly disqualified.

The Appeals Authority reviewed Clauses 13.1(ii)(b) of the MKW and 10.1(j)(e) of the LDZ which read as follows: -

"MKW 13.1 Tathmini ya Awali; ili kutambua ni zabuni zipi zinakidhi matakwa ya msingi ya nyaraka za Zabuni, kama vile: zile zilizosainiwa kwa usahihi na zilizotimiza vigezo na masharti ya Mwaliko wa Zabuni.

ii) Kama tathmini ya awali, Taasisi Nunuzi itaangalia:



(b) Uthibitisho wa Kimaandishi kwamba Mzabuni alikamilisha mkataba/mikataba inayofanana na huu kwa ufanisi.

LDZ 10.0 Masharti na Nyaraka nyingine ambavyo Taasisi Nunuzi itatumia wakati wa tathmini ni:

1. Vigezo vifuatavyo vitaangaliwa wakati wa tathmini ya awali:

j) Nyaraka nyingine ni;

*(e) Mzabuni yeyote aliyewahi kupewa kazi na Taasisi na kushindwa kufikia makusanyo yaliyotajwa kwenye mkataba au **kushindwa kutekeleza sharti lolote la mkataba hatapewa zabuni hii'**.*

(Emphasis supplied)

The above quoted provisions state clearly that tenderers were required to submit a written proof of successfully executing the contract of the same nature as the Tender under Appeal. In addition, the provisions require a tenderer who had been awarded a contract of the same nature and failed to reach the revenue collection target or failed to implement contracts obligations as required, not to be awarded the Tender.

The record of this Appeal indicates that in ascertaining if the Appellant complied with Clauses 13.1(ii)(b) of the MKW and 10.1(j)(e) of the LDZ, the Respondent through a letter dated 19th June 2023 inquired from the Appellant's previous employers: Dar es Salaam City Council, TARURA –



Mbeya, Dar es Salaam and Arusha offices about its performance. In response thereof, Dar es Salaam City Council through a letter dated 21st June 2023 informed the Respondent that the Appellant when executing the said contract continued with operations beyond 31st December 2022.

The Appeals Authority observed further that Dar es Salaam City Council through a letter dated 28th December 2022 notified the Appellant to handover the site and all equipment for revenue collection as its contract was coming to an end on 31st December 2022. Furthermore, Dar es Salaam City Council through a letter dated 17th January 2023 reminded the Appellant to handover the site. Moreover, the said letter informed the Appellant that its request for extension of the contract was refused. In addition, the Dar es Salaam City Council through a letter dated 23rd January 2023 addressed to the Central Police Station of Dar es Salaam requested for the arrest of the Appellant so that it could handover the equipment for revenue collection. Thereafter, Criminal Case No. 8 of 2023 was instituted against the Appellant.

In view of the above facts, the Appeals Authority is of the settled view that the Appellant's act of proceeding with revenue collection after the expiry of the contract without the consent of the Dar - es Salaam City Council amounted to a breach of the terms and conditions of the contract. According to Clauses 13.1(ii)(b) of the MKW and 10.1(j)(e) of the LDZ, the Appellant's act implies that it had not successfully completed the referred contract for failure to handover the equipment for revenue collection when the contract ended.

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The Appeals Authority considered the Appellant's contention that for it to be considered to have not successfully executed the contract, it ought to have been debarred by the PPRA. The Appeals Authority observed that from the facts of this Appeal it is crystal clear that the Appellant was disqualified from this Tender process for proceeding with the execution of the referred contract after its tenure had already expired. The Appellant was found to have breached terms and conditions of the contract as it ought to have complied with the start and completion date as indicated.

The Appeals Authority also rejects the Appellant's contention that the instituted Criminal Case No. 8 of 2023 does not relate to contract execution. From the facts of this Appeal, it is evident that the referred criminal case was instituted following the Appellant's act of refusing to handover to the Dar es salaam City Council equipment for revenue collection after the expiry of the contract. Thus, the criminal case relates to the contract.

In view of the above, the Appeals Authority finds the Respondent's act of disqualifying the Appellant to be proper and in accordance with Regulation 206(2) of the Regulations which reads as follows: -

"Reg. 206(2) ***where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.***"

(Emphasis added)

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Under the circumstances the Appeals Authority concludes the second issue in the affirmative that the Appellant's disqualification was justified.

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

Taking cognizance of the findings hereinabove, the Appeals Authority hereby dismiss the Appeal and allows the Respondent to proceed with the Tender process. 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.

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 parties this 22nd day of September 2023.

HON. JUSTICE (rtd) SAUDA MJASIRI



.....
CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....


2. MR. PIUS MPONZI.....
