

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 20 OF 2025-26

BETWEEN

M/S FAVORITE GROUP LIMITED (FGL)..... APPELLANT

AND

**PUBLIC SERVICE SOCIAL
SECURITY FUND (PSSSF) RESPONDENT**

RULING

CORAM

1. Hon. (rtd) Judge Awadh Bawazir	- Chairperson
2. Dr. Gladness Salema	- 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. Dr. Aron Kinunda	- Adv. Lawhill Chambers
2. Mr. James Jacob	- Legal Officer FGL
3. Mr. Paul Meela	- Chief Executive Officer

FOR THE RESPONDENT

1. Mr. Steven Biko	- Principal State Attorney
2. Ms. Grace Lupondo	- Senior State Attorney
3. Mr. Jimmy Mbogela	- Director of Procurement Services
4. Mr. Joseph Mwera	- Ag. Supplies Manager
5. Mr. John Mudende	- Senior Procurement Officer
6. Mr. Kelvin Charles	- Legal Officer

This appeal, lodged by **M/S Favorite Group Limited** (hereinafter referred to as "**the appellant**") against the **Public Service Social Security Fund**, abbreviated as **PSSSF** (hereinafter referred to as "**the respondent**"), concerns Tender No. TR196/2024/2025/C/40 for Provision of Tax Consultancy Services (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 can be summarized as follows: -

The tender was done through the Restricted National Competitive Selection method, as prescribed 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 24th April 2025, the respondent issued a Request for Proposal (RFP) inviting Auditax International Ark Associate Limited and the appellant to participate in the tender process through the National e-Procurement

System of Tanzania (NeST). By 02nd May 2025, two tenders, including the appellant's, were received and subsequently evaluated by the respondent. After successful negotiations, the respondent awarded the contract to the appellant at the price of Tanzania shillings Thirty-Three Million Eight Hundred Ninety-Eight Thousand Three Hundred Five and Nine Cents only (TZS 33, 898,305.09), VAT exclusive.

The notification of award dated 30th May 2025 required the appellant to submit a performance security guarantee. In complying, the appellant submitted a performance bond that was effective from 3rd June 2025 to 2nd June 2026. Thereafter, the appellant was given the contract for signing. After signing, it returned the contract to the respondent for counter-signature on 9th June 2025.

Through a letter dated 21st August 2025, the respondent requested the appellant to extend the tender validity period for an additional sixty (60) days. The appellant, by a letter dated 26th August 2025, refused to extend the tender validity period, reasoning that the procurement process had been completed and the contract execution was underway. On the 3rd December 2025, the respondent revoked award of the tender to the appellant via notification issued through NeST.

Aggrieved by the revocation, the appellant submitted an application for administrative review to the respondent on 08th December 2025. On the same date, the respondent cancelled the tender. Subsequently, on 12th December 2025, the respondent issued a decision rejecting the appellant's complaint. Further dissatisfied, the appellant lodged this appeal to the Appeals Authority on 19th December 2025.

In this appeal, the appellant challenges the respondent's revocation of the tender award on the basis that the tender validity period had expired. It contends that the tender validity period was set to expire on 29th August 2025. Before this date, on 9th June 2025, the appellant signed the contract and submitted it to the respondent for counter-signature. The respondent had over seventy days to sign the contract but failed to do so. Instead, on 21st August 2025, the respondent requested extension of the bid validity period, which the appellant refused, believing that the tender process had been concluded. The appellant further asserts that prior to the respondent's extension request, it was verbally instructed to commence the work and by the time the award was revoked, it had completed over eighty percent of the contract. Therefore, the appellant argues that the revocation of award and subsequent cancellation were improper and unlawful.

In response, the respondent stated that award made to the appellant was revoked due to the expiry of the tender validity period. The respondent maintained that the contract had not entered into force in terms of section 69(12) of the Act. Consequently, it requested an extension of the tender validity to finalize contract signing. The appellant's refusal left the respondent with no alternative but to revoke the award and cancel the tender. The respondent concluded that the revocation was lawful, as the tender process was not fully finalized.

When the matter was called on for hearing and prior to framing up of the issues, the respondent raised a Preliminary Objection on a point of law (PO) to wit; *whether or not there is a valid tender for determination by the Appeals Authority*. The Appeals Authority resolved to first

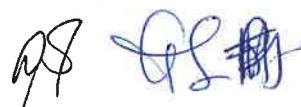
determine the raised PO before considering the substantive merits of the appeal. Thus, it invited both parties to address it on the PO.

SUBMISSIONS BY THE RESPONDENT ON THE PO

The respondent's submissions were made by Mr. Steven Biko, Principal State Attorney, assisted by Ms. Grace Lupondo, Senior State Attorney. Mr. Biko began by citing section 86 of the Act, which requires procuring entities to specify the tender validity period that runs from the tender opening date until contract signing. He stated that clause 25 of the Proposal Data Sheet (PDS), which modified clause 25 of the Instruction To Consultants (ITC), set the tender validity period for this tender at 120 days.

Mr. Biko submitted that the tender opening took place on 2nd May 2025, thus the tender validity period was due to expire on 30th August 2025. Before this expiration, the respondent sent a letter dated 21st August 2025 requesting the appellant to extend the validity period pursuant to regulation 200(6) of the Regulations. However, the appellant refused this request by a letter dated 26th August 2025. Consequently, the tender validity expired on 30th August 2025 due to the Appellant's refusal to extend it. Mr. Biko emphasized that by the time the tender validity period expired, the tender process was incomplete, as the contract had not been signed by both parties.

He further argued that all actions taken by the respondent after the expiry date namely, revocation of award on 3rd December 2025, cancellation of the tender on 8th December 2025, and the response to the appellant's complaint on 12th December 2025-were all null and void under the law because they occurred after the tender validity period had lapsed.

A handwritten signature in blue ink, appearing to read "G. Biko".

Mr. Biko submitted that the PO raised is premised under section 86 of the Act read together with regulation 200(4) and (6) of the Regulations. These provisions require the tender validity period specified in the tender documents to be sufficient to allow the procuring entity to complete evaluation, approve recommendations, issue the notification of award, and finally signing of the contract.

These provisions also permit the procuring entity to request tenderers to extend the validity period before its expiry, for an additional term not exceeding the original period. Since the respondent realized the validity period was nearing its expiry date and the tender process was not completed, it requested an extension, which the appellant refused. Therefore, the tender expired on 30th August 2025 upon lapse of the original period.

To support his argument, Mr. Biko cited several Appeals Authority decisions addressing bid validity periods. The cases were ***M/S Ascerics Limited against Dar es salaam City Council and another***, Appeal Case No. 45 of 2022-23, ***M/S Wasion Group (Tanzania) Limited against Tanzania Electric Supply Company Limited***, Appeal Case No. 3 of 2019-2020 and ***M/S COSEKE Tanzania Limited against Tanzania Petroleum Development Corporation***, Appeal Case No. 16 of 2020 – 21.

In all the above cited cases, the Appeals Authority held that it could not proceed with the appeals filed after the tender validity period had expired, as no valid tender existed. Mr. Biko urged the Appeals Authority to maintain the *stare decisis et non quieta movere* and not to depart therefrom. Therefore, he prayed that the PO be sustained and dismiss the current appeal for the same reason.

He further submitted that the PO is a pure point of law based on section 86 of the Act, regulation 200(4) and (6) of the Regulations and undisputed facts in the pleadings. To reinforce his argument, he cited the case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*** (1969) E.A 696 and the case of ***Moto Matiko Mabanga v Ophir Energy and Six Others***, Civil Appeal No. 119 of 2021, Court of Appeal of Tanzania at Dar es Salaam, (unreported). Both cases establish the principle that a preliminary objection must be on a pure point of law, determinable from the pleadings without extensive factual inquiry.

In conclusion, Mr. Biko prayed that the Appeals Authority declare there is no valid tender for determination due to the expiry of the tender validity period on 30th August 2025, and therefore no appeal exists before the Appeals authority for determination.

REPLY BY THE APPELLANT ON THE PO

The appellant's submissions were made by Dr. Aron Kinunda, learned counsel. He commenced by stating that the PO raised by the respondent is not a pure point of law because it requires ascertainment of facts. He said the respondent referenced facts to support its PO, such as a request for extension of the bid validity period and signing of the contract indicating that the PO is not premised on the law alone. To support this position, Dr.Kinunda cited the case of ***Leopard Net Logistics Company Limited v Tanzania Commercial Bank and Five Others***, Miscellaneous Civil Application No. 15825 of 2024 where the court referred to ***Mukisa Biscuit*** (supra) and the case of ***Soitambu Village Council v Tanzania Breweries Limited and***



Another, Civil Appeal No. 105 of 2011, Court of Appeal of Tanzania (Unreported). In *Soitambu*, the Court stated that:

"Where the Court is to investigate facts, such an issue cannot be raised as a preliminary objection on the point of law..., it will treat as a preliminary objection only those points that pure law, unstained by facts or evidence" (sic).

Dr. Kinunda proceeded to submit that the tender process was completed within the tender validity period because by the time the tender expired, the appellant had already signed the contract on its part and commenced execution of the work. He explained that after being awarded the tender, the appellant submitted the required performance security and was issued with the contract by the respondent. The appellant signed the contract and returned it for counter-signature on 9th June 2025.

He expounded that clause 25 of the PDS, specified that a tender validity period of 120 days commenced from the tender opening date which was 2nd May 2025. Therefore, the tender validity period was to expire on 29th August 2025. Before that expiry date, the respondent had over seventy days to sign the contract. During this period, the respondent instructed the appellant to commence execution of the work. He was of the view that this demonstrated completion of the tender process before expiry of the validity period.

The learned counsel based his arguments on section 86 of the Act, which requires the tender validity period to be sufficient to cover all the activities from the tender opening date to the signing of the contract. Since the appellant signed the contract within the bid validity period, the

respondent's failure to sign on its part should not prejudice the appellant's right. It was his reasoning that the tender process was completed within the stipulated period.

Dr. Kinunda also noted that it is an undisputed fact that the respondent requested an extension of the tender validity period by letter dated 21st August 2025. The appellant refused this request on the ground that the tender process was already completed, having submitted the performance security, signed the contract and commenced work. Therefore, the respondent's claim that the tender process was not completed by 30th August 2025 is unfounded.

He added that regulation 200(6) of the Regulations allows a procuring entity to seek an extension of the tender validity period only for justifiable reasons. However, the respondent's letter dated 21st August 2025, requesting the extension did not specify any such reasons, rendering the request invalid.

The learned counsel stated that the general procurement law recognizes offer and acceptance as constituting a formal contract. Applying this principle to the facts of this case, the appellant's tender submission constituted an offer, and the respondent's award constituted acceptance, thereby forming a binding contract even if not signed by both parties.

To support this point, he cited ***Baco and Ayub Co. Limited v Permanent Secretary Ministry of Defence and National Service and Two Others***, Commercial Case No. 40 of 2015, High Court of Tanzania (Commercial Division). In this case the court made reference to ***John Timothy Nyasanga t/a Just Dear Investment v Ministry of Defence and National Service and another***, Civil Case No. 176 of

2011, High Court of Tanzania, Dar es salaam Registry (Unreported). The Court recognized an offer and acceptance to have constituted a formal contract despite other arrangements. He therefore urged the Appeals Authority to apply the same principle in this appeal.

Dr. Kinunda concluded by distinguishing the cases cited by the respondent, stating that facts therein differ significantly with those in the present matter, whereby in the disputed tender process, contract signing was completed within the tender validity period. He was of the view that the cited cases are inapplicable. He prayed that the PO be rejected and the appeal proceeds to be heard on its merits.

REJOINDER BY THE RESPONDENT

In her brief rejoinder, Ms. Grace Lupondo, Senior State Attorney, reiterated the respondent's submission in chief, insisting that the PO is based on a pure point of law since it relies solely on the filed pleadings without need for additional evidence. She argued that *Leopard's* case (supra) cited by the appellant supports the respondent's position that a PO must be based on the law and facts clearly established in pleadings, not on matters requiring investigation. She contended that in the present matter, the facts relied upon are clear from the pleadings, unlike in the cited case where parties intended to rely on investigated evidence.

Ms. Lupondo further submitted that section 69(12) of the Act requires a contract to be signed by both parties to enter into force. The facts here show that the contract was not signed by both parties when the tender validity period expired, the tender process was not finalized. She added that section 2(4) of the Act established that the governing law for public



procurement matters is the Act and its regulations, rendering the general contract law principles cited by the appellant inapplicable.

Ms. Lupondo reiterated that the tender has expired and therefore, no valid tender exists which this appeal can proceed on.

ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

The Appeals Authority began its analysis by addressing the appellant's proposition that the point of law raised is not a pure point of law because its determination requires factual ascertainment. It acknowledged the principle established in ***Mukisa Biscuit Manufacturing Co. Ltd*** (supra) cited by both parties. In that case, the court held 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 in ***Ali Shabani and 48 others v Tanzania National Roads Agency and Another***, Civil Appeal No. 261 of 2020, Court of Appeal of Tanzania at Tanga (unreported) which held that: -

"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".

(Emphasis supplied)

After the foregoing, we find that indeed this is a pure point of law based on section 86 of the Act and regulation 200(4) and (6) of the Regulations, as well as facts apparent on the pleadings. We therefore proceed to determine its validity.

In considering the PO, we examined section 86 of the Act, which reads:

"s.86. The procuring entity shall require tenderers to make their tenders and tender securities valid for periods specified in the tendering documents, sufficient to enable the procuring entity to complete the comparison and evaluation of tenders, approval of the recommendations, issuance of notification of award and signing of contract whilst the tenders and tender securities are still valid".

(Emphasis supplied)

The provision requires procuring entities to specify in the tender document a validity period sufficient to complete the evaluation process, obtain Tender Board approval, and sign the contract. Tenderers are also required to maintain the validity of their tenders for the period specified in the tender documents.

We reviewed clause 25.1 of the ITC read together with Clause 25 of the PDS and noted that the specified tender validity period for this tender was 120 days from the deadline for submission of tenders.

Additionally, clause 28 of the PDS sets the deadline for submission of tenders as 2nd May 2025. The tender opening record confirms that the tenders were opened on 2nd May 2025, consistent with the PDS. Counting from 02nd May 2025, the tender validity period was therefore set to expire on 30th August 2025.

We further reviewed regulation 200(6) and (7) of the Regulations, which reads as follows: -

"r.200 (6) A procuring entity may, prior to the expiry of the original tender validity period, request tenderers to extend the period for a further term not exceeding the original validity period, if there are justifiable grounds for the procuring entity failing to complete the tendering process within the specified time.

(7) A tenderer may refuse the request for extension of time under sub regulation (6) without forfeiting its tender security and the effectiveness of its tender shall be terminated upon the expiry of the unextended period of effectiveness."

(Emphasis supplied)

The above provisions are crystal clear that, in exceptional circumstances, a procuring entity may request tenderers to extend the tender validity period, provided that such a request is made before the expiry of the initially specified period and should be supported by justifiable reasons. The provision further accords tenderers the option to reject the request, in which case the validity of the tender of a tenderer which declines the

request shall lapse upon the expiry of the original un-extended validity period.

It is apparent from the record of appeal that the respondent did not advance justifiable reason for seeking extension of time because it had over seventy days to sign the contract before expiry of the tender validity period. However, the appellant did not raise this concern when it was requested to extend the tender validity period.

According to the record of appeal, the respondent, by its letter dated 21st August 2025 requested the appellant to extend the tender validity period for an additional 60 days. The appellant, through a letter dated 26th August 2025, rejected the request on the grounds that the tender process had been completed, as it had already submitted a performance security, signed the contract on its part and commenced execution of the contract. Under the general contract law, the contract was already in force, thus negating the need for an extension of the validity period.

To assess the validity of the appellant's proposition that the contract was already in force, we reviewed sections 69 (12) of the Act, which reads: -

"s.69 (12) A procurement contract shall enter into force upon being signed by parties to the contract".

(Emphasis supplied)

The provision recognizes that a procurement contract enters into force once it has been signed by both parties to the contract.

We further considered the appellant's contention that, under the general contract law, a contract comes into force upon the establishment of an offer and acceptance. Additionally, a contract may be deemed to be in

force through the conduct of parties. In this case, the appellant had commenced execution of the contract following verbal instructions by the respondent. It was the appellant's argument that the contract between the parties was effectively in force before expiry of the tender validity period.

In response to the above argument, we made reference to section 2(4) of the Act that reads as follows: -

"s.2(4) Subject to section 4(1), the extent to which this Act or regulations made under it conflict with other laws, regulations or rules on matters relating to public procurement, supply and disposal of public assets by tender, the provisions of this Act and regulations made under it shall prevail".

(Emphasis supplied)

In terms of the above provision, any conflict between this Act and other laws, the Act shall prevail on all matters relating to public procurement. Consequently, since the Act governs all public procurement matters, the signing of the contract for the tender under appeal must also comply with the Act. Given the undisputed fact that the contract had not been signed by both parties in accordance with section 69(12) of the Act by the time the tender validity period expired, it follows that no valid contract existed to justify completion of the tender process. On this basis, we reject the appellant's proposition that the contract was already in force when the request to extend the tender validity period was issued.

We then considered the import of regulation 200(7) of the Regulations. It provides that if a tenderer is requested to extend the tender validity period and refuses, the effectiveness of its tender ends upon expiry of the originally stipulated bid validity period. Applying this provision to the facts of this appeal, we find the appellant's tender ceased to exist upon expiry of the tender validity period on 30th August 2025 due to its refusal to extend the validity period.

Since there were no other valid tenders, the tender naturally expired at the end of the tender validity period. Therefore, any subsequent actions by the respondent after 30th August 2025 were null and void, as no valid tender was in existence.

Under the circumstances, we find the tender in dispute had already expired, and thus we cannot proceed to determine the appeal based on a non-existing tender. Therefore, we uphold the respondent's PO and hold that the there is no valid tender for determination by the Appeals Authority. Accordingly, we dismiss the appeal for being filed in respect of a non-existing tender. Each party shall bear its own costs.

It is so ordered.

This ruling is binding and enforceable under section 121(7) of the Act.

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

This ruling is delivered in the physical presence of the respondent and virtual appearance by the appellant this 15th day of January 2026.

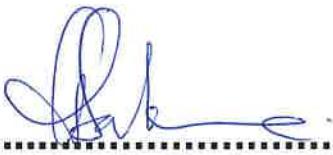
HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. GLADNESS SALEMA



2. MR. RAPHAEL MAGANGA

