

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 28 OF 2024 - 2025**

**BETWEEN**

**M/S SEC MORE INVESTMENT LIMITED.....APPELLANT**

**AND**

**TANZANIA AGRICULTURAL DEVELOPMENT  
BANK.....RESPONDENT**

**RULING**

**CORAM**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwambo               | - Member      |
| 3. Eng. Stephen Makigo              | - 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. Mugambila Augustine | - Head of Legal Department |
| 2. Mr. Simon Emmanuel      | - Managing Director        |



## FOR THE RESPONDENT

- |                       |                                 |
|-----------------------|---------------------------------|
| 1. Mr. Emil Lukiko    | - Principal Legal Officer       |
| 2. Ms. Neema Madoffe  | - Procurement Manager           |
| 3. Mr. Gulisha Amkeni | - Principal Procurement Officer |

M/S SEC More Investment Ltd (hereinafter referred to as "**the Appellant**") has lodged this Appeal against **Tanzania Agricultural Development Bank** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR209/2023/2024/G/06/2 for Supply and Installation of Milk Processing Machinery and Handling Equipment (hereinafter referred to as "**the Tender**"). The Tender consisted of four lots and the Appeal pertains specifically to Lot 2 which involves the Supply and Installation of Pasteurizing Machine.

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: -

The Tender was conducted through International Competitive Tendering method as specified in the Public Procurement Act, No.10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 3<sup>rd</sup> July 2024, the Respondent through National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in the



Tender. The deadline for submission of tenders was set on 24<sup>th</sup> July 2024. On the deadline, the Respondent received five tenders including that of the Appellant in respect of Lot 2.

The received tenders were subjected to evaluation. After completion of the evaluation process the Evaluation Committee recommended award of the Tender for Lot 2 to M/S Bajaj Processpack Ltd. The recommended contract price was United States Dollars Twenty-Seven Thousand Two Hundred Seventy-Five only (USD 27,275) VAT Exclusive.

The Tender Board approved the award of the Tender through Circular Resolution No. 94 of 2024 as recommended by the Evaluation Committee subject to successful negotiation. Negotiations successfully took place on 13<sup>th</sup> November 2024. The Tender Board approved minutes of negotiations through Circular Resolution Number 95 of 2024 dated 19<sup>th</sup> November 2024.

On 22<sup>nd</sup> November 2024, the Respondent issued the Notice of Intention to award the Tender. The Notice stated that the Respondent intended to award the Tender to M/S Bajaj Processpack Ltd. It also specified that the recommended contract price is Twenty-Seven Thousand Two Hundred Seventy-Five United States Dollars only (USD 27,275.00) VAT Exclusive. In addition, the Notice stated that after combining technical and financial evaluation, the Appellant's tender was ranked the fourth. Thus, it was not considered for award of the Tender.

Dissatisfied with the reason given for its disqualification, on 29<sup>th</sup> November 2024, the Appellant applied for administrative review to the Respondent. The Respondent through a letter dated 4<sup>th</sup> December 2024, issued its

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decision which rejected the application for administrative review. The said letter was sent to the Appellant through its postal address and on 11<sup>th</sup> December 2025 through its e-mail address. Aggrieved further, on 31<sup>st</sup> December 2024, the Appellant filed this Appeal to the Appeals Authority.

In this Appeal the Appellant disputes the reason given for its disqualification. The Appellant stated that the Notice of Intention to award indicated that its tender was ranked the fourth after the technical and financial scores were combined. The Appellant stated that the Tender was for supply of goods, however the Respondent treated it as the Tender for provision of consultancy services. In addition, the Tender Document issued by the Respondent did not specify that the Tender would be conducted using Quality and Cost Based Selection (QCBS) method whereby weighted scores would be given to technical and financial proposals. Thus, the Respondent's act of evaluating the tender for supply of goods by using the QCBS method contravened the law.

Upon receipt of the Appeal, the Appeals Authority notified the Respondent about its existence and required it to submit a Statement of Reply. In its Statement of Reply, the Respondent stated that the Appellant's tender was not considered for award as after combining technical and financial scores, the Appellant's tender was ranked the fourth. The Respondent stated further that evaluation of tenders was conducted using the QCBS method. Thus, a tenderer with the highest score was recommended for award.

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In its Statement of Reply, the Respondent raised a Preliminary Objection (PO) on a point of law that the Appeal is time barred.

When the matter was called on for hearing the following issues were framed, namely: -

**1.0 Whether the Appeal is properly before the Appeals Authority;**

**2.0 Whether the disqualification of the Appellant's tender was justified;**

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

Having framed the issues, parties were required to address the Appeals Authority on the first issue which related to the PO raised by the Respondent before embarking on the merit of the Appeal.

#### **SUBMISSIONS BY THE RESPONDENT ON THE PO**

The Respondent's submissions were made by Mr. Emil Lukiko Principal Legal Officer. He commenced his submissions on the first issue by stating that the Appellant received the Notice of Intention to award the Tender on 22<sup>nd</sup> November 2024. Aggrieved with the reason given for its disqualification, on 29<sup>th</sup> November 2024 the Appellant applied for administrative review to the Respondent. The Respondent issued its decision on 4<sup>th</sup> December 2024 which was sent to the Appellant on the same date through its postal address. The Respondent's decision was also sent to the Appellant through its e-mail address on 11<sup>th</sup> December 2024.

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The legal officer submitted that if after receipt of the Respondent's decision the Appellant was still aggrieved or if the Appellant did not receive the Respondent's decision within five working days in which the Respondent was required to issue its decision, the Appellant should have filed its Appeal to the Appeals Authority within five working days in accordance with Section 121(1) of the Act. To the contrary, the Appellant filed this Appeal on 31<sup>st</sup> December 2024, 14 days afterwards. Therefore, the Appeal is not properly before the Appeals Authority for being filed out of time specified under the law. Thus, the legal officer prayed for the dismissal of the Appeal.

#### **REPLY BY THE APPELLANT ON THE PO**

The Appellant's submissions on the first issue were made by Mr. Mugambila Augustine, Head of Legal Department. He commenced his submissions by stating that Section 121(1) of the Act relied upon by the Respondent is not applicable in the circumstances of this Appeal. This is due to the reason that the Appellant could not have filed this Appeal as it had not received the Respondent's decision within the time prescribed under the law. Mr. Mugambila submitted that the Appellant received the Respondent's decision on 20<sup>th</sup> December 2024. It filed this Appeal on 31<sup>st</sup> December 2024 within five working days after receipt of the Respondent's decision.

Mr. Mugambila submitted that the Appeal was filed within time since Sections 120(8) and 121(1) of the Act contradict each other in respect of the time for filing an Appeal to the Appeals Authority. On the one hand

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Section 120(8) of the Act, allows a tenderer to submit an appeal within five working days if it has not received the procuring entity's decision within the time prescribed under the Act. On the other hand Section 121(1) of the Act requires a tenderer to submit an appeal upon receipt of the procuring entity's decision. He stated further that if the Appeals Authority will uphold this PO, such an act would allow the Respondent to benefit from its own wrong. The Respondent delayed in issuing its decision, thus it cannot challenge the validity of this Appeal as it was filed after the Appellant had received the Respondent's decision.

Mr. Mugambila stated further that the Appeals Authority as a quasi-judicial organ is required to observe the Constitution of the United Republic of Tanzania. The Constitution requires the overriding objective principle to be considered in delivery of justice. In view of this position the Appellant requested the Appeals Authority to consider the overriding objective principle.

Mr. Mugambila concluded his submissions by stating that the Appeal has been filed within the time prescribed under the law, therefore should be entertained by the Appeals Authority.

### **REJOINDER BY THE RESPONDENT**

In its brief rejoinder, Mr. Lukiko submitted that the overriding principle cannot be applied in the circumstances of this Appeal. This is due to the reason that the Act has clearly stipulated the time limit within which a dissatisfied tenderer has to file an Appeal to the Appeals Authority. He stated that the Appellant having not received the Respondent's decision





within the specified time limit, it was required to file an Appeal to the Appeals Authority. The Appellant was not required to wait for the Respondent's decision after the lapse of the time limit within which the decision was to be issued. The Appellant should have proceeded to file its Appeal to the Appeals Authority within five working days after the lapse of the time limit in which the Respondent was required to have issued its decision. Thus, it is clear that the Appeal has been filed out of time and should be dismissed with costs.

### **ANALYSIS BY THE APPEALS AUTHORITY ON THE PO**

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

In resolving this issue, the Appeals Authority reviewed Sections 120(6) and (8) and 121(1) and (2)(a) of the Act. The referred provisions provide guidance on the number of days within which the accounting officer is required to issue its decision after receipt of an application for administrative review and the time limit for a tenderer to file an appeal to the Appeals Authority. Sections 120(6) and (8) and 121(1) and (2)(a) of the Act read as follows: -

*"120.- (6) Within five working days after the submission of the complaint or dispute, or within seven days in case an independent review panel is constituted, the accounting officer shall 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.*





*(8) Where the accounting officer does not issue a decision within the time specified in subsection (7), the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 121 and upon institution of such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.*

*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."*

The above quoted provisions state clearly that the accounting officer is required to issue its decision within five working days from the date it received the tenderer's application for administrative review. If the accounting officer forms an independent review team after receipt of an application for administrative review, it is required to issue its decision within seven working days. A tenderer which would still be dissatisfied



with the accounting officer's decision, is required to file an Appeal to the Appeals Authority within five working days. In addition, where the accounting officer fails to issue its decision within the time limit prescribed under the law, a dissatisfied tenderer has a right to file an Appeal to the Appeals Authority within five working days.

The Appeals Authority related the above quoted provisions of the law to the facts of this Appeal. It observed that the Respondent issued the Notice of Intention to award to the Appellant on 22<sup>nd</sup> November 2024. After receipt of the said Notice and being dissatisfied with the reason given for its disqualification, on 29<sup>th</sup> November 2024 the Appellant applied for administrative review to the Respondent. The Respondent issued its decision through a letter dated 4<sup>th</sup> December 2024. The Respondent claimed to have sent the said decision to the Appellant through postal address on the same date and through email on 11<sup>th</sup> December 2024.

From the above sequence of events, the Appeals Authority observed that much as the Respondent's decision on the application for administrative review was issued through a letter dated 4<sup>th</sup> December 2024, the same was not received by the Appellant within the time prescribed under the law. During the hearing the Respondent stated that its decision on the Appellant's application for administrative review was sent to the Appellant through postal address on 4<sup>th</sup> December 2024 and by email on 11<sup>th</sup> December 2024. According to the Appellant, it received the Respondent's decision on 20<sup>th</sup> December 2024.

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According to the requirement of the law, the Respondent was required to have issued its decision to the Appellant by 6<sup>th</sup> December 2024. From the record of Appeal, it is clear that the Appellant did not receive the Respondent's decision within the time limit prescribed under the law. Consequently, it was required to file an Appeal to the Appeals Authority within five working days. Counting from 6<sup>th</sup> December 2024, the five working days within which the Appellant was required to file an Appeal to the Appeals Authority expired on or by 16<sup>th</sup> December 2024. The Appellant filed this Appeal to the Appeals Authority on 31<sup>st</sup> December 2024, 8 working days later beyond the time limit prescribed under the law.

The Appeals Authority considered the Appellant's contention that it filed this Appeal after receipt of the Respondent's decision, therefore the same was filed within time. After considering the sequence of events and the requirements of the law, the Appeals Authority rejects the Appellant's proposition in this regard as it was not required to wait for the Respondent's decision after the lapse of time for the issuance of the said decision. The Appellant was required to file its Appeal to the Appeals Authority within five working days in accordance with Section 121(2)(a) of the Act.

Regarding the Appellant's proposition that Sections 120(8) and 121(1) of the Act contradict each other, the Appeals Authority observes that Section 120(8) of the Act allows a tenderer to file an appeal to the Appeals Authority pursuant to Section 121 of the Act if the accounting officer fails to issue its decision within the time stipulated under the law. Section

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121(1) of the Act allows a tenderer if it is dissatisfied with the accounting officer's decision to file an appeal to the Appeals Authority within five working days from the date of receipt of the accounting officer's decision. Section 121(2)(a) of the Act also states categorically that if the accounting officer had not issued its decision within the time specified under the law, a tenderer has a right to file an Appeal to the Appeals Authority. In view of the position of the law, the Appellant was required to read the provisions of Sections 120 and 121 of the Act as a whole without isolation of the sub-sections thereunder. Thus, the Appeals Authority rejects the Appellant's proposition that there is contradiction between Sections 120(8) and 121(1) of the Act.

The Appellant also asked the Appeals Authority to apply the overriding objective principle in this Appeal as the delay in filing the Appeal was caused by the Respondent's failure to issue its decision within the time prescribed under the Act. The Appeals Authority reviewed Article 107A(2) (e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. The referred Article directs the courts to dispense justice without being tied up with technicalities. This Article was given a statutory effect through Written Laws (Miscellaneous Amendments) Act of 2018. This law introduced a new legal principle commonly referred to as Overriding Objective Principle. The objective of the legislature was to promote substantive justice and to facilitate just, expeditious, proportionate and affordable resolution of disputes. The Appeals Authority is of the considered view that the overriding objective principle cannot be applied to cure contravention of the law of limitation. The governing law

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for filing of an Appeal to the Appeals Authority provides for a time limit to do so. Thus, the same cannot be overridden as limitation of time touches the jurisdiction of the Appeals Authority. In the case of ***Martin D. Kumaliya and 117 Others versus Iron and Steel Ltd***, Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 70 of 2018 (Tanzlii) at p.9. In this case, the Court of Appeal declined the invitation to invoke overriding objective principle to cure failure by the party to take necessary steps to appeal within time. In view of this position the Appeals Authority equally rejects the Appellant's contention in this regard.

Under the circumstances, the Appeals Authority concludes the first issue in the negative that the Appeal is not properly before the Appeals Authority for being filed out of time.

The Appeals Authority hereby dismiss the Appeal for being filed out of time. Each party is ordered 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.

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This Ruling is delivered in the presence of the parties this 31<sup>st</sup> day of January 2025.

**HON. JUSTICE (rtd) SAUDA MJASIRI**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. ADV. ROSAN MBWAMBO.....**



**2. ENG. STEPHEN MAKIGO.....**

