

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 01 OF 2025-26

BETWEEN

M/S JOBAN HOLDINGS LIMITED APPELLANT

AND

TANZANIA AIRPORTS AUTHORITY RESPONDENT

RULING

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Mr. Raphael Maganga | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

- | | |
|-----------------------|--|
| 1. Mr. Denis Maringo | - Advocate, 3 rd Opinion
Advocates |
| 2. Ms. Caroline Eric | - Resident Consultant |
| 3. Mr. Richard Mubiri | - Corporate Affairs Director |
| 4. Mr. Gaurang Patel | - Head of Business
Development |



FOR THE RESPONDENT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Boaz Msoffe | - State Attorney, OSG |
| 2. Ms. Catherine Kiiza | - State Attorney, OSG |
| 3. Ms. Judith Kaihura | - Legal Officer |
| 4. Mr. Josephat Msafiri | - Senior Procurement Officer |
| 5. Mr. Stephen Minja | - Senior Procurement Officer |

This Appeal was lodged by **M/S Joban Holdings Ltd** (hereinafter referred to as "**the Appellant**") against the **Tanzania Airports Authority** known by its acronym "**TAA**" (hereinafter referred to as "**the Respondent**"). It is in respect of the following tenders: -

- (a) Tender No. AE-027/2023-2024/JNIA/PPP/01 for Development of a Four-Star Hotel & with its Associated Facilities at JNIA.
- (b) Tender No. AE-027/2023/2024/JNIA/PPP/03 for Development of a Four-Star Hotel & Convention Centre at Arusha Airport.
- (c) Tender No. AE-027/2023/2024/JNIA/PPP/02 for Development of a Commercial Complex and its Associated Facilities at JNIA (hereinafter referred to as "**the Tenders**").

Based on the documents provided to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this Appeal can be summarized as follows: -

On 22nd August 2023, the Respondent using the International Restrictive Selection method issued a Request For proposal (RFP) document to

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seven shortlisted firms, including the Appellant, to participate in the Tenders. The Tenders were done in accordance with the Public Private Partnership Act, Cap 103 as amended (hereinafter referred to as "**the PPP Act**") and the Public Private Partnership Regulations of 2020 (hereinafter referred to as "**the PPP Regulations**").

After completing the evaluation process, the Appellant was invited for negotiations. But before the negotiations were completed, the Respondent through a letter dated 10th February 2025, informed the Appellant that the Tenders were cancelled pursuant to section 68(2)(e) of the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**").

Aggrieved with the cancellation of the tenders, the Appellant through a letter dated 13th March 2025 submitted a complaint to the Respondent. Having not received a response from the Respondent, the Appellant referred the matter to the Public Private Partnership Centre (hereinafter referred to as "**the PPP Centre**"). After deliberation on the matter, the PPP Centre advised the Respondent to extend the tender validity period to facilitate ongoing negotiations with the Appellant regarding unresolved issues. The PPP Centre further advised that if the two parties would not be able to resolve the disputed issues, the Appellant may apply for administrative review to the Appeals Authority in accordance with regulation 61(3) and Seventh Schedule to the PPP Regulations.

The record of Appeal does not indicate whether the Respondent heeded the advice given by the PPP Centre. Subsequently, on 16th July 2025, the Appellant lodged this Appeal to the Appeals Authority.

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In this Appeal, the Appellant challenges the Respondent's decision to cancel the tenders without granting the Appellant an opportunity to be heard. The Appellant stated that before cancelling the Tenders, the Respondent was required to table the disputed matters for negotiations as required by the PPP Act. Thus, it was the Appellant's view that the Respondent's cancellation of the Tenders by relying on section 68(2)(e) of the Act was improper in law.

On the other hand, the Respondent rebutted the Appellant's contention by stating that the Appellant was the successful tenderer and was thereby invited for negotiations on the method to determine the concession fees. However, there was no consensus between the parties. And the Respondent later realised that the Tender validity period had expired, thus could not proceed with negotiations. The Respondent therefore cancelled the Tenders pursuant to section 68(2)(e) of the Act.

When the matter was called on for hearing and before framing up the issues, the Appeals Authority suo motu informed the parties that it had observed from the record of Appeal a point of law to wit; whether the appeal was properly before it which had to be determined before proceeding with the substantive merits of the Appeal and required the parties to address this point. The Appeals Authority accorded the parties two hours for preparation. When the session resumed, the parties presented their arguments as follows: -

SUBMISSIONS BY THE APPELLANT

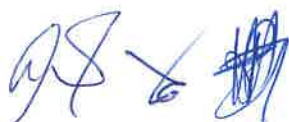
The Appellant's submissions were made Mr. Denis Maringo, senior learned counsel. He commenced by stating that Section 121(1) of the

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Act requires an appeal before this Appeals Authority to be filed within five working days after becoming aware of the circumstances giving rise to an Appeal. He stated that the cause of action for this appeal arose after the Appellant was notified of the Respondent's cancellation of the tenders. The Notice was issued through a letter dated 10th February 2025 and received by the Appellant on 10th March 2025. Thereafter, on 13th March 2025, the Appellant submitted a complaint to the Respondent which did not respond.

He submitted that after not receiving any response from the Respondent, the Appellant submitted the matter to the PPP Center for more deliberations. He argued that the Appellant invoked the PPP Center since the Tenders were implemented in accordance with the PPP Act and its Regulations. According to these laws, the PPP Center plays a crucial role in the process by overseeing all procedures. He added that section 22 of the amended PPP Act requires disputes arising out of the implementation of the PPP agreement to be amicably resolved through negotiations. Thus, before filing this Appeal, the Appellant tried to resolve the matter by engaging the PPP Center which issued recommendations of how to resolve the dispute. However, the Respondent did not comply with the given advice.

The learned counsel submitted that after the Respondent's failure to respond, the Appellant through a letter dated 30th June 2025, informed the Respondent about its intention to refer the matter to this Appeals Authority. In response thereof, the Respondent through a letter dated 4th July 2025, raised a new reason for cancellation of the Tenders, namely, expiry of the bid validity period. He argued that since that was

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a new reason for the cancellation of the tenders, the Appellant is entitled to challenge the same. Thus, it filed this Appeal on 16th July 2025 after receiving the Respondent's letter on 10th July 2025. It was his argument therefore that, the Appeal was filed timely.

The learned counsel submitted further that if the Appeals Authority finds that the Appeal is time barred as the cause of action was the notice of cancellation of tenders issued on 10th February 2025, he urged the Appeals Authority to consider the second reason for cancellation of tenders which was issued through a letter dated 4th July 2025 to be a sufficient ground for this Appeal. He averred that the Respondent has issued two decisions regarding cancellation of Tenders, thus the Appellant is entitled to challenge both. Therefore, he argued that time for filing this Appeal started to run from the date the Appellant received the second reason for cancellation of Tenders.

During the hearing of this Appeal, the Appeals Authority required the Appellant to clarify if there was a PPP agreement which had been entered between it and the Respondent to warrant application of dispute resolution procedures provided under Section 29 of the PPP Act in the circumstances of the matter at hand. In response thereof, the learned counsel submitted that there was no PPP agreement which had been entered between the Appellant and the Respondent. He therefore conceded that the requirements of section 29 of the PPP Act were inapplicable in the matter at hand.

He added that the Appellant was not required to involve the PPP Center on the matter at hand. However, the learned counsel reiterated his earlier submissions that the Appeal is properly before the Appeals



Authority as the cause of action for the matter at hand is based on the Respondent's letter dated 4th July 2025 which raised a new reason for cancellation of tenders.

The learned counsel therefore prayed that the Appeal proceed to be heard on merits.

REPLY BY THE RESPONDENT

The Respondent's reply submissions were made by Mr. Boaz Msoffe, learned state attorney from the Office of the Solicitor General.

He began by stating that this Appeal is hopelessly time barred as it has been filed in contravention of section 121 of the Act. He elaborated that the Act is the general law on matters relating to public procurement where as the PPP Act is a specific law relating to public private partnership projects. He stated that procurement in public private partnership projects is to be in accordance with the PPP Act. However, if a tenderer is dissatisfied with the procuring entity's conduct on a tender, it is required to invoke the dispute resolution procedures as provided under the PPP Regulations as well as the Act.

The learned state attorney submitted that the Respondent cancelled the Tenders through a letter dated 10th February 2025 which was served to the Appellant on 10th March 2025. Aggrieved with the cancellation, on 13th March 2025, the Appellant rightly filed a complaint to the Respondent pursuant to paragraph 1 of the Seventh Schedule to the PPP Regulations. He stated that paragraph 5 of the Seventh Schedule to the PPP Regulations requires the Respondent to issue its decision within fourteen (14) days from the date of receipt of a complaint. The



Respondent was required to issue its decision by 27th March 2025. However, it failed to do so.

The learned state attorney submitted that paragraph 6 of the Seventh Schedule to the PPP Regulations allows a tenderer to refer a matter to the Appeals Authority if the procuring entity fails to issue its decision within the specified time limit. He stated further that an appeal to the Appeals Authority is filed in accordance with section 121 of the Act which requires an appeal to be lodged within five working days after becoming aware of the circumstances giving rise to it.

The learned state attorney averred that the Appellant instead of filing its appeal within the specified time limit, it filed the same on 16th July 2025 after lapse of almost one hundred (100) days. Thus, it was his view, the Appeal is time barred.

In support of his argument on this point, the learned state attorney cited PPAA Appeal Case No. 31 of 2024-25 between ***M/S Supreme International Ltd v. Dar es Salaam Water Supply and Sanitation Authority (DAWASA)*** wherein the Appeals Authority dismissed the matter for being filed in contravention of the law. The learned state attorney urged the Appeals Authority to apply the same principle in this Appeal.

Regarding the Appellant's contention that it referred the matter to the PPP Centre as it is the overseer of all the public private partnership matters, the learned state attorney submitted that according to the PPP Act, the PPP Regulations and the Act, the PPP Centre is not part of the dispute resolution process on matters relating to procurement in public private partnership projects. Thus, when the Respondent failed to issue



its decision within the specified time limit, the Appellant was required to refer the matter to the Appeals Authority and not otherwise.

The learned counsel submitted further that the Appellant's attempt to resolve the dispute by using other means was at its own risk and did not stop the time from running. The Appellant was obligated to comply with the legal requirements of filing its Appeal, regardless of other measures taken. To support this argument, he cited the case of ***Alwyn Bob Mutagulwa v. Tanzania Electric Supply Limited (TANESCO)***, Civil Appeal No. 319 of 2023, Court of Appeal, at Dar es salaam, where the Court held that once time for filing of a matter has been specified, the delay to do so cannot stop the time from running.

On the Appellant's contention that the basis of this Appeal is the new ground for cancellation of Tenders contained in the Respondent's letter dated 4th July 2025, the learned state attorney submitted that the referred letter was a response to its letter which indicated its intention to refer the matter to the Appeals Authority. The letter did not contain a new reason for cancellation of the Tenders, rather it elaborated that due to lapse of time, the tender validity period had expired and therefore there was no valid tender worth deliberations. Thus, he argued that the Appellant should not change the date when the cause of action arose.

Regarding section 29 of the PPP Act relied upon by the Appellant, the learned state attorney submitted that the provision is inapplicable in the matter at hand as there was no PPP agreement that had been entered between the Appellant and the Respondent. Thus, the Appellant's argument that disputes must be resolved by negotiations before invoking other measures lacks basis.



The learned state attorney concluded his submissions by stating that, since the Appeal was filed out of time, it should be dismissed with costs.

THE APPELLANT'S REJOINDER

In his brief rejoinder, the learned counsel for the Appellant reiterated that since the Respondent had issued two reasons for cancellation of the Tenders one dated 10th February 2025 and the other on 4th July 2025, each constitutes a decision and has to be dealt with separately. He argued that the Appeal is based on the new reason issued through the letter dated 4th July 2025. In support of his contention, the learned counsel cited the case of ***Jitesh Jayantilal Ladwa and Another v. Dhirajlal Walji Ladwa and Others***, Civil Appeal No. 435 of 2020, Court of Appeal of Tanzania at Dar es salaam where the Court held that where two decisions are given, the first decision should be regarded as an interlocutory order and the second one as the main decision. The learned counsel therefore urged the Appeals Authority to consider the second decision as the main decision to be challenged and find this Appeal to be properly before it.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the Appeal is properly before the Appeals Authority

In resolving this issue, we are invited to answer the question as to when the cause of action arose. The Appellant contended to have filed its Appeal within time since the cause of action arose after receipt of the Respondent's letter dated 4th July 2025. On the other hand, the Respondent rebutted the Appellant's argument by stating that the cause



of action arose from the Respondent's letter dated 10th February 2025 which cancelled the Tenders. The Respondent contended that the Appellant being aggrieved with the cancellation of the Tenders, it submitted a complaint to the Respondent which did not respond. And the appellant was required to file this Appeal within five working days from the date the Respondent was expected to issue its decision. However, it failed to do so, and hence the Appeal is time barred.

In ascertaining the validity of the parties' contentions, we reviewed section 2 - Clause 5.2 of the Tender Document and regulation 61 (3) of the PPP Regulations read together with paragraphs 1, 5 and 6 of the Seventh Schedule thereto which read as follows: -

"Clause 5.2 The method of procurement used by Contracting Authority is in accordance with the PPP Act 2010 (as amended) and the PPP Regulations 2020.

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

para.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.



para 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.

para. 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."

(Emphasis supplied)

The above provisions state that dispute resolution for Tender proceedings involving the PPP Act would be in accordance with the Seventh Schedule to the PPP Regulations. The schedule also states that a procuring entity is required to issue its decision within fourteen days from the date of receipt of a complaint from a tenderer and if it fails to do so within the specified time, a tenderer may refer the matter to the Appeals Authority.

We reviewed section 121 (1) and (2) (a) of the Act which reads as follows: -

"s.121. (1) A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to the Appeals Authority for appeal within five working days from the date of receipt of the accounting officer's decision.



(2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if -

(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision".

(Emphasis supplied)

The above provision states that if an accounting officer has not issued a decision within the time prescribed under the law, a tenderer may submit its complaint directly to the Appeals Authority within five working days.

In substantiating whether the Appellant complied with the requirements of the above provisions in filing this Appeal, we reviewed the record of Appeal and observed that the Respondent cancelled the Tenders through a letter dated 10th February 2025 which was received by the Appellant on 10th March 2025. Aggrieved with the cancellation, the Appellant submitted a complaint to the Respondent through a letter dated 13th March 2025. However, there was no response from the Respondent within fourteen days as required.

Paragraph 6 of the Seventh Schedule to the PPP Regulations requires a tenderer to submit a complaint to the Appeals Authority if the accounting officer of the contracting authority has not issued its decision within the specified time limit. Section 121(2)(a) of the Act requires a complaint to be lodged to the Appeals Authority within five working days after becoming aware of the circumstances giving rise to a complaint.



Counting from the date the Appellant submitted its complaint; the Respondent was required to issue its decision by 27th March 2025. Since it failed to do so, the Appellant was required to lodge its Appeal to the Appeals Authority on or by 8th April 2025. To the contrary, the Appellant lodged its Appeal on 16th July 2025 after a lapse of 66 working days.

The Appellant contended that before filing this Appeal it referred the matter to the PPP Centre for amicable settlement which was unsuccessful. We noted that, according to the requirements of paragraph 6 of the Seventh Schedule to the PPP Regulations, the Appellant was not obligated to refer the matter to the PPP Centre after not receiving the Respondent's decision. Instead, the Appellant was required to submit directly its complaint to the Appeals Authority, as the PPP Centre is not one of the bodies authorized to resolve disputes arising from the public private partnership procurement process. Therefore, the Appellant's referral of the matter to the PPP Centre was at its own peril.

We further considered the Appellant's contention that the cause of action arose after it received the Respondent's letter dated 4th July 2025. We reviewed the referred letter and find that it was a response to the Appellant's letter titled "Notice of Intention to refer the dispute to the Appeals Authority". The letter did not present a new reason for cancelling the Tenders; rather, it informed the Appellant that the Tenders in question had already expired due to lapse of the tender validity period, a fact that ought to have also been known to the Appellant.

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In view of the above facts, we reject the Appellant's contention that the cause of action for this Appeal arose through the letter dated 4th July 2025. The reasons for cancellation of the Tenders remained to be as contained in the letter dated 10th February 2025.

Regarding the case of ***Jitesh Jayantilal Ladwa and Another v. Dhirajlal Walji Ladwa and Others*** (supra) cited by the Appellant, we distinguish it to the circumstances of this Appeal as there were no two decisions issued by the Respondent on the cancellation of the tenders. As stated earlier, we find there was only one decision issued through the letter dated 10th February 2025.

We are in agreement with the Respondent's position as stated in the case of ***Alwyn Bob Mutagulwa v. Tanzania Electric Supply Limited*** (supra) that negotiations or communications between parties do not stop the time from running for one to institute legal proceedings. Legal proceedings are to be instituted within the time specified under the law regardless of other measures invoked.

Given the above position, we find the Appeal to be time barred for being filed in contravention of section 121(1) and (2) (a) of the Act.

We therefore conclude the issue in the affirmative that the Appeal is not properly before the Appeals Authority. We hereby dismiss the Appeal and order each party to bear its own costs.

It is so ordered.

This ruling is binding and can be enforced in accordance with section 121(7) of the Act.



The Right of Judicial Review as per section 125 of the Act is explained to the parties.

This ruling is delivered in the presence of the parties this 14th day of August 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....

2. MR. RAPHAEL MAGANGA.....