IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 41 OF 2025-2026

BETWEEN

M/S PHILIPONELY KOMBA COMPANY LTD................APPELLANT

AND

SONGEA DISTRICT COUNCIL..................................RESPONDENT

DECISION

CORAM

1. Ms. Florentina Sumawe - Ag. Chairperson
2. Dr. William Kazungu - Member
3. Dr. Gladness Salema - 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. Mr. Zuberi Maulid - Advocate - Wakili Diversity Attorney's

FOR THE RESPONDENT

1. Ms. Elizabeth Gumbo	- District Executive Director
2. Mr. Pascal Kapinga	- Head of Legal Services
3. Ms. Happiness Komba	- Head of Procurement Management Unit (HPMU)
4. Mr. Elias Sanga	- Accountant

The appeal was lodged by **M/S Philiponely Komba Company Ltd** (hereinafter referred to as "**the appellant**") against Songea District Council (hereinafter referred to as "**the respondent"**), concerning Tender No. 82N1/2025/2026/NC/88 for the Provision of Revenue Collection Agent Services for Songea District Council (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 may be summarized as follows:

The tender was done through the National Competitive tendering method in accordance with 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 1st April 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to participate in the tender. By the submission deadline of 8th April 2026, eleven tenders were received and evaluated. The Evaluation Committee thereafter recommended award of the tender to M/S LAS Innovations Limited (**the proposed awardee**).

On 2nd June 2026, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the tender to the proposed awardee at the contract price of Tanzania Shillings Three Billion Two Hundred Sixty-Four Million (TZS 3,264,000,000.00) VAT Exclusive for a completion period of 120 days. The Notice further stated that the appellant's tender was not considered for award as it was not the lowest evaluated tender financially.

Dissatisfied with the reason given for its disqualification, on 6th June 2026, the appellant applied for administrative review to the respondent. On 8th June 2026, the respondent dismissed the application. Aggrieved further, on 12th June 2026, 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. **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. Zuberi Maulidi, learned counsel.

Addressing the first issue, the counsel stated that the appellant duly participated in the tender by submitting its bid. On 2nd June 2026, the appellant received a Notice of Intention to Award, which informed it that the respondent intended to award the tender to the proposed awardee. The notice further indicated that the appellant's tender was disqualified for not being the lowest evaluated tenderer at the financial evaluation stage. Dissatisfied, the appellant sought administrative review from the respondent and, upon dismissal, filed this appeal.

Mr. Maulid submitted that according to the tender opening report, the proposed awardee quoted TZS 3,254,000,000.00 VAT exclusive, whereas the appellant quoted TZS 2,930,000,000.00 VAT exclusive. He argued that since the appellant submitted the lowest price, it ought to have been awarded the tender.

He further stated that the respondent's decision on administrative review revealed that the award was based not only on price but also on other criteria in the tender document which the proposed awardee complied with despite quoting the highest priced bid. Mr. Maulid contended that the respondent failed to indicate the specific criteria the appellant allegedly failed to meet, thereby departing from the reason given in the Notice of Intention to Award.

Mr. Maulid emphasized that the evaluation report annexed to the respondent's statement of reply shows that the appellant complied with all the mandatory requirements and consequently qualified for financial evaluation. He pointed out that, at evaluation stage, the appellant was ranked the second despite quoting a lower price than the proposed awardee. He argued that designating the proposed awardee as the lowest evaluated tenderer, while its price was higher than the appellant's price, was inconsistent, unfair, irrational and contrary to the principles of transparency and fairness in public procurement.

He submitted that the respondent was legally obliged to clearly specify and uniformly apply evaluation criteria. According to him, the respondent's failure to disclose the criteria on which the appellant was declared non-compliant while the proposed awardee was found successful rendered the whole process non-transparent and in contravention of sections 53(4) and 89 of the Act. He insisted that the appellant met all the evaluation requirements and should have been recommended for award.

Finally, Mr. Maulid prayed for the following orders:

i. The tender be awarded to the appellant as it was the lowest evaluated tenderer than the proposed awardee.

ii. In the alternative, the tender process be nullified and re- advertised in accordance with the law.

REPLY BY THE RESPONDENT

The respondent's submissions were done by Mr. Pascal Kapinga, assisted by Ms. Happiness Komba.

Mr. Kapinga began by noting that it is undisputed that the respondent advertised the tender, and the appellant submitted its bid. Following the evaluation, on 2nd June 2026, the respondent issued a Notice of Intention to Award, indicating that the appellant's tender was not considered for award for not being the lowest evaluated tenderer in terms of financial evaluation.

Mr. Kapinga conceded that the reason stated in the Notice of Intention to Award was inaccurate because it had a typographical error. He explained that the appellant's tender qualified at all stages and was subjected to financial comparison, where it was ranked second despite quoting a lowest price than the proposed awardee. He clarified that since the tender concerned with revenue collection, the award was to be made to the tenderer with the higher evaluated price, rather than the lowest priced tender. He submitted that, the correct reason for disqualification was that the appellant's tender was not the highest evaluated financially.

In support of his argument, Mr. Kapinga cited PPAA Appeal Case No. 24 of 2015-16, between ***M/S Muwa Trading (TZ) Ltd and Another versus Tanzania Electric Supply Company Ltd***, where the Appeals Authority held that if reasons for disqualification were incorrectly stated, the evaluation report should be returned to the evaluation committee for rectification. He therefore urged the Appeals Authority to allow the respondent to correct the reason for disqualification of the appellant's tender.

Mr. Kapinga further submitted that the proposed awardee satisfied all the evaluation criteria and was recommended for award as the highest evaluated tenderer. He maintained that the tender process was conducted transparently and in compliance with the tender document, the Act, and the Regulations. Accordingly, he prayed that the appeal be dismissed for want of merit.

REJOINDER

In rejoinder, Mr. Maulid argued that if the respondent had not intended to rely on the reason stated in the Notice of Intention to Award, it should have rectified the error in its decision on the administrative review. He contended that the respondent's claim that the Notice contained a typographical error was an afterthought, raised only during the hearing and was neither reflected in the statement of reply nor in the administrative review decision. He urged the Appeals Authority to determine the appeal based solely on record, not on new facts introduced at the hearing.

Mr. Maulid also distinguished the case cited by the respondent, noting that its details were not provided to establish similarity with the present matter. He therefore urged the Appeals Authority to disregard the cited case and reiterated his prayer that the appellant be awarded the tender as the successful tenderer.

ANALYSIS BY THE APPEALS AUTHORITY

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

In this appeal, the appellant challenges the respondent's act of disqualifying its tender on ground that it was not the lowest evaluated tenderer in terms of financial evaluation. The appellant contended that it quoted the lowest price and was therefore eligible for award, yet the respondent intends to award the tender to the proposed awardee who quoted a higher price. The appellant further challenges the respondent for issuing contradictory reasons for its disqualification. The Notice of Intention to Award stated that the appellant was not the lowest evaluated tenderer financially, while the administrative review decision stated that the award was not solely based on price but also compliance with all other criteria in the tender document, without disclosing those criteria the appellant allegedly failed to meet.

Conversely, the respondent maintained that the tender was for revenue collection, and therefore the award was to be made to the highest evaluated tenderer. It asserted that during financial comparison, the appellant was ranked second and thus not eligible for award. The respondent added that there were no contradictions on the reasons for disqualification of the appellant. The Notice erroneously referred to the lowest evaluated tenderer instead of the highest evaluated tenderer, and the decision on the administrative review clarified that the award was based on compliance with other criteria as well as the price.

To ascertain the validity of these arguments, we reviewed the record of appeal. The Notice of Intention to Award shows that the appellant was not considered for award because its tender was not the lowest evaluated financially. The respondent's decision on administrative review, however, stated that the award was made to a tenderer who complied with all the requirements and since the tender was for revenue collection, award was to be made to the highest evaluated tenderer.

Further review of the evaluation report confirms that both the appellant and the proposed awardee, reached the financial evaluation stage. At this stage, the proposed awardee was ranked the first, while the appellant was ranked second. The report shows that the appellant was not considered for award because it was not the highest evaluated tenderer.

We revisited regulation 238(3) of the Regulations, which reads as follows: -

> *"r.238 (3) The notice referred to in sub regulation (2) shall contain-*
>
> *(a) the name of the successful tenderer;*
>
> *(b) the total contract cost and the completion or delivery time; and*
>
> *(c)* ***the reasons for the unsuccessful tenderer's failure according to the evaluation report****."*
>
> (Emphasis added)

This provision requires a procuring entity, when issuing a notice of intention to award, to inform tenderers on the name of the successful tenderer, the contract amount, the completion period and the reasons for the unsuccessful tenderer's failure as provided in the evaluation report.

Applying this provision, we observed that the Notice of Intention to Award correctly specified the name of the successful tenderer, contract amount and completion period. However, it incorrectly stated the reason for the appellant's disqualification as not being the lowest evaluated tenderer in terms of financial evaluation, while the evaluation report shows the actual reason was that the appellant was not the highest evaluated tenderer.

Based on the record, we are satisfied that the appellant was not considered for award because its tender was not the highest evaluated at the financial evaluation stage. The respondent was therefore required to avail the appellant with the actual reason for its disqualification.

In determining whether the respondent's intention to award the tender to the proposed awardee instead of the appellant who quoted a lower tender price was justified, we reviewed clauses 13.3 and 14 of the Instructions To Tenderers (ITT) which read as follows:

> *"13.3 Ulinganishaji wa Zabuni; Katika kulinganisha Zabuni, kamati ya tathmini itaweka kwa kila Mzabuni bei ya Zabuni iliyofanyiwa tathmini ili kubaini Mzabuni mwenye bei kubwa.*
>
> *14* ***TN itatoa tuzo ya mkataba kwa Mzabuni ambaye Zabuni yake imeonekana kukidhi vigezo vya Zabuni na ambayo imewasilisha bei ya Zabuni iliyofanyiwa tathmini na kuwa na bei kubwa zaidi ya wengine."***
>
> *[Emphasis Added]*

These provisions require the procuring entity, in revenue collection tenders, to recommend the award to the tenderer with the highest evaluated price. The respondent's evaluation report complied with this requirement as it ranked the proposed awardee as the highest evaluated tenderer, despite the evaluation report conclusion recommending award to the proposed awardee as the lowest evaluated tenderer.

We considered the appellant's contention that the evaluation report indicated that the award was recommended to the lowest evaluated tenderer and that, since its price was the lowest, it was therefore eligible for award. We observe that since the tender related to revenue collection, the contract was to be awarded to the highest evaluated tenderer. The record shows that only the two tenderers reached the financial evaluation stage: the appellant who quoted TZS 2,930,000,000.00 and the proposed awardee who quoted TZS 3,264,000,000.00. The proposed awardee was ranked first while the appellant was ranked second.

In view of these observations, we find that the conclusion in the evaluation report was incorrectly worded stating that the award was recommended to the lowest evaluated tenderer instead of the highest evaluated tenderer. This anomaly in wording does not invalidate the substantive findings of the evaluation report, which ranked the proposed awardee as the highest evaluated tenderer.

We further reviewed regulation 219 (a) of the Regulations which provides:

> *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)*

This provision clearly establishes that in revenue collection tenders, the successful tender must be the one with the highest evaluated tender price. Accordingly, the respondent's recommendation to award the tender to the proposed awardee is justified.

Regarding the appellant's contention that the respondent failed to disclose the evaluation criteria allegedly not met by the appellant, we note from the record that both the appellant and the proposed awardee complied with all mandatory criteria and proceeded to financial evaluation. At this stage, the appellant was ranked second solely because it did not quote the highest evaluated price. Thus, the allegation that undisclosed criteria led to disqualification is without merit.

We therefore find the respondent's evaluation process to have complied with section 89(1) of the Act which states:

> *"89.-(1) The evaluation committee shall evaluate, on a common basis, tenders that have not been rejected in order to determine the cost to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs, but the lowest submitted price, may not necessarily be the basis for selection for award of a contract.*

Based on the above findings, we are satisfied that the respondent was justified in disqualifying the appellant's tender. However, we fault the respondent for failing to communicate the actual reason for the appellant's disqualification.

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

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

Taking cognizance of the foregoing findings, we are satisfied that the appellant was fairly disqualified. However, we find that the respondent failed to discharge its statutory duty to communicate the correct reason for the appellant's disqualification in the Notice of Intention to Award. This incorrect communication misled the appellant on the basis for its disqualification and is the cause of the present appeal.

Accordingly, we partly dismiss the appeal to the extent that the appellant's disqualification was justified, but we partly uphold it on account of the respondent's failure to provide the correct reason for the appellant's disqualification.

In view of the respondent's omission and considering that it triggered the institution of this appeal and the subsequent expenses incurred by the appellant in attending the appeal, we order the respondent to compensate the appellant the sum of Tanzania Shillings One Million (TZS 1,000,000.00) only, being the appeal filling fees and reasonable incidental costs.

It is so ordered.

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

The parties are hereby informed of their Right of Judicial Review under section 125 of the Act.

This decision is delivered in the virtual presence of the parties this 6th day of July 2026.

MS. FLORENTINA SUMAWE

....

Ag. CHAIRPERSON

MEMBERS: -

1. **DR. WILLIAM KAZUNGU** ....
2. **DR. GLADNESS SALEMA** ....