

**IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 85 OF 2010**

**BETWEEN**

**PIGADEAL ENTERPRISES LTD..... APPELLANT**

**AND**

**ARUSHA MUNICIPAL COUNCIL ...RESPONDENT**

**DECISION**

**CORAM:**

1. Hon. A.G. Bubeshi, J. (rtd) - Chairperson
2. Mr. M. R. Naburi - Member
3. Mrs. R. Mang'anya - Member
4. Mr. K.M. Msita - Member
5. Ms. E.V.A. Nyagawa - Ag. Secretary

**SECRETARIAT:**

Ms. F. R. Mapunda - Legal Officer

## **FOR THE APPELLANT:**

1. Mr. Richard Pallangyo – Lawyer from Albert Msando Legal Consultant
2. Mr. Yussuph A. Mmary – Managing Director
3. Mr. Suru Abushiri – Operations Manager

## **FOR THE RESPONDENT**

1. Mr. Mr. Paul Mugasha – Municipal Solicitor
2. Mr. David M. Makolo – Ag. Municipal Supplies Officer
3. Mr. Callist V. Kimatare – Municipal Inspector

This decision was scheduled for delivery today 13<sup>th</sup> December, 2010, and we proceed to deliver it.

The appeal at hand was lodged by **PIGADEAL ENTERPRISES LTD** (hereinafter to be referred to as "**the Appellant**") against **ARUSHA MUNICIPAL COUNCIL** (hereinafter to be referred to as "**the Respondent**").

The said Appeal is in respect of Tender No. LGA/003/2010/11/AMC/NC/002 for Revenue Collection for Car Parking (hereinafter to be referred to as "**the Tender**").

According to the documents submitted to the Authority as well as the oral submissions by parties, the facts of this Appeal may be summarized as follows:

On 15<sup>th</sup> April, 2010, the Respondent invited various tenders *vide* Mtanzania and Majira newspapers, which included, amongst others, the tender for Revenue Collection from Central Bus Stands and Public Parking using Agencies. The aforesaid tender was divided into three Lots, namely:

- **Lot No. 1** - Revenue Collection for Bus Stand/Small Buses;
- **Lot No. 2** - Revenue Collection for Bus Stand/ Large Buses; and
- **Lot No. 3** - Revenue Collection for Car Parking which is the subject matter of this Appeal.

The tender opening took place on 18<sup>th</sup> May, 2010, whereby five tenders were submitted as hereunder:

<b>TENDERER</b>	<b>AMOUNT TO BE REMITTED PER MONTH (TSHS)</b>
<b>Konsad Investment Ltd</b>	<b>24,650,000/=</b>
<b>Jamahedo Health Food Co. Ltd</b>	<b>52,900,000/=</b>
<b>Mkomilo Trade Centre (T) Ltd</b>	<b>47,250,000/=</b>
<b>Econ Consult &amp; Trading Co. Ltd</b>	<b>37,372,463/=</b>
<b>Pigadeal Enterprises Ltd</b>	<b>56,000,000/=</b>

The said tenders were evaluated and thereafter the tender was awarded to the Appellant at a contract price of Tshs. 56,000,000/=.

The Respondent communicated the acceptance of the Appellant's offer *vide* letter referenced AMC/CTB/AWD/197 dated 28<sup>th</sup> June, 2010.

On 16<sup>th</sup> July, 2010, the Respondent received a copy of the Ruling of Misc. Civil Application No. 44 of 2010 issued by the Resident Magistrate's Court (hereinafter to be referred to as "**RMs Court**"), at Arusha, granting a Temporary Injunction to Jamahedo Health Food Co. Ltd against the Respondent. The said Order, amongst others, restrained the Respondent from appointing another agent for the tender under Appeal.

On 26<sup>th</sup> July, 2010, the Appellant delivered to the Respondent a letter from their banker referenced EHA/CORP/017/10 assuring the Respondent that, the Appellant's application for Performance Securities

was in the final stages and would be completed within seven days. Further that, the delay for submitting the Performance Security was caused by unforeseen circumstances within the bank and should not be taken as a reflection of the Appellant's failure to secure the said guarantee.

On 27<sup>th</sup> July, 2010, the Appellant *vide* letter referenced PGL/F/2010/APRIL/09 requested the Respondent to extend the deadline for submission of the said guarantee for seven days as their banker had received threats and false information that the Appellant and the Respondent were facing a civil case on the tender under Appeal.

On 3<sup>rd</sup> August, 2010, the Respondent *vide* letter referenced MD/CT.10/1VOL.2/229 informed the Appellant that, the previous Service Provider, namely; Jamahedo Health Food Co. Ltd applied for a temporary injunction at the Resident Magistrates' Court, Arusha which was granted by the said Court. By virtue of the said Order, the Respondent was

*estopped* from not only continuing with the tender process but also from awarding the tender to another tenderer. The Appellant was advised to be patient pending determination of the court case.

On 3<sup>rd</sup> August, 2010, the Appellant *vide* letter referenced PDL/f/2010/APL/9 complained to their banker on the delay in granting the said guarantee. They requested their banker to honour their promise or compensate them for losing the tender in case they failed to submit the guarantee within the specified time.

On 4<sup>th</sup> August, 2010, the Appellant *vide* letter referenced PDL/f/2010/APL/9 requested the Respondent for a further extension of 21 days for submission of the Performance Security. The reasons for the said request were, amongst others, that the Appellant's banker had refrained from granting the said guarantee until they have verified the information they had received on the Appellant's pending court case.

Being aggrieved by the turn of events pertaining to the tender they had won, the Appellant on 1<sup>st</sup> October, 2010, lodged an appeal with the Public Procurement Appeals Authority (hereinafter to be referred to as "**the Authority**").

## **SUBMISSIONS BY THE APPELLANT**

The Appellant's documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing may be summarized as follows:

That, the Appellant had applied for the said tender and on the tender opening day all tenderers were present whereby some of the companies were disqualified for failure to submit Bid Securities. The Appellant was among those who qualified for evaluation which is normally conducted secretly. Thereafter, the Appellant was informed that they were the successful tenderer.

That, in the course of securing the Performance Security the Appellant faced some problems which were communicated to the Respondent and requested for extension of time. However, the Respondent neither declined the Appellant's requests for extension of time nor replied to their requests.

On 6<sup>th</sup> August, 2010, the Appellant obtained Performance Securities in respect of the two tenders they had won, namely, the tender for Revenue Collection at Kilombero Market and the tender under Appeal. Upon furnishing the said guarantees to the Respondent as a stage towards contract signing, the Respondent accepted the one in respect of Revenue Collection at Kilombero Market and declined to accept the other in respect of the tender under Appeal. The reason for the non acceptance was that a Temporary Injunction had been issued restraining them from continuing with the tender process. They were further informed that, there is a pending court case lodged by one of the disqualified tenderers.

That, the Appellant continues to-date to service the said Performance Security which is quite costly.

That, the subject matter of the application that is pending before the RMs Court has nothing to do with the tender under Appeal.

That, the Appellant requested the Authority to do the following:

- (i) Review the Respondent's decision and compel them to continue with the tender process by signing the contract and execute the same.
- (ii) Order the Respondent to compensate the Appellant for the following:

<b>S/No.</b>	<b>Costs /Claim</b>	<b>Tshs.</b>
1	Cost of feasibility study	<b>18,726,000/=</b>
2	Tender preparations	<b>7,600,000/=</b>
3	Recruitment	<b>6,530,000/=</b>
4	Training	<b>7,290,000/=</b>
5	Advertisement and create awareness to stakeholders	<b>16,800,000/=</b>
6	Setting offices and furnishing them	<b>37,460,000/=</b>
7	Salaries	<b>61,800,000/=</b>
8	Workers uniforms	<b>1,760,000/=</b>
9	Office rent	<b>2,000,000/=</b>
10	Expected profit	<b>17,200,000/=</b>
11	Clear the Company's image to the public	<b>1,000,000,000/=</b>
12	Security Bond charges	<b>49,000,000/=</b>
<b>TOTAL TSHS</b>		<b>1,226,766,000/=</b>

(iii) In the event that the Authority grants the Appellant's first prayer (item (i) above), all the claims appearing on the Table above should be abandoned and be replaced by the following costs:

<b>S/ No.</b>	<b>Costs /Claim</b>	<b>Tshs.</b>
1	Legal fees	<b>7,000,000/=</b>
2	2.5% of the Performance Guarantee of Tshs. 100,800,000/=	<b>2,520,000/=</b>
3	1% of the Performance Guarantee of Tshs. 100,800,000/= which is charged monthly for the Appellant's failure to open a matching account at the BOA Bank	<b>1,008,000/=</b> <b>monthly</b>
4	Transport to Dar es salaam in pursuit of the Performance Security	<b>200,000/=</b>

## **THE RESPONDENT'S REPLIES**

The Respondent's documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing may be summarized as follows:

That, the Appellant's arguments are disputed as the order granted by the RMs Court is legal and binding and it is not safe for the Respondent to dispense with it unless an order to that effect is issued by a superior court. Accordingly, the Respondent

requested the Appellant, through letter referenced MD/CT.10/1 VOL.2/229 dated 3<sup>rd</sup> August, 2010, to be patient and await the outcome of the case filed in Court.

That, the Respondent cannot be compelled to enter into contractual relationship with the Appellant as the latter has failed to furnish the Performance Security for the tender under Appeal within 30 days.

That, should the Authority compel the Respondent to allow the Appellant to start working, the same will contravene the Public Procurement Act (hereinafter to be referred to as "**the Act**") as the Appellant had failed to provide the Performance Bond. Instead of furnishing the said security, the Appellant came up with delaying tactics and manouvres which aggravated the matter and created doubt as to their credibility and fairness to other bidders.

That, the Respondent was ordered by the RMs Court not to proceed with the disputed tender pending

determination of the main case instituted by Jamahedo Health Food Co. Ltd.

That, the Respondent requested the Authority to grant the following reliefs:

- (i) Dismissal of the Appeal with costs;
- (ii) Punitive and general damages to the tune of Tshs. 3,000,000,000/=; and
- (iii) Any other relief as the Authority may deem just to grant.

### **ANALYSIS BY THE AUTHORITY**

Having gone through the documents submitted and having heard the oral submissions from parties, the Authority is of the view that this Appeal is based on the following issues;

- (i) Whether the Appellant failed to furnish the Performance Security in respect of the tender under Appeal**
- (ii) Whether the suspension of the finalization of the tender process was proper at law**
- (iii) To what reliefs, if any, are the parties entitled to?**

Having identified the issues in dispute, the Authority proceeded to resolve them as follows;

### **1.0 Whether the Appellant failed to furnish the Performance Security**

In its endeavour to resolve this issue, the Authority reviewed documentary evidence availed to it as well as oral submissions by parties on this particular point vis-à-vis the Tender Document and the applicable

law. The Authority revisited submissions by parties starting with the Respondent's as the issue in dispute originated from their Written Replies to the Appellant's Statement of Appeal.

For purposes of recapitulation, the Authority summarizes the Respondent's main arguments on this point as well as their responses from questions asked by Members of the Authority during the hearing as follows:

- The Appellant was required to furnish the Performance Security within 30 days from the date of the letter of acceptance which was written on 28<sup>th</sup> June, 2010. Further that, the deadline for submission of the said guarantee was 26<sup>th</sup> July, 2010.
- Instead of submitting the said guarantee, the Appellant employed delaying tactics by raising some excuses for failure to meet the said requirement while requesting for extension of

time. The Respondent neither replied nor acted on the Appellant's requests for extension of time as a way of upholding the principle of fairness since granting such extension could have attracted complaints from the other tenderers.

- The Respondent conceded that, failure to respond to the Appellant's written requests for extension of time to submit the Performance Security was caused by negligence on their part.
- The Appellant submitted Performance Securities in respect of the two tenders they had won, on 8<sup>th</sup> August, 2010, instead of 26<sup>th</sup> July, 2010, which was the deadline. However, the security in respect of the tender under Appeal was not accepted while the other one was accepted and the contract thereof signed on 9<sup>th</sup> August, 2010.
- The Respondent further conceded that, had it not been for the Order of the Temporary

Injunction issued by RMs Court, at Arusha, the Appellant's Performance Security for the tender under Appeal would have been accepted.

Having revisited the Respondent's submissions, the Authority summarized the Appellant's replies thereof as hereunder:

- Their failure to submit Performance Security in respect of the tender in dispute was caused by deliberate interference by, among others, the previous Service Provider, namely; Jamahedo Health Food Co. Ltd who, misinformed the respective banks from which they had applied for the said guarantees that the Appellant and the Respondent were facing a law suit in respect of the tender awarded to the Appellant. They further submitted that, efforts to secure the said guarantees were blocked in a number of banks they had approached.
- They wrote two letters to the Respondent requesting for extension of time and also

submitted one letter from BOA Bank addressed to the Respondent which assured the latter that the said security would be granted within seven days. However, the Respondent did not reply.

- Following the non acceptance of the Performance Security for Revenue Collection for Car Parking pending determination of the Application at the RMs Court which was communicated verbally, the Appellant requested the Respondent to reduce the same into writing hence resulting into the letter dated 3<sup>rd</sup> August, 2010.
- Had the said securities been submitted out of time as alleged by the Respondent, what did the Respondent seek to achieve by inquiring from BOA Bank on the authenticity of the Performance Securities furnished by the Appellant.
- The Respondent's contention that the Appellant had furnished the Performance Security in

respect of the tender under Appeal after the expiration of the set date, was not valid because they accepted the Performance Security for Revenue Collection at Kilombero Market which was submitted on the same day.

- The Respondent's letter to the Appellant dated 3<sup>rd</sup> August, 2010, reiterates the fact that the Appellant is the successful tenderer for the tender under Appeal. Hence it defeats the Respondent's contention that the Appellant failed to furnish the Performance Security.

Having summarized the submissions by parties, the Authority proceeded to ascertain the validity of such contentions in the light of the Tender Document and the applicable law. The Authority is of the considered view that, the contention that the Appellant failed to furnish the Performance Security did not exist prior to the lodging of this complaint but was raised by the Respondent as an afterthought in the course of writing their replies to the Statement of Appeal. The

Authority's position is derived from the following facts:

- Item 4(v) of the Instructions to Bidders (hereinafter to be referred to as "**ITB**") requires the Performance Security to be furnished within 30 days, failure of which the tender would be awarded to the second successful tenderer. During the hearing the Respondent was asked as to why they did not invoke the afore-cited provision if the Appellant had failed to meet the said requirement. The Respondent submitted that, there was an attempt to sign the contract prior to submission of the Performance Security in anticipation that the said guarantee would be provided later due to the assurance which had been received from the Appellant's banker. The Respondent had by implication extended the time for submission of the Performance Security.
- The Authority concurs with the Appellant that, by 3<sup>rd</sup> August, 2010, when the Respondent

informed the Appellant of the Temporary Injunction issued by the RMs Court, they still recognized the Appellant as the successful tenderer for this particular tender. This is evident in the content of the letter by the Respondent referenced MD/CT.10/1 VOL.2/229 which states:

**“Napenda kukutaarifu kuwa katika zabuni ya maegesho ya magari, ambayo ulishinda na kupewa barua ya kupitishwa (Award),** Mzabuni aliyekuwepo katika kipindi cha mwaka 2009/2010 Jamahedo Food Co. Ltd, amefungua kesi katika Mahakama ya Mkoa Misc-Civil application No. 44 ya 2010 c/f Arusha Rm’s court Civil Case No. 39 ya 2010 na Mahakama ilitoa hukumu ndogo na kuweka pingamizi la muda kwa Halmashauri kuendelea na taratibu za zabuni. Pingamizi hilo linahusu kutogawa tenda hiyo kwa wakala mwingine.

Kutokana na hali hiyo **Halmashauri inakuomba uzidi kuvuta subira hadi zabuni hiyo itakapotolewa maamuzi na Mahakama.**" (Emphasis added)

The Authority's translation of the said letter is as follows:

**"I wish to inform you that in the tender for Car Parking in which you won and was awarded in writing; the previous Service Provider for the period 2009/2010 Jamahedo Food Co. Ltd has filed a suit at the RMs Court *vide* Misc. Civil Application No 44/2010 – c/f Arusha RMs Court Civil Case No. 39 of 2010 and the Court issued a Temporary Injunction to the Council not to proceed with the tender process. That injunction restrains the Council from awarding the tender to any other agent.**

**In view of the above the Council is requesting you to continue being patient until the Court determines the matter.”**

- The Respondent failed to respond to the Appellant’s requests for extension of time to submit the said guarantee. Furthermore, during the hearing the Respondent admitted that the only reason that hindered the finalization of the tender process pertaining to the tender under Appeal was the Court Order.
- According to the documents availed to the Authority, the contention that the Appellant did not furnish the Performance Security appeared for the first time in the Respondent’s Written Replies dated 8<sup>th</sup> November, 2010.
- The Public Procurement Act, Cap. 410 does not prescribe the period within which a performance security should be furnished. However, the Tender Document indicated that, it should be furnished within 30 days, but the Respondent

had waived the said period by conduct. Moreover, the Respondent conceded that the Court Order was the only stumbling block to contract signing and execution.

In view of the foregoing, the Authority is satisfied that there was an implied understanding between the parties on the late submission of the Performance Security pertaining to this tender. The Respondent's contention that the Appellant failed to furnish the said security is therefore an afterthought.

Accordingly, the Authority concludes that, the Appellant did furnish the Performance Security for the tender under Appeal.

## **2.0 Whether the suspension of the finalization of the tender process was proper at law**

In resolving this issue the Authority considered submissions by parties vis-à-vis the applicable law. In the course of doing so, the following questions would also be answered:

- **Whether the subject matter of the pending court case relates to the tender under Appeal; and**
- **Whether it was proper for the Respondent to allow the previous Service Provider, namely, Jamahedo Health Food Co. Ltd who instituted the suit, to continue collecting revenue for car parking pending determination of the said suit.**

During the hearing it was evident that, both the Appellant and the Respondent were in agreement that, the subject matter of the pending Application as well as the main suit thereto are not related to the tender under Appeal. According to the documents availed to this Authority, the previous Service Provider has instituted a suit against the Respondent for breach of contract. The Authority noted that, Item 10 of the contract pertaining to the pending court case indicated that it was for a period

of 10 months effective 1<sup>st</sup> September, 2009, and expired on 30<sup>th</sup> June, 2010. The said contract was extended for a further period of one month which ended on 31<sup>st</sup> July, 2010.

The Authority is of the considered opinion that, since the said Service Provider alleges breach of contract arising from the expired contract, the RMs Court is the proper forum to determine the matter. However, the said Service Provider who also participated in the tender under Appeal and was disqualified at the Preliminary Stage for failure to submit a Bid Securing Declaration has not lodged any complaint with regard to the said tender in accordance with the Public Procurement Act, Cap. 410. On the face of it, the said tenderer does not have any problem with the tender process that disqualified them because four months have elapsed since the cause of action arose. Hence, no complaint can be entertained under the Act in respect of the tender under Appeal. The Authority therefore finds that, since the said tenderer did not object to the tender process which resulted

into the award in favour of the Appellant, they have no right to institute court proceedings that interfere with the tender process. This is because the Act provides for procedures as well as institutions that are mandated to hear and determine complaints arising from the procurement process.

The Authority also observes that, the claims by Jamahedo Health Food Co. Ltd against the Respondent can be resolved by the RMs Court without interfering with the tender under Appeal as the contract relating to the previous tender is not related to the said tender. Furthermore, when Jamahedo Health Food Co. Ltd signed the contract with the Respondent they were well aware of the duration of that agreement, that is why they tendered again when the tender for 2010/2011 was advertised by the Respondent in April 2010.

The Authority observes further that, when the order for Temporary Injunction was issued by the RMs Court on 16<sup>th</sup> July, 2010, the tender for Revenue

Collection for Car Parking had already been awarded to the Appellant on 28<sup>th</sup> June, 2010. Hence, when the said Court purported to estop the Respondent from awarding the tender to another agent, the actual award had already been made and the contract was in force as per Section 55(7) of the Act which reads:

**“The procurement contract shall enter into force when a written acceptance of a tender has been communicated to the successful supplier, contractor or consultant.”** (Emphasis supplied)

The Authority emphasizes that, once a procurement contract has entered into force, the only recourse open to tenderers to challenge the award is to lodge an appeal with the Public Procurement Appeals Authority pursuant to Section 82(2)(a) of the Act which states as hereunder:

**“S. 82(2) A supplier, contractor or consultant entitled under section 79 to seek review may submit a complaint or dispute to the Public Procurement Appeals Authority:-**

**(a) if the complaint or dispute cannot be submitted or entertained under section 80 or 81 because of entry into force of the procurement contract and provided that the complaint or dispute is submitted within fourteen days from the date when the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that supplier, contractor or consultant should have become aware of those circumstances;” (Emphasis added)**

The above quoted provision entails that the **Authority has sole original jurisdiction in complaints where a procurement contract has already entered into force.** It is the firm view of this Authority that, the issuance of the said Order which compelled the Respondent to refrain from awarding the tender to another agent was *ultra vires* as the jurisdiction to interfere and make decisions affecting the procurement process is mandated to this Authority. The Authority also observes that, in the public procurement process under the Act, the jurisdiction of the courts of law come into play by way of Judicial Review as per Section 85 of the Act and contract execution pursuant to the Law of Contract.

The Authority therefore observes that, the RMs court acted *ultra vires* in ruling that the Respondent should not award the tender under Appeal as by that time the said tender had already been awarded to the Appellant. Moreover, this tender has nothing to do with the tender from which the claim of breach of

contract made by Jamahedo Health Food Co. Ltd arose. The Authority emphasizes that, in public procurement where the method applied is competitive tendering, the procuring entities are obliged to invite new tenders before the expiry of the running contract as it was done by the Respondent; and such tenders are independent of each other.

The Authority also considered the Respondent's submission that currently Jamahedo Health Food Co. Ltd provides the said services in implementation of the Court Order as they were directed to maintain the *status quo*. The Authority noted that the contract which allowed the said Service Provider to collect revenue for car parking had expired on 30<sup>th</sup> June, 2010, and it was extended for one month which ended on 31<sup>st</sup> July, 2010. Since then the Respondent has not communicated on the matter with the said Service Provider who remits a sum of Tshs. 52,900,000/= per month. The Authority is concerned that, at present there is no formal contract between the Respondent and Jamahedo Health Food Co. Ltd

on the provision of the said services which may be detrimental to the Respondent in case of default.

In view of the above findings, the Authority's conclusion in respect of the second issue is that, the suspension of the finalization of the tender process was not proper at law.

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

Having disposed of the contentious issues in dispute, the Authority proceeded to consider prayers by parties jointly. In so doing, the Authority took cognizance of its findings and conclusions on the first and second issues that, the Appellant had met the requirement of furnishing the Performance Security and that the suspension of the finalization of the tender process was not proper at law. The Authority therefore is of the considered view that, had it not been for the Court Order, the procurement process would have been finalized in August, 2010. Since

both the Appellant and the Respondent found themselves in the situation they are in, the Authority is of the settled view that, it will not be fair to penalize either party for the decision that was beyond their powers. Accordingly, the Authority accepts the Appellant's prayer for the finalization of the tender process by signing the contract and directs that execution thereof to commence on 1<sup>st</sup> January, 2011. The Authority therefore rejects parties' other prayers for compensation and damages.

### **Other matters that caught the Authority's attention**

In the course of handling this Appeal the Authority came across some pertinent matters that are worth mentioning as indicated herein below:

- (i) During the hearing the Respondent conceded that they did not reply to the letters received from the Appellant. The

Authority observes that, such conduct depicts lack of seriousness and defeats the principles of Good Governance.

- (ii) The Respondent submitted that following the Court Ruling, Jamahedo Health Food Co. Ltd is still the current Revenue Collector for Car Parking as the Court had ordered, among other things, the *status quo* to be maintained. Having gone through the said Ruling, the Authority observes that, it is not stated anywhere therein that the said Service Provider should continue to provide the said services pending determination of the suit.

The Authority is concerned that, despite the fact that the contract between the Respondent and Jamahedo Health Food Co. Ltd expired on 31<sup>st</sup> July, 2010, they have continued to provide the said services for 5 months now. In other words, they stand to

gain from the Court Ruling at the detriment of the Appellant whose rights have been infringed. The Authority also observes that the Respondent has equally suffered by receiving a lesser sum of Tshs. 52,900,000/= as monthly collections instead of Tshs. 56,000,000/= per month had the tender under Appeal been executed.

- (iii) During the hearing the Respondent stated that, since the court Ruling was issued on 16<sup>th</sup> July, 2010, the hearing of the application interparties has not yet commenced but it comes for mention on 13<sup>th</sup> December, 2010. The Authority observes that, under normal circumstances, the Respondent should have requested for an expedited hearing in respect of the Application filed by Jamahedo Health Food Co. Ltd. This would have ensured that, the application is dealt with expeditiously after

the order for Temporary Injunction had been issued so that the rights of the Appellant and the Respondent are not jeopardized.

- (iv) The Authority is of the view that the fee of Tshs. 100,000/- charged on the Tender Document was on the high side and hence contrary to Regulation 82(3) of GN No. 97/2005.
- (v) The Authority commends the Respondent for preparing a simple Tender Document in Kiswahili which is easily understood.

Having considered all facts and evidence, the Authority concludes that, the Appeal has merit.

On the basis of the aforesaid findings, the Authority upholds the Appeal and orders:

- **the parties to finalize the tender process by signing the contract and commence**

**execution of the contract on 1<sup>st</sup> January, 2011; and**

- **each party bear their own costs.**

Right of Judicial Review as per Section 85 of the PPA/2004 explained to parties.

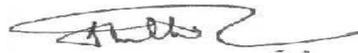
Decision delivered in the presence of the Appellant and the Respondent this 13<sup>th</sup> December, 2010.



.....  
JUDGE (rtd) A. BUBESHI  
**CHAIRPERSON**

**MEMBERS:**

1. MR. M. R. NABURI .....



2. MR. K. M. MSITA .....



3. MRS. R. MANG'ENYA.....