

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

APPLICATION NO. 35 OF 2023

BETWEEN

PASSIONATE VENTURES SMC UGANDA LIMITED:.....APPLICANT

AND

BULAMBULI DISTRICT LOCAL GOVERNMENT :.....RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE CONSTRUCTION OF BULAMBULI
DISTRICT ADMINISTRATION BLOCK PHASE III (COMPLETION OF
GROUND FLOOR WESTERN WING AND BLOCK WORKS ON 1ST
FLOOR) UNDER PROCUREMENT REFERENCE NO. BULA
820/WRKS/2023-24/00001**

**BEFORE: FRANCIS GIMARA, S.C; NELSON NERIMA; THOMAS
BROOKES ISANGA; PAUL KALUMBA; CHARITY KYARISIIMA;
AND KETO KAYEMBA, MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Bulambuli District Local Government (the Respondent) initiated a tender for the construction of Bulambuli District Administration Block Phase III (completion of ground floor western wing and block works on 1st floor) under procurement reference no. BULA 820/WRKS/2023-24/00001, using open domestic bidding on 4th September, 2023.
2. On 25th September 2023, the Respondent received bids from 3 bidders namely, *Wiljon Estates Limited*, *Selemani Construction Ltd* and *Passionate Ventures SMC Uganda Limited* (the Applicant).
3. Upon the conclusion of the evaluation process, on 11th November, 2023, the Evaluation Committee recommended that the impugned procurement process be re-advertised since none of the bidders had submitted a substantially compliant and responsive bid.
4. The Respondent issued a Best Evaluated Bidder Notice on 4th December, 2023, indicating that all 3 bidders were unsuccessful.
5. With respect to the Applicant, the Best Evaluated Bidder Notice indicated that its bid was unsuccessful because no income tax clearance certificate was attached.
6. The Respondent then initiated a fresh a tender for the construction of Bulambuli District Administration Block Phase III (completion of ground floor western wing and block works on 1st floor) under procurement reference no. BULA 820/WRKS/2023-24/00001 (re-advertised) using open domestic bidding on 7th December, 2023 with a bid closing date of 29th December, 2023.
7. The Applicant being dissatisfied with the outcome of the previous procurement process, filed an administrative review complaint with the Accounting Officer of the Respondent on 7th December, 2023.
8. The Applicant's administrative review complaint was that its bid included a copy of an income tax clearance certificate issued on 18th September 2023.

9. The Applicant alleges that the Accounting Officer did not make and communicate a decision regarding the complaint.
10. The Applicant therefore filed this Application with the Tribunal on 22nd December, 2023.
11. The Applicant filed written submissions through *Nangulu & Mugoda Advocates*.
12. The Respondent filed a reply contending that the Applicant did not attach an income tax clearance certificate and was eliminated at preliminary stage; and that the Applicant did not pay fees for its administrative review complaint after being guided.

D. THE ORAL HEARING

1. The Tribunal held an online hearing on 10th January, 2024. The appearances were as follows:
 - 1) Mr. Nangulu Eddy assisted by Diana Buyela represented the Applicant.
 - 2) In attendance was Mr. Masaba Paulo the Managing Director of the Applicant.
 - 3) Mr. Echat Moses the Chief Administrative Officer represented the Respondent.
 - 4) In attendance was Mr. Nangail Zemulani the Senior Procurement Officer and Eng. Walimbwa Paul the chairperson of the Evaluation Committee.

E. RESOLUTION OF ISSUES

1. The Applicant raised 2 issues for determination by this Tribunal. However, in light of the facts of the case and the submissions at the hearing, the issues have been reframed as follows:
 - 1) Whether the Tribunal has jurisdiction to hear and determine the Application?
 - 2) Whether the Respondent's Accounting Officer erred when he did not make an administrative review decision on the Applicant's complaint?
 - 3) Whether the Respondent erred in law and fact when it rejected the bid of the Applicant?
 - 4) What remedies are available to the parties?
2. The Tribunal has duly considered the pleadings, submissions, the bids, and all relevant documents on the procurement action file.

Issue No.1:

Whether the Tribunal has jurisdiction to hear and determine the Application?

3. The Public Procurement and Disposal of Public Assets Tribunal is a creature of the *Public Procurement and Disposal of Public Assets Act* and its jurisdiction arises out of the instances listed in section 91I (1) of the *Public Procurement and Disposal of Public Assets Act*.
4. The Tribunal must therefore inquire into the facts to determine whether the Tribunal is seized or clothed with jurisdiction to interrogate the merits of Application before it.
5. Section 91I(3)(a) of the *Public Procurement and Disposal of Public Assets Act* provides as follows:

For the avoidance of doubt, the following matters shall not be subject to review by the Tribunal— (a) a decision by a procuring and disposing entity to reject or cancel any or all bids prior to award of a contract under Section 75;

6. Section 75(3) of the *Public Procurement and Disposal of Public Assets Act* provides as follows:

“A procuring and disposing entity may reject a bid during the evaluation stage, as may be prescribed”.
7. The Tribunal would have no jurisdiction to review a decision by a procuring and disposing entity to *reject any or all bids prior to award of a contract*, in accordance with the law. However, for all purposes and intents, the Tribunal has jurisdiction to inquire into the decision-making process leading to the rejection of the bids, to determine whether there is a valid rejection within the meaning of section 75(3) of the *Public Procurement and Disposal of Public Assets Act*.
8. The Tribunal can only lack jurisdiction when it satisfies itself that the purported rejection was conducted in full accordance and compliance with the *Public Procurement and Disposal of Public Assets Act* and the Bidding Document. Once it is determined by the Tribunal that there exists a rejection which was effected in accordance with sections 75(3) and 91I(3)(a) of the *Public Procurement and Disposal of Public Assets Act*, the Tribunal would have no jurisdiction to inquire into the reasons for the said rejection. See ***Application No. 20 of 2023-Globe Engineering Uganda Limited v Jinja City***.
9. The Tribunal therefore needs to examine the entire procurement process to determine whether there was a valid decision by a procuring and disposing entity to *reject any or all bids prior to award of a contract*.
10. ITB 42 of the Bidding Document provides that the PDE (Procuring and Disposing Entity) reserves the right to accept or reject any bid and to cancel the bidding process at any time before the contract award, without thereby incurring any liability.
11. The Evaluation Committee report dated 20th November, 2023 indicates that no company met the preliminary requirements and none was subjected to further evaluation. The Evaluation Committee recommended that the procurement be re-advertised.

12. The Evaluation Committee report was submitted to the Contracts Committee vide a submission dated 27th November 2023 and signed by the Senior Procurement Officer.
13. According to LG Form 20 dated 4th December 2023, the Contracts Committee decision was as follows:

“The contracts committee under minute No 7/6/CC/2023-24, considered the submission made approved the evaluation report and rejected all the bidders on this subject of procurement for Construction of Bulambuli District Administration Block phase III (completion of ground floor western wing and block works on the 1st floor) because all the applicants were non-compliant and non-responsive to the requirements of the solicitation document. The committee resolved the project be re-advertised to obtain complaint bids”.
14. From the foregoing, it is evident that the Evaluation Committee recommended rejection of all the bids and re-tender of the procurement. The recommendation was approved by the Contracts Committee. The rejection was prior to award of contract.
15. The rejection of all bids was therefore in accordance with sections 75 (3) and 91I(3)(a) of the *Public Procurement and Disposal of Public Assets Act*.
16. Counsel for the Applicant submitted that the rejection was illegal and unjustified and therefore the Tribunal has jurisdiction to entertain the application.
17. Having determined that the rejection of bids was effected in accordance with the law, the Tribunal is barred by section 91I (3) (a) of the *Public Procurement and Disposal of Public Assets Act* from reviewing the reasons for the said rejection.

18. There is therefore no need to delve into the merits or resolve any other issues raised in the Application.
19. **Issue no. 1 is resolved in the negative.**

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated 27th December, 2023 is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 10th day of January, 2024.



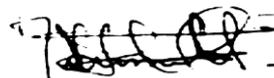
FRANCIS GIMARA S.C
CHAIRPERSON



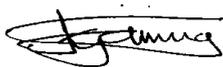
NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



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MEMBER



CHARITY KYARISIIMA
MEMBER



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MEMBER