

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

**APPLICATION NO. 14 OF 2024**

**BETWEEN**

**NAMI HARDWARE LIMITED:.....APPLICANT**

**AND**

**MBALE DISTRICT LOCAL GOVERNMENT:.....RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE  
PROCUREMENT FOR THE CONSTRUCTION OF THREE (03)  
CLASSROOM BLOCK AT JEW A PRIMARY SCHOOL PHASE I  
UNDER PROCUREMENT REFERENCE NO. MBAL/891/WRKS/23-  
24/00010**

**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. Mbale District Local Government (the **Respondent**) initiated a procurement for the construction of a three-classroom block at Jewa Primary School Phase 1 under procurement reference number: MBAL891/WRKS/23-24/00010 using open domestic bidding on November 13, 2023.
2. On December 4, 2023, the Respondent received bids from 5 bidders namely, *Nami Hardware Ltd, Gebana Company Ltd, Transworld Agencies Ltd, Muroma Building and Suppliers Ltd, K&K Commercial Agencies Ltd.*
3. Upon conclusion of the evaluation process, the Respondent displayed a Notice of Best Evaluated Bidder on December 21, 2023 indicating that *Gebana Company Ltd* was the best evaluated bidder with a Contract Price of UGX 157,190,152/=.
4. The award to *Gebana Company Ltd* was challenged by *Nami Hardware Ltd* (the **Applicant**) before the Accounting Officer on January 3, 2024 and to the Tribunal on January 25, 2024 through Registry Application No. 7 of 2024.
5. In a decision rendered on February 19, 2024, the Tribunal *inter alia*, set aside the award of contract to *Gebana Company Ltd* and directed the Respondent to re-evaluate the bids in the impugned procurement within ten (10) working days.
6. The Respondent conducted a re-evaluation of the bids as directed by the Tribunal; and on February 29, 2024, displayed a notice of the best evaluated bidder in which *Gebana Company Ltd* was stated as the Best Evaluated Bidder with a Contract Price of Ugx 156, 676, 333/=.
7. The Applicant was dissatisfied with the results of the re-evaluation process and applied directly to the Tribunal on 4<sup>th</sup> March 2023, seeking to review the decision of the Respondent.

### **B. ORAL HEARING**

1. The Tribunal held an oral hearing on March 19<sup>th</sup>, 2024 via

Zoom videoconferencing. The appearances were as follows:

- 1) *Mr. Wadada Safiyi Mugoya, the Managing Director of NAMI Hardware Ltd* represented the Applicant.
- 2) *Mr. Luke Lokuda the Chief Administrative Officer of Mbale District Local Government* represented the Respondent.
- 3) *Mr. Natwesiga Brian, the Managing Director of Gebana Company Ltd* represented the Best Evaluated Bidder.

**C. RESOLUTION**

Considering the facts deduced from the pleadings and the procurement action file, the issues are reframed as follows:

- 1) Whether the Applicant has locus standi before the Tribunal?
- 2) Whether the re-evaluation of the bids was lawfully conducted by the Respondent?
- 3) Whether the Applicant's bid was rightfully disqualified by the Respondent?
- 4) What reliefs are applicable to the parties?

**Issue No. 1:**

**Whether the Applicant has locus standi before the Tribunal?**

1. The instant application was lodged directly before the Tribunal under *Section 91I (1) (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*.
2. A bidder who believes that an Accounting Officer has a conflict of interest in respect of a complaint, omission, or breach or that the matter cannot be handled impartially by the procuring and disposing entity, may make an application directly to the Tribunal.
3. The Tribunal has extensively dealt with the issue of belief that an Accounting Officer is biased or that the procuring and

disposing entity cannot handle a complaint impartially. See **Application No. 18 of 2021, Abasamia Hwolerane Association Ltd vs. Jinja City Council, Application No. 7 of 2022, SMS Construction Limited and Another vs. Ministry of Justice and Constitutional Affairs** and more recently in **Application No.21 of 2023, EAA Company Ltd vs UNBS**

4. We have perused the Application and observed that at pages 2-3 of the Application, paras 2, 4, 5, 6-10, the Applicant particularized the basis for its belief that the Respondent and its Accounting Officer could not impartially handle the complaint relating to the impugned procurement.
5. In the cited paragraphs, the Applicant avers *inter alia* that the re-evaluation was not conducted within 10 working days as directed, the re-evaluation committee had the same chairperson as the former evaluation committee, the reasons of the disqualification of other bidders remained the same as in the earlier notice of best evaluated bidder, there is a persistent alteration, in at least 4 instances of the bid price of *Gebana Company Ltd* and there is no communication on the directive to refund administrative review fees.
6. In the given premises and considering the circumstances cited in the application, we are persuaded that the Applicant's belief that the Accounting Officer and the Respondent cannot reasonably and impartially handle their complaint is well founded.
7. **Issue No. 1 is resolved in the affirmative.**

**Issue no. 2:**

**Whether the re-evaluation of the bids was lawfully conducted by the Respondent?**

1. The Applicant asserts that the re-evaluation of the bids was conducted in more than the 10 working days as ordered by the Tribunal, that the membership of the re-evaluation committee remained the same and that the re-evaluation was only conducted on the bid of the Applicant.
2. The re-evaluation of bids was expected to commence on February 20, 2024, and end by March 4, 2024.

We have reviewed the procurement action file and observed that the evaluation report is dated and signed by the Evaluation Committee on February 22, 2024. In any case, the Notice of Best Evaluated Bidder was displayed on February 29, 2024, indicating that the re-evaluation was conducted on time. There is no proof that the evaluation was conducted beyond the stated timeline.

3. It was not a legal requirement that the re-evaluation be conducted by a newly appointed evaluation committee, and neither was the need for reconstitution of an evaluation committee, part of the directives of the Tribunal. We are unable to fault the Respondent for relying on the Evaluation Committee appointed on December 8, 2023, to conduct the re-evaluation.
4. The Evaluation Report of February 22, 2024, indicates that all the bids were subjected to re-evaluation. There is no proof that only the Applicant's bid was subjected to the re-evaluation.
5. **Issue no. 2 is resolved in the affirmative.**

**Issue no.3:**

**Whether the Applicant's bid was rightfully disqualified by the Respondent?**

1. The Notice of Best Evaluated Bidder displayed by the Respondent on December 21, 2023, indicated reasons why the Applicant's bid was disqualified. We have perused the procurement action file and the Applicant's bid and made the following observations to the specific matters (bolded below) raised therein:
  - (i) ***The appointment letter for the project Engineer was reading Awoli Ahmed Okwir and the academic documents were reading Awoii Ahmed Okwir hence bringing a comparison of to different people. When the committee carried due diligence to the contract manager on this number 077759229, he denied having worked with Ms. Nami Hardware Ltd.***

2. The appointment letter of Awoii Ahmed Okwir is contained on page 0221 of the Applicant's bid. The Appointment letter and Form 2: CV of proposed personnel on page 0222 all state the name of the proposed personnel is AWOLI AHMED OKWIR, the last page of the form indicates the name of the proposed personnel as Awoll Ahmed Okwir. The Degree of Bachelor of Engineering in Civil and Building Engineering from Kyambogo University is in the names of AWOII AHMED OKWIR. The Certificate issued by the Uganda Institution of Professional Engineers indicates the awardee's name as AWOII AHMED OKWIR. All certificates issued by UNEB indicate the name AWOII AHMED OKWIR.
  
3. It is our finding that the statement in the Appointment Letter and Form 2: CV of proposed personnel that indicates the name of AWOLI AHMED OKWIR is an honest mistake made in the typing of the Engineer's name. The correct name is AWOII AHMED OKWIR, and the typographical error could have been rectified by the Respondent seeking clarification under Regulation 7 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*.

**(ii) The CV for the project manager was also varying, it mentioned Mugoya Safyi Wadada Namanda in the confirmation part and not Awoii Ahmad Okwir**

4. The CV of Awoii Ahmed Okwir is contained on page 0231 of the Applicant's bid. The last page of the CV contains the Applicant's stamp with a date of November 15, 2023. The page mentions Awoii Ahmed Okwir's referee as Mugoya Safyi Wadada but contains a statement as follows;

***I confirm that the information above is the true curriculum vitae for Mugoya Safyi Wadada Namanda***

**Signed .....**  
**AWOII AHMAD OKWIR**

5. It is our finding that the confirmation that indicates the name of **Mugoya Safyi Wadada Namanda** is an honest mistake made in the typing of the curriculum vitae of **AWOII AHMAD OKWIR**. This could have been rectified by the Respondent seeking

clarification under regulation 7 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023*.

**(iii) The Health and Safety Manager appointed had a Bachelor of Science in Environmental science and not a diploma /certificate in occupational safety and health as it was a requirement in the bid document.**

6. Part 1, Section 3, Evaluation Methodology and Criteria, C, Detailed Evaluation Criteria, 6.1, A- Personnel on pages 36-37 of the bidding document required a bidder to demonstrate that it will have the personnel for key positions that meet the stipulated requirements and these should attach their appointment letters and CVs. Item 4 on the position of Health and Safety Manager, the personnel was to possess *Diploma/Certificate in Industrial Health and Safety* and should attach the CVs and Letters of appointment.

7. Page 0241 of the Applicant's bid is in respect to the proposed personnel WASAGALI ALIZIKI who possesses a Degree of Bachelor of Science in Environmental Science from Islamic University of Uganda as Health and Safety Manager.

8. The Qualification of a Bachelor's degree in Environmental Management or any other related field was required for the position of Environmental Officer in item 8 for which the Applicant on page 0257-0260, proposed WADINDA JULIUS who possesses a Degree of Bachelor of Environmental Health Science from Makerere University.

9. It is therefore our finding that the Applicant's proposed personnel WASAGALI ALIZIKI did not possess a *Diploma/Certificate in Industrial Health and Safety* and the Applicant did not provide evidence in the bid or at hearing to demonstrate that the *Industrial Health and Safety* relevant subjects required under the Diploma/certificate level were covered under the Degree of Bachelor of Environmental Health Science.

**(iv) The pickup logbook attached showed names of Suza Dagira and there was no evidence that it was sold to Khabusi Building Contractors & Furniture Centre Ltd.**

22. Part 1, Section 4, Bidding Forms, Forms for Equipment, Form 3 on page 69 *inter alia* required a bidder to indicate source of equipment whether *Owned, Rented, Leased or Specially Manufactured (Attach evidence of ownership, lease or hire in the form of registration books, agreements or memoranda or purchase order as well as permits to operate where necessary)*. Form 3A applies where the equipment is not owned by the bidder. Form 3A also required the bidder to include *details of rental/lease/manufacture agreements specific to the project (attach evidence of ownership, lease or hire in the form of registration books, agreements or memoranda or purchase order)*.
23. Page 0273-0276 of the Applicant's bid contains an agreement made on August 12, 2023 between the Applicant and *Khabusi Building Contractors & Furniture Centre Ltd* for hire of 5 equipment including a pickup (see page 0275).
24. Page 0280 of the Applicant's bid contains a Registration Book for a NISSAN DATSUN D21 pick up with Registration No. UAH673J in the names of SUZA DAGIRA.
25. Since the Applicant did not own the said pick up, Form 3 is inapplicable to the Applicant's Bid. Instead, its Form 3A that is applicable.
26. Whereas the Applicant attached a lease agreement, the impugned agreement dated August 12, 2023 is not specific to the project i.e. construction of a three-classroom at Jewa Primary School Phase 1.
27. The rationale for requiring a *rental/lease/manufacture agreements specific to the project* is to ensure that the equipment is secured in advance for the execution of the contract upon award and to ensure that the scope or quality of the supplies or services or the performance of the works to be procured is not affected in a substantial way; so that the ability of the bidder to perform the proposed contract is not diminished and lastly to ensure that key factors of a procurement including cost, risk, time and quality are not impacted.
28. It therefore follows that where the bidder is not the owner of the proposed equipment, failure to include details of rental/lease/manufacture agreements specific to the project



becomes fatal and detrimental to the procuring and disposing entity while implementing the proposed contract.

29. Further, in absence of a plausible link between SUZA DAGIRA in whose names the NISSAN DATSUN D21 pick up with Registration No. UAH673J is registered and *Khabusi Building Contractors & Furniture Centre Ltd*; the purported owner leasing the pickup to the Applicant, the Respondent would be unable to know whether the proposed equipment would be dedicated for purposes of implementing the proposed contract.

30. It is our finding that the Applicant did not comply with the requirements of the bidding document in as far as the information in the forms for equipment is concerned.

**(v) *The Balance sheet provided was ending 1/08/2023 and not as it was required to be in October 2023 and had a credit of UGX: 7,483/=. Though there was a letter of credit attached.***

***He did not have a minimum average annual turnover of UGX: 150,000,000/= calculated as total certified payments received for contracts in progress within the last 4years instead he had UGX:112.374,529/= as the average annual turnover which was below the requirement***

31. The requirement in Table 3: Detailed Technical Evaluation, item 3 was *minimum average annual turnover of UGX calculated as total certified payments received for contracts in progress or completed within the last four years is 150,000,000/=.*

32. Under the above requirement, the applicant submitted the following contracts in form 10A:

- *Construction of a normal building at UGX 84,839, 876/= at page 0316;*
- *Construction of a normal building at UGX 184,889,403.3/= at page 0315;*
- *Construction of 4 classroom block at Bumuluya Primary School at UGX 147,849,548/= at page 0313;*
- *Construction of 4 classroom block at Kama Primary School at UGX 180,269,544/= at page 0310; and*
- *Construction of 2 classroom block at Nayunza Primary School normal building dated November 11, 2022 at UGX 84,839, 876/= at page 0311.*

33. Save for the Contract for the Construction of 4 classroom blocks at Kama Primary School at UGX 180,269,544/= at page 0310 which is stated to be a contract executed in 2021(as per form 7 on page 0302) and in Note 1 of the Finance Statements for the year ended June 30, 2021 on page 083, the rest of the contracts have no date of execution or status of execution. They cannot be relied upon in determining responsiveness under the said requirement.
34. Form 10A indicates that UGX 184,889,403.3/= was construction of a normal building, however, Note 1 of the Finance Statements for the year ended June 30, 2020 on page 097 states Construction of 4 classroom block at Bunawire P/S in Wanale sub county.
35. Page 43, item 6.2.5 of the bidding document provides ample guidance on the determination of Average Annual Turn Over. It requires the 150,000,000/= to be calculated from total certified payments received for contracts in progress (70%) or completed, within the last three (3) years. The documentation required is form 7 and audited financial statements.
36. We found this requirement contradictory to the requirement provided for in Table 3: Detailed Technical Evaluation, item 3 as to the determination of the *minimum average annual turnover*.
37. *Nonetheless, what is clear is that the Respondent required an Average Annual Turn Over of UGX 150,000,000/= whether derived from the audited financial statements or from total certified payments received for contracts in progress (70%) or completed, within the last three (3) years.*
38. From the audited financial statements for the years ended June 30, 2022, 2021 and 2020, the Applicant met the threshold of having an Average Annual Turn Over of UGX 150,000,000/=.
39. Nonetheless, the Applicant's bid was not substantially responsive to the other requirements of the bidding document as pointed out in the above paragraphs. Our review of the reasons for which the Applicant's bid was disqualified indicate that the outcome of the procurement would not change.

40. **Issue no. 3 is resolved in the affirmative.**

**Issue No.4:**

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

41. Having found that the Applicant's bid was rightfully disqualified, the Applicant is not entitled to any reliefs.

**D. DISPOSITION**

1. The Application is dismissed.
2. The Tribunal's suspension order dated March 4<sup>th</sup>, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 25<sup>th</sup> day of March 2024.



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**FRANCIS GIMARA S.C  
CHAIRPERSON**



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**NELSON NERIMA  
MEMBER**



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**THOMAS BROOKES ISANGA  
MEMBER**



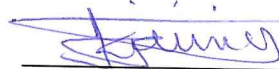
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**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



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**PAUL KALUMBA  
MEMBER**



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**CHARITY KYARISIIMA  
MEMBER**