

IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY

AT DAR ES SALAAM

APPEAL NO. 20 OF 2018-19

BETWEEN

M/S PIPE INDUSTRIES COMPANY LIMITED.....APPELLANT

AND

DAR ES SALAAM WATER &

SEWARAGE AUTHORITY.....RESPONDENT

RULING

CORAM

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| 1. Hon. Justice (rtd) Sauda Mjasiri | - | Chairperson |
| 2. Dr. Leonada Mwangike | - | Member |
| 3. Eng. Stephen Makigo | - | Member |
| 4. CPA Fredrick Rumanyika | - | Member |
| 5. Adv. Rosan Mbwambo | - | Member |
| 6. Mr. Rheuben Nkori | - | Member |
| 7. Mr. Ole-Mbille Kissioki | - | Secretary |

SECRETARIAT

- | | | |
|------------------------|---|---------------|
| 1. Ms. Florida Mapunda | - | DST |
| 2. Ms. Violet Limilabo | - | Legal Officer |
| 3. Mr. Hamis Tika | - | Legal Officer |

FOR THE APPELLANT

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| 1. Mr. Jovin Ndungi | - | Advocate, Law Domain Advocates |
| 2. Mr. Ezra Chiwelesa | - | Sales Manager |

FOR THE RESPONDENT

- | | | |
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| 1. Ms. Neema Mugasa | - | Legal Officer |
| 2. Ms. Hellen Lubogo | - | Director of Procurement |
| 3. Mr. Alex Mpambije | - | Principal Procurement Officer |
| 4. Mr. Christian Christopher | - | Head of Quality assurance |

The Appeal was lodged by M/s Pipe Industries Company Limited (hereinafter referred to as "the Appellant") against the Dar es Salaam Water & Sewerage Authority commonly known by its acronym DAWASA (hereinafter referred to as "the Respondent"). The Appeal is in respect of Tender No. AE/033/2017-2018/G/06 Lot 1 for Supply of Pipes and Special fittings for Mlandizi-Mboga Chalinze Pipeline (hereinafter referred to as "the Tender").

After going through the records submitted by the parties to the Public Procurement Appeals Authority (hereinafter referred to as "the Appeals Authority"), it was observed that there is a point of law that needed to be determined before proceeding to the merits of the Appeal.

At the commencement of the hearing, Members of the Appeals Authority required to be addressed by the parties as to whether or not the Appeal was filed within the specified time limit. Submitting on this point of law the parties argued as follows:

SUBMISSIONS BY THE APPELLANT

Mr. Ndungi, counsel for the Appellant started his submission by pointing out that, the cause of action for this Appeal arose on 6th August 2018 when the Appellant was served with a notice to cancel the award of the Tender. The counsel argued further that, after being dissatisfied with the said notice, the Appellant lodged his application for administrative review to the Respondent on 28th August 2018; that is, 22 days from the date they were served with the said notice of cancellation of award.

The counsel argued further that, according to Section 96(4) of the Public Procurement Act of 2011 as amended (hereinafter referred to as “the Act”) an application for administrative review has to be lodged within seven working days from the date one becomes aware of the circumstances giving rise to the complaint. The Appellant lodged its complaint to the Respondent on 28th August 2018. This was after a lapse of 22 days and thus out of time.

The counsel further submitted that, according to Section 96(6) of the Act, the Respondent’s accounting officer is required to issue its decision within seven working days from the date the complaint was lodged. To the contrary, the Respondent issued the decision on 21st September 2018; almost 30 days from the date it was lodged.

The Appellant lodged this Appeal on 27th September 2018, six days from the date they received the Respondent’s decision. According to Section 97(3) of the Act, tenderers are required to lodge their Appeal to this Appeals Authority within seven working days. Since the Appellant’s Appeal was lodged within six days from the date of receipt of the Respondent’s decision, the Appeal was lodged within time.

After being directed to consider the requirements under Section 97(2)(a) of the Act by the Members of the Appeals Authority, the counsel for the Appellant readily conceded that the Appeal was lodged out of time. According to the said provision the Appellant was required to lodge his Appeal within seven working days if the Respondent (accounting officer) fails to deliver its decision within the stipulated period. Therefore, having counted the date from the time the application for review was lodged the counsel for the Appellant conceded that this Appeal was lodged out of time.

REPLY BY THE RESPONDENT

On her part, the Legal Officer for the Respondent submitted that as the Appellant conceded to have lodged its Appeal out of time the same should be dismissed.

DECISION BY THE APPEALS AUTHORITY

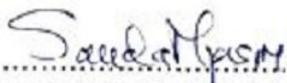
In view of the Appellant's concession that the Appeal has been filed out of time, and given the legal position, the Appeals Authority hereby dismiss the Appeal.

Since the issue was raised by the Appeals Authority *suo moto*, we make no order as to costs.

Order accordingly.

The Right of Judicial Review is available to the parties as per Section 101 of the Act.

This Ruling is delivered in the presence of the parties this 9th November 2018.


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HON. JUSTICE (rtd) SAUDA MJASIRI
CHAIRPERSON

MEMBERS:

1. DR. LEONADA MWAGIKE 
2. ENG. STEPHEN MAKIGO 
3. CPA FREDRICK RUMANYIKA 
4. ADV. ROSAN MBWAMBO 
5. MR. RHEUBEN NKORI 