

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 13 OF 2026-27

BETWEEN

M/S YAMMA GROUP

INTERNATIONAL COMPANY LIMITED APPELLANT

AND

TANROADS - MARA REGIONAL OFFICE RESPONDENT

DECISION

CORAM

- | | |
|--------------------------|-------------------|
| 1. Ms. Florentina Sumawe | - Ag. Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Ms. Sarah Bisanda | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|-----------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

- | | |
|---------------------|--------------------------------|
| 1. Mr. Mtemi Hamisi | - Managing Director |
| 2. Mr. Gerald Peter | - Business Development Officer |



FOR THE RESPONDENT

1. Mr. Onesmo Haule
 - In charge of Procurement Management Unit – TANROADS MARA
2. Mr. Baraka Maugo
 - Legal Counsel – TANROADS HQ

This appeal was lodged by **M/S Yamma Group International Company Limited** (hereinafter referred to as "**the appellant**") against the **TANROADS - Mara Regional Office** (hereinafter referred to as "**the respondent**") in respect of Tender No: TR36/012/2026/2027/W/16 for Bridge Major Repair along Makutano Juu - Ikoma gate Trunk Road (hereinafter referred to as "**the tender**").

Based on the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this appeal is summarized as follows:

The tender was done through the National Competitive Tendering method 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**").

On 13th July 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible pre-qualified tenderers to participate in the tender with the submission deadline set for 27th July 2026. By the deadline, nine tenders, including that of the appellant, were received and evaluated. The Evaluation Committee recommended award of the tender to M/S Kapindya Company Limited (**the proposed awardee**).

On 12th August 2026, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the tender to the proposed awardee at a contract price of Tanzania Shillings Six Hundred Sixty-Eight Million One Hundred Thirty Thousand only (TZS 668,130,000.00), VAT exclusive, with a completion period of 240 days.

The Notice further stated that the appellant's tender was not considered because it submitted a Power of Attorney citing an incorrect Board Resolution Number No. 7 instead of Resolution No. 07/2026 as indicated in the attached extract to the Power of Attorney. Dissatisfied, the appellant applied for administrative review on 18th August 2026. In its decision dated 19th August 2026, the respondent rejected the complaint. Aggrieved further, the appellant lodged this present appeal before the Appeals Authority on 23rd August 2026.

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

1.0 Whether the disqualification of the appellant's tender was justified; and

2.0 What reliefs, if any, are the parties entitled to

SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Mr. Gerald Peter, Business Development Officer. He commenced by stating that the appeal arose from the Notice of Intention to Award the contract issued by the respondent on 12th August 2026. Through the said Notice, the appellant was informed that its tender was not considered for award because the Power of Attorney attached to its tender referred to "Resolution No. 7"

instead of the correct reference, "Resolution No. 07/2026". Consequently, the Evaluation Committee concluded that it was unable to verify its validity. Mr. Peter submitted that this finding was erroneous, disproportionate and unsupported by the substantive documents forming part of the tender.

He emphasized that the appellant's Power of Attorney was duly submitted and properly executed, dated 24th July 2026, identified the appellant as the donor, appointing Mr. Mtemi Mtoka Hamisi as the attorney, related to the tender in dispute and executed before a Commissioner for Oaths. He argued that the tender document specifically required written confirmation of authorization to sign the tender on behalf of the tenderer in the form of the Power of Attorney, which the appellant duly complied with.

Mr. Peter further submitted that although the Power of Attorney referred to Board Resolution No. 7, the attached extract clearly identified it as Resolution No. 07/2026 and expressly authorized Mr. Mtemi Mtoka Hamisi to execute all tender-related documents. He contended that the respondent failed to establish the existence of a separate "Resolution No. 7" and its claim that the two Resolutions were distinct was unsubstantiated. He argued that if the respondent alleged the existence of a different resolution, it ought to have identified its date, contents, place of submission in the NeST, authorized persons and any conflict with Resolution No. 07/2026.

He maintained that since no substantive defect was identified in Board Resolution No. 07/2026, the discrepancy in numbering was merely a minor clerical error. The extract confirmed all material particulars and

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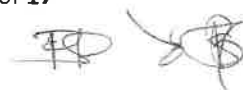
expressly authorized Mr. Mtemi Mtoka Hamisi to act as the appellant's attorney in relation to the tender.

Mr. Peter referred to clause 28.2 of the Instructions to Tenderers (**ITT**), which distinguishes between minor and major deviations. He argued that citing Resolution No.7 instead of 07/2026 was a clerical error that did not affect scope, quality or execution of the works. He further cited clause 28.5 of the ITT, which allows the respondent to seek clarification from a tenderer where it observes errors relating to non-material requirements. He contended that, the respondent ought to have sought clarification from the appellant, which would not have affected the tender price, technical offer, qualifications, experience, personnel, equipment, methodology, completion period, scope of works, or any competitive parameter.

Based on these arguments, Mr. Peter submitted that the respondent's decision to declare the appellant's tender non-responsive was improper and unjustified.

He concluded by praying for the following reliefs: -

- i) That the Appeal be allowed.
- ii) That the respondent's decision declaring the appellant's tender non-responsive be set aside.
- iii) A determination that the respondent has not sufficiently established whether the difference between "Resolution No. 7" and "Resolution No. 07/2026" constituted a material deviation warranting rejection of the tender.
- iv) That, if the respondent maintains that a separate "Resolution No. 7" was submitted or relied upon, the respondent be ordered to



identify and produce such document and demonstrate that it formed part of the appellant's original tender submitted in NeST.

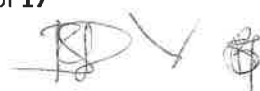
- v) The respondent be ordered to re-evaluate the appellant's tender in accordance with the tender document and applicable procurement law, regulations and PPRA guidelines.
- vi) The respondent be ordered to properly consider whether the identified discrepancy constitutes a minor/non-material irregularity, rather than treating it automatically as a material deviation.
- vii) An order preventing further implementation of the proposed award, to the extent permitted by law, pending determination of this Appeal, so that the Appeal is not rendered nugatory.
- viii) Any other relief, the Appeals Authority considers just, lawful and appropriate in the circumstances.

REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Onesmo Haule, In-Charge of the Procurement Management Unit. He began by adopting the respondent's Statement of Reply filed before this Appeals Authority as part of his submissions.

On the merits of the appeal, Mr. Haule submitted that the evaluation of tenders was guided by the fundamental principles of fairness and equal treatment. He maintained that no tenderer was excluded or disadvantaged without valid grounds and all tenderers were afforded an equal opportunity to compete without any preferential treatment.

He explained that the appellant's tender was disqualified on the ground that the Power of Attorney contained a discrepancy in the Board Resolution number. While the Power of Attorney referred to Resolution

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No. 7, the attached extract referred to Board Resolution No. 07/2026. Instead of submitting the Board Resolution expressly cited in the Power of Attorney, the appellant submitted an extract of a different resolution.

This, he argued, created a material inconsistency between the document referenced in the Power of Attorney and the document submitted as evidence of authority. The Evaluation Committee therefore determined that "Board Resolution No. 7" and "Board Resolution No. 07/2026" were distinct and not interchangeable.

Mr. Haule averred that if the appellant intended both references to denote the same resolution, it was its duty to make this clear before the submission deadline. Since no document in the appellant's tender established that the two references were identical, they could not be presumed to be the same.

He further stated that the Evaluation Committee considered the implications of accepting a legally binding document where the granting authority was unclear. Questions arose as to why Board Resolution No. 7 was not submitted, who passed it, and whether it existed at all. In the absence of answers, the Evaluation Committee could not ascertain whether the discrepancy was inadvertent or deliberate.

Mr. Haule further added that if Resolution No. 7 did not exist, its reference in the Power of Attorney could amount to misrepresentation under section 128 of the Act. He emphasized that such uncertainty in legally binding documents could expose the respondent to significant legal, financial, or contractual risks.

He further submitted that the respondent could not seek clarification, as doing so would prejudice other tenderers who had complied with the

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tender requirements. The law requires evaluation to be based strictly on the documents submitted by the deadline, without recourse to new information obtained after the deadline for submission of tenders.

Mr. Haule acknowledged that the discrepancy might appear minor at the first glance. However, once contested, it became a substantive issue that could expose the respondent, as a government institution, to legal complications. He noted that all other tenderers complied with the requirement, and only the appellant failed to do so. Waiving the criterion would therefore undermine equal treatment.

He concluded by urging the Appeals Authority to determine the matter based on the documents submitted, while considering the interests of the other tenderers, particularly the proposed awardee.

In view of the above, Mr. Haule prayed for the following reliefs: -

- i) Dismissal of the appellant's appeal.
- ii) Confirmation that the discrepancy concerning the Power of Attorney and the Board Resolution referred to therein constituted a valid basis for determining the appellant's tender to be non-responsive.
- iii) Upholding the Evaluation Committee's determination that the appellant's tender was non-responsive and therefore not eligible for award of the tender.
- iv) Consideration to other tenderers who completed their tender documents carefully and without discrepancies which will encourage them to continue exercising diligence and accuracy when preparing and submitting tender documents.

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- v) Advice the appellant to exercise greater care and diligence in the preparation and submission of tender documents, particularly legally binding documents such as Powers of Attorney and corporate resolutions.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the disqualification of the appellant's tender was justified

In determining this issue, the Appeals Authority duly considered the submissions made by both parties. The appellant challenged the respondent's decision declaring its tender non-responsive on the ground of a discrepancy between "Board Resolution No. 7" cited in the Power of Attorney and "Board Resolution No. 07/2026" stated in the attached extract. The appellant contended that the Power of Attorney was duly executed and submitted, and that the discrepancy was merely a minor clerical error which could have been clarified and should not have resulted in disqualification.

The respondent, however, maintained that the appellant's Power of Attorney expressly referred to Board Resolution No.7, while the extract attached referred to Board Resolution No. 07/2026. This, according to the respondent, created a material discrepancy between the document expressly cited and the document submitted as evidence of authority. The Evaluation Committee therefore determined that "Board Resolution No. 7" and "Board Resolution No. 07/2026" were distinct, rendering the appellant's Power of Attorney invalid.

In assessing the validity of these rival arguments, the Appeals Authority reviewed Item 2 - Standard Tender Forms, specifically second bullet

under SECTION IV – Qualification and Evaluation Criteria which reads as follows:

"Notarized Special Power of Attorney (SCORE: Comply/Not Comply to specified minimum requirements)

Tenderers must fill in Standard Power of Attorney as per the required format and upload into the system".

This requirement clearly stipulates that tenderers were obliged to submit the Standard Power of Attorney in the prescribed format and upload the duly completed document to the system.

The Appeals Authority further examined Section V – Bidding Forms which provides prescribed formats for various forms, including the Standard Power of Attorney. The first part of the Standard Power of Attorney template, which is the subject of dispute in this appeal, reads as follows:

"[Tenderer's Header]

STANDARD POWER OF ATTORNEY

[This form shall be used by company/firms]

*TO ALL IT MAY CONCERN THAT BY THIS POWER OF ATTORNEY given on the [insert date, month and year], WE the undersigned [insert name of the Donor(Company)] of [insert address of the Donor(Company)], by virtue of authority conferred to us by the Board of Directors through Resolution No **[insert Board Resolution Number]** of [insert day] day of [insert Board Resolution month and year], of which is still in full force and effect; do hereby ordain, nominate, authorize, empower and appoint [insert name of Donee] of [insert address of the Donee] to be our*



true lawful Attorney and Agent, with full power and authority, for us and in our names, and for our accounts and benefits, to do any, or all of the following acts, in the execution of tender No. [insert tender number] for [insert description of procurement] that is to say;"

(Emphasis added)

This quoted excerpt clearly demonstrates that tenderers were required to provide specific particulars by inserting the date, month, and year on which the Power of Attorney was executed, followed by the name and address of the company, Board Resolution Number, the date, month, and year on which the said Board Resolution was passed. The requirement further stipulated that tenderers were to include the particulars of the Donee and his or her address, together with the tender number and the description of the tender.

In verifying whether the appellant submitted the Power of Attorney in the prescribed format, we reviewed its tender submitted through NeST and observed that, under the Power of Attorney slot, the appellant uploaded two documents: a Power of Attorney dated 24th July 2026 and an extract of Board Resolution No. 07/2026 dated 24th July 2026. The appellant duly completed the required particulars in accordance with the prescribed format. However, in the space provided for the Board Resolution Number, the appellant entered No. "7", while the attached extract of the Company's Board Resolution specified the Board Resolution Number as 07/2026.

Based on the appellant's submissions, the respondent's Evaluation Committee concluded that "Board Resolution No. 7" and "Board

Resolution No. 07/2026" referred to two distinct resolutions. Consequently, the Committee rejected the appellant's tender on the ground that it was non-responsive.

Having considered the requirements of the tender document *vis-à-vis* the parties' submissions, we examined regulation 214(1), (2)(b) of the Regulations and clauses 27.1, 28.2 and 28.5 of the ITT which provide as follows:

"r.214 (1) A procuring entity may request a tenderer to clarify his tender in order to assist in the examination, evaluation and comparison of tenders but no advantage shall be sought, offered or permitted to change any matter of substance in the tender, including changes in price or changes aimed at making an unresponsive tender responsive.

(2) Notwithstanding regulation 209(5)-

(b) a procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the tender documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the tender;

Clause 27.1

In order to assist in the examination, evaluation, and comparison of Tenders, and post-qualification of

Tenderers, **the PE may, at its discretion, ask any Tenderer for clarification of its tender,** including breakdowns of prices in the Activity Schedule. Any clarification submitted by a Tenderer that is not in response to a request by the PE shall not be considered.

Clause 28.2

A substantially responsive tender is one which conforms to all the terms, conditions, and specifications of the Tendering Documents, without material deviation, omission or reservation. A material deviation, omission or reservation is one that;-

- a) if accepted, would affect in any substantial way the scope, quality, or execution of the works;
- b) limits in any substantial way, inconsistent with the Tendering Documents, the PE's rights or the Tenderer's obligations under the Contract; or
- c) if rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

Clause 28.5

Provided that a Tender is substantially responsive, the PE may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities in

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the Tender related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender".

(Emphasis added)

The above provisions clearly establish that, for purposes of facilitating examination, evaluation, comparison and post-qualification of tenders, the procuring entity may, at its discretion, seek clarification from a tenderer. They further provide that a substantially responsive tender is one which conforms to all the terms, conditions, and specifications of the tender document without any material deviation, omission, or reservation. Where a tender is substantially responsive, the procuring entity may request the tenderer, within a reasonable time, to furnish information or documents to rectify non-material non-conformities relating to documentation requirements, provided that such clarification does not involve price-related matters.

Applying these provisions to the facts of this matter, we observed that the appellant's Power of Attorney contained all the particulars required under the prescribed format. The Power of Attorney referred to Board Resolution No. 7 as the basis of the authority and was accompanied by an extract of Board Resolution No. 07/2026. We noted, however, that the Board Resolution number stated in the Power of Attorney differed from that appearing in the attached extract.

The appellant, in its submissions, acknowledged the inconsistency between the Board Resolution number in the Power of Attorney and that in the attached extract but contended that the discrepancy was a minor deviation which could have been rectified through clarification. The respondent, conversely, argued that the discrepancy was material, carried legal consequences, and therefore could not be rectified through clarification.

We considered regulation 214(2)(b) of the Regulations and clause 28.2 of the ITT, which set out the circumstances constituting major deviations. Upon reviewing these provisions alongside the appellant's Power of Attorney and the attached extract, we found that the Power of Attorney contained all material particulars necessary to establish the authority granted. Both documents clearly established that Mr. Mtemi Mtoka Hamisi was duly authorized to act on behalf of the appellant in relation to the tender. The only discrepancy noted was confined to the numbering of the Board Resolution. Since all the mandatory requirements of the Power of Attorney were complied with, we find the discrepancy in numbering constituted a minor deviation, as it neither affects the existence or scope of the authority granted nor the substance of the tender.

Accordingly, we hold that, if the respondent was uncertain as to the correct Board Resolution number, it could have invoked clause 28.5 of the ITT (supra) to seek clarification from the appellant. This clause expressly allows the respondent to seek clarification from tenderers to rectify non-material non-conformities relating to the documentation.

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We further considered the respondent's argument that seeking clarification on the Board Resolution number would prejudice the rights of other tenderers. We find that such prejudice would only arise where clarification relates to matters affecting the substance of a tender. In the present case, clarification would merely have served to confirm the correct Board Resolution number underlying the authority granted to Mr. Mtemi Mtoka Hamisi. Seeking such clarification would not have affected the rights of other tenderers and we therefore reject the respondent's assertion in this regard.

Given these circumstances, we find that the discrepancy in the Board Resolution number did not amount to a major deviation warranting disqualification of the appellant's tender.

We therefore conclude the first issue in the affirmative that the disqualification of the appellant's tender was not justified.

2.0 What reliefs, if any, are the parties entitled to?

In view of the foregoing findings, we hereby allow the Appeal and quash the respondent's proposal for the award of the tender. The respondent is hereby ordered to reinstate the appellant in the tender process and to conduct a re-evaluation of tenders in strict compliance with the applicable law. No order as to costs.

It is so ordered.

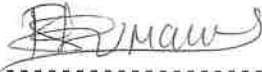
This decision is binding and can be enforced in accordance with section 121 (7) of the Act.

The parties have been informed of their Right of Judicial Review pursuant to section 125 of the Act.

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This decision is delivered in the virtual presence of the parties this 17th day of September 2026.

MS. FLORENTINA SUMAWE



Ag. CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU



2. MS. SARAH BISANDA

