

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

**APPLICATION NO. 27 OF 2022**

**BETWEEN**

**VISION SCIENTIFIC & ENGINEERING LIMITED =====APPLICANT**

**AND**

**MAKERERE UNIVERSITY =====RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR THE SUPPLY, DELIVERY AND INSTALLATION OF Q-TOF LC/MS SYSTEM WITH ITS ACCOMPANYING COMPONENTS UNDER PRESIDE PROJECT, COLLEGE OF VETERINARY MEDICINE, ANIMAL RESOURCES AND BIO SECURITY UNDER PROCUREMENT REFERENCE NUMBER MAK/SPLS/2021-22/00765.**

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

## **DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. The Applicant responded to an invitation to bid by Makerere University for the supply, delivery and installation of Q-TOF LC/MS system with its accompanying components under PRESIDE project, college of veterinary medicine, animal resources and bio security under procurement reference number MAK/SPLS/2021-22/00765.
2. Bids were received from 7 bidders namely *Qualichem Uganda Limited, Palin Corporation, Joh. Achelis Ltd, Vision Scientific & Engineering Ltd, Rima Uganda Ltd, Prepaid Meters Ltd, Smakk International Ltd* on Friday, June 24, 2022.
3. On 2<sup>nd</sup> August 2022, the Respondent issued a Notice of Best Evaluated Bidder declaring Palin Corporation Limited the best evaluated bidder at the awarded contract price of UGX 2,473,431,133.6. The Notice indicated that the Applicant was disqualified for failing to provide two contracts of supply of similar equipment equivalent to UGX 1.5 Billion each.
4. On 12<sup>th</sup> August 2022, the Applicant applied for administrative review before the Accounting Officer. The Applicant was not guided by the officers of the Respondent on what to do with the complaint or any fees to be paid and where it was to be paid.
5. On 19<sup>th</sup> August 2022, the Accounting wrote a letter dismissing the Applicant's complaint on the grounds that there was no evidence of payment of prescribed fees. The Applicant received this letter on 24<sup>th</sup> August 2022.
6. The Applicant contends that the Accounting Officer erred in law and in fact when he failed to make and communicate a decision to the Applicant within ten (10) days from 12<sup>th</sup> August 2022.

7. The Applicant is aggrieved by the failure and omission of the Accounting Officer to make and communicate a decision and has therefore applied for administrative review before the Tribunal on 31<sup>st</sup> August 2022.

**B. APPLICATION TO THE TRIBUNAL**

1. Relying on section 89 (8) and 91I(2)(b) of the PPDA Act, the Applicant averred that the Accounting Officer made a decision outside the statutory timelines and that therefore the Applicant rightly applied to the Tribunal to review the omission and breach of the Procurement Act by the Accounting Officer.
2. The Applicant averred that the Best Evaluated Bidder did not meet the requirements of the bidding document and should not have been awarded the contract.
3. The Applicant contended that the Accounting Officer erred in law and fact when he dismissed the complaint on ground of non-payment of fees yet for 7 days upon receipt of the application he did not provide any guidance on how much the fees were, where and how to pay the fees.
4. The Applicant contended that the Accounting Officer erred in law and fact when he failed to make and communicate a decision to the Applicant within ten (10) days from 12<sup>th</sup> August 2022.
5. The Applicant prayed for a declaration of the Tribunal that the Accounting Officer erred in fact and law when he dismissed the complaint of the Applicant on the ground of non-payment of fees; when he failed or omitted to make and communicate a decision on the complaint of the Applicant within statutory timelines; and an order that the procurement process be cancelled and retendered by the Respondent entity; and costs.

**C. REPLY TO THE APPLICATION**

1. The Respondent averred that the Applicant has no cause of action against it.

2. The Respondent contended that on 2<sup>nd</sup> August 2022, the Respondent issued a Notice of Best Evaluated Bidder declaring Palin Corporation Limited the best evaluated bidder and that the Applicant failed to undertake a fundamental step in the process of seeking an administrative review of the above decision by the Accounting Officer as required by law, i.e. payment of administrative review fees.
3. That the Accounting Officer communicated that, this is to inform you that your complaint did not fulfil the requirements for carrying out an administrative review under the PPDA Act, 2003 (as amended) and the PPDA (Administrative Review) Regulations, 2014, in particular, there is no evidence of payment of the prescribed fees to the Applicant on 19<sup>th</sup> August 2022 in response to its letter dated 12<sup>th</sup> August 2022.
4. The Respondent prayed that the Application be dismissed with costs.

**D THE ORAL HEARING**

The Tribunal held an oral hearing on Friday, 16<sup>th</sup> September 2022 via zoom software. The appearances were as follows:

1. Counsel Pario Nick represented the Applicant.
2. The Respondent was represented by Counsel Natukunda Phiona.

**E. SUBMISSIONS**

During the oral hearing, the Applicant and Respondent highlighted their written submissions and also provided clarifications to the Tribunal.

Applicant

1. Relying on section 89 (8) and 91I (2)(b) of the Public Procurement and Disposal of Public Assets Act, the Applicant averred that the Accounting Officer made a decision outside the statutory timelines and that therefore the Applicant rightly applied to the Tribunal to review the omission and breach of the Public Procurement and Disposal of Public Assets Act by the Accounting Officer.

2. The Applicant averred that the Best Evaluated Bidder did not meet the requirements of the bidding document and should not have been awarded the contract.
3. The Applicant contended that the Accounting Officer erred in law and fact when he dismissed the complaint on ground of non-payment of fees yet for 7 (seven) days upon receipt of the application he did not provide any guidance on how much the fees were, where and how to pay the fees.
4. The Applicant contended that the Accounting Officer erred in law and fact when he failed to make and communicate a decision to the Applicant within ten (10) days from 12<sup>th</sup> August 2022.
5. The Applicant prayed for a declaration of the Tribunal that the Accounting Officer erred in fact and law when he dismissed the complaint of the Applicant on the ground of non-payment of fees; when he failed or omitted to make and communicate a decision on the complaint of the Applicant within statutory timelines; and an order that the procurement process be cancelled and retendered by the Respondent entity; and costs.

Respondent

1. The Respondent averred that the Applicant has no cause of action against it.
2. The Respondent contended that on 2<sup>nd</sup> August 2022, the Respondent issued a Notice of Best Evaluated Bidder declaring Palin Corporation Limited the best evaluated bidder and that the Applicant failed to undertake a fundamental step in the process of seeking an administrative review of the above decision by the Accounting Officer as required by law, i.e. payment of administrative review fees..

3. That the Accounting Officer communicated the same to the Applicant on 19<sup>th</sup> August 2022 in response to its letter dated 12<sup>th</sup> August 2022.
4. The Respondent prayed that the Application be dismissed with costs.

**F. RESOLUTION BY THE TRIBUNAL**

**Issues**

We now revert to the substantive issues in this application:

- i. *Whether the Accounting Officer erred in law and fact when he dismissed the complaint of the Applicant on the ground of non-payment of fees?*
- ii. *Whether the Accounting Officer erred in law and fact when he failed or omitted to make and communicate a decision on the complaint of the Applicant within statutory timelines?*
- iii. *Whether in light of the said acts and omissions of the Accounting Officer, the Tribunal can inquire into the substance of the complaint filed by the Applicant before the Accounting Officer?*

**Resolution of Issues**

**Issue 1**

**Whether the Accounting Officer erred in law and fact when he dismissed the complaint of the Applicant on the ground of non-payment of fees?**

1. Procuring and disposing entity upon filling a Compliant. **See Section 89(3)(a) of the Public Procurement and Disposal of Public Assets Act 2003 as amended** read together with **Reg 11 of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014**
2. The PPDA Authority issued **Circular No. 3 of 2015** on the procedure for administrative Review by Accounting Officers, in which it guided that Accounting Officers have to advise a complainant on the required Administrative Review Fees and where to pay the said fees, upon receipt of a Compliant.

3. The Applicant in paragraph (g) of its application avers that the Accounting Officer did not provide the required guidance but instead dismissed the Application. The Respondent did not rebut the said claim in its Reply but denied the same in its page 3 of the Submissions.
4. In **VCON Construction (U) Ltd versus UDB Application 22 of 2021**, the Tribunal held that non-payment of administrative review fees is not necessarily fatal as long as the fees can be assessed and paid.
5. This Tribunal has been consistent on the principle that late payment of administrative review fees is not necessarily fatal, and that even actual non-payment of court fees has been held not to be fatal so long as the proper fees can be assessed and paid. See **Vcon Construction Ltd Vs Uganda Development Bank, Application No.22 of 2021, Samanga Elcomplus Jv Vs. Uganda Electricity Distribution Company Limited, Application No.17 Of 2021, Kasokoso Services Limited Vs. Jinja School of Nursing And Midwifery, Application No. 13 of 2021**. In the said decisions, the Tribunal has relied on the Supreme Court decision in **Lawrence Muwanga V Stephen Kyeyune (Legal Representative of Christine Kisamba, Deceased) Supreme Court Civil Appeal No. 12 of 2001**.
6. It is our finding that the conclusion of the Accounting Officer on non-payment as a basis for dismissing a complaint, with due respect, is erroneous because the payment of fees for purposes of administrative review application under **Section 89(3)(a) of the Public Procurement and Disposal of Public Assets as amended** is not restricted to be within ten working days stated therein.
7. The Tribunal finds that the Accounting Officer breached his statutory duty to guide the Applicant on the required administrative review fees and where to pay the said fees. The Accounting Officer ought to have guided the Applicant on the modalities of payment of prescribed fees between August 12, 2022 and August 19, 2022 before deciding to dismiss the Complaint of the Applicant on the ground of non-payment of fees.

8. There is no pre-condition that a complainant has to first ask for guidance before it can be provided. Where a complainant errs by omitting to pay administrative review fees, the Accounting Officer has an obligation to provide the required guidance. The Accounting Officer would only be justified to dismiss a complaint if the complainant fails to pay the administrative review fees even after being guided.
9. The Accounting Officer thus erred in law and fact when he dismissed the complaint of the Applicant on ground of non-payment of administrative review fees.

10. **The Tribunal resolves this issue in the affirmative.**

**Issue 2**

**Whether the Accounting Officer erred in law and fact when he failed or omitted to make and communicate a decision on the complaint of the Applicant within statutory timelines?**

11. **Section 89(7) of the Public Procurement and Disposal of Public Assets Act** requires the Accounting Officer to make and communicate an administrative review decision within ten days from the date of receipt of the application.
12. While the Applicant filed its complaint to the Accounting Officer on 12<sup>th</sup> August 2022, the Applicant received the decision of the Accounting Officer on 24<sup>th</sup> August 2022. This was outside the statutory timeline within which the Accounting Officer ought to have communicated his decision to the Applicant. A decision in reply to a complaint lodged on 12<sup>th</sup> August 2022 ought to have been made and effectively served on the Complainant by the Accounting Officer before or on August 22, 2022.
13. The decision received by the Applicant on August 24, 2022 was made out of time, in breach of the law and is thus a nullity. See ***Application No.18 of 2022 Meera Investments Limited vs URA & Numani Mubiakulamusa and Technology Associates Ltd & COMVIVA***



***Technologies Ltd VS. Postbank Uganda Ltd, Application No.06 of 2022.***

14. Therefore, the Accounting Officer erred in law and fact when he failed or omitted to make and communicate a decision on the complaint of the Applicant within statutory timelines.
15. **The Tribunal resolves this issue in the affirmative.**

**Issue 3**

**Whether in light of the said acts and omissions of the Accounting Officer, the Tribunal can inquire into the substance of the complaint filed by the Applicant before the Accounting Officer?**

16. **Section 91(I) of the Public Procurement and Disposal of Public Assets Act** allows a bidder who is aggrieved, as specified in section 89(7) or (8) to apply to the Tribunal for review of a decision of a procuring and disposing entity.
17. The Tribunal has inquired into the substance of the complaint addressed to the Accounting Officer and found that there was a valid complaint and as such, the Respondent was under a duty to make and communicate a decision to the Applicant within the statutory time period.
18. Having failed to do so, the Tribunal hereby orders the Respondent to hear and consider the Applicant's complaint and any submissions in relation thereto; and make and communicate a decision in writing in accordance with the law.
19. In matters where the Accounting Officer has erroneously dismissed an Application on the ground of non-payment of fees, the Tribunal has restrained itself from inquiring into the merits of the matter. ***See Application No.22 of 2021 VCON Construction (U) Ltd vs UDB.***

20. **The Tribunal hereby remits the matter back to the Accounting Officer to exercise his discretion, investigate and decide the matter on its merits.**


**G. DECISION OF THE TRIBUNAL**

1. The Application is successful.
2. The Decision of the Accounting Officer dated August 19, 2022 is a nullity and set aside.
3. The Accounting Officer is directed, within two days from the date hereof, to guide the Applicant in writing on the amount and mode of payment of the administrative review fees, which the Applicant must pay within one working day of being so guided.
4. The Accounting Officer is directed to hear and consider the Applicant's compliant and any submissions thereto, and make and communicate a decision in writing no later than 10 (ten) days from date of this decision of the Tribunal.  
The suspension order dated August 26, 2022 is vacated
5. Each party should bear own costs

Dated at Kampala this 21<sup>st</sup> day of **September 2022**.



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



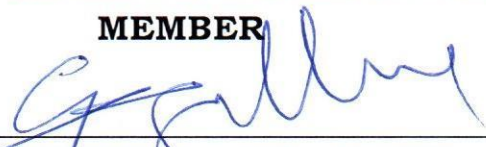
**PAUL KALUMBA**  
**MEMBER**



**CHARITY KYARISIIMA**  
**MEMBER**



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



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



**NELSON NERIMA**  
**MEMBER**