

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

**APPLICATION NO. 28 OF 2022**

**BETWEEN**

**FRIDA B. KWIKIRIZA=====APPLICANT**

**AND**

**BULIISA DISTRICT LOCAL GOVERNMENT =====RESPONDENT**

**APPLICATION FOR REVIEW OF THE DECISION OF SEMBABULE  
DISTRICT LOCAL GOVERNMENT FOR MANAGEMENT OF  
REVENUE SOURCES INCLUDING NYAMUKUTA SONSIO FISH  
LANDING SITE IN BUTIABA SUB COUNTY FOR THE FINANCIAL  
YEAR 2022-2023 UNDER PROCUREMENT REF NO.  
BUL1576/SRVCS/2022-2023/00019**

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

## **A. BRIEF FACTS**

1. Buliisa District Local Government, the respondent, initiated a procurement for management of local revenue sources including Nyamukuta Sonsio fish landing site in Butiaba Sub County for the financial year 2022-2023 under procurement ref no. **BUL1576/SRVCS/2022-2023/00019** using Open National Bidding Method
2. Bids for Nyamukuta Sonsio fish landing site in Butiaba sub county were received from 2 bidders namely; *Frida B. Kwikiriza* (the Applicant) and *Ochopa John* on 4<sup>th</sup> August, 2022.
3. The Best Evaluated Bidder Notice for the various revenue sources was displayed on Friday, 19<sup>th</sup> August, 2022. The Notice indicated *Ochopa John* as the Best Evaluated Bidder at a contract price of UGX 1,837,500/= for Nyamukuta Sonsio fish landing site in Butiaba Sub County
4. The Best Evaluated Bidder notice also indicated that *Ochopa John's* bid was unsuccessful because it was *Deferred by the Evaluation Committee* and that the bid of the Applicant was unsuccessful because *Bidder included positions of Director and Assistant.*
5. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer on 24<sup>th</sup> August, 2022. The Accounting Officer did not make or communicate any decision regarding the complaint filed by the Applicant.
6. On 31<sup>st</sup> August, 2022, the Respondent entered into a Purchase Order Agreement with *Ochopa John* for the management of Nyamukuta Sonsio fish landing site in Butiaba Sub County. The Agreement stated a contract price of UGX 1,837,500/= for ten months from 1<sup>st</sup> September 2022 to 30<sup>th</sup> June 2023.

7. The Applicant having not received a decision from the Accounting Officer, filed the instant application to the Tribunal on 13<sup>th</sup> September 2022 by ordinary letter, seeking review of the decision of the Respondent.

#### **B. RESPONSE TO THE APPLICATION**

1. The Respondent in a response dated averred that the Applicant did not apply for administrative review during the 10 working days after display of the best evaluated bidder notice and did not pay the mandatory fee as required by law.
2. That the review was signed by the Chief Administrative Officer on 7<sup>th</sup> September 2022 and sent to the Procurement and Disposal Unit to handle after agreements were already prepared and signed by the Chief Administrative Officer. That the application was not received officially and stamped by the Respondent's Records Officer, which makes it an illegal document smuggled into the Entity.
3. That one of the reasons why the Applicant was dropped by the evaluation committee from further evaluation was due to altering information on the qualification form about the key staff required for the assignment.
4. That the Applicant altered information on the qualification form by adding in the positions of a Director and Assistant Director and that even some of the key staff were already civil servants with Buliisa District Local Government.
5. The Respondent prayed that the Tribunal drops the application because there is no merit. [sic]

#### **C. ORAL HEARING**

1. The Tribunal held an oral hearing on 20<sup>th</sup> September 2022 via the zoom videoconferencing.

The Applicant was represented by her husband Mr. Samuel Bigirwenkya.

2. The Respondent was represented by Mr. Kasaijja Ronald Wilfred, Head of the Procurement and Disposal Unit.
3. The Best Evaluated Bidder, Mr. Ochopa John, appeared in person.
4. We have duly considered the parties pleadings and oral submissions and also studied the procurement action file.

#### **D. RESOLUTION**

1. The application framed no issues for the Tribunal's determination. However, the following issues can be deduced from the facts pleaded in the Application.
  - 1) *Whether the Applicant's letter dated 12<sup>th</sup> September 2022 addressed to the Registrar of the Tribunal is a competent Application?*
  - 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?*
  - 3) *Whether the Accounting Officer erred in law and fact when he failed or omitted to immediately suspend the procurement process upon receipt of the Applicant's complaint?*
  - 4) *Whether the Respondent erred in law and fact when it decided that the Applicant's bid was non-responsive to the requirements of the bidding document.*
  - 5) *Whether the Purchase Order Agreement between the Respondent and Ochopa John for the management of Nyamukuta Sonsio fish landing site in Butiaba Sub County is valid.*
  - 6) *What reliefs are available to the parties?*

**Issue No. 1:**

***Whether the Applicant's letter dated 12<sup>th</sup> September 2022 addressed to the Registrar of the Tribunal is a competent application?***

1. The Applicant filed the instant application to the Tribunal on 13<sup>th</sup> September 2022 by ordinary letter, seeking review of the decision of the Respondent.
2. Section 91L (1) of the Public Procurement and Disposal of Public Assets Act provides that an application to the Tribunal shall be in writing in the prescribed form and include a statement of the reasons for the application.
3. The formal requirements for an application to the Tribunal are contained in Regulation 6 (2) of the *Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016*.
4. In the instant case, the application dated 13<sup>th</sup> September, 2022 was in writing (but not in the prescribed form); it included a reasons for the application; and filing fees were paid.
5. It is our finding that the Applicant's letter suffices for an application to the Tribunal for purposes of section 91L of the *Public Procurement and Disposal of Public Assets Act*.
6. Non-conformity with the prescribed form does not render the application void. In considering the substance rather than the form, we are fortified by section 43 of the *Interpretation Act* which provides that where any form is prescribed by any Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document or which is not calculated to mislead.

See: ***SAMANGA ELCOMPLUS JV v PPDA & UEDCL, Application No. 4 of 2021.***

7. **Issue no. 1 is answered in the affirmative.**

**Issue No. 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?**

8. The best evaluated bidder notice was issued on 19<sup>th</sup> August, 2022. Under section 89 (3) of the *Public Procurement and Disposal of Public Assets Act* and regulation 137 of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*, the aggrieved Applicant had ten working days to make a complaint to the Accounting Officer. The ten working days would have expired on 2<sup>nd</sup> September 2022. The Applicant timeously applied for administrative review before the Accounting Officer on 24<sup>th</sup> August, 2022. The Tribunal rejects the Respondent's submission that the Applicant did not apply for administrative review during the 10 working days after display of the best evaluated bidder notice.
9. The Respondent also avers that there was no decision because the Applicant did not pay the mandatory fee as required by law. The Applicant alleges that she was advised against payment of administrative review fees.
10. An aggrieved bidder is obliged to pay prescribed administrative review fees to the procuring and disposing entity upon filling a Compliant. See Section 89(3)(a) of the ***Public Procurement and Disposal of Public Assets Act*** read together with Regulation 138(3) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
11. The Public Procurement and Disposal of Public Assets Authority (PPDA) 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.

12. In ***VCON Construction (U) Ltd versus Uganda Development Bank, 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.
13. 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 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***.
14. 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. See ***Applications No. 26 and 27 of 2022- Vision Scientific & Engineering Limited Vs. Makerere University***.
15. Under Regulation 139(1) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*, upon receipt of an application for administrative review, an Accounting Officer must constitute a committee of three persons with the requisite technical expertise on the subject of the complaint, to review and advise on the complaint. The Accounting Officer did not comply with this requirement.

16. Under Section 89(7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer must make and communicate a decision within ten (10) days of receipt of a complaint. The ten days started running on 25<sup>th</sup> August, 2022 and would have expired on Saturday 3<sup>rd</sup> September 2022. 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 Saturday 3<sup>rd</sup> September 2022 and Sunday 4<sup>th</sup> September 2022 were not working days, the last day was Monday 5<sup>th</sup> September, 2022. Therefore, the Accounting Officer was bound to communicate his decision latest on Monday 5<sup>th</sup> September, 2022.
17. The Accounting Officer did not make and communicate any decision by Monday 5<sup>th</sup> September, 2022. Instead, on 7<sup>th</sup> September 2022, he endorsed on the Applicant’s complaint “Noted 7/9/2022 head PDU please handle urgently”. This was an unlawful abdication of responsibility on the part of the Accounting Officer. The Head of the Procurement and Disposal Unit has no power to handle administrative review complaints.
18. Under sections 911I(1)(b) and 89 (8) of the *Public Procurement and Disposal of Public Assets Act*, where the Accounting Officer fails to make and communicate a decision, the aggrieved bidder must file an application before this Tribunal within ten days after the expiry of the ten days stipulated under section 89 (7).
19. The ten days started running on 6<sup>th</sup> September 2022 and were due to expire on 15<sup>th</sup> September 2022. The Applicant was therefore within her statutory rights to file application in the Tribunal on 13<sup>th</sup> September 2022.
20. **Issue no. 2 is resolved in the affirmative.**



**Issue No. 3:**

**Whether the Accounting Officer erred in law and fact when he failed or omitted to immediately suspend the procurement process upon receipt of the Applicant's complaint?**

21. The Accounting Officer is under a duty to immediately suspend the procurement process upon receipt of a compliant. The procurement process is expected to remain suspended until the Tribunal makes a decision, where a bidder makes a further application to the Tribunal. See sections 89(5) and 89(11) (a) of the *Public Procurement and Disposal of Public Assets Act and 139(1) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
22. The Accounting Officer is prohibited from entering a contract with a provider during the administrative review period and where the matter is before the Tribunal, before the Tribunal makes a decision. See sections 89(11) (b)(i) & (ii) of the *Public Procurement and Disposal of Public Assets Act*.
23. The Accounting Officer therefore acted in blatant breach of the law when he entered into a Purchase Order Agreement with *Ochopa John* on 31<sup>st</sup> August, 2022 when the Applicant had filed an administrative review application with the Respondent on 24<sup>th</sup> August, 2022, and during the administrative review period. It is a breach of the *Public Procurement and Disposal of Public Assets Act* to enter into a contract with a provider during the administrative review period. See ***Public Procurement and Disposal of Public Assets Authority Vs. Mbarara District Local Government, Reference No. 1 of 2020***; and ***Wakiso Seven Star's Association Ltd, v Wakiso District Local Government, Public Procurement and Disposal of Public Assets Authority (PPDA), Application No.17 of 2019***.
24. **Issue no. 3 is resolved in the affirmative**

**Issue No. 4:**

**Whether the Respondent erred in law and fact when it decided that the Applicant's bid was non-responsive to the requirements of the bidding document.**

25. According to the evaluation report, the Applicant's bid failed on two grounds.
26. The first ground was that the Applicant indicated non-existent positions of Director and Assistant Manager. The second reason was that the Applicant used staff who are civil servants, like Bisobora Owen and Kwesiga Moses.
27. During an evaluation process, no evaluation criteria other than that stated in the bidding document shall be taken into account. See section 89(3)(a) of the *Public Procurement and Disposal of Public Assets Act* read together with regulation 78 (4) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
28. Further, the determination of compliance and responsiveness is based on the contents of the bid. Substantial compliance and responsiveness requires conformity with instructions, requirements, terms and conditions of a bid document without material deviation or omission. See regulation 73 (1) and (2) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
29. The evaluation methodology in the instant procurement was stated in Part 1: Bidding Procedures, pages 7 and 8 of the bidding document.

30. The key staff required for the assignment were stated in a table provided for in part 2: statement of requirements, (a) terms of reference, item 5 and its reproduced as hereunder;

<b>SN</b>	<b>Personnel</b>	<b>No. Required</b>	<b>Minimum Qualification</b>	<b>Evidence</b>
1	Market Master/Manager	1	O' Level	UCE-Certificate
2	Revenue Collector	2	O' Level	UCE-Certificate
3	Watchman/Guard	1	Primary	PLE-Certificate
4	Cleaner	2	N/A	N/A

NB. For purposes of Gender equity, at least two personnel must be female.

30. The qualification form on page 12 of the bidding document provided for a tabular form where the position, name, years of experience of the key personnel proposed for operations administration and execution of contract would be listed. It was a requirement to attach biographical data and academic documentation.
31. The Applicant's bid on page 3 of 29 reproduced the qualification form as follows;

<b>SN</b>	<b>Position</b>	<b>Name</b>	<b>Years of experience in proposed position</b>
1.	Director	Kiwikiriza B. Frida	5 years
2.	Market Master/Manager	Gubaza Edwin	5 years
3.	Revenue Collector	Bisoborwa Owen	5 years

4.	Market Assistant Revenue Collector	Moses Kwesiga	5 years
5.	Watchman	Wabyodna Robert	3 years
6.	Cleaner	Joy Kusemererwa	4 years
7.	Porter/ Cleaner	Akiiki Evas	3 Years

30. It is our finding that the wording of the requirement on key staff requirement for the assignment under terms of reference were expansive enough to accommodate other personnel such as Director and Assistant Manager.
31. The ordinary and literal meaning of the word *at least* denotes a *bare minimum or not less than what is required*. Item 5 of the statement of requirements only demanded that a bidder's key staff should include a minimum of 4 positions namely *Market Master/Manager, Revenue Collector, Watchman/Guard* and a *Cleaner*.
32. In the qualification form, the Applicant duly proposed *Gubaza Edwin* as Market Master/Manager, *Bisoborwa Owen* as Revenue Collector, *Wabyodna Robert* as Watchman and *Joy Kusemererwa* as Cleaner.
33. Any other additional staff such as *Director, Market Assistant Revenue Collector, Porter/Cleaner* proposed to be utilised by the Applicant were a superabundance which should not have been a basis for declaring the Applicant's bid non-responsive to the bidding requirements.
34. The allegation that the Applicant proposed personnel who are civil servants (*Bisobora Owen* and *Kwesiga Moses*) was not substantiated. The Head of the Procurement and Disposal Unit informed the Tribunal at the hearing that the members of the evaluation committee relied on their personal knowledge of the

said individuals. With due respect, that was a very casual and unacceptable approach.

35. **Issue no. 4 is resolved in the affirmative.**

***Issue no. 5:***

***Whether the Purchase Order Agreement between the Respondent and Ochopa John for the management of Nyamukuta Sonsio fish landing site in Butiaba Sub County is valid.***

36. The evaluation committee in its report recommended none of the bidders as best evaluated bidder.
37. Under section 28 (1) (a) of the *Public Procurement and Disposal of Public Assets Act*, the Contracts Committee adjudicates recommendations from the Procurement and Disposal Unit. Also see regulation 17(1) (a) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*.
38. Section 33 of the *Public Procurement and Disposal of Public Assets Act* provides that where a Contracts Committee disagrees with the recommendations of a Procurement and Disposal Unit, it may—(a) return the submission to the Procurement and Disposal Unit for review giving written reasons for its disagreement; or (b) request for independent advice from the Authority.
39. According to the minutes of the meeting of the District Contracts Committee (DCC) which sat on 19<sup>th</sup> August 2022, they approved Ochopa John as “Best bidder after evaluation committee evaluated him on wrong criteria and failed to

*respond to DCC deferred decision*". There is however, no record of the purported "deferred decision". There is also no evidence of a submission from the Procurement and Disposal Unit for a contract award to *Ochopa John*.

40. When the Contracts Committee decided to reject the recommendations of the evaluation committee report, the proper course of action was to either return the submission to the Procurement and Disposal Unit for review, giving written reasons for its disagreement; or to request for independent advice from the Authority.
41. The purported decision of the Contracts Committee to declare *Ochopa John* as "*Best bidder*" was illegal, null and void.
42. It therefore follows that the Purchase Order Agreement between the Respondent and *Ochopa John* for the management of Nyamukuta Sonsio fish landing site in Butiaba Sub County is invalid.
43. **Issue no. 5 is resolved in the affirmative.**

**Issue No. 6:**

**What reliefs are available to the parties?**

44. In view of our findings on issues no. 2 and 3, the proceedings leading to and the award of the Purchase Order Agreement to *Ochopa John* for the management of Nyamukuta Sonsio fish landing site in Butiaba Sub County was marred by illegalities.
45. In addition, we observed at the hearing that although the Applicant and bidder was stated to be Frida B. Kwikiriza, the bid was prepared and signed by her husband Bigirwenkya. Frida B. Kwikiriza herself did not attend the hearing. Her (the

Applicant's) husband Bigirwenkya attended the hearing on her behalf and made oral submissions. He submitted that "he" bid and was the highest bidder.

46. When the Tribunal Registrar, on our instructions, telephoned Frida B. Kwikiriza at the commencement of the hearing to confirm whether Bigirwenkya was authorised to represent her (the applicant) we got the impression that she (the Applicant) had very scanty knowledge of the procurement and the proceedings. Bigirwenkya informed the Tribunal that Frida B. Kwikiriza had studied only up to Primary 3 and could not understand the bid document since she cannot read English.
47. A person who is unable to read and understand the script or language in which a document is written or printed is an illiterate within the meaning of section 1 (b) the *Illiterates Protection Act*.
48. Section 2 of the *Illiterates Protection Act* provides that no person shall write the name of an illiterate by way of signature to any document unless such illiterate shall have first appended his or her mark to it; and any person who so writes the name of the illiterate shall also write on the document his or her own true and full name and address as witness, and his or her so doing shall imply a statement that he or she wrote the name of the illiterate by way of signature after the illiterate had appended his or her mark, and that he or she was instructed so to write by the illiterate and that prior to the illiterate appending his or her mark, the document was read over and explained to the illiterate.

49. Section 3 of the *Illiterates Protection Act* further provides that any person who writes any document for or at the request, on behalf or in the name of any illiterate shall also write on the document his or her own true and full name as the writer of the document and his or her true and full address, and his or her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her.
  
50. Contravention of sections 2 or 3 of the *Illiterates Protection Act* is a criminal offence.
  
51. The purported bidder in this case could not read or understand English. However, the above mandatory provisions of the *Illiterates Protection Act* were not complied with. The tribunal has determined that there was no valid bid from Frida B. Kwikiriza.
  
52. In view of the illegalities and irregularities in the procurement for management of Nyamukuta Sonsio fish landing site in Butiaba Sub County, procurement, the Tribunal has determined that it is fatally flawed and cannot be remedied.
  
53. The Tribunal has therefore decided that the procurement for management of Nyamukuta Sonsio fish landing site in Butiaba Sub County should be cancelled.



### **E. DISPOSITION**

1. The Purchase Order Agreement between *Ochopa John* and the Respondent, entered into on 31<sup>st</sup> August, 2022 for management of Nyamukuta Sonsio fish landing site in Butiaba Sub County is null and void and is hereby cancelled.
2. The procurement for management of Nyamukuta Sonsio fish landing site in Butiaba Sub County under procurement reference number **BUL1576/SRVCS/2022-2023/00019** is cancelled.
3. The Respondent, if it so wishes, may re-tender the procurement for management of Nyamukuta Sonsio fish landing site in Butiaba Sub County.
4. The Tribunal's suspension order dated 13<sup>th</sup> September, 2022 is vacated.
5. Each party shall bear its own costs.

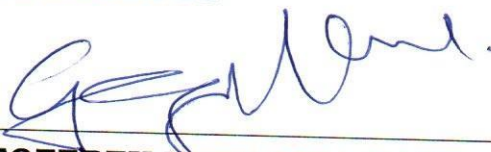
Dated at Kampala this 3<sup>rd</sup> day of **October 2022**.



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



**NELSON NERIMA**  
**MEMBER**



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



**PAUL KALUMBA**  
**MEMBER**



**CHARITY KYARISIIMA**  
**MEMBER**