

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPLICATION No. 01 OF 2024-25

BETWEEN

M/S Y AND P ARCHITECTS (T) LIMITED.....APPLICANT

AND

TANZANIA ELECTRIC SUPPLY

COMPANY LIMITEDRESPONDENT

RULING

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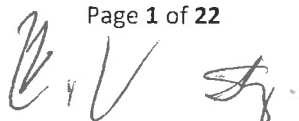
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|-------------------------------------|---------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwanbo | - Member |
| 3. Eng. Stephen Makigo | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPLICANT

- | | |
|-------------------------|--|
| 1. Mr. Jeremia Mtobesya | - Advocate, Juris Peritis
Advocates |
| 2. Mr. Yassin A. Mringo | - Managing Director |



FOR THE RESPONDENT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Eva Mchau | - Principal Legal Officer |
| 2. Mr. Mkumbo Elias | - Senior Legal Officer |
| 3. Mr. Mwigira Kasalama | - Procurement Officer |

This Application was lodged by **M/S Y & P ARCHITECTS (T) LIMITED** (hereinafter referred to as "**the Applicant**") against the **TANZANIA ELECTRIC SUPPLY COMPANY LIMITED** (hereinafter referred to as "**the Respondent**"). The Application is for extension of time to file an Appeal against the decision of the Respondent in respect of Tender No. PA/001/2022-23/HQ/C/026 for the provision of Consultancy Services for Design, Contract Management and Supervision of Implementation of Julius Nyerere Hydro Power Project (JNHPP), Corporate Social Responsibility (CSR) Project (hereinafter referred to as "**the Tender**").

The background of this Application may be summarized according to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") as follows: -

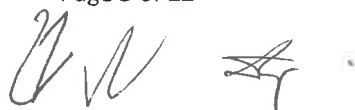
According to the record of this Application, the Applicant was a proposed successful tenderer in the above-named Tender that was advertised by the Respondent. The referred Tender was conducted through the Restrictive Tendering Method as was specified in the Public Procurement Act, No. 7 of 2011 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 446 of 2013 (hereinafter referred to as "**the Regulations**") as repealed and replaced by Act No. 10 of 2023 and Regulations, GN. No 518 of 2024, respectively.



The disputed Tender was floated by the Respondent in September 2022. The deadline for submission of tenders was on 27th October 2022. On the deadline, the Respondent received three tenders including that of the Applicant. The received tenders were then subjected to evaluation. After completion of the evaluation process, the Applicant's tender was found to be successful and therefore recommended for award subject to successful negotiations. On 13th January 2023, the Respondent invited the Applicant to attend a negotiation meeting which was not, however, successfully completed as there were some pending issues to be finalized within the Respondent's office.

On 29th May 2023, the Applicant applied for administrative review to the Respondent challenging the delay in finalization of the negotiations process. In response to the application for administrative review, the Respondent through a letter dated 09th June 2023, informed the Applicant that it was in the finalization process on some of the issues that were pending during negotiation. The Applicant was aggrieved with the said response as a result on 16th June 2023, it filed Appeal Case No. 47 of 2022-23 before the Appeals Authority. The Appeals Authority dismissed the said Appeal on 20th July 2023 as the negotiations were yet to be concluded.

The available record indicates that upon receipt of the advice from the user department the Respondent later decided to reject the Tender. All tenderers, the Applicant inclusive were notified about the Respondent's decision. After receipt of the notification, the Applicant submitted its Application for Administrative Review to the Respondent challenging the rejection of the Tender. Through a letter dated 15th September 2023,

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the Respondent rejected the Applicant's complaint. The Respondent's decision was received by the Applicant on 22nd September 2023.

Dissatisfied with the Respondent's decision, on 04th October 2023 the Applicant lodged an Appeal to the Appeals Authority. Nevertheless, on the date set for hearing the Appeals Authority *suo motu* brought to the attention of the parties that after reviewing the record of Appeal, it found that there is a point of law to be determined regarding compliance of Section 97 (1) and (2) of the Act. The Appeals Authority required the parties to address it on the point of law. When submitting on the point of law, the Applicant conceded to have lodged its Appeal beyond the stipulated time limit and verbally requested for extension of time to file an Appeal out of time. However, after hearing the arguments by both parties, the Appeals Authority found that the Appeal was filed out of time and the application for extension of time was made in contravention of the law. Hence, the Appeal and the application for extension of time were dismissed.

Upon being dissatisfied with the decision of the Appeals Authority, the Applicant applied to the High Court for Judicial Review. The High Court quashed and set aside the Appeals Authority's decision in Appeal Case No. 19 of 2023-24 issued on 16th November 2023. The Court allowed the Applicant, if still interested, to apply for an extension of time within which to file an Appeal before the Appeals Authority. After receipt of the High Court decision, on 28th August 2024, the Applicant lodged this Application to the Appeals Authority.

The Appeals Authority notified the Respondent on the existence of this Application. When filing its Statement of Reply, the Respondent raised a Preliminary Objection (PO) on a point of law to wit: -

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"The Appeals Authority has no jurisdiction to entertain the matter as the Respondent is in the process to appeal to the Court of Appeal against the decision of Miscellaneous Civil Cause No. 7630 of 2024, dated 26th July 2024 before Honorable H.S. Mtembwa, Judge."

When the matter was called on for hearing and during framing up of issues, the Appeals Authority informed the parties that from the record of the Application there is a PO on a point of law that has been raised by the Respondent. In view of this, the following issues were framed for the PO and the substantive merits of the Application: -

- 1.0 Whether the Appeals Authority has the jurisdiction to entertain this application;**
- 2.0 Whether the Appeals Authority has jurisdiction to enlarge time in the circumstances of this Application and whether there are sufficient reasons to extend time; and**
- 3.0 What reliefs if any are the parties entitled to?**

After framing the issues, parties were asked to address the first issue that relates to the PO before embarking on the merits of the Application.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The Respondent's submissions were made by Mr. Mkumbo Elias, Senior Legal Officer. He commenced by stating that the Respondent is aggrieved with the High Court Decision in Misc. Civil Cause No. 7630 of 2024 before H.S. Mtembwa, Judge which allowed the Applicant, if still interested, to apply for an extension of time within which to file an Appeal before the Appeals Authority.



The Senior Legal Officer submitted that the Respondent has filed Application No. 22485 of 2024 to the High Court seeking for an extension of time to file the Notice of Appeal to the Court of Appeal. The matter has already been assigned to Bwegoge Judge and is coming for mention on 23rd October 2024. Thus, since the Respondent is in the process of filing an Appeal to the Court of Appeal, this Appeals Authority lacks jurisdiction to entertain this Application. Therefore, the Senior Legal Officer prayed for the dismissal of the Application.

REPLY BY THE APPLICANT ON THE PO

The Applicant's reply was made by Mr. Jeremia Mtobesya, learned advocate for the Applicant. He commenced by stating that there is no law which states that any step to file an appeal or an appeal itself acts as an automatic stay of the execution of the order issued by the court. Thus, if the Respondent would like to have a stay of execution of the order issued by Mtembwa Judge, it should have made a separate application to that effect.

The learned advocate stated that the Respondent's contention that the Appeals Authority lacks jurisdiction to entertain this Application due to the existence of the application for extension of time to file Notice of Appeal is unfounded. The jurisdiction of the Appeals Authority cannot be ousted by the existence of the application for extension of time as the same might be rejected or accepted. Thus, the application for extension of time cannot bar the jurisdiction of the Appeals Authority. In addition, the learned advocate submitted that as per the court best practices when there is an application for extension of time, the court cannot grant an order for stay of execution, as the application for extension of time is not an appeal. Thus, the Respondent cannot rely

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on the filed application for extension of time as a bar to other proceedings.

The learned advocate submitted that the Respondent has not presented any document before the Appeals Authority which substantiates the steps taken to challenge the decision issued by Mtembwa Judge. Thus, the learned advocate urged the Appeals Authority not to rely on mere words by the Respondent. The Respondent was duty bound to substantiate its assertion by submitting the relevant documents.

The learned advocate contended that the decision of Mtembwa Judge has issued an order of certiorari which quashed the decision of the Appeals Authority that was issued in respect of Appeal No. 19 of 2023-24. The issued order is not executable, the learned advocate contended.

In support of his argument the learned advocate cited the case of ***Sugar Board of Tanzania versus 21st Century Food & Packaging and others***, Civil Application No. 49 of 2005, Court of Appeal of Tanzania at Dar es salaam where the Court of Appeal cited with approval the case of ***Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd*** (1969) E.A 696. In the referred case the Court of Appeal stated that the point of law should be able to be determined out of the pleadings for it to be considered as a pure point of law. The learned advocate stated that, the Respondent's point of law in this Application needs ascertainment of facts. The Respondent alleged the existence of the application for extension of time that has been filed to the High Court which was not attached to its pleadings. The Appeals Authority cannot take judicial notice of the existence of the said application unless facts are ascertained. Thus, it is not a pure point of



law. The learned advocate therefore concluded his submissions by praying that the point of law should be disregarded and the Application be heard on merits.

RESPONDENT'S REJOINDER ON PO

In his brief rejoinder, the Respondent's senior legal officer submitted that the learned Advocate for the Applicant has misconceived the Respondent's submission in chief. That is, the application before High Court is for extension of time and not for stay of execution. Thus, the learned advocate ought to have addressed the existence of the application for extension of time before the High Court and not otherwise.

The senior legal officer submitted that if the Appeals Authority proceeds to determine this Application it would affect the Respondent's intended Appeal to the Court of Appeal. Thus, this Application should not be heard on merit.

The senior legal officer also distinguished all the cases relied upon by the learned advocate for the Applicant for the reasons that the circumstances of the cases are different. Thus, the senior legal officer reiterated his earlier prayer that the application should not be heard on merit.

ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

The Appeals Authority commenced its analysis on this part by considering the Applicant's proposition that the point of law raised is not a pure point of law as its determination would require ascertainment of facts. The Appeals Authority is aware of the principle laid down in the case of ***Mukisa Biscuit Manufacturing Co. Ltd*** (supra) relied upon by the Applicant. In the referred case the court stated that: -

"A preliminary objection is in nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct, it cannot be raised if any fact is to be ascertained".

The Appeals Authority is also mindful of the decision of the Court of Appeal in the case of ***Ali Shabani and 48 others versus Tanzania National Roads Agency and another***, Civil Appeal No. 261 of 2020, Court of Appeal of Tanzania at Tanga (unreported). In this case it was held as follows: -

"It is clear that an objection as it were on the account of time bar is one of the preliminary objection which courts have held to be based on the 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".

The Appeals Authority considered the Respondent's PO and observed that it had not cited the provisions of the law which ousts the jurisdiction of this Appeals Authority to determine the lodged Application. Given the position of the cited cases herein above that a preliminary objection has to be a pure point of law, the Appeals Authority overrules the PO and proceeds to determine the Application on merits.

SUBMISSIONS BY THE APPLICANT ON THE MERITS

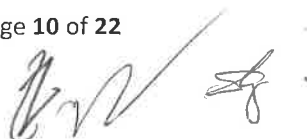
The Applicant's submissions on the second issue were made by Advocate Jeremia Mtobesya. He started by indicating that the second



issue would be argued by considering two points namely, jurisdiction and sufficient cause.

On the point of jurisdiction, the learned advocate submitted that according to Rule 11 of the Public Procurement Appeals Rules, GN No. 411 of 2014 as amended (hereinafter referred to as "**the Appeals Rules**") the Appeals Authority has the jurisdiction to entertain this Application. The learned advocate stated that Rule 11 of the Appeals Rules requires the application for extension of time to be filed before the Appeals Authority within seven days from the date the appeal was to be filed. However, the learned advocate urged the Appeals Authority not to apply strictly Rule 11 of the Appeals Rules. The learned advocate requested the Appeals Authority to consider the circumstances of the case before establishing if Rule 11 of the Appeals Rules has been complied with or not.

The learned advocate cited the case of ***Attorney General versus Lesinoi Ndeinai and Others [1980] TLR.*** According to the learned advocate this case laid down a foundation that it is always helpful to consider what courts in other jurisdiction have considered. In view of this position, the learned advocate cited the case of ***Brendan Kirwan versus John O' Leary and others (2023) IESC 27*** (the Irish case). The learned advocate stated that in the Irish case the issue was extension of time for filing of an Appeal. According to the Supreme Court of Ireland the law governing the subject matter that was before it required an appeal to be filed within twenty one days. However, the applicant on the matter failed to adhere to the specified time limit. It sought for extension of time. The Court of Appeal of Ireland rejected the applicant's application for extension of time. Upon being



dissatisfied, the applicant challenged the Court of Appeal's decision to the Supreme Court of Ireland. Having considered the matter, the Supreme Court granted the extension of time to file an appeal out of time.

The learned advocate submitted that in the Irish case, the Supreme Court stated clearly that the court has discretion of determining as to whether to grant an extension of time to file an appeal or not. According to the learned advocate, the Supreme Court stated clearly the discretion of the court should be based on the balance of justice which always depends on the circumstances of the case. He stated that in order for the court to exercise its discretion judiciously it has to consider three things, namely, whether the applicant formed a bona fide intention to appeal within the prescribed time, whether the failure to appeal within that time is explicable by reference to some factor akin to a mistake, and whether there are arguable grounds of Appeal.

The learned advocate submitted that as per the facts of the matter in dispute the Applicant was required to file its Appeal to the Appeals Authority by 2nd October 2023. However, it failed to do so due to several circumstances which transpired at that time. The Applicant filed its Appeal to the Appeals Authority on 4th October 2023. During the hearing of the Appeal, the Appeals Authority *suo motu* raised the issue of limitation of time for filing an appeal. The learned advocate submitted that when arguing the point of law, it conceded to filing of the appeal beyond the stipulated time limit. However, it requested for extension of time to file an appeal out of the specified time limit. After considering submissions by the parties, the Appeals Authority dismissed the Appeal and the application for extension of time. Dissatisfied with

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the Appeals Authority's decision, the Applicant applied for judicial review to the High Court. Having considered the parties arguments, the High Court quashed the Appeals Authority's decision and allowed the Applicant to apply for extension of time. Hence, this application.

The learned advocate stated that in view of the background of this Application, the Applicant requested the Appeals Authority not to consider strictly the requirement of Rule 11 of the Appeals Rules. The learned advocate urged the Appeals Authority to adopt the position in the Irish case and grant the extension of time as there are triable issues.

On the point of sufficient cause, the learned advocate submitted that the Applicant's delay in filing the Appeal within the specified time was caused by human error. The learned advocate stated that the concept of human error was introduced by the Court of Appeal in the case of ***Rashidi Abiki Nguwa versus Ramadhan Hassan Kuteya and another***, Civil Application No. 431 of 2021, Court of Appeal of Tanzania at Dodoma (unreported). In the referred case, the Court of Appeal accepted the applicant's argument that the delay in effecting the service of the document was caused by human error. The Court of Appeal reached this position after observing that the Applicant having realized its mistake, made some efforts to remedy the situation.

In view of the position of the Court of Appeal in the above cited case, the learned advocate urged the Appeals Authority to apply the same principle in this Application and grant the Applicant extension of time to file an Appeal out of time. The learned Advocate contended that after receipt of the Appeals Authority's decision in Appeal Case No. 19 of 2023-24 that was issued on 16th November 2023 which dismissed the Applicant's Appeal and an application for extension of time, the



Applicant applied for judicial review to the High Court. For all this period until 26th July 2024 when the High Court issued its decision which quashed the Appeals Authority's decision, the Applicant was in court. The Applicant claimed to have managed to obtain the High Court decision on 7th August 2024. It filed this Application on 28th August 2024, which was after a lapse of twenty one days. In all this time the Applicant has been litigating in getting its rights from the Appeals Authority and the High Court. The Applicant requested the Appeals Authority not to consider the lapsed time as wastage, instead the efforts made in seeking for justice should be considered first.

The learned advocate further cited the case of ***Emmanuel Rurihafi and another versus Janas Mrema***, Civil Appeal No. 314 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported). According to the learned advocate, in this cited case, the Court of Appeal stated that when counting the required time for filing of any matter, the time that lapsed in pursuing the same matter in different courts or tribunals should be excluded.

In view of the above made submissions, the learned advocate prayed that the Appeals Authority grants the extension of time so that the Applicant could file its Appeal and be heard on merit.

REPLY BY THE RESPONDENT ON THE MERITS

The Respondent's submissions were made by Ms. Eva Mchau, Principal Legal Officer and Mr. Mkumbo Elias, Senior Legal Officer. Ms. Mchau commenced by stating that the Applicant is aware of the requirements of Rule 11 of the Appeals Rules. The said Rule states clearly that an application for extension of time must be filed to the Appeals Authority within seven days from the last date the Appeal was required to be filed.



Thus, when submitting the application for extension of time the Applicant was required to adhere to the requirement of Rule 11 of the Appeals Rules.

Ms. Mchau submitted that Section 14 of the Law of Limitation Act, Cap 89 R.E. 2019 provides a clear guidance on the submission for the application for extension of time. An application for extension of time must be filed in accordance with the stipulated time limit as provided under the governing law. She explained that since the time for filing of an application for extension of time in a public procurement dispute is guided by Rule 11 of the Appeals Rules, the Applicant was required to strictly adhere to the requirement of the law, without any reservation thereof.

Ms. Mchau submitted that Section 98 of the Act provides guidance on the circumstances that might lead a tenderer to seek for extension of time to file an appeal out of time. Ms. Mchau stated that the Applicant has failed to demonstrate before the Appeals Authority the circumstances which led to the filing of this Application. The Applicant has been arguing about human error and bona fide litigation; however, it has failed to prove the same. In addition, Section 98 of the Act identifies different circumstances that may lead a tenderer to apply for extension of time. However, among the provided scenarios there is no human error or bona fide litigation. Thus, the Applicant's adduced reasons for extension of time are unfounded and should be rejected.

In support of the Respondent's proposition, Mr. Mkumbo cited the case of ***Letshego Bank (T) Ltd versus James Simon Kitajo and another***, Miscellaneous Civil Application No. 12 of 2020, High Court of Tanzania at Mwanza where the Court cited the case of ***Lyamuya***



Construction Company Ltd versus Board of Registered Trustees of Young Women's Christian Association of Tanzania, Court of Appeal of Tanzania, Civil Application No. 2 of 2010 (unreported). In the Lyamuya's case, the Court of Appeal stated that the decision to grant the request for extension of time is solely based on the court's discretion. Mr. Mkumbo submitted that in the same decision the Court of Appeal listed several conditions which might be considered as sufficient reason for extension of time. Among the listed items none relates to human error or bona-fide litigation.

Mr. Mkumbo also cited the case of ***Hyasinth Malisa versus John Malisa***, Civil Application No. 167/01 of 2021, Court of Appeal of Tanzania (unreported). In this case, the court cited the case of ***Bushiri Hassan versus Latifa Lukio Mashayo***, Civil Application No. 3 of 2007 (unreported). In the Bushiri's case, the court insisted to the adherence of time specified under any law. The court stated that "*delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken*". Mr. Mkumbo submitted that based on the position of the court in the cited cases, the Applicant's application falls short of merit as the position of the law regarding time limit is well known.

Mr. Mkumbo stated further that in substantiating its argument the Applicant relied on the Irish Case. Having reviewed the said case it was observed that its circumstances differ significantly with the matter at hand. The principle laid down in the Irish case is applicable in Ireland and not in Tanzania particularly where the law that governs the subject matter exists.



Mr. Mkumbo also distinguished all the cases which were cited by the Applicant in that they are not relevant in the circumstances of this Application. In addition, Mr. Mkumbo urged the Appeals Authority to disregard the cited cases as the Applicant has failed to avail the copies of the same to the Respondent, hence denying it a right to be heard.

Mr. Mkumbo submitted that the Applicant became aware that its Appeal before the Appeals Authority was filed out of time on the date when the matter was called on for hearing. Having been aware that the Appeal was filed out of time, the Applicant was required to withdraw the Appeal and to apply for extension of time to file the Appeal out of time. To the contrary, the Applicant failed to do so until the Appeal was dismissed. Thus, since the Applicant failed to take remedial measures when Appeal No. 19 of 2023-24 was before the Appeals Authority, its act of seeking redress at this juncture is an afterthought and should be disregarded.

Mr. Mkumbo reminded the Appeals Authority of its position in PPAA's Appeal Case No. 2 of 2023-24 between ***M/S Pitambra Books PVT Ltd versus Tanzania Institute of Education*** and Appeal Case No. 4 of 2023-24 Between ***M/S Qwihaya General Enterprises Company Limited versus National Development Corporation***. In both cases, the Appeals Authority dismissed the Appeals for being filed out of time. Thus, Mr. Mkumbo requested the Appeals Authority to equally dismiss this Application for failure to adhere to the requirement of Rule 11 of the Appeals Rules.

Finally, the Respondent prayed for the dismissal of the Application for want of merit with costs as per Section 97(5) of the Act.



REJOINDER BY THE APPLICANT

On its brief rejoinder, the learned advocate for the Applicant submitted that, the Irish case was cited on this matter to persuade the Appeals Authority to go beyond the requirement of Rule 11 of the Appeals Rules. The Applicant is aware of the requirement of Rule 11, however, it wants the Appeals Authority to consider its matter with peculiarity as there are justifiable circumstances which allows the Appeals Authority to depart from usual tradition of interpreting Rule 11 of the Appeals Rules.

The learned advocate submitted further that it is true the Applicant became aware that the time to file Appeal No. 19 of 2023-24 had expired on the date when the same was called for hearing. However, the Applicant could not have filed the application for extension of time, as the time to do so had lapsed. Thus, the Applicant referred the matter for judicial review and after the decision of the High Court has been issued, it considered it to be the right time for filing an application for extension of time.

The learned advocate distinguished all the cases cited by the Respondent for the reason that the same are not relevant to the matter at hand. The learned advocate reiterated the Applicant's submission in chief that the application is properly before the Appeals Authority and sufficient reasons for granting extension of time have been adduced. Thus, the learned advocate prayed that the Application be granted.

ANALYSIS BY THE APPEALS AUTHORITY ON THE MERIT

2.0 Whether the Appeals Authority has jurisdiction to enlarge time in the circumstances of this Application and whether there are sufficient reasons to extend time.

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In resolving this issue, the Appeals Authority considered parties' contentious arguments on the first limb of this issue which relates to jurisdiction. On the one hand, the Applicant requested the Appeals Authority to adopt the position in the Irish case and grant extension of time. The Applicant contended that in some circumstances the Appeals Authority should be able to grant an application for extension of time and not to strictly apply the requirement of Rule 11 of the Appeals Rules. On the other hand, the Respondent contended that the Applicant's application should be dismissed as the same has been brought in contravention of Rule 11 of the Appeals Rules.

In substantiating the validity of the parties' contentions in this regard, the Appeals Authority revisited Section 98 of the Act and Rule 11 of the Appeals Rules which govern the filing of an application for extension of time to lodge an Appeal. Section 98 of the Act and Rule 11 of the Appeals Rules read as follows: -

"98 The Appeals Authority may extend the time limit set under subsections (2) and (3) of section 97 where it is satisfied that failure by a party to lodge an appeal or complaint was occasioned by being absent from the United Republic, sickness or other reasonable cause, subject to such terms and conditions as may be prescribed in the rules."

"11. Subject to Section 97 (2) of the Act, an Application for an extension of time to lodge an appeal out of time shall be filed with the Appeals Authority within seven days from the date when the Appellant ought

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to have filed his appeal using PPAA Form No. 6 as set out in the First Schedule to these Rules."

(Emphasis supplied)

Section 98 of the Act states clearly that the Appeals Authority is mandated to extend time to a party who has failed to file an appeal within the stipulated time limit if it meets the conditions provided therein. Rule 11 of the Appeals Rules provides further guidance on filing of an application for extension of time. The Rule requires an application for extension of time to be filed to the Appeals Authority within seven days from the date the Appellant was required to file an appeal. The Rule requires the application to be filed by using PPAA Form No. 6. In addition, the said application would be deemed to be complete upon payment of the requisite fee of TZS 300,000.00 as specified on the Second Schedule to the Appeals Rules.

In ascertaining if this Application has been filed in accordance with the requirements of the law, the Appeals Authority revisited the record of the Application. It observed that the cause of action for this matter arose after the Applicant received a letter dated 24th August 2023 from the Respondent which informed it that the Tender has been rejected. The Applicant was dissatisfied with the Respondent's decision to reject the Tender. Therefore, through a letter dated 11th September 2023, the Applicant applied for administrative review to the Respondent. The Respondent was required to issue its decision by 20th September 2023. However, the Respondent's decision was received by the Applicant on 22nd September 2023. According to Section 97 (1) and (2) of the Act, if the procuring entity fails to issue its decision within the specified time limit, a tenderer is required to submit its Appeal to the Appeals Authority



within seven working days. Counting from 20th September 2023, the Applicant was required to file its Appeal by 2nd October 2023. However, the Applicant filed Appeal No. 19 of 2023-24 on 4th October 2023.

Before filing its Appeal on 4th October 2023, the Applicant was required to seek for extension of time to file an Appeal out of the stipulated time limit. According to Rule 11 of the Appeals Rules, the Applicant was required to file the application for extension of time by 9th October 2023. However, the Applicant did not do so. It orally sought for extension of time on 13th November 2023 when its Appeal was called on for hearing and after being informed by the Appeals Authority that its Appeal was filed out of time and in contravention of Section 97 (1) and (2) of the Act. The Appeals Authority dismissed both the Appeal and the Applicant's application for extension of time. The Appeals Authority's decision indicated clearly the basis of dismissing the Applicant's application for extension of time. The adduced reasons were, that the Application was made beyond the seven days, not in the prescribed form, PPAA Form No. 6 and the relevant fee was not paid.

In this Application, the Applicant urged the Appeals Authority not to consider the requirement of Rule 11 of the Appeals Rules; instead, it should adopt the position in the Irish case. The Appeals Authority revisited the Irish case and observed that the facts and the circumstances in that case are different from the facts and circumstances in this Application. In addition, since in Tanzania there is a specific Rule that governs the filing of an application for extension of time for filing of an appeal on procurement related matters, the Appeals Authority finds no justifiable reasons for adopting the position in the Irish case.

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In view of the requirement of Rule 11 of the Appeals Rules, the Appeals Authority finds the Applicant's Application to have been filed after a lapse of 323 days. Thus, the Application has been filed beyond the stipulated time limit.

The Appeals Authority wishes to enlighten the Applicant on the essence of time under the Act, Regulations and the Appeals Rules. That is, the laws governing public procurement have set a specific time limit for handling all issues in order to ensure that the government projects are executed in time. In addition, the law has specified a separate dispute resolution mechanism for public tenders in order to ensure that that disputes arising are resolved within the shortest possible time limit in order to avoid delays in the execution of the government projects.

Following the importance of time limit in respect of the laws governing public procurement, the Appeals Authority rejects the Applicant's proposition that its circumstances should be treated as of a peculiar nature, thus it be granted the extension of time despite its application being made beyond the specified time limit.

Given the above findings the Appeals Authority hereby finds the Applicant's Application for extension of time to be incompetent for being filed in contravention of Rule 11 of the Appeals Rules and therefore has no leg to stand on. In that regard, the Appeals Authority will not delve into the remaining limb relating to sufficient reason for extension of time.

Under the circumstances the Appeals Authority answers the first limb of the second issue in the negative that the Appeals Authority has no jurisdiction to enlarge time beyond the seven days prescribed under Rule 11 of the Appeals Rules.

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

Taking cognizance of the findings hereinabove, the Appeals Authority hereby dismiss the Application for being filed out of time. We make no order as to costs.

It is so ordered.

This decision is binding and can be enforced in accordance with Section 97(8) of the Act.

The Right of Judicial Review as per Section 101 of the Act is explained to the parties.

This decision is delivered in the presence of the parties this 4th day of October 2024.

HON.JUSTICE (RTD) SAUDA MJASIRI


.....
CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO.....

2. ENG. STEPHEN MAKIGO.....