

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CAUSE NO. 9 OF 2022

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
PREROGATIVE ORDER OF MANDAMUS**

AND

**IN THE MATTER OF PUBLIC PROCUREMENT APPEALS AUTHORITY ON
FAILURE TO DETERMINE THE APPEAL LODGED AGAINST THE PUBLIC
PROCUREMENT REGULATORY AUTHORITY (PPRA)**

BETWEEN

AKO GROUP LIMITED.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE PUBLIC PROCUREMENT APPEALS

AUTHORITY (PPAA).....2ND RESPONDENT

THE PUBLIC PROCUREMENT REGULATORY

AUTHORITY (PPRA).....3RD RESPONDENT

RULING

27 & 29 April, 2022

MGETTA, J:

In this application, the applicant Ako Group Limited, through the legal service of Mr. Heri Zuku, the learned advocate, on 31/3/2022 filed a chamber summons supported by an affidavit sworn by Ms. Sabrina Mtega and accompanied by a statement. The chamber summons is made under **section 2(3) of the Judicature and Application of Laws Act**, Cap. 358, **section 18 (1) of the Law Reform (Fatal Accidents and Miscellaneous**

Provisions) Act, Cap 310 and Rules 5 (1), (2), (3) and 7 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedures and Fees) Rule, 2014. The applicant is seeking for two orders namely leave to apply for judicial review and suspension of debarment order issued by the 3rd respondent pending determination of this application, determination of application for judicial review, appointment of members of Public Procurement Appeals Authority and determination of the appeal by the 2nd respondent.

When the application was called on for hearing, Mr. Heri Zuku, the learned advocate appeared for the applicant; while, the respondents namely the Attorney General (1st respondent), The Public Procurement Appeals Authority (PPAA) (the 2nd respondent) and the Public Procurement Regulatory Authority (PPRA) (the 3rd respondent) enjoyed a legal service of Mr. Urso Luoga, the learned State Attorney, who was assisted by Mr. Benard Kongola, the learned principal state attorney, Mr. Joackim Maambo, the learned senior state attorney, Ms. Maria Mang'ong'o, the learned state attorney and Ms. Agness Sai, the learned senior state attorney.

In his submission, Mr. Zuku adopted the contents of the affidavit and the statement. He submitted that the applicant is aggrieved by the decision

made on 22/12/2021 by the 2nd respondent. The applicant is therefore praying for a leave to apply for the order of Mandamus to compel the 2nd respondent to hear and determine the appeal lodged by the applicant against the decision of the 3rd respondent. The order of Mandamus is also intended to be issued against the 1st respondent to advise the government to appoint the chairperson and members of the Public Procurement Appeal Authority as required by law.

He asserted further that the applicant is also suffering economically due to the debarment order issued by the 3rd respondent against the applicant who is now praying that this court be pleased to grant an order for suspension of debarment order. He added that it is on the record that on 8/11/2021, the 3rd respondent issued a notice requiring the applicant to show cause why applicant should not be debarred from participating in public procurement. Despite showing good cause why debarment should not be issued, the 3rd respondent continued to issue debarment order on 22/12/2021 against the applicant on account of Tender No. PA/116/2020 - 2021/KADCO/NCS/19 Lot 2. On 31/12/2021, being aggrieved by that debarment order, the applicant timely appealed to the 2nd respondent challenging the debarment order. But the appeal is yet to be heard allegedly

due to absence of quorum as the appointment authority has not yet appointed new members. Hence, this application.

It is not in dispute that on 22/12/2021 the 3rd respondent issued debarment decision against the applicant who was aggrieved by it. The alternative was for the applicant to appeal against that decision. Indeed, the applicant timely appealed to the 2nd respondent who has failed to determine the appeal due to what is said an absence of quorum as the appointing authority has not yet appointed members to constitute the 2nd respondent. To me that sounds to be an arguable case warranting the issuance of leave.

It is not in dispute that at the stage of application for leave to apply for judicial review, the conditions the applicant has to satisfy to warrant the grant of such leave have been tested before this court and the court of appeal. **One**, the application must be timely lodged i.e. lodged within six months as required by law; **two**, the applicant has to show sufficient interest in the matter to which the application relates; **three**, the applicant must establish an arguable or *prima facie* case grounding for application for judicial review. In this application, the applicant has lodged an appeal as alternative remedy which is yet to be determined. (Vide: **Cheavo Juma Mshana Versus Board of Trustee of Tanzania National Parks and**

Two Others; Misc. Civil Cause No. 7 of 2020 (HC) (Moshi) (unreported). I have considered those three conditions and found that the applicant have successfully established them. In the event, I do proceed to grant leave to the applicant to apply for judicial review.

As regard to the prayer for suspension of debarment order, following a grant of leave, I find it prudent to suspend a debarment order that was issued against the applicant by the 3rd respondent against the applicant, only for the period of fourty five (45) days from the date of this ruling (i.e. today). The same order for suspension of debarment order may be applied for by the applicant at the time of lodging an application for judicial review. In the circumstances of this application, I order that each party has to bear its own costs.

It is so ordered.

Dated at **Dar es Salaam** this 29th day of April, 2022.



A handwritten signature in blue ink, appearing to read 'J.S. MGETTA', with a horizontal line extending to the right.

J.S. MGETTA
JUDGE

COURT: This ruling is delivered today this 29th day of April, 2022 in the presence of Mr. Heri Zuku, the learned advocate for the applicant and in the presence of Mr. Urso Luoga, assisted by Ms. Agness

Sai and Ms. Maria Mng'ong'o, all learned state attorneys for the respondents.

A handwritten signature in blue ink, appearing to read 'J.S. MGETTA', with a stylized flourish at the end.

J.S. MGETTA
JUDGE
29/4/2022