

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

APPLICATION NO. 24 OF 2022

BETWEEN

MUGABI DAVID===== APPLICANT

AND

SEMBABULE DISTRICT LOCAL GOVERNMENT =====RESPONDENT

**APPLICATION FOR REVIEW OF THE DECISION OF SEMBABULE
DISTRICT LOCAL GOVERNMENT AS THE PROCURING AND
DISPOSING ENTITY IN RESPECT OF THE PROCUREMENT FOR
PROVISION OF LOCAL REVENUE COLLECTION & MANAGEMENT
SERVICES FOR THE PERIOD JULY-DECEMBER 2022-LUMEGERE
CATTLE MARKET; REF NO. SEMB551/LR/2022-2023/00007**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On 16th June 2022, Sembabule District Local Government (the Respondent) published an invitation to bid in the New Vision newspaper for the procurement of local revenue collection and management services from various revenue sources for the period of July–December, 2022 including Lumegere Cattle market and on farm loading under open national bidding method.
2. Bids were received from two bidders namely *Fred Mugerwa* and *Mugabi David* (the Applicant on June 30, 2022).
3. On July 5, 2022, the Accounting Officer of the Respondent wrote to Centenary Rural Development Bank-Masaka Branch and Bank of Africa seeking to verify and certify bank drafts submitted by the bidders for their authenticity and to enable the Respondent evaluate rightful bidders. Both Banks certified the drafts on July 12, 2022 and communicated the same to the Accounting Officer.
4. Upon completion of the evaluation process, the Sembabule District Contracts Committee sitting of July 7, 2022 under minute 5(e) of 01/CCM/2022-2023 awarded the Contract to *Mugerwa Fred* at a Contract Price of UGX 52,000,000/=
5. On July 8, 2022, *Mugabi David* being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer.
6. On July 14, 2022, the Accounting Officer of the Respondent wrote to the Solicitor General, Mbarara Regional Office, requesting for clarification, legal advice and guidance on how to proceed regarding the Lumegere Cattle market and on farm loading procurement process. The Office of the Solicitor General, Mbarara Regional Office did not respond to the Accounting Officer.
7. On July 19, 2022, the Accounting Officer instructed the Respondent's Head of Procurement and Disposal Unit to have

the matter re-submitted to the Contracts Committee with a view of disqualifying the two bidders and having the tender-re-advertised.

8. On July 20, 2022, the Contracts Committee approved the recommendation to cancel the award of Contract to the Applicant and directed the entire procurement process be re-tendered.
9. On July 21, 2022, the Accounting Officer of the Respondent through a letter dated July 20, 2022, instructed the Bulongo Subcounty Chief to manage Lumegere cattle market until a new contractor is procured.
10. The Accounting Officer in a letter dated July 21, 2022 and addressed to the bidders, communicated the cancellation of the said procurement process.
11. The Applicant filed the instant Application with the Tribunal on August 22, 2022, for review of the decision of the Procuring and Disposing Entity (PDE) to cancel the said procurement process.

B. RESPONSES TO THE APPLICATION

The Respondent

1. The Respondent raised two preliminary points of law to the effect that *the instant Application was filed outside the statutory time limit* and that *the Application was filed prematurely without requisite notice to the Accounting Officer*.
2. The Respondent averred that the Bank Draft relied upon by the Applicant was irregular for having been sourced from the bank account of a one *Byaruhanga James* who was a stranger to the bid.
3. The Respondent contended that the Accounting Officer did not make any error or omission at law, and that the bids from the two bidders were non-complaint.
4. The Respondent contended that even after cancellation of the procurement process, no financial loss was caused to the Government by the cancellation.

5. The Respondent prayed that the Application be dismissed and with costs.

The Best Evaluated Bidder

1. Mr. Mugerwa Fred, the Best Evaluated Bidder through his lawyers *Lubega & Buzibira Advocates*, in a letter to the Tribunal filed on August 23, 2022 contented that the Application is incompetent, an abuse of Tribunal process that ought to be dismissed with costs for being inadvertently filed 24 days out of time contrary to *section 91I (2) (b) of the Public Procurement and Disposal of Public Assets Act 2003 as amended*.
2. The Best Evaluated Bidder contended that the Accounting Officer acted *ultravires* when he purported to cancel the impugned procurement. That the Contracts Committee had no powers to cancel the procurement once an award decision was made.
3. The Best Evaluated Bidder averred that the he duly fulfilled and complied with the requirements of the bidding document and is entitled to execute the Contract following the award decision.
4. The Best Evaluated Bidder further submitted that *section 78 of the Public Procurement and Disposal of Public Assets Act 2003 as amended* only applies to disposals and is inapplicable to procurements.
5. The Best Evaluated Bidder prayed that the Application be dismissed.

C. SUBMISSIONS

The parties (Applicant, Respondent and Best Evaluated Bidder) filed written submissions in which they all expounded their respective cases. We have studied the written submissions and considered them in reaching this decision.

D. THE ORAL HEARING

The Tribunal held an oral hearing on 30th August 2022 via zoom software. The appearances were as follows:

1. Mugabi David, the Applicant represented himself.

2. Mr. Mahabba Malik, Chief Administrative Officer and Mr. Tumuheirwe Geoffrey, the procurement Officer and acting Head of Procurement and Disposal Unit represented the Respondent.
3. The Best Evaluated Bidder was served and acknowledged receipt of the Hearing Notice but did not attend the hearing.

E. RESOLUTION OF ISSUES

1. The Applicant raised 2 issues for determination by the Tribunal that are reproduced as follows;
 - 1) *Whether the Accounting Officer was right to disqualify the Applicant*
 - 2) *Whether the Applicant being the only surviving bidder was not entitled to the award*
2. In view of the preliminary points of law raised by the Respondent and the Best Evaluated Bidder, the Tribunal reframed the issues as follows;
 - 1) *Whether there is a competent Application before the Tribunal*
 - 2) *Whether the Accounting Officer erred in law and fact when he cancelled the procurement.*
 - 3) *What reliefs are available to the parties*

Issue 1:

Whether there is a competent Application before the Tribunal

3. The Respondent and Best Evaluated Bidder challenged the competence of the Application on the ground that the Application was filed out of time.
4. The Applicant in paragraphs 4 and 5 of his Application alleges that the Respondent did not make and communicate an administrative review decision regarding his 8th July 2022 Complaint to the Accounting Officer, compelling it to seek relief before the Tribunal. The Complaint was received by the Respondent on July 8, 2022.

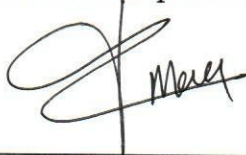
5. At the hearing, the Accounting Officer confirmed that he made an administrative review decision regarding the Applicant's complaint and communicated the same to the Applicant on July 21, 2022. The Applicant confirmed that he received the decision on July, 21, 2022.
6. In accordance with section 89 (7) of the *Public Procurement and Disposal of Public Assets Act 2003 as amended*, the Accounting Officer of the Respondent was by law obligated to make and communicate a decision regarding the Complaint within ten days from July 8, 2022 when he received the Applicant's Complaint. The Accounting Officer therefore ought to have made and communicated his decision on or before July 18, 2022.
7. It is our finding that the administrative review decision of the Accounting Officer contained in the letter dated July 21, 2022 was therefore made out of time, in breach of the law and of no legal consequence. See ***Application No.18 of 2022 Meera Investments Limited vs URA & Numani Mubiakulamusa***.
8. Under section 89(8) of the *Public Procurement and Disposal of Public Assets Act as amended*, where the Accounting Officer does not make or communicate a decision within ten days of receipt of the complaint, the bidder may make an application to the Tribunal.
9. Section 91I (2) (b) of the *Public Procurement and Disposal of Public Assets Act as amended* provides that such application must be made within ten days of the expiry of the period given for the Accounting Officer to make a decision; that is to say within 10 days from July 18, 2022.
10. The time for filling the instant Application with the Tribunal commenced on **July 19, 2022** and lapsed on **July 28, 2022** in accordance with section 91I (2)(b) of the *Public Procurement and Disposal of Public Assets Act 2003 as amended*.
11. The Tribunal has in its previous decisions affirmed that the time limits set in the procurement and disposal statute were set for a purpose, are couched in mandatory terms, are a matter of substantive law and not mere technicalities and must be strictly complied with. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act 2003 as amended* that accords the Tribunal power to enlarge or extend time.

12. 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. See ***Sanlam General Insurance vs UNRA, Application No.29 of 2021.***
13. In conclusion, the instant Application filed on **August 22, 2022** was therefore filed 25 days out of time and the jurisdiction of the Tribunal is extinguished at this point as far as the matter is concerned. The Application is therefore incurably defective and incompetent.
14. As a result, there is no need to resolve other preliminary points of law raised or delve further into the merits of the Application.

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated August 22, 2022 is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 31st day of August, 2022.



FRANCIS GIMARA S.C
CHAIRPERSON



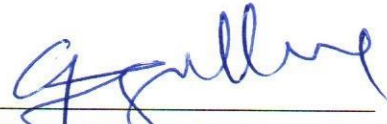
NELSON NERIMA
MEMBER



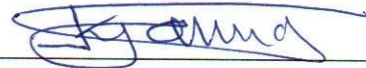
THOMAS BROOKES ISANGA
MEMBER



PAUL KALUMBA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



CHARITY KYARISIIMA
MEMBER