IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 44 OF 2025-2026

BETWEEN

M/S S.E.C. (EAST AFRICAN) COMPANY LTD............APPELLANT

AND

MOSHI MUNICIPAL 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. Violet Limilabo	- Senior Legal Officer
3. Mr. Venance Mkonongo	- Legal Officer

FOR THE APPELLANT

1. Mr. Ntuli Mwankusye	- Marketing Director
2. Mr. Peter Mshumbusi	- Marketing Officer

FOR THE RESPONDENT

1. Ms. Mwajuma Nasombe	- Municipal Director
2. Mr. Sifael Kulanga	- Municipal Solicitor
3. Mr. Uhuru Mwembe	- Head of Natural Resources

4. Ms. Furaha Sarakikya - Head of Procurement Management Unit (HPMU)
5. Ms. Leah Francis - Legal Officer

M/S S.E.C. (East African) Company Limited (hereinafter referred to as "**the appellant**") lodged this appeal against Moshi Municipal Council (hereinafter referred to as "**the respondent"**), challenging re-advertisement of Tender No. 7512/2025/2026/W/19 for Installations of Lift at Moshi International Bus Stand (Ngangamfumuni) (hereinafter referred to as "**the re-advertised 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 re-advertised tender was done in accordance with the National competitive tendering method provided under 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 29th April 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to submit tenders. The deadline for submission was set for 6th May 2026. By the deadline, five tenders, including that of the appellant, were received. The tenders were evaluated, and the Evaluation Committee recommended the award of the re-advertised tender to M/S VISAM COMPANY Ltd (hereinafter referred to as **"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 re-advertised tender to the proposed awardee at a contract price of Tanzania Shillings Three Hundred Ninety-Four Million Four Hundred Sixty Thousand Only (TZS

394,460,000.00), VAT exclusive, with 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 at the financial evaluation stage.

On 9th June 2026, the appellant applied for administrative review to the respondent, specifically challenging the re-advertisement of the tender while the earlier Tender No. LGA/045/2010–2019/HQ/W/13 (hereinafter referred to as (**"the first tender"**) previously awarded to it was still in existence. On 16th June 2026, the respondent issued its decision dismissing the appellant's application for administrative review. Dissatisfied, the appellant filed this appeal to the Appeals Authority on 19th June 2026.

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

1. Whether the rejection of the first tender was lawful.

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

SUBMISSIONS BY THE APPELLANT

The appellant's submissions on the first issue were made by Peter Mshumbusi, Marketing Officer, assisted by Mr. Ntuli Mwankusye, Marketing Director.

Mr. Mshumbusi began by submitting that the appellant participated in the first tender which was advertised by the respondent and opened on 2nd November 2018. Upon completion of the internal processes, the appellant was notified by letter dated 29th January 2019 that it had been awarded the contract and was required to submit the performance guarantee. In compliance, the appellant submitted the performance security in the form of a Bank Guarantee to the project consultant, Digital Space Consultant, on 19th February 2019.

He further stated that the project consultant required the appellant to submit the working drawings, which were duly submitted on 25th May 2019. Thereafter, the respondent remained silent, as the appellant was not informed on when the contract would be signed and the project to commence.

On his part, Mr. Mwankusye submitted that after a considerable lapse of time without communication regarding the project, the appellant wrote a reminder letter to the respondent on 26th August 2020. This was followed by three additional reminders dated 5th February 2021, 19th March 2026, and 23rd March 2026. He added that on 19th March 2026, the appellant also wrote to the project consultant requesting an update on the status of the project to facilitate the renewal of the performance guarantee. Neither the respondent nor the consultant responded to any of these letters.

Mr. Mwankusye further submitted that on 4th May 2026, through NeST, the appellant discovered that the first tender previously awarded to it had been re-advertised by the respondent. Consequently, on 8th May 2026 the appellant lodged an application for administrative review to the respondent through the email address **md@moshimc.go.tz**, and physically dispatched the same on 11th May 2026. He explained that the application was filed upon observing that the re-advertised tender bore the same description as the first tender, save for the tender number. However, the respondent failed to entertain the application.

He added that, having not received any response, the appellant sought the intervention of the Public Procurement Regulatory Authority (**PPRA**). PPRA contacted the project consultant and the respondent's Head of the Procurement Management Unit (HPMU), but no response was forthcoming.

He explained further that since the appellant remained interested in undertaking the project, it participated in the re-advertised tender. On 2nd June 2026, the appellant received a Notice of Intention to Award indicating that the respondent intended to award the re-advertised tender to the proposed awardee, while the appellant's tender was unsuccessful for not being the lowest evaluated at the financial stage.

He averred that, being aggrieved by the respondent's act of re-advertising the tender, the appellant applied for administrative review on 9th June 2026, which was subsequently followed by this appeal. He argued that both the application for administrative review and this appeal, challenge the respondent's unlawful rejection of the first tender without complying with the Act and the Regulations.

Mr. Mshumbusi submitted that the first tender was not lawfully concluded, as the contract had not been signed. He contended that the respondent had not rejected the first tender despite the appellant's submission of the performance guarantee and working drawings. He argued that in the absence of any formal rejection, the respondent acted contrary to the law by re-advertising the tender without concluding the earlier process or communicating its decision regarding the award previously made to the appellant.

Mr. Mwankusye further submitted that the respondent acted unlawfully by proceeding with the re-tendering process after receipt of the appellant's application for administrative review dated 8th May 2026. He contended that the respondent was required to suspend the process pending determination of the application. Instead, it proceeded and issued the Notice of Intention to Award, thereby denying the appellant's rights, in contravention of the Act and the Regulations.

He emphasized that the respondent failed to determine the appellant's application for administrative review within the statutory timelines. The respondent's failure to respond amounted to procedural unfairness, as

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it enabled the respondent to continue with the procurement process without first determining the issues lawfully raised by the appellant.

Finally, the appellant prayed for the Appeals Authority to grant the following orders:

1. To suspend the ongoing tender process.
2. To review the entire re-tendering process to determine its compliance with Act and Regulations.
3. The respondent to compensate the appellant costs of TZS 90,000,000/- being performance guarantee submitted by it.
4. Return drawing which were submitted to the respondent
5. Order the respondent to proceed and finalize signing of the contract previously awarded to the appellant.
6. Any other equitable reliefs that the Appeal Authority may deem fit and just to grant.

REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Sifael Kulanga, Municipal Solicitor, assisted by Ms. Mwajuma Nasombe, Municipal Director.

Mr. Kulanga began by acknowledging that the appellant had previously participated in the first tender and was awarded the contract through a letter dated 29^{th} January 2019. He elaborated that the award was not finalized by the signing of the contract due to unavailability of funds.

He further submitted that the project was under the management of the project consultant, who was responsible for its design and implementation. He contended that although the appellant claimed to have been communicating with the consultant, it had not demonstrated the basis upon which such communication was undertaken without the respondent's knowledge or involvement.

Mr. Kulanga further added that, upon realizing that the bid validity period was near to expiry, the respondent, by a letter dated 29th January 2019, requested the appellant to extend the validity of its tender. He stated that the request was dispatched to the appellant's postal address but no response was received. He emphasized that since the bid validity period was ninety (90) days from the tender opening held on 2nd November 2018, the respondent was unable to proceed with the procurement process upon its expiry.

Mr. Kulanga explained that, by a letter dated 11th February 2026, the respondent sought guidance from PPRA on the appropriate course of action following the expiry of the bid validity period before contract signing. According to him, PPRA advised the respondent to re-advertise the tender as the expired bid validity period rendered the procurement process incapable of proceeding to contract execution.

He further stated that, upon receipt of PPRA's advice, the respondent, by a letter dated 21st April 2026, informed the appellant of the guidance received and notified it that the tender would be re-advertised due to the expiry of the bid validity period. The respondent also invited the appellant to participate in the re-advertised tender.

On her part, Ms. Nasombe submitted that the respondent had no intention of failing to sign the contract with the appellant, however, the delay was caused by non-availability of funds allocated for the project. Consequently, the bid validity period lapsed before the funds were released, rendering it impossible to be concluded.

She further stated that, following the subsequent release of funds in the financial year 2025/2026, the respondent re-advertised the tender in accordance with the Act and the Regulations. The appellant participated in the re-advertised tender but was not recommended for award because its tender price was higher than that of the proposed awardee.

Regarding confirmation of the tender price, Ms. Nasombe submitted that the respondent requested the appellant to confirm its quoted price because nearly six years had elapsed since the initial award. She explained that, due to lapse of time, the respondent deemed it necessary to ascertain whether the appellant's quoted price remained valid.

Mr. Kulanga further submitted that the respondent could not suspend the re-advertised tender due to the urgent need to implement the project, which had already delayed for about six years. He explained that, following the release of funds and the PPRA's advice to re-advertise the tender, the respondent proceeded with the tender process and, upon completion of the evaluation process, issued a Notice of Intention to Award in favour of the proposed awardee, who was found to be the lowest evaluated tenderer.

He averred that the appellant's application for administrative review dated 8th May 2026 was improperly lodged by email and physically delivered to the respondent instead of being filed through the NeST platform as required by law. Nevertheless, he stated that the respondent considered the appellant's subsequent complaint dated 9th June 2026 and communicated its decision on 16th June 2026.

Finally, Mr. Kulanga prayed that the appeal be dismissed for lack of merit and that the respondent be allowed to proceed with the tender process, noting the respondent had already incurred a loss amounting to TZS 2 billion paid to the main contractor as a result of the prolonged suspension of the project.

REJOINDER

In his brief rejoinder, Mr. Mwankusye submitted that while communicating with the PPRA, the respondent failed to disclose that the appellant had already submitted the performance security and the project drawings. He argued that had the respondent disclosed the actual status of the appellant when seeking advice, PPRA would not have issued the guidance to re-advertise the tender.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the rejection of the first tender was lawful

In determining this issue, the Appeals Authority considered the rival submissions of the parties. The appellant contended that the respondent unlawfully rejected the first tender which had been awarded to it, notwithstanding the appellant's compliance with all pre-contract signing requirements, including submission of the performance guarantee and working drawings. The appellant further argued that, despite making several follow-ups regarding the status of the tender, the respondent proceeded to advertise a new tender process without addressing the concerns it has raised.

Conversely, the respondent maintained that the contract awarded to the appellant could not be executed due to the unavailability of funds. Consequently, the bid validity period expired before the funds were released, thereby necessitating the re-advertisement of the tender in accordance with the Act and the Regulations.

From the foregoing, it is evident that the appellant does not dispute it's disqualification from the re-advertised tender process. Rather, it challenges the respondent's decision to proceed with the re-advertising the tender before finalizing the first tender, which had already been awarded to the appellant. In view of this contention, the Appeals Authority finds it necessary to ascertain whether the appellant's arguments are consistent with the requirements of the Act and the Regulations.

In this regard, the Appeals Authority reviewed sections 69(8) of the Act and regulation 240(1) of the Regulations, which read as follows: -

"s. 69. (8) Where a tender has been accepted by the accounting officer, the procuring entity and the person whose tender has been accepted shall enter into a contract for the supply of goods, provision of services or undertaking of works.

r. 240.-(1) Without prejudice to the provisions relating to vetting of the contract, where a tender is accepted by the accounting officer, ***the procuring entity and the person whose tender is accepted shall enter into a formal contract for supply of goods, provision of services or undertaking of works within fourteen working days after fulfilling all conditions prior to the signing of contract.***

(Emphasis Added)

The above provisions clearly stipulate that once a tender has been accepted by a procuring entity, the parties are required to enter into a procurement contract within fourteen days, provided that all the prescribed pre-contract requirements have been fulfilled.

Since the first tender was advertised under the Public Procurement Act of 2011 as amended in 2016 and the Regulations made thereunder, the Appeals Authority also reviewed section 60(7) of that Act read together with regulation 233(1) of the Public Procurement Regulations, 2013. These provisions required that the signing of the contract be effected within 28 days after fulfillment of all pre-contract conditions.

Applying these provisions to the facts of this appeal, the record shows that the respondent awarded the tender to the appellant on 29th January 2019.

The letter of award required the appellant to submit performance security within twenty-eight (28) days. On 19th February 2019, the appellant duly submitted the performance guarantee to the consultant, Digital Space Consultant.

The record further indicates that, despite the appellant's compliance, the respondent failed to finalize the contract signing as required by the law. Regulation 233(1) of the Public Procurement Regulations, 2013 mandates a contract to be signed within twenty-eight days after submission of pre-contract documents. Counting from 19th February 2019, the twenty-eight-day period would have expired on or before 19th March 2019. However, the contract was not signed. The record also reveals that the appellant made several reminders to the respondent, but these efforts proved futile.

In addition, the Appeals Authority reviewed sections 120 (1), (4) (6) and 121(2)(a) of the Act, which provide as follows:-

> *120 (1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets and award of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.*
>
> *(4)* ***The accounting officer shall not entertain a complaint or dispute unless it is submitted within five working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have***

become aware of those circumstances, whichever is earlier".

(6) ***Within five working days after the submission of the complaint or dispute,*** *or within seven days in case an independent review panel is constituted,* ***the accounting officer shall deliver a written decision which shall-***

(a) *state the reasons for the decision; and*

(b) *if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken.*

s. 121 (2) ***A tenderer may submit a complaint or dispute directly to the Appeals Authority if-***

(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision;

These provisions provide clear guidance on procedures to be followed by a tenderer when challenging any act or omission of a procuring entity arising during the procurement process. Specifically, an aggrieved tenderer is required to lodge a complaint with the procuring entity within five working days of becoming aware of the circumstances giving rise to the complaint. The procuring entity must determine the complaint within five working days of its receipt. Where the procuring entity fails to deliver its decision within the prescribed period, the tenderer is entitled to file an appeal with the Appeals Authority within five working days thereafter.

We further reviewed the dispute resolution procedures under the Public Procurement Act of 2011 and its Regulations of 2013. These were sections 96(1)(4) and (6) and 97(1) and (2) of that Act. The provisions required a tenderer aggrieved by the tender process to file its complaint with the accounting officer within seven working days of becoming aware of the circumstances giving rise to the complaint. The accounting officer was required to issue its decision within seven working days. If dissatisfied or if the accounting officer failed to issue a decision within the specified time limit, the tenderer was required to file an appeal with the appeals Authority within seven working days.

Applying these provisions to the circumstances of this appeal, the record shows that after the lapse of twenty-eight days within which the contract between the appellant and the respondent was required to be signed, and in the absence of any correspondences to that effect, the appellant was required to pursue its right by submitting an application for administrative review to the respondent within seven working days, challenging the latter's failure to sign the contract within the prescribed period. Counting from 19th March 2019, the appellant ought to have filed its application for administrative review on or by 28th March 2019, and the respondent was to issue its decision on or by 8th April 2019. Whether the respondent issued a decision or failed to do so, the appellant was required to file its appeal to the Appeals Authority within seven working days thereafter, that is, on or by 17th April 2019. However, the appellant failed to exhaust its remedial right at that juncture.

The record further shows that the respondent re-advertised the tender on 29th April 2026, with the deadline for submission set for 5th May 2026. The appellant participated in the re-advertised tender and subsequently submitted an application for administrative review to the respondent on 8th May 2026 through email address md@moshimc.go.tz, and subsequently dispatched the same application physically on 11th May 2026. During the hearing, the respondent challenged the appellant's act of filling an application for administrative review outside the NeST, contrary to the law that requires all complaints to be filed and determined within the system.

The Appeals Authority reviewed regulation 108(1) of the Regulations and item 38.1, 38.2 and 38.3 of the Guidelines for Use of National Electronic Procurement System of Tanzania in Public Procurement and Supply Management, 2025 (hereinafter referred to as **the PPRA Guidelines**), issued by PPRA, which provide as follows: -

> *"r. 108.-(1)* ***Any application for the review of complaints or disputes shall be submitted to the accounting officer through the electronic public procurement system*** *and a copy to the Authority within five working days of the tenderer becoming aware of, or should have become aware of, the circumstances giving rise to the complaint or dispute.*
>
> *Item 38.1 Any complaint or appeals between a procuring entity and a tenderer that arise in respect of procurement proceedings and award of contracts shall be submitted, reviewed and decided through the system.*
>
> *38.2 Tenderers shall lodge in the system complaints and appeals in respect of procurement proceedings.*
>
> *38.3. The Accounting Officer shall review and provide a decision through the system of any complaints between PE and tenderers which arise in respect of procurement proceedings and award of contracts."*

The above provisions clearly stipulate that tenderers are required to submit complaints and appeal through NeST, and that both the accounting officer and the Appeals Authority are required to entertain such complaints and appeals exclusively through the system. In view of this position, the Appeals Authority finds the appellant's application for administrative review filed on 8th May 2026 through email and subsequently by physical delivery to be improper, as it contravened regulation 108(1) of the Regulations and item 38.1, 38.2 and 38.3 of the PPRA Guidelines. Accordingly, in the eyes of the law, such an application is deemed not to have been filed.

The Appeals Authority further examined the application for administrative review lodged by the appellant on 9th June 2026 through NeST, following receipt of the respondent's Notice of Intention to Award in the re-advertise tender. The record shows that the appellant challenged the respondent's act of re-advertising the current tender while the first tender remained unresolved. The appellant raised the same grounds in the present appeal.

Sections 120(1), 120(4), 120(6) and 121(2)(a) of the Act clearly prescribe the procedures and timelines for challenging a procuring entity's act or omission during the procurement process. In the present case, the appellant was required to challenge the respondent's failure to sign the contract within the prescribed time. Having failed to do so within the statutory time limits, the appellant is precluded from challenging matters of which it was aware but chose not to contest within the period prescribed by the Act.

Given this position, the Appeals Authority finds the appellant's act of challenging matters relating to the first tender in this appeal to be improper and contrary to the law.

Under the circumstances, the Appeals Authority is unable to determine whether the rejection of the first tender is justified, since the application for administrative review and the subsequent appeal were lodged in contravention of the applicable legal requirements. Consequently, the Appeals Authority cannot entertain matters relating to the first tender within the context of the re-advertised tender, as the law prescribes specific procedures and timelines for each dispute whenever a tenderer is dissatisfied.

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

In light of the foregoing findings, the appeal is hereby dismissed with no order as to costs. The respondent is accordingly permitted to proceed with the tender process. It is so ordered.

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

The parties have been duly informed of their right to seek Judicial Review in accordance with section 125 of the Act.

This decision is delivered in virtual appearance of the appellant and physical presence of the respondent this 10th day of July 2026.

MS. FLORENTINA SUMAWE

……………………………………………………………

Ag. CHAIRPERSON

MEMBERS: -

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

2. **DR. GLADNESS SALEMA** ……………………………………