

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

**REGISTRY APPLICATION NO. 44 OF 2022**

**BETWEEN**

**ATEKER COMMUNITY ENERGY COOPERATIVE  
SOCIETY LTD:.....:APPLICANT**

**AND**

**KATAKWI DISTRICT  
LOCAL GOVERNMENT :.....: RESPONDENT**

**APPLICATION FOR REVIEW OF THE DECISION OF KATAKWI  
DISTRICT LOCAL GOVERNMENT IN RESPECT OF THE  
PROCUREMENT FOR HIRE OF OCORIMONGIN GRADE A WEEKLY  
MARKET UNDER PROCUREMENT REFERENCE NUMBER  
KATA857/SRVCS/22-23/00007**

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

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. The Respondent invited bids for the hire of Ocorimongin Grade A weekly market under Procurement Reference Number **KATA857/SRVCS/22-23/00007** using open national bidding method. The bidding document was issued on August 15, 2022.
2. 5 bidders namely *Ateker Community Energy Cooperative Society Ltd* (the Applicant), *Kamutur Oil Seeds Farmers Coop- Society Ltd*, *Bukeddea Orongot Vendors Coop- Society Ltd*, *Ogoloi Farmers Coop- Society Ltd* and *Katakwi Central Joint Multi-Purpose Coop- Society Ltd* submitted bids by the closing date of September 2, 2022
3. Upon conclusion of the evaluation process, the Notice of Best Evaluated Bidder was displayed on October 11, 2022 with a date of removal being October 24, 2022. The Notice indicated that *Kamutur Oil Seeds Farmers Coop- Society Ltd* was the Best Evaluated Bidder at a total contract price of UGX 326,003,877/= VAT inclusive.
4. The Notice of Best Evaluated Bidder also indicated that the Applicant's bid failed because it did not submit powers of attorney.
5. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer of the Respondent in a letter dated October 19, 2022. The Respondent received the said complaint on October 21 2022.
6. The Applicant's application for administrative review before the Accounting Officer of the Respondent was premised on three grounds, i. e that all the members of the best evaluated bidder are from Bukeddea District, contrary to the criteria that at least 80% of the members should be from the local community with a registered office in Katakwi Distict; and having a place of abode

relating to the market; that the Applicant's bid failed on the basis of lack of a power of attorney yet the bid document had an option of any other authorization to sign the bid; and that the Contracts Committee which approved the Evaluation Committee report had no quorum.

7. The Accounting Officer in a letter dated November 3, 2022 made and communicated an administrative review decision to the Applicant stating that the complaint had no merit.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant being aggrieved by the decision of the Accounting Officer lodged the instant application with the Tribunal on November 17, 2022, seeking to review the decision of the Respondent.
2. That upon bid opening, the bid of the Applicant was declared incompetent on purported reasons that the applicant did not possess registered powers of attorney yet the 3.2(g) of the evaluation methodology and criteria which required "*Registered Powers of attorney to the bid or any other authorized to sign the bid.*"
3. That the said clause made powers of attorney optional and the applicant had fully submitted an application duly sealed by its authorized signatories as provided for by clause 51 of its constitution.
4. That the said clause authorizes 3 people to sign all documents, contracts and cheques that includes among others; Accountant, treasurer, secretary and chairman.
5. That the bid application was signed by Otai Charles Lwanga as its chairman, Opus George as Sec/General Manager and Atero Rebecca who were appointed pursuant to a meeting of the association (Annexure "C" to the Application).

6. That *M/S Kamutur Oil Seeds Farmer's Cooperative Society Limited* did not meet the requirements of the bid as they did not have 80% membership within Katakwi district as was required in the evaluation methodology as the said company instead had its members from Bukedea.
7. That the Respondent purported to waive the said requirement of the regulations that gave the successful firm an advantage over the Applicant. The evaluation committee deviated from the detailed evaluation criteria provided for in the bid solicitation document.
8. That the Applicant's bids had succeeded in the previous year 2021-2022 on similar terms and requirements and has been the one running the said market giving them an upper edge over all the other bidders based on their experience. They have no history of non-performance of contracts.
9. That the bid of the Applicant ought to be considered and declared the successful bid.

**C. RESPONSE TO THE APPLICATION**

1. Registered Powers of Attorney were optional, but the Applicant did not provide an alternative instrument of appointment of the persons authorized to sign the bid. Clause 51 of the Applicant's Constitution does not substitute the requirement for a registered Power of Attorney appointing signatures to the bid. It simply gives offices/positions but without names of the authorized persons who ought to have been appointed by an instrument such as a Power of Attorney.
2. Annexure C to the application did not form part of the bid documents. There is no evidence that these are genuine minutes or were even approved minutes.
3. The requirement that 80% of the membership of the bidder had to hail from Katakwi District was waived by the Evaluation Committee for the following reasons.

- a) it was an open bidding that allowed all Ugandans to participate.
- b) it was not a very material consideration.
- c) it would have been discriminatory against other responsive bids.

**D. APPLICANT'S SUBMISSIONS**

1. The Applicant filed written submissions through *M/S Odokel Opolot & Co. Advocates*.
2. Counsel submitted that *M/S Kamutur Oil Seeds Farmer's Cooperative Society Limited* did not qualify as per the requirements of clause 5.1.(g)(h) of the evaluation methodology and criteria of the bid notice published by the respondent, that required the candidate for consideration to be a cooperative or society operating as traders in market facility and must have at least 80% of the members from the local community with the registered office in Katakwi.
3. That to the contrary, the purported successful bidder had most of its members as being from Bukedea District with no known membership or office at Katakwi.
4. That awarding a contract to *M/S Kamutur Oil Seeds Farmer's Cooperative Society Limited* through a process deviating from the solicitation document was an illegality on its face. Counsel relied on section 52 of the *Public Procurement and Disposal of Public Assets Act*, and regulations 72 and 13 (3) of the *Local Governments (Public Procurement and Disposal of Assets) Regulations, 2006*.
5. Counsel also cited ***Clear Channel Independent Uganda Ltd v. Public Procurement and Disposal of Public Assets Authority Misc. App.No. 380 of 2008, Makula International Ltd v. Cardinal Nsubuga, Civil Appeal No. 4 of 1981***, and

**Roko Construction Ltd V Public Procurement and Disposal of Assets Authority & Ors, Civil Appeal. No. 59 of 2017.**

6. The Respondent purported to fault the applicant for having not provided a registered power of attorney or authority to sign contrary to the requirements of the evaluation methodology and criteria that made the same optional.
7. The Applicant's authorized representatives duly executed the said bid as authorized persons. The constitution of the Applicant in clause 51 authorizes 3 people to sign all documents, contracts and cheques that includes among others; Accountant, Treasurer, Secretary and Chairman. The bid application was signed by Otai Charles Lwanga as its Chairman, Opus George as Secretary and Atero Rebecca as the Treasurer who were appointed pursuant to a meeting of the association.
8. That in the alternative, in case the Respondent was to hold that there was no evidence of authorization from the Applicant for the signatories who made the bid to sign, the same would not be a material deviation for the rejection of the bid.
9. That it would amount to inter-meddling with the internal affairs of a company.
10. That the decision of the respondent was clearly unfair, biased and discriminated the applicant among others contrary to section 43 of the *Public Procurement and Disposal of Assets Act* and regulation 72 of the *Local Governments (Public Procurement and Disposal of Assets) Regulations, 2006*.

**E. RESPONDENT'S SUBMISSIONS**

1. Under Section 46 of the *Public Procurement and Disposal of Assets Act* and Regulations 37 (4) of the *Public Procurement and Disposal of Assets Regulations*, an entity permitted to waive certain restrictive requirements that have the tendency of restricting competition.

2. There is no evidence that the Evaluation Committee abused its discretion given by law by waiving that apparently discriminatory and immaterial requirement. Secondly, since it was an open bid, it was inconsistent to insist that the bidders had to come from Katakwi District. This was an open domestic bid which attracted all Ugandan citizens. It would have been discriminatory and unconstitutional to ring fence the open bid to only Katakwi residents. Article 21 of the Constitution of the Republic of Uganda, 1995 provides for equality and freedom from discrimination. That requirement was rightly waived because it had the tendency of shutting out better bids. It turned out that there was no clear and operative definition of what constituted a cooperative society with 80% of its membership being citizens from Katakwi District.
3. The Applicant concedes that there was no Power of Attorney. There is no resolution provided to show the Officers of the Applicant duly authorized to deal with the District, in respect of this procurement.
4. The persons who signed the bid allegedly on behalf of the Applicant were OTAI CHARLES, OPUS GEORGE and ATERO REBECCA. They were allegedly "*duly* authorized to sign for *and* on behalf of the Co-operative". No instrument of authorization or duly registered Power of Attorney was provided as proof that these three were duly authorized to sign for and on behalf of the Applicant. At page 20 to 21 of the Applicant's bid are the byelaws. The only person mentioned as authorized to perform the functions of Secretary of the Co-operative is a one OLINGA A.M, pending its AGM. OTAI CHARLES, OPUS GEORGE and ATERO REBECCA are not mentioned as authorized Officers of the Co-operative to act on its behalf. Clause 51 of the Applicant's Constitution does not substitute the requirement for a registered Power of Attorney appointing signatories to the bid. That Clause simply lists the offices to be filled but does not indicate the office bearers. It does not help the Applicant's case.

5. Further Annexure "C" to the application did not form part of the bid document. There is no way the Applicant would expect the Evaluation Committee to keep soliciting for clarifications, more explanations and documents for it to establish who were authorized to sign the bid on its behalf, in the absence of a registered Power of Attorney or authorizing instrument.

**F. ORAL HEARING**

1. The Tribunal held an oral hearing on December 1, 2022.
2. The appearances were as follows:  
Counsel Odokel Opolot appeared for the Applicant. Mr. Olila Patrick the Accounting officer of Katakwi District Local Government appeared for the Respondent.

Mr. Okui Tom, the Chairman Marketing of Kamutur Oil Seeds Farmers Coop- Society Ltd appeared for the Best Evaluated Bidder.

In attendance were; Mr. Gakowe Kaugule Jamada the Head of Procuring and Disposing Unit of the Respondent and Mr. Opus George a representative of the Applicant.

3. The parties highlighted their respective written submissions and responded to questions put by the Tribunal. The Best evaluated bidder opted not to make any formal or oral submission.
4. The Tribunal also asked the parties to address it on whether the decision of the Accounting Officer and the Application to the Tribunal were made within the time prescribed by law.

**G. RESOLUTION**

1. The application raised 3 issues for determination by the Tribunal. The issues have been rephrased as follows;
  - 1) Whether there is a competent application before the Tribunal?



- 2) Whether the consideration of Kamatur Oil Seeds Farmers Cooperative Society Limited by the respondent as the best bidder was lawful and met the criteria?
- 3) Whether the Respondent erred when it disqualified the Applicants bid for lack of a power attorney/authority to sign?
- 4) What reliefs are available to the parties?

Issue no. 1:

- Whether there is a competent application before the Tribunal*
2. The Applicant being dissatisfied with the evaluation process, submitted an application for administrative review before the Accounting Officer on October 21, 2022.
  3. In accordance with Section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer of the Respondent was obligated to make and communicate a decision regarding the Complaint within ten days from October 21, 2022 when he received the Applicant's Complaint. Regulation 139(5) of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006* provides for a period of 15 working days within which to make an administrative review decision. However, the provisions of the *Public Procurement and Disposal of Public Assets Act* as amended take precedence over the regulations. See section 18(4) of the *Interpretation Act*.
  4. The Accounting Officer therefore ought to have made and communicated his decision on or before October 31, 2022.
  5. The Accounting Officer however, purported to communicate a decision in a letter dated November 3, 2022. That decision was out of time, in breach of the law and of no legal consequence. See

**Applications No. 26 and 27 of 2022- Vision Scientific & Engineering Limited v Makerere University; Meera Investments Limited v URA & Numani Mubiakulamusa, Application No.18 of 2022; Sanlam General Insurance v UNRA, Application No.29 of 2021, and Mugabi David v Sembabule District Local Government, Application no. 24 of 2022.**

6. Where an Accounting Officer does not make or communicate a decision within ten days of receipt of the complaint, the complainant has a right to make an application to the Tribunal within ten days of the expiry of the period given for the Accounting Officer to make and communicate a decision. See sections 89(8) and 91I (2) (b) of the *Public Procurement and Disposal of Public Assets Act as amended*.
7. The ten days started to run on November 1, 2022 and expired on November 10, 2022.
8. The Tribunal has no inherent powers under the *Public Procurement and Disposal of Public Assets Act* as amended to enlarge or extend time limits stated in the procurement and disposal statute. The jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See ***JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd Vs. Private Sector Foundation Uganda, Application No. 29 of 2022, pages 14-15.***
9. The Tribunal has in its previous decisions affirmed that the time limits in the *Public Procurement and Disposal of Public Assets Act* were set for a purpose, are couched in mandatory terms, are a matter of substantive law and must be strictly complied with. They are not mere technicalities.
10. 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*** and ***Mugabi David v Sembabule District Local Government, Application no. 24 of 2022.***

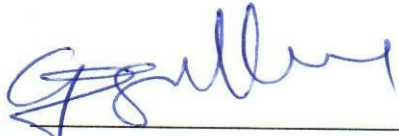
11. The instant Application filed on November 17, 2022 was therefore filed 7 days out of time. The Application is therefore time barred and the tribunal has no jurisdiction to hear it.
12. **Issue no. 1 is resolved in the negative.**
13. As a result, there is no need to delve into the merits of the Application.

**H. DISPOSITION**

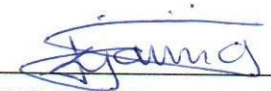
1. The Application is struck out.
2. The Tribunal's suspension order dated November 18, 2022 is vacated.
3. The Respondent may continue with the procurement process to its logical conclusion.
4. Each party to bear its own costs.

Dated at Kampala this 6<sup>th</sup> day of December, 2022.

  
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**NELSON NERIMA**  
**MEMBER**

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

  
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**PAUL KALUMBA**  
**MEMBER**

  
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**CHARITY KYARISIIMA**  
**MEMBER**