

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 26 OF 2023-24

BETWEEN

M/S AFRICA GLOBAL LOGISTICSAPPELLANT

AND

TANZANIA PORTS AUTHORITY.....RESPONDENT

RULING

CORAM

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| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Ms. Ndeonika Mwaikambo | - Member |
| 3. Mr. Rhoben Nkori | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 3. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

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| 1. Ms. Natasha Mukangara | - Advocate, IMMMA advocates |
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FOR THE RESPONDENT

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| 1. Mr. Mark Mulwambo | - Principle State Attorney - OSG |
| 2. Ms. Grace Lupondo | - State Attorney - OSG |
| 3. Mr. Boaz Msoffe | - State Attorney - OSG |
| 4. Mr. Christian Chiduga | - Legal Counsel Manager |
| 5. Mr. Alex Seneu | - Senior Legal Officer |
| 6. Mr. Geofrey Mwakasala | - Procurement Officer |
| 7. Mr. Mark Mutayoba | - Senior Planning Officer |
| 8. Mr. Josephat Lukindo | - Port Operation Coordination
Manager |

This Appeal has been preferred by **M/S Africa Global Logistics** (hereinafter referred to as "**the Appellant**") against the **Tanzania Ports Authority** commonly known by its acronym as "**TPA**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender for Operating Container Terminal II (Berths Number 8 - 11) of the Dar es Salaam Port (hereinafter referred to as "**the Tender**").

The background of this Appeal may be summarized from the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") as follows: -

On 31st August 2023, the Respondent issued a Public Notice that invited eligible tenderers to submit proposals for the Tender. The deadline for submission of proposals was set two weeks from the date the Public Notice was advertised. On 12th September 2023, the Respondent issued a Public Notice which informed tenderers that



the deadline for submission of proposals has been extended to 25th September 2023. On the extended deadline, the Respondent received fifteen (15) proposals from different firms.

On 15th November 2023, the Respondent requested these 15 tenderers to submit additional information for the Tender. Deadline for submission of additional information was 27th November 2023. On 22nd November 2023, the Respondent extended the deadline for submission of additional information to 1st December 2023. On 1st December 2023, all fifteen (15) tenderers submitted additional information which formed part of the initially submitted proposals.

The received proposals were then each subjected to evaluation which assessed a compliance with eligibility, technical and financial evaluation criteria. After completion of the evaluation process, M/s Adani Ports and Special Economic Zone Limited was found to have the highest score amongst all tenderers which participated in the Tender.

The Respondent through a letter dated 8th December 2023 with reference No. EA.274/414/02/106, notified the Appellant about the results of the evaluation. The Appellant was informed that its proposal was not successful as it attained an overall score that was not above the scores of all other applicants. The letter stated further that M/s Adani Ports and Special Economic Zone Limited attained the highest overall score that was above the scores of all other applicants. Therefore, it was to be invited for negotiations.

Three blue ink signatures are written horizontally at the bottom of the page. The first signature is a stylized 'V' or 'Z' shape. The second is a cursive 'S' or '8' shape. The third is a long, flowing cursive line.

On 14th December 2023, the Appellant through a letter dated 13th December 2023 filed a complaint to the Respondent. The Appellant challenged the award that was intended to be made to M/s Adani Ports and Special Economic Zone Limited. The Appellant also demanded to be availed with reasons for its proposal not being successful and the breakdown of scores assigned to its technical and financial proposals. The Appellant claimed that the Respondent did not respond to its complaint as required by the law. As a result, the Appellant filed this Appeal on 27th December 2023.

The Appeals Authority notified the Respondent on the existence of the Appeal. When filing its Statement of Reply, the Respondent raised Preliminary Objections (POs) on points of law to wit: -

- i) The Appeal is untenable in law for want of jurisdiction of the Appeals Authority.
- ii) The Appeal is untenable in law for being preferred prematurely contrary to Section 97(1) and (2) of the Public Procurement Act [Cap 410 RE 2022].
- iii) The Appeal is untenable in law as the Appellant is riding two horses at the same time.

When the matter was called on for hearing and during the framing up of issues, the Appeals Authority informed the parties that from the record of Appeal there are POs on points of law that have been raised by the Respondent. In view of this, the following issues were framed for the POs (as the first issue) and the substantive merits of the Appeal: -



1.0 Whether the Appeal is properly before the Appeals Authority. This issue has three limbs, namely: -

1.1 Whether the Appeals Authority has jurisdiction to entertain the Appeal;

1.2 Whether the Appeal has been preferred prematurely;

1.3 Whether the Appellant is riding two horses at the same time

2.0 Whether the disqualification of the Appellant's proposal was justified; and

3.0 What reliefs, if any, are the parties entitled to?

After framing the issues, parties were directed to address the Appeals Authority on the first issue that related to POs before embarking on the other remaining issues.

SUBMISSIONS BY THE RESPONDENT ON THE FIRST ISSUE

The Respondent's submissions were made by Mr. Mark Mulwambo - Principal State Attorney, Ms. Grace Lupondo – State Attorney and Mr. Boaz Msoffe - State Attorney, from the Office of the Solicitor General. On the first limb of the 1st issue, the Respondent submitted that the cause of action for this Appeal emanated from the Public Notice issued on 31st August 2023. Through this Public Notice, the Respondent invited tenderers to participate in the Tender under Appeal.

The Respondent submitted that the Public Notice indicated in paragraph three that the Tender was advertised pursuant to Section 5(e) of the Ports



Act No. 17 of 2004, Cap 166 (hereinafter referred to as "**the Ports Act**"). Section 5(e) of the Ports Act allows the Respondent to enter into contractual obligations with other persons or body of persons in order to secure the provision of port services. The Respondent elaborated that when floating the disputed Tender, it intended to execute the concession agreement for operations of Terminal II. The concession arrangements were conducted under the Public Private Partnership Act Cap 103 R.E 2019 as amended (hereinafter referred to as the "**PPP Act**").

The Respondent stated that the intended concession agreement that was to be entered between the Respondent and the proposed port operator was considered as one of the strategic projects. Therefore, it was processed in accordance with procedures under Section 2(2) of the PPP Act. In complying with the requirements of the law, the Respondent secured the registration of the intended project with the Office of the Treasury Registrar. Having registered the project as one of the strategic projects for the country, the Respondent issued a Public Notice that invited the eligible ports operators to submit their proposals.

The Respondent elaborated that the whole procurement process of obtaining an eligible port operator was conducted as per the procedures of procurement of solicited projects under the PPP Act. According to the Respondent, Section 28 of the PPP Act states categorically that if there is inconsistency between the provisions of the PPP Act and any provision of the written laws on matters relating to procurement of a public private partnership project, the provisions of the PPP Act would prevail.



The Respondent submitted further that Section 79(1) of the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Public Procurement Act**") states that if the project is of a public private partnership in nature, its procurement be either solicited or unsolicited tenders, should be conducted pursuant to the PPP Act. Since the Tender under Appeal was floated pursuant to Section 5(e) of the Ports Act and was a strategic project governed by the PPP Act, the Public Procurement Act does not apply under the circumstances of this Tender, the Respondent contended.

The Respondent stated that the Tender was conducted under the PPP Act and that the said law does not provide guidance on procedures to be followed by a tenderer who is dissatisfied with the Tender process. Thus, if the Appellant was aggrieved with the Tender results it ought to submit its complaint to the High Court for judicial review as per Section 17 of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act** Cap 310 R.E 2019.

In support of its argument on this point, the Respondent cited the case of ***Michael David Nungu versus Institute of Finance Management***, Civil Appeal No. 170 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported). In this case, the court stated that if there is no available remedy for any aggrieved party, the dissatisfied party may apply to the court for judicial review. The Respondent contended that the Appellant ought to have filed an application for judicial review to the High Court and not before the Appeals Authority as it lacks jurisdiction to entertain the same.



In the alternative to the above submissions, the Respondent submitted that according to Section 88 (4) of the Public Procurement Act, this Appeals Authority is required to entertain appeals or complaints arising out of administrative decisions issued by accounting officers. In the instant appeal, there is no administrative decision that has been issued by the Respondent's accounting officer which warrants the Appeals Authority to determine this Appeal. The Respondent expounded that, having been aggrieved with the evaluation results, the Appellant filed a complaint to the Respondent on 14th December 2023. The Respondent was required to determine the said complaint within seven working days. That is to say, the Respondent was to issue its decision by 27th December 2023. However, prior to the expiry of the period within which the Respondent ought to have issued its decision, the Appellant filed this Appeal on 27th December 2023.

The Appellant's Appeal has been filed while there was no administrative decision issued by the Respondent capable of being challenged by way of Appeal to this Appeals Authority. Thus, the Appeals Authority lacks jurisdiction to entertain this Appeal for want of administrative decision by the Respondent's Accounting Officer.

On the second limb of the 1st issue, the Respondent submitted that the Appeal at hand has been prematurely filed contrary to Section 97 (1) and (2) of the Public Procurement Act. The Respondent submitted that according to Section 96(6) of the Public Procurement Act, the Respondent is required to issue its decision against any complaint filed by a tenderer



within seven working days. In the Appeal at hand, the Appellant lodged its complaint to the Respondent on 14th December 2023. The Respondent was to issue its decision by 27th December 2023. Before the expiry of the seven days period within which the Respondent ought to have issued its decision, the Appellant filed this Appeal on 27th December 2023. Thus, the Appeal was filed pre-maturely.

In support of its argument on this point, the Respondent cited the Case of ***M/S Acqua Power Tanzania Limited (T/A Turbine Tech) versus Tanzania Electric Supply Company Limited and Another***, Appeal Case No. 2 of 2021-22. In the referred case, this Appeals Authority dismissed the Appeal for being filed prematurely before it. The Respondent urged the Appeals Authority to employ the same position in this Appeal and dismiss the same as it was filed prematurely.

The Respondent stated further that the Appellant's act of filing this Appeal before the expiry of the time limit for the Respondent to issue its decision, indicates that it was riding two horses at the same time. That is, the Appellant wanted its grievances to be determined by the Respondent and at the same time the same issues to be considered by the Appeals Authority. The Respondent contended that the Appellant's act in this regard is not acceptable under the law.

In support of its argument on this point, the Appellant cited the case of ***Hector Sequiraa versus Serengeti Breweries Limited***, Civil Application No. 395/18 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported). The court adopted the position stated in the case of



Hamis Said Mkuki versus Fatuma Ally, (2018) T.L.R 170 (CA) where the court held that the law does not allow riding two horses at the same time because it amounts to abuse of court process.

The Respondent concluded its submissions on the first issue by indicating that since its argument on the second limb is similar to what was intended to be argued under the third limb, it prayed for the withdrawal of the third limb.

REPLY BY THE APPELLANT ON THE FIRST ISSUE

Ms. Natasha Mukangara, learned Advocate for the Appellant commenced her submissions on the first limb of the first issue by stating that the Tender under Appeal was publicly advertised by the Respondent. As an experienced port operator, the Appellant believed that since the Respondent is a government entity, the Tender process would be conducted as per the laws governing public procurement. Much as paragraph 3 of the Public Notice indicated that the Respondent has floated the Tender in accordance with Section 5(e) of the Ports Act, the Appellant was of the view that the provision allows the Respondent to float the Tender under Appeal for purposes of entering into a concession agreement. However, the existence of the said provision did not imply that the Public Procurement Act and its Regulations would not be applicable under the circumstances. In support of her submissions on this point, the learned counsel relied on the case of ***M/S Alvic Builders (T) Limited versus Morogoro Municipal Council***, Appeal Case 47 of 2018-19.



The learned counsel stated that even though the Tender under Appeal was conducted under the public private partnership arrangement, the same does not exclude the applicability of the Public Procurement Act and its Regulations during the procurement process. The Public Procurement Act and its Regulations requires public tenders to be processed in a transparent manner. Thus, it is applicable in every public tender. In view of this, the learned counsel contended that the Appeals Authority has jurisdiction to entertain this Appeal.

On the second limb of the first issue, the learned counsel submitted that on 8th December 2023, the Appellant received a letter from the Respondent which notified it about the Tender results. Upon being dissatisfied with its disqualification and intention to award the contract to M/s Adani Ports and Special Economic Zone Limited, the Appellant filed a complaint to the Respondent on 14th December 2023. The Respondent was required to issue its decision by 27th December 2023. Since the Respondent had not issued its decision within the stipulated time limit, by mid day of 27th December 2023 the Appellant lodged this Appeal. The filing of this Appeal did not prohibit the Respondent from responding to the Appellant's complaint. However, the Respondent opted not to do so. Thus, the Appellant was right in filing its Appeal by 27th December 2023.

The learned counsel distinguished the case of ***M/S Acqua Power Tanzania Limited (T/A Turbine Tech)*** (supra) relied upon by the Respondent, stating that the circumstances of the referred case differ with the circumstances of this Appeal. In the **Acqua** case, the Appellant did not



file the application for administrative review before filing an appeal to the Appeals Authority. In this matter the Appellant filed an application for administrative review and having not received a response within the specified time limit, lodged this Appeal. Thus, the Appeal is properly before the Appeals Authority.

The learned counsel therefore prayed that the POs be overruled and that the Appeal be heard on merit.

REJOINDER BY THE RESPONDENT

On its brief rejoinder, the Respondent submitted that the Tender under Appeal is distinct from other ordinary tenders as it relates to a public private partnership project. Therefore, the procedures governing its procurement are those under the PPP Act. The Respondent contended that if the Appellant was not sure what law governed the Tender, it ought to have sought for clarification from the Respondent.

On the timing of filing of the Appeal, the Respondent reiterated its earlier position that the Appeal has been filed prematurely. The Respondent stated that the counting of dates which led to the conclusion that the Appeal was filed prematurely was governed by Section 60(1) of the Laws of Interpretation Act Cap 1 R.E 2019. Therefore, the Respondent prayed that the POs under the first issue be upheld and the Appeal be dismissed.



ANALYSIS BY THE APPEALS AUTHORITY ON THE FIRST ISSUE

The Appeals Authority started this analysis by taking cognizance of the fact that the Respondent withdrew the third limb of the first issue and therefore remained with two limbs. The Appeals Authority proceeds to analyse the first limb of the first issue as hereunder: -

1.1 Whether the Appeals Authority has jurisdiction to entertain the Appeal

In determining this point of law, the Appeals Authority considered the parties' rival submissions whereby on one hand the Respondent contended that the Tender relates to a strategic project. Therefore, it was processed under the PPP Act. The Public Procurement Act and its Regulations were not applicable; thus, the Appeals Authority lacks jurisdiction to entertain this Appeal. On the other hand, the Appellant submitted that the Public Procurement Act and its Regulations apply to all public tenders. As the Respondent is a public entity, consequently the Public Procurement Act applies to this Tender. In that regard, the Appeals Authority has jurisdiction to entertain this Appeal.

In ascertaining the validity of the parties' contentions, the Appeals Authority reviewed the record of Appeal and observed that on 31st August 2023, the Respondent issued a Public Notice that invited eligible tenderers to submit proposals for the Tender. The Notice indicated under paragraph 3 that the Tender was floated pursuant to



Section 5(e) of the Ports Act. Section 5(e) of the Ports Act reads as follows: -

"S. 5 It shall be the underlying objective of the Authority in carrying on its function and exercising its powers provided for under this Act, to enhance the advantages of geographical position of Tanzania as maritime nation by –

(e) entering into contractual obligations with other persons or body of persons in order to secure the provision of port services whether by means of concession; joint venture, public, private partnership or other means, and to this end to delegate its own function of providing port services to one or more port operators".

The above quoted provision empowers the Respondent to enter into contractual obligations but does not indicate the law that would be governing the whole process of obtaining the service provider. In establishing which law is applicable, the Appeals Authority reviewed Section 2 of the Public Procurement Act which reads as follows: -

"2 (1) This Act shall apply to –

(a) all procurement and disposal by tender undertaken by a procuring entity except where it is provided otherwise in this Act;

(b) non-Government entities, for procurement financed from specific public finances; and

(c) Public Private Partnership projects, in their relevant stages".



(Emphasis supplied)

The Appeals Authority also reviewed Section 3 of the Public Procurement Act and observed that the word "procuring entity" has been defined to mean "a public body and any other body, or unit established and mandated by government to carry out public functions". The Appeals Authority reviewed the Ports Act and observed that the Respondent's office is established under Section 4 as a public body.

In view of Section 2(1) and Section 3 of the Public Procurement Act read together with Section 4 of the Ports Act, the Appeals Authority is of the view that the Respondent is a public body. In that regard the Appeals Authority as one of the organs that is vested with powers to determine disputes arising under tenders conducted through the Public Procurement Act and its Regulations has jurisdiction to entertain this Appeal.

The Appeals Authority further considered the Respondent's argument that M/s Adani Ports and Special Economic Zone Limited was procured through the solicited tender as guided by the PPP Act and therefore the Public Procurement Act was not applicable. The Respondent added that since the PPP Act does not provide for dispute resolution mechanism for disputes arising out of its procurement process, upon being aggrieved by the Tender process, the Appellant ought to have submitted its grievances to the High Court by way of judicial review.



The Appeals Authority reviewed the Public Private Partnership Regulations of 2020 (hereinafter referred to as the "**PPP Regulations**") and observed that the procurement of the solicited tenders under it are governed by Part VI of the Regulations. The dispute mechanism for unsatisfied tenderers is also guided by Regulation 61(3) of the PPP Regulations. Regulation 61(3) of the PPP Regulations reads as follows: -

"61(3) Any complaint or dispute on the tender proceedings shall be as set out in the Seventh Schedule".

The Appeals Authority revisited the Seventh Schedule to the PPP Regulations. It observed that tenderers which are dissatisfied with the tender processes conducted under the PPP Act and its Regulations, are allowed to file a complaint to the accounting officer of the respective contracting entity. Item 1 of the Seventh Schedule to the PPP Regulations reads as follows: -

"1. Any complaints or dispute between contracting authorities and bidders which arise in respect of procurement proceedings and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a contracting authority and give reasons for his decision".

(Emphasis supplied)

The Appeals Authority observed further that Item 5 of the Seventh Schedule to the PPP Regulations requires the accounting officer of



the contracting authority to issue its decision within fourteen days.
Item 5 reads as follows: -

"5. The accounting officer shall, within fourteen days after the submission of the complaint or dispute deliver a written decision which shall: -

(a) state the reasons for the decision; and

(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken".

Item 6 of the Seventh Schedule to the PPP Regulations allows a tenderer to file its complaint to this Appeals Authority if the accounting officer of the contracting authority had failed to issue its decision within the specified time limit. Item 6 reads as follows: -

"6. Where the accounting officer does not issue a decision within the time specified in subsection (5), the bidder submitting the complaint or dispute to the contracting authority shall be entitled immediately thereafter to apply for administrative review to the Appeals Authority".

In view of the above, the Appeals Authority is of the settled view that the PPP Regulations under the Seventh Schedule recognizes this Appeals Authority as one of the organs that is vested with powers to determine disputes arising under tenders conducted through the PPP Act and its Regulations.



Under the circumstances the Appeals Authority finds that it has jurisdiction to entertain the Appeal. Thus, the first point of law on jurisdiction is hereby overruled.

1.2 Whether the Appeal has been preferred prematurely

Taking cognizance of its findings on the analysis on the first point of law above that the Appeals Authority has jurisdiction to entertain this Appeal, the Appeals Authority now proceeds to determine if this Appeal was filed as per the requirements of the law.

According to Sections 96(1), (4) and (6) and 97(1) and (2) (a) and (b) of the Public Procurement Act, a tenderer who is dissatisfied with the tender process is allowed to file a complaint to the accounting officer of the respective procuring entity within seven working days of becoming aware of the circumstances giving rise to the complaint. The accounting officer is required to issue its decision within seven working days. If the accounting officer issues a decision and a tenderer is still dissatisfied or if the accounting officer fails to issue its decision within seven working days as required, a tenderer may lodge an appeal to this Appeals Authority within seven working days. Sections 96(1), (4) and (6) and 97(1) and (2) (a) and (b) of the Act read as follows: -

"96(1) Any complaints or disputes between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards 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

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting it 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.

(6) The accounting officer shall, within seven working days after the submission of the complaint or dispute deliver a written decision which shall:-

(a) State the reason for the decision; and

(b) If the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.

97(1) A tenderer who is aggrieved by the decision of the Accounting Officer may refer the matter to the Appeals Authority for review and administrative decision.

(2) Where-

(a) **the accounting Officer does not make a decision within the period specified under this Act;**

(b) the tenderer is not satisfied with the decision of the accounting officer

the tenderer may make the complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer



or upon the expiry of the period within which the accounting officer ought to have made a decision”.

(Emphasis supplied)

According to the PPP Regulations as analysed on the first point of law above, a tenderer who is dissatisfied with the tender process is allowed to challenge the same as per the procedures provided under the Seventh Schedule to the PPP Regulations. In both the Public Procurement Act and the PPP Regulations a tenderer who is dissatisfied with the tender process is allowed to file a complaint to the accounting officer of the respective procuring entity. If the accounting officer fails to issue its decision within the prescribed time limit, a tenderer is allowed to file its appeal to the Appeals Authority.

As per the Public Procurement Act a tenderer is allowed to file its Appeal to this Appeals Authority within seven working days after receiving the procuring entity's decision or if the procuring entity fails to issue its decision within the specified time limit. Under the PPP Regulations the accounting officer is required to issue its decision within fourteen days from the date it received the complaint from a tenderer. Thus, if the accounting officer fails to issue its decision within the prescribed time limit, a tenderer is allowed to file a complaint to this Appeals Authority.

In ascertaining if this Appeal was filed in compliance with the requirements of the Public Procurement Act or the PPP Regulations, the Appeals Authority revisited the record of this Appeal. It observed that the cause of action arose after the Appellant received the Tender evaluation results



through the Respondent's letter dated 8th December 2023. According to the record of Appeal, the referred letter informed the Appellant that its proposal was not successful as it attained an overall score that was not above the scores of all other tenderers that participated in the Tender. The Appellant was dissatisfied with the reason given for its unsuccessful proposal. Therefore, it filed a complaint through a letter dated 13th December 2023. According to Appendix AGL 7 (copy of dispatch) attached to the Appellant's Statement of Appeal, the Appellant's complaint letter was physically delivered to the Respondent on 14th December 2023. The Appellant filed this Appeal on 27th December 2023 before the Respondent issued its decision; subsequently, the Appellant filed this Appeal on 27th December 2023.

From the record of Appeal, it is crystal clear that the Appellant lodged its complaint to the Respondent's accounting officer within seven working days of becoming aware of the circumstances of the complaint. According to the Section 96(6) of the Public Procurement Act quoted herein above, the Respondent's accounting officer was to issue its decision within seven working days. In that regard the counting of the seven working days within which the Respondent was required to issue its decision starts from 15th December 2023. Counting from 15th December 2023, the Respondent was required to issue its decision within seven working days that expired on 27th December 2023.

As per Item 5 of the Seventh Schedule to the PPP Regulations, after receipt of the Appellant's complaint, the Respondent's accounting officer was



required to issue its decision within fourteen days. Counting from 15th December 2023, the Respondent's accounting officer ought to have issued its decision within fourteen days that elapsed on 28th December 2023.

The record of Appeal indicates that prior to the expiry of the seven working days as per the Public Procurement Act or fourteen days as per the PPP Regulations, the Appellant filed this Appeal on 27th December 2023. Given this observation, the Appeals Authority is of the settled view that the Appeal was filed prematurely prior to the expiry of the time limit within which the Respondent ought to have issued its decision with respect to the Appellant's complaint.

In view of the above finding, the Appeals Authority is of the firm view that the Appeal was filed prematurely. Under the circumstances the Appeals Authority upholds the second point law and hereby dismiss the Appeal for being improperly before it.

Given our findings on the second point of law, the Appeals Authority would not delve into the remaining issues.

It is so ordered.

This Ruling is binding and can be enforced in accordance with Section 97(8) of the Act.

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



This Ruling is delivered in the presence of the parties this 9th Day of February 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. MS. NDEONIKA MWAIKAMBO.



2. MR. RHOBEN NKORI.

