

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 26 OF 2025-2026

BETWEEN

M/S JUHUDI MWENGE GROUP.....APPELLANT

AND

NATIONAL HEALTH INSURANCE FUND (NHIF).....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. Mr. Said Kalembo | - Site Manager |
| 2. Mr. Thomas Magessa | - Chairperson of the
Appellant's Group |



FOR THE RESPONDENT

1. Ms. Catherine Kiiza - State Attorney, Office of the Solicitor General- OSG
2. Mr. Lucas Myula - Legal Officer - NHIF
3. Ms. Leonia Masmin - Procurement Manager - NHIF
4. Mr. Denis Muro - Senior Procurement Officer- NHIF

This appeal, lodged by **M/S Juhudi Mwenge Group** (hereinafter referred to as "**the appellant**") against the **National Health Insurance Fund (NHIF)** (hereinafter referred to as "**the respondent**"), concerns Tender No. TR187/2025/2026/NC/111 for Provision of Cleaning Services (hereinafter referred to as "**the tender**").

Based on the documents provided 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 Quotation Method as 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 19th December 2025, the respondent invited eligible tenderers to participate in the tender via the National e-Procurement System of Tanzania (NeST). Eight tenders, including the appellant's, were received by the submission deadline of 29th December 2025 and were then evaluated. Thereafter, M/s Ebtos Group (hereinafter referred to as "**the proposed awardee**") was recommended for award at a contract price of



Tanzania Shillings Thirty-Three Million One Hundred Sixty-Seven Thousand only (TZS 33,167,000.00) VAT exclusive, for a completion period of 360 days.

On 13th February 2026, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the tender to the proposed awardee. It further stated that the appellant's tender was not considered for award due to failure to meet the access to financial resources criterion.

Dissatisfied with the reason for disqualification, the appellant applied for administrative review on 14th February 2026. On 19th February 2026, the respondent issued a decision dismissing the appellant's application. Aggrieved by this decision, on 23rd February 2026 the appellant filed this appeal to the Appeals Authority.

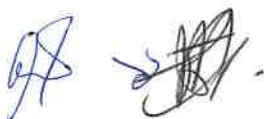
When the matter was called on for hearing, the following issues were framed for determination:

- 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 Mr. Thomas Magessa, chairperson of the appellant, assisted by Mr. Said Kalembo, Site Manager.

In the first issue, Mr. Magessa averred that the appellant's tender was unfairly disqualified despite complying with the access to financial resources criterion. He pointed out that the tender document did not



specify the exact documents required from tenderers to demonstrate compliance with this criterion. To support its compliance, the appellant uploaded a letter addressed to the respondent dated 23rd December 2025 in the access to financial resources slot in NeST. This letter outlined two financial options: cash receivables and cash receivables with loans. It clearly stated that the appellant holds bank accounts with DCB and NMB Banks, enabling easy access to loans. Furthermore, the letter listed the appellant's clients and cash receivables of two months, demonstrating the required cash flow of TZS 50,000,000.00.

Mr. Magessa argued that, since the tender document did not specify the required supporting documents, the respondent was obliged to accept any document that, from the tenderer's perspective, demonstrated compliance of this criterion.

Mr. Magessa submitted further that section 85(2) of the Act and regulation 194(2) of the Regulations mandate procuring entities to issue tender documents that encourage competition and clearly specify all necessary information for a prospective tenderer to prepare a competitive tender.

Mr. Magessa contended that the tender document's silence on required documents for financial resources compliance means the respondent's later specification of bank statements or letters of credit in its Statement of Reply and administrative review decision effectively introduced new criteria during evaluation. He argued that this, contravenes regulation 210(1) of the Regulations, which requires tender evaluation to adhere strictly to the terms and conditions set out in the tender document.



Additionally, Mr. Magessa challenged the respondent's intention to award the tender to the proposed awardee on the basis that the proposed awardee's quoted price was higher than the appellant's. He emphasized that proceeding with the award to the proposed awardee would impose unnecessary additional costs to the Government amounting to Tanzania Shillings Forty-Six Million (TZS 46,000,000), funds that could otherwise be allocated to other activities.

In conclusion Mr. Magessa prayed for the following orders:

- a) Re-evaluation of the appellant's tender in respect to access to the financial resources criterion.
- b) Refund of the appeal filing fee.

REPLY BY THE RESPONDENT

The respondent's submissions were made by Ms. Catherine Kiiza, State Attorney from the Office of the Solicitor General.

On the first issue, Ms. Kiiza submitted that Clause 9 of the Statement of Requirements required tenderers demonstrate their ability to access adequate finances to meet the cash flow demands of current and future contracts. The minimum amount specified was TZS 50,000,000.00 from any available sources.

She stated that, in complying with this criterion, the appellant submitted a letter self-written addressed to the respondent, claiming to have several sources of funds. However, this letter was not supported by any documentation from banks or clients confirming cash receivables. During



the evaluation, the appellant's tender was found non-compliant with the access to financial resources criterion, and was therefore disqualified.

Ms. Kiiza further submitted that other tenderers, particularly the proposed awardee complied with the access to financial resources criterion by submitting a bank guarantee letter from the Tanzania Commercial Bank (TCB), confirming their qualification to access a credit facility of TZS 50,000,000.00.

Regarding the appellant's argument that the respondent introduced alien criteria during evaluation, Ms. Kiiza refuted the claim and clarified that no new evaluation criteria were introduced. She said the tenders were evaluated strictly according to the criteria set out in the tender document. And that the mention of bank statements or letters of credit in the respondent's statement of reply and administrative review decision was only to illustrate examples of documents that could demonstrate access to financial resources. That tenderers were free to submit any document substantiating their financial capacity. She said that the appellant failed to meet this requirement because its attached letter did not adequately demonstrate access to financial sources. Therefore, the respondent did not contravene regulation 210(1) of the Regulations, instead its evaluation process lawfully adhered to the requirements of this provision.

Ms. Kiiza further explained that if the appellant found the access to financial resources criterion unclear, it should have sought clarification in accordance with regulation 12 of the Regulations. This provision allows tenderers to request clarification before the tender deadline submission if



any requirements are unclear or ambiguous. Since the appellant did not seek clarification, it implied that the requirements were clear and binding.

In conclusion, Ms. Kiiza prayed for the 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 challenges its disqualification, asserting that its tender was unfairly rejected due to an alleged failure to demonstrate access to financial resources. Conversely, the respondent refutes this claim, maintaining that the disqualification was justified because the appellant failed to provide the required documentary evidence of its funding sources as set out in the tender document.

To assess the rival arguments, we examined the tender document, focusing specifically on Item 3, Financial Situation and Performance, under Section IV - Qualifications and Evaluation Criteria which states:

"3. Financial Situation and Performance

Access to Financial Resources (Sources of Fund)
(SCORE: Comply/Not Comply to specified minimum requirements)

Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In the case of a Joint



Venture compliance requirements are all Parties Combined – Must Meet requirements).

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder)</i>	<i>50000000"</i>
---	-------------------------

(Emphasis Added)

The above item requires tenderers to demonstrate their ability to access adequate finances to meet the cash flow demands of current and future contracts. The average amount required from all sources of finance is TZS 50,000,000.

After examining the appellant's tender submitted in NeST, we noted that under the slot for access to financial resources, the appellant attached a self-written letter addressed to the respondent dated 23rd December 2025. The letter asserted that the appellant had access to finances from various sources amounting to TZS 50,000,000.00.

The letter indicated that the appellant holds bank accounts with DCB and NMB Banks and could secure loans from these institutions. It also listed several clients with cash receivables for two months, including: Kinondoni Municipal Council with a monthly invoice of TZS 9,252,147.00, Small Industries Development Organization (SIDO) with a monthly invoice of TZS 1,760,000.00, the Commission for Science and Technology with a monthly invoice of TZS 5,278,800.00, Tanzania Agricultural Development Bank with monthly invoice of TZS 9,950,166.68, Tanzania Commission for Human Rights and Good Governance with a monthly invoice of TZS 900,000.00,



and the Dar es Salaam Maritime Institute with a monthly invoice of TZS 3,899,994.40. The total monthly receivables amounted to TZS 31,041,108.08 and the expected loan from DCB and NMB banks was TZS 18,958,891.93, bringing the total to TZS 50,000,000.00.

Upon reviewing the appellant's letter, we observed that it only provided a breakdown of how the TZS 50,000,000.00 would be sourced but lacked any supporting documentation to substantiate this breakdown. Specifically, the appellant did not submit documents such as bank commitment letters, bank statements, credit facility confirmations, guarantee letters or confirmed overdraft facilities to verify the availability of funds. Moreover, no copies of the cited contracts or documentary proof of receivables were provided to establish the accessibility of the stated amounts.

Based on these observations, we are of the firm view that in the absence of supporting documents substantiating access to financial resources, the appellant's letter alone is insufficient to prove the availability of funds.

We also reviewed regulations 211 (2) (k) and regulation 213(2) of the Regulations which states as follows:

***"r. 211 (2) The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:
(k) failure to submit major supporting documents to determine substantial responsiveness of a tender stipulated in the tender documents."***



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 added]

The provisions indicate that a tender may be rejected if the tenderer fails to submit key supporting documents required by the tender document to establish substantial responsiveness.

In the present appeal, the appellant did not provide sufficient documentary evidence to demonstrate access to the financial resources criterion as required by the tender document. Accordingly, we find the respondent's decision to disqualify the appellant's tender was proper and in accordance with regulation 213(2) of the Regulations.

Next, we considered the appellant's argument that the tender document did not specify the exact documents required to demonstrate access to financial resources. Upon reviewing of Item 3, Financial Situation and Performance, under Section IV - Qualifications and Evaluation Criteria, quoted hereinabove, we observed that tenderers were allowed to submit any documents that would substantiate their access to funds. Therefore, we reject the appellant's assertion, as the tender document provided tenderers with flexibility to submit various forms of evidence proving availability of funds.

Handwritten signature and mark consisting of a stylized 'A' or 'S' followed by a checkmark and another signature.

Furthermore, if the appellant was unclear about the required documents to demonstrate access to financial resources, it was incumbent upon them to seek clarification in accordance with clause 12.7 of the Instructions to Tenderers (ITT), read together with regulation 12 (1) of the Regulations which state as follows:

"ITT 12.7 A prospective Tenderer requiring any clarification of the Tendering Document may notify the PE through NeST at least three (3) days before submission deadline.

r. 12 (1) A tenderer may request clarification of the tender documents from the procuring entity, provided that such request is submitted to the procuring entity at least-

(a) in the case of a competitive tendering method, three days prior to the deadline for submission of the tenders."

(Emphasis Added)

We further considered the appellant's argument that the respondent had applied new evaluation criteria not provided in the tender document. Upon reviewing the evaluation report, we found that the evaluation process was done strictly in accordance with the criteria set out in the tender document. No new evaluation criteria were introduced during the evaluation process, contrary to the appellant's claim. Therefore, we reject the appellant's proposition in this regard.

Regarding the appellant's contention that the respondent intends to award the tender to the proposed awardee who quoted a higher price than the



appellant's thereby causing unnecessary costs to the Government, we examined regulation 219 (a) of the Regulations which states as follows:

" r. 219. The successful tender shall be-

*(a) **the tender with the lowest evaluated tender price in case of goods, works or services, or the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or highest submitted price, subject to any margin of preference applied;***

(Emphasis Added)

The provision establishes that a successful tender is determined by the lowest evaluated price in case of goods, works or services or the highest price in case of revenue collection, but this does not necessarily correspond to the lowest or highest quoted price.

The evaluation report indicates that the appellant's tender was disqualified at the commercial evaluation stage due to failure to demonstrate access to financial resources. Consequently, its tender did not advance to the subsequent technical and financial evaluation stages, where its quoted price would have been compared to those of other tenderers who qualified. Given this fact, the appellant cannot validly challenge the award based on its quoted price, as its tender was lawfully disqualified at the earlier stage. Therefore, its contention lacks merits

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



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

In light of the findings on the first issue above, we hereby dismiss the appeal for lack of merit. The respondent is ordered to proceed with the tender in observance of 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 the presence of the parties on this 20th March 2026.

HON. JUDGE (rtd) AWADH BAWAZIR

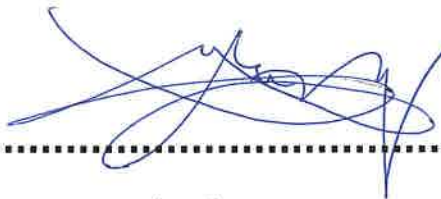


.....

CHAIRPERSON

MEMBERS: -

1. DR WILLIAM KAZUNGU



2. MR. RAPHAEL MAGANGA

