

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 46 OF 2024-25

BETWEEN

M/S ONE STOP GENERAL SUPPLY

COMPANY LTD.....APPELLANT

AND

PUBLIC PROCUREMENT REGULATORY

AUTHORITY.....1ST RESPONDENT

NATIONAL SOCIAL SECURITY FUND.....2ND RESPONDENT

RULING

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Eng. Lazaro Loshilaari | - Member |
| 3. Dr. Gladness Salema | - 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. Haidari Rashid | - Chief Executive Officer |
| 2. Ms. Hafsa Rashid | - Company Director |



3. Mr. Armando Swenya
4. Mr. Hangaiko Abbas

- Advocate - Smart Lawyers
- Legal Officer

FOR THE 1ST RESPONDENT

1. Mr. Ayoub Sanga
2. Mr. Boaz Msoffe
3. Mr. Mathew Fuko
4. Ms. Careen Masonda
5. Mr. Hilmar Danda

- Senior State Attorney - Office of the Solicitor General (OSG)
- State Attorney - OSG
- State Attorney - OSG
- State Attorney - OSG
- Principal State Attorney – Public Procurement Regulatory Authority
- Senior Legal Officer – PPRA
- Legal Officer
- Legal Officer - PPRA

FOR THE 2ND RESPONDENT

1. Mr. Ayoub Sanga
2. Mr. Boaz Msoffe
3. Mr. Mathew Fuko
4. Ms. Careen Masonda
5. Mr. Benedicto Mahela

- Senior State Attorney - OSG
- State Attorney - OSG
- State Attorney - OSG
- State Attorney - OSG
- Director of Procurement - National Social Security Fund (NSSF)
- State Attorney - NSSF
- Principal Procurement Officer
- Procurement Officer
- Legal Officer

6. Mr. Daudi Maneno
7. Ms. Antoinette Mukama
8. Mr. Erasto Mkude
9. Mr. Baraka Mgaya



This Appeal has been lodged by **M/S One Stop General Supply Company Ltd** (hereinafter referred to as "**the Appellant**") against the **Public Procurement Regulatory Authority** known by its acronym "**PPRA**" (hereinafter referred to as "**the 1st Respondent**") and the **National Social Security Fund** also known by its acronym "**NSSF**" (hereinafter referred to as "**the 2nd Respondent**").

It is in respect of a debarment decision issued by the 1st Respondent against the Appellant for failure to sign a contract in Tender No. 191/2024/2025/G/05 for Supply of Networks Switches (hereinafter referred to as "**the Tender**").

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 13th August 2024, the 2nd Respondent advertised the Tender through the National e- Procurement System of Tanzania (NeST) done using the National Competitive Tendering method as specified under 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 to "**the Regulations**").

On 30th September 2024, the 2nd Respondent issued a Notice of Intention to award the Tender to the Appellant at the contract price of Two Hundred Thirty-Nine Million Eight Hundred Thousand only (TZS 239,800,000.00) VAT exclusive for a delivery period of 90 days. It was followed with the notification of award dated 9th October 2024.

On 4th October 2024, the Appellant wrote a letter to the 2nd Respondent which stated that the latter was unable to execute the contract within



the stipulated timeframe due to unforeseen inventory management challenges. The Appellant claimed to have insufficient stock to meet the required order and that the timeframe given would be inadequate to restock for delivery of the required goods.

The record of Appeal indicates that the 2nd Respondent through a letter with Ref. No. AM.35/234/01A/63 dated 15th October 2024, submitted to the 1st Respondent a debarment proposal against the Appellant for failing to sign the contract as per the Tender Securing Declaration and section 72 of the Act. The 1st Respondent through a letter dated 23rd December 2024, informed the 2nd Respondent that the debarment proposal was not in a debarment proposal submission form as required. After efforts of requiring it to do so failed, the 1st Respondent decided to cease handling of the debarment proposal and subjected the matter for investigation in accordance with section 11 of the Act.

After completion of the investigation, on 8th April 2025, the 1st Respondent required the Appellant to submit its written defence to show cause why it should not be debarred from participating in public procurement for its failure to sign the procurement contract. The 1st Respondent's letter was served to the Appellant through email on 10th April 2025. In turn, the Appellant through a letter dated 17th April 2025 submitted its written defence to the 1st Respondent. On 9th May 2025, the 1st Respondent issued a decision which debarred the Appellant for a period of six months with effect from 8th May 2025.

The record indicates that the debarment decision was served to the Appellant through email on 12th May 2025. On 21st May 2025,



the Appellant observed that its NeST account had been suspended. Consequently, it wrote a letter to the 1st Respondent who did not respond. According to the Appellant, he discovered that it had been debarred from participating in public procurement through a public notice issued on 26th May 2025. Aggrieved with the debarment decision, on 6th June 2025, the Appellant filed this Appeal to the Appeals Authority.

In this Appeal, the Appellant challenges the debarment decision on four grounds namely, failure to be afforded the right to be heard, the 1st Respondent's failure to serve the debarment decision to the Appellant as required by law, the suspension of the NeST account and that the debarment disregarded due process as its written representation was not considered.

Upon receipt of the Appeal, the Appeals Authority notified the Respondents about the existence of the Appeal and required them to submit Statements of Replies. In their joint Statement of Reply, the Respondents raised a Preliminary Objection (PO) on point of law to wit: -

"The Appeal before this Honorable Appeals Authority is untenable in law for being filed out of time contrary to Regulation 106 of the Public Procurement Regulations."

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 Appellant's debarment was justified and in accordance with the law; and

3.0 To what reliefs, if any, are the parties entitled to?

The parties were required to make their submissions on the issues raised above.

SUBMISSIONS BY THE RESPONDENTS ON THE PO

The Respondents submissions on the first issue were made by Mr. Ayoud Sanga assisted by Mr. Boaz Msoffe, both State Attorneys from the office of the Solicitor General. Mr. Msoffe commenced by stating that the right to file this Appeal emanated from the debarment decision. He stated that regulation 106(1) of the Regulations allows a tenderer who is dissatisfied with a debarment decision, to file its Appeal to the Appeals Authority within twenty-one days from the date the debarred tenderer becomes aware of the debarment decision.

Mr. Msoffe submitted that the debarment decision was made on 8th May 2025 and communicated to the Appellant on 12th May 2025 through its registered official e-mail. He averred that counting from 12th May 2025, the twenty-one days for the Appellant to file its Appeal to the Appeals Authority lapsed on 2nd June 2025. And that the Appeal was filed on 6th June 2025, after expiry of four days.

Mr. Msoffe submitted that the email address used to communicate the debarment decision was the same one used to send the notice of intention to debar, which was received by the Appellant and acted upon. He added that the Appellant has not

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disputed owning the email used to communicate the debarment decision. In view of this fact, Mr. Msoffe stated that the debarment decision was received by the Appellant through email on 12th May 2025 and it was therefore required to file its Appeal within twenty-one days in compliance with the law.

In support of his submissions, the learned State Attorney cited **PPAA Appeal Case No. 5 of 2023-24 between M/S Simba Logistics Equipment Supply Ltd versus Tanzania-Zambia Railway Authority**. In this case, the Appeals Authority dismissed the Appeal for being filed out of the time. Under the circumstances, Mr. Msoffe urged the Appeals Authority to dismiss this Appeal for being filed out of time.

Mr. Msoffe emphasized that regulation 106(1) of the Regulations was introduced to cover two purposes, firstly, to assist those who are vigilant, not those who sleep on their rights as captured in the latin maxim "*vigilantibus non dormientibus jura subveniunt*". He argued that the maxim supports the core idea behind limitation of laws that a claimant must act promptly to enforce his rights. It was his view that delays can lead to injustice, loss of evidence or prejudice the other party. Secondly, the learned counsel quoted another latin maxim to wit; "*interest reipublicae ut sit finis litium*" meaning that it is in the interest of the State that there should be an end to litigation. He averred that courts encourage timely resolution of disputes. And that limitation period ensure legal certainty and finality to litigation.

In support of the above cited maxim, He submitted that the law of limitation of time knows no equity as it is a sword that cuts all those caught in. The learned counsel cited the case of **Alwyn Bob Mutagulwa and Three Others versus Tanzania Electric Supply**



Company Limited and Another, Civil Appeal No. 319 of 2023, Court of Appeal of Tanzania, at Dar es Salaam wherein the Court held that:

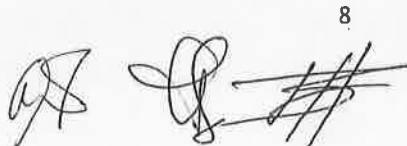
"However, unfortunate it may be for the plaintiff; the Law of Limitation on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

Mr. Msoffe added that the PO raised is a pure point of law as it relates to the limitation of time, and hence the Appellant's failure to comply with the twenty-one days window in filing an Appeal led to the dismissal of the Appeal for being filed contrary to the requirements of the law.

Mr. Msoffe also cited the case of **Moto Matiko Mabanga versus Ophir Energy PLC and Six Others**, Civil Appeal No. 119 of 2021, Court of Appeal, at Dodoma. In this case the Court cited the case of **Ali Shabani and 48 Others versus Tanzania National Roads Agency and the Attorney General**, Civil Appeal No. 261 of 2020, whereby the Court held that: -

"It is clear that an objection as it were on account of time bar is one of the preliminary objections which courts have held to be based on a pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."

Finally, the learned State Attorney prayed for dismissal of the Appeal for being filed out of time.

8


REPLY BY THE APPELLANT

The Appellant's submissions on the first issue were made by Mr. Armando Swenya, learned counsel. He disputed the raised PO by stating that on 22nd May 2025, the Appellant realized that its NeST account had been suspended, and suspected that punitive action may have been taken against the company. He contended that on the same day it wrote a letter to the 1st Respondent inquiring on the suspension of its NeST account. However, the 1st Respondent did not respond.

Mr. Swenya stated that the Appellant became aware of the debarment on 26th May 2025 through a public notice which published the names of the debarred firms. Then, the Appellant wrote a letter to the 1st Respondent demanding to be availed with the letter which communicated the debarment decision, however, the 1st Respondent never replied. Hence on 6th June 2025, the Appellant decided to file this Appeal. Therefore, it was his submission that the Appeal was filed within twenty-one days as prescribed under regulation 106(1) of the Regulations.

Mr. Swenya went on to submit that the cited cases by the Appellant's counsel do not fall within the circumstances of this Appeal since the law is clear on limitation of time. Hence there was no need to rely on the case of ***Alwyn Bob Mutagulwa and Three Others versus Tanzania Electric Supply Company Limited and Another*** (supra).

The learned counsel distinguished PPAA Appeal Case ***No. 5 of 2023-24 between M/S Simba Logistics Equipment Supply Ltd versus Tanzania-Zambia Railway Authority***, (supra) relied upon by the

9


Respondents and argued that it differs with the circumstances of this Appeal and it thus cannot be relied upon.

Regarding the Latin maxims, Mr. Swenya, submitted that they did not apply to the Appeal as the circumstances are not the same. In the current Appeal, the Appellant did not receive a debarment decision and it only became aware of its debarment after the public notice was issued.

REJOINDER BY THE RESPONDENTS

Mr. Sanga, learned State Attorney, submitted that the purpose of regulation 106(1) of the Regulations was to accord a tenderer a right to file an appeal if it is dissatisfied with the debarment decision and therefore speed up the justice process. He averred further that regulation 100(6)(c) and (d) of the Regulations states clearly that the notice would be presumed to be served if it has been sent using the email address which has been previously used for communication with the procuring entity or if the debarment notice has been issued through public notice.

Mr. Sanga related the provision of the law with the facts of this Appeal and reiterated the Respondent's earlier submissions that the email address used to communicate the debarment decision was the same one used to send the notice of intention to debar, which was received by the Appellant and acted upon. The learned State Attorney submitted further that the Appellant has not disputed the email used to communicate the debarment decision was not his. He insisted that the cited cases in the Respondent's submissions in chief are applicable to the circumstances of this Appeal. He finalized his

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rejoinder by praying for the dismissal of the Appeal for being filed out of time.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the Appeal is properly before the Appeals Authority

Having heard the parties, we commence by considering the first issue which related to the PO, whereby the Respondents contended that the Appeal is untenable in law for being filed out of time contrary to regulation 106(1) of the Regulations. In rebuttal to the Respondents' contention, the Appellant claimed to have filed its Appeal within time as it became aware that its company has been debarred on 26th May 2025 when the 1st Respondent issued the public notice which published the names of the debarred firms.

In resolving the parties' contentious arguments, we reviewed section 72(6) of the Act and regulation 106(1) of the Regulations which read as follows:-

"s.72.- (6) A tenderer debarred pursuant to this section may appeal against the decision to the Appeals Authority within twenty one days from the date the decision came to his knowledge.

r.106.- (1) Mzabuni ambaye hajaridhika na uamuzi wa kufungiwa uliotolewa na Mamlaka chini ya Kanuni hizi, anaweza kukata rufaa dhidi ya uamuzi huo kwa



***Mamlaka ya Rufani ndani ya siku
ishirini na moja tangu tarehe ya
kupokea uamuzi huo."***

(Emphasis supplied)

The above provisions require a tenderer who is dissatisfied with a debarment decision to file an Appeal to us within twenty-one days from the date of becoming aware of such a decision.

We observed that on 8th April 2025, the 1st Respondent issued a notice of intention to debar the Appellant. It was sent to the Appellant on 10th April 2025 through its official email address onestop.generalsupply1@yahoo.com. The Appellant submitted its written defence to the 1st Respondent on 17th April 2025.

On 9th May 2025, the 1st Respondent issued a debarment decision which indicated that the Appellant was debarred from participating in public procurement for a period of six months with effect from 8th May 2025. The decision was communicated to the Appellant on 12th May 2025, through its official email address onestop.generalsupply1@yahoo.com.

The Appellant alleged it only became aware of the debarment decision on 26th May 2025 when the 1st Respondent issued the public notice that published names of the debarred firms. Thus, on 6th June 2025, when it filed this Appeal, it was in compliance with the law for being within the prescribed twenty-one-day period.

We reviewed the record of Appeal and noted that the Appellant's e-mail address namely; onestop.generalsupply1@yahoo.com had been registered in NeST and used as a means of communication between it

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and the 2nd Respondent. Furthermore, the 1st Respondent used it to send the notice of intention to debar which was received and acted upon by the Appellant. In addition, the same e-mail address has been provided in the Statement of Appeal and had been used for communication between us and the Appellant. However, when the 1st Respondent communicated the debarment decision through the same email address, the Appellant denied having received the same.

We confirmed that the debarment notice was published on 9th May 2025 on the 1st Respondent's website. It is apparent the Appellant saw the public notice on 26th May 2025 as averred in its submissions.

During the hearing, the Appellant was shown the audit trail of the e-mail sent by the 1st Respondent on 12th May 2025 at 17:21. Amongst the sent e-mails, it included the debarment decision against the Appellant which was sent by the Director General of the 1st Respondent through e-mail address dg@ppra.go.tz to onestop.generalsupply1@yahoo.com. The Appellant did not dispute owning the email used to send the debarment decision, however it insisted to have not received the debarment decision.

In view of the audit trail finding and the fact that the Appellant's email has been used as the means of all official communications, we conclude that the debarment decision was sent to the Appellant through its email address on 12th May 2025.

We further reviewed section 22(1) of the Electronic Transactions Act, Cap 442 R.E 2022 which reads as follows: -

"22(1) Information in electronic form is dispatched when it enters a computer system outside the control

13


of the originator or of the person who sent the electronic communication on behalf of the originator”.

(Emphasis supplied)

In terms of the above provision, information in an electronic form is deemed to have been communicated when it enters the computer system outside the computer of the originator. This means, information would be deemed to have been communicated when it enters the recipient's computer.

We applied the quoted provision to the facts of this Appeal and noted that the debarment decision dated 9th May 2025 was duly communicated to the Appellant through its official email address onestop.generalsupply1@yahoo.com on 12th May 2025 as there was no notification showing a delivery failure. Consequently, the Appellant was required to file an Appeal to us within twenty-one days from the date it became aware of the debarment decision. Reckoning from 12th May 2025, the twenty-one days period lapsed on 2nd June 2025. The Appeal was filed on 6th June 2025, four days beyond the limit required to file its Appeal. Given this fact, we are of the settled view that the Appeal was filed contrary to the requirements of section 72(6) of the Act and regulation 106(1) of the Regulations.

This position is buttressed by cases cited by the Respondents namely, ***Appeal Case No. 5 of 2023-24 between M/S Simba Logistics Equipment Supply Ltd versus Tanzania-Zambia Railway Authority, Alwyn Bob Mutagulwa and Three Others versus Tanzania Electric Supply Company Limited and Another and Moto Matiko Mabanga versus Ophir Energy PLC and Six Others.***

14



We concur with the Respondents' position that limitation of time is a merciless sword that cuts across those who do not abide by it.

Given the above findings, we hereby uphold the Preliminary Objection that the Appeal is indeed untenable in law for being filed out of time stipulated under the law. Thus, we cannot delve into the remaining issues and hereby dismiss the Appeal for being filed out of time. We make no order as to 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 3rd day of July 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. ENG. LAZARO LOSHILAARI



2. DR. GLADNES SALEMA

