

THE REPUBLIC OF UGANDA

**IN THE PUBLIC PROCUREMENT AND DISPOSAL OF
PUBLIC ASSETS APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 22 OF 2021**

VCON CONSTRUCTION (U) LTD===== APPLICANT

VERSUS

UGANDA DEVELOPMENT BANK =====RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
TENDER FOR PREQUALIFICATION OF FIRMS TO
UNDERTAKE THE PROPOSED REHABILITATION AND
MODIFICATION OF UDBL TOWERS ON PLOT 22
HANNINGTON ROAD VIDE PROCUREMENT REF NO.
UDB/WRKS/2021/0006.**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON;
NELSON NERIMA; ENG. THOMAS BROOKES ISANGA;
GEOFFREY NUWAGIRA KAKIRA; AND PAUL
KALUMBA; MEMBERS**

DECISION OF THE TRIBUNAL

A. Background

1. Uganda Development Bank (the Respondent/Entity) invited qualified and competent firms to submit expressions of interest to undertake the rehabilitation and modification of UDBL Towers on Plot 22 Hannington Road vide Procurement Ref No. UDB/WRKS/2021/0006. The Notice was advertised in *The New Vision* newspaper of February 18, 2021, *The Observer* newspaper of February 18, 2021 and *The Monitor* newspaper of February 24, 2021.
2. Bids were issued to 22 firms on February 18, 2021 as per Form 20 – Record of issue of request for proposals. Only 11 Bidders namely, *Seyani Brothers and Company Ltd*, *Nato Engineering Company Limited*, *Krishna Construction Company Limited*, *Seyani International Company Ltd*, *Roko Construction Ltd*, *SMS Construction Ltd*, *VCON Construction Ltd*, *Pearl Engineering Company Ltd*, *Canaan Construction Company Limited* and *Coronation Developers Ltd* and *Ambitious Construction Company Ltd* submitted bids for the said procurement on 5th March 2021.
3. Evaluation of bids was concluded on 12th March 2021 wherein *Seyani Brothers and Company Ltd* and *Ambitious Construction Company Ltd* were recommended by the evaluation committee as the firms to be invited to bid. The best evaluated bidder notice was displayed on March 23, 2021 with a removal date of April 7, 2021.
4. *VCON Construction (U) Limited* (the Applicant) being dissatisfied with the outcome of evaluation process, applied for administrative review to the Accounting Officer of the Respondent on March 31, 2021. The Complaint was dismissed by the Accounting Officer on April 28, 2021.
5. The Applicant applied for review of the decision of the Accounting Officer with the Public procurement and Disposal of Public Assets Authority (the Authority) on May 14, 2021. The

Authority upheld the Applicant's Application on June 16, 2021 and ordered the Respondent to re-evaluate the bids taking into account the findings of the Authority.

B. The re-evaluation of bids

1. On August 3, 2021, the Entity notified the Applicant of its commencement of the re-evaluation of bids as directed by the Authority.
2. Re-evaluation of bids was conducted and on 16th August 2021, *Seyani Brothers and Company Ltd* and *Ambitious Construction Company Ltd* were recommended by the evaluation committee as the firms to be invited to bid.
3. The best evaluated bidder notice was displayed on September 30, 2021 with a removal date of October 14, 2021. The notice indicated that the Applicant's bid failed because it was unresponsive.
4. *VCON Construction (U) Limited* (the Applicant) being dissatisfied by the outcome of the re-evaluation process, applied for administrative review to the Accounting Officer of the Respondent on October 14, 2021. The Complaint requested for information that would be relied upon to improve the complaint and further requested for guidance on where to pay the prescribed fees. The complaint was dismissed by the Accounting Officer on October 19, 2021 on grounds of having been filed out of time and for non-payment of prescribed administrative review fees.

C. Application to the Tribunal

1. The Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant Application on October 22, 2021 before the Tribunal to challenge the decision of the Accounting Officer of the Respondent.

2. The Applicant averred that it had duly lodged a Complaint before the Accounting Officer of the Respondent on October 14, 2021, within the required statutory timelines.
3. The Applicant contended that having been advised on where to pay the prescribed fees, it duly transferred the said funds from its Accounts at Orient Bank into the nominated bank account of the Respondent on 18th October 2021 and that it further sent a confirmatory email to the Respondent on 19th October 2021.
4. The Applicant further contended that its Complaint was dismissed by the Accounting Officer, without addressing the Applicant's request for information on the summary of the evaluation process; comparison of the tenders, proposals or quotations, including the evaluation criteria used; and the reasons for rejecting the concerned bids
5. The Applicant averred that it was unable to appropriately challenge the re-evaluation process, the legality and propriety of the bid solicitation document and omission by the evaluation committee to judiciously apply provisions of the PPDA (Evaluation) Regulations due to failure of the Accounting Officer to provide the said information.
6. The Applicant made this application to the Tribunal on the following grounds:
 - a) *Whether the Accounting Officer of the Respondent erred in fact and law when she decided that the Complaint was filed out of time.*
 - b) *Whether the Accounting Officer of the Respondent erred in fact and law when she decided that the Complaint was invalid for non-payment of administrative review fees.*
 - c) *Whether the Accounting Officer of the Respondent erred in fact and law when she ignored and/refused to avail information requested for by the applicant contrary to the tenets of natural justice.*
7. The Applicant sought the following reliefs from the Tribunal

- i) An order to set aside the impugned decision of the accounting officer of the respondent.*
- ii) In the alternative and without prejudice to (i) above, an order that the accounting officer of the respondent avails the information requested for by the Applicant.*
- iii) An order that the Respondent re-evaluate bids without bias and in accordance with the guidance earlier on provided by the Authority*
- iv) In the alternative and without prejudice to its earlier prayers, an order that the procurement process is cancelled and retendered by the entity.*
- v) Refund of Administrative Review fees paid by the Applicant*
- vi) Costs*

D. Reply to the Application

1. The Respondent stated that having received a Complaint from the Applicant, on 14th October 2021, the Accounting Officer of the Respondent provided the Applicant with information on the amount of administrative review fees that were to be paid as well as the Respondent's relevant bank account details for the purpose of receipt of the requisite fees within one hour from receipt of the Applicant's letter.
2. The Respondent contended that the Applicant did not make payment in respect of administrative review fees until 18th October 2021 and that evidence of payment of the administrative review fees was submitted to the Respondent on 19th October 2021.
3. The Respondent averred that owing to the Applicant's failure to make payment of fees within the statutorily prescribed timeframe, the Applicant's purported Complaint was invalid; that the Respondent did not have any jurisdiction or discretion to undertake an administrative review in respect to the Proposed Procurement.

4. The Respondent contended that due to nonconformities of the Applicant's communication to the Respondent dated 14th October 2021, the said communication did not constitute a Complaint or an Application for Administrative Review within the meaning of the PPDA Act and the PPDA Amendment Act; and the evaluation process in respect to the Proposed Procurement was rightfully conducted and the shortlisted bidders were selected in accordance with the applicable law and the basic principles of public procurement and disposal.
5. The Respondent further averred that the Applicant's purported complaint was rightfully dismissed due to the Applicant's failure to submit its complaint and pay the requisite fees within the statutory period of ten (10) working days as prescribed by law.
6. The Respondent therefore prayed that the Application is dismissed with Costs.

E. Written submissions

Applicant

1. The Applicant submitted that the Application was filed on the 10th working day from 30th September 2021 being the date of display of the best evaluated bidder notice and that is when it became aware of the circumstances giving rise to the complaint.
2. The Applicant relied on Section 34(1) of the Interpretation Act Chapter 2 to submit that the first working day in reckoning time would be Friday, 1st October 2021 and the last and 10th working day would be 14th October, 2021.
3. In the alternative, the Applicant submitted that an application for administrative review would be competently filed if it is filed between 30th September 2021 and 14th October 2021 because a bidder would only become aware of the circumstances giving rise to its complaint through the notice of best evaluated bidder

which must be effectively served on the bidder as per Reg 4(3)(c) and Reg 4(4) of the PPDA (Contracts) Regulations 2014.

4. That payment was made to the Respondent's Bank Account on 18th October 2021 whose receipt was acknowledged in writing on October 22, 2021 and in any case, late payment of filing fees or even non-payment of court fees isn't fatal as long as the proper fees can be assessed and paid. Applicant relied on the Supreme Court decision in **Lawrence Muwanga v Stephen Kyeyune, Civil Appeal No. 12 of 2001**.
5. That it is entitled to information requested for in accordance with sections 43(b) and (f), and Section 45 of the PPDA Act and Articles, 28, 42 and 44 of the Constitution of Uganda. Applicant relied on the decision of **Onyango Oloo vs. Attorney General [1986 – 1989] EA 456**,
6. The Applicant therefore prayed that the Tribunal cancels the entire procurement and orders the procurement to be retendered.

The Respondent

1. The Respondent submitted that under **Section 89 (3) of the PPDA Act (as amended by section 33 of the PPDA (Amendment) Act 2021** both the payment of fees and the submission of the document should be done within the 10-working day period and that in this case, the 10-working day period expired on 14th October 2021 and that time is of essence in procurement processes. It relied on **Nyamuchoncho & Anor v Attorney General & 2 Ors (Miscellaneous Cause-2017/241) [2018] UGHCCD 95**, to support its submissions.
2. The Respondent denied claims that the Applicant was frustrated in payment of the Administrative Review Fees. It submitted that its Account was active and available for crediting as illustrated from the bank statements attached hereto in evidence

3. The Respondent submitted that its Accounting Officer acted fairly and reasonably in providing the Applicant with information that the latter required for payment, the same being provided not only within the same day, but within an hour from the time of receipt of the request. It relied on the decision of **Marvin Baryaruha versus Attorney General Misc. Cause No. 149/2016**.
4. That the Applicant acted irresponsibly and dilatorily in failing to seek information on the evaluation or payment details for nine (9) working days from the issuance of the Best Evaluated Bidder Notice and that the Applicant's decision to lodge a complaint seems to have been, at best, an attempt to frustrate the procurement process, rather than a genuine effort on lodgement of an application for administrative review.
5. That the Accounting Officer could not act to validate an illegality. The Respondent relied on the decisions of **Council for Civil Service Union v Minister for Civil Service [1985]AC 374, 410-411, Attorney General v Fulham Corporation [1921] 1 Ch. 440** and **Makula International Limited vs. His Eminence Cardinal Wamala & Anor (1982) HCB 11** at p.15.
6. The Respondent distinguished and challenged the applicability of the authority of **Lawrence Muwanga versus Stephen Kyeyune (Civil Appeal No. 12 of 2001)** to the current Application.
7. The Respondent submitted owing to the Applicant's failure to effect the payment of fees within the prescribed time, the duty of the Respondent to provide the evaluation information never arose.
8. The Respondent submitted that the Applicant is not entitled to any reliefs and therefore prayed that the Honourable Tribunal dismisses the Application with costs to the Respondent.
9. The Applicant reiterated its earlier submissions that its compliant was valid and complied with the requirements of

Section 89(3) of the PPDA Act as amended and Regulation 4(1) and 4(2) of the PPDA (Administrative Review) Regulations 2014. That the Accounting Officer erred in fact and law when she decided that the Application was filed out of time.

10. The Applicant demurred from the Respondent's submission that the decision of **LAWRENCE MUWANGA v STEPHEN KYEYUNE Civil Appeal No 12 of 2001**, was inapplicable to the instant application.
11. The Applicant submitted that Section 97 of the Civil Procedure Act is applicable to the PPDA Appeals Tribunal, as such, late payment of administrative review fees or filing fees is not fatal
12. The Applicant submitted that the Respondent was not prejudiced by the late payment and that the said fees paid by the Applicant are still in possession of the Respondent
13. The Applicant contended in rejoinder that Article 126(2)(e) of the constitution provides that substantive justice shall administered without undue regard to technicalities.
14. The Applicant submitted that it is entitled to receive the information it requested for as stipulated in section 43(b) and (f), 44, 45, 46 and 89(4) of the PPDA Act 2003 as amended.
15. The Applicant submitted that the decision of **ASSOCIATED PROVINCIAL PICTURE HOUSES LTD. V WEDNESBURY CORPORATION [1948] 1 KB 223** on *Wednesbury unreasonableness* was not applicable to the current Application and it is cited out of context by the Respondent since there is a specific procedure for reviewing and appealing against procurement decisions under sections 89, 91I and 91M of the PPDA Act 2003(as amended) and are thus envisaged exceptions in Regulation 7A(1)(b) of the Judicature (Judicial Review) (Amendment) Rules, 2019.

The best evaluated bidders

16. The best evaluated bidders did not make any written submissions.

F. The oral hearing

The Tribunal held an oral hearing on November 10, 2021 via zoom software. The appearances were as follows:

1. Nelson Walusimbi assisted by Andrew Kabubi, Counsel for the Applicant. In attendance was Eunice Ouko, the Legal Administrator of the Applicant.
2. Joshua Ogwal assisted by Damalie Izaula as Counsel for the Respondent, In attendance was Patricia Ojangole, the Managing Director and Accounting Officer; Sophie Nakandi, the Company Secretary/ Head Legal and Member of the Evaluation Committee; Dennis Ochieng, Member of Evaluation Committee; Patrick Byasigaraho, Member of Evaluation Committee; Kenneth Akampurira, Member of Evaluation Committee; Agnes Nyamaizi, Member of Evaluation Committee; Ivan Kisembo, Member of Evaluation Committee; Eng. Kidega Jude, Assistant Commissioner Electrical-Ministry of Works and Transport and also Member of Evaluation Committee of the Respondent.
3. Sarfaraz Jiwani, a Director of *Seyani Brothers and Company Ltd* represented *Seyani Brothers and Company Ltd* as one of the Best Evaluated Bidder.
4. The parties highlighted their written submissions and provided clarifications.
5. *Seyani Brothers and Company Ltd* as one of the best evaluated bidders who attended the hearing stated that it had nothing to submit.

G. Resolution by the Tribunal

Issue No. 1: Whether the Accounting Officer of the Respondent erred in fact and law when she decided that the Complaint was filed out of time.

1. Section 89 (1) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 states that “A bidder who is aggrieved by a decision of a Procuring and Disposing Entity may make a complaint to the Accounting Officer of the procuring and disposing entity”.
2. Section 89 (3) (b) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that a complaint against a procuring and disposing entity must be made within ten working days **after** the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.
3. In the instant case, the best evaluated bidder notice is dated 30th September 2021. The notice was also given to the Applicant by the Entity vide a letter dated 30th September 2021. The letter was copied to all bidders. The Applicant alleged in its application to the Accounting officer that the notice of best evaluated bidder was displayed on 4th October 2021 but there is no evidence to support that assertion. The available evidence shows that the Applicant received the notice of best evaluated bidder on 30th September 2021.
4. When a bid evaluation is completed, an unsuccessful bidder usually becomes aware of the reasons for the failure of its bid and the circumstances that give rise to the complaint when a copy of the notice of best evaluated bidder is delivered to the bidder. This is because the notice of best evaluated bidder content includes particulars of the unsuccessful bidders and the stage at which their bids failed or were eliminated. See regulation 4(3)(f) and (4) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014*.
5. The notice of best evaluated bidder in this Application was displayed on September 30, 2021 and also served on the Applicant on the same day. The Applicant thus became aware

and is expected to have been aware of the circumstances giving rise to the Complaint on September 30, 2021.

6. In computation of the ten working days after the date on which the bidder first became aware or ought to have become aware of the circumstances that give rise to the complaint, the computation only began or should have started on 1st October 2021 for the following reasons;
 - (i) *Section 34(1) of the Interpretation Act, Cap 2 on computation of time guides that “in computing time for the purpose of any act, a period of days from the happening of an event or the doing of any act of thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done.”* It therefore follows 30th September 2021 when the NOBEB was brought to the Applicant is excluded from computation of time for purposes of lodging a complaint under *Section 89 (3)(b) of the Public Procurement and Disposal of Public Assets (Amendment) Act, 2021*. The computation of working days would and should start from 1st October 2021 and end on 14th October 2021.
 - (ii) Further, the language of the legislative text used in section 89 (3)(b) of the *Public Procurement and Disposal of Public Assets* as amended by Act 15 of 2021 indicates that the computation of time would begin after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint. The operative preposition used in the text is “*after*”; which ordinarily means “*in the time following (an event or another period of time)*”. A textual analysis would mean that computation of time starts after 30th September 2021 and not on or before the said date. Simply put time started to run on 1st October 2021.
7. It is our finding that the Application filed on 14th October 2021 was filed on time and that the Accounting Officer of the Respondent erred in fact and law when she decided that the Complaint was filed out of time.

8. **This issue is therefore answered in the affirmative.**

Issue No. 2: Whether the Accounting Officer of the Respondent erred in fact and law when she decided that the Complaint was invalid for non-payment of administrative review fees.

9. Section 89 (1) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 states that “A bidder who is aggrieved by a decision of a Procuring and Disposing Entity may make a complaint to the Accounting Officer of the procuring and disposing entity”
10. Section 89(3)(a) of the *Public Procurement and Disposal of Public Assets (Amendment) Act* as amended by Act 15 of 2021 requires a complaint against a Procuring and Disposing Entity to be in writing and submitted to the Accounting Officer, of the Procuring and Disposing Entity **on payment of the fees prescribed.**
11. Regulation 11 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014* provides that the fees in the second column of the Schedule to the Regulations shall be paid to a procuring and disposing entity, for the administrative review for a procurement or disposal of a value specified in the first column.
12. The PPDA Authority issued Circular No. 3 of 2015 on *Procedure for Administrative Review by the Accounting Officers*. The circular guided that on receipt of an application for Administrative Review, the Accounting Officer should advise the complainants on the required Administrative Review fees and where to pay the said fees.
13. We noted that the Applicant’s Complaint to the Accounting Officer dated October 14, 2021, at paragraph 9, the Respondent requested the Accounting Officer to guide them on the modalities of payment of the administrative review fees.

14. The bank account details of the Respondent were sent through an email dated October 14, 2021 and time of receipt by the Applicant's system indicated as 4:47pm. The email also contained a letter written by the Accounting Officer of the Respondent, indicating the same bank details indicated in the content of the forwarding email. The said email is attached as annexure 2 on page 12 of the Application.
15. The Respondent effected payment through electronic transfer evidenced by an attached Funds Transfer Form from Orient Bank dated October 18, 2021. The said Funds Transfer Form is attached as Annexure 5 on page 13 of the Application.
16. The affidavit of the Respondent's accounting officer filed in support of her decision confirms that the Applicant paid the administrative review fees on 18th October 2021. According to the chronology of events narrated in the said affidavit and confirmed at the hearing, the Accounting Officer issued the dismissal decision after the administrative review fees had been paid.
17. It is our finding that the conclusion of the Accounting Officer for alleged non-payment or delayed payment of fees, was with due respect, erroneous.
18. The Tribunal has consistently held and guided that late payment of filing fees is not necessarily fatal, and even actual non-payment of court fees has been held not to be fatal so long as the proper fees can be accessed and paid. See: **SAMANGA ELCOMPLUS JV VS. UGANDA ELECTRICITY DISTRIBUTION COMPANY LIMITED, APPLICATION NO.17 OF 2021, KASOKOSO SERVICES LIMITED VS. JINJA SCHOOL OF NURSING AND MIDWIFERY, APPLICATION NO. 13 OF 2021.**

In so holding, the Tribunal was guided inter alia by the case of **LAWRENCE MUWANGA v STEPHEN KYEYUNE (Legal Representative of Christine Kisamba, deceased) SUPREME COURT CIVIL APPEAL NO. 12 OF 2001.**

19. We noted that the Respondent distinguished the applicability of the Supreme Court decision in **LAWRENCE MUWANGA v STEPHEN KYEYUNE (Legal Representative of Christine Kisamba, deceased) SUPREME COURT CIVIL APPEAL NO. 12 OF 2001** to the instant Application on the grounds that under the procurement legislation, neither the Accounting Officer nor the Tribunal has the discretion to waive payment of fees before lodgement of a compliant or extend the time within which to pay the said fees, further that the Applicant had acted in a dilatory manner and actually paid fees late despite being advised on modalities of payment and that the wording of Section 89(3) of the *Public Procurement and Disposal of Public Assets Act* as amended is mandatory and not a mere technicality. That the non-payment of fees renders the Complaint an illegality.
20. With due respect, delayed payment of filing fees is not an illegality which can render proceedings a nullity. Even in court proceedings, a party can be allowed to pay filing fees at any stage.
- Section 97** of the **Civil Procedure Act (Chapter 71)** provides as follows;
- “Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom the fees payable to pay the whole or part, as the case may be, of that court fee, and upon payment, the document, in respect of which the fee is payable, shall have the same force and effect as if the fee had been paid in full in the first instance.”*
22. It therefore follows that the late payment of filing fees is not necessarily fatal, and even actual non-payment of court fees is not fatal and does not render the applicant’s application a nullity so long as the proper fees can be assessed and paid. The Applicant eventually paid the said fees by October 18th 2021. Such payment by the Applicant should be taken to have the same force and effect as if the fee had been paid in full in the

first instance. See decision of Mr Justice Christopher Madrama (as he was then) in **Standard Chartered Bank Uganda Ltd v Mwesigwa (Miscellaneous Application-2012/477) [2012] UGCommC 139**. Also see **Kings College Buddo Staff Savings Scheme Limited v Lukanga and Another (Civil Suit 26 of 2020) [2021] UGHCCD 56** .

23. In any case, under section 89(7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021, the Accounting Officer had ten (10) working days from the receipt of a complaint i.e. 14th October 2021 to make and communicate a decision. Having received the payment on 18th October, 2021, the Accounting Officer had until 25th October 2021 to make and communicate a decision. There was no need to rush and dismiss the Complaint on the ground of non-payment of fees. In our opinion, the “rush” to dismiss the complaint on the said ground was irrational and unreasonable of the Accounting Officer of the Respondent. The Accounting Officer would have been justified to dismiss the only complaint if the Applicant had refused to pay the fees even after being guided.
24. We agree with the Applicant’s submission that the authority of **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223** as cited by the Respondent on the rationality of the Accounting Officer’s actions is inapplicable to the case at hand. The *Wednesbury rules* apply to matters of judicial review and not merits review matters as succinctly stated by **Justice Mubiru** in **Public Procurement and Disposal of Public Assets Authority v Arua Kubala Park Operators and Market Vendors Cooperative Society Limited (Civil Appeal-2016/5) [2017] UGHCCD 13** .
25. It is our finding that the Applicant paid the prescribed administrative review fees. Accordingly, the Accounting Officer of the Respondent erred in fact and law when she dismissed the complaint on the ground of non-payment of fees.
27. **This issue is therefore answered in the affirmative**

Issue No. 3: Whether the Accounting Officer of the Respondent erred in fact and law when she ignored and/refused to avail information requested for by the applicant contrary to the tenets of natural justice

26. We noted that the Applicant's Complaint to the Accounting Officer dated October 14, 2021, at paragraphs 6, 8 and 10, the Respondent requested the Accounting Officer avail to them with *a summary of the evaluation process; a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and the reasons for rejecting the concerned bids, founded on Sections 44, and 46 of the PPDA Act 2003.* The written submissions relied on section 43(b) and (f) and Section 45 of the *Public Procurement and Disposal of Public Assets Act.*
27. We noted that the wording of the request for information by the Applicant is actually premised on the legislative text of *Section 89(2) of the Public Procurement and Disposal of Public Assets Act 2003.* However, the said section was repealed and substituted in its entirety by section 33 of the *Public Procurement and Disposal of Public Assets (Amendment) Act 15 of 2021;* which provided for a new wording of section 89 and dealt away with the need for Procuring and Disposing Entity to provide the requested for documentation as detailed by the Applicant, to a bidder who seeks administrative review.
28. Section 89(4) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that *the procuring and disposing entity against which a complaint is made shall on request provide the bidder with a report indicating the reasons for the rejection of the bidder and the stage at which the bidder was rejected and the report shall be used only for the administrative review process.*
29. A complaining bidder is entitled to a report which contains the information specified in section 89(4) as stated above. In the instant case, the notice of best evaluated bidder stated that the Applicant's bid was unresponsive for 3 reasons i.e. Applicant

did not indicate the status of litigation; key personnel and equipment did not meet the minimum requirements; and the declaration of current contract commitments/works in progress was not counter-signed by the employer. The notice of best evaluated bidder also stated that those reasons were *among others*, implying that there are other reasons which were not disclosed.

30. In accordance with the principles of fairness, transparency and accountability, the Applicant was entitled to know the stage at which its bid failed; details of the alleged missing status of litigation; details of the unfulfilled minimum requirements of key personnel/equipment; and details of other reasons for failure which were not disclosed by the Respondent in the notice of best evaluated bidder. Only then could the Applicant be in position to effectively ventilate its grievances before the Accounting Officer.
31. We have already found and resolved that there was a valid compliant and as such, the Respondent was under a duty to provide the report as required by section 89(4) of the of the *Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021*.
32. The Accounting Officer of the Respondent therefore erred in fact and law when she ignored and/refused to avail information requested for by the Applicant.
33. **This issue is therefore answered in the affirmative**

Issue 4: What remedies are available to the parties

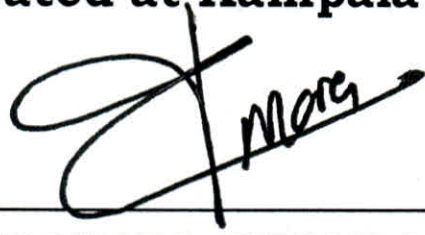
34. In view of our findings under issues no. 1, 2 and 3 above, the Application is successful.
35. The Respondent shall avail the Applicant with a report as required under section 89(4) of the *Public Procurement and*

Disposal of Public Assets Act as amended by Act 15 of 2021. The Accounting Officer of the Respondent shall hear and consider the complaint plus any submissions in relation thereto; and make and communicate a decision as directed herein.

H. DISPOSITION

1. The Application is allowed.
2. The decision of the Accounting Officer of the Respondent dated 19th October 2021 is set aside.
3. The Accounting Officer of the Respondent shall, not later than 15th November, 2021, provide the Applicant with a report indicating reasons for the rejection of the Applicant's bid and the stage at which the Applicant's bid was rejected.
4. The Accounting Officer of the Respondent is directed to hear and consider the Applicant's complaint and any submissions in relation thereto; and make and communicate a decision in writing not later than 22nd November 2021.
5. The Tribunal's suspension order dated 22nd October 2021 is vacated.
6. Each party to bear its own costs.

Dated at Kampala this 11th day of November, 2021.



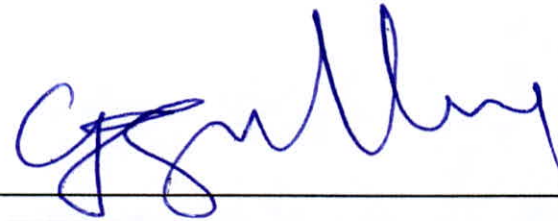
FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER