

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

APPLICATION NO. 14 OF 2022

BETWEEN

SAMANGA SOLUTIONS LIMITED:::::::::::::::::::::::::::::::::::::APPLICANT

AND

UGANDA WILDLIFE AUTHORITY:::::::::::::::::::::::::::::::::::::RESPONDENT

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE
PROCUREMENT FOR SUPPLY OF 250 COMMUNICATION
EQUIPMENT; 43 VHF BASE STATION AND 207 VHF HAND SETS
UNDER PROCUREMENT REF. NO. UG-UWA-247644-GO-RFB**

**BEFORE: NELSON NERIMA; PAUL KALUMBA; AND CHARITY
KYARISIIMA, MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Uganda Wildlife Authority (UWA), the Respondent, initiated a procurement for the supply of 250 communication equipment; 43 VHF base sets and 207 VHF handsets under World Bank project vide **REF NO. UWA/SPLS/2021-2022/02781, STEP: UG-UWA-247644-GO-RFB/SRVCS/21-22/172693** using Open Domestic Bidding Method. The bid notice was published in the New Vision newspaper on December 15, 2021.
2. Bids were received from 7 bidders namely *Sagewood Ltd, Securex & New Edge Solutions Ltd, Balton (U) Ltd, Edd-Gadgets Technical Services Ltd, Samanga Solutions Ltd* (the Applicant), *Blue Crane Communications* and *Protectorate S.P.C (U) Ltd*.
3. Upon completion of the evaluation process, the Best Evaluated Bidder Notice was displayed on 11th April, 2022 with a date of removal being April 22, 2022. The Notice indicated that the Best Evaluated Bidder was *Edd-Gadgets Technical Services Ltd* at a total contract price of UGX 1,343,365,100/= inclusive of all taxes.
4. The Best Evaluated Bidder Notice indicated that the Applicant was an unsuccessful bidder because "*Bidder passed all stages of evaluation criteria and was ranked second best with UGX 1,496,464,200/= tax inclusive*".
5. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting

Officer on 22nd April 2022. The ground of the application was that the Best Evaluated bidder did not have a manufacturer's authorisation as required under ITB 17.2(a).

6. The Accounting Officer in a decision dated 5th May, 2022 but communicated to the Applicant on 12th May, 2022, dismissed the Application for lacking merit.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal on 20th May 2022 seeking to review the decision of the Accounting Officer.
2. The Applicant raised one ground i.e. *Whether the entity erred in law and fact when it conducted and affirmed an evaluation to award the contract to M/S Edd-Gadgets Technologies (U) Ltd.*
3. The Applicant asked the Tribunal to:
 - a) Prohibit the Respondent from taking further action in respect to the procurement until the application is disposed of.
 - b) Set aside the decision of the Accounting Officer of the Respondent
 - c) Do a merit review of the whole process and award the applicant as the best evaluated bidder.
 - d) Issue an order for refund of the administrative fees.
 - e) Award costs of the application to the Applicant.

4. The Respondent in its response contended that *M/S Edd-Gadgets Technologies (U) Ltd* possessed the requisite manufacturer's authorisation through *M/S Aristel, spol s.r.o* who was authorised by *M/S Motorola Solutions* to distribute *Motorola* products. The Respondent prayed that the application be dismissed with costs.

5. The Best Evaluated Bidder *M/S Edd-Gadgets Technologies (U) Ltd* also filed a response. They contended that they have a manufacturer's authorisation from *Motorola Solutions Germany GMBH* given through an agent *Aristel, spol s.r.o*.

C. THE ORAL HEARING

The Tribunal held an oral hearing on 2nd June 2022 using the Zoom online platform. The appearances were as follows:

1. The Applicant was represented by Counsel Sharon Tem.
2. The Respondent was represented by Counsel Chemonges Sabilla and Ali Luzinda.
3. The Best Evaluated Bidder was represented by Counsel Derrick Kagooby.

D. SUBMISSIONS

The parties highlighted their written submissions as follows:

Applicant

1. That the entity did not properly consider all the listed requirements in the and ITB 17.2 (a) and the Bid Data Sheet which provided that a manufacturer's authorisation was a requirement for all bidders.

2. That *M/S Edd-Gadgets Technologies (U) Ltd* was a local agent of a mere distributor *M/S Aristel, spol s.r.o* who was not a manufacturer.
3. The Applicant averred that the bid of the best evaluated bidder was not administratively compliant and should have been rejected at the preliminary stage of evaluation. That there was deviation from the evaluation criteria.
4. That the Applicant was in conformity with all the requirements and ought to be declared the Best evaluated Bidder.

Respondent

5. The Respondent contended that *M/S Edd-Gadgets Technologies (U) Ltd* was a local sales representative in Uganda and had requisite manufacturer's authorisation through *M/S Aristel, spol s.r.o*.
6. That the Applicant had the highest bid price compared to *M/S Edd-Gadgets Technologies* who had the lowest bid price.

Best Evaluated Bidder

7. The Best Evaluated Bidder reiterated their contention that they have a manufacturer's authorisation from Motorola Solutions Germany GMBH given through *Aristel, spol s.r.o*.

F. RESOLUTION BY THE TRIBUNAL

Preliminary issue

1. The Tribunal asked the parties to address it on whether the decision of the Accounting Officer was made and communicated within the time stipulated in the Public Procurement and Disposal of Public Assets Act as amended. The Tribunal also asked the parties to address it on whether this Application was made within the time stipulated in the Public Procurement and Disposal of Public Assets Act as amended. We have duly considered the submissions made by the parties and their counsel.
2. The Tribunal is duty bound to inquire into the existence of the facts in order to decide whether it has jurisdiction. This is because Jurisdiction must be acquired before judgment is given. See decision in ***K-Solutions Limited Vs. Ministry of Energy and Mineral Development, Application No.16 of 2021***
3. On 22nd April 2022, the Applicant applied to the Accounting Officer for Administrative Review.
4. Under Section 89(7) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021, the Accounting Officer must make and communicate a decision within ten (10) days of receipt of a complaint. Therefore, the Accounting Officer was bound to communicate his decision on or before the 3rd of May 2022. However, the Respondent's Accounting Officer purported to issue his decision in a letter dated 5th May 2022, but communicated to the Applicant on 12th May 2022. The purported decision of the Accounting Officer was therefore issued out of time. The Respondent conceded that the decision was communicated out of time but invited us to look at the substance rather than technicalities. Reliance was placed on article 126 (2) (e) of the Constitution.

5. In the case of ***Super Taste Ltd V Bank of Uganda, Application No. 33 of 2021***, this Tribunal held that a decision issued out of time is “a blatant breach of the law and no decision at all.” The purported decision of the Accounting Officer was therefore null and void.
6. Under section 89(8) of the Public Procurement and Disposal of Public Assets Act as amended, where an Accounting Officer does not make a decision within the specified period, a bidder may make an application to the Tribunal. Under section 91 I (2) (b), of the Public Procurement and Disposal of Public Assets Act as amended, such application to the Tribunal shall be made within ten (10) days from the date of expiry of the period within which the Accounting Officer should have communicated his decision.
7. The days contemplated under section 89(8) and 91I (2) (b) of the Public Procurement and Disposal of Public Assets Act as amended are not *working days* but calendar days. See ***Application No.04 of 2022 JV KADAC-GLOBETEC VS Uganda Prison Services***.
8. In the instant case, the ten (10) days started running from 4th May 2022 and expired on 13th May 2022. The Applicant, therefore, should have submitted the application to the Tribunal on or before 13th May 2022. The Applicant filed this application to the Tribunal on 20th May 2022 and was therefore time barred.
9. The Tribunal has previously held that the provisions in the Public Procurement and Disposal of Public Assets Act are mandatory. See ***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.

10. The Tribunal relies on the Supreme Court decision in **Galleria in Africa Ltd versus Uganda Electricity Distribution Company Ltd (Civil Appeal-2017) [2018] UGSC 19** where court 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 noncompliance with them makes the proceedings fatal”.

11. Counsel for the Applicant asked us to be lenient and look at the substance rather than “minor technicalities”. She cited article 126 (2) (e) of the Constitution. However, we have no residual or inherent jurisdiction to enlarge a period laid down by statute. See: **Makula International Ltd versus Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981.**

12. Article 126 (2) (e) of the Constitution requires that substantive justice be administered without undue regard to technicalities, but subject to the law. Article 126(2) (e) of the Constitution is no license for ignoring the existing law.

See: Kasirye, Byaruhanga and Co Advocates v Uganda Development Bank, SCCA No. 2 of 1997.

13. The Tribunal therefore finds that the application to the Tribunal was time barred, and the Tribunal does not have jurisdiction

over this application. In the premises, the Tribunal need not delve into the merits of the application.

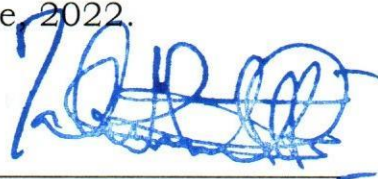
G. DISPOSITION

1. This Application, lodged on 30th May, 2022, was filed out of time.
2. This Application is struck out.
3. The Tribunal's suspension order dated 23rd May, 2022, is vacated.
4. Each party to bear its own costs.

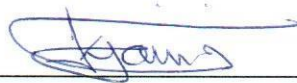
Dated at Kampala this 13th day of June, 2022.



**NELSON NERIMA
MEMBER**



**PAUL KALUMBA
MEMBER**



**CHARITY KYARISIIMA
MEMBER**