

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 37 OF 2024-2025**

**BETWEEN**

**M/S SHADES OF GREEN SAFARIS LIMITED.....APPELLANT**

**AND**

**TANZANIA PETROLEUM**

**DEVELOPMENT CORPORATION.....RESPONDENT**

**DECISION**

**CORAM**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Eng. Lazaro Loshilaari         | - Member      |
| 3. Mr. Raphael Maganga            | - Member      |
| 4. Mr. James Sando                | - Secretary   |

**SECRETARIAT**

- |                         |                           |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda  | - PALS Manager            |
| 2. Ms. Agnes Sayi       | - Principal Legal Officer |
| 3. Ms. Violet Limilabo  | - Senior Legal Officer    |
| 4. Mr. Venance Mkonongo | - Legal Officer           |

**FOR THE APPELLANT**

- |                       |                                    |
|-----------------------|------------------------------------|
| 1. Mr. Asubuhi Yoyo   | - Advocate - Yoyo & Co<br>Advocate |
| 2. Mr. Gadi Mbuya     | - Managing Director                |
| 3. Mr. Salifius Mligo | - Procurement Specialist           |



## FOR THE RESPONDENT

- |                           |   |
|---------------------------|---|
| 1. Mr. Ayoub Sanga        | - Senior State Attorney - Office of the Solicitor General |
| 2. Mr. Kelvin Lyimo       | - Senior Procurement Officer                              |
| 3. Ms. Anna Mkongwa       | - Senior Legal Officer- TPDC                              |
| 4. Ms. Scholastica Matupa | - Legal Officer   |

This Appeal was lodged by **M/S Shades of Green Safaris Limited** (hereinafter referred to as "**the Appellant**") against **Tanzania Petroleum Development Corporation** known by its acronym "**TPDC**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR24/2024/2025/NC/43 for provision of Air Travelling Services (hereinafter referred to as "**the Tender**").

The background of this Appeal may be summarized from the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") as follows: -

The Tender was conducted using the National Competitive Tendering method as specified in the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "the Act") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "the Regulations").

On 6<sup>th</sup> February 2025, the Respondent invited eligible tenderers to participate in the tender through the National e-Procurement System of Tanzania (**NeST**). The deadline for submission of tenders was on 13<sup>th</sup>



February 2025 and twenty-two tenders including that of the Appellant were received by the Respondent.

The tenders were subjected to an internal evaluation process and after its completion, the Respondent issued a Notice of Intention to award the Tender to M/S Blue Lion Travel & Tours Limited (hereinafter referred to as "**the successful tenderer**") on 28<sup>th</sup> March 2025. It stated that the Respondent intended to award the Tender to the successful tenderer at a contract price of Tanzania Shillings Zero (TZS 0.00). The Notice also asserted that the Appellant's tender was unsuccessful as its offered price of TZS 0.0000000012 VAT Inclusive was higher than of the proposed successful tenderer.

Dissatisfied with the reason given for its disqualification, the Appellant applied for administrative review through a letter dated 4<sup>th</sup> April 2025 which it e-mailed to the Respondent on 8<sup>th</sup> April 2025. The Respondent issued its decision on 10<sup>th</sup> April 2025 which stated that it could not entertain the Appellant's complaint as it was submitted contrary to section 120(4) of the Act. Aggrieved with the Respondent's decision, the Appellant filed this Appeal to the Appeals Authority on 22nd April 2025.

When the matter was called on for hearing the following issues were framed for determination: -

**1.0 Whether the Respondent's refusal to entertain the Appellant's application for administrative review was justified.**



**2.0 Whether the award of the Tender to the successful tenderer was justified and in accordance with the law; and**

**3.0 To what reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's submissions were made by Mr. Asubuhi Yoyo, learned counsel. Submitting on the first issue, he averred that the Respondent erred in law by refusing to entertain the Appellant's application for administrative review on the basis that it was submitted after a lapse of thirteen days from the date the Appellant received the Notice of Intention to award.

The learned counsel stated that section 120(4) of the Act read together with regulation 108 of the Regulations requires an accounting officer to decline to entertain a complaint which has not been submitted within five working days from the date a tenderer became aware of the circumstances giving rise to the complaint. The learned counsel submitted that section 60(1)(b) and (e) of the Interpretation of Laws Act, [CAP. 1 R.E. 2019] states clearly that where a period is expressed to be reckoned from or after a specified day, that day shall not be included in the period.

The learned counsel submitted that the Notice of Intention to award was issued on Friday 28<sup>th</sup> March 2025. The days that followed thereafter, that is 29<sup>th</sup> and 30<sup>th</sup> March 2025 were weekends and 31<sup>st</sup> March, and 1<sup>st</sup> April 2025 were public holidays known as Eid el Fitr. Therefore, the Appellant was required to count the five working days within which to apply for



administrative review from 2<sup>nd</sup> April 2025. Counting from that date, the five working days period was to expire on 9<sup>th</sup> April 2025 as 5<sup>th</sup> and 6<sup>th</sup> April were weekends and 7<sup>th</sup> April 2025 was Karume day. The Appellant applied for administrative review to the Respondent on 8<sup>th</sup> April 2025, through an e-mail. On 9<sup>th</sup> April 2025, the Appellant delivered physically its application to the Respondent.

It was the learned counsel's view that the Appellant filed its application for administrative review to the Respondent within time. And hence, the Respondent ought to have entertained the same. He added that, the Respondent's failure to entertain the Appellant's complaint contravened section 120(6) of the Act.

The learned counsel went on to submit that the Respondent indicated in its Statement of Reply, that it could not have entertained the Appellant's complaint as it was submitted beyond working hours. He argued that the law does not require an application for administrative review to be filed within working hours. That section 120(4) of the Act requires an application for administrative review to be filed within five working days from the date a tenderer becomes aware of the circumstances giving rise to the complaint. He concluded on this point by stating that the Respondent was required to mandatorily entertain the Appellant's application as it was filed within the stipulated time limit.

It was the learned counsel's submission on the second issue that section 10 of the Law of Contract Act, [CAP. 345 R.E. 2019] clearly provides that all agreements are contracts if they are made with the free consent of parties competent to contract, for a lawful object and for a lawful



consideration. He submitted that the Respondent awarded the Tender to the tenderer who did not offer any consideration. He stated that the term consideration arose from the Latin maxim quid pro quo meaning nothing should go for nothing. He further stated that for a contract to be considered valid, it must indicate reciprocal exchange between the parties. In this Appeal, the awarded tenderer offered a zero-price meaning that there was no consideration offered which could legalize the contract between the parties. Therefore, it was his view that the Respondent erred in law for intending to award the Tender to a tenderer who had not offered any consideration.

The learned counsel went on to aver that section 25(1) of the Law of Contract Act states clearly that a contract made without consideration is void. The learned counsel contended that the provision has exceptions which are provided under section 25(1), but they do not fit the circumstances of the disputed tender. And therefore, the provision is inapplicable to this case.

The learned counsel contended that the Appellant was disqualified in other tenders for provision of air ticketing services for quoting zero price. Thus, the Appellant was surprised by the Respondent's intention to award the Tender to the proposed successful tenderer who had offered zero consideration.

Finally, the Appellant prayed to the Appeals Authority for the following orders: -

- i. The process of signing the contract between the parties to be suspended pending determination of the Appeal.



- ii. The Respondent to award the Tender to the Appellant as it was the lowest evaluated tenderer.
- iii. Declare the legal rules and principles that govern the subject matter.
- iv. To prohibit the Respondent from signing the contract which is not enforceable in law.
- v. The Respondent that has acted or proceeding in an unlawful manner, or reached an unlawful decision, to be ordered to act or proceed in a lawful manner or to reach a lawful decision.
- vi. Annul part of an unlawful act or decision of the Respondent for signing the contract with the proposed successful tenderer. Instead, the Respondent should award the Tender and sign the contract with the Appellant as it was the lowest evaluated tenderer;
- vii. The Respondent to compensate the Appellant costs incurred in filing this Appeal; and
- viii. Any other remedies, the Appeals Authority may deem fit and just to grant.

### **REPLY BY THE RESPONDENT**

The Respondent's reply submissions were made by Mr. Ayoub Sanga, learned Senior State Attorney from the office of the Solicitor General. At the outset, he conceded to the first issue that indeed the Respondent erred in law for failing to entertain the Appellant's application for administrative review. He stated that after reviewing section 60 of the Interpretation of Laws Act and section 120(4) of the Act relied by the Appellant, the Respondent admitted that the Appellant's application for administrative review was filed within the time limit stipulated under the law. Thus, the Respondent was required to entertain the same.





On the second issue, the learned State Attorney submitted that evaluation of tenders was performed in accordance with criteria provided in the Tender Document. The learned State Attorney affirmed that the Respondent complied with section 89(1) of the Act during evaluation of the tenders. This section mandates a procuring entity to compare prices of tenders that have not been disqualified for failure to meet technical requirements.

The learned State Attorney averred that the Appellant's tender was one of the three tenders subjected to financial evaluation after meeting the technical requirements in the Tender under Appeal. When evaluating tenders at this stage, the Respondent observed that the Appellant's tender was the lowest among the three tenders. In addition, it was observed that the three tenderers had offered price discounts in accordance with Clause 16 of the Instruction to Tenderers (ITT). After computation of the offered discounts, the Respondent required tenderers to confirm their prices. All tenderers confirmed their prices with discounts. Hence, after completing this process, the successful tenderer emerged as the lowest evaluated tenderer. Consequently, it was recommended for award of the contract.

The learned State Attorney went on to aver that section 10 of the Law of Contract Act provides for the basic requirements of a lawful contract. These include the free consent of parties, having a lawful object and consideration. He further averred that section 25 of the same Act states categorically that any agreement without consideration is void. However, section 25(1) of the same Act provides for circumstances where consideration might not be necessary in a contract. The learned State





Attorney added that section 25(3) of the Act affirms clearly that consideration should be sufficient but need not be adequate.

He stated that the Appellant quoted a price of TZS 0.001 and offered a discount of 99.9999% while the proposed successful tenderer quoted a price of TZS 0.01 and offered a discount of 100%. After computation of the discounts offered by the two tenderers, the successful tenderer was found to be the lowest evaluated tenderer with Tanzania Shillings Zero (TZS 0.00) while the Appellant followed the lowest evaluated tenderer with TZS 0.0000000012. Therefore, the successful tenderer was recommended for award of contract while the Appellant's tender which had a higher price was disqualified.

The learned State Attorney submitted that consideration needs to be sufficient and not adequate. To fortify his argument, he cited three Latin maxims on consideration to wit; *consedatio suffiat sed non adeo, nudum patum* and *quid pro quo*. According to the learned State Attorney, the three maxims emphasize the requirement that consideration needs to be sufficient but not adequate.

In support of his submissions, the learned State Attorney cited the case of ***Currie V. Misa (1875) LR EX 153***, which held that: -

*"A valuable consideration is a sense of law which may consist either in some right, interest, profits or benefit occurring to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."*



In relating the above principles with the facts in this Appeal, the learned State Attorney was of the view that the proposed successful tenderer who was awarded the Tender at TZS Zero price does not mean that there was no consideration. He insisted that there was indeed consideration based on the benefit of the commissions given to the service provider by the airlines. Any tenderer who has a contract for provision of air ticketing services would derive a benefit in the form of commissions from airlines. He argued that consideration in the air ticketing industry is obtained from airlines through the offered commissions.

In supporting his contention, he cited the case of ***Kom Mining Company Limited Versus BHG Energy and Mineral Limited and three others***, Commercial Case No. 16362 of 2024, (HC) of Tanzania (Commercial Division) at Dar es Salaam where the court held that: -

*"...under the law of contract, consideration need not be adequate. All what is needed is that, the value exchanged should be a result of agreement of the parties, the exchange having some legal value."*

He also cited the Case of ***Ashura Mwinyimvua and Five Others Versus Yahaya Said Hinchu***, High Court of Tanzania, (Land Division) at Dar es Salaam, Land Appeal No. 77 of 2021 where the Court held that: -

*"... In absence of valuation assessment, the purchase price which is alleged to be 550,000/= remains the consideration for assessment of pecuniary jurisdiction. Under the law of contract Act consideration does not need to be adequate but only sufficient, meaning that the amount was sufficient to the seller."*



He concluded his submissions on this point by insisting that consideration needs to be sufficient but not adequate, that is, at the minimum, some value should be exchanged between the parties. It was his position that in the Tender under Appeal, the proposed successful tenderer agreed that the value in this Tender is the contract given to it which would permit it to receive commissions from the airliners it purchases tickets from. Therefore, in view of this position, the learned State Attorney submitted that proposed award of the Tender to the successful tenderer was justified and in accordance regulations 213(1), 218, 219 and 220 of the Regulations.

In reply to the Appellant's assertion that it was disqualified in other tenders that it had quoted a zero price as it had offered nothing, the learned State Attorney submitted that the Appellant could not argue its previous experience in other tenders to the Tender under Appeal as each case has its own merits and must be treated separately. And if the Appellant was aggrieved in the referred tenders, it ought to have taken appropriate legal measures.

Finally, the Respondent prayed for dismissal of the Appeal with costs as it lacks merit.

### **REJOINDER BY THE APPELLANT**

The Appellant's learned counsel rejoined on the second issue by stating that the case of ***Currie V. Misa*** (supra) relied upon by the Respondent is inapplicable to the circumstances of this Appeal. In addition, the Law of Contract Act governs contractual matters in Tanzania and the English case was obsolete. Hence, there is no need of applying common law principles. Moreover, he stated that consideration must be between the two parties.



Thus, a commission given by the airlines, which was a third party to the contract, should not be treated as a consideration for the contract entered between the successful tenderer and the Respondent.

The learned counsel also distinguished the other cases relied upon by the Respondent because they had a particular monetary value which, though inadequate, was held by the courts to be consideration. It was his argument that in the Appeal at hand, the successful tenderer offered a zero price which could not be termed as consideration. The counsel stated that section 25(3) of the Law of Contract provides that consideration needs to be sufficient and not adequate. However, under the circumstances of this Appeal, there was no consideration at all moving from the promisee to the promisor. Therefore, the learned counsel claimed that the proposed award of the Tender to the successful tenderer was neither justified nor in accordance with the law.

### **ANALYSIS BY THE APPEALS AUTHORITY**

#### **1.0 Whether the Respondent's refusal to entertain the Appellant's application for administrative review was justified**

In resolving this issue, the Appeals Authority took cognizance of the fact that the Respondent conceded that its refusal to entertain the Appellant's application for administrative review was not justified. The Respondent admitted that indeed the Appellant's application for administrative review was filed within the time stipulated under section 120(4) of the Act. In view of this fact, the Appeals Authority finds and holds that the first issue is in the negative.



## **2.0 Whether the award of the Tender to the successful tenderer was justified and in accordance with the law**

In resolving this issue, the Appeals Authority reviewed the parties' contentious arguments. On the one hand the Appellant disputed the Respondent's proposal of award of the Tender to the successful tenderer as it had not offered any consideration. On the other hand, the Respondent insisted that the award was justified as consideration should be sufficient but not adequate.

In ascertaining the validity of the parties' contentious arguments, the Appeals Authority reviewed the evaluation report and observed that the Appellant, M/S Blueberry Voyage Ltd and the successful tenderer were found to be responsive at the technical evaluation and thereafter subjected to financial evaluation. The Appeals Authority reviewed the tenders submitted by the three tenderers in the NeST and found that under the Price Activity Schedule, each tenderer had offered a discount on their quoted prices. The Appellant offered price was TZS 0.001 with a discount of TZS 99.9999%, the successful tenderer offered a price of TZS 0.01 with a discount of 100% and M/S Blueberry Voyage Ltd offered price was TZS 0.001 with a discount of 2%.

The record of Appeal indicates that during the financial evaluation, the Respondent computed the offered discounts of the three tenderers and thereafter observed that, the Appellant's price was TZS 0.0000000012 whilst that of the successful tenderer was TZS Zero. The Respondent required the two tenderers to confirm their prices after their stated discounts through letters dated 5<sup>th</sup> and 14<sup>th</sup> March 2025. Both, the



successful tenderer and the Appellant confirmed the discounted prices through letters dated 10<sup>th</sup> and 17<sup>th</sup> March 2025 respectively.

Based on the above facts, the Appeals Authority observed that after computation of the discount offered, the tender price of TZS 0 offered by the proposed successful tenderer was lower compared to the Appellant's tender price of TZS 0.0000000012.

Regulations 218 and 219(1) of the Regulations read as follows: -

*"r.218. Taasisi nunuzi itatathmini na kulinganisha zabuni zote zinazokubalika ili kubaini zabuni iliyoshinda kwa mujibu wa taratibu na vigezo vilivyoainishwa katika nyaraka ya zabuni.*

*r.219 Zabuni iliyoshinda itakuwa: -*

(a) ***zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini ikiwa ni bidhaa, kazi za ujenzi au huduma, au bei ya juu zaidi ya zabuni iliyofanyiwa tathmini ikiwa ni ukusanyaji wa mapato, isipokuwa si lazima iwe bei ya chini zaidi au bei ya juu zaidi iliyowasilishwa, kwa kuzingatia kigezo cha ukomo wowote wa upendeleo utakaotumika"***

(Emphasis supplied)

The above provisions require a procuring entity to evaluate tenders in accordance with the criteria provided in the Tender Document. And that for a tender to be considered for award, it should be the lowest evaluated tender in case of works, goods or services or the highest evaluated tender





in case of revenue collection, but not necessarily the lowest or the highest quoted price.

The Appeals Authority applied the requirements of the above provisions to the facts of this Appeal and observed that the Appellant had the lowest quoted price compared to that of the proposed successful tenderer. However, after computation of the discount offered by both parties, the successful tenderer emerged as having the lowest quoted price compared to that of the Appellant. Given this position, the Appeals Authority finds that the proposed successful tenderer was the lowest evaluated tenderer.

In considering the Appellant's argument that the zero price quoted by the successful tenderer should not be taken as consideration for award of the contract, the Appeals Authority reviewed section 25(3) of the Law of Contract Act which reads as follows: -

"s.25(3) An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given"

The above provision states clearly that an agreement which the consent of the promisor has been freely given, would not be void merely because of inadequate consideration.

The Appeals Authority applied the above quoted provision to the facts of this Appeal and observed that the successful tenderer had offered a Zero price after discount. The offered price is for the service fee only. This meant that the successful tenderer would provide air ticket services to the





Respondent without charging a service fee. According to Item 4.10 of the Statement of Requirements, "Payment Mode" in the Tender Document, the Respondent would be required to effect monthly payments to the successful tenderer for purchased air tickets.

According to the general practice of the airline industry, and as also admitted by the Appellant in its letter to the Respondent dated 17<sup>th</sup> March 2025, each travel agent is entitled to a commission from airlines whose tickets are sold. The Appeals Authority observed that, this is one of the implied terms in a contract whereby the provisions are assumed to be part of the contract, even though they are not explicitly stated in writing. Since the proposed successful tenderer would be making a profit out of commissions it receives by offering air ticket services to the Respondent, it would derive a benefit attributable to the promisor through having a contract with the promisor.

The Appeals Authority further considered the principle enunciated in the case of **Currie V. Misa** (supra) where the court held that consideration must not necessarily be in terms of monetary value but rather even a benefit accruing to one party would amount to consideration.

In view of the above, the Appeals Authority is of the settled view that consideration under the intended contract would not be in monetary terms from the promisor, but rather the proceeds that would be attained out of the service offered.

At this juncture, it would be pertinent to point out differences in the English and Indian positions in regard to consideration. In English law as evidenced in **Tweddle v Atkinson** (1861) EWHC QB J57, third party



consideration was historically problematic. But modern interpretations and Statutes like the Contracts (Rights of Third Parties) Act 1999 have relaxed this requirement and allows third party consideration. The Indian Contract Act, 1872 which we copied, again expressly allows for third party consideration. This principle is established under section 2(d) of the said Act, which states that consideration can be provided by "**the promisee or any other person**" which phrase is lacking in our section 2(1) of the Law of Contract Act.

In *Chinnaya vs. Ramaya* (1882), a donor gifted property to her daughter, with the condition that she pays an annuity to the donor's brother. The court upheld the validity of the contract, recognizing that consideration can move from a third party.

And it is crystal clear, section 2 (1) of our Law of Contract Act does not expressly prohibit third party consideration provided it is real and valuable, and there is no fraud or coercion involved. This is best illustrated in Agency Contracts and other third party guarantees. For instance, an insurance agent typically enters into a contract with a policy holder for the same price offered by the insurance company. The agent does not receive a service charge from the policy holder but rather, receives a benefit in commissions from the insurance company. We think this is similar to the case in hand.

Therefore, the Appeals Authority agrees with the Respondent's argument and holds that there is consideration for the intended contract between the proposed successful tenderer and the Respondent derived from third parties to the contract which was actuated by the contract between the contracting parties.



Given these circumstances, the Appeals Authority determines the second issue in the affirmative that the award of the Tender to the successful tenderer was justified and in accordance with the law.

### **3.0 To what reliefs, if any, are the parties entitled to?**

In view of the above findings, the Appeals Authority hereby rejects all the Appellant's prayers and dismisses the Appeal for lack of merit. It orders the Respondent to proceed with the Tender process in compliance with the law. We make no order as to costs.

It is so ordered.

This decision is binding and can be enforced in accordance with section 121(7) of the Act.

The Right of Judicial Review as per section 125 of the Act is explained to the parties.

This decision is delivered in the presence of the parties on this 29<sup>th</sup> day of May 2025.

**HON. JUDGE (rtd) AWADH BAWAZIR**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. ENG. LAZARO LOSHILAARI**.....

**2. MR. RAPHAEL MAGANGA**.....