

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Ministry of Justice and Constitutional Affairs (the Respondent/Entity) undertook a procurement process under Procurement Ref No: MOJCA/WKS/21-22/00095 for the proposed office development (JLOS House) for Ministry of Justice and Constitutional Affairs on Plots 92-102 Katalima Road, Naguru, Kampala using Open International Bidding Procurement Method. The Bid Notice was published in Daily Monitor newspaper on Tuesday, 9th November, 2021.
2. The entity issued two subsequent addenda 1 and 2 to the bidding document on November 30, 2021 and December 17, 2021 respectively.
3. Out of the 24 prospective bidders who purchased the bidding documents, only 10 bidders submitted bids.
4. At preliminary examination, three (03) bidders were eliminated and seven (07) bidders including the Applicant were found compliant and proceeded to the technical and commercial evaluation.
5. The evaluation committee conducted a detailed technical and commercial evaluation of the said seven (07) bids to determine responsiveness as required.
6. At the detailed technical and commercial evaluation stage, the bids of the following three (03) bidders, including the Applicant, were eliminated for being non-responsive:
 - i) M/s Consortium of China Communications Construction Limited and China First Highway Engineering Limited;
 - ii) M/s Sadeem Al Kuwait General Trading and Contracting Company; and
 - iii) M/s SMS Construction Ltd And Farrin Yol Yapi Insaat San Ve Tic Ltd-Sti Joint Venture.

7. The Evaluation Committee proceeded to conduct financial comparison of the four (04) bids listed below, which had been found to be responsive at the detailed technical and commercial evaluation stage i.e;

- i) M/s Seyani Brothers and Company (U) Limited;
- ii) M/s China National Aero Technology International Engineering Corporation
- iii) M/s China Railway Engineering Group; and
- iv) M/s Sino Hydro Corporation Limited.

8. The Evaluation Committee issued an evaluation report recommending M/S SEYANI BROTHERS & CO. (U) Limited as the best evaluated bidder at a contract price of UGX 256,438,726,974 VAT inclusive

9. At its 16th meeting held on 31st January 2022, the Contracts Committee rejected the evaluation committee report and recommended cancellation of the procurement on two grounds i.e;

- (i) That clarification was sought from one bidder *M/s Sadeem AL Kuwait General Trading and Contracting Company* to clarify on the wireman's permit for the foreman and its certificate of registration. That clarification was also sought from Seyani Brothers & Co. (U) Ltd. and two others during financial comparison to clarify on arithmetic errors. It was however noted that M/S Consortia of China Communications Construction Company Limited and China First Highway Engineering Limited were eliminated because they did not attach the same documents and no clarification was sought from them. That the evaluation committee thereby selectively, discriminatively, and illegally sought for clarification from bidders.
- (ii) That Addendum 2 to the bidding document had been issued without the Contracts Committee's approval.

10. In a memo dated 3rd February 2022, the Head of the Procurement and Disposal Unit of the Respondent sought the Permanent Secretary/Accounting Officer's intervention to recommend that the contracts committee reviews its recommendations and approve the evaluation report. :
11. On 7th February 2022 the Permanent Secretary/Accounting Officer of the Respondent requested the Head of the Procurement and Disposal Unit to re-submit to the Contracts Committee to reconsider their decision in view of the explanation of the Head of the Procurement and Disposal Unit.
12. In a memo dated 8th February 2022, the Head of the Procurement and Disposal Unit re-submitted the evaluation report to the Contracts Committee for review based on the reasons in his memo to the Permanent Secretary/Accounting Officer dated 3rd February 2022.
13. At its meeting of 10th February 2022 the Contracts Committee upheld its decision of 30th January 2022 to reject the evaluation report and recommend cancellation of the procurement.
14. On 11th February 2022, the Permanent Secretary/Accounting Officer of the Respondent sought the advice of the Public Procurement and Disposal of Public Assets Authority under section 33 of the *Public Procurement and Disposal of Public Assets Act*.
15. On 21st February 2022, the Public Procurement and Disposal of Public Assets Authority advised that:
 - (i) The Evaluation Committee, having considered it as a non-material deviation, rightly requested *M/s Sadeem Al Kuwait General Trading and Contracting Company* to submit the

installation permit since they had mentioned in their bid that their electrical foreman had the permit.

- (ii) The bid of *M/s Consortium of China Communications Construction Company Limited and China First Highway Engineering Limited* did not mention that their foreman had the ERA certificate and as such there was no need to seek clarification.
- (iii) Notwithstanding the above, both bidders i.e. *M/S Sadeem and M/s Consortium* and *M/s Consortium of China Communications Construction Company Limited and China First Highway Engineering Limited* were disqualified, their bids having been found non-responsive on other grounds.
- (iv) The Contracts Committee did not have the power to cancel or recommend cancellation of a procurement process, but could only approve cancellation on recommendation of the Procurement and Disposal Unit; and
- (v) In light of the stand-off between the Procurement and Disposal Unit and the Contracts Committee, the Accounting Officer may consider delegating the function of award of the contract to a sub-division of the Entity or a member of staff in accordance with S. 39 of the *Public Procurement and Disposal of Public Assets Act*.

16. On 22nd February 2022, the Accounting Officer delegated the function of the Contracts Committee under the procurement to a select committee of three staff members.

17. At its meeting of 23rd February 2022, the select committee approved the evaluation report and awarded the contract for the construction of JLOS House to M/S SEYANI BROTHERS & CO. (U) LIMITED at a total evaluated price of UGX: 256,438,726,974 VAT inclusive.

18. The Notice of Best Evaluated Bidder was accordingly issued on 24th February 2022 with a removal date of 10th March 2022.

B. APPLICATION TO THE TRIBUNAL

1. On 10th March 2022, the Applicant filed the instant application directly with the Tribunal under section 89 (9) of the *Public Procurement and Disposal of Public Assets Act*, on grounds that the Accounting Officer has a conflict of interest, and the Entity cannot handle the matter impartially.
2. The Application raised three issues i.e.
 - (i) Whether the Respondent erred in law when it issued the Notice of Best Evaluated Bidder dated 24th February 2022 without a decision by the Contracts Committee to award the contract to the bidder.
 - (ii) Whether the Respondent erred in law by issuing Addendum No. 2 without approval by the Contracts Committee.
 - (iii) Whether the Respondent erred in law when it did not deliver a copy of the Notice of Best Evaluated Bidder to the Applicant.
3. The Applicant prayed that the procurement be suspended and cancelled; and the Entity be advised to retender the same. The Applicant also prayed that it be awarded the costs of the Application.

C. RESPONSE BY THE ENTITY

1. Contrary to the assertions of Contracts Committee, the Respondent contends that the request for clarification from *M/S Sadeem AL Kuwait General Trading and Contracting Company* was made lawfully in total compliance with the applicable requirements and without discrimination whatsoever. The request for clarification did not disadvantage any bidder.

2. On 11th February 2022, the Respondent sought the advice of the Public Procurement and Disposal of Public Assets Authority.

3. On 21st February 2022, the Public Procurement and Disposal of Public Assets Authority responded and advised that:
 - (i) The Evaluation Committee, having considered it a non-material deviation, rightly requested M/s Sadeem Al Kuwait General Trading and Contracting Company to submit the installation permit since they had mentioned in their bid that their electrical foreman had the permit.

 - (ii) The bid of M/s Consortium of China Communications Construction Company Limited and China First Highway Engineering Limited did not mention that their foreman had the ERA certificate and as such there was no need to seek clarification.

 - (iii) Notwithstanding the above, both bidders i.e. M/S Sadeem and M/s Consortium were disqualified, their bids having been found unresponsive on other grounds.

 - (iv) The Contracts Committee did not have the power to cancel or recommend cancellation of a procurement process, but could only approve cancellation on recommendation of the Procurement and Disposal Unit; and

 - (v) In light of the stand-off between the Procurement and Disposal Unit and the Contracts Committee, the Accounting Officer would consider delegating the function of award of the contract to a sub-division of the entity or a member of staff in accordance with S. 39.



4. Pursuant to the above S. 39 of the PPDA Act and the guidance of the Authority concerning the disagreement between PDU and Contracts committee, the Accounting Officer delegated the function related to award of contract, to a delegated committee of particular staff.
5. At its meeting of 23rd February, 2022, the Select Committee considered the Evaluation Report, reasons advanced by Contracts Committee in declining award, advice from the Authority, the relevant minutes of the 12th, 13th, 16th, and 18th meetings, the bid and the attendant addenda No.1 and No.2 and other relevant documents;
6. The delegated committee found that the evaluation had been conducted properly and lawfully and approved the evaluation report and awarded the contract for the construction of JLOS House to M/S SEYANI BROTHERS & CO. (U) LIMITED at a total evaluated price of UGX: 256,438,726,974/= VAT inclusive.
7. The Notice of the Best Evaluated Bidder was issued on 24th February 2022 and duly displayed on the Entity's Notice Board as required and the same was delivered to all bidders including the Applicant electronically on 24th February, 2022. I.e. sent to the bidders' email addresses provided (info@smsconstruction.com, info@smsgroup.com and martha@smsgroup360.com). The Best Evaluated Bidder Notice was further displayed on the PPDA Website and the JLOS website.
8. The Respondent contends and avers that the Applicant was amply notified by issuance and service of the Best Evaluated Bidder Notice in the above manner.
9. The Applicant has brought this Application as a result of and acknowledges and admits receipt of the Best Evaluated Bidder Notice.

10. The Respondent contends that the Application is baseless and ungrounded, and that the Applicant is not entitled to the reliefs and remedies sought and prays that the same be denied.
11. The Respondent prays that the Application be dismissed with costs to the Respondent.

D. RESPONSE BY THE BEST EVALUATED BIDDER

1. The Best Evaluated Bidder M/S Seyani Brothers & Co. (U) Limited, through Kampala Associated Advocates, raised preliminary objections that the Application was incompetent and filed out of time stipulated in section 91I (2) of the Public Procurement and Disposal of Public Assets Act; was frivolous and vexatious; was premature and incompetent for having been filed directly to the Tribunal.
2. On the merits of the Application, the Best Evaluated Bidder contended that the allegation that the Notice of Best Evaluated Bidder was issued without a decision by the Contracts Committee is factually incorrect. That Addendum 2 was issued to all bidders; contains clarifications and extension of bid submission date; doesn't restrict competition, does not change any scope of works; the clarifications were minor and did not materially change the initial bid document. That the Respondent delivered the best Evaluated Bidder Notice via email and informed the bidders the notice was available to be picked from the office of the head of procurement of the Respondent. That the Applicant's representative was in copy of the email.
3. The Best Evaluated Bidder prayed that the Application be dismissed with costs.



E. ORAL HEARING AND SUBMISSIONS

1. The Tribunal held an oral hearing on 23rd March 2022. The appearances were as follows:
 - 1) John Kalemera and Didas Elias from *Muhumuza, Kateba & Co. Advocates* appeared as counsel for the Applicant.
 - 2) Ashaba Ainea a Director of the Applicant, Edna Atuhaire, a Legal Officer of the Applicant and Shamila Lule the Head Legal and Human Resource of the Applicant, were in attendance.
 - 3) Richard Adrole, Principal State Attorney assisted by Christopher Arinaitwe, Senior State Attorney, both from the Attorney General's Chambers appeared as counsel for the Respondent.
 - 4) Oyet Tom, Head Procurement and Disposal Unit of the Respondent, Rachel Odoi Musoke a Senior Technical Advisor-Justice Law & Order Sector (JLOS), Sam Rogers Wairagala, Deputy Senior Technical Advisor JLOS were also in attendance.
 - 5) Joakim Kunta-Kinte Karaarira of *Kampala Associated Advocates* appeared as counsel for *Seyani Brothers & Co Ltd* (best evaluated bidder) as an interested party, who was invited by the Tribunal.
 - 6) Rose Siima Akankunda, a lawyer from *Kampala Associated Advocates*, Manish Siyani the Managing Director and Sarfaraz Jiwani the General Manager of the best evaluated bidder were in attendance.

2. The parties highlighted their written submissions and provided clarifications to the Tribunal.

Applicant

3. The Applicant abandoned issue no. 3 i.e. the complaint that the Respondent did not deliver a copy of the Notice of Best Evaluated Bidder to the Applicant.
4. On the first preliminary objection i.e. limitation, the Applicant's counsel submitted that the prescribed period for making an application to the Tribunal under section 89 (9) of the Public Procurement and Disposal of Public Assets Act is ten working days.
5. That the reference to days in section 91I (2) of the Public Procurement and Disposal of Public Assets Act is an error in the Public Procurement and Disposal of Public Assets (Amendment) 2021 Act. That the context of section 91I shows that the days referred to therein are working days. That the Best Evaluated Bidder Notice was published on 24th February 2022 and the instant application was filed on 10th March 2022 within the prescribed ten working days.
6. On the second preliminary objection regarding the propriety of the application made directly to the Tribunal, the Applicant's counsel submitted that the Applicant had reasonable grounds to believe that the Accounting Officer could not handle the matter impartially since he had already made decisions that are being challenged.
7. On the first issue, counsel submitted that the Accounting Officer of the Respondent lacked the mandate to seek advice from the Authority regarding the Contracts Committee decision. The Advice



from the Authority was misconceived and ultra vires. The delegation of the contracts committee function to a select committee by the Accounting Officer was unlawful and ultra vires.

8. That under regulation 18 of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations 2014*, where the Accounting Officer does not agree with the Contracts Committee, he may either return the decision with the reasons for rejection to the Contracts Committee or refer the decision with the reasons to the Authority for independent review. He could not exercise both options.
9. That the advice of the Public Procurement and Disposal of Public Assets Authority was misconceived and ultra vires. The Accounting Officer can delegate the functions of the Contracts Committee only on the recommendation of the Contracts Committee. The Contracts Committee did not recommend any delegation. Reliance was placed on section 39 (a) of the *Public Procurement and Disposal of Public Assets Act*, and regulation 21 of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations 2014*.
10. The Contracts Committee had already completed and exhausted its functions and the same could not be delegated.
11. On issue no. 2, counsel submitted that the Respondent failed to adduce evidence of the necessary approval of Addendum No. 2 by the Contracts Committee on the prescribed Form 9. The minutes relied on by the Respondent were not signed by the chairperson of the Contracts Committee. The Applicant relied on regulation 13 (1) of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations 2014*, regulation 49 of the *Public*

Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies ,Works and Non-consultancy Services) Regulations 2014.

12. The Applicant reiterated the prayers in the application.

Respondent

13. The Respondent's counsel raised a preliminary objection that the Application is time barred under Section 91I (2) (c) of the *Public Procurement and Disposal of Public Assets Act* which provides for a limitation period of ten days. That the Notice of Best Evaluated Bidder was issued on 24th February 2022 and this Application having been filed 14 days later is time barred.

14. That the Applicant applied directly to the Tribunal yet it had no reasonable ground to believe that the Accounting Officer had conflict of interest within the meaning of section 89 (9) of the *Public Procurement and Disposal of Public Assets Act*.

15. On the merits, counsel submitted that the evaluation report was approved by a select committee which was exercising delegated powers under sections 29 (b) and 39 (a) of the *Public Procurement and Disposal of Public Assets Act*; and regulations 18 and 21 of the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations 2014*.

16. That Addendum No. 2 was approved by the Contracts Committee whose minutes were signed by the Secretary under regulation 16 of

the *Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations 2014*.

17. That the Notice of Best Evaluated Bidder was issued on 24th February 2022; duly displayed on the Entity's notice board; and delivered electronically by email to all bidders including the Applicant. That the Applicant had abandoned this issue in its submissions.

18. Counsel prayed that the application be dismissed with costs.

F. RESOLUTION BY THE TRIBUNAL

1. The Tribunal shall first deal with the preliminary objections because any of the objections can dispose of the Application if it is upheld.

Whether the instant Application made directly to the Tribunal is competent

2. There are only five instances under which the Tribunal can exercise its jurisdiction in administrative review. These instances are provided for under sections 89(8), 89(9) and 91I(1)(a), (b) and (c) of the *Public Procurement and Disposal of Public Assets Act, 2003* as amended by Act 15 of 2021 namely:

a) under sections 89 (8) and 91I(1)(a), where an Accounting Officer does not make a decision or communicate a

decision on an administrative review complaint within ten working days as required under section 89(7), or;

- b) under section 91I(1)(a), where a bidder is not satisfied with the decision made by the Accounting Officer on an administrative review complaint under section 89(7), or;
- c) under section 91I(1)(b), where a person's rights are adversely affected by a decision made by the Accounting Officer on an administrative review complaint, or;
- d) under sections 89(9) and 91I(1)(c), where a bidder believes that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach; or
- e) under sections 89(9) and 91I(1)(c), where a bidder believes that the matter cannot be handled impartially by the procuring and disposing entity.

3. Under section 89 of the of the *Public Procurement and Disposal of Public Assets Act, 2003* as amended by Act 15 of 2021, the Accounting Officer is the forum of first instance for administrative review complaints. In the instant case, the Applicant did not first apply for administrative review to the Respondent's Accounting Officer. The Application was made direct to the Tribunal under sections 89(9) and 91I(1) (c) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.

4. Section 89(9) of the *Public Procurement and Disposal of Public Assets (Amendment) Act 2021* as amended by Act 15 of 2021 reads as follows;

*“Where a bidder believes that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section **or** that the matter cannot be handled impartially by the procuring and disposing entity, the*

bidder shall make an application to the Tribunal for determination of the complaint, omission or breach”

5. The Applicant bears the burden to demonstrate that its complaint or matters arising out of the impugned procurement could not be handled impartially by the Accounting Officer of the procuring and disposing entity or that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach to the satisfaction of the Tribunal. The Applicant must adduce cogent and reasonable evidence to satisfy the Tribunal that there was in fact such partiality or real likelihood of partiality or conflict of interest. See the Tribunal decision in **APPLICATION NO. 18 OF 2021-ABASAMIA HWOLERANE ASSOCIATION LTD v JINJA CITY COUNCIL**.
6. There is however, no need to prove that the Accounting Officer is actually biased or partial or has a conflict of interest. The requirement is to demonstrate a sincere belief, and the basis for that belief, that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach or that the matter cannot be handled impartially by the procuring and disposing entity.
7. The Applicant bears the burden to demonstrate that its complaint or matters arising out of the impugned procurement could not be handled impartially by the Accounting Office of the procuring and disposing entity.
8. The Applicant in paragraph 11 of the Application pleaded that it believes the Accounting Officer has conflict of interest and the entity cannot handle the matter impartially. That this is because the Accounting Officer requested the Contracts Committee to review its decision which found incurable defects in the procurement process, and he permitted the publication of the Notice of best evaluated Bidder without the required approval of the evaluation report by the contracts committee.

9. In the instant case, the Applicant has pleaded and demonstrated that the Contracts Committee of the Respondent rejected the impugned evaluation report. That the Accounting Officer decided to re-submit the impugned evaluation report to the Contracts Committee. Upon a second rejection, the Accounting Officer sought advice from the Public Procurement and Disposal of Public Assets Authority which advised him to delegate the function of the Contracts Committee to a sub-division of the entity or a member of staff. The Accounting Officer agreed with the advice and delegated the function to a select committee of the entity's staff. The advice of the Authority, the delegation and the award by the select committee are under challenge in this Application. However, the Accounting Officer has already formed an opinion and is fully in support of the impugned decisions and actions.

10. The *Public Procurement and Disposal of Public Assets Act 2003* does not define the meaning of "conflict of interest" and "*impartially*" as used in the text of the said statute. However, it cannot be gainsaid that the provision is intended to ensure that the Accounting Officer does not adjudicate administrative review complaints where there is a situation of actual or perceived conflict of interests or bias.

11. Procedural fairness requires that the decision maker should not be biased or prejudiced in a way that precludes fair and genuine consideration being given to the arguments advanced by the parties. The principle of bias is expressed in the maxim *nemo iudex in sua causa* (no one should be a judge in his own cause) which means that no one shall adjudicate in his own cause, or no one should adjudicate in a matter in which he has a conflicting interest. Bias in decision making imputes that a decision maker is influenced by private interests or personal predilections, and he will not follow, or may be tempted not to follow, the required standards and considerations which ought to guide the decision. An accurate decision is more likely to be achieved by a decision-

maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices. Secondly, the requirement for public confidence in the decision making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the courts and other decision-making bodies. See the decision of **Ssekaana, J** in **HIGH COURT CIVIL DIVISION MISCELLANEOUS CAUSE NO. 34 OF 2020-DR. ARTHUR AHIMBISIBWE VERSUS THE APPOINTMENTS BOARD OF MAKERERE UNIVERSITY BUSSINESS SCHOOL.**

12. We are persuaded that in the circumstances of this case as stated above, the Applicant has a belief that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section or that the matter cannot be handled impartially by the procuring and disposing entity. We do not suggest that the Accounting Officer is actually biased or partial, but the circumstances of this case would ordinarily lead a reasonable person to have an apprehension of bias or partiality if the Accounting Officer were to sit in judgment of his own decisions. The Applicant was therefore entitled to make the Application direct to the Tribunal for determination of the complaint under sections 89(9) and 91I(1) (c) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.

13. In the result, the Tribunal finds that the Applicant has shown that it had a belief that the matter could not be handled impartially by the procuring and disposing entity. The Applicant was therefore within its statutory rights to file the application directly to the Tribunal.

14. The objection that this Application is incompetent because it was made directly to the Tribunal, is overruled.

Whether the Application is time barred

15. According to the Respondent, the Notice of Best Evaluated Bidder was issued on 24th February 2022; duly displayed on the Entity's Notice Board and the same was electronically delivered to all bidders, including the Applicant on 24th February 2022. That it was sent to the Applicant's email addresses provided (info@smsconstruction.com; info@smsgroup.com and martha@smsgroup360.com). The email is R.15 to the Respondent's reply. That the Notice of Best Evaluated Bidder was further displayed on the PPDA Website and the JLOS website.
16. At the hearing, the Respondent's Head of the Procurement and Disposal Unit, Mr. Tom Oyet, confirmed that he personally sent the email.
17. Mr. Ashaba Michael, an authorized representative of the Applicant, also confirmed to the Tribunal that info@smsconstruction.com; info@smsgroup.com and martha@smsgroup360.com are the email addresses which the Applicant furnished to the Respondent.
18. In the Application as originally filed, the Applicant had complained that the Respondent did not deliver a copy of the Notice of Best Evaluated Bidder to the Applicant.
19. However, the Applicant's counsel abandoned this issue in the submissions filed on 18th March 2022.
20. In light of the evidence adduced by the Respondent, the admission by the Applicant and the submissions of the Applicant's counsel, it is not in dispute that the Applicant received the Notice of Best Evaluated Bidder by email on 24th February 2022. This was a valid electronic communication permitted under section 95B of the

Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021.

21. The Notice of Best Evaluated Bidder indicates that Seyani Brothers and Company (U) Limited was the best evaluated bidder at a total contract price of UGX. 256,438,726,974. The Notice of Best Evaluated Bidder also indicates the reasons for failure of unsuccessful bids, including the Applicant.
22. Upon receipt of the impugned Notice of Best Evaluated Bidder, the Applicant had a right to apply for administrative review under sections 89 and 91I of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.
23. Sections 89 and 91I(2) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 stipulate time limits for applications to the Accounting Officer and to this Tribunal.
24. Where the application is due to the failure by the Accounting Officer to make and communicate a decision to the bidder within the period specified under section 89(7) of the Act, the application must be lodged by the bidder within ten days from the date when the Accounting Officer's decision should have been made and communicated.
25. An application for review of a decision of the Accounting Officer made under section 89 (7) of the Act must be lodged by the bidder within ten working days after an Applicant is served with the decision of the Accounting Officer.

26. An application made direct to the Tribunal under section 89 (9) of the Act must be lodged by the bidder within ten days of the impugned decision, omission or breach by the procuring and disposing entity.
27. The Applicant lodged the instant Application directly with the Tribunal on 10th March 2022 under section 89 (9) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.
28. Under section 91I (2) (c) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021, an application under section 89 (9) shall be made to the Tribunal within ten days from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place.
29. Whereas the legislature provided for a time limit of ten working days for an application for review of a decision of the Accounting Officer made under section 89 (7) of the Act; the same legislature provided for a time limit of ten days for an application made direct to the Tribunal under section 89 (9) of the Act.
30. A reference to “days” means calendar days and not working days. See the Tribunal decisions in ***Sanlam General Insurance (U) Limited v Uganda National Roads Authority, Application No. 29 of 2021***; ***JV Kadac-Lobaltec v Uganda Prisons Service, Application No. 4 of 2022***; ***Super Taste Ltd V Bank of Uganda, Application No. 33 of 2021***; and ***Apa Insurance Uganda Limited v Uganda National Roads Authority, Application No. 2 of 2022***.

31. We do not therefore agree with the submission of the Applicant's counsel that the ten days in section 91I(2)(c) refers to working days.

32. We also do not agree with the submission of the Applicant's counsel that the text of section 91I(2)(c) contains an "error". Even if there was an error, only Parliament has constitutional authority to amend the law.

33. In ***HIGH COURT COMMERCIAL DIVISION C.S OS-0009-2009-ROCK PETROLEUM (U) LTD v UGANDA REVENUE AUTHORITY, C.S O.S 0009 of 2009***, the Plaintiffs challenged the defendant's collection of increased excise duty on diesel from Ug. Shs. 450 to Ug. Shs. 530 and on Petrol from Ug. Shs 720 to Ug. Shs. 850 under the Excise Tariff (Amendment) Act No. 5 of 2008. The Act had two fatal errors i.e. having a commencement date of 1st July 2008 instead of the intended retrospective date of 1st July 2007, and amendment of a non-existent 2nd Schedule of the Excise Tariff (Amendment) Act 2007. The Uganda Printing and Publishing Corporation later purported to publish corrigenda to correct the alleged error. Counsel for the defendant contend that the errors were typographical and were effectively cured by such publication of the corrigenda. It was held that the mandate to clarify such errors is only vested in the Legislature Articles 79 and 91 of the Constitution and cannot be exercised by a mere publisher. That it is only Parliament which has the mandate to make law. That it is only Parliament which can revoke, amend, or correct mistakes in any law which has become an Act of Parliament. It was accordingly held that the plaintiffs were entitled to a refund of the monies collected by the defendant from 1st November 2007 onwards under the Excise Tariff (Amendment) Act No 6 of 2008.

34. It is therefore the finding of this Tribunal that after receipt of the Notice of Best Evaluated Bidder on Thursday 24th February 2022, the Applicant had ten days to apply to the Tribunal under section 89(9) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021. The ten days started to run on Friday 25th February 2022 and expired on Sunday 6th March, 2022. However, section 34 (1) (b) of the *Interpretation Act* provides that in computing time for the purpose of any Act, if the last day of the period is a Sunday or a public holiday (“excluded days”), the period shall include the next following day, not being an excluded day. Since the last day was a Sunday, the Applicant could file the Application in the Tribunal on the next working day, which was Monday, 7th March 2022.

35. However, the Applicant lodged the Application with the Tribunal on Thursday, 10th March 2022. The Application was time barred.

36. 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.***

37. 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.

38. 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. 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.

39. In conclusion, the Application lodged with the Tribunal on 10th March 2022 was therefore filed out of time and the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. **The preliminary objection on limitation is upheld.**

40. 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 11th March 2022 is vacated.
3. The Respondent may continue with the procurement to its logical conclusion.
4. Each party bear its own costs.

Dated at Kampala this 29th day of March 2022.



FRANCIS GIMARA S.C
CHAIRPERSON



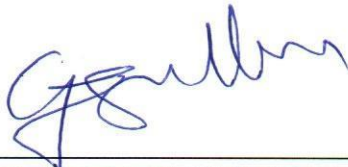
NELSON NERIMA
MEMBER



PATRICIA K. ASIIMWE
MEMBER



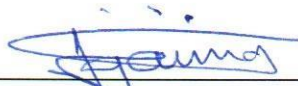
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER