

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 24 OF 2025 - 2026**

**BETWEEN**

**M/S JISHAM & CONSTRUCTION CO. LIMITED.....APPELLANT**

**AND**

**MINING COMMISSION.....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. Violet Limilabo  | - Senior Legal Officer |
| 3. Mr. Venance Mkonongo | - Legal Officer        |

**FOR THE APPELLANT**

- |                          |                              |
|--------------------------|------------------------------|
| 1. Ms. Elizabeth Kagembe | - Advocate - MMT Law Chamber |
| 2. Mr. Juma Swai         | - Managing Director          |
| 3. Mr. Halabi Mushi      | - Quantity Surveyor          |

**FOR THE RESPONDENT**

- |                        |   |
|------------------------|---|
| 1. Mr. Chenduta Makawa | - Director of Procurement<br>Management Unit (DPMU) |
| 2. Mr. Benson Makala   | - Legal Officer                                     |



M/s Jisham & Construction Co. Limited, (hereinafter referred to as "**the appellant**") filed this appeal against the Mining Commission (hereinafter referred to as "**the respondent**") pertaining to **Tender No. X10/2025/2026/W/04** for Proposed Office Buildings to be built at Mahenge, Songwe and Rukwa Resident Mines Offices (hereinafter referred to as "**the tender**").

The background of this appeal based on the documents provided to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), can be summarized as follows: -

The tender was done through the Restricted National Competitive Tendering 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 2<sup>nd</sup> October 2025, the respondent invited eligible tenderers to participate in the tender via the National e-Procurement System of Tanzania (NeST). Five tenders including the appellant's were received by the submission deadline of 17<sup>th</sup> October 2025 and they were then evaluated.

After evaluation, M/s Kika Construction Company Ltd (**the proposed awardee**) was recommended for award of the tender at a contract price of Tanzania Shillings One Billion Five Hundred Ninety-Five Million Two Hundred Ninety-Five Thousand Five Hundred Ninety and Ninety Six Cents (1,595,295,590.96), exclusive of VAT.



On 3<sup>rd</sup> February 2026, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the contract to the proposed awardee. It further stated that the appellant's tender was not considered for award because under the general and specific experience criterion it submitted five contracts, but only one fell within the specified period from 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025.

Dissatisfied with the given reason for its disqualification, the appellant applied for administrative review to the respondent on 3<sup>rd</sup> February 2026. On 9<sup>th</sup> February 2026, the respondent issued a decision dismissing the appellant's said application. Aggrieved by this decision, on 13<sup>th</sup> February 2026, the appellant filed this appeal to the Appeals Authority.

When the matter was called on for hearing, the following issues were framed; namely:-

- 1. Whether the disqualification of the appellant's tender was justified.**
- 2. What reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Ms. Elizabeth Kagembe, learned advocate, assisted by Mr. Juma Swai, Managing Director, and Mr. Halabi Mushi, a Quantity Surveyor. Ms. Kagembe started by adopting the Statement of Appeal as part of her submissions.

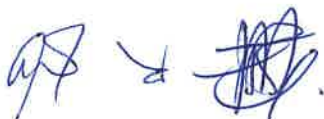


In the first issue, she submitted that the respondent erred in law by disqualifying the appellant on the basis that it failed to comply with the specific experience criterion as set out in the tender document.

Ms. Kagembe submitted that the appellant was informed through the Notice of Intention to award that only one out of the five submitted contracts was within the specified period from 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025. She stated that the relevant experience for this tender should be assessed on the actual execution dates of the contracts, not the contract signing date.

Ms. Kagembe averred that in the construction industry, experience is acquired through execution and performance of works, not by the date on which a contract is signed. She explained that a contract may be signed within the period specified in the tender document, but its execution might not have commenced within the required timeframe. Therefore, the relevant experience should be evaluated from the actual commencement date of execution, not the contract signing date.

She further submitted that during the tender evaluation, the respondent was required to consider contracts entered into before the specified start date of 1<sup>st</sup> January 2022, provided their execution continued within the period specified in the tender document. Contrary to this, the respondent restricted the assessment of the specific experience criterion solely to contract signing dates. Ms. Kagembe argued that this interpretation was incorrect and contravened the requirements provided in the tender document.



On his part Mr. Swai insisted that in the construction industry, the contract signing date and the commencement date often differ due to various pre-execution issues which might be encountered prior to actual execution of works. Therefore, the respondent should have considered actual execution dates when assessing the specific experience criterion for this tender. He added that the appellant submitted five completion certificates which demonstrate compliance with the specific experience criterion. They indicated that although the contracts were signed before the specified period, their execution was between 1<sup>st</sup> January 2022 and 30<sup>th</sup> September 2025. Consequently, the respondent should have qualified the appellant on this criterion.

Mr. Mushi reinforced this argument by stating that the specific experience criterion was clearly outlined in the tender document, but the respondent misinterpreted it by focusing on contract signing dates instead of the actual execution periods. He noted that completion certificates serve as valid proof of specific experience, confirming that the work was executed from initial to its end. Final completion certificates are proof of experience acquired in executing the work. Mr. Mushi contended that a signed contract alone does not necessarily demonstrate a tenderer's experience, particularly if the contract was not executed.

Concluding her submissions, Ms. Kagembe asserted that if the respondent intended to limit the specific experience strictly to contract commencement dates, such a restriction would have been explicitly provided in the tender document. Since no such limitation existed, evaluating the specific

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experience criterion based on contract signing dates amounted to applying an alien criterion not provided for in the tender document. She argued that this approach contravened the fundamental public procurement principles of fairness, transparency and equal treatment of all tenderers.

Finally, Ms. Kagembe urged the Appeals Authority to order the respondent to: -

- i. Award the tender to the appellant, as it complied with the requirements of the tender document.
- ii. Re-evaluate the tender.
- iii. Pay costs incurred by the appellant.

#### **REPLY BY THE RESPONDENT**

The respondent's submissions were made by Mr. Benson Makala, legal officer, assisted by Mr. Chenduta Makawa, Director of Procurement Management Unit. Mr. Makala commenced by stating that tenderers were required to demonstrate both specific and general experience based on the specified period from 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025, as clearly provided under Item 1 – Technical Evaluation, Qualification and Evaluation Criteria.

He explained that the requirement obligated tenderers to show specific experience in the construction of office and public buildings by submitting evidence of five contracts of a similar nature, each valued at TZS 1,500,000,000.00, executed from 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025. During evaluation, the respondent evaluated tenders strictly



according to provided criteria. Mr. Makala emphasized that the criterion was not misinterpreted by respondent, contrary to the appellant's allegations.

Mr. Makala further submitted that the specific experience criterion was clear and unambiguous, as demonstrated by the fact that other tenderers, including the proposed awardee, complied with it without any reservation. He added that the evaluation process applied the specific experience criterion equally to all tenders by considering contracts signed within the timeframe of 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025. The tender document did not provide for apportionment, segmentation, or prorating of experience based on partial execution of contracts entered into outside the stated period. Therefore, contracts commenced before the specified period were not relevant for demonstrating a tenderer's specific experience, even if some activities were executed during the timeframe.

Addressing the appellant's assertion that the specific experience criterion should be assessed from the execution date rather than the contract signing date, Mr. Makala stated that adopting such an interpretation would amount to introducing a new evaluation criterion not provided for in the tender document. He argued that the law requires tenders to be evaluated strictly according to the criteria set out in the tender document, and a procuring entity is prohibited from introducing new criteria or altering the existing ones during the evaluation process.

Mr. Makala insisted that accepting the appellant's proposition would undermine the principles of fairness, transparency, and equal treatment of

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all tenderers. He emphasized that since tenders were evaluated based on the criteria provided in the tender document, the appellant's disqualification was justified due to non-compliance with the specific experience criterion.

In conclusion, Mr. Makala prayed for dismissal of the appeal for lack of merit.

### **ANALYSIS BY THE APPEALS AUTHORITY**

#### **1. Whether the disqualification of the appellant's tender was justified.**

The appellant in this appeal challenges its disqualification for failure to comply with the specific experience criterion. It contends that the disqualification was unfair, arguing that the respondent misinterpreted the specific experience criterion provided in the tender document. Specifically, the appellant asserts that the specific experience criterion should have been based on the experience acquired during the stated period regardless when the work started, whereas the respondent evaluated it based on the contract signing date. It further argued that this approach contravened the tender document's requirements and effectively introduced an alien criterion during the evaluation stage.

The respondent refuted the appellant's assertion, stating that the tender document clearly required tenderers to submit evidence of five contracts, each valued at TZS 1,500,000,000.00, executed between 1<sup>st</sup> January 2022 and 30<sup>th</sup> September 2025. It argued that the Appellant failed to meet this

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criterion, having submitted only one contract, which justified its disqualification. The respondent denied any misinterpretation or use of an alien criterion during evaluation, as alleged by the appellant.

To assess the validity of parties' contentious arguments, we reviewed the evaluation report and found that out of the five tenderers who participated, only two-the appellant and the proposed awardee - advanced to the technical evaluation stage. The appellant was disqualified at this stage for failing to comply with the specific experience criterion, as it submitted five contracts but only one was relevant to the tender.

To determine whether the appellant's disqualification was justified, we examined the tender document, particularly Item 1 – Technical evaluation of Section IV - Qualification and Evaluation Criteria which reads as follows:-

***"Item 1. Experience***

***Specific Experience (Score: Comply/ Not comply to specified minimum requirements)***

*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 the completed assignments under the contract) as a prime contractor/ supplier/service provider, joint venture, 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 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 IN THE CONSTRUCTION OF OFFICE AND PUBLIC BUILDINGS</i>
<b><i>Specific Experience Start Year</i></b>	<b><i>2022-01-01</i></b>
<b><i>Specific Experience End Year</i></b>	<b><i>2025-09-30</i></b>
<b><i>Number of Specific Experience Contracts</i></b>	<b><i>5</i></b>
<b><i>Value of each specific experience contract in the specified tender currency</i></b>	<b><i>1500000000"</i></b>

(Emphasis added)

The above criterion requires tenderers to demonstrate the specific experience criterion by submitting five contracts of a similar nature involving construction of office and public buildings. Each contract must have been executed between 1<sup>st</sup> January 2022 and 30<sup>th</sup> September 2025 with a minimum value of TZS 1,500,000,000.00.

We reviewed the appellant's tender submitted in NeST and observed that, in complying with the specific experience criterion, the appellant attached five completion certificates summarized as follows:-

1. A Practical completion certificate for contract No. Y57/2020/JCL/01 for the proposed construction of a commercial complex at Mbweni Malindi, Plot No. 5 Block BB, Kinondoni Municipality, Dar es Salaam, Tanzania. The contract had a value of TZS 5,293,205,250.00 signed on 10<sup>th</sup> July 2020 and completed on 20<sup>th</sup> June 2024.
2. Substantial completion of work on a contract for proposed construction of a commercial residential building at Plot No. 32 Block D Dodoma City Council. The contract had a value of TZS 5,597,412,635.40.00 signed on 2<sup>nd</sup> November 2021 and completed on 19<sup>th</sup> March 2023.
3. A Certificate of practical completion for proposed construction of a commercial building at Plot No. 12E-16E Mukendo/Kusaga/Gandhi Street, phase II Musoma Mara region. The contract had a value of TZS 4,205,179,060.00. The contract signing date was not indicated; however, the work was completed on 20<sup>th</sup> March 2022.
4. A Certificate of practical completion for construction of a four-storey building at area "C" Dodoma Municipality, project ref. No. SUB/AREA C/01/2021. The contract had a value of TZS 5,895,481,750 (VAT inclusive). The contract signing date was



not indicated; however, the work was completed on 9<sup>th</sup> September 2023.

5. A Certificate of practical completion for construction of a commercial building on Plot No. 43, Block "A" Kisasa North in Dodoma City Council. The contract had a value of TZS 5,750,490,200, signed on 16<sup>th</sup> April 2022 and completed on 14<sup>th</sup> August 2024.

Upon reviewing the attached completion certificates, we found that only one (certificate No. 5) met the tender requirements, as it was executed within the specified period from 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025.

The remaining ones did not comply with the timeframe; in particular, certificate No. 1 indicates that the contract was entered on 10<sup>th</sup> July 2020 and completed on 20<sup>th</sup> June 2024 and certificate No. 2 shows the contract was entered on 2<sup>nd</sup> November 2021 and completed on 19<sup>th</sup> March 2023. Both contracts commenced before the stipulated period of 1<sup>st</sup> January 2022 to 30<sup>th</sup> September 2025.

Certificates No. 3 and No. 4 did not specify contract signing dates. However, according to the appellant's description in the NeST: certificate No. 3 relates to a contract signed on 2<sup>nd</sup> April 2019 and completed on 20<sup>th</sup> March 2022, while certificate No. 4 relates to a contract signed on 1<sup>st</sup> July 2019 and completed on 9<sup>th</sup> September 2023. These contracts also commenced prior to the tender specified period.



In light of the foregoing, we find that only one of the five submitted completion certificates satisfied the tender's specific experience requirements. Therefore, the appellant failed to comply with the specific experience criterion.

Regarding the appellant's contention that there was ambiguity in evaluating the specific experience criterion, we carefully reviewed the tender document and found it clearly specifies the required number of contracts, defines the start and end dates for eligible contracts and their minimum value. Therefore, we reject the appellant's contention in this regard.

During hearing, the appellant was asked whether it had sought clarification on the ambiguity from the respondent on the specific experience requirement. The appellant admitted it did not do so, asserting the requirement was clear, and that the respondent misinterpreted it during evaluation of tenders. Our review confirms that the tender document does not specify that the relevant period should be evaluated from the work commencement date rather from the contracts start date.

When the appellant was also asked to demonstrate whether it had indicated work commencement dates in its tender submission to support its interpretation, it failed to do so. Furthermore, by failing to seek clarification in compliance with clause 8 of the tender document and regulation 12 of the Regulations and proceeding to participate in the tender, the appellant is deemed to have accepted the tender terms and conditions as stated.

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Based on these findings, we reject the appellant's proposition that the respondent misinterpreted the specific experience requirement or applied an alien criterion during evaluation of the tenders.

Regulations 210(1), 211(1) and (2) (g) and 213(2) of the Regulations read as follows: -

*"r.210 - (1) The tender evaluation shall be consistent with the terms and conditions prescribed in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents.*

*"r. 211-(1) All tenders shall be checked for substantial responsiveness to the commercial terms and conditions of the tender documents.*

***(2) The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:***

***(g) failure to comply with minimum experience criteria specified in the tender document.***

***"r.213 - (2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of that deviation".***

(Emphasis supplied)

The cited provisions mandate that tender evaluations be conducted strictly in accordance with the terms and conditions set forth in the tender



document, without recourse to extrinsic evidence. Any tender failing to meet the specified criteria must be rejected and cannot be rendered responsive by correction or withdrawal of the deviations.

Applying these legal requirements to the facts of this appeal, we observed that the tender document required tenderers to demonstrate the specific experience criterion by submitting five contracts valued at TZS 1,500,000,000.00 each executed between 1<sup>st</sup> January 2022 and 30<sup>th</sup> September 2025. As found above, only one out of the five submitted contracts by the appellant met this specific experience criterion. Consequently, the appellant failed to comply with requirement. In view of this position, we find the respondent's decision to disqualify the appellant's tender was justified and consistent with the cited legal provisions.

We also considered the respondent's argument during the hearing that, although the appellant alleges misinterpretation of the specific experience criterion, other tenderers-particularly the proposed awardee complied with this criterion demonstrating that the criterion was clear.

To verify whether the proposed awardee complied with this criterion, we reviewed its tender submitted in NeST and found that it attached eleven (11) contracts. Of these, six commenced before the specified date of 1<sup>st</sup> January 2022. The remaining five contracts, which started within the specified period, are as follows:-

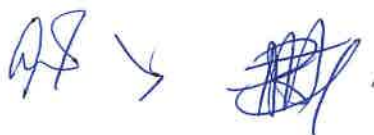
- i. A contract with Tanzania Revenue Authority for a construction of a TRA Arumeru District office building, signed on 1<sup>st</sup> August 2023 and

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ended on 4<sup>th</sup> December 2024, valued at TZS 2,124,421,167.72 VAT inclusive.

- ii. A contract with Nile Equatorial Lakes Subsidiary Action Program, for execution of works in repair and reconstruction of 540 structures like fencing wall, kitchen, pit toilet etc damaged by blasting during the construction of Rusumo project for 308 PAPS, signed on 9<sup>th</sup> August 2023, ended on 3<sup>rd</sup> June 2024, valued at TZS 5,271,390,333/-
- iii. A contract with the Judiciary of Tanzania for a proposed construction of Kilosa District Court building to be built in Morogoro Region, signed on 18<sup>th</sup> September 2024, ended on 20<sup>th</sup> November 2025, valued at TZS 1,599,553,320/- VAT inclusive.
- iv. A contract with TRA for a proposed construction of a TRA sports centre in Kurasini, Temeke in Dar es Salaam Region, signed on 17<sup>th</sup> August 2022, ended on 31<sup>st</sup> August 2023, valued TZS 1,461,429,958.60, VAT inclusive.
- v. A contract with the Ministry of Minerals for construction of an office building and furnishing of resident mines in Geita Region, signed on 26<sup>th</sup> February 2025, ended on 20<sup>th</sup> December 2025, valued TZS 5,092,031,587.60 VAT inclusive.

Out of the five contracts listed above, only two (first and second) fully complied with the specific experience criterion set forth in the tender document, having been signed and completed within the specified period and complied with the required contract value.

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Contracts number three and five were signed within the specified period but ended on 20<sup>th</sup> November 2025 and 20<sup>th</sup> December 2025, respectively, which exceeds the deadline of 30<sup>th</sup> September 2025, rendering them non-compliant. Further, there was no evidence to prove that the contracts have been substantially completed by 80% or more based on the criterion provided. Contract number four was signed and completed within the relevant period; however, its contract value was TZS 1,461,429,958.60, falling below the minimum threshold of TZS 1,500,000,000.00 specified in the tender document. Therefore, this contract also failed to comply with the tender requirement.

These observations indicate that even the proposed awardee did not fully satisfy the specific experience requirement, as only two contracts were relevant instead of five. Given this finding, it is clear that, had the respondent acted strictly, the proposed awardee would have been disqualified for non-compliance. Therefore, the respondent's failure to disqualify the proposed awardee contravenes regulation 213(2) of the Regulations (supra), which mandates rejection of any tender that does not meet a tender document's requirements.

Under the circumstances, we find that the respondent acted lawfully in disqualifying the appellant's tender; however, the award to the proposed awardee was improper, as the said firm also should have been disqualified.

Accordingly, we conclude affirmatively on the first issue that the disqualification of the appellant's tender was justified.

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## 2. What reliefs, if any, are the parties entitled to?

In light of our findings on the first issue, we hold that the disqualification of the appellant's tender is justified and we hereby dismiss the appeal. However, we also found that the award to the proposed awardee was improper. Accordingly, we nullify the award and order the respondent to re-start the tender process in full compliance with the law. We make no order as to costs.

### **It is so ordered.**

This decision 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 decision is delivered in presence of the parties on this 19<sup>th</sup> day of March 2026.

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



.....  
**CHAIRPERSON**

**MEMBERS: -**

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


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