

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 38 OF 2024 - 2025**

**BETWEEN**

**M/S FASTLINK SAFARIS & TOURS LTD.....APPELLANT**

**AND**

**NATIONAL INSURANCE 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 |
| 2. Ms. Violet Limilabo  | - Senior Legal Officer    |
| 3. Mr. Venance Mkonongo | - Legal Officer           |

**FOR THE APPELLANT**

- |                           |                                   |
|---------------------------|-----------------------------------|
| 1. Mr. Revocatus Ludovick | - Business Development<br>Manager |
|---------------------------|-----------------------------------|

**FOR THE RESPONDENT**

- |                      |                        |
|----------------------|------------------------|
| 1. Adv. Marko Nsimba | - Senior Legal Officer |
| 2. Juma Salim        | - Head of Procurement  |



This Appeal was lodged by **M/S Fastlink Safaris & Tours Ltd** (hereinafter referred to as "**the Appellant**") against the **National Insurance Corporation** known by its acronym **NIC** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR188/2024/2025/NC/35 for Provision of Air Ticketing Services (hereinafter referred to as "**the Tender**").

The Tender was done through 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**").

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

On 10<sup>th</sup> March 2025, the Respondent through the National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was on 19<sup>th</sup> March 2025 and twenty-three tenders were received by the Respondent including the Appellant's.

The said tenders were subjected to an evaluation process. Thereafter, the Evaluation Committee recommended the award of the Tender to M/S Ekoma General Supply and Services at the recommended contract price of TZS. 0.001 with a completion period of 365 days.



On 23<sup>rd</sup> April 2025, the Respondent issued a Notice of Intention to award which informed the Appellant that the Respondent intended to award the contract to M/S Ekoma General Supply and Services. Furthermore, the Notice stated that the Appellant's tender was not eligible for award since it was not the lowest bid following the financial evaluation.

Dissatisfied with the reason given for its disqualification, on 23<sup>rd</sup> April 2025 the Appellant applied for administrative review to the Respondent which issued a decision on 28<sup>th</sup> April 2025 by rejecting the application. Aggrieved further with the Respondent's decision, on 28<sup>th</sup> April 2025, the Appellant filed this Appeal before the Appeals Authority.

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

- 1.0 Whether the Respondent issued a decision with reasons on the Appellant's application for administrative review; and**
- 2.0 To what reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's submissions were made by Mr. Revocatus Ludovick, Business Development Manager. He commenced on the first issue by stating that the Appellant was one of the tenderers which participated in the Tender. Upon completion of the internal processes, the Respondent issued the Notice of Intention to award, stating that the Appellant's tender was not successful as it was not the lowest evaluated bid.



Mr. Ludovick stated that the Appellant being dissatisfied with the reason given for its disqualification, on 23<sup>rd</sup> April 2025, it applied for administrative review to the Respondent. The Appellant expected to receive a written decision from the Respondent. However, the Respondent did not issue any written decision as required by the law.

Mr. Ludovick further submitted that the Respondent's failure to provide a clear and unambiguous response to the Appellant's application for administrative review demonstrated a lack of transparency and adherence to due process which undermined the integrity of the Tender process.

Mr. Ludovick stated further that the Respondent issued a decision which simply contained a single word "REJECTED" as the reason for the Appellant's disqualification. It was his view, the word "rejected" fell short of the Respondent's legal obligation to provide reasons for the disqualification and this undermined the Appellant's ability to assess the fairness and legality of the Tender process.

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

- i) Nullification of the award proposed to M/S Ekoma General Supplies.
- ii) The Respondent to be ordered to award the Tender to the Appellant.

### **REPLY BY THE RESPONDENT**

The Respondent's reply submissions were made by Mr. Juma Salim, Head of Procurement assisted by Adv. Marko Nsimba, Senior Legal Officer. Mr. Salim commenced his submissions by stating that the Notice of Intention to



award issued on 23<sup>rd</sup> April 2025, stated clearly that the Appellant's tender was not successful as it was not the lowest evaluated in terms of financial evaluation.

Mr. Salim submitted that the Appellant's Form of Tender indicated that its quoted price was zero before a discount. According to Clause 16.2 of the Instruction to Tenderers (ITT), each activity was required to be priced as per the activity schedule. To the contrary, the Appellant did not quote any price hence its tender was found to be non-responsive to the Tender requirements.

Mr. Salim stated that the Appellant was informed about its tender being unsuccessful through the Notice of Intention to award. The Appellant was dissatisfied with its disqualification and thus applied for administrative review through the NeST to the Respondent. Based on section 120(6) of the Act, the Respondent issued its decision through NeST within five working days as stipulated under the law.

Mr. Salim submitted that the Respondent's decision was further communicated to the Appellant through an email on 29<sup>th</sup> April 2025. After receiving the Respondent's decision, on the same date 29<sup>th</sup> April 2025, the Appellant wrote an email to the Respondent contesting the issued decision. The Respondent issued another decision on 30<sup>th</sup> April 2025, which the Appellant acknowledged to have received.

On his part, the senior Legal Officer submitted that the Appellant's Appeal has been filed based on section 96(6) of the Public Procurement Act of 2011 as amended in 2016. The cited law has been repealed and replaced



by the Public Procurement Act No. 10 of 2023. In the light of this, the Respondent urges the Appeals Authority to dismiss the Appellant's appeal as it is based on dead law.

Finally, the Respondent prayed to the Appeals Authority for dismissal of the Appeal in its entirety.

## **ANALYSIS BY THE APPEALS AUTHORITY**

### **1.0 Whether the Respondent issued a decision with reasons on the Appellant's application for administrative review**

In this Appeal the Appellant challenged the Respondent's decision issued in respect of its application for administrative review for not giving reasons for its disqualification. On the other hand, the Respondent alleged to have issued a detailed decision with reasons.

In ascertaining the validity of the parties' contentious arguments in this regard, the Appeals Authority reviewed section 120 (1) and (6) of the Act which requires an accounting officer to issue its written decision within five working days from the date of receipt of a complaint. Section 120 (1) and (6) of the Act reads as follows:-

***"s.120.- (1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets and award 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.***



***(6) Within five working days after the submission of the complaint or dispute, or within seven days in case an independent review panel is constituted, the accounting officer shall deliver a written decision which shall-***

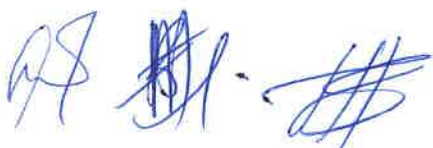
***(a) state the reasons for the decision; and***

***(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken”.***

(Emphasis supplied)

In substantiating whether the Respondent complied with section 120(6) of the Act when issuing its decision in respect of the Appellant's application for administrative review, the Appeals Authority reviewed the record of Appeal. It observed that there is no dispute between the parties that after the Respondent had issued the Notice of Intention to award on 23<sup>rd</sup> April 2025, the Appellant filed an application for administrative review to the Respondent through the NeST.

The record of Appeal shows that the dispute between the parties is on whether the Respondent issued a decision with reasons. The Appeals Authority observed that after receipt of the Appellant's application for administrative review, the Respondent issued a decision through the NeST system on 28<sup>th</sup> April 2025. The decision indicated that the Appellant's complaint was rejected but there was no attachment which elaborated the Respondent's reasons for the decision. It appears being prompted by the Appellant's complaint, the Respondent realized that it had not uploaded reasons when responding to the Appellant's complaint on the NeST. Then





on 29<sup>th</sup> April 2025, the Respondent sent an email to the Appellant with a letter dated 25<sup>th</sup> April 2025 titled "complaint response".

The letter elaborated the reasons for the Respondent's disqualification of the Appellant's tender. It pointed out that in conducting the evaluation, the Respondent adhered to requirements of both the law and the Tender Document. During evaluation, the successful tenderer was found to have complied with all requirements of the Tender and was therefore recommended for award of the contract. Furthermore, in the said letter, the Respondent specified that all tenderers were treated fairly and equally.

The record of Appeal indicates that, after receiving the Respondent's letter on 29<sup>th</sup> April 2025, the Appellant on the same day wrote an email to the Respondent challenging the issued decision. The Respondent replied to the Appellant's email through a letter dated 30<sup>th</sup> April 2025. The Appeals Authority noticed further that the Respondent issued its decision on 28<sup>th</sup> April 2025 through the NeST which the Appellant received and on the same day it filled PPAA Form No. 1 and submitted the same to the Appeals Authority. The Appeals Authority officially received the Appellant's Appeal on 30<sup>th</sup> April 2025 when it paid the Appeal filing fee.

After applying section 120(6) of the Act to the facts of this Appeal, the Appeals Authority observed that the Respondent's decision on the Appellant's application for administrative review issued on 28<sup>th</sup> April 2025 through NeST did not give reasons as it only contained the word "rejected". However, on 29<sup>th</sup> April 2025, the Respondent emailed the Appellant a letter dated 25<sup>th</sup> April 2025. The letter clearly stated the

Three handwritten signatures in blue ink are visible at the bottom of the page. The first signature on the left is a stylized 'AS'. The middle signature is more complex, with multiple overlapping strokes. The third signature on the right consists of several sharp, intersecting lines.



reasons for the Respondent's decision as per Section 120(6) of the Act. It is apparent that Appellant received the said letter and in return it sent an email to the Respondent challenging the issued decision. Consequently, we are of the view that indeed the Appellant received the issued decision providing reasons for the Appellant's disqualification.

In view of this position, the Appeals Authority is of the settled view that the Respondent's decision sent to the Appellant on 29<sup>th</sup> April 2025 was a decision with reasons which was communicated to the Appellant within five working days as required by the law. Thus, the Appeals Authority rejects the Appellant's contention that the Respondent failed to issue a decision with reasons within time.

Finally, the Appeals Authority considered the Respondent's argument that this Appeal is improperly before it as it has been brought under the wrong provision of the law. It reviewed the Appellant's statement of Appeal and noted that it cited section 96 (6) of the repealed Public Procurement Act.

In response to the argument, the Appeals Authority reviewed regulation 22 of the Public Procurement Appeals Regulations, GN No. 65 of 2025 which reads as follows: -

*"r.22. Utaratibu wa uendeshaaji wa mashauri mbele ya Mamlaka ya Rufani utakuwa rahisi na hautafungwa na masharti ya kiufundi au kanuni za lazima za ushahidi wa kimahakama".*

(Emphasis supplied)



The above provision requires the Appeals Authority to handle its proceedings in a flexible manner as it is not bound by strict rules of evidence or procedures.

It is true that the Public Procurement Act of 2011 has been repealed and replaced by the Public Procurement Act of 2023. However, the new piece of legislation still allows a tenderer to submit its Appeal to the Appeals Authority if it is dissatisfied with the Respondent's decision or if the Respondent fails to issue its decision within the specified time limit. Since the Appellant was dissatisfied with the Respondent's decision and filed this Appeal, the Appeals Authority waives the Appellant's irregularity of citing a provision of a repealed law. Thus, we hold that this Appeal is properly before the Appeals Authority.

Given the above findings, the Appeals Authority concludes the first issue in the affirmative that the Respondent issued a decision with reasons on the Appellant's application for an administrative review.

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

Taking cognizance of the above findings, the Appeals Authority rejects all the Appellant's prayers and dismisses the Appeal and makes 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 .....**

