IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 32 OF 2025-2026

BETWEEN

M/S SUNCHINE QUALITY CONTROL TECHNOLOGY SERVICE CO. LTD (SUNCHINE INSPECTION) .....APPELLANT

AND

TANZANIA BUREAU OF STANDARDS (TBS).....RESPONDENT

RULING

CORAM

1. Hon. Judge (Rtd) Awadh Bawazir - Chairperson
2. Dr. William Kazungu - 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. Tishan Mabere Marando - Advocate, THD Attorneys
2. Mr. Donald Ikhile Samwel - Regional Country Manager
3. Mr. Francois Shi - General Manager

FOR THE RESPONDENT

1. Mr. Ayoub Sanga	- Senior State Attorney, OSG
2. Ms. Catherine Kiiza	- State Attorney, OSG
3. Mr. Bahati A. Chonya	- Legal Service Manager, TBS
4. Ms. Lucy P. Mallya	- Senior Legal Officer, TBS
5. Mr. Gerald Magola	- Senior Quality Assurance Officer, TBS
6. Mr. Maulidi Abdallah	- Senior Procurement Officer, TBS

This appeal was lodged by **M/S Sunchine Quality Control Technology Service Co. Ltd (Sunchine Inspection)** (hereinafter referred to as **"the appellant"**) against the **Tanzania Bureau of Standards**, abbreviated as **"TBS"** (hereinafter referred to as "**the respondent"**). The appeal arises from Tender No. FA/2024/2025/287/TR34/NC/09/1 for Provision of Pre - Shipment Verification of Conformity to Standards (PVoC) Services for General Goods - China Zone (China Mainland, Hong Kong, Taiwan, Mongolia and Macau (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:

The Tender was done through the Restricted International Competitive Tendering Method as provided 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 to as **"the Regulations"**).

According to the record of appeal, on 11th November 2025, the respondent, through the National e-Procurement System of Tanzania (NeST), invited eligible tenderers to participate in the Tender. By 3rd December 2025, eight tenders were received and evaluated, including that of the appellant.

Upon completion of the evaluation process, the Evaluation Committee recommended a shortlist of five tenderers, including the appellant, to be subjected to post-qualification. Between 31st January 2026 and 5th March 2026, the respondent post-qualified the shortlisted tenderers. During this process, the appellant was considered incapable of performing the inspection functions, as it did not own laboratories and lacked the requisite work licences in certain areas. Subsequently, the Tender Board, through a Circular Resolution dated 19th March 2026, approved the Post-Qualification Report.

On 2nd April 2026, the respondent issued a Notice of Intention to award the tender to M/s World Standardization Certification & Testing Group Co. Ltd, M/s Intertek International Ltd, M/S TUV Rheinland Middle East FZE, and M/s SGS Société Générale de Surveillance S.A (hereinafter referred to as **"the proposed awardees"**). The notice further stated that the appellant's tender was not considered for award because during post-qualification, it was found non-compliant with certain requirements in the tender document.

Dissatisfied with the reason given for its disqualification, on 16th April 2026 the appellant applied for administrative review to the respondent. The record of appeal indicates that the respondent did not issue a decision.

Consequently, on 27th April 2026, the appellant lodged this appeal before the Appeals Authority.

In this appeal, the appellant challenges its disqualification during post-qualification, claiming that the respondent failed to properly evaluate its international experience, technical capacity, laboratory infrastructure, and compliance with the tender requirements, despite evidence of successful provision of similar PVoC services in various countries.

The appellant asserted that it possessed adequate technical expertise, accredited laboratories, and partnership arrangements in areas where it lacked physical laboratories but was nevertheless disqualified for allegedly not owning laboratories. The appellant submitted further that, had post-qualification been properly executed, it would have qualified for award. It argued that the respondent's disqualification contravened sections 5(3)(d) and 53(4) of the Act, which require qualification criteria to be applied equally and transparently to all tenderers.

The respondent rebutted the appellant's grounds of appeal, stating that the appellant failed to satisfy several requirements stipulated in the tender document, including proof of operational licenses within the required geographical locations, ownership of laboratories, accreditation certificates for Hong Kong and Taiwan, and verification of ICT infrastructure required for execution of the PVoC services. The respondent therefore contended that the appellant was fairly disqualified.

Prior to commencement of the hearing, the respondent raised a preliminary objection (PO) on two points of law to wit:

a) *"The Appeals Authority has no jurisdiction to entertain the appeal as the appeal is vexatious, frivolous and untenable in law for want of the decision by procuring entity capable of being appealed against as the appellant did not exhaust remedies available by lodging complaint as she lodged the same out of time, contrary to Sections 120 and 121 of the Public Procurement Act.*

b) *The Appeals Authority has no jurisdiction to entertain the appeal as the appeal before this Honourable Authority is untenable in law for being filed out of time contrary to Sections 120 and 121 of the Act."*

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

1. **Whether the appeal is properly before the Appeals Authority;**
2. **Whether the appellant's disqualification was justified; and**
3. **What reliefs, if any, are the parties entitled to?**

Thereafter, the Appeals Authority directed the parties to first address the preliminary objection, which centred on its jurisdiction to entertain the appeal before embarking on the substantive merits.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The respondent's submissions were made by Mr. Ayoub Sanga, learned Senior State Attorney from the Office of the Solicitor General.

He commenced by submitting that the preliminary objection constitutes pure points of law, thereby satisfying the principle established in ***Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd [1969] 1 EA 696,*** subsequently affirmed by the Court of Appeal in ***Moto Matiko Mabanga v. Ophir Energy PLC and 6 Others, Civil Appeal No. 119 of 2021.*** He emphasized that the jurisdiction of the Appeals Authority is purely statutory and must be strictly observed, as underscored in ***Commissioner General Tanzania Revenue Authority and Another v. Milambo Limited, Civil Appeal No. 62 of 2022.***

On the first limb of the PO, Mr. Sanga submitted that the law requires the Appeals Authority to entertain only appeals arising from a decision of an Accounting Officer. He noted that, according to the record of appeal, the appellant was dissatisfied with the reasons for its disqualification as communicated in the Notice of Intention to award issued on 2nd April 2026. The appellant subsequently filed an application for administrative review to the respondent on 16th April 2026.

He referred to section 120(1) of the Act, which allows a tenderer aggrieved by a procuring entity's decision to file an application for administrative review to an accounting officer of the procuring entity. He further cited section 120(4) of the Act, which requires such an application to be filed within five working days of a tenderer becoming aware of the circumstances giving rise to the complaint.

Mr. Sanga argued that sections 60 and 61 of the Interpretation of Laws Act [R.E. 2023] provide guidance on computation of time. Since reckoning of

time under section 120(4) of the Act is guided by the word "from", counting begins on the following day. Thus, counting from 2nd April 2026, the five working days lapsed on 14th April 2026. He pointed out that the appellant filed its application on 16th April 2026, two days late.

He contended that, because the application was filed out of time, the respondent's accounting officer was not obliged to entertain it. He relied on Section 120(4) of the Act, which prohibits an accounting officer from entertaining complaints filed beyond prescribed time.

In support of his argument, Mr. Sanga cited ***PPAA Appeal Case No. 2 of 2021–22 between M/S Aqua Power Tanzania Ltd (T/A Turbine Tech) v. TANESCO and Another*** whose position was affirmed by the Court of Appeal in ***M/S Aqua Power Tanzania Ltd v. PPAA and 3 Others Civil Appeal No. 462 of 2022*** holding that an application for administrative review must be filed within a specified time before an appeal can be lodged with the appeals authority.

On the second limb of the PO, Mr. Sanga submitted that the present appeal is time barred, having been filed after lapse of five working days specified under Section 121(2)(a) of the Act. He explained that, since the time for filing the application for administrative review lapsed on 14th April 2026, and the respondent did not entertain the appellant's application filed on 16th April 2026, the appellant was required to file its appeal to the Appeals Authority within five working days thereafter. Counting from 14th April 2026, the deadline was 21st April 2026. However, the appeal was filed on 27th April 2026, rendering it filed out of time.

In support of this argument, he relied on ***PPAA Appeal Case No. 5 of 2023-24*** *between* ***M/S Simba Logistic Equipment Supply Ltd v. Tanzania Zambia Railway Authority*** and ***PPAA Appeal Case No. 1 of 2025-26 between M/S Joban Holdings Ltd v. Tanzania Airports Authority,*** where the appeals filed out of time were dismissed.

In conclusion, Mr. Sanga prayed that the Appeals Authority sustains the PO raised with costs.

REPLY BY THE APPELLANT ON THE PO

The appellant's reply submissions were made by Mr. Tishan Mabere Marando, learned counsel.

Replying on the first limb of the PO, Mr. Marando submitted that section 121(1) and (2) of the Act permits a tenderer to lodge an appeal to the Appeals Authority even where an accounting officer of a procuring entity has not issued a decision on the filed application for administrative review. He argued that, since the law allows filing of an appeal in the absence of an accounting officer's decision, the respondent's contention challenging the appellant's *locus standi* to institute the present appeal is unfounded.

Mr. Marando explained that the cause of action arose after the appellant was informed of the post-qualification results through a letter dated 20th March 2026. Dissatisfied with the findings, the appellant sought clarification from the respondent by a letter dated 24th March 2026, which the respondent replied on 31st March 2026. This was followed by a Notice of Intention to Award dated 2nd April 2026, received by the appellant on 27th April 2026. Nevertheless, the appellant filed its application for

administrative review on 16th April 2026, challenging the post-qualification results.

He argued that the Notice of Intention to Award indicated that tenderers had three working days to file an application for administrative review, which contravened section 120(4) of the Act which requires five working days. Mr. Marando submitted that, if time were to reckon from 2nd April 2026, the deadline would have been 14th April 2026. Since the appellant filed its application for administrative review on 16th April 2026, it was admittedly out of time. However, he urged the Appeals Authority to apply the overriding objective principle (oxygen rule), emphasizing that substantive justice should prevail over procedural technicalities.

On the second PO, Mr. Marando submitted that the respondent had misled the appellant by indicating three days instead of five working days for filing an application for administrative review. He averred that this misinformation contributed to the delay in filing both the application for administrative review and the present appeal. He therefore prayed that the Appeals Authority apply the overriding objective principle on this matter.

In conclusion, Mr. Marando prayed that the preliminary objection be dismissed with costs and that the appeal be heard on its merit.

REJOINDER BY THE APPELLANT ON THE PO

In his brief rejoinder, Mr. Sanga reiterated his submissions in chief. He emphasized that the appellant had conceded to filing both the application for administrative review and the present appeal out of time, but sought

refuge under the Overriding Objective principle (Oxygen Principle). Mr. Sanga contended that the overriding objective principle cannot apply to procurement disputes where Parliament has expressly prescribed timelines for lodging complaints or appeals. He argued that the statutory timelines are mandatory and cannot be overridden by the principle of substantive justice. Accordingly, he maintained that the appellant's reliance on the overriding objective principle is legally untenable.

ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

1. Whether the appeal is properly before the Appeals Authority;

In determining this PO, the Appeals Authority reviewed section 120 (1) and (4) of the Act, which reads as follows:-

> *"s. 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.

(Emphasis Added)

These provisions require a tenderer to file an application for administrative review to the Accounting Officer within five working days from the date it became, or should have become aware of the circumstances giving rise to the complaint or dispute.

Upon reviewing the record of Appeal, we observed that the respondent issued the Notice of Intention to Award to the appellant on 2nd April 2026 through NeST. Aggrieved by the reason given for its disqualification, the appellant lodged an application for administrative review on 16th April 2026. Counting from 2nd April 2026, the statutory period of five working days lapsed on 14th April 2026.

We considered the appellant's argument that it received the Notice on 27th April 2026. However, the record shows that this was the date on which the appellant filed this appeal. The appellant did not furnish evidence to substantiate its claim regarding the alleged date of receipt. Moreover, its filing an application for administrative review on 16th April 2026 demonstrates that the appellant had already become aware of the Notice prior to that date. Given that the Notice was issued through NeST, the appellant cannot reasonably deny timely receipt, as system-generated notifications are promptly sent to all participating tenderers. Accordingly, we reject the appellant's assertion in this regard.

Applying section 120(4) of the Act to the facts of this appeal, we find that the appellant's application for administrative review was filed beyond the stipulated five working days.

We further considered the appellant's reliance on the overriding objective principle (oxygen rule). We observe that this principle was not intended to override mandatory provisions of the law. Its essence is to facilitate substantive justice and prevent undue reliance on procedural technicalities that do not occasion prejudice or affect jurisdiction. However, it cannot be invoked to cure non-compliance with statutory timelines or other mandatory legal requirements expressly prescribed by the law.

The application of this principle was aptly considered in ***Mondorosi Village Council & Others v. Tanzania Breweries Limited & Others [2018] TZCA 303,*** where the Court of Appeal held that the Overriding Objective Principle cannot be applied in disregard of mandatory procedural requirements that go to the root or foundation of a case.

In view of these observations, we reject the appellant's argument on the applicability of the oxygen principle. The timelines for filing an application for administrative review and an appeal to this Appeals Authority are expressly prescribed under sections 120 and 121 of the Act.

Based on the foregoing findings, which clearly establish that the appellant's application for administrative review was filed out of time contrary to section 120(4) of the Act, it follows that the subsequent appeal founded on such anomaly cannot be sustained.

Accordingly, we conclude affirmatively that the appeal is not properly before the Appeals Authority and we therefore sustain the preliminary objection.

Given this finding, we dismiss the appeal for being improperly before the Appeals Authority. We make no order as to costs.

It is so ordered.

This Ruling is binding and enforceable in accordance with section 121(7) of the Act.

The right of Judicial Review, as provided under section 125 of the Act, has been explained to the parties.

This Ruling is delivered in the physical presence of the respondent and virtual appearance of the appellant this 29th day of May 2026.

HON. JUDGE (rtd) AWADH BAWAZIR

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CHAIRPERSON

MEMBERS:

1. DR. WILLIAM KAZUNGU.....

2. DR. GLADNESS SALEMA.....