

IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY  
AT DAR ES SALAAM

APPEAL NO. 33 OF 2017-18

BETWEEN

M/S NICE CATERING SERVICES

COMPANY LIMITED.....APPELLANT

AND

MEDICAL STORES DEPARTMENT (MSD).....RESPONDENT

RULING

CORAM

- |                            |   |                 |
|----------------------------|---|-----------------|
| 1. Ms. Monica P. Otaru     | - | Ag. Chairperson |
| 2. Eng. Francis T. Marmo   | - | Member          |
| 3. Mr. Louis P. Accaro     | - | Member          |
| 4. Mr. Ole-Mbille Kissioki | - | Secretary       |

SECRETARIAT

- |                           |   |                      |
|---------------------------|---|----------------------|
| 1. Ms. Florida Mapunda    | - | Senior Legal Officer |
| 2. Ms. Violet S. Limilabo | - | Legal Officer        |

This Appeal was determined by way of review of documents whereby the written submissions were made by the following;

1. Mr. Christian Sonelo – for the Appellant
2. Ms. Hellen Rwijage – (State Attorney) for the Respondent.

The Appeals at hand was lodged by M/s Nice Catering Services Company Limited (hereinafter referred to as "the Appellant"), against the Medical Stores Department commonly known by its acronym, MSD (hereinafter referred to as "the Respondent").

The said Appeal is in respect of Tender No. IE-009/2017/2018/HQ/NC/30 for Provision of Catering Services to MSD Head Quarters Staff (hereinafter referred to as "the Tender"). The Tender was conducted pursuant to the Public Procurement Act of 2011, as amended (hereinafter referred to as "the Act"), the Public Procurement Regulations, Government Notice No. 446 of 2013 (hereinafter referred to as "G.N. No. 446/2013") and the Evaluation Guidelines issued by the Public Procurement Regulatory Authority (PPRA).

After going through the records of proceedings submitted to the Public Procurement Appeals Authority (hereinafter referred to as "the Appeals Authority"), the facts of the Appeal may be summarized as follows:

This Appeal was lodged on 8<sup>th</sup> March 2018 by the Appellant after being dissatisfied with response of the Respondent issued on 2<sup>nd</sup> and 5<sup>th</sup> March 2018 regarding rejection of all the tenders. The Appeals Authority served the Appeal lodged to the Respondent and in the course of submitting the replies; they raised points of Preliminary Objections (PO) to wit;

- i) The Statement of Appeal/Complaint lodged by the Appellant/Complainant is untenable in law for being preferred outside the time *limine* prescribed by the law;
- ii) The Appeal is incompetent for want of grounds/reasons of Appeal as mandatorily required by the law;
- iii) The Appeal is bad in law for want of reliefs sought by the Appellant; and
- iv) The Appeal is incompetent for being signed by the unknown and unauthorized person by the Appellant

Before proceeding on the merits of the Appeal, the Appeals Authority deemed it proper to determine the PO's so raised in order to substantiate the validity of the existence of the Appeal. The parties were

ordered to submit their written submissions on the POs and the same are summarized herein below.

#### RESPONDENT'S SUBMISSIONS ON THE PO

- a) The Statement of Appeal/Complaint lodged by the Appellant/Complainant is untenable in law for being preferred outside the time *limine* prescribed by the law.

In support of this point the Respondent argued that, the Appellant was informed about cancellation of the Tender vide a letter dated 15<sup>th</sup> February 2018. According to Section 97(2)(b) of the Act, a tenderer who is aggrieved by the decision of the accounting officer (procuring entity) may refer the matter to the Appeals Authority for review and administrative decision within seven working days. The Appellant's statement of Appeal indicates that he was dissatisfied with the Respondent's decision issued on 15<sup>th</sup> February 2018 which cancelled the Tender. Having received the Respondent's decision to cancel the Tender, the Appellant ought to have lodged his Appeal to the Appeals Authority on or before 23<sup>rd</sup> February 2018. The Appellant lodged his Appeal on 8<sup>th</sup> March 2018 after lapse of sixteen (16) working days from the date he ought to have lodged his Appeal. The Appellant delay in this regard renders his Appeal to be incompetent before the Appeals Authority for being preferred outside the prescribed time by the law.

In support of his argument the Respondent cited Section 3(1) of the law of Limitation Act (CAP.89 R.E.2002) which clearly states that "where a period for limitation for any proceeding is prescribed by any other written law, then unless the contrary intention appears in such written law, and subject to the provision of Section 43, the provision of this Act shall apply as if such period of limitation has been prescribed".

The Respondent referred this Appeals Authority to consider its own decision issued on Appeal No. 13 of 2017-18 of M/s H.H Hillal and Company Limited Versus Medical Stores Department. In the said Appeal the Appeals Authority dismissed the Appeal after it was realized that the same was lodged out of time.

The Respondent concluded his arguments with respect to the first point of PO by praying for the dismissal of the Appeal with costs for being lodged out of time.

b) The Appeal is incompetent for want of grounds/reasons of Appeal as mandatorily required by the law

Submitting on the second point of PO the Respondent cited Rule 10(1) of the Public Procurement Appeals Rules GN. No. 411 of 2014 (herein referred to as "the Appeals Rules") that it requires the Appeal to be in writing or in electronic form and should be filled in accordance with PPAA Form No. 2. In substantiating his argument on this point the Respondent submitted that it is mandatory that the Appeal lodged must comply with requirements of PPAA Form No. 2 found under the first schedule of the Appeals Rules.

The Respondent argued that the Appellant's PPAA Form No. 2 did not contain grounds of Appeal. Paragraph 3 of the said Form whereby the grounds of Appeal were to be stated it was written "AS PER ATTACHED DOCUMENTS". According to Item No. 3 of the PPAA Form No. 2, reasons/grounds of Appeal must be stated. The wording of Rule 10 and PPAA Form No. 2 do not indicate that grounds/reasons of Appeal can be attached in additional pages. If the Rules would have intended the additional pages to be attached, it would have provided so.

Thus, the Appellant's failure to comply with requirement of Rule 10(1) of the Appeals Rules by not stating reasons/grounds of Appeal in PPAA Form No.2, it goes without saying that the Appeal is incompetent before this Appeals Authority. Thus, the Respondent prayed that the Appeal be struck out with costs.

c) The Appeal is bad in law for want of reliefs sought by the Appellant.

Submitting on this point the Respondent relied on Rule 10(2)(c) of the Appeals Rules read together with PPAA Form No.2 Item 5 which requires the Statement of Appeal to contain reliefs or remedies sought. Expounding on this point the Respondent stated that the Appellant's Statement of Appeal does not contain the remedies/reliefs sought;

instead, under Item 5 of the said Statement of Appeal it has been indicated that the remedies were attached in additional document.

The Respondent reiterated its earlier position stated under the second point of PO, that if the Appeals Rules intends that remedies/reliefs be stated in a separate document, then the said intention could have been clearly stated. Thus, the Appellant's act of attaching remedies/reliefs in a separate/additional document amounts to non compliance of the Appeals Rules. Therefore, the Appeal is incompetent for failure to comply with requirement of Rule 10(2)(c) of the Appeals Rules and PPAA Form No. 2 Item 5. Thus, the Appeal be struck out with costs.

d) The Appeal is incompetent for being signed by the unknown and unauthorized person by the Appellant

Arguing on this point, the Respondent submitted that Clause 11.1(g) of the Instruction to Tenderers (ITB) required tenderers to submit Power of Attorney authorizing the signatory of the Tender. The person given Power of Attorney in the Appellant's tender is Mr. Christian Sonelo identified as the Director of Finance. The Appellant's statement of Appeal has been signed by one and the same Mr. Christian Sonelo. However the attached "BRIEF FACTS AND THE GROUNDS SUPPORTING THE APPEAL" has been signed by Mr. Christian Sonelo and at this point has identified himself as the Managing Director of the Appellant's firm.

The Respondent argued that, Mr. Christian Sonelo's act of identifying himself to be the Director of Finance and at the same time the Managing Director of the Appellant's firm raises doubt as to what position does he hold. It is the Respondent submission that, the act of Mr. Christian Sonelo of identifying himself as holding different position in the same company raises doubt if he has been duly appointed to be the legal representative of the Appellant's firm.

In addition to that the Respondent submitted that, the records of Appeal are silent as to who has been authorized by the Appellant's firm to institute these proceedings on its behalf. There is no company resolution which has been filed indicating that Mr. Christian Sonelo has been

appointed to be legal representative of the Appellant. Thus, in the absence of such an instrument it goes without saying that the person who signed the Appeal has not been authorized to do so.

Therefore the Respondent prayed that the Appeal be struck out with costs as the statement of Appeal has been signed by unauthorized person.

#### APPELLANT'S REPLIES TO THE PO

Before embarking on his submissions on the POs, the Appellant raised his concern about the Respondent's failure to submit his written submissions on the POs within the stipulated time. The Appellant is concerned by the Appeals Authority's act of granting the Respondent the extension of time to file his submission without him being accorded right to be heard first. Apart from this argument the Appellant's replies on POs are summarized as follows;

##### a) The Appeal is time barred

With regard to the first point of PO the Appellant submitted that, it is true that he received the letter which rejected all the tenders on 15<sup>th</sup> February 2018. According to him the said letter did not contain reasons which led to the rejection of the Tenders as required by Section 4A of the Act which promulgates the principle of transparency and fairness on the side of the procuring entities. The Appellant contended further that, Section 59 of the Act and Regulation 16 of GN. No 446 of 2013 requires the Respondent when communicating the decision to reject the tenders to state the reasons for such a decision. To the contrary, the Respondent's letter dated 15<sup>th</sup> February 2018 did not state reasons for rejection of all the tenders. Based on such omission it was not possible for the Appellant to file complaint on the grounds which were not known to them.

The Appellant contended further that, on 19<sup>th</sup> February 2018 he wrote a letter to the Respondent seeking to be given reasons for rejection of the Tender. The Respondent did not reply to the said letter as a result the Appellant was forced to write a reminder letter on 28<sup>th</sup> February 2018. There were no replies from the Respondent; hence, on 2<sup>nd</sup> March 2018

the Appellant submitted an application for administrative review to the Respondent. It is through the application for administrative review the Respondent availed reasons for rejection of the tenders on 2<sup>nd</sup> March 2018.

The Appellant submitted further that, according to Section 96 of the Act a tenderer is required to lodge an application for review from the date he became aware of the circumstances giving rise to a complaint or an Appeal. The Appellant became aware of the circumstances of the Appeal after receipt of the Respondent's letter dated 2<sup>nd</sup> March 2018 and that of 5<sup>th</sup> March 2018. Thus, the Appellant could not have lodged his complaint before knowing the reasons which led to the rejection of the tenders.

According to Section 60(3) of the Act read together with Regulation 231(4)(c) of GN. No.446 of 2013, procuring entities are obliged when issuing a notice of intention to award to inform the unsuccessful tenderers the reasons for their bids being unsuccessful. This same principle is applicable at the scenario at hand. The Respondent was required to state reasons for rejection of all the tenders. The Appellant argued further that, the Respondent's failure to state the reasons rendered the seven working days to be counted from the date the Appellant received reasons for rejection of the tenders; that is from 2<sup>nd</sup> March 2018. Therefore, Appeal No. 13 of 2017-18 of M/s H.H Hillal and Company Limited Versus Medical Stores Department relied by the Respondent is not applicable in the scenario at hand, since the seven working days started to run from 2<sup>nd</sup> March 2018 when the Appellant received reasons for rejection.

b) The Appeal is incompetent for want of grounds/reasons of Appeal and remedies sought as mandatorily required by the law

The Appellant argued the 2<sup>nd</sup> and the 3<sup>rd</sup> points of POs together and started by submitting that, Rule 24(2) of the Appeals Rules provides that the proceedings before the Appeals Authority are to be conducted with as little formality and technicality as possible. Further to that the Webster dictionary has defined the term proceedings to mean "the instituting or carrying on of an action at law". Based on Rule 24(2) and the definition from Webster dictionary the Appellant argued that, he was

not restricted from attaching a statement of facts supporting the Appeal as well as the reliefs. The Appellant did not change the format of PPAA Form No. 2 as alleged by the Respondent; instead he had expounded the grounds of Appeal and reliefs sought in a separate sheet.

The Appellant argued further that, the opening statement of Item 2 of PPAA Form No. 2 states clearly that "If the space is not adequate attach as many additional pages as needed for the statement". From the wording of Item 2 of PPAA Form No.2 it is undisputed that the attachment of additional pages with respect to the facts supporting the Appeal as well as the reliefs is allowed.

The Appellant contended further that, the Respondent's act of making reference to the statement of facts supporting the Appeal in his submission (paragraph 5, 6, 7 and 8) indicates that he clearly admits the presence of the grounds of Appeal and reliefs sought. Therefore, the Respondent assertion that the Appellant failed to comply with requirement of PPAA form No. 2 is misleading and weak.

In concluding his arguments, the Appellant prayed that the 2<sup>nd</sup> and the 3<sup>rd</sup> points of POs be dismissed as the same are not supported by any provisions of the law.

- c) The Appeal is incompetent for being signed by the unknown and unauthorized person by the Appellant.

Submitting on this point the Appellant stated that, it is true that in this Tender process tenderers were required to submit Powers of Attorney. The Appellant's firm appointed one Mr. Christian Sonelo to be the lawful attorney for the Tender in question. Mr. Christian Sonelo signed various documents for this Tender and he was communicating with the Respondent on behalf of the Appellant's firm, the fact known by the Respondent.

The Appellant argued further that, the issue of what position does Mr. Christian Sonelo holds in the Appellant's firm is irrelevant since the Power of Attorney was not issued to the title of a person in the office; instead, it was issued to an individual in his personal capacity. The



argument that Mr. Christian Sonelo has no mandate to institute these proceedings because his title is unknown is misconception by the Respondent. The Power of Attorney was granted to Mr. Christian Sonelo and he is the one who instituted this Appeal.

Therefore, the Appellant's humble submission is that the POs so raised by the Respondent based on assumptions and not pure points of law to qualify to be termed as PO. The Appellant prayed that the PO's be declared to be baseless and devoid of merits, thus be dismissed with costs.

### ANALYSIS BY THE APPEALS AUTHORITY

Before embarking on the analysis of the PO's, the Appeals Authority deemed it proper to consider the argument raised by the Appellant in relation to the Respondent's delay in submitting their written submissions in relation to the POs raised.

According to the orders issued on 10<sup>th</sup> April 2018, the Respondent was required to submit his written submissions on POs by noon 12<sup>th</sup> April 2018. It is not disputed that up to the closure of working hours on 12<sup>th</sup> April 2018 the Respondent had not filed his submission. In the morning of 13<sup>th</sup> April 2018, the Respondent submitted a request for extension of time to file their written submissions on POs adducing the reason that the delay was caused by the circumstances beyond their control. The Appeals Authority having considered the reason adduced granted the Respondent an extension of time to submit his written submissions. The Respondent's submissions were filed before noon on 13<sup>th</sup> April 2018 and it was served to the Appellant on that same day.

Furthermore, the Appellant was given an extension of time to submit his replies to the Respondent's arguments on POs. Before the Respondent was given the extension of time to file his submission on POs, the Appellant was required to file their replies to the POs by noon 16<sup>th</sup> April 2018. However, after the Respondent was granted the extension of time to file written submissions, the Appellant was also informed on 13<sup>th</sup> April 2018 that he was required to file his submissions by noon 17<sup>th</sup> April 2018

instead of 16<sup>th</sup> April 2018 scheduled earlier. The time for submission of the Appellant's replies on POs was extended for one day.

The Appeals Authority enlightens the Appellant that, it conducts its proceedings with as little formalities and technicalities as possible, as per Rule 24(2) of the Appeals Rules. The Appeals Authority is not bound to follow strict rules of evidence and court procedures. Having received the Respondent's request for extension of time and being satisfied with reasons given, the Appeals Authority granted the said extension of time. The Appeals Authority was not bound to hear the parties on such a request and the circumstances of hearing the parties are determined by the facts of each case.

The Appeals Authority is of the settled view that, its act of granting the extension of time to the Respondent to file his submission out of time is not favoritism and it did not prejudice the Appellant's rights in anyway whatsoever; it rather accorded both parties equal rights in filing their submissions. Further, the Appellant's rights were not affected in any way whatsoever, as they were also given extension of one day.

The Appeals Authority distinguishes the Consolidated Appeal Cases Nos. 24 and 25 of 2016-17 between M/s Low's Creek Treated Timber (Pty) Ltd & M/s Maqhilika Timber (Pty) Ltd versus Tanzania Electric Supply Company Limited relied by the Appellant in that, in the said consolidated Appeals the Respondent failed to submit his written submissions within the stipulated time, neither was there any request for extension of time filed. In the Appeal at hand the Respondent had requested for extension of time and they had adduced reasons which were accepted after thorough consideration.

Therefore, the Appeals Authority finds the Appellant's argument on this point to have no merits. The Appeals Authority therefore proceeds to determine the POs raised.

In resolving the contentious arguments by the parties on the PO, the Appeals Authority framed the following issues;

- Whether the Appeal is properly before the Appeals Authority;
- Whether the Statement of Appeal lacked grounds/reasons of Appeal and remedies sought thereof; and
- Whether the Appeal has been instituted by unauthorized person.

Having identified the issues the Appeals Authority resolved them as follows;

#### 1.0 Whether the Appeal is properly before the Appeals Authority

In resolving this issue the Appeals Authority considered the contentious arguments by the parties and deemed it proper to determine if the Appeal has been filed by following the review procedures enshrined under the Act. According to Section 96 of the Act, tenderers who are dissatisfied with public procurement or disposal by tender processes are allowed to file their complaints to the accounting officer within seven working days of becoming aware of the circumstances giving rise to the complaint. Further to that, Section 97 of the Act allows tenderers who are dissatisfied by the administrative decision issued by the accounting officer or if the accounting officer fails to issue his decision within the stipulated time, to refer the complaint or an appeal to this Appeals Authority.

The Appellant lodged this Appeal on 8<sup>th</sup> March 2018 after being dissatisfied with the Respondent's decisions issued on 2<sup>nd</sup> March 2018 and 5<sup>th</sup> March 2018, respectively. Having reviewed the documents submitted, the Appeals Authority observed that the Respondent's response issued on 2<sup>nd</sup> March was in relation to the Appellant's request to be availed with reasons that led his tender to be unsuccessful. We observed further that such request was made on 19<sup>th</sup> February 2018 after the Appellant had received the Respondent's letter dated 15<sup>th</sup> February 2018 which rejected all the tenders. The facts indicate that the Appellant's letter of 19<sup>th</sup> February 2018 was followed by the reminder

letter dated 28<sup>th</sup> February 2018 and the application for administrative review filed on 2<sup>nd</sup> March 2018 as the Respondent did not reply to the Appellant's letters until 2<sup>nd</sup> and 5<sup>th</sup> of March 2018.

The Appeals Authority revisited the Appellant's argument that he was forced to request for reasons that led to his disqualification from the Tender before filing his application for administrative review as according to Section 59 of the Act and Regulation 16 of GN No. 446 of 2013 accounting officers are compelled to provide reasons that led to the decision of rejecting all the tenders; however, the Respondent failed to do so. The Appeals Authority reviewed the provisions relied by the Appellant and observed that, they do not compel the Respondent to provide reasons for rejecting all the tenders; instead, they require the procuring entity after deciding if either of the circumstances under Section 59(2) of the Act exists, obtain approval from the Tender Board to reject all the tenders. In this Tender the approval to reject all the tenders was obtained from the Tender Board meeting held on 31<sup>st</sup> January 2018.

Having considered the facts of this Appeal, the Appeals Authority is of the settled view that, the Appellant after receipt of the Respondent's decision to reject all the tenders was required to challenge it pursuant to Section 96(1) and (4) of the Act which provides as follows;

S.96(1) "Any complaint or dispute between procuring entities and tenderers which arises in respect of procurement proceedings, disposal of public assets by tender 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".

S.96(4) "the accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier".

From the above quotation, the Appellant was required to file his application for administrative review within seven working days from 15<sup>th</sup>

February 2018 as that is when he became aware of the circumstances giving rise to the complaint. Counting from 15<sup>th</sup> February 2018 the seven working days expired on 26<sup>th</sup> February 2018 while the Appellant lodged his application for review on 2<sup>nd</sup> March 2018, three days after expiry of the stipulated time. From the sequence of events, it is crystal clear that the Appellant's application for review was lodged out of time.

The Appeals Authority considered the Appellant's argument that, he was unable to lodge his complaint within seven working days since the Respondent did not avail him reasons that led to his disqualification from the Tender. In support of his argument the Appellant relied on Section 60(3) of the Act and Regulation 231(4)(c) of GN No. 446 of 2013 that it compels the Respondent to provide reasons for rejection of the tenders. The Appeals Authority wishes to enlighten the Appellant that the requirement of Section 60(3) of the Act and Regulation 231(4)(c) of GN No. 446 of 2013 do not apply to the situation at hand. The said provisions are relevant when the procuring entity is issuing a notice of intention to award. In this Appeal the Respondent had not reached the stage of issuing the notice of intention to award, he rejected all the tenders after being satisfied that none of them complied with the Tender requirements.

The Appeals Authority noted with concern the Appellant's act that while on one side he claims that he was unable to file his complaint before being given reasons leading to his bid to be unsuccessful, on the other side he lodged his application for review on 2<sup>nd</sup> March 2018 without being given the said reasons.

The Appeals Authority is of the firm view that, the Appellant ought to have applied for administrative review within seven working days after receipt of the Respondent's letter which rejected all the tenders. Subsequently, the Appellant's failure to do so led to his application for review to be out of time. Therefore, there was no application for administrative review, as such; there is no decision to be challenged by way of Appeal to this Appeals Authority.

The Appeals Authority wishes to enlighten the Respondent that, after receipt of the decision to reject the tenders, the Appellant ought to have submitted his application for administrative review to the Respondent's accounting officer rather than to the Appeals Authority. The complaints that are lodged directly to the Appeals Authority are the ones which arise after the procurement contract had entered into force as per Section 97(3) of the Act.

From the above, the Appeals Authority's conclusion with regard to the first point of the PO is that the Appeal is not properly before the Appeals Authority for failure to comply with the review mechanism procedures provided for under the Act.

The determination of the first point of PO suffices to dismiss this Appeal as there is no proper Appeal; however, for purposes of enlightening the parties the Appeals Authority proceeds to consider other points of POs as raised.

## 2.0 Whether the Statement of Appeal lacked grounds/reasons of Appeal and remedies sought thereof

In resolving this issue the Appeals Authority considered the second and third points of POs and proceeds to analyze them as hereunder:

We revisited the PPAA Form No. 2 submitted by the Appellant when lodging this Appeal and observed that, under Item 3 where the grounds of Appeal are to be stated it is written "AS PER ATTACHED DOCUMENTS". Also under Item 5 of the said Form where remedies/reliefs are to be provided, it says "AS PER ATTACHED DOCUMENTS". In reviewing further the documents submitted, it was observed that the Appellant had attached to PPAA Form No. 2 additional pages addressed to the Appeals Authority titled "BRIEF FACTS AND THE GROUNDS SUPPORTING THE APPEAL". From the facts above, it is crystal clear that the grounds/reasons of Appeal as well as reliefs sought were not written on the PPAA Form No. 2. Instead, they were attached in additional pages attached to the said Form.

The Appeals Authority is of the firm view that, much as the PPAA Form No. 2 requires grounds of Appeal and reliefs sought to be included in the Form itself, the Appeals Rules do not prohibit an attachment of the grounds of Appeal and reliefs in the additional pages. Item 2 of PPAA Form No. 2 with a heading "STATEMENT OF FACTS SUPPORTING THE APPEAL" allows attachment of additional pages as much as needed if the space provided is not sufficient. The same principle can be applied under Item 3 of PPAA Form No. 2 since the space provided for stating the grounds of Appeal is not sufficient.

The Appeals Authority conducts its proceedings as per Rule 24(2) of the Appeals Rules which provide as follows;

"The proceedings before the Appeals Authority shall be conducted with little formality and technicality as possible and in relation thereto, the Appeals Authority shall not be bound by strict rules of evidence or court procedures".  
(Emphasis supplied)

Based on the above quoted Rule, the Appeals Authority finds the Appellant's act of stating the grounds of Appeal and reliefs sought in additional pages attached to PPAA Form No. 2 to be proper since the proceedings are conducted with little formalities and technicalities as possible. The Appellant was required to indicate the grounds of Appeal and reliefs sought and the same was done on the additional pages attached to the PPAA Form No. 2.

Furthermore, the Appeals Authority could not see how the format of PPAA Form No. 2 was altered. The Appellant's PPAA Form No. 2 was intact and in places where the grounds of Appeal and reliefs were to be stated it was written "as per the attached documents". The additional documents were attached; thus, the Appeals Authority rejects the Respondent's arguments in this regard.

Therefore, the Appeals Authority's conclusion on the second and third points of POs is that the grounds/reasons of Appeal and remedies sought were provided in the Appellant's Statement of Appeal.

### 3.0 Whether the Appeal has been instituted by unauthorized person

In resolving this issue, the Appeals Authority revisited the document submitted and observed that the Appeal was instituted by one Mr. Christian Sonelo. It was observed further that, the said person was appointed to be the legal representative of the Appellant in the Tender process. The said appointment was proved by the Power of Attorney attached to the Appellant's bid that was submitted to the Respondent.

Based on the above facts, the Appeals Authority is of the settled view that the Appeal has been lodged by a person who was appointed to be the Appellant's legal representative in this Tender. The Respondent's argument that Mr. Christian Sonelo has been signing the documents of Appeal as Finance Director and in other places as the Managing Director does not hold water as his office position does not affect the Power of Attorney granted to him.

The Appeals Authority is of the view that, the office title of a person with Power of Attorney can be changed at any time depending on the circumstances but the same would not invalidate the legal powers granted to the person unless it is stated otherwise.

Therefore, the Appeals Authority concludes that the Appeal has been filed by a person who is legally authorized to represent the Appellant. Thus, the Respondent's PO on this point is rejected.

In view of the above, the Appeals Authority upholds the first point of PO that the Appeal is not properly before the Appeals Authority and rejects other points of POs as analyzed above.

Therefore, since the first point of PO has been upheld the Appeal is hereby dismissed. No order to costs.

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



This Ruling is issued on 19<sup>th</sup> April 2018.

*M. Otaru*  
.....  
**Ms. MONICA P. OTARU**  
**Ag. CHAIRPERSON**

**MEMBERS:**

**1. ENG. FRANCIS MARMO** ..... *Francis Marmo*

**2. MR. LOUIS ACCARO** ..... *Louis Accaro*