

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 30 OF 2022-23**

**BETWEEN**

**M/S BAHARI PHARMACY LTD.....APPELLANT**

**AND**

**REGIONAL ADMINISTRATIVE**

**SECRETARY- PWANI.....RESPONDENT**

**RULING**

**CORAM**

- |                       |                   |
|-----------------------|-------------------|
| 1. Adv. Rosan Mbwambo | - Ag. Chairperson |
| 2. Mr. Rhoben Nkori   | - Member          |
| 3. Mr. Pius Mponzi    | - Member          |
| 4. Mr. James Sando    | - Secretary       |

**SECRETARIAT**

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

**FOR THE APPELLANT**

- |                         |                                       |
|-------------------------|---------------------------------------|
| 1. Mr. Aliko Mwamanenge | - Advocate - Brave hill Attorney      |
| 2. Mr. Richard Olotu    | - Managing Director                   |
| 3. Mr. Humphrey Malenga | - Legal Officer - Brave Hill Attorney |

## FOR THE RESPONDENT

1. Mr. Joseph Mally - Head of ICT - RAS- Pwani
2. Mr. Obadia Malima - Chief Internal Auditor - RAS Pwani
3. Ms. Anne Mwandiga - Ag. Head of Procurement Management  
Unit (Ag. HPMU) - RAS Pwani
4. Mr. Beda Mbaga - Procurement Officer - RAS Pwani

The Appeal was lodged by M/S Bahari Pharmacy Limited (hereinafter referred to as "**the Appellant**") against the Regional Administrative Secretary - Pwani (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. RAS/013/2021-2022/G/54 Lot 4B for Supply of Medical Supplies (Other than Medicine, Diagnostics and Medical Supplies) for Public Health Facilities in Pwani Region (hereinafter referred to as "**the Tender**").

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 Shopping 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 as amended (hereinafter referred as "**the Regulations**").

This Appeal arises out of the Tender which was floated following the this Appeals Authority' decision issued in respect of Appeal Case No. 4 of 2022-23 between **M/S Bahari Pharmacy Limited and Regional**

*Administrative Secretary Pwani*, In the said Appeal, the Appeals Authority found procedural irregularities ordered the Respondent to re-start the Tender process in compliance with the law.

Following the Appeals Authority's order, the Respondent re-started the Tender process and inviting eleven tenderers. The Tender was advertised on 22<sup>nd</sup> September 2022 through Tanzania National electronic Procurement System (TANePS). The deadline for submission of tenders was set for 26<sup>th</sup> September 2022. On the deadline, two tenders were received from M/S Kasimwa General Supplies and M/S Grant Care Ltd.

The received tenders were then subjected to evaluation and after completion, the Evaluation Committee recommended award of the Tender to M/S Kasimwa General Supplies. The Tender Board at its meeting held on 4<sup>th</sup> October 2022, approved the award of the Tender as recommended by the Evaluation Committee subject to due diligence. On 19<sup>th</sup> October 2022, the Tender Board approved the due diligence report and awarded the Tender to M/S Kasimwa General Supplies for a period of three years.

On 16<sup>th</sup> November 2022, the Respondent issued award letter to the successful tenderer. On 21<sup>st</sup> November 2022 the Respondent signed the contract with the successful tenderer.

According to the Appellant, on 27<sup>th</sup> January 2023, it became aware that M/S Kasimwa General Supplies was unlawfully awarded the Tender. On 6<sup>th</sup> February 2023, the Appellant filed this Appeal.

When the Appeal was called on for hearing the Appellant was represented by Mr. Aliko Mwamanenge, learned advocate. Mr. Joseph Mally, Head of

ICT represented the Respondent. The Appeals Authority *suo motu* brought to the attention of the parties that there is a point of law for determination. This is **whether the Appeal is properly before the Appeals Authority**. The point of law was raised by the Appeals Authority after reviewing the record of appeal and observed that the Appellant lodged this Appeal after lapse of almost two months from the date it submitted an application for administrative review on 25<sup>th</sup> November 2022. The Appeals Authority, therefore, invited the parties to address it on this point.

The learned advocate for the Appellant readily conceded that the appeal is time barred. Following this admission, the Respondent prayed for costs. As rightly conceded by the learned counsel for Appellant the Appeals Authority finds that this Appeal is time barred pursuant to Sections 96(7) and 97(2)(a) of the Act and is hereby dismissed.

The Appeals Authority considered the Respondent's prayer for costs. However, no details have been furnished for the Appeals Authority to assess the same. Further that, the point that led to the dismissal of the appeal was raised by the Appeals Authority on its own motion. In the premises, the request for costs is declined.

It is so ordered.

This Ruling 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 Ruling is delivered in the presence of the Respondent and in the absence of the Appellant this 2<sup>nd</sup> day of March 2023.

**ADVOCATE ROSAN MBWAMBO**



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**Ag. CHAIRPERSON**

**MEMBERS: -**

**1. MR. RHO BEN NKORI.**.....

**2. MR. PIUS MPONZI.**.....

