

**THE REPUBLIC OF UGANDA  
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS  
TRIBUNAL**

**APPLICATION NO. 33 OF 2021**

**BETWEEN**

**SUPER TASTE LIMITED =====APPLICANT**

**AND**

**BANK OF UGANDA =====RESPONDENT**

**APPLICATION IN RESPECT OF A PROCUREMENT BY BANK OF  
UGANDA FOR PROVISION OF CATERING SERVICES AT BANK OF  
UGANDA HEADQUARTERS AND BRANCHES (JINJA, ARUA AND  
FORT PORTAL) VIDE PROCUREMENT REFERENCE NUMBER  
BOU/SRVCS/20-21/00325**

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

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. Bank of Uganda (the Respondent) invited competent firms to bid for the provision of Catering Services at Bank of Uganda at Headquarters and Branches (Jinja, Arua and Fort Portal), in 3 lots vide Procurement Reference Number BOU/SRVCS/20-21/00325, on the 4<sup>th</sup> August, 2021.
2. 11 bidders including Super Taste Limited (the Applicant) submitted bids for Lot 1 of the procurement (Bank of Uganda Headquarters).
3. The Best Evaluated Bidder Notice displayed on October 29, 2021 with a date of removal stated as November 11, 2021 indicated that the best evaluated bidders for Lot 1. Bank of Uganda Headquarters were; *Kaka Catering Services (Bid No.9)*, *Krystal Concepts Ltd (Bid No.5)* and *Copella Foods Ltd (Bid No.1)* [*Alternate-to be contacted when ultimate winners fail to deliver required services*]. The bid of the Applicant failed at the Technical evaluation stage for failure to meet some technical requirements.
4. The Applicant being dissatisfied with the outcome of the procurement process, applied for debrief on 1<sup>st</sup> and 4<sup>th</sup> November 2021. The Respondent debriefed the Applicant in writing on 8<sup>th</sup> November 2021.
5. According to the debrief, when the evaluation team visited the premises of Super Taste Limited (the Applicant), the premises were found unsuitable due to the following:
  - a) The kitchen/cooking area was smaller than the 40 square metres required by the tender
  - b) The tender requirement was to have a Fridge, Electric Chaffing Dishes or a Baine Marie at the provider's premises;

M/s Super Taste Limited had no Fridge, Electric Chaffing Dishes or a Baine Marie.

- c) M/s Super Taste Limited had one room for storage of food and utensils, and the same room was being used as a changing room for the staff. This was hygienically unacceptable.
6. The Applicant being dissatisfied with the procurement process and debrief provided, applied for administrative review before the Accounting Officer of the Respondent through email on Thursday November 4, 2021 at 11:00 AM and followed it up with a letter dated and received by the Respondent on November 12, 2021.
7. The Accounting Officer of the Respondent made and communicated a decision regarding the Applicant's complaint on December 2, 2021. The Accounting Officer found that when M/s Super Taste Limited premises were visited, they were found unsuitable. He cited the 3 reasons given in the debrief on 8<sup>th</sup> November 2021 but also added a fourth reason i.e that the kitchen was constructed on the perimeter wall between them and the neighbour.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant being aggrieved by the decision of the Accounting Officer of the Respondent, filed the instant Application with the Tribunal on December 9, 2021.
2. The Applicant contended as follows:
  - a) it applied for administrative review but received no decision within the time stipulated in section 89 (7) of the Public Procurement and Disposal of Public Assets Act.
  - a) it submitted its ground architectural layout in its bid and also stated that kitchen is divided into two; inner kitchen (43.17 sq. m) and service kitchen 915.922 sq. m). The total is 59.092 sq. m;
  - b) in the food production section, there is clear separation of areas for various functions;

- c) it was unfairly disqualified because the evaluation committee did not find it necessary to seek knowledge of a qualified engineer to establish the correct measurements of the kitchen but opted for a mere observation methods (eyes) to conclude that the kitchen was less than the required 40 square metres;
  - d) it owned the Baine Marie machine since September 2020 as evidenced by the purchase receipt. Due to covid-19, the machine was kept in the store to reduce on the cost of electricity. Some members of the evaluation committee guided by the head chef observed the availability of the machine;
  - e) three of the reasons given for disqualification were outside the evaluation criteria i.e the kitchen being constructed on the perimeter wall; having no electric chaffing dishes or Baine Marie and having one room for storage of food and utensils, and the same room was being used as a changing room for the staff ;
  - f) it was disqualified on grounds where clarification would have been sought;
3. The Applicant sought the following remedies from the Tribunal:
- a) Compel the Respondent to refund the administrative review fees of UGX 5,000,000/= since there was no administrative review process carried out.
  - b) Order the re-evaluation of information to be verified at site inspection for all the qualified bidders (Technical Evaluation Part B).
  - c) Declare that the evaluation criteria were flouted greatly affecting the competitive position of Super Taste Limited.
  - d) Declare that Super Taste Limited was disadvantaged by the evaluation committee.
  - e) Award Super Taste Limited costs and expenses suffered in the course of pursuing the administrative review before the Tribunal.
  - f) Revisit of Super Taste Limited's site to ascertain the correct measurements of the kitchen/or cooking area and the presence Baine Marie machine and its accessories.

- g) Declare that Super Taste Limited was unfairly eliminated on grounds where technical expertise would have been sought from an experienced Engineer other than mere eye observation.

**C. RESPONSE TO THE APPLICATION**

- 1. The Respondent averred as follows;
  - a) that it would raise a preliminary point of law that the Application was filed six (6) days out of time and shall therefore pray that it is struck out with costs.
  - b) the Applicant was not prejudiced by any delay of the Respondent's Accounting Officer.
  - c) the Architectural lay out submitted by the Applicant was not considered by the Respondent since the same not conform to the provisions of the Building Control Regulations, 2020.
  - d) its interest and assessment was the size of the appropriate area actively used as a kitchen since it was seeking outside catering services and the Applicant's premises did not conform to the requirements under the Bidding Document.
  - e) while assessing the active kitchen cooking area, it took into consideration the standards under the Building Control Regulations as enumerated in its Accounting Officer's decision.
  - f) at the time of the surprise site visit by its Evaluation Committee to the Applicant's premises, the Applicant did not have the required Electric Chafing Dishes or a Baine Marie.
  - g) it undertook the detailed technical evaluation as prescribed under the Bidding Document. under Part 2: Section 6 clause 4.0 of the Bidding document, the Applicant was specifically put on notice that the Respondent would inspect the bidder's premises to verify the

information provided in the RFP as well as assess the suitability of the Bidders facilities.

- h) that it conducted the procurement in accordance with its bidding document and the process prescribed by the Public Procurement and Disposal of Assets legal framework, the Public Procurement and Disposal of Assets Authority and other laws of Uganda that prescribe standards and are not in conflict with the PPDA legal framework.
- i) that the Applicant's application is time barred, has no merit and ought to be dismissed with costs.

**D. APPLICANT'S REJOINDER**

- 1. In rejoinder the Applicant averred as follows;
  - a) that the Application was filed within time and that the Respondent's intended preliminary objection be dismissed with costs.
  - b) according to 34(1) of the Interpretation Act ten (10) working days for issue of decision by the Respondent's Accounting Officer in Section 89(7) started on 15<sup>th</sup> November 2021 and expired on 26<sup>th</sup> November 2021.
  - c) under section 71 (a) PPDA Act (Amendment) 2021, each stage of the procurement process shall be completed within the period prescribed in the regulations made under the Act.
  - d) under the Standard Bidding Document issued by PPDA Authority and Solicitation document issued by the Respondent "day" means working day.
  - e) the evaluation committee of the Respondent had a right to carry out measurements to ascertain whether the kitchen was below the measurements stated in the bid document submitted by the Applicant.
  - f) the tender document issued by the Respondent did not require a building plan which conforms to the provisions of the Building Control Regulations, 2020; it required a kitchen/ or appropriate cooking area of approximately 40 Square meters which had to be ascertained by the evaluation committee of the Respondent during the surprise site visit.

- g) the evaluation committee of the Respondent did not carry out measurements to ascertain correct square meters of the Applicant's kitchen but relied on mere eye observation to make its conclusions.
- h) outside catering services are carried out in stages which involve food preparation, cooking and arrangement before dispatch. Food arrangement, blending juices and cutting fruits cannot be done in an active cooking area, it creates possible food contamination with raw food and charcoal, and it's prohibited under US 1551:2013 by Uganda National Bureau of Standards (UNBS).
- i) the Baine Marie was available on site by the time of inspection, some members of the evaluation committee of the Respondent that entered the Applicant's store observed the availability of the machine guided by the Head chef.
- j) the Respondent's evaluation committee has no evidence and keeps on denying the availability of the machine to defend this malicious falsehood.
- k) the evaluation committee did not have any form/checklist during site visit and the Head chef who guided them through site inspection never appended his signature on any form/checklist issued by the Respondent's evaluation committee to confirm that some items required by the Respondent were not available by the time of site.

**E. THE ORAL HEARING**

1. The Tribunal held an oral hearing on 20<sup>th</sup> December 2021 via zoom software. The appearances were as follows:
  - a) Winter Slyvia from Allan and Partners Advocates represented the Applicant. Cissy Nambejja, the Managing Director was in attendance
  - b) David Steven Kamurasi, the Principal Legal Officer together with Doreen Ninsiima, the Legal Officer represented the Respondent
  - c) Akampurira Miriam, the Managing Director of Kystal Concepts Limited, one of the Best Evaluated Bidders attended the oral hearing.

2. The parties expounded their respective cases. We have studied the pleadings and written submissions and taken them into account in reaching this decision.

**F. RESOLUTION BY THE TRIBUNAL**

1. The Application raised 4 issues for determination by the Tribunal. However, owing to the preliminary objection raised by the Applicant, the issues have been reframed as follows;
  - 1) *Whether the Application is time barred.*
  - 2) *Whether the Respondent unfairly disqualified the Applicant's bid.*
  - 3) *Whether the evaluation criteria were flouted.*
  - 4) *Whether the Applicant was disqualified on grounds where clarification would have been sought.*
  - 5) *What remedies are available to the parties.*

**Issue 1:**

**Whether the Application is time barred.**

1. The Applicant applied for administrative review to the Respondent's Accounting Officer on 12<sup>th</sup> November 2021.
2. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 requires the Accounting Officer to make and communicate a decision within ten days of receipt of a compliant. The Accounting Officer was therefore duty bound to make and communicate a decision on or before 22<sup>nd</sup> November 2021.
3. In the instant case, the decision was made on 2<sup>nd</sup> December 2021. A decision made and communicated after 22<sup>nd</sup> November 2021 was a blatant breach of the law and no decision at all.
4. We find such conduct by the Accounting Officer to be dilatory and an egregious disregard of the law.



5. We are fortified in our finding by relying on the Supreme Court decision of ***Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19*** where Mwondha, JSC held that;
- “..... there’s no way the Act can regulate practices in respect of public procurement and Disposal of public assets unless if the provisions are adhered to strictly to the letter. The provisions cannot be directory merely. They are for all purposes and intents mandatory and non-compliance with them makes the proceedings fatal”.***
6. Section 89 (8) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that where an Accounting Officer does not make and communicate a decision within the period specified in subsection (7) [ie within ten days], the bidder may make an application to the Tribunal, in accordance with Part VIIA of the Act.
7. Section 91I(2)(b) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 provides that an application to the Tribunal under section 89(8) [failure to make and communicate a decision] shall be made within ten days from the date of expiry of the period specified in the section.
8. Sections 89 (7) and 91I (2) (b) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 do not make reference to “*working days*” but to “*days*”. The only reference to “*working days*” is in section 89(3) (b) but it is in respect of the time within which a bidder may make an application for administrative review to the Accounting Officer, after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.
9. It therefore follows that the Accounting Officer having not made a decision on or by 22<sup>nd</sup> November 2021, the Applicant ought to have made an application to the Tribunal within 10 days, in accordance with Part VIIA of the Act.

10. The Tribunal has pronounced itself on this issue in **APPLICATION NO. 29 OF 2021 SANLAM GENERAL INSURANCE (U) LIMITED v UGANDA NATIONAL ROADS AUTHORITY.**
11. The Applicant should have lodged this instant application within 10 calendar days from 22<sup>nd</sup> November, 2021 which was the last day for the Accounting Officer to make and communicate a decision. The 10 days expired on 2<sup>nd</sup> December, 2021. Therefore, the application lodged with the Tribunal on 9<sup>th</sup> December 2021 was lodged out of time.
12. We are not convinced by the Applicant's rejoinder that "day" as used in the legislative text of Section 89 (8) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 means "working days" as deduced from Bidding Document and the *Interpretation Act*.
13. With due respect, the Bidding Document cannot override express provisions of the *Public Procurement and Disposal of Public Assets Act*. The definition of "working days" in the Bidding document could apply to timelines for the bidding process but not administrative review timelines stipulated under Part VII of the Act.
14. Section 34(1)(b) of the *Interpretation Act Cap 3* only excludes Sundays or a public holiday in the computation of time, only if the last day of the period prescribed for doing any act or taking any proceeding is a Sunday or a public holiday, then the period mandatorily includes the next following day, not being an excluded day. Saturdays and Sundays, unless they fall within the ambit of section 34(1)(b) of the *Interpretation Act Cap 3*, are therefore not excluded days. d
15. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. See: ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000/31) [2000] UGCA 2.***

16. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned.
17. In ***Makula International Ltd versus Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981***, it was held that a court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute.
18. This precedent was authoritatively relied on by the Supreme Court of Uganda in ***Sitenda Sebalu versus Sam K. Njuba & Another Election Petition Appeal No. 5 of 2007*** wherein it held that if there is no statutory provision or rule, then the court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute or rule.
19. In conclusion, the Application lodged with the Tribunal on 9<sup>th</sup> December 2021 was therefore filed out of time and the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. The Application is therefore incompetent.
20. In the result there is no need to delve into the merits of the Application.

**G. DISPOSITION**

1. The Application is struck out.
2. The Tribunal's suspension order dated 9<sup>th</sup> December 2021 is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 21<sup>st</sup> day of December, 2021.



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**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



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**NELSON NERIMA**  
**MEMBER**



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**THOMAS BROOKES ISANGA**  
**MEMBER**



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**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**PAUL KALUMBA**  
**MEMBER**