

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 31 OF 2025-26**

**BETWEEN**

**M/S DONNA GENERAL ENTERPRISES.....APPELLANT**

**AND**

**THE HIGHER EDUCATION**

**STUDENTS' LOANS BOARD.....RESPONDENT**

**DECISION**

**CORAM**

1. Hon. (rtd) Judge Awadh Bawazir - Chairperson
2. Dr. William Kazungu - Member
3. Dr. Gladness Salema - 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. Imani Mhagama - Operations Manager

**FOR THE RESPONDENT**

1. Ayoub Sanga - Senior State Attorney – OSG.
2. Ms. Catherine Kiiza - State Attorney – OSG



3. Ms. Emelda Waigama - State Attorney – HESLB
4. Ms. Hadija Shuma - Assistant Director Procurement and Supply – HESLB
5. Ms. Salha Kakiziba - Procurement Officer - HESLB

This appeal was lodged by **M/S Donna General Enterprises** (hereinafter referred to as "**the Appellant**") against the **Higher Education Students' Loans Board** abbreviated as **HESLB** (hereinafter referred to as "**the Respondent**"), in respect of Tender No. FA/2025/2026/13/TR112/NC/06/2 for Provision of Catering Services – Dodoma – Lot 2 (hereinafter referred to as "**the tender**").

Based on the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this appeal can be summarized as follows:

The Tender was done through the National Shopping method as provided under 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 27<sup>th</sup> February 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to participate in the tender. The tender comprised six (6) Lots, with the submission deadline set on 06<sup>th</sup> March 2026. By the deadline, nineteen tenders including that of the appellant were received in respect of Lot 2 and subjected to evaluation. After evaluation, the evaluation committee proposed award of the tender to M/S Outdoor Catering Limited (**the proposed awardee**).



On 16<sup>th</sup> April 2026, the respondent, through NeST, issued a Notice of Intention to award a contract. It indicated that the respondent intended to award the tender to M/S Mama's General Company Limited at a contract price of Tanzania Shillings Five Thousand Three Hundred only (TZS 5,300) per Unit Price. The Notice further stated that the appellant's tender was not considered for award for not being the most qualified among all bidders.

Dissatisfied with the reason given for its disqualification, the appellant applied for administrative review to the respondent on 18<sup>th</sup> April 2026. The application was rejected through the respondent's decision issued on 21<sup>st</sup> April 2026. Aggrieved further by this decision, the appellant lodged the present appeal before the Appeals Authority on 23<sup>rd</sup> April 2026.

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

- 1.0 Whether the disqualification of the appellant's tender was justified; and**
- 2.0 What reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Mr. Imani Mhagama, Operations Manager. He commenced by stating that this appeal arose from the respondent's decision to disqualify the appellant's tender on the ground that it had participated in more than one Lot, contrary to Clause 14.1 of the Instruction to Tenderers (ITT). He explained that the advertised tender comprised six Lots and the appellant participated in three Lots.



Mr. Mhagama elaborated that, upon completion of the evaluation process, the appellant was invited for negotiations in respect of Lot 3 (Mwanza), where the respondent indicated that the appellant could be awarded that Lot, if it had agreed. However, the appellant declined the offer, expecting that it would also be awarded Lot 2, for being the lowest evaluated tenderer.

He submitted further that, since the appellant rejected the respondent's offer for Lot 3, the respondent disqualified the appellant's tender in Lot 2 for having participated in more than one Lot, contrary to Clause 14.1 of the ITT. He argued that if bidding for more than one Lot was prohibited, the appellant ought to have been disqualified at the preliminary evaluation stage and should not have been invited for negotiations in Lot 3. He contended that the respondent's inviting the appellant to negotiations prior to its disqualification raised doubts regarding the fairness, transparency, and consistency of the evaluation process.

Mr. Mhagama further stated that M/s Outdoor Catering Ltd, another tenderer in the process, had also participated in more than one Lot and was recommended for award of Lot 1 (Dar es Salaam). He argued that if participating in multiple Lots was the basis for tenderers disqualification, then M/s Outdoor Catering Ltd ought likewise to have been disqualified. He averred that the respondent's selective application of Clause 14.1 amounted to unequal and discriminatory treatment, contrary to the principles of fairness, equality, transparency, and consistency in public procurement. He maintained that if the clause was applied during evaluation, it should have been enforced uniformly against all tenderers, and if waived, it should have been waived equally for all participants.



Additionally, Mr. Mhagama submitted that the respondent failed to provide a detailed analysis and justification for the award decision, thereby limiting the appellant's ability to verify compliance with the evaluation criteria, ascertain whether value for money was achieved, and effectively exercise its right to a fair review.

The appellant also asserted that its quoted price for Lot 2 in Dodoma was lower than that of the successful bidder, raising concerns that the award decision did not adhere to value for money principles and may not have ensured optimal utilization of public funds.

Based on the foregoing submissions, Mr. Mhagama concluded that the respondent's tender process violated the procurement principles of fair competition, transparency, consistency, and equal treatment as required under the Act and its Regulations. He further pointed out that, after filing this appeal, the appellant discovered that the Lot initially awarded to M/s Outdoor Catering Ltd had been re-advertised and was still at the opening and evaluation stages.

In view of the above submissions, the appellant prayed for the following reliefs:

- i) Review and nullification of the award decision for Lot 2;
- ii) The respondent be ordered to provide a full evaluation report, including scores and rankings;
- iii) Determination of the proper application of clause 14.1 of the ITT to all bidders;
- iv) An order directing re-evaluation or re-tendering in the event non-compliance is established; and
- v) An order suspending the contract award or implementation pending determination of the appeal.



## REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Ayoub Sanga, learned Senior State Attorney from the Office of the Solicitor General. He adopted the respondent's written statement of reply as part of his submissions.

Mr. Sanga commenced by stating that it is a settled legal principle that parties are bound by their own pleadings as established in ***James Funke Gwagilo versus Attorney General***, (2004) T.L.R, 161. He further cited regulation 19 of the Public Procurement Appeals Regulations, GN No. 65 of 2025 which prohibits parties from raising new matters at the hearing stage. He argued that, in its submission in chief, the appellant introduced new matters not contained in the statement of appeal, including negotiations on Lot 3 and cancellation and re-advertisement of Lot 1. According to him, these matters are not within the scope of the present appeal, which relates solely to Lot 2. Entertaining them at this stage would deprive the respondent of its right of hearing and address such matters at the administrative review stage.

In support of his argument, Mr. Sanga cited **PPAA Appeal Case No. 03 of 2025/26** between ***Technowise Company Ltd and the Ministry of Communication and Information Technology***, where it was held that new facts should not be introduced at the bar without leave of the Appeals Authority.

Without prejudice to the above, Mr. Sanga submitted that the evaluation of the tender under appeal was in strict compliance with sections 42(7) and 87 of the Act, regulations 211, 212 and 213 of the Regulations, clause 14.1 of the ITT and clause 7 of the Tender Data Sheet (TDS). He explained that clause 14.1 of the ITT, read together with clause 7 of TDS, required tenderers to bid for only one lot out of the six Lots in the tender.



Contrary to this requirement, the appellant submitted bids for Lots 1, 2, and 3. During evaluation, the appellant was found non-compliant with the tender requirement, rendering its tender non-responsive and lawfully disqualified.

Addressing allegations of unfairness and unequal treatment, Mr. Sanga acknowledged that M/s Outdoor Catering Ltd was initially proposed for award of Lot 1. However, upon review, the respondent discovered that the tenderer had participated in more than one Lot, contrary to clause 14.1 of the ITT, and was thus ineligible. Consequently, Lot 1 was re-advertised as no other eligible tenderer remained.

He argued that the respondent's corrective action demonstrated fairness and equal treatment of tenderers. He elaborated that clause 14.1 of the ITT was applied uniformly across all lots, including Lots 2 and 3, where the appellant was disqualified for submitting bids in more than one Lot. He emphasized that the disqualification of the appellant's tender was in accordance with regulation 213(2) of the Regulations which requires rejection of a non-responsive tender that cannot subsequently be made responsive by waiver or correction of an anomaly.

During the hearing, the Appeals Authority sought clarification on the tender status, after noting that NeST records indicated Lots 2 to 5 were at the opening stage and Lot 1 was at the evaluation stage. In response, Mr. Sanga explained that having failed to obtain responsive tenderers in Lots 1 and 3, the respondent re-advertised those Lots. Since none of the remaining Lots had reached the contractual stage, the re-advertisement reverted the entire tender to the advertisement stage, meaning all Lots could not proceed to award as the entire tender process had restarted afresh.



In regard to the appellant's argument about award of the tender to a tenderer with a higher price, Mr. Sanga submitted that the appellant's tender did not reach the price comparison stage. Price evaluation is only undertaken once a tenderer has complied with technical requirements. Since the appellant failed to comply with clause 14.1 of the ITT, its price was immaterial and could not be considered. He therefore rejected the appellant's argument as claimed it was baseless.

In conclusion, Mr. Sanga prayed that the appeal be dismissed with costs.

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

#### **1.0 Whether the disqualification of the appellant's tender was justified**

In resolving this issue, the Appeals Authority took cognizance that the respondent re-advertised Lots 1 and 3 after identifying irregularities on the proposed awards. During hearing, Members of the Appeals Authority requested the respondent to clarify as to when the irregularities were observed. In response thereof, the respondent indicated that the anomalies were discovered during a review of the proposed awards, and on 24<sup>th</sup> April 2026, a decision was issued to re-advertise Lots 1 and 3.

We further noted in NeST that upon re-advertising Lots 1 and 3, the entire tender process reverted whereby Lot 1 was at the evaluation stage and the remaining Lots (2-6) were at the opening stage. This information was confirmed by both parties during the hearing.

The appeal record shows that the appellant filed this appeal on 23<sup>rd</sup> April 2026. On the same date, the Appeals Authority notified the respondent on the existence of the appeal and required submission of its statement of reply.



Section 124(1) of the Act requires an accounting officer to suspend the procurement process upon receipt of a complaint or dispute. It reads as follows:

*“s.124.-(1) Upon receipt of a complaint or dispute, **the accounting officer shall suspend the procurement proceedings pending determination of a complaint or dispute**”.*

(Emphasis supplied)

From the wording of this provision, a procuring entity is required to suspend the procurement process upon receipt of an application for administrative review or an appeal. Since the respondent had already been notified of the appeal on 23<sup>rd</sup> April 2026 but nevertheless proceeded to re-advertise Lots 1 and 3 on 24<sup>th</sup> April 2026, it is evident that the issues raised by the appellant concerning the proposed award of Lot 1 to M/S Outdoor Catering Limited, despite having participated in more than one Lot contrary to Clause 14.1 of the ITT, formed the basis for the re-advertisement.

We are further of the view that the respondent’s decision to re-advertise Lot 1 validates the appellant’s first ground of appeal, which challenged the proposed award to M/S Outdoor Catering Limited on the basis of non-compliance with clause 14.1 of ITT. Moreover, the respondent’s re-advertising certain Lots while an appeal was pending implies acknowledgement of irregularities in the tender process and an attempt to rectify them before determination of this appeal.

In light of these observations, we find the respondent’s re-advertising some Lots during the pendency of this appeal was improper and in contravention of section 124(1) of the Act.



Given that the respondent conceded to re-advertising Lot 1, which was directly challenged by the appellant, and that this action reverted the entire tender process to the opening stage, we find the process of analysing the merits of the appeal to have been rendered nugatory, as there is no evaluation process left to be analysed.

Accordingly, we hold that the respondent's conduct affirms the irregularities in the tender process as challenged by the appellant.

**2.0 What reliefs, if any, are the parties entitled to?**

In view of the foregoing, we hereby allow the appeal, cancel the ongoing tender process and order the respondent to restart the entire tender process afresh in accordance with the law. We make no order as to costs. It is so ordered.

This decision is binding and enforceable under section 121 (7) of the Act.

The Right of Judicial Review, as outlined in section 125 of the Act, has been explained to the parties.

This decision is delivered in the virtual presence of both parties this 28<sup>th</sup> day of May 2026.

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



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. DR. WILLIAM KAZUNGU** .....



**2. DR. GALDNESS SALEMA**.....

