

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 41 OF 2024 - 2025**

**BETWEEN**

**M/S BOGETA ENGINEERING LTD ..... APPELLANT**

**AND**

**MBEYA UNIVERSITY OF**

**SCIENCE AND TECHNOLOGY ..... RESPONDENT**

**DECISION**

**CORAM**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu            | - Member      |
| 3. Mr. Raphael Maganga            | - 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. Eng. John Bogomba | - Managing Director                                 |
| 2. Mr. John Mahegere | - Director of Administration<br>and Human Resources |
| 3. Mr. Shafii Zuberi | - Accountant  |



## FOR THE RESPONDENT

- |                       |                                       |
|-----------------------|---------------------------------------|
| 1. Mr. Disth Japhet   | - Head of Procurement Management Unit |
| 2. Mr. William Mambo  | - Legal Expert                        |
| 3. Mr. Joseph Paul    | - Senior Assistant Supplies Officer   |
| 4. Mr. Atukuzwe Fungo | - Estate Officer                      |

This Appeal was lodged by **M/S Bogeta Engineering Limited** (hereinafter referred to as "**the Appellant**") against **Mbeya University of Science and Technology** known by its acronym "**MUST**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR83/2024/2025/W/13 for the Proposed Rehabilitation and Upgrading of Mtwara Kawaida Teachers College to MUST Mtwara Campus College-Package 01 (hereinafter referred to as "**the Tender**").

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

The Respondent floated the tender through the National Competitive Tendering method specified in the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 24<sup>th</sup> March 2025, the Respondent invited eligible tenderers through the National e-Procurement System of Tanzania (**NeST**) to participate in the said Tender. Seven tenders, including that of the Appellant's, were



received by the Respondent within the 04<sup>th</sup> April 2025 deadline for submission of tenders.

They were subjected to an evaluation process by the Respondent's Evaluation Committee which recommended award of the Tender to M/S Kawishe Contractors Limited (**the proposed successful tenderer**) at a recommended contract price of Tanzania shillings Eight Hundred One Million Five Hundred Six Thousand only (TZS. 801,506,000/-) VAT exclusive for a completion period of 120 days. Thereafter, on 16<sup>th</sup> May 2025, the Tender Board approved the award as recommended.

On 20<sup>th</sup> May 2025, the Respondent issued a Notice of Intention to award which notified the Appellant of its intention to award the contract to M/S Kawishe Contractors Limited. Furthermore, the Notice stated that the Appellant's tender was found ineligible for the award on the following reasons:-

- i) General and Specific Experience - the submitted projects did not range within the time specified in the Tender Document as only two out of the three submitted contracts complied with the specified requirements.
- ii) Construction Management Strategy - the submitted document did not align with the requirements specified in the Tender Document.
- iii) Mobilization Schedule - the submitted documents did not align with the requirements specified in the Tender Document.
- iv) Method Statement - the documents submitted did not align with the requirements specified in the Tender Document.

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v) Key Personnel - the Appellant did not include an ICT Specialist as required.

Dissatisfied with the reasons given for its disqualification, on 20<sup>th</sup> May 2025 the Appellant applied for administrative review to the Respondent. And on 24<sup>th</sup> May 2025, the Respondent issued its decision which rejected the Appellant's application for administrative review. Aggrieved further, on 30<sup>th</sup> May 2025, the Appellant filed this Appeal before the Appeals Authority.

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 To what reliefs if any are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's submissions were made by Eng. John Bogomba, the Managing Director who was assisted by Mr. John Mahegere, Director of Administration and Human Resources.

Eng. Bogomba submitted on the first issue by complaining that the Appellant was disqualified in the Tender for failure to comply with five requirements, which are the grounds of this Appeal as expounded hereunder.

**Firstly,** Eng. Bogomba disputes the Appellant's disqualification for the alleged non-compliance with the general and specific experience criteria as provided in the Tender Document. He was of the view the Appellant company which was incorporated in 2004 had twenty-one (21) years of



experience in the construction industry. During this period, the company executed a total of thirty-six (36) projects that are significantly more valuable than the Respondent's project. It was his argument that the executed projects complied with the general and specific experiences criteria required for this Tender.

Eng. Bogomba added that in compliance with the experience requirements criteria, the Appellant submitted fourteen contracts amongst which complied with and had the required value in the Tender Document. He argued that had the Respondent's evaluators been competent, they would not have disqualified the Appellant's tender as all uploaded contracts in NeST demonstrated the Appellant's competence. In view of his argument, Eng. Bogomba urged us to find the disqualification on this ground of experience was unjustified.

**Secondly**, the Appellant challenges its disqualification for failure to comply with the construction management strategy requirement criterion. Eng. Bogomba submitted that in complying with this criterion, tenderers were required to submit a Construction Management Schedule detailing the time to be taken and resources needed for the project execution. He stated that, in complying with this requirement, the Appellant submitted a Compliance License together with a certificate of registration No. 214 102 507 issued by the Occupational Safety and Health Authority (OSHA) which it uploaded in NeST. As there was no specific format provided for the Construction Management Strategy, the Appellant believed it complied with this criterion.

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It was his further view, even if this anomaly was noted by the Respondent, it should have not disqualified the tender as the Appellant would have rectified it prior to signing of the contract. It was his submission that the Tender Document allows the schedule of work to be revised at this stage. He wound up on this ground by insisting that the disqualification of the Appellant's tender at this stage was not proper.

**Thirdly**, the Appellant disputes its disqualification for failure to comply with the mobilization schedule criterion. Eng. Bogomba submitted that the Tender Document did not provide a specific format on how the mobilization schedule should be prepared. And therefore, the Appellant submitted a professionally prepared document which it believed complied with the requirement in this criterion. He argued that in the absence of a specific format, the Respondent lacks a basis for disqualifying the Appellant's tender as every submitted document which explained the mobilization schedule should have been accepted by the Respondent.

Eng. Bogomba submitted that non-compliance with the Mobilization Schedule requirement should not have been the basis of disqualification of the tenderer since it did not fall under mandatory requirements of the Tender. According to him, mandatory requirements had specific formats provided in the Tender Document and hence, the disqualification was improper as no specific format was provided. Based on this position, Eng. Bogomba insisted that the Appellant's disqualification on this point was not justified.

**Fourthly**, the Appellant challenges its disqualification for failure to comply with the Method Statement requirement. Eng. Bogomba averred that this

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requirement was not one of the mandatory criteria for the Tender and it should not have led to the Appellant's disqualification. He said that the Respondent provided a format of this criterion in NeST and which the Appellant abided to and submitted a Method Statement. Therefore, it was his view that the Respondent should not have disqualified the Appellant's tender on this criterion.

**Fifthly**, the Appellant disputes its disqualification for failure to include an ICT specialist as one of the four required key personnel in its tender. Eng. Bogomba submitted that the Tender Document required tenderers to submit four key personnel to wit: an ICT specialist, a site technician, a project manager and an electrical engineer. In complying with this requirement, the Appellant submitted information of three required key personnel but did not submit the name or information of an ICT specialist.

On his part, Mr. John Mahegere submitted that since the nature of the intended project was construction, the absence of an ICT specialist would not have rendered the execution of the contract impossible. He added that the Appellant had submitted names and detailed information of three out of the four required key personnel. Hence, it was his view that before disqualifying the Appellant's tender, the Respondent ought to have weighed if the missing ICT specialist would have rendered the Appellant's tender to be ineligible. It was his submission that instead of disqualifying the Appellant's tender, the Respondent should have invited it for negotiations which could not have led to the disqualification. Consequently, it was his view that the Respondent would have saved TZS 214,000,000.00 by not awarding the Tender to the proposed successful

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tenderer and use this amount to assist the Government in execution of other projects.

Eng. Bogomba wound up his submissions and urged the Appeals Authority not to allow the Respondent to incur a loss just for the Appellant's minor anomalies.

Based on the above submissions, he prayed for the following reliefs: -

- (i) Review of the Tender award process and award the contract to the Appellant; and
- (ii) Costs of the Appeal be borne to the Respondent

### **REPLY BY THE RESPONDENT**

The Respondent's reply submissions were made by Mr. William Mambo, Legal Expert from the Respondent's office.

In reply to the first ground, he submitted that the Appellant was disqualified for failure to comply with the experience requirement which was divided into two parts; namely, general experience and specific experience.

The learned counsel explained in the general experience category, tenderers were required to submit three previous executed contracts from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2024 with each contract having a value of not less than TZS 340,000,000.00. Mr. Mambo submitted that during evaluation, the Appellant's tender was found to have submitted only two previous executed contracts in satisfying the above criteria.

He stated further that in the specific experience category, tenderers were required to demonstrate experience in building construction by submitting

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three contracts which were satisfactorily completed as a prime contractor between 1<sup>st</sup> January 2021 and 31<sup>st</sup> December 2024 and each having a value of not less than TZS 340,000,000.00. Mr. Mambo submitted that during evaluation, the Appellant's tender was disqualified for failure to comply with this requirement as it had two contracts instead of three and with less value than the amount provided in the Tender Document. Consequently, it was his argument that the Appellant was disqualified fairly.

In response to the Appellant's contention that it had executed several projects and hence had the required experience, Mr. Mambo stated that such an argument is irrelevant as the Appellant was required to demonstrate its experience as per the requirements provided in the Tender Document. Thus, he urged the Appeals Authority to disregard the Appellant's argument on this point.

On the second ground of appeal alleging that the Appellant failed to comply with the construction Management Strategy, Mr. Mambo submitted that tenderers were required to submit a Construction Schedule detailing the time for completion and resources needed for the intended contract execution that was to be presented in a bar chart. He stated that during evaluation, the Appellant's tender was found to have attached a health and safety policy from OSHA contrary to the requirement provided in the Tender Document.

Mr. Mambo further disputed the Appellant's contention that its non-compliance with this criterion was due to the reason that no specific format was provided by the Respondent. He stated that the Construction

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Management Strategy requirement was clear on what was to be submitted by tenderers, and hence there was no need for a specific format.

In reply to the third ground of Appeal on the Appellant's disqualification for failure to comply with the Mobilization Schedule, Mr. Mambo submitted that tenderers were required to submit a Mobilization Schedule for personnel, equipment and materials. According to him, the mobilization schedule would assist the Respondent to understand how the project would be executed. In complying with this requirement, the Appellant submitted a Code of Conduct for contractors and sub-contractors personnel instead of a Mobilization Schedule as per the requirements provided in the Tender Document. He concluded on this by contending that the Appellant's failure to do so led to its disqualification.

Regarding the Appellant's contention that the Mobilization Strategy was not among the mandatory criteria for the Tender, Mr. Mambo stated that the Appellant's argument is misconceived as the Tender Document did not specify which requirements were mandatory and non-mandatory. Tenderers were to comply with all the criteria as provided in the Tender Document. Mr. Mambo therefore urged the Appeals Authority to disregard the Appellant's contention in this regard.

On the fourth ground of Appeal, Mr. Mambo submitted that the Appellant failed to comply with the Method Statement criterion where tenderers were required to submit clear details on how works will be executed and completed in accordance with the proposed program. In response to this requirement the Appellant provided a general statement which did not indicate how the works would be executed. The counsel further contended

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that, during evaluation process the Appellant's tender was found to be non-compliant and non responsive with the tender requirement. Therefore, Mr. Mambo urged us to find that the disqualification of the Appellant on this criterion was justified.

In response to the fifth ground of appeal, Mr. Mambo stated that tenderers were required to provide qualifications and adequate details of ICT Specialist, Project Manager/Site Engineer, Electrical Engineer and Site Technician as key personnel. He contended that, in complying with this requirement the Appellant submitted qualifications and details of other personnel except the ICT Specialist.

Mr. Mambo submitted that since the Respondent's university is technology based, an ICT specialist was considered to be one of the key personnel because the intended construction involves matters relating to technology.

In reply to the Appellant's contention that it ought to have been invited for negotiations, Mr. Mambo submitted that only the lowest evaluated tenderer is, by law, invited for negotiations. He pointed out that the Appellant was disqualified at the technical evaluation stage and thus it could not be invited for negotiations.

In regard to the Appellant's contention that the Respondent would have saved TZS 214,000,000.00, had it been awarded the Tender, Mr. Mambo stated that an award is legally made to the lowest evaluated tenderer and the Appellant was not the one. It was his argument that under the circumstances of the Tender under Appeal, the question of value for money could not arise.

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In support of his argument Mr. Mambo cited the case of ***E1 Limited versus Bank of Tanzania and Another***, Miscellaneous Cause No. 2 of 2022, High Court of Tanzania, Main Registry at Dar es Salaam where the court held that: -

*"...value for money is also determined by considering other two aspects namely, quality and delivery in respect of the prescribed specifications and criteria. Apart from price, the procuring entity is entitled to consider the quality and delivery of the prescribed specification."*

To buttress his argument, the counsel further cited PPAA Appeal Case No. 9 of 2024-2025 between ***M/S Ismani Company Limited versus Dar es Salaam Water Supply and Sanitation Authority*** where the Appeals Authority held that the Respondent's disqualification of the Appellant's tender complied with the requirement of the law as the latter failed to comply with criteria provided in the Tender Document.

In view of the above, Mr. Mambo concluded his submissions by stating that the Appellant was fairly disqualified from the Tender process and in accordance with regulations 173, 210 and 211 of the Regulations.

Finally, the Respondent prayed for the dismissal of the Appeal with costs.

## **ANALYSIS BY THE APPEALS AUTHORITY**

### **1.0 Whether the disqualification of the Appellant's tender was justified**

Having heard the parties, we commence by determining the first ground of Appeal. In its submissions, the Appellant contended to have complied with

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general and specific experience requirements as provided in the Tender Document whilst the Respondent rebutted the assertions by stating that the experience provided by the Appellant did not comply with the requirements provided the Tender Document.

In ascertaining the validity of the parties' arguments, we reviewed Item 1 of Section IV - Qualification and Evaluation Criteria which provides guidance on the requirements of general and specific experience and reads as follows: -

***"Specific Experience (SCORE: N/A)***

*Specific and Contract Management Experience: A minimum number of similar contracts based on the physical size, complexity, methods/technology and/or other characteristics described in the PE Requirements on contracts that have been satisfactorily and substantially completed (substantial completion shall be based on 80% or more of completed assignments under the contract) as a prime contractor/supplier/service provider, joint venture member, management contractor/supplier/service provider or sub-contractor/supplier/service provider for mentioned duration. (In case of Joint Venture, compliance requirements are: All Parties – Must Meet requirements). In the case of JVCA, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JVCA meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.*

<i>Specific Experience</i>	<i>Experience</i>	<i>under</i>
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	<b><i>Construction (Building) contracts in the Role as Prime Contractor.</i></b>
<i>Specific Experience Start Year</i>	<b><i>2021-01-01</i></b>
<i>Specific Experience End Year</i>	<b><i>2024-12-31</i></b>
<i>Number Specific Experience Contracts</i>	<b><i>3</i></b>
<i>Value of each Specific Experience Contract in the specified tender currency</i>	<b><i>340,000,000"</i></b>

***"General Experience (SCORE: N/A)***

*Tenderer should provide details of their previous and ongoing contracts to evidence their general experience in construction*

<i>General experience start date</i>	<b><i>2021-01-01</i></b>
<i>General experience end date</i>	<b><i>2024-12-31</i></b>
<i>Number of Contract</i>	<b><i>3</i></b>
<i>Contract value in the specified currency</i>	<b><i>340,000,000"</i></b>

(Emphasis supplied)

The above provisions state that in complying with general and specific experience in construction contracts, tenderers were required to attach 3 contracts executed from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2024 each with a value of not less than TZS 340,000,000.00.

We reviewed the Appellant's tender in NeST and noted that under the specific and general experience criteria, the Appellant listed fourteen contracts but only two complied with the requirements of the Tender. They were: -

- i) Contract No. 007/CCP/211158/W/2020/21/03-LOT3 for Construction of Four Subordinate Courts at Kaliua in Tabora Region, Uvinza, Buhingwe and Kakonko in Kigoma Region. The contract was between the Judiciary of Tanzania - High Court Kigoma Centre and the Appellant with a value of TZS 3,693,466,880.04. The contract period was from 26<sup>th</sup> October 2021 to 28<sup>th</sup> September 2022.
- ii) Contract No. ME012/2018-19/HQ/W/40Lot3 for Construction of Infrastructure for the Ministry of Agriculture at Mat Mubondo. The contract was between the Ministry of Agriculture and the Appellant with a value of TZS 559,417,945.00. The contract commencement date was from 10<sup>th</sup> July 2021 to 11<sup>th</sup> November 2022.

It is clear, that the Appellant failed to comply with the experience requirement criteria that required submission of three relevant contracts whereas it submitted only two that were relevant to the requirements of the Tender. In view of this finding, we hold that the Appellant's disqualification under this criterion was proper.

We then considered the second ground of Appeal where the Appellant complains its disqualification for failure to comply with the Construction Management Strategy requirement was improper. On the one hand, the Appellant alleged to have complied with the said criterion while on the other hand, the Respondent denied the Appellant's claim.

In substantiating whether the Appellant's disqualification was proper; we reviewed Item 4 of Section IV - Qualification and Evaluation Criteria which provides guidance on the Construction Management Strategy where

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tenderers were required to submit a bar chart showing the construction time for each activity and the required resources. The provision reads as follows: -

***"Construction Management Strategy***

*Tenderer is required to submit Construction Schedule showing time taken and resources required in execution of various tasks, presented in bar chart. The Construction Schedule must reflect construction period stipulated in the Tendering Documents.*

<i>Construction Management Strategy</i>	<i>Provide Construction Management Strategy</i>
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In ascertaining if the Appellant complied with this criterion, we review its tender in NeST and observed that in complying with this requirement, the Appellant attached to its tender a Health and Safety Compliance Licence with Registration No. 214 102 507 issued by OSHA and an Occupational Health and Safety Policy. The Appellant also attached a letter addressed to the Respondent which indicates its compliance with environmental matters. After reviewing the attached documents, we observed that none of them detailed the time, a schedule and resources needed for execution of various tasks under the intended contract. Therefore, from the available record it is apparent that the Appellant failed equally to comply with construction management strategy criterion.

Thereafter, we considered the fifth ground of Appeal where the Appellant disputed its disqualification for failure to submit an ICT specialist as one of the key personnel. The Appellant asserted that much as an ICT specialist was not included on its list of key personnel, the said anomaly would not

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have led to its disqualification if the Appellant was invited for negotiations and it could have been rectified. The Respondent on its side rejected the Appellant's proposition that its failure to submit an ICT specialist could have been rectified through negotiations. The Respondent contended that negotiations are to be conducted with the lowest evaluated tenderer and the Appellant was not the one in this Tender.

In ascertaining the validity of the parties' contentious arguments, we reviewed Item 3 of Section IV – Qualification and Evaluation Criteria which stated clearly that for this Tender, the required key personnel were an ICT Specialist, a Project Manager/Site Engineer, an Electrical Engineer and a Site Technician as the key personnel. The provision reads as follows: -

***"Key Personnel: (Score N/A)***

*Tenderer should provide details of their personnel with adequate qualifications as required by the procuring entity.*

<b><i>Categories of Key Personnel</i></b>	<b><i>Education Level</i></b>	<b><i>Experience of Key Personnel</i></b>	<b><i>Number of Required Key Personnel</i></b>
<i>ICT Specialists</i>	<i>Bachelor in ICT, Bachelor in Computer Science, Bachelor in Computer Engineering, Bachelor in Telecommunication Engineering</i>	<i>3 Years</i>	<i>1</i>
<i>Site Technician</i>	<i>Diploma in Water Supply Engineering, Diploma in Plumbing Engineering</i>	<i>3 Years</i>	<i>1</i>
<i>Project</i>	<i>Bachelor in Civil</i>	<i>5 Years in</i>	<i>1</i>



<i>Manager/ Site Engineer</i>	<i>Engineering, Must be registered by relevant board</i>	<i>building construction</i>	
<i>Electrical Engineer</i>	<i>Bachelor in Electrical Engineering, Must be registered by relevant board</i>	<i>3 Years</i>	<i>1"</i>

We reviewed the Appellant's tender in NeST and noted that it submitted names of one John Kengere Bogomba as the project manager, Joseph Bareli Kuboja as the electrical mechanical engineer and John Joseph Kabuche as site engineer. It failed to submit the name of an ICT specialist.

In view of the above facts, we find that the Appellant's disqualification for failure to comply with the key personnel criterion requirement to be proper and justified.

From the foregoing, we find that the Respondent's act of disqualifying the Appellant's tender for failure to comply with experience, construction management strategy and key personnel requirements to be proper and in accordance with regulations 210(1) and 213(1) and (2) of the Regulations which read as follows: -

***"r.210 (1) Tathmini ya zabuni itaendana na vigezo na masharti yaliyoanishwa kwenye nyaraka za zabuni na itafanywa kwa kutumia vigezo vilivyoainishwa kwenye nyaraka za zabuni.***

*"r.213.- (1) Uamuzi wa taasisi nunuzi wa ukidhi wa zabuni utazingatia yaliyomo kwenye zabuni bila kutegemea ushahidi wa nje ya nyaraka zilizowasishwa.*

*(2) Pale ambapo zabuni haikidhi masharti ya nyaraka ya zabuni itakataliwa na taasisi nunuzi, na haitaweza kukidhi masharti kwa kufanyiwa marekebisho au kusahihishwa ukiukwaji huo."*

(Emphasis supplied)

Next, we considered the Appellant's contention that it ought to have been invited for negotiations to rectify the noted anomalies on its tender. We agree with the Respondent's position that regulation 232 (5) of the Regulations requires negotiations to be conducted with the lowest evaluated tenderer. Since the Appellant's tender was disqualified at the technical evaluation stage, its tender could not have been considered as eligible for negotiations. Regulation 232 (5) of the Regulations reads as follows: -

*"r.232 (5) Majadiliano yatafanyika kwa mzabuni mwenye zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini kwa bidhaa, huduma au kazi za ujenzi, au mzabuni mwenye zabuni yenye bei ya juu zaidi iliyofanyiwa tathmini ya ukusanyaji wa mapato kwa zabuni za ushindani wa kitaifa na kimataifa."*

(Emphasis supplied)



We now address the Appellant's claim that the Respondent would save TZS 214,000,000.00, had it been awarded the Tender. In terms of regulation 219 (a) of the Regulations, for a tenderer to be awarded the tender, it should be the lowest evaluated tenderer in case of goods, works or services, or the highest evaluated tenderer in case of revenue collection, but not necessarily the lowest or highest submitted price. It reads as follows: -

*"r.219. Zabuni iliyoshinda itakuwa-*

*(a) zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini ikiwa ni bidhaa, kazi za ujenzi au huduma, au bei ya juu zaidi ya zabuni iliyofanyiwa tathmini ikiwa ni ukusanyaji wa mapato, isipokuwa si lazima iwe bei ya chini zaidi au bei ya juu zaidi iliyowasilishwa, kwa kuzingatia kigezo cha ukomo wowote wa upendeleo utakaotumika".*

(Emphasis supplied)

Based on the record of Appeal and the above provision, we noted that the Appellant was not the lowest evaluated tenderer as its tender was disqualified during the technical evaluation stage. Consequently, we agree with the Respondent's contention that the claim is irrelevant and we hereby reject it as being devoid of merit.

This position is buttressed by the case of ***E1 Limited versus Bank of Tanzania and Another*** (Supra), relied upon by the Respondent where the court had stated that value for money needs also to consider quality and delivery of the prescribed specifications and criteria provided by a procuring entity.



Given the above findings, we are of the view the above grounds suffice to dispose of the appeal and we need not belabor on the rest of the grounds.

Having said all and done, we find the first issue in the affirmative that the disqualification of the Appellant's tender was justified.

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

Taking cognizance of the above findings, we hereby dismiss the Appeal for lack of merit. The Respondent is allowed to proceed with the Tender process in compliance with the law. We make 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 Right of Judicial Review as per section 125 of the Act is explained to the parties.

This decision is delivered in the presence of the Appellant and in the absence of the Respondent though duly notified this 26<sup>th</sup> day of June 2025.

**HON. JUDGE (rtd) AWADH BAWAZIR**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. DR. WILLIAM KAZUNGU**.....



**2. MR. RAPHAEL MAGANGA**.....



