

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 30 OF 2024-2025

BETWEEN

M/S MTATIRO AUTO ENGINEERS

AND DECORATORS COMPANY APPELLANT

AND

MZUMBE UNIVERSITY..... RESPONDENT

RULING

CORAM

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| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Dr. William Kazungu | - 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

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| 1. Mr. Mtatiro Chogo | - Director - Mtatiro Auto
Engineers & Decorators Company |
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FOR THE RESPONDENT

- | | |
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| 1. Ms. Lightness Tarimo | - State Attorney- Office of the
Solicitor General |
| 2. Ms. Eveline Kweka | - Acting Corporate Counsel-
Mzumbe University |
| 3. Mr. Castor Komba | - Head of Procurement
Management Unit - Mzumbe
University |

This Appeal was lodged by **M/S Mtatiro Auto Engineers and Decorators Company** (hereinafter referred to as "**the Appellant**") against **Mzumbe University** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR76/2024/2025/G/82 for Supply of Motor Vehicle (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: -

The Tender was conducted through National 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 as "**the Regulations**").

On 14th October 2024, the Respondent invited tenderers through National e-Procurement System of Tanzania (**NeST**) to participate in the Tender. The deadline for submission of tenders was set on 23rd October 2024. On the deadline, six tenders including the Appellant's were received.



The received tenders were subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended an award of the Tender to M/S Yutong Hongkong Limited. The recommended contract price was Tanzania Shillings Four Hundred Thirty Seven Million Two Hundred Thousand only (TZS 437,200,000.00) VAT exclusive for a delivery period of 60 days subject to successful negotiations.

The Tender Board approved an award of the Tender as recommended by the Evaluation Committee subject to successful negotiation. On 30th December 2024, the Respondent issued the Notice of Intention to award the Tender to all tenderers including the Appellant. The notice stated that the Respondent intends to award the Tender to M/S Yutong Hongkong Limited. The proposed contract price was USD One Hundred Fifty-Nine Thousand One Hundred Fifty-Two and Fifty Four Cents (USD 159,152.54) VAT Exclusive for a completion period of 60 days. Furthermore, it stated that the Appellant's tender was not considered as it was not the lowest evaluated tender in terms of financial evaluation stage.

Dissatisfied with the reason given for its disqualification, on 31st December 2024 the Appellant applied for administrative review to the Respondent. Having not received a response from the Respondent, on 22nd January 2025 the Appellant filed this Appeal to the Appeals Authority.

In this Appeal, the Appellant disputes the Respondent's decision of disqualifying its tender. The Appellant contended to have been the lowest bidder hence its disqualification was unfair.



Upon receipt of the Appeal, the Appeals Authority notified the Respondent about the Appeal and required it to submit a Statement of Reply. In its Statement of Reply, the Respondent maintained its position that the Appellant was fairly disqualified. In addition, the Respondent raised a Preliminary Objection (PO) on a point of law to wit that: -

The Appeal has been prematurely filed before the Appeals Authority contrary to Sections 120 (1) and 121 (1) of the Act.

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

- 1. Whether the Appeal is properly before the Appeals Authority;**
- 2. Whether the disqualification of the Appellant's tender was justified; and**
- 3. 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 merits of the Appeal.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The Respondent's submissions on the first issue were made by Ms. Lightness Tarimo, State Attorney from the Office of the Solicitor General. Ms. Tarimo commenced her submissions by stating that the Appeal has been filed prematurely before the Appeals Authority contrary to the requirement of Section 120 (1), (4) and (6) of the Act. The said provision requires an aggrieved



tenderer to submit its complaint to the accounting officer before submitting an Appeal to the Appeals Authority.

Ms. Tarimo submitted further that if the Appellant was dissatisfied with its disqualification, it ought to have submitted an application for administrative review to the Respondent's Accounting Officer within five working days from the date it received the Notice of Intention to award in compliance with Section 120(4) of the Act. To the contrary, the Appellant filed its Appeal directly to the Appeals Authority. Thus, the Appeal was filed prematurely.

In addition, Ms. Tarimo expounded that even if it can be assumed that the Appellant filed properly its application for administrative review to the Respondent's Accounting Officer, the appeal to the Appeals Authority was filed out of time contrary to the requirement of Section 121 (2) (a) of the Act. She averred that the above provision allows a tenderer to file an appeal directly to the Appeals Authority within five working days if the accounting officer fails to issue its decision within the specified time limit. She stated further that if an application for administrative review was filed on 31st December 2024 then counting the days from the date when the Respondent was supposed to issue its decision on 8th January 2025, the Appellant was supposed to file its Appeal on or by 15th January 2025. Therefore, since the Appeal was filed on 22nd January 2025, she finds the same to have been filed out time after a lapse of four working days. Ms. Tarimo cited **PPAA Appeal Case No. 2 of 2021-22 between MS Aqua Power Tanzania Limited (T/A Turbine Tech) against Tanzania Electric Supply Company Limited and Ms. CSI Energy Group Tanzania Limited** to



support her submissions. In the cited case, the Appeals Authority found the Appeal to have been filed pre-maturely. In addition, the Appellant had not exhausted the remedies provided by the law before filing the Appeal to the Appeals Authority. Thus, the Appeals Authority held that the Appeal was not properly before it.

In concluding her submissions, Ms. Tarimo prayed to the Appeals Authority to dismiss the Appeal with costs.

SUBMISSIONS BY THE APPELLANT ON THE PO

The Appellant's submissions were made by Mr. Mtatiro Chogo, Director of the Appellant's Company. He stated that, this Appeal was not filed prematurely to the Appeals Authority as alleged by the Respondent. The Appellant submitted its application for administrative review to the Respondent's Accounting Officer before filing his appeal to the Appeals Authority. He stated further that its application for administrative review was submitted to the Respondent on 4th January 2025. In addition, he stated confidently that its application for administrative review was well received by the Respondent as it was sent to one william.mwegoha@mu.ac.tz who is the Respondent's Accounting Officer. To cement his argument to that effect, he produced evidence of a printout copy of the said email dated 4th January 2025.

When asked by the Members of the Appeals Authority on the issue of whether its Appeal was filed to the Appeals Authority out of time, Mr. Chogo stated that he was not aware that the same was filed out of time. However, after counting the days based on the provision of the law he conceded that



the Appeal was filed out time. Nevertheless, the Appellant prayed to the Appeals Authority to grant it a special consideration, based on the reason that the application for administrative review was properly submitted to the Respondent. Thus, the Appeals Authority should proceed with the hearing of the Appeal on merits.

REJOINDER BY THE RESPONDENT ON THE PO

The Respondent's submissions on the rejoinder were made by Ms. Tarimo. She maintained that the Appeal was filed prematurely before the Appeals Authority contrary to the requirement of the law. The law mandates an aggrieved tenderer to submit an application for administrative review to the Respondent before filing an Appeal to the Appeals Authority. With regard to the copy of the printout of email produced by the Appellant purporting to be an email for application for administrative review sent to the Respondent, Ms. Tarimo averred that the same was not received by the Respondent. However, when asked by the Appeals Authority on the name of the person addressed in that email one William Mwegoha and the email address used, Ms. Tarimo acknowledged that he is the Accounting Officer of the Respondent. She stated that the said email is a personal email which was not supposed to receive official communications. The official email designated to receive official communications has been provided in the Tender document and NeST. She added that, the official email that the Appellant should have used for communication is mu@mzumbe.ac.tz. She concluded her submissions and prayed to the Appeals Authority to dismiss the Appeal with costs.



ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

1. Whether the Appeal is properly before the Appeals Authority

In resolving this issue, the Appeals Authority reviewed Sections 120 (1), (4) & (6) and 121 (1) & (2) (a) of the Act and Regulation 108(1) of the Regulations which provide guidance on the submission of an application for administrative review to the accounting officer and an Appeal to the Appeals Authority. The provisions read as follows: -

"120. -(1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets 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.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within five 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) 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;



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;

108.-(1) *Maombi yoyote ya mapitio ya malalamiko au mgogoro yatawasilishwa kwa afisa masuuli na nakala kwa Mamlaka kupitia mfumo wa kielektroniki wa ununuzi wa umma ndani ya siku tano za kazi baada ya mzabuni kufahamu au alipopaswa kufahamu mazingira yanayosababisha malalamiko au mgogoro huo".*

[Emphasis Added]

The above quoted provisions indicate clearly that if a tenderer is not satisfied with the procuring entity's decision, it is required to file an application for administrative review to the respective procuring entity within five working days of becoming aware of the circumstances giving rise to a complaint. The procuring entity is required to issue its decision within five working days



and where it fails to do so, a tenderer is required to file an Appeal to the Appeals Authority within five working days.

In ascertaining whether the Appeal is properly before the Appeals Authority, the Appeals Authority reviewed the record of Appeal. It observed that the Respondent issued the Notice of Intention to award on 30th December 2024. Upon receipt of the said Notice and being dissatisfied with its disqualification, the Appellant applied for administrative review to the Respondent through a letter dated 31st December 2024 which was sent to the Respondent on 4th January 2025 via the email address of william.mwegoha@mu.ac.tz who is the Respondent's Accounting Officer.

Having found that the Appellant's application for administrative review was submitted on 4th January 2025, the Appeals Authority considered Section 120 (4) of the Act which requires a Procuring Entity to entertain an application for administrative review within five working days of becoming aware of the circumstances giving rise to a complaint. The circumstances giving rise to a complaint emanated from the Notice of Intention to award the Tender dated 30th December 2024 which was communicated to the Appellant. The Appeals Authority reviewed the Appellant's application for administrative review. It found that the Appellant complied with the five working days required for submitting an application for administrative review.

The Appeals Authority observed that after receipt of the Appellant's application for administrative review, the Respondent was required to issue its decision within five working days or seven working days if it has formed



an independent review team pursuant to Section 120 (6) of the Act. The Respondent was required to issue its decision on or by 10th January 2025. However, no decision was issued.

The Respondent having failed to issue its decision within the time limit prescribed under Section 121 (2) (a) of the Act, the Appellant was required to file its Appeal directly to the Appeals Authority within five working days from the date the Respondent ought to have issued a decision. The Appellant was required to file the Appeal on or before 17th January 2025. To the contrary, the Appellant filed this Appeal to the Appeals Authority on 22nd January 2025, beyond two working days prescribed under the law. From the above observations and taking into account that the Appellant conceded to the delay in filing its appeal, the Appeals Authority is of the settled view that the Appeal has been filed out of time contrary to the requirement of Section 121 (2) (a) of the Act.

The Appeals Authority considered the Appellant's prayer that, since the application for administrative review was properly submitted to the Respondent, the Appeals Authority should proceed with the determination of its Appeal on merits. Given the requirements of the law, the Appeals Authority rejects the Appellant's prayer for having no basis.

Consequently, the Appeals Authority sustains the preliminary objection and concludes the first issue in the negative that the Appeal is not properly before the Appeals Authority for being filed out of time.



In view of the findings on issue No. 1, the Appeal is hereby dismissed and 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 27th day of February 2025.

HON. JUSTICE (rtd) SAUDA MJASIRI


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CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO

2. DR. WILLIAM KAZUNGU