

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 35 OF 2024-2025

BETWEEN

M/S LAJA ENTERPRISES AND COMPANY LIMITED.....APPELLANT

AND

MASWA DISTRICT COUNCIL.....RESPONDENT

RULING

CORAM

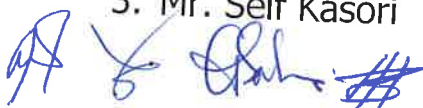
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|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Dr. Gladness Salema | - Member |
| 4. Eng. Lazaro Loshilaari | - Member |
| 5. Mr. James Sando | - 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. Anthony Maufi | - Managing Director |
| 2. Ms. Rose Ndege | - Advocate - Ndege Attorneys & Company |
| 3. Mr. Seif Kasori | - Procurement Officer |



4. Mr. Charles Mukama

- Company Secretary

FOR THE RESPONDENT

1. Mr. Philip Shoni

- Head of Legal Unit

2. Mr. Frank Mpiluka

- Legal Officer

3. Dr. Hadija Zegeega

- District Medical Officer (DMO)

4. Ms. Elinight Mmari

- Head of Procurement

Management Unit (HPMU)

The Appeal was lodged by **M/S Laja Enterprises and Company Ltd** (hereinafter referred to as "**the Appellant**") against **Maswa District Council** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Quotation No. 83P3/2024/2025/G/273 for Procurement of Medical Equipment - Health, Social Welfare and Nutrition Services Division (for Health Facilities) (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 using the Quotation 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 13th December 2024, the Respondent through the National e-Procurement System of Tanzania (NeST) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was set

on 18th December 2024. On the deadline, the Respondent received three tenders including that of the Appellant.

The received tenders were subjected to an evaluation process. After completion, the Evaluation Committee recommended award of the Tender to the Appellant. The recommended contract price was Tanzania Shillings Three Hundred Ninety-Nine Million One Hundred Ninety Thousand only (TZS 399,190,000.00) VAT Exclusive. The Respondent approved the award of the Tender to the Appellant through a Circular Resolution dated 19th December, 2024. On 18th December 2024, the Respondent issued the Notice of Intention to award to the Appellant which stated that the Respondent intended to award the contract to the Appellant at the contract sum of TZS 399,190,000.00 VAT exclusive.

On 25th December 2024, the Respondent issued an award letter to the Appellant. It required the Appellant to submit a Performance Securing Declaration within fourteen (14) days. As requested, the Appellant submitted the Performance Securing Declaration to the Respondent on 27th December 2024.

The Appeal record shows that on 7th February 2025, the Appellant sent a letter to the Respondent, reminding it about signing the contract. Again, on 9th March 2025, the Appellant sent another reminder letter to the Respondent. The Appeal record indicates that the Respondent did not respond to both of the Appellant's letters. On 8th April 2025, the Appellant applied for administrative review to the Respondent. After not receiving



the Respondent's decision, the Appellant filed this Appeal with the Appeals Authority on April 17, 2025.

In this Appeal, the Appellant disputes the Respondent's failure to sign the contract within fourteen (14) days as required by section 69(8) of the Act read together with regulation 240(1) of the Regulations. The Appellant stated that after being awarded the Tender, on 27th December 2024, it submitted the Performance Securing Declaration to the Respondent as required. The Appellant through letters dated 7th February and 19th March 2025 reminded the Respondent about signing of the contract. However, there were no responses from the Respondent. Consequently, on 8th April 2025, the Appellant applied for administrative review. When the Respondent did not respond to the Appellant's application, the Appellant filed this Appeal on 17th April 2025.

After receipt of the Appeal, the Appeals Authority notified the Respondent about the existence of the Appeal and required it to submit a Statement of Reply. In its Statement of Reply, the Respondent stated that after awarding the Tender to the Appellant, it realised that the whole Tender process was invalid as it did not comply with requirements of regulation 136(8) and (9) of the Regulations. Considering this information, the Respondent's Accounting Officer claimed he had exercised the authority granted to him under sections 38(1)(i) & (j) and 50(1) of the Act by sending a letter to the Medical Stores Department (MSD) to inquire about the availability of medical supplies included in the Tender awarded to the Appellant.

The Respondent stated further that it suspended signing of the contract with the Appellant pending consultation with the MSD. And that signing of the contract before obtaining MSD's status on the availability of the required medical supplies would cause loss to the Appellant. It added that while working on the procedural flaws noted in the Tender, the Appellant submitted complaints to different authorities which summoned the Respondent's officials to clarify on the matter. Thus, the Respondent was unable to notify the Appellant the reasons which led the contract not to be signed timely. Moreover, it claimed that the Appellant should not have incurred any loss, as regulation 240(3) of the Regulations specifies that preparations for the required medical supplies were not supposed to begin until the contract was officially signed.

When the matter was called on for hearing and at the time of framing up the issues, the Respondent raised a Preliminary Objection (PO) on a point of law to wit: "***that the Appeal is not properly before the Appeals Authority for contravening the requirements of sections 120(4) and 121(2)(a) of the Act***".

In the light of this development the following issues were framed: -

- 1.0 Whether the Appeal is properly before the Appeals Authority;**
- 2.0 Whether the Respondent was justified for not signing the contract with the Appellant; and**
- 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 raised PO by the Respondent before embarking on the substantive merits of the Appeal.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The Respondent's submissions were made by Mr. Philip Shoni, Head of the Legal Unit. He commenced his submissions on the PO by stating that the Appellant had a right to submit a complaint to the Respondent within five (5) working days after lapse of fourteen days within which it was required to sign the contract with the Respondent. He argued that the Appellant's complaint ought to have been submitted in compliance with section 120(4) of the Act.

Mr. Shoni submitted that the Appellant in its Statement of Appeal relied on regulation 240 of the Regulations which requires a procuring entity to sign the contract with the successful tenderer within fourteen (14) days from the date it would have submitted the required performance security. The Appellant pointed out clearly that the Performance Securing Declaration for the awarded contract was submitted to the Respondent on 27th December 2024. It also attached two letters dated 7th February 2025 and 19th March 2025 which reminded the Respondent about the signing of the contract. He pointed out that from the facts contained in the Appellant's Statement of Appeal, the Appellant was aware of the time limit within which it was required to sign the contract with the Respondent.



Mr. Shoni submitted that counting from 27th December 2024, when the Appellant submitted the required performance security, fourteen (14) working days within which the contract was to be signed expired on 17th January 2025. After not signing the contract, the Appellant was required to submit its complaint to the Respondent within five (5) working days in compliance with section 120 (4) of the Act. Counting from 17th January 2025, five working days lapsed on 24th January 2025.

Mr. Shoni stated that had the Appellant submitted its complaint in compliance with the law, the Respondent was required to issue its decision within five (5) working days pursuant to section 120(6) of the Act. If the Respondent had failed to issue its decision within time, the Appellant should have submitted an Appeal to the Appeal Authority within five (5) working days pursuant to section 121(2) (a) of the Act. Counting from 24th January 2025, the Appeal should have been filed to the Appeals Authority on or before 31st January 2025. To the contrary, the Appeal was filed on 17th April 2025 after lapse of more than sixty (60) days.

Mr. Shoni stated further that the Respondent did not reply to the two reminder letters about signing of the contract and the complaint submitted by the Appellant on 8th April 2025, since they were submitted in contravention of the law.

Under these circumstances, Mr. Shoni prayed for the dismissal of the Appeal as it was filed in contravention of the law.



REPLY BY THE APPELLANT ON THE PO

The Appellant's submissions on the PO were made by Mr. Anthon Maufi, Managing Director. He commenced by stating that the Appellant was among the tenderers which were invited to submit quotations for the Tender and that the Appellant submitted timely its quotation. On 18th December 2024, the Appellant received the Notice of Intention to award. The Notice indicated that the Respondent intended to award the contract to the Appellant at the contract sum of TZS 399,190,000.00 VAT exclusive. On 25th December 2024, the Appellant received a letter of award of the contract. The letter also required it to submit a Performance Securing Declaration. On 27th December 2024, the Appellant submitted the Performance Securing Declaration to the Respondent.

Mr. Maufi submitted that after receipt of the Performance Securing Declaration, the Respondent was required to sign the contract with the Appellant within fourteen (14) working days. However, the contract was not signed. The Appellant several times visited the Respondent's office in following up the matter. In addition, the Appellant reminded the Respondent about the signing of the contract through letters dated 7th February 2025 and 19th March 2025. Despite all the efforts made, there were no responses from the Respondent about the signing of the contract.

Mr. Maufi further submitted that after all efforts at ensuring that the contract is signed ended in vain, the Appellant applied for administrative review to the Respondent on 8th April 2025. The Respondent did not issue its decision within five working days as required by the law. Hence, on 17th

April 2025, the Appellant filed this Appeal in accordance with section 121(2) (a) of the Act. Therefore, the Appeal was filed within time prescribed under the law, Mr. Maufi contended.

In view of the above submissions, Mr. Maufi prayed that the Appeals Authority rejects the raised PO and proceed to determine the Appeal on the substantive merits.

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 revisited the Respondent's PO that is, whether the Appeal is properly before the Appeals Authority for being filed in contravention of sections 120 (4) and 121(2)(a) of the Act. In response to the PO, the Appellant contended to have filed the Appeal in accordance with the requirements of the law.

In ascertaining if the Appeal is properly before it, the Appeals Authority reviewed sections 120 (4) and 121(2)(a) of the Act which read as follows: -

"120.-(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.

121.-(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 quoted provisions state in clear terms that if a tenderer is dissatisfied with the procuring entity's conduct with respect to tender, it is required to apply for administrative review to the accounting officer of the respective procuring entity within five working days after becoming aware of the circumstances giving rise to the complaint. And if a procuring entity has not issued its decision within the specified time limit, a tenderer is required to lodge its complaint to the Appeals Authority within five working days.



The Appeals Authority reviewed the record of Appeal and observed that the Appellant was among the tenderers who participated in the Tender. The Appellant received the Notice of Intention to award on 18th December 2024 which indicated that the Respondent intended to award it the Tender. The Respondent awarded the contract to the Appellant through a letter dated 25th December 2024. The same letter required the Appellant to submit a Performance Securing Declaration within fourteen days. On 27th December 2024, the Appellant submitted a Performance Securing Declaration. The record of Appeal indicates that the Respondent did not finalize the contract signing after the Appellant had submitted the Performance Securing Declaration. According to section 69(8) and (12) of the Act read together with regulation 240(1) of the Regulations, a tenderer who has been awarded a tender is required to sign the contract with the procuring entity within fourteen working days after complying with all the contract's requirements. section 69(8) and (12) of the Act and regulation 240(1) of the Regulations read as follows: -

"69. (8) Where a tender has been accepted by the accounting officer, the procuring entity and the person whose tender has been accepted shall enter a contract for the supply of goods, provision of services or undertaking of works.



(12) A procurement contract shall enter into force upon being signed by parties to the contract.

240.-(1)Bila kuathiri masharti yanayohusu uhakiki wa mkataba, taasisi nunuzi na mtu ambaye zabuni yake imekubaliwa watapaswa, iwapo zabuni imekubaliwa na afisa masuuli, kuingia katika mkataba wa uwasilishaji wa bidhaa, utoaji wa huduma au kazi za ujenzi ndani ya siku kumi na nne za kazi baada ya kuzingatia masharti yote kabla ya kusainiwa kwa mkataba".

(Emphasis Supplied)

The Appeals Authority applied the above quoted provisions to the facts of this Appeal and observed that after the Appellant submitted the Performance Securing Declaration to the Respondent, the contract between the two parties was not signed as required by the law. According to regulation 240(1) of the Regulations, the contract between the parties was to be signed within fourteen working days from the date the Appellant submitted the Performance Securing Declaration. Counting from 27th December 2024 when the Appellant submitted the Performance Securing Declaration, the contract was required to be signed by 17th January 2025.

The Appeals Authority further observed that since the contract was not signed by 17th January 2025, the Appellant was required to



apply for administrative review to the Respondent. According to section 120(4) of the Act, an application for administrative review was to be submitted within five working days. Counting from 17th January 2025 when the Appellant was required to sign the contract, the five working days within which the Appellant was required to apply for administrative review to the Respondent expired on 24th January 2025.

The record of Appeal indicates that the Appellant did not apply for administrative review, and instead kept reminding the Respondent to proceed with signing of the contract through letters dated 7th February 2025 and 19th March 2025 respectively.

Regulation 240(1) of the Regulations requires a contract to be signed between the parties within fourteen working days after completion of all the contract requirements. The Appellant was therefore required to challenge the Respondent's omission of signing the contract within the stipulated time. If the Appellant had applied for administrative review to the Respondent by 24th February 2025, the Respondent was required to issue its decision within five working days, that is by 31st January 2025. And if the Respondent did not issue its decision within the prescribed time or alternatively, if the Appellant had been unsatisfied with the Respondent's decision, it was required to file its Appeal to the Appeals Authority by 7th February 2025 pursuant to section 121(2)(a) of the Act.



In view of the above position, the Appeals Authority is of the settled view that since the contract between the parties was not signed within the time stipulated under the law, the Appellant was required to invoke sections 120(4) and 121(2) (a) of the Act by applying for both administrative review and subsequently this Appeal within the time limits prescribed under the law.

Since the Appellant's application for administrative review and this Appeal were filed beyond the time limit stipulated under the law, the Appeals Authority upholds the Respondent's PO that the Appeal has been filed contrary to the requirements of the law.

In determining the 1st issue, the Appeals Authority sustains the PO and upholds the first issue in the negative that the Appeal is not properly before it for being filed out of time.

In view of the above finding, the Appeals Authority cannot delve into the remaining issues. Therefore, the Appeals Authority hereby dismisses 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.



This Ruling is delivered in the presence of the Appellant and in the absence of the Respondent though duly notified on this 22nd day of May 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



.....
CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU



2. DR. GLADNES SALEMA.....



3. ENG. LAZARO LOSHILAARI

