

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

APPLICATION NO. 6 OF 2023

BETWEEN

APPLE PROPERTIES LIMITED ===== APPLICANT

AND

UGANDA HUMAN RIGHTS COMMISSION =====RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE DECISION OF
THE ACCOUNTING OFFICER IN THE PROCUREMENT FOR OFFICE
SPACE FOR UHRC HEAD OFFICE UNDER PROCUREMENT
REFERENCE NUMBER UHRC/NCONS/22-23/00005**

**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. The Respondent undertook a procurement of office space for its head office under Procurement Reference No. UHRC/NCONS/22-23/00005, using Open Domestic Bidding Method. Two bids were received, from Apple properties Ltd (the Applicant) on November 9, 2022 and Rumme Investments Ltd on November 9, 2022 before the deadline date and time for submission of bids. The bids were opened on the same day in the presence of representatives of both bidders and recorded on Form 12.
2. Upon completion of the evaluation process and award of contract by the Contracts Committee, the Respondent displayed a Notice of Best Evaluated Bidder dated 21st December 2022, a removal date of 4th January 2023 in which *M/s Rume Investments Limited* was declared the best evaluated bidder at a contract price of UGX. 123,616,800 per month VAT inclusive.
3. The Applicant's bid was disqualified on the ground that it had not obtained the solicitation document directly from the Respondent entity. d
4. The Applicant challenged the decision of the Respondent and filed Application No. 1 of 2023 before this Tribunal.
5. In a decision dated 2nd February, 2023, the Tribunal found that the Applicant did not apply for or obtain the bidding document from the Respondent and that its bid was rightly disqualified. However, the Tribunal faulted the Respondent for failure to carry out proper scrutiny and due diligence on the power of attorney and board resolution submitted by *Rumme Investments Ltd*. There was a discrepancy in that the power of attorney and supporting board resolution are both dated 14th October 2022 but registered with Uganda Registration Services Bureau on 20th September 2022. This Tribunal therefore allowed the application in part and ordered that

the re-evaluation of the submitted bids be done by the entity in a manner not inconsistent with its decision.

6. Following a re-evaluation and award of contract, on 9th February 2023, the Respondent issued a fresh Best Evaluated Bidder Notice with a removal date of 23rd February 2023, in which it rejected the Applicant on the ground that there was no evidence that the Applicant had obtained the solicitation document directly from the Respondent entity.
7. On 17th February 2023, the Applicant (Apple Properties Ltd) lodged an administrative review complaint to the Accounting Officer of the Respondent to express its dissatisfaction with the published Best Evaluated Bidder Notice.
8. On 22nd February 2023, the Accounting Officer responded to the Applicant's complaint and thereby dismissed it.
9. On 28th February 2023, the Applicant lodged this instant application before the Tribunal being dissatisfied with the whole decision and justification of the Accounting Officer for dismissing its complaint. de

B. APPLICATION TO THE TRIBUNAL

1. The Applicant averred that the re-evaluation exercise was conducted in a manner inconsistent with the decision of the Tribunal in Application No. 01 of 2023, the Public Procurement and Disposal of Public Assets Act and its regulations.
2. The Applicant averred that the evaluation committee failed and/or omitted to make a written request to and never sought clarification from *M/s Rume Investments Limited* on the impugned power of attorney and board resolution as required by the law.
3. The Applicant averred that the Respondent relied on documents that the Applicant was neither given a hearing on nor chance to use in its complaint and/or an opportunity to examine or submit on for

purposes of administrative review process contrary to the principles of natural justice.

4. The Applicant contended that the purported clarification sought from Uganda Registration Services Bureau (URSB) was not done by the Chairperson of the Evaluation Committee contrary to the law and exposed the conflict of interest of the Accounting Officer of the entity.
5. The Applicant argued that the deficiency, illegality and invalidity in the power of attorney and the board resolution amount to a material deviation for which the entity is barred from seeking clarification. That the Respondent did not have the powers and cannot in law correct and amend the bid submitted by purporting to rectify an incompetent, illegal power of attorney and Board resolution as it was not an arithmetic error or non-conformity/omission which could be corrected by the re-evaluation committee.
6. The Applicant contended that the Best Evaluated Bidder did not have legal capacity to enter into a contract at the date of bid submission and the defective power of attorney and board resolution made the bidder ineligible. d
7. The Applicant further contended that the Accounting Officer has a conflict of interest, is not impartial and has competing interests in being determined to sign a contract with the bidder at any cost before its contract with the current landlord expires on 28th February 2023 and that in fact she has already issued a notice to occupy the Best Evaluated Bidder's premises.
8. The Applicant prayed that the Tribunal finds that *M/s Rume Investments Limited's* power of attorney and board resolution amount to an illegality, material deviation and fraud that cannot be cured by clarification of the evaluation committee, that the re-evaluation was conducted ultra vires and in a manner inconsistent with the decision of the Tribunal in Application 1 of 2023 and, is null and void, that the Accounting Officer acted in a manner that disclosed a conflict of

interest, that the Respondent erred when it declared *M/s Rume Investments Limited* as the Best Evaluated Bidder; that the procurement process be cancelled, and that costs be awarded to the Applicant.

C. REPLY TO THE APPLICATION

The Respondent

1. The Respondent contended that the re-evaluation of the subject procurement was carried out in a manner consistent with the Tribunal's decision in Application 1 of 2023 and in observance of the legal framework and accepted practice in public procurement.
2. The Respondent averred that the Contracts Committee of the Respondent approved an evaluation committee which comprised new members with independent minds and composure who had never participated in the previous evaluation.
3. The Respondent further averred that during the re-evaluation, the evaluation committee discovered that the Respondent did not issue the bidding document to the Applicant and thus rejected and eliminated the Applicant at the preliminary examination stage in accordance with ITB 6.3 and Regulation 48 (a) of the **Public Procurement and Disposal of Public Assets (Rules & Methods for Procurement of Supplies, Works, and Non-Consultancy services) Regulations, 2014.**
4. The Respondent argued that the evaluation committee carried out due diligence and sought for the authenticity and clarification of the special powers of attorney and board resolution that had been submitted by *M/s Rume Investments Limited* containing discrepancies between the date of registration and the date of signature.
5. The Respondent averred that it rightly sought clarification, verification and authenticity of the registration status of the

documents from Uganda Registration Services Bureau (URSB) which is legally mandated to register documents in Uganda.

6. The Respondent contended that the letter seeking the said clarification was written by the Ag. Secretary of the evaluation committee in line with protocol requirements that dictate for the Secretary to be the official channel for communication in correspondences to other institutions.
7. The Respondent further contended that having received a clear response from URSB where it indicated that it was an unintended mistake of the registration officer which was the cause of the discrepancies in the documents submitted by *M/s Rume Investments Limited*, the evaluation committee proceeded with the evaluation of its bid.
8. The Respondent argued that the clarification obtained from URSB never changed any substance of the submitted bids but rather only clarified the already existing documents that were subject for re-evaluation.
9. The Respondent vehemently stressed that the Accounting Officer was not obliged under any law to conduct a hearing but rather she could only do so at her discretion if the circumstances warranted it.
10. The Respondent prayed that the Tribunal finds that the Applicant is not entitled to the remedies and prayers sought and that the Application be dismissed.

The Best Evaluated Bidder

11. The Best Evaluated Bidder (as an interested party) raised a preliminary objection that the Applicant is not a bidder properly so called and has no *locus standi* to make this application to the Tribunal or to make the application to the Accounting Officer dated 17th February 2023.

12. The Interested Party averred that the power of attorney and board resolution submitted within its bid have at all material times been valid, effective and in accordance with the requirements of the bidding document.
13. The Interested Party contended that the re-evaluation was carried out in a manner consistent with the directions of the Tribunal and procurement law.
14. The Interested Party avowed that there has been no conflict of interest or similar improper conduct between the Interested Party and the Respondent or any of its officials and that this allegation is false and baseless.
15. The Interested Party averred that the Respondent rightly declared it as the Best Evaluated Bidder as it was compliant with the requirements in the bidding document. The Interested Party argued that there is no ground meriting the cancellation of the procurement process given that it was conducted in accordance with the Tribunal's guidelines.
16. The Interested Party prayed that the Tribunal finds that the application has no merit whatsoever and for the application to be dismissed with costs.

D **THE ORAL HEARING**

The Tribunal held an oral hearing on **17th March 2023** via zoom software. The appearances were as follows:

1. The Applicant was represented by Counsel Tendo Deogratus.
2. The Respondent was represented by Counsel Ida Nakiganda.
3. The Best Evaluated Bidder was represented by Counsel John Kallemera

E. **SUBMISSIONS**

During the oral hearing, the Applicant and Respondent highlighted their written submissions and made oral arguments before the members of the Tribunal.

Applicant

1. The Applicant averred that the re-evaluation exercise was conducted in a manner inconsistent with the decision of the Tribunal, the **Public Procurement and Disposal of Public Assets Act** and its regulations. ↓
2. The Applicant averred that the evaluation committee failed and/or omitted to make a written request to and never sought clarification from *M/s Rume Investments Limited* on the impugned power of attorney and board resolution as required by the law.
3. The Applicant averred that the Respondent relied on documents that the Applicant was neither given a hearing on nor chance to use in its complaint and/or an opportunity to examine or submit on for purposes of administrative review process contrary to the principles of natural justice.
4. The Applicant contended that the purported clarification sought from Uganda Registration Services Bureau (URSB) was not done by the Chairperson of the Evaluation Committee contrary to the law and

- exposed the conflict of interest of the Accounting Officer or the entity.
5. The Applicant argued that the deficiency, illegality and invalidity in the power of attorney and the board resolution amount to a material deviation for which the entity is barred from seeking clarification. That the Respondent did not have the powers and cannot in law correct and amend the bid document by purporting to rectify an incompetent, illegal power of attorney and Board resolution as it was no an arithmetic error or non-conformity/omission which could be corrected by the re-evaluation committee.
 6. The Applicant contended that the Best Evaluated Bidder did not have legal capacity to enter into a contract at the date of bid submission and the defective power of attorney and board resolution made the bidder ineligible.
 7. The Applicant further contended that the Accounting Officer has a conflict of interest, is not impartial and has competing interests in being determined to sign a contract with the bidder at any cost before its contract with the current landlord expires on 28th February 2023 and that in fact she has already issued a notice to occupy the Best Evaluated Bidder's premises. d
 8. The Applicant prayed that the Tribunal finds that M/s Rumees Investments Limited's power of attorney and board resolution amount to an illegality, material deviation and fraud that cannot be cured by clarification of the evaluation committee, that the re-evaluation was conducted ultra vires and in a manner inconsistent with the decision of the Tribunal in Application 1 of 2023 and, is null and void, that the Accounting Officer acted in a manner that disclosed a conflict of interest, that the Respondent erred when it declared M/s Rumees Investments Limited as the Best Evaluated Bidder; that the procurement process be cancelled, and that costs be awarded to the Applicant.

Respondent

1. The Respondent contended that the re-evaluation of the subject procurement was carried out in a manner consistent with the Tribunal's decision in Application 1 of 2023 and in observance of the legal framework and accepted practice in public procurement.
2. The Respondent averred that the Contracts Committee of the Respondent approved an evaluation committee which comprised new members with independent minds and composure who had never participated in the previous evaluation.
17. The Respondent further averred that during the re-evaluation, the evaluation committee discovered that the Respondent did not issue the bidding document to the Applicant and thus rejected and eliminated the Applicant at the preliminary examination stage in accordance with ITB 6.3 and Regulation 48 (a) of the **Public Procurement and Disposal of Public Assets (Rules & Methods for Procurement of Supplies, Works, and Non-Consultancy services) Regulations, 2014.**
3. The Respondent argued that the evaluation committee carried out due diligence and sought for the authenticity and clarification of the special powers of attorney and board resolution that had been submitted by *M/s Rume Investments Limited* containing discrepancies between the date of registration and the date of signature.
4. The Respondent averred that it rightly sought clarification, verification and authenticity of the registration status of the documents from Uganda Registration Services Bureau (URSB) which is legally mandated to register documents in Uganda.
5. The Respondent contended that the letter seeking the said clarification was written by the Ag. Secretary of the evaluation committee in line with protocol requirements that dictate for the

Secretary to be the official channel for communication in correspondences to other institutions.

6. The Respondent further contended that having received a clear response from URSB where it indicated that it was an unintended mistake of the registration officer which was the cause of the discrepancies in the documents submitted by *M/s Rume Investments Limited*, the evaluation committee proceeded with the evaluation of its bid.
7. The Respondent argued that the clarification obtained from URSB never changed any substance of the submitted bids but rather only clarified the already existing documents that were subject for re-evaluation.
8. The Respondent vehemently stressed that the Accounting Officer was not obliged under any law to conduct a hearing but rather she could only do so at her discretion if the circumstances warranted it.
9. The Respondent prayed that the Tribunal finds that the Applicant is not entitled to the remedies and prayers sought and that the Application be dismissed. d

The Best Evaluated Bidder

10. The Best Evaluated Bidder (as an interested party) raised a preliminary objection that the Applicant is not a bidder properly so called and has no *locus standi* to make this application to the Tribunal or to make the application to the Accounting Officer dated 17th February 2023.
11. The Interested Party averred that the power of attorney and board resolution submitted within its bid have at all material times been valid, effective and in accordance with the requirements of the bidding document.

12. The Interested Party contended that the re-evaluation was carried out in a manner consistent with the directions of the Tribunal and procurement law.
13. The Interested Party avowed that there has been no conflict of interest or similar improper conduct between the Interested Party and the Respondent or any of its officials and that this allegation is false and baseless.
14. The Interested Party averred that the Respondent rightly declared it as the Best Evaluated Bidder as it was compliant with the requirements in the bidding document.
15. The Interested Party argued that there is no ground meriting the cancellation of the procurement process given that it was conducted in accordance with the Tribunal's guidelines.
16. The Interested Party prayed that the Tribunal finds that the application has no merit whatsoever and for the application to be dismissed with costs. de

F. RESOLUTION BY THE TRIBUNAL

Preliminary Objection 1: The Applicant is not a bidder properly so called and has no locus standi to make this application to the Tribunal or to make the application to the Accounting Officer dated 17th February 2023.

1. The Best Evaluated Bidder raised a preliminary objection that the Applicant is not a bidder properly so called and has no *locus standi* to make this application to the Tribunal or to make the application to the Accounting Officer dated 17th February 2023 because the Applicant did not apply for or obtain the bidding document from the Respondent.
2. Under section 3 of the ***Public Procurement and Disposal of Public***

Assets Act (as amended), a bidder is defined as a person intending to participate or participating in public procurement proceedings.

3. Our understanding of the definition of a bidder as stated in this provision is that the Applicant intended to participate and indeed participated in the procurement Ref No. UHRC/NCONS/22-23/00005 by submitting a bid to the Respondent on 9th November 2022 at 8:34am.
4. The Tribunal in paragraphs 41, 47 and 48 of its decision in **Application No.1 of 2023** already determined that the Applicant erred when it submitted a bid without the Bidding Document being issued to it by the Respondent. It therefore follows that once the bid was submitted by the Applicant, it was a bidder for all purposes and intents. However, the Applicant's illicitly prepared bid could only be rejected by the Respondent during evaluation and not at the stage of bid submission or receipt. This is the import of **ITB 6.3 of Bidding Document** read together with **Regulation 48(a) of the Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works, and Non-Consultancy Services) Regulations, 2014.**
5. **ITB 6.3** of the bidding document provided that bidders who did not obtain the bidding document directly from the procuring and disposing entity were to be rejected during evaluation. This position was further reiterated by this Tribunal in its decision in **Application 1 of 2023** dated 2nd February 2023 when it held that the Applicant (who is the same Applicant in this matter) erred when it submitted a bid without having rightly obtained the bidding document as issued by the Respondent. This means the Applicant did not have a right to participate in the procurement as it did not obtain the bidding document from the Respondent and the Respondent rightly rejected the bid during the evaluation of the received bids.
6. Even after the ultimate rejection of the Applicant's impugned bid at the evaluation stage, the Applicant is still deemed to be a bidder with

locus standi before this Tribunal and is within its rights to apply to the Accounting officer for administrative review as envisaged under section 3 and 89(3) of the **Public Procurement and Disposal of Public Assets Act**.

7. Be that as it may, in this particular instance as noted from the Applicant's written rejoinder to the Interested Party's response, the Applicant contended that its application was brought under **Section 91I (1) (b) of the Public Procurement and Disposal of Public Assets Act (as amended)** as a person whose rights are adversely affected by a decision made by the Accounting Officer.
8. **Section 91I (1) of the Public Procurement and Disposal of Public Assets Act (as amended)** provides the categories of persons who may apply to the Tribunal for review of a decision of a procuring and disposing entity as follows:
 - a) *bidder who is aggrieved, as specified in section 89 (7) or (8);*
 - b) *a person whose rights are adversely affected by a decision made by the Accounting Officer; and*
 - c) *a bidder who believes that the Accounting Officer has a conflict of interest as specified in section 89 (9).*
9. The Tribunal has previously dealt with a similar issue in **Tumwebaze Stephen Kiba versus Mbarara City Council & Another Application 21 of 2022** wherein it explained that the aforementioned provision of the procurement statute creates an avenue for persons who are not necessarily bidders but are aggrieved by a decision made by an Accounting Officer to apply to the Tribunal for a review of the decision of the procuring entity.
10. In **Obon Infrastructure Development JV versus Mbarara City & others Application 20 of 2021**, the Tribunal held that applications for administrative review are not only restricted to bidders but are also open to any persons whose rights are adversely affected by a decision of the Accounting Officer.

11. In ***Old Kampala Students Association Application 7 of 2017***, the Tribunal held that a person who is not a bidder in a procurement may apply to the Tribunal for review of a decision if the person shows that his or her or its rights are adversely affected by the decision. The Tribunal also guided that in determining whether a person is adversely affected, the Tribunal has to consider the facts of each particular application.
12. From the Tribunal's careful interpretation of the law and the facts of this instant application, the Applicant ought to show that its rights are adversely affected by the decision of the Accounting Officer in order for its application to be successful. Therefore, the Tribunal ought to be satisfied of the existence of the following elements:
 - a) *That the Accounting Officer made a decision in response to an application for administrative review submitted by the Applicant; and*
 - b) *That the rights of the Applicant have been adversely affected by the decision of the Accounting Officer.*
13. The Tribunal is satisfied that the Applicant is also eligible to bring this application as a person whose rights have been adversely affected by the Respondent's decision to disqualify it as a bidder from the procurement.
14. **This preliminary objection is therefore unsuccessful. The Applicant has *locus standi* before this Tribunal.**

Preliminary Objection 2: The Applicant's written rejoinder to the Respondent's response is procedurally improper to be filed, served and become part of its pleadings to this application.

15. The second preliminary objection concerns the procedural propriety of the Applicant's written rejoinder to the Respondent's response to the Application. The ***Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016*** read together with the summons issued to the Applicant and Respondent by the

Tribunal on 28th February 2023 did not provide for or anticipate the filing of an “**Applicant’s Written Rejoinder to Respondent’s Response**” by the Applicant dated 3rd March 2023.

16. We have perused through the Respondent’s Reply to the Application and the impugned “**Applicant’s Written Rejoinder to Respondent’s Response**” and observed that no new issues were raised, meriting a rejoinder by the Applicant. The revelations that elicited the rejoinder would have been appropriately dealt with by the Applicant in and through written submissions of the Applicant which were to be filed three (03) days later on 6th March 2023.
17. The Respondent suffers no prejudice or inconvenience by the impugned rejoinder. However, for the sake ensuring orderliness in Tribunal proceedings and emphasising the need for parties to strictly comply with the directions issued by the Tribunal, the Rejoinder should and will be struck off the Tribunal’s record. The Applicant is at liberty to address the matters raised in the Respondent’s Reply through its oral submissions to the Tribunal at the hearing.
18. **This preliminary objection is successful.**

SUBSTANTIVE ISSUES RAISED

We now revert to the substantive issues that the raised as follows:

- i. *Whether the bidder’s impugned power of attorney and board resolution amount to an illegality, material deviation and fraud that cannot be cured by clarification of the Respondent Entity’s evaluation committee?*
- ii. *Whether the Re-evaluation carried out by the entity was ultra-vires and is null and void?*
- iii. *Whether the Accounting Officer of the entity acted in a manner that disclosed a conflict of interest?*
- iv. *Whether the entity conducted the re-evaluation in a manner not inconsistent with the directions of the Tribunal in Application No. 1 of 2023?*

- v. *Whether the entity erred when it declared Rume Investment Limited as the Best Evaluation Bidder?*
- vi. *What remedies are available to the Parties?*

Resolution of the Substantive Issues

Issue 1

Whether the bidder's impugned power of attorney and board resolution amount to an illegality, material deviation and fraud that cannot be cured by clarification of the Respondent Entity's evaluation committee?

Issue 2

Whether the Re-evaluation carried out by the entity was ultra-vires and is null and void?

Issue 4

Whether the entity conducted the re-evaluation in a manner not inconsistent with the directions of the Tribunal in Application No. 1 of 2023?

19. The Tribunal will resolve Issues 1, 2 and 4 jointly.
20. The requirement for a registered power of attorney from bidders in Uganda is explicitly required under instruction to bidders (ITB) 20.2 of the bidding document. The Authorities cited by the Respondent in paragraphs 15, 16 and 17 of its written submissions on the effect of non-registration of Powers of Attorney vis-a-vis the invalidity thereof is applicable to the general registration of documents but are unfortunately, inapplicable to matters of procurement law and practice where the standard bidding document issued by the Public Procurement and Disposal of Public Assets Authority regulate the said practice.
21. Failure to comply with the instruction to bidders (ITB) stated in a bidding document issued by the Authority may lead to rejection or disqualification of the bid found to be in default.

22. *Rumee Investments Ltd* duly submitted a registered power of attorney appointing *Kushuboo R. Vadodaria* as its lawful attorney dated **14th October 2022** but **registered** with Uganda Registration Services Bureau on **20th September 2022**.
23. The Tribunal, at paragraph 63 of its decision in **Application No.1 of 2023** already and rightfully determined that the Respondent's evaluation of the power of attorney was conducted in a perfunctory manner and fell short of the duty to conduct proper scrutiny on the impugned power of attorney.
24. The duty of the evaluation committee tasked with evaluation of the bids in compliance with the decision of the Tribunal in Application No.1 of 2023 was therefore to exercise due prudence and scrutinize the impugned power of attorney to determine whether the registration date of 20th September 2022 was an innocent error or not and whether it satisfies the requirement of **ITB 20.2 of the bidding document**.
25. We observed that on 3rd February, 2023, the Accounting Officer wrote to Uganda Registration Services Bureau (USRB) and sought clarification on the impugned power of attorney and board resolution which were dated 14th October 2022 but registered on 20th September, 2022.
26. On 6th February, 2023, the Uganda Registration Services Bureau responded with an explanation of the discrepancies in the registration of the Power of Attorney and Resolution of *Rumee Investments Ltd*. It was explained that the documents were received on 20th October, 2022 and assigned a registration number G221020-9046. That stamp duty was paid on 20th October, 2022. That the documents were stamped with the date of 20th October, 2022 due to an unintended mistake of the registration officer, which was brought about by an earlier adjustment of the stamp to make a correction on a document

processed on 20th September, 2022. The URSB confirmed that the documents were duly registered on 20th October 2022.

27. The explanation from URSB has the effect of indicating that the pre-registration of 20th September 2022 was an error occasioned by officers of URSB. The Applicant has not rebutted this evidence. The Tribunal does not find it just for *Rumee Investments Ltd* to be faulted and punished for registration errors not occasioned by its own actions or omissions.
28. The Tribunal expected the Respondent to exercise due diligence or due care in evaluating the impugned power of attorney. The due diligence undertaken by the Accounting Officer while seeking verification or checking from URSB on the impugned power of attorney fell within the ambit of **Regulation 31 (1) and (2) of the Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014**. The request for “clarification” from URSB was therefore a lawful exercise of due diligence and verification but not a clarification from a bidder under regulation 10 of the **Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014**.
29. We further agree with the submissions of the Respondent that *Rumee Investments Ltd* could not be requested to clarify on the impugned registration of its power of attorney because the matter of the said registration was not non-conformity or an omission in *Rumee Investments Ltd.*'s bid and that it also formed a crucial or deciding factor in the evaluation of the impugned bid; which is prohibited under **Regulation 10 (2)(a) and 10 (3)(c) of the Public Procurement and Disposal of Public Assets (Procuring and Disposing Entities) Regulations, 2014**.
30. We have not found any evidence of fraud, illegality, or material deviation in the re-evaluation of bids conducted by the respondent. The Applicant has also not provided proof of the said allegations.

31. **The Tribunal resolves Issues 1, 2 and 4 in the negative.**

Issue 3

Whether the Accounting Officer of the entity acted in a manner that disclosed a conflict of interest?

32. **Section 89(9) of the *Public Procurement and Disposal of Public Assets Act*** provides that where a bidder believes that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section or that the matter cannot be handled impartially by the procuring and disposing entity, the bidder shall make an application to the Tribunal for determination of the complaint, omission or breach.
33. **Section 91I (1) (c) of the *Public Procurement and Disposal of Public Assets Act*** provides that a bidder who believes that the Accounting Officer has a conflict of interest as specified in section 89 (9) can apply to the Tribunal for review. This means that an Applicant whose application is hinged on the premise or belief that the Accounting Officer has a conflict of interest has direct access to the Tribunal without having to first file a complaint before the Accounting Officer. As to whether there actually exists such conflict of interest, that is for the Tribunal to decide basing on the facts of each case.
34. In such cases involving allegations of existence of a conflict of interest, the Applicant bears the evidential burden of proving the said belief of partiality of the Accounting Officer or to demonstrate that it's complaint or matters arising out of the impugned procurement can't be handled impartially by the Accounting Officer. **See *section 106 of the Evidence Act, Cap 6.***
35. The requirement is however, to demonstrate a sincere belief, and the basis for that belief that the matter cannot be impartially handled by the procuring or disposing entity. **See *SMS Construction Ltd, Farrin YYISVT Ltd & STI Joint Venture versus Ministry of Justice and Constitution Affairs, Application No.07 of 2022.***

36. The Applicant has not adduced any cogent and reasonable evidence to satisfy the Tribunal that there was a conflict of interest or likelihood of conflict of interest by the Accounting Officer. The Tribunal cannot sustain allegations of conflict of interest on an imaginary basis. See ***Abasamia Hwolerane Association Limited v Jinja City Council Application No. 18 of 2021*** at page 10-12.
37. As in the matter of ***Kafophan & SIAAP Consortium versus Ministry of Agriculture Application 31 of 2022***, the Tribunal reiterates that mere vague suspicion of whimsical and unreasonable people should not be made to constitute a standard of proof of such serious complaints. Allegations of bias on imaginary basis cannot be sustained.
38. **This issue is resolved in the negative.**

Issue 5

Whether the entity erred when it declared Rume Investment Limited as the Best Evaluation Bidder?

39. The Procuring and Disposing Entity's determination of a bid's compliance and responsiveness is to be based on the contents of the bid itself. A substantially compliant and responsive bid is one that conforms to all the terms, conditions, and requirements of the Bidding Document without material deviation, reservation, or omission. See ***ITB 28.1, 28.2 of the bidding document at page 17, Section 70 of the Public Procurement and Disposal of Public Assets Act and Regs 7(1), 18 and 19 of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014.***
40. *Rume Investment Limited's* bid was found to be substantially compliant and responsive to all the terms, conditions, and requirements of the Bidding Document without material deviation, reservation, or omission.

41. In light of the proper and lawful manner in which the re-evaluation of the submitted bids was conducted, the Tribunal finds that *Rumee Investments Limited* was rightfully declared as the Best Evaluation Bidder by the Respondent.
42. **This issue is resolved in the negative.**

Issue 6

What remedies are available to the Parties?

43. The Applicant has failed to satisfactorily prove any of the substantive grounds raised in its application and is therefore not entitled to any of the remedies it seeks.

The Applicant has failed to provide justification meriting the cancellation of the procurement process. Therefore, the Tribunal holds that the Respondent is at liberty to proceed with the procurement process to its logical conclusion.

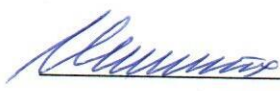
G. DISPOSITION

1. The Application is dismissed.
2. The Respondent Entity may proceed with the procurement process to its logical conclusion.
3. The Tribunal's suspension order dated 28th February 2023 is vacated.
4. Each party should bear own costs

Dated at Kampala this **22nd** day of **March 2023**.



FRANCIS GIMARA, S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
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CHARITY KYARISIIMA
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