

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM**

**MISC. COM. CAUSE NO. 14 OF 2006**

**IN THE MATTER OF AN APPLICATION FOR ORDERS  
OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF THE DECISION OF THE PUBLIC  
PROCUREMENT APPEALS AUTHORITY**

**AND**

**IN THE MATTER OF SECTION 82 (4) AND 85 OF  
THE PUBLIC PROCUREMENT ACT NO. 21 OF 2004**

**BETWEEN**

**QUALITY MOTORS LTD.....APPLICANT**

**AND**

<b>1.THE CHAIRMAN, PUBLIC PROCUREMENT APPEALS AUTHORITY</b>	}	<b>.....RESPONDENTS</b>
<b>2.THE MINISTER FOR PUBLIC..... SAFETY AND SECURITY</b>		
<b>3.THE ATTORNEY GENERAL</b>		

Counsel: Mr. Kamara for the Applicant

Mr. Ngwembe for the Respondent

**R U L I N G**

**Dr. Bwana, J:**

1. This application is made under section 85 of the Public Procurement Act No. 21 of 2004 (the Act) seeking for Orders of Certiorari and Mandamus against the Respondents. The Order of

Certiorari is intended to quash the decision of the First Respondent upholding what is described as “ the unjustified elimination of the Applicant from the tender process of Tender No. 36 of 2004/2005 floated by the second Respondent”. The Order for Mandamus is sought to direct both the first and second Respondents to perform their duties according to law and compensate the Applicant for costs incurred during the tender process.

2. The uncontroverted facts leading to this Application may be succinctly put as follows. Sometime in March 2005, the second Respondent (then referred to as Minister for Home Affairs) floated tender No.36 of 2004/5 (the Tender) for the supply of specified pick up motor vehicles. The applicant herein submitted bid documents. One of the requirements was for any bidder to provide Manufacturer’s Authorisation. The Applicant failed to submit the same. It is averred that during that period, the Applicant “was locked up in litigation with the Manufacturer’s representative in East Africa, one M/S General Motors East Africa Ltd and therefore could not obtain Manufacturer’s Authorisation”. In order to circumvent that obstacle, the Applicant moved the High Court of Tanzania ( in Civil Case No. 34 of 2005) and obtained an order from the same Court which directed that the said Order be recognized as manufacturer’s authorization. That order was however not recognised by the second respondent. As a consequence thereof, the Applicant’s bid was summarily rejected for lack of Manufacturer’s authorisation. A regulatory body, namely the Central Tender board, redirected the second Respondent to re evaluate the Applicant’s bid taking into consideration the court Order. However after the re evaluation, the tender was awarded to someone else, M/S CMC Automobiles Ltd.

3. Aggrieved by that decision, the Applicant appealed to the first Respondent raising the following grounds-

- 3.1. That the second respondent erred in failing to appreciate and recognize the Court Order as Manufacturer's authorization.
- 3.2. That the tender was awarded to a non responsive bidder.

That appeal was dismissed in its entirety, hence this Application for Judicial Review. I should emphasise at the outset that Judicial Review is not an appeal. To use the words of Lord Fraser (in *Re Amin* (1983) 2 All ER 864, at 868, H.L):

**“ Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made. Thus Judicial Review differs from an ordinary appeal, it is made effective by the court quashing an administrative decision without substituting with its own decision...”**

Paraphrased, it means this: when hearing an appeal, this court would be concerned with the merits of the case. However when reviewing the first and second respondents' administrative decisions, this court is concerned mainly with the legality, propriety, rationality, reasonableness (or unreasonableness) of the decision in question. The question to be considered is the lawful or unlawful nature of the decision; whether the decision making authority exceeded its powers or breached the rules of natural justice in arriving at such a decision.

4. The instant application is for, as stated above, Certiorari and Mandamus. It is trite that an order of certiorari, if granted, would involve the quashing of the decisions of the first and second respondents herein, on the main grounds of illegality, irrationality



or even unreasonableness. Procedural impropriety and failure to follow the rules of natural justice, could as well lead to the quashing of such a decision. Of course, to be unreasonable, the decision must be of such a nature that no reasonable and prudent person would entertain such a thing.

On the other hand an order for mandamus would command the Respondents to perform their duties, in this respect and as prayed for, the Respondents would be required to compensate the Applicant for expenses incurred during the bidding process.

5. What is then the position in the instant application? One obvious position is that the tendering process is long concluded. As stated earlier, a winner has already been declared and, hopefully, supplied the vehicles that were the subject matter of the tender. Therefore to grant an order of certiorari would not serve any purpose. Further, such an order would, in my view, be unreasonable and likely to open the flood gates of similar claims not only in this matter but in other subsequent ones as each unsuccessful bidder would claim for refund of costs incurred, be they reasonable costs or otherwise.

I should also note here that what the Applicant submits as being disregard of a court Order is far from being the case.. What is apparent is that after the Central Tender board directed the second Respondent to take into consideration the said Court Order, that was complied with and re evaluation was done a fresh. It is only after re-evaluation that the Tender was awarded to someone else, other than the Applicant. This seems to be the accepted position when the applicant states:

**“ After the re evaluation, the Tender was finally awarded to MS CMC Automobile Ltd....”**

Therefore I see no reasonable justification to warrant this court to issue an order of Certiorari as prayed for.

6. With regard to Mandamus, compensation could be ordered pursuant to the provisions of sections 82 (4) and 85 of the Act. Section 82(4)(f) states:

**“ The Procurement Appeals Authority may, unless it dismisses the complaint or dispute, recommend one or more of the following remedies –**

**(f) require the payment of compensation for any reasonable costs incurred by the supplier, contractor or consultant.....” (emphasis provided).**

Section 85 states:

**“ The court of competent jurisdiction shall have jurisdiction over actions pursuant to section 79 and petitions for judicial review of decisions made by bodies or failure of those bodies to make a decision within the prescribed time limit...”**

As section 82 (4) (f) (supra) states, compensation could have been ordered had the First Respondent not dismissed the appeal. In the

present application, the appeal was dismissed. Therefore compensation could not be ordered. I see no illegality in that decision. Mandamus cannot, thus, be ordered by this court, ordering compensation.

7. It is also apparently evident that the Applicant failed to include Manufacturer's Authorisation in his bid documents. A court order as a substitute thereof was rejected by both the Second and First Respondents. Reasons given for such refusal seem to be right and I do concur with the same. Therefore having failed to comply with the tender requirements, the Applicant, in my view, should not be allowed to benefit by being compensated. Reasonable costs being claimed are not justifiable either. If awarded, they would defeat both the spirit of competition (there were 9 bidders) and that of the Fair Competition Act, 2004 and would, as stated earlier, open up flood gates of such claims by unsuccessful bidders. That trend should not be encouraged by this court.

8. Accordingly, this Application fails in its entirety. It is dismissed with costs.

Dr. S. J. Bwana

**JUDGE**

30/6/2006

**Court:** Ruling delivered.

Dr. S.J. Bwana

**JUDGE**

30/6/2006

1,300 words