

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

**APPLICATION NO. 39 OF 2024**

**BETWEEN**

**GULF AFRICA LIMITED =====APPLICANT**

**AND**

**NATIONAL INFORMATION TECHNOLOGY- UGANDA====RESPONDENT**

**APPLICATION IN RESPECT OF THE TENDER FOR THE SUPPLY OF  
2000 DEVICES (1000 DESKTOPS-LOT 1 AND 1000 LAPTOPS -LOT 2)  
FOR THE UGANDA DIGITAL ACCELERATION PROJECT  
GOVERNMENT NETWORK (UDAP-GOVNET) UNDER PROCUREMENT  
REFERENCE NO. NITA-U/UDAP/SUPLS/2023-2024/00012.**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON NERIMA;  
GEOFREY NUWAGIRA KAKIRA; CHARITY KYARISIIMA AND CYRUS  
TITUS AOMU, MEMBERS**

## **DETAILED DECISION OF THE TRIBUNAL**

### **A. BRIEF FACTS**

1. The Government of Uganda, through National Information Technology Uganda (NITA-U) (the Respondent), received funds from the International Bank for Reconstruction and Development or the International Development Association (World Bank) for the Uganda Digital Acceleration Project Government Network (UDAP-GOVNET).
2. The Respondent initiated a procurement through the Open International Competitive Bidding method using a Request for Bids (RFB) as specified in World Bank Procurement Regulations, for the supply of Two Thousand (2000) Devices (1000 Desktops under Lot 1 & 1000 Laptops under Lot 2) through procurement reference number NITA-U/UDAP/SUPLS/2023-2024/00012.
3. On 10 February 2024, the Respondent received bids from eleven bidders: *Attain Enterprise Limited JV JO World Agencies Limited, GNM Projects Limited, Pynet Technologies Limited, Aircom Systems Limited, Sybl Limited, CWG-Uganda Limited, International Business Solutions Limited, Computer Uganda, Netcon Technologies India Private Limited, MFI Document Solutions Limited, and Gulf Africa Limited (the Applicant)*.
4. Upon the conclusion of the evaluation process, the Respondent issued a Notification of Intention to Award the contract on 16 August 2024, in which Netcon Technologies India Private Limited was indicated as a successful bidder at a contract price of Unites States Dollars (USD) 1,139,952 and USD 1,143,252 for Lot 1 and Lot 2, respectively, with VAT excluded.
5. The Notification of Intention to Award the Contract indicated that the Applicant's bid was unsuccessful because the Applicant presented evidence of 420 contracts, none of which met the minimum value of Uganda Shillings Four Billion, as required in the bidding document. The Applicant's highest-valued contract was Uganda Shillings 590,000,000.

6. The Applicant, being dissatisfied with the procurement process, filed a procurement-related complaint with the Respondent on 21 August 21 2024.
7. The Respondent's Accounting Officer responded to the Applicant's complaint on 5 September 2024 and did not find merit in the Applicant's complaint.
8. The Applicant, being dissatisfied with the Accounting Officer's decision, filed the instant application with the Tribunal on 6 September 2024, seeking to review the officer's decision.

The parties filed written submissions, which are reproduced below.

## **B. APPLICANT'S SUBMISSIONS**

1. The Applicant submitted that the Respondent failed to consistently apply the information received through due diligence on 20 May 2024 from Acer Europe, the manufacturer of goods offered by bidders like NETCON, MFI, GULF AFRICA LIMITED, and SYBL and that this information was critical in assessing the adequacy of technical parts of the bids with NITA-U's requirements stated in Section VII - Schedule of Requirements; Part 3 - Technical Specifications on page 45 of the bidding document.
2. The Applicant contended that Section VII - Schedule of Requirements under Items 14 and 15 in respect of Desktop and Laptop specifications on pages 83 and 85 of the bidding document, respectively, mandated all bids to demonstrate responsiveness to the requirement for "*Microsoft Office 2016 or later version installed at the factory*" and the criteria was never applied to all Bids, contrary to provisions of para 2.2(f) of the Evaluation Criteria in Annex X to the World Bank Procurement Regulations for IFP Borrowers.
3. The Applicant argued that the bid of NETCON Technologies India Private Ltd that was declared successful was non-responsive due to reliance on interactions with the Manufacturer's Middle East Commercial Head in July 2024.

4. The Applicant contended that it would invoke provisions of Order 10 Rule 14 of the Civil Procedure Rules so that the Tribunal can order the Respondent to extract a copy of an email from the manufacturer dated May 20, 2024, requesting confirmation on four critical aspects: Licensed Manufacturer's Windows 11 pro, Office 2016 or later version loaded at the factory, NITA-U branding in BIOS, which appears at the boot-up stage, and a permanent custom asset tag on the surface, featuring predetermined NITA-U.
5. The Applicant argued that awarding the contract to NETCON Technologies India Private Limited, whose bid did not meet NITA-U's technical specifications, and not Gulf Africa Limited, whose bid was evaluated post-qualification but lacking specific experience, will not improve economy, efficiency, or value for money.
6. The Applicant submitted that although the impugned procurement was financed by the World Bank, Annex III of the World Bank Procurement Regulations for IPF Borrowers 5<sup>th</sup> edition conferred upon the Respondent as a procuring and disposing entity the responsibility to handle and resolve procurement-related complaints. That where a bidder is dissatisfied with the decision of the Respondent, the Bidder can appeal to the Tribunal with jurisdiction to review the decision in the interest of justice. The Applicant cited **Application No. 16 of 2023, Vital Capital Investments Ltd & others versus Ministry of Lands Housing & Urban Development** to support its submission.
7. The Applicant therefore prayed that the Tribunal sets aside the said Accounting Officer's decision and directs the Respondent to re-evaluate the bid of *NETCON Technologies India Private Limited* in accordance with provisions of the Evaluation Criteria taking into consideration the clarification or information contained in the Manufacturer's email of May 20, 2024, and the Application to be allowed.

#### **C. RESPONDENT'S SUBMISSIONS**

1. The Respondent contended that the Tribunal did not have jurisdiction over the impugned procurement in circumstances where the procurement is based on World Bank Standard

Procurement Documents (SPDs). That such procurements are subject to the complaint's mechanism specified in the Annex III of the World Bank Procurement Regulations for IF Borrowers July 2016 Revised January 2021.

2. That draft response to a complaint is reviewed and cleared by the World Bank through the STEP system, prior to its being communicated to a complainant. That once the response is communicated, there is no further recourse for a complainant since there is no provision for an application to the Tribunal. The Respondent prayed that the application is struck out with costs to the Respondent.
3. The Respondent contended that the Applicant should not have submitted a bid since it had attended a pre-bid meeting on 2 February 2024, reviewed the bidding document and realized that it would not meet the Evaluation and Qualification Criteria.
4. The Respondent contended that the Applicant did not demonstrate that it had successfully completed at least two (2) contracts within the last three (3) years prior to the bid submission deadline, each year with a value of at least Uganda Shillings 4,000,000 (Four billion) only.
5. The Respondent argued that the Tribunal should not embark on a re-evaluation or re-assessment exercise of the bids, which is the Respondent's mandate, with the World Bank providing an oversight role. The Respondent cited ***Arua Municipal Council v Arua United Transporters SACCO, Civil Appeal No. 25 of 2017, Lion v. Firebuy Limited [2007] All ER (D) 177 and Letting International v. Newham London Borough Council [2008] EWHC 1583 (QB)*** to fortify its argument.
6. The Respondent contended that the requirement for a licensed Manufacturer's Windows 11 Pro and Office 2016 or later version to be loaded at the factory together with NITA-U branding (Logo) in the BIOS, which appears at the bootup stage, was mandatory and would never be dispensed even for the Applicant.
7. Lastly, the Respondent averred that the World Bank, under its Procurement Regulations for IPF Borrowers, exercises

procurement oversight at every stage of the procurement process, and thus, the Tribunal cannot reverse the no objection issued by the Bank.

**D. SUBMISSIONS BY NETCON TECHNOLOGIES INDIA PRIVATE LIMITED AS BEST EVALUATED BIDDER**

1. The Best Evaluated Bidder associated itself with the Respondent's submissions.
2. The Bidder averred that it offered to supply Windows Pro and Microsoft Office 2016 or later preinstalled, and the said software would be purchased from Microsoft Authorized distributor Red Dot Distribution as evidenced by the Distributor Authorization Form dated 26 March 2024 which formed part of its bid.
3. That the Respondent was within its rights to seek clarification from the bidder's Manufacturers, regarding the specifications contained in the technical proposals. There was nothing illegal with seeking clarification and relying on information supplied during evaluation.
4. The Bidder contended that it presented proof of completion of four contracts of over Four Billion Uganda Shillings of similar nature and complexity successfully completed within three years of the bid submission and therefore satisfied the requirements of the bidding document.
5. That since the Applicant does not challenge the grounds on which their bid was disqualified, such an omission is an admission on the Applicant's part that their bid was rightly rejected rendering its application moot as stated in ***Application No. 4 of 2024 Goldstar Insurance Vs UNRA and Application No.8 of 2024 K-Solutions vs Ministry of Water & Environment.***
6. The best evaluated bidder prayed that the Tribunal dismisses the Application with costs and the suspension order vacated.

**E. THE ORAL HEARING**

The Tribunal held a physical hearing on September 23, 2024. The

appearances were as follows:

1. For the Applicant – Mr. Yovino Okwir and Mr. Magezi Godfrey
2. For the Respondent-Mr. Edmund Kyeyune holding brief for Mr. Albert Byamugisha. In attendance was Patricia Anabo a Legal Officer and Jacqueline Musimenta a procurement Specialist
3. For the Best Evaluated Bidder-Mr. Atwine Osmond and Mr. Ojiambo David.

**F. SUMMARY RULING BY THE TRIBUNAL**

The Tribunal upon hearing the parties and their respective counsel on September 23, 2024, issued a summary ruling the same day of the hearing in which the procurement by the Respondent for the supply of Two Thousand (2000) Devices (1,000 Desktops under Lot 1 & 1,000 Laptops under Lot 2), was cancelled and undertook to render a detailed decision on 27<sup>th</sup> September 2024, the detailed finding of the Tribunal in the instant Application is therefore contained in this decision.

**G. RESOLUTION BY THE TRIBUNAL**

1. The Tribunal resolved that it that the *Public Procurement and Disposal of Public Assets Act* was applicable to the impugned procurement and the Tribunal has jurisdiction in the matter before it and went ahead to cancel the impugned procurement.
2. The Tribunal will therefore resolve the following issues:
  - (i) *Whether the Tribunal has Jurisdiction over the impugned procurement*
  - (ii) *Whether the Tribunal can objectively determine the Application without access to the documents it directed the Respondent to produce before the Tribunal*
  - (iii) *What remedies are available to the parties*

## **Resolution of the Issues**

### **Issue 1**

#### ***Whether the Tribunal has Jurisdiction over the impugned procurement?***

1. The Tribunal is a creature of the *Public Procurement and Disposal of Public Assets Act Cap 205*.
2. Section 2 of the *Public Procurement and Disposal of Public Assets Act* guides on when the Act can be applied. Under Section 1 (1) (a) (iii), the Act is to apply to all public procurement and disposal activities to do with the public finances of a procuring and disposing entity. Section 1 (1) (c) adds that the Act shall apply to procurement and disposal by a procuring and disposing entity within or outside of Uganda.
3. The procurement in issue is by the National Information Technology Authority Uganda a (NITA—U) which is an autonomous body corporate with perpetual succession and a common seal, an agency of Government of Uganda established under section 3 of the National Information Technology Authority, Uganda Act, Cap 200, therefore a procuring and disposing entity within the meaning of sections 1 (1) (a) (iii) and 2 of the *Public Procurement and Disposal of Public Assets Act*.
4. Prima facie, *Public Procurement and Disposal of Public Assets Act*, is applicable to the impugned disputed procurement. However, the applicability of the *Public Procurement and Disposal of Public Assets Act* can be rebutted.
5. Section 3 (1) of the *Public Procurement and Disposal of Public Assets*



Act provides that where the Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more States, or with an international organisation, the provisions of the agreement shall prevail over the Act.

6. ITB 47.1 of the Bidding Document and the Bid Data Sheet provide that the procedures for making a Procurement-related Complaint are detailed in the "Procurement Regulations for IPF Borrowers (Annex III)." The Complaint must be submitted to the **Hatwib Mugasa, Executive Director** National Information Technology Authority Uganda.
7. The World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers, 5<sup>th</sup> Edition, September 2023 and its Annex III on Procurement-related Complaints, confers on the "Borrower" the responsibility to handle and resolve procurement-related complaints. The said World Bank Procurement Regulations define, "Borrower" as a borrower or recipient of Investment Project Financing (IPF) and any other entity involved in the implementation of a project financed by IPF.
8. ITB 2.1 in Section 1 of the Bidding Document states that the Borrower or Recipient (hereinafter called "Borrower" specified in the BDS has received or has applied for financing (hereinafter called "funds") from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called "the Bank") in an amount specified in the BDS, toward the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contracts) for which this bidding document are issued.
9. ITB 2.1 in the Bid Data Sheet states that the Borrower is National Information Technology Authority Uganda. The Respondent as the Borrower is therefore mandated to handle and resolve procurement-related complaints in this procurement.

10. The Financing Agreement between the Government of Uganda and the International Development Agency regarding the Uganda Digital Acceleration Project Government Network (UDAP-GOVNET) states that the additional conditions of effectiveness consist of inter alia a duly executed Subsidiary Agreement executed on behalf of the Recipient and the Project Implementing Entity and that the Project Implementing Manual (PIM) has been adopted by the Project Implementing Entity. See *Article V-Effectiveness; Termination, 5.01 (a)-(c)*.
9. The Government of Uganda, represented by the Ministry of Finance, Planning and Economic Development and the National Information Technology Authority Uganda, entered into a Subsidiary Agreement on 4 April 2023. The Project Operational /Implementation Manual was adopted by National Information Technology Authority Uganda in April 2023
10. The Project Operational/Implementation Manual April 2023 details the procurement management arrangement under para 6.3.2 on page 25. It refers to a procurement manual in Annex 6.
11. The Procurement Management Manual May 2023 for the Uganda Digital Acceleration Project Government Network (UDAP-GOVNET) is provided on pages 117-212. The Manual provides for a complaints management procedure under para 6.11.
12. The manual guides that for Complaints involving contracts where World Bank Standard Procurement Documents (SPDs) are used shall follow the complaints mechanism specified in the Annex III of the World Bank Procurement Regulations for IPF Borrowers July 2016 Revised January 2021. For such complaints, the PC shall provide for the Bank's review all the relevant information and documents. Further, the draft response to the complainant shall be reviewed and cleared by the Bank prior to transmittal to the complainant. The PC shall not proceed with the next stage/phase of the procurement process, including the awarding of the

contract without receiving confirmation of the satisfactory resolution of complainants) from the Bank. All complaints will be entered in the STEP system and submissions/responses with the Bank processed in the STEP.

13. Complaints involving contracts using National Standard Bidding Documents shall be subject to the complaint's mechanism under the PPDA Law. The PC shall inform the Bank about the actions taken regarding the complaint. In addition, the PC shall provide to the Bank all relevant documentation, as requested.
14. It is quite clear that a procurement-related complaint, whether originating from a Standard Procurement or Bidding Document under the World Bank or National, is resolved by National Information Technology Authority Uganda as the borrower. The only difference is that for Complaints involving contracts where World Bank Standard Procurement Documents (SPDs), the Respondent's resolution of the Complaint is subjected to prior review and clearance by the World Bank while for Complaints involving contracts using National Standard Bidding Documents is not subject to any prior review or clearances.
15. Nonetheless, there was no evidence adduced by the parties to show that the *Public Procurement and Disposal of Public Assets Act* conflicts with an obligation of the Republic of Uganda arising out of a Financing Agreement between the Government of Uganda and the International Development Agency regarding the Uganda Digital Acceleration Project Government Network (UDAP-GOVNET) to activate the need for the provisions of the agreement to prevail over the the *Public Procurement and Disposal of Public Assets Act*.
16. There was no evidence adduced by the parties or in the financing agreement or in the Procurement Regulations for IPF Borrowers that ousts National Information Technology Authority Uganda as the Borrower to handle and resolve procurement-related complaints in this procurement under the Public Procurement and Disposal of Public Assets Act.

17. It is therefore our finding that the jurisdiction of this Tribunal does not conflict with any obligation of the Republic of Uganda arising out of the Financing Agreement between the Republic of Uganda and the International Bank for Reconstruction and Development or International Development Association. On the contrary, the resolution of procurement-related complaints is left to National Information Technology Authority Uganda. **See: *K-Solutions Limited v Attorney General and Public Procurement and Disposal of Public Assets Authority, Application no. 9 of 2020; Dott Services Limited & Hes Infra Private Limited J v Ministry of Water and Environment, Application no. 25 of 2021; and China Civil Engineering and Construction Corporation u Uganda National Roads Authority, Application no. 11 of 2023.***
18. **Issue no. 1 is answered in the affirmative.**
19. Therefore, the Tribunal has jurisdiction to entertain the instant application.

## **Issue 2**

### ***Whether the Tribunal can objectively determine the Application without access to the documents it directed the Respondent to produce before the Tribunal?***

20. For the purpose of the hearing of proceedings before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it to give evidence; or to produce books, documents or things mentioned in the summons, that are in the possession, custody or control of the person named in the summons. See Section 116(2)(a) and (b) of the *Public Procurement and Disposal of Public Assets Act Cap 205*.
21. Once the instant Application was filed with the Tribunal on September 6, 2024, the Accounting Officer of the Respondent, was

on September 9, 2024, ordered to produce and submit to the Tribunal certain specified documents. The relevant part of the Order stated as follows;

*In accordance with Section 116(2)(b) of the PPDA Act Cap 205, You further **ORDERED** to **PRODUCE AND SUBMIT** to the Tribunal, not later **September 11, 2024**, the **entire procurement action file**, which shall include the following documents for review:*

- (i) The invitation for bids to the various bidders*
  - (ii) Original Bid proposals, submitted by the bidders (if any)*
  - (iii) Copy of the original detailed bidding document issued to the bidders including any addenda*
  - (iv) Record of issue and receipt of bids*
  - (v) All forms, Reports and Minutes related to this procurement*
  - (vi) All contracts (if any) related to this procurement*
  - (vii) All correspondence and any other documentation related to this matter*
22. The Respondent received the Order on 9 September 2024, with the Respondent's stamp duly embossed on a copy of the Order returned to the Tribunal.
23. The Respondent went ahead and filed its Response to the Tribunal on 11 September 2024, Annexures to its Response on 12 September 2024, and its written submissions on 18 September 2024.
24. On 20 September 2024, the Respondent, through its lawyers, JB Byamugisha Advocates in a Letter addressed to the Registrar of the Tribunal, stated as follows;

***Your Worship,***

***Re: Application No. 39 of 2024  
Gulf Africa Ltd v National Information Technology Authority,  
Uganda***

*We refer to your order for production of documents and suspension of the procurement process in respect of the subject application and we wish first to apologize for our delay in replying to and/or complying with the same.*

*Our client has instructed us to inform you that procurement processing under IDA financed projects is conducted in accordance with Procurement Regulations for Investment Project Financing (IPF) Borrowers (Fifth Edition) September 2023. Accordingly, our client sought approval from the World Bank to provide the said documents.*

*However, the World Bank has directed our client to maintain the confidentiality requirement as provided in the World Bank Procurement Regulations for IPF Borrowers, Bidding Document, the Project Procurement Manual respectively. A copy of the World Bank's email is attached.*

*In the premises, our client is unable to comply with the said order.*

25. The Attachment containing the email from Raman V. Krishnan stated as follows;

*Dear Edmond,*

*We note the Letter from the Tribunal was received by the IA-NITA U on 08/09/2024 but the NITA. U informed the Bank Task Team on 09/11/2024 yet this was an urgent matter. Please be guided on prompt communication to the Bank Task Team of any developments in terms of the procurement processes.*

*So far we have no communication on how the iA is managing the issue, however this is to request you to draft a response to the Tribunal informing them that the procedures that govern the implementation of a World Bank financed Loan or Grant, are specified in the Financing or Grant Agreement signed between the World Bank as the financier, and the Government as the Borrower. In the case of the Uganda Digital Acceleration Project (UDAP), the Financing Agreement among others specifies that procurement processing under IDA financed projects is conducted in accordance with the Procurement Regulations for investment Project Financing*

*(IPF) Borrowers Fifth Edition September 2023 (the Procurement Regulations). The draft response to the Tribunal should be sent for Bank's review and clearance,*

*The Bank also notes that the procurement process is still ongoing, and confidentiality must be maintained as required under clause 26 of Section 1 of the Bidding Document on Confidentiality: "26, 1 information relating to the Evaluation of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned vital Bee with roe as until information on intention to Award the Contract is transmitted to all Bidders in accordance with ITB 40."*

*Thank you, \_Raman*

26. Furthermore, on 20 September 2024, the Tribunal issued witness summons to the Accounting Officer of the Respondent directing him to appear as a witness and to produce the said documents at the hearing today
27. When the Application came up for hearing, the Accounting Officer did not appear, and the documents were also not produced.
28. The Tribunal stood over the hearing for one hour to give the Respondent one more chance to produce the documents. Before the stand over, the Tribunal also invited the Respondent to consider the legal consequences of violation of Tribunal orders. Despite this caution, the Respondent persisted in its disobedience of Tribunal orders, by not producing the documents.
29. Counsel for the Respondent contemptuously submitted that they will stick to their letter of 20 September 2024 and that the Tribunal should write to the Solicitor General and the World Bank if they want the documents.
30. The Tribunal takes great exception to the contemptuous letter and submissions by counsel for the Respondent. It is rather unbecoming for counsel to boldly state, without lawful



justification, that his client is unable to comply with the Tribunal order.

31. Advocates are officers of the court, and their duties to their clients are subject to their paramount duty to the court. Advocates should not aid their clients or anyone in abuse of Court orders or court process. See the decision of **Hon Justice Stephen Mubiru** in ***Opiyo v M/S M. Oyet & Co Advocates & 4 Ors (CIVIL SUIT No. 0019 OF 2016) [2018] UGHCCD 43***
32. The Tribunal has perused the documents relied upon by the Respondent and finds no lawful justification for the disobedience of the Tribunal's orders.
33. Article 2.12 of the Subsidiary Agreement between the Ministry of Finance Planning and Economic Development (MoFPED) and NITA-U mandates the Respondent to facilitate or enable the Government and the Association to inspect parts 1 to 4 of the Projects, its operation and any relevant records and documents. Similar obligations are stated in 2.13, 2.14, 2.16.
34. In our view, reference to ITB 26.1 in the advisory by Raman Krishan of the World Bank to a one Edmond Macheli is self-defeating. The requirement for confidentiality under the said ITB comes to a halt as soon as the Intention to Award the contract is transmitted to all bidders in accordance with ITB 40.
35. The Notification of Intention to award Contracts in lots 1 and 2 was sent by email to all bidders on 16 August 2024, respectively. There was no basis for the alleged confidentiality.
36. Further, a confidentiality requirement cannot be invoked against a Tribunal or court with a statutory mandate to adjudicate disputes in a procurement.
37. Section 116 (2) of the *Public Procurement and Disposal of Public Assets Act* and Regulation 36 of the *Public Procurement and*



*Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016*, empowers the Tribunal to apply the rules of practice of the High Court.

38. Order 16 Rule 19 of the *Civil Procedure Rules* provides for consequences of refusal of a party to give evidence or to produce any document. The court may pronounce judgment against him or her or make such order in relation to the suit as it thinks fit.
39. Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct decision, if there is only one, or the preferable decision, if there is more than one correct decision. Merits review involves standing in the shoes of the original decision maker, reconsidering the facts, law and policy aspects of the original decision. In a merits review, the whole decision is made again on the facts. See the decision of **Hon Justice Stephen Mubiru** in ***Public Procurement and Disposal of Public Assets Authority Vs. Peace Gloria Civil Appeal No. 0006 of 2016 (Arising from PPDA Appeals Tribunal Application No. 3 of 2015)***
40. The Public Procurement and Disposal of Public Assets Appeals Tribunal and the appellant's interests lie in the correct and preferable application of the relevant legislation and policy to procurement decisions rather than on the procedural limitations of pleadings and arguments as found in courts of law. Administrative merits review allows for examination of the evidence with a view of reviewing agency forming its own view about the substantial merits of the case. See the decision of **Hon Justice Stephen Mubiru** in ***Public Procurement and Disposal of Public Assets Authority v Pawor Park Operators and Market Vendors SACCO (CIVIL APPEAL No. 0003 OF 2016) [2017] UGHCCD 12***

41. As a merits review Tribunal, we are constrained to execute our statutory mandate and adjudicate the merits of the Application in the absence of the procurement action file and the bids.
42. **Issue no. 2 is answered in the negative.**

**Issue 3**

***What remedies are available to the parties?***

43. Having determined that the Tribunal is constrained to execute its statutory mandate to adjudicate the merits of the Application in the absence of the procurement action file and the bids, the natural consequence of this is that the procurement by the Respondent for the supply of Two Thousand (2000) Devices (1,000 Desktops under Lot 1 & 1,000 Laptops under Lot 2), is cancelled.

**G. DISPOSITION**

1. The tender for the supply of Two Thousand (2000) Devices (1000 Desktops under Lot 1 & 1000 Laptops under lot 2) through procurement reference number NITA-U/UDAP/SUPLS/2023-2024/00012 is hereby cancelled.
2. The Respondent is at liberty to re-tender the procurement process if it so wishes.
3. The Respondent is ordered to refund the administrative review fees that the Applicant paid on August 28, 2024.
4. The Tribunal's suspension order dated September 9, 2024, is vacated.
5. Each Party to bear its own costs.

Dated at Kampala this 27<sup>th</sup> day of September 2024.



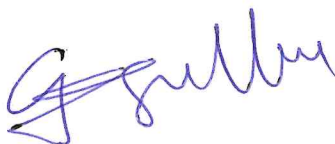
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**FRANCIS GIMARA. S.C**  
**CHAIRPERSON**



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**NELSON NERIMA**  
**MEMBER**



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**GEOFREY NUWAGIRA KAKIRA**  
**MEMBER**



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**CHARITY KYARISIIMA**  
**MEMBER**



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**ENG. CYRUS TITUS AOMU**  
**MEMBER**