

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISCELLANEOUS APPLICATION NO. 76 OF 2007**

BETWEEN

**IN THE MATTER OF SECTION 38(13) OF THE PUBLIC PROCUREMENT ACT
(NO 8 OF 2003)**

IN THE MATTER OF ORDER 53 OF THE RULES OF THE SUPREME COURT

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY SADM PHARMACEUTICALS LIMITED**

BETWEEN

THE STATE

AND

**THE OFFICE OF THE DIRECTOR
OF PUBLIC PROCUREMENT1ST RESPONDENT
MINISTRY OF HEALTH (CENTRAL MEDICAL STORES)2ND RESPONDENT**

CORAM : HON. JUSTICE NYIRENDA

: Mr. Theu, Counsel for the interested party
: Mr. Kachule, Counsel for the State
: Mrs. Nakweya, Court Interpreter

RULING

I have carefully read through the affidavits and the supporting documents in this matter.

Judicial Review is about the decision making process and in exceptional cases about the decision itself where it is contended that the decision is far too unreasonable. In the instant case there is nothing in the

Applicant's case about the decision making process. It is not contended that the procedure by which the bids were evaluated was irregular or improper.

As I understand the Applicant's case the complainant's case is more to the reasons for decision in award the Applicant only part of the bid. On a clear reading of the affidavit of Mr. Wemba the Applicant is disgruntled with the size of the award from the expected USD28,379,063.00 to only USD 847,304.56. The explanation by the first and second Respondents, among other reasons given, was that the applicant priced some items higher than other bidders. I should however at this stage of the matter avoid going much into what might still have to be determined further in case the applicant was dissatisfied with this ruling.

The short of my ruling is that the applicant is simply not contended with the portion allocated. It is not that no explanation was given by the two Respondents. In fact the documents that I have seen exchanged between the parties have detailed considerations that were made for the decision to be made. I am inclined to hold that there is nothing that strikes me as being overt unreasonableness on part of the Respondents.

For all these reasons I decline leave for judicial review.

PRONOUNCED in Chambers at Lilongwe this 26th day of September, 2007.

A.K.C. Nyirenda
J U D G E