

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

**REGISTRY APPLICATION NO. 18 OF 2022**

**BETWEEN**

**MEERA INVESTMENTS LIMITED===== APPLICANT**

**AND**

**1. UGANDA REVENUE AUTHORITY**

**2. NUMANI MUBIAKULAMUSA =====RESPONDENTS**

**[APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF THE  
PROCUREMENT BY UGANDA REVENUE AUTHORITY FOR THE  
PROVISION OF OFFICE SPACE FOR KAMPALA METRO, PROCUREMENT  
REF NO: URA/CSD/NCON/21-22/01385/02398]**

**BEFORE: NELSON NERIMA; PATRICIA K. ASIMWE, THOMAS  
BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; AND CHARITY  
KYARISIIMA, MEMBERS**

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**Representation:**

Mr. Nelson Walusimbi for the Applicant

Ms. Patricia Ndagire and Ms. Christa Namutebi for the 1<sup>st</sup> Respondent

Mr Peter Mukidi Walubiri and Mr. Hannington Mutebi for the 2<sup>nd</sup> Respondent

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**DECISION OF THE TRIBUNAL**

**A. Background**

1. Uganda Revenue Authority (the 1<sup>st</sup> Respondent), initiated a procurement for the provision of office space for Kampala Metro- *Retender*, South and North Tax Offices, under Procurement Ref No: URA/CSD/NCON/21-22/01385/02398 using Open Domestic Bidding Method. The bid notice was published in the *Daily Monitor* Newspaper, on April 13, 2022 and *New Vision* newspaper on April 14, 2022.

2. In respect of Lot 1: Kampala Metro Tax Office, bids were received from 3 bidders namely Meera Investments Ltd. for premises at plot 22/26 Kampala Road; Apple Properties Ltd for premises at Block 1 plot 4 Old Kampala; and Mr. Numani Mubiakulamusa for premises at plot 40 Kampala Road.
3. Upon completion of the evaluation process, the Best Evaluated Bidder Notice was displayed on May 30, 2022 with a date of removal being June 14, 2022.
4. The Notice indicated that Best Evaluated Bidder was Mr. Numani Mubiakulamusa with a total contract price of UGX 1,441,020,000/= for Lot 1: Kampala Metro Tax Office. The Bid of Meera Investments Ltd (the Applicant) was disqualified at the financial comparison stage having quoted a price higher than that of the best evaluated bidder.
5. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer of the 1<sup>st</sup> Respondent on June 6, 2022, but received on June 7, 2022. The Applicant raised three grounds:
  - 1) That Meera Investments Ltd was the preferred office space requirement supplier for Uganda Revenue Authority;
  - 2) That Mr. Numani Mubiakulamusa's proposed space does not have provision for the required 40 parking slots; and
  - 3) That Mr. Numani Mubiakulamusa's proposed space does not have provision for disabled access or even passenger lifts.
6. The Applicant filed the instant application with the Tribunal on June 22, 2022, seeking to review the omission by the Accounting Officer to make a decision on its complaint.

7. The Applicant raised three grounds ie
  - (1) *Whether the omission by the Accounting Officer to make and communicate an administrative review decision to the Applicant by June 17 2022 is lawful.*
  - (2) *Whether the Respondent erred in law and fact when it named Numani Mubiakulamusa the best evaluated bidder.*
  - (3) *What reliefs are available to the applicant?*
8. The Tribunal issued a suspension order of the procurement process on 22<sup>nd</sup> June 2022 in accordance with section 89(11)(a) of the *Public Procurement and Disposal of Public Assets Act*.
9. On June 22, 2022, the 1<sup>st</sup> Respondent's Accounting Officer purported to communicate a decision on the Applicant's application for administrative review. He found no merit in ground 1 of the complaint. He found merit in grounds 2 and 3 of the complaint. He accordingly directed the evaluation committee to re-evaluate the bids for Kampala Metro Office-Lot 1.
10. Following a re-evaluation, 1<sup>st</sup> Respondent issued a new notice of best evaluated bidder in favour of the Applicant, Meera Investment Limited, on June 29, 2022
11. On June 23, 2022, the Applicant through its lawyers M/S Walusimbi & Co. Advocates filed a letter dated June 23, 2022, indicating that it was no longer interested in pursuing Registry Application No. 18 of 2022 and prayed that the same be withdrawn. The Tribunal set the hearing of the withdrawal application for July 7, 2022.
12. On July 7, 2022, Mr. Numani Mubiakulamusa filed Interlocutory Application No. 2 of 2022 seeking orders for contempt of the suspension order, and stay of the withdrawal of Registry Application No. 18 of 2022. He also filed Interlocutory Application No. 3 of 2022, seeking to be joined as the 2<sup>nd</sup> Respondent to Registry Application No. 18 of 2022.

13. In ruling dated 11<sup>th</sup> July 2022, the Tribunal struck out Interlocutory Application No. 2 of 2022, having determined that the Applicant therein, Mr. Numani Mubiakulamusa, had no *locus standi* to commence the contempt proceedings.
14. Meera Investments Ltd by letter from its lawyers M/S Walusimbi & Co. Advocates dated July 8, 2022 addressed to the Registrar, conceded to Interlocutory Application No. 3 of 2022 that sought to add Mr. Numani Mubiakulamusa as a 2<sup>nd</sup> Respondent in Registry Application No.18 of 2022 and further retracted its withdrawal letter of June 23, 2022.
15. Uganda Revenue Authority opposed Interlocutory Application No. 3 of 2022 that sought to add Numani Mubiakulamusa as a 2<sup>nd</sup> Respondent in Registry Application No.18 of 2022.
16. In a ruling dated July 11 2022, the Tribunal allowed Interlocutory Application No. 3 of 2022 and added Mr. Numani Mubiakulamusa as the 2<sup>nd</sup> Respondent to Registry Application No.18 of 2022.
17. On June 22 2022, the Tribunal had notified Mr. Numani Mubiakulamusa (best evaluated bidder) of the Application and invited him to file a response/submission if he deemed it necessary. He filed his written arguments through *M/S KBW Advocates* on June 30, 2022.
18. On ground 1, Mr. Numani Mubiakulamusa averred that no injustice was occasioned to the Applicant when the Accounting Officer omitted to make a decision in regard to the complaint, and that the late decision after this matter had been filed in the Tribunal is of no legal effect.
19. On ground 2, Mr. Numani Mubiakulamusa averred that his premises have provision for a lift device which is currently under modification and that final stages of completing the installation shall be done within the Uganda Revenue Authority fit out period which usually takes a minimum of 30 days prior to the commencement of the tenancy.
20. On ground 3, Mr. Numani Mubiakulamusa averred that his premises have *ten (10) parking slots and 30 rented parking on plot 1 The Square with property known as "KOOKI TOWER", which falls within the required radius of 100 metres from Kampala Road.*

21. Uganda Revenue Authority filed its response on July 10, 2022.
22. Uganda Revenue Authority averred that the Accounting Officer made a decision on 17<sup>th</sup> June 2022 and immediately communicated the decision to the Applicant by telephone. That following a telephone communication, a written communication was made to the Applicant on 22<sup>nd</sup> June 2022.
23. Uganda Revenue Authority prayed for a judgment on admission that the best evaluated bidder Numani Mubiakulamusa did not have lifts and the required parking lots.
24. Having perused the Application, responses and submissions, we frame the following issues for determination:
  - (1) *Whether there is a competent Application before the Tribunal.*
  - (2) *Whether the omission by the Accounting Officer to make and communicate an administrative review decision to the Applicant by June 17 2022 was lawful.*
  - (3) *Whether the Accounting Officer erred in law and fact when he made an administrative review decision on June 22, 2022.*
  - (4) *Whether the Respondent erred in law and fact when it named Numani Mubiakulamusa the best evaluated bidder.*
  - (5) *What reliefs are available to the parties?*

## **B. Resolution**

1. We have carefully studied the Application, the responses, the procurement action file and also considered the submissions of the parties. We now resolve the issues as hereunder:

*Issue no. 1- Whether there is a competent Application before the Tribunal*
2. Registry Application No. 18 of 2022 was filed before the Tribunal on June 22, 2022.
3. On June 23, 2022, the Applicant through its lawyers M/S Walusimbi & Co. Advocates filed a letter dated June 23, 2022, stating that it was no longer interested in pursuing the Application and prayed that the same be withdrawn. On July 8, 2022, the Applicant in a letter addressed to the Registrar retracted its letter to withdraw the Application and prayed that the matter be heard on merit.

4. A withdrawal is governed by regulation 16 of the *Public Procurement and Disposal of Public Assets (Tribunal)(Procedure) Regulations 2016*:

***Withdrawal of applications or references.***

*(1) An applicant may at any time before or during consideration of the application or reference by the Tribunal, by notice in writing, addressed to the Registrar, discontinue the application against the Respondent.*

*(2) The notice shall be served on the respondent or any person or entity affected by the application or reference.*

*(3) The Tribunal shall approve the withdrawal of the application or reference, with or without costs.*

*(5) When the application or reference is withdrawn, the registrar shall immediately inform the respondent or any persons affected by the application or reference.*

5. A withdrawal is not complete until it is approved by the Tribunal under regulation 16 (3). The Tribunal has power to approve a withdrawal, with costs or without costs. The power to approve implies a power to disapprove. Where the Tribunal declines to approve a withdrawal, it may strike out or dismiss the application.
6. The withdrawal request was set to be heard by the Tribunal on July 12, 2022. It therefore follows that the withdrawal was not yet effective and the Applicant was therefore within its rights to retract the withdrawal application, which the Tribunal has accepted.
7. It follows that a valid and live Application exists and is competently before the Tribunal.
8. **Issue no. 1 is resolved in the affirmative.**

*Issue no. 2.- Whether the omission by the Accounting Officer to make and communicate an administrative review decision to the Applicant by June 17 2022 was lawful.*

9. On 7<sup>th</sup> June 2022, the Applicant applied to the Accounting Officer of the 1<sup>st</sup> Respondent for Administrative Review.

10. 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 June 17, 2022. This he failed to do.
11. We do not agree with the 1<sup>st</sup> Respondent that a purported telephone communication on June 17, 2022 and the letter dated June 22, 2022, amounted to a timely written communication within the meaning of sections 89(7) and 95B of the *Public Procurement and Disposal of Public Assets Act*. Both the decision and its written communication must be made within ten days as stipulated under section 89(7). A written communication may be made electronically under section 95B but a telephone call does not amount to a written communication. We also note that the 1<sup>st</sup> Respondent has not adduced any evidence on who made the telephone call and to whom the telephone call was made.
12. The omission to make and communicate a written decision within ten days was a breach of 89 (7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.
13. 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.
14. The 10 days started running on June 18, 2022 and would have expired on 27<sup>th</sup> June 2022. The Applicant was therefore within its statutory rights to make the instant Application to the Tribunal on June 22, 2022.
15. **Issue no. 2 is resolved in the affirmative.**

Issue no. 3-Whether the Accounting Officer erred in law and fact when he made an administrative review decision on June 22, 2022.

16. A decision issued out of time is “a blatant breach of the law and no decision at all.” The purported decision of the 1<sup>st</sup> Respondent’s Accounting Officer was therefore null and void.

See: *Super Taste Ltd V Bank of Uganda, Application No. 33 of 2021 and Application no. 17 of 2022- MBJ Technologies Limited versus Mbarara City & 2 Others.*

17. Under section 89(5) of the *Public Procurement and Disposal of Public Assets Act*, on receiving an administrative review complaint, the Accounting Officer must immediately suspend the procurement or disposal process, as the case may be. Under section 89 (11) (a) of the *Public Procurement and Disposal of Public Assets Act* a procurement or disposal process that is suspended under section 89 (5) shall remain suspended until the Tribunal makes a decision, where a bidder makes an application to the Tribunal.
18. The Tribunal issued a suspension order of the procurement process on 22<sup>nd</sup> June 2022 in accordance with section 89(11)(a) of the *Public Procurement and Disposal of Public Assets Act*. The order was served on the 1<sup>st</sup> Respondent on June 22, 2022 at 3:26 pm.
19. We note that on June 23, 2022, the Applicant, through its lawyers M/S Walusimbi & Co. Advocates, filed a letter indicating that it was no longer interested in pursuing this Application and prayed that the same be withdrawn. However, as resolved under issue no. 1, a withdrawal becomes effective only when approved by the Tribunal. In the circumstances, the Tribunal’s suspension order remained in force despite the request to withdraw Registry Application No. 18 of 2022.
20. The purported communication of a decision on June 22 2022; the purported re-evaluation and the purported issue of a new notice of best evaluated bidder on 29<sup>th</sup> June 2022 were all in violation of sections 89 (7); section 89 (5) and section 89(11)(a) of the *Public Procurement and Disposal of Public Assets Act* and a nullity.
21. **Issue no. 3 is resolved in the affirmative.**



Issue no. 4- Whether the Respondent erred in law and fact when it named Numani Mubiakulamusa the best evaluated bidder.

22. Regulation 7 of *The Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*, requires strict adherence to the evaluation criteria.
23. Regulation 37(1) and (2) of *The Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non Consultancy Services) Regulations, 2014*, provide that the evaluation criteria to be used shall be stated in the solicitation document and the evaluation shall be conducted in accordance with the criteria without any amendments to the criteria. That the evaluation criteria shall be used to assess compliance with the statement of requirements, the ability to perform the proposed contract and the ability to meet the objectives of the procurement.
24. ITB 28.1 of the bidding document herein also required the 1<sup>st</sup> Respondent to determine the bid's compliance and responsiveness based on the contents of the bid itself. ITB 28.2 re-echoes the provisions of regulation 7 of *The Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*.
25. Section 6. Statements of Requirements, 2: Technical Requirements, Table 1: Non-negotiable requirements on page 45 of the bidding document required the premises to provide *40 parking slots, the structure to have provision for the disabled access, including...ramps or lifts where the premises are not located on the ground floor.*
26. Mr. Numani Mubiakulamusa, at page 6 of his bid dated May 10, 2022 regarding the parking slots responded that *20 parking slots available on kalungu Building Plot 40, Kampala Road.30 parking slots available on Kooki Tower Plot 1 The Square under the same landlord to be hire from the landlord [SIC].*
27. However, in para. 40 of his submissions, Mr. Numani Mubiakulamusa submitted that his premises have *10 parking slots and 30 rented parking on Kooki Tower.*
28. Regarding provision for disabled access, Mr. Numani Mubiakulamusa indicated in his bid that *LIFTS AVAILABLE WITH 16 carrying capacity.*

25. However, Mr. Numani Mubiakulamusa, in his response to the Application dated June 30, 2022 at page 6, stated that the premises have provision for a lift device which is currently under modification and that final stages of completing the installation shall be done within the Uganda Revenue Authority fit out period which usually takes a minimum of 30 days prior to the commencement of the tenancy. (para 34).
29. The Tribunal also notes that, contrary to regulation 34 of *The Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*, and Part 1, Section 3E of the bidding document, the evaluation committee did not carry out a post-qualification on Mr. Numani Mubiakulamusa to confirm whether he had the capacity and financial resources to execute the procurement.
30. Under regulation 34 (2) of *The Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*, a post qualification evaluation must be undertaken to determine to confirm— (a) the experience and performance of the bidder, with regard to similar assignments; (b) the capacity of the bidder with respect to equipment and facilities; (c) the qualifications and experience of the personnel of the bidder; (d) for a bid to procure non-consultancy services or works, that the bidder has the capacity to supervise or manage the performance of the non-consultancy services or works, as the case may be, based on the qualifications of the supervisory or management staff of the bidder and the number and deployment of the staff; (e) the financial capability to perform the assignment; (f) the facilities or representation at or near the location to be used for the performance of the assignment; and (g) any other relevant criteria
31. If post-qualification had been done, the evaluation committee would have been in position to verify the responsiveness of the best evaluated bidder's bid with regards to the contentious issue of the parking slots and the lift.
32. The 1<sup>st</sup> Respondent therefore erred in law and fact when it named Mr. Numani Mubiakulamusa as the best evaluated bidder.
33. **Issue no. 4 is resolved in the affirmative.**

Issue no. 4- What reliefs are available to the parties?


34. The Applicant having succeeded on all the issues raised in the Application, and the 1<sup>st</sup> Respondent having erred in conducting the evaluation, it will suffice that the procurement is remitted back to the entity for re-evaluation in a manner consistent with the decision of the Tribunal and the law.


**C. Disposition**

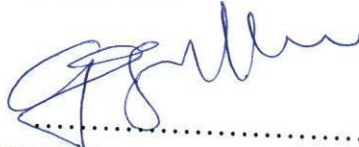
1. The Application is successful and upheld.
2. The purported decision of the 1<sup>st</sup> Respondent's Accounting Officer dated June 22, 2022; the re-evaluation and the resultant notice of best evaluated bidder dated June 29, 2022 are null and void and accordingly set aside.
3. The 1<sup>st</sup> Respondent is directed to re-evaluate the bids in a manner consistent with the decision of the Tribunal, the bidding document and the law.
4. The suspension order of the Tribunal dated June 22, 2022 is vacated
5. The 1<sup>st</sup> Respondent shall refund the administrative review fees paid by the Applicant.
6. Each Party to bear its own costs.

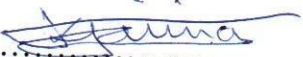
Dated this 13<sup>th</sup> day of July 2022.

  
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**NELSON NERIMA**  
**MEMBER**

  
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**PATRICIA K. ASIIMWE**  
**MEMBER**

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

  
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