

**THE REPUBLIC OF UGANDA
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
APPEALS TRIBUNAL
APPLICATION NO. 13 OF 2024**

BETWEEN

FUELESS TECHNOLOGIES LTD:.....:APPLICANT

AND

MBALE CITY COUNCIL:.....:RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE COLLECTION OF REVENUE FROM
STREET PARKING IN MBALE CITY FOR THE FINANCIAL YEAR
2023/2024 UNDER PROCUREMENT REFERENCE NO:
MBALE608/SRVCS/23-24/00017.**

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

DETAILED DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Mbale City Council (the Respondent) initiated a tender for the collection of revenue from street parking in Mbale City for the financial year 2023/2024 under procurement Reference No: MBALE608/SRVCS/23-24/00017 using open national bidding on November 28, 2023.
2. On October 24, 2023, the Respondent received bids from 2 bidders namely, *Fueless Technologies Ltd (Applicant)* and *Medlid Contractors Ltd*.
3. Upon the conclusion of the evaluation process, the Evaluation Committee recommended *Fueless Technologies Ltd* with a total evaluated price of Ugx 36,193,900/= per month. The Respondent displayed a Best Evaluated Bidder Notice on January 5, 2024, with a removal date of January 11, 2024.
4. On January 18, 2024, *Medlid Contractors Ltd* through its lawyers *Nangulu & Mugoda Advocates*, filed a Civil Suit No. 003 of 2024 in the High Court of Uganda at Mbale City against Mbale City and Industrial City Division of Mbale. Further Applications for interim stay and permanent injunctions vide Misc Application No. 19 and 20 of 2024 were also filed in the High Court regarding the tender for collection of revenue from street parking in Mbale city, for the financial year 2023/2024.
5. On January 19, 2024, *Medlid Contractors Ltd* through its lawyers *Nangulu & Mugoda Advocates* also wrote to the City Clerk of the Respondent informing him of *Medlid Contractors Ltd's* intention to file an administrative review application before the Tribunal in accordance with section 89(10) of the *Public Procurement and Disposal of Public Assets Act 2003* following an administrative review decision that the Respondent made on January 17, 2024 (other documents from the Respondent indicates January 19, 2024).
6. On January 29, 2024, another letter was written to the Respondent's City Clerk by *Medlid Contractors Ltd's* lawyers *Nangulu & Mugoda Advocates* advising the Respondent to cease and desist from entering any contract regarding the tender for

- collection of revenue from street parking in Mbale city, for the financial year 2023/2024 on the basis of the fact that the same is a subject of litigation before the High Court.
7. On February 8, 2024, the Applicant wrote to the City Clerk of the Respondent, inquiring about the status of the procurement to ascertain why no contract had so far been signed.
 8. The Respondent did not make any response to the Applicant's letter of February 8, 2024, on the grounds that the Applicant had filed an administrative review compliant without paying the prescribed fees.
 9. The Respondent together with a representative from the Office of the Inspectorate of Government (IGG) held a meeting with a director of the Applicant on February 20, 2024, regarding the status of the tender for collection of revenue from street parking in Mbale city, for the financial year 2023/2024.
 10. At the said meeting, the Applicant was informed that the High Court had issued injunctive reliefs to *Medlid Contractors Ltd* and that the main suit i.e., Civil Suit No. 003 of 2024 was scheduled to be heard on March 14, 2024 and it is the reason why a contract could not be issued to the Applicant.
 11. The meeting therefore resolved that the Applicant would extend its bid validity for another 120 working days from April 9, 2024 while steps to amicably resolve the dispute with *Medlid Contractors Ltd* before May 1, 2024 are undertaken by the Respondent.
 12. The Applicant being dissatisfied by the decision of the Respondent, filed the instant application with the Tribunal on February 23, 2024, seeking to review the decision of the Respondent.

B. APPLICANT'S SUBMISSIONS

1. The Applicant submitted that it participated in the tender for the collection of revenue from street parking in Mbale City for the financial year 2023/2024 and was determined as the best evaluated bidder at a total evaluated price of Ugx 36,193,900/= per month.

2. The Applicant contended that for a period of one month after the display of the Best Evaluated Bidder Notice on January 5, 2024, the Respondent has not entered into a contract or provided updates on the status of the procurement despite written requests for updates.
3. The Applicant averred that when its director physically followed up on its requests for updates, an impromptu meeting was organised by the City Clerk and a representative from the Office of the Inspectorate of Government (IGG) on February 20, 2024; wherein it was revealed that *Medlid Contractors Ltd* had filed a civil suit against the Respondent in the High Court and had secured an injunction barring the Respondent from taking any steps regarding the impugned procurement.
4. The Applicant also argued that *Medlid Contractors Ltd* is exploiting legal processes to perpetuate its illegal actions in Mbale City well aware that it had participated in the impugned procurement and its bid was unsuccessful but went ahead to file a civil suit in the High Court.
5. The Applicant contended that *Medlid Contractors Ltd* was suspended by Uganda Registration Services Bureau and was not worthy of participating in a national bidding process and as such, directors of *Medlid Contractors Ltd* must be brought to order.
6. The Applicant prayed that the Application is allowed, *Medlid Contractors Ltd* is stopped from collecting parking fees in Mbale City and that the Respondent be compelled to enter into a resultant contract with the Applicant.

C. RESPONDENT'S RESPONSE

1. The Respondent conceded that on February 09, 2024, the Applicant sought administrative guidance on the progress of the tender for the collection of revenue from street parking in Mbale City for the financial year 2023/2024 since no contract had been entered into yet.
2. The Respondent averred that it held a meeting with a representative from the Office of the Inspectorate of Government (IGG) and the Applicant on February 20, 2024, regarding the

status of the tender for collection of revenue from street parking in Mbale city.

3. That at the said meeting, the Applicant was informed of the suit that *Medlid Contractors Ltd* had filed against the Respondent in the High Court and correspondences from *Medlid Contractors Ltd* demanding that no contract be executed until matters at the High Court are resolved.
4. That at the meeting, it resolved that the Applicant extends its bid validity for another 120 working days from April 9, 2024 while steps to amicably resolve the dispute with *Medlid Contractors Ltd* are explored by the Respondent for possible closure before May 1, 2024.
5. The Respondent affirmed that the Applicant is still their best evaluated bidder and once the suit by *Medlid Contractors Ltd* is resolved, then steps leading to execution of a contract with the Applicant would be undertaken in accordance with the law

SUBMISSIONS BY MEDLID CONTRACTORS LTD AS AN INTERESTED PARTY

1. *Medlid Contractors Ltd* filed an affidavit in reply to the Application, deponed by *Wafuba Muhammed* as its Director.
2. *Wafuba Muhammed* deponed that *Medlid Contractors Ltd* was appointed as an agent by the Respondent, to collect revenue from street parking within Mbale City for the Financial Year 2023/2024, which appointment was followed by heavy investment by *Medlid Contractors Ltd* for purposes of performing the Contract.
3. He stated that *Medlid Contractors Ltd* is currently performing the said contract and were shocked when the Respondent initiated a tender for the collection of revenue from street parking in Mbale City for the financial year 2023/2024 on November 28, 2023.
4. On the basis of the foregoing, *Medlid Contractors Ltd* was compelled to institute Civil Suit No. 003 of 2024 in the High Court of Uganda at Mbale against Mbale City and Industrial City Division of Mbale, and further filled applications for

interim stay and permanent injunctions vide Misc Application No. 19 and 20 of 2024.

5. He further deponed that on 5th February 2024, the Respondent issued another engagement letter to *Medlid Contractors Ltd*, contracting it to collect revenue from street parking within Mbale City for a period of 5 months from 1st February 2024 to 30th June 2024.
6. That *Medlid Contractors Ltd* is therefore lawfully contracted to collect parking fees in Mbale City, pending the determination of matters that it had filed in the High Court.

D. ORAL HEARING

1. The Tribunal held an oral hearing on March 15, 2024 via Zoom videoconferencing. The appearances were as follows:
 - 1) *Mubangizi Matia*, a Director of *Fueless Technologies Ltd* represented the Applicant.
 - 2) *Ocen Ambrose* the City Clerk and Accounting Officer represented the Respondent. In attendance were *Stuma Fredricks*, the Principal Procurement Officer and *Wodero Ali*, the Procurement Officer.
 - 3) *Counsel Eddie Nangulu* represented the *Medlid Contractors Ltd* as an interested party. In attendance was *Wafuba Muhammed* a Director of *Medlid Contractors Ltd*

E. RESOLUTION

1. The Application was by way of letter and did not raise any specific grounds or issues for determination by the Tribunal. However; from the pleadings filed by the parties, the issues deduced are framed as follows;
 - 1) *Whether there is a competent application before the Tribunal?*
 - 2) *Whether the Respondent erred when it did not issue a contract to the Applicant?*
 - 3) *What remedies are available to the parties?*

Issue No. 1:

Whether there is a competent application before the Tribunal?

1. The Tribunal is duty bound to inquire into the existence of the facts in order to decide whether it has jurisdiction. This is because jurisdiction must be acquired before judgment is given. See ***World Standardization Certification & Testing Group (Shenzen) Co. Ltd Vs. Uganda National Bureau of Standards, Application No. 46 of 2022.***
2. The pertinent question to be determined by the Tribunal at the onset is whether there is a valid and competent Application before the Tribunal. ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government.***
3. The determination of the competence of the application is premised on, *inter alia*, the determination of *whether the Applicant has locus standi to file this application with the Tribunal.* See ***Application No.2 of 2023 Fara Gostar Bistoon versus Uganda Electricity Transmission Company Limited and Application No.31 of 2022 Kafophan and SIAAP Consortium versus Ministry of Agriculture Animal Industry and Fisheries & Youth Alive Uganda.***
4. Under **section 91I (a) and (c) of the Public Procurement and Disposal of Public Assets Act 2003 and Regulation 9 (1)(a)-(c) and 9(5) of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2023**, only a bidder is envisaged to file an application before the Tribunal.
5. Any other person not being a bidder, whose rights are adversely affected by a decision made by an accounting officer has locus to apply to the Tribunal pursuant to **section 91I (b) of the Public Procurement and Disposal of Public Assets Act 2003.** Also see ***Application No.21 of 2022 Tumwebaze Stephen Kiba versus Mbarara City and 2 others.***

6. The avenue of review by the Tribunal under **section 91I (b)** of the **Public Procurement and Disposal of Public Assets Act 2003** is not available to the Applicant in the instant application.
7. We perused through the letter that the Applicant wrote to the City Clerk of the Respondent on February 8, 2024. The said letter merely requested the Accounting Officer to provide guidance on the way forward in light of the delay to sign a contract with the Applicant following publication of the Best Evaluated Bidder Notice on January 5, 2024.
8. At the hearing, *Mubangizi Matia*, a Director of the Applicant when questioned about the letter dated February 8, 2024 to the City Clerk of the Respondent, conceded that it was not an administrative review complaint but a mere letter of inquiry.
9. It is our finding that the Applicant's letter to the City Clerk of the Respondent dated February 8, 2024 was not an administrative review complaint envisaged under **section 89(1)** of the **Public Procurement and Disposal of Public Assets Act 2003** and **Regulation 4 (1)** of the **Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2023**.
10. In light of the above, it stands to reason that the Applicant cannot take benefit of **section 91I (b)** of the **Public Procurement and Disposal of Public Assets Act 2003**.
11. Similarly, the avenue of review by the Tribunal under **section 91I (c)** of the **Public Procurement and Disposal of Public Assets Act 2003** and **Regulation 9(5)** of the **Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2023** is not available to the Applicant in the instant application because he did not make the application under the cited provisions or plead circumstances indicating the grounds for his belief that the Accounting Officer has a conflict of interest or that the complaint cannot be handled impartially by the Respondent.
12. For an Applicant to benefit or fall under the ambit of **section 91I (a)** and **(c)** of the **Public Procurement and Disposal of**

Public Assets Act 2003 and **Regulation 9 (1)(a)-(c)** of the **Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2023**, the Applicant must have filed a complaint before the Accounting Officer.

13. In the absence of a formal complaint before the Accounting Officer and in the absence of the Applicant having pleaded circumstances indicating the grounds for its belief that the Accounting Officer has a conflict of interest or that the complaint cannot be handled impartially by the Respondent, the Applicant had no locus standi to file a direct application to the Tribunal.
14. The instant application before the Tribunal is therefore incurably defective and incompetent.
15. In the result, there is no need to delve further into the merits of the Application.

F. DISPOSITION

1. The Application is struck out.
2. Each party to bear its own costs.

Dated at Kampala this 20th day of March 2024.



**FRANCIS GIMARA S.C
CHAIRPERSON**



**NELSON NERIMA
MEMBER**



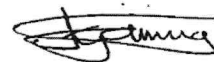
**THOMAS BROOKES ISANGA
MEMBER**



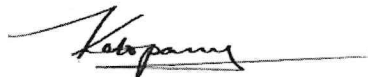
**GEOFFREY NUWAGIRA KAKIRA
MEMBER**



**PAUL KALUMBA
MEMBER**



**CHARITY KYARISIIMA
MEMBER**



**KETO KAYEMBA
MEMBER**