

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

APPLICATION NO. 15 OF 2025

BETWEEN

BUU-LEPU FOUNDATION LTD::::::::::::::::::::::::::::::::: APPLICANT

AND

LIRA CITY COUNCIL::::::::::::::::::::::::::::::::: RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR REVENUE COLLECTION FROM OFF-LOADING OF GOODS WITHIN
LIRA CITY FOR THE FINANCIAL YEAR 2025/2026 UNDER
PROCUREMENT REFERENCE NUMBER LIRA606/SRVCS/25-
26/00015.**

**BEFORE: FRANCIS GIMARA SC, NELSON NERIMA, GEOFFREY
NUWAGIRA KAKIRA, PAUL KALUMBA, CHARITY KYARISIIMA, KETO
KAYEMBA, ENG. CYRUS TITUS AOMU; MEMBERS**

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Lira City Council (the "Respondent") initiated a procurement for the revenue collection from off-loading of goods within Lira City for the financial year 2025/2026 under procurement reference number: LIRA606/SRVCS/25-26/00015 using the open domestic bidding procurement method on April 11, 2025.
2. On April 28, 2025, the Respondent received bids from **BUU-Lepu Foundation Ltd** (the Applicant), **Richan (U) Ltd** and **Bukello Investments Uganda Ltd**
3. Upon completion of the evaluation process, the Respondent issued a Best Evaluated Bidder Notice on May 20, 2025, indicating **Bukello Investments Uganda Ltd** as the Best Evaluated Bidder at a contract price of **UGX 21,100,400 (Uganda Shillings Twenty-One Million One Hundred Thousand and Four Hundred only)**.
4. The Applicant, dissatisfied with the procurement process, lodged an administrative review complaint dated May 23, 2025, before the Respondent's Accounting Officer. The Respondent received the complaint on May 26, 2025
5. The Respondent's Accounting Officer made and communicated his administrative review decision to the Applicant via WhatsApp on June 10, 2025, dismissing the complaint for lack of merit. The Applicant received a physical copy of the administrative review decision from the Respondent's registry on June 16, 2025, at 4:00 pm.
6. The Applicant, aggrieved with the Respondent's decision, filed the instant Application on June 23, 2025, at 2:30 pm before the Tribunal, to review the Respondent's decision.

7. The Respondent filed a response on June 25, 2025 to oppose the application.
8. The Best Evaluated Bidder also filed a response on June 27, 2025 and opposed the application. The Best Evaluated bidder also raised a preliminary objection that the application is time barred.

B. SUBMISSIONS

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

Applicant

1. The Applicant criticised the Respondent for introducing a new evaluation criterion, specifically, the use of “*closing bank balance*” instead of “*active cash flow*” as originally required in the bidding criteria. The Applicant contended that although both Buu-Lepu and Bukello submitted compliant bank statements showing active cash flow, the Town Clerk shifted focus to the amount of closing balance, disadvantaging the Applicant. That this shift was not only arbitrary but also a breach of section 76(3) of the *Public Procurement and Disposal of Public Assets Act* and related Evaluation Regulations that prohibit modifying or adding to evaluation criteria after bid submission.
2. The Applicant also faulted the Respondent for rejecting its bid without first seeking clarification about its low bank balance, which was misinterpreted as a lack of financial capacity. The Applicant contended that the law empowers procuring and disposing entities to request clarifications when examining bids. The Applicant argued that, had the Respondent inquired from the Applicant, it would have demonstrated sufficient financial capacity, including evidence of ongoing contracts, substantial recent deposits, and access to credit. That the omission to seek clarification violated section 79 of

the PPDA Act and the principles of natural justice. The Applicant relied on the Tribunal decision in **Gat Consults Ltd and Lee Construction Ltd (JV) v PPDA and Ministry of Water and Environment, PPDA Appeals Tribunal Application No.6 of 2021** and the High Court decision in **Public Procurement and Disposal of Public Assets Authority v. Peace Gloria, Civil Appeal No. 006 of 2016**

3. The Applicant challenged the Respondent's refusal to provide the Applicant with requested bid documents, both its own and those of Richan (U) Ltd and Bukello Investments Uganda Ltd, even after proof of payment for access fees under the *Access to Information Act 2005*. That the impugned refusal, despite written requests and follow-ups, obstructed the Applicant's ability to prepare for its application before the Tribunal. Such conduct, the Applicant argued, contravenes constitutional rights to information and fair hearing under Articles 28, 41, and 42 of the Constitution, and has been previously condemned by both the Tribunal in **Sadeem Al Kuwait General Trading & Construction Co. & Dott Services Ltd JV v. Uganda Cancer Institute and PPDA, Application No. 24 of 2018**, at paragraph 7.8 and **Gat Consults Ltd and Lee Construction Ltd (JV) v PPDA and Ministry of Water and Environment, PPDA Appeals Tribunal Application No.6 of 2021**, at paragraph 26 and High Court in **Public Procurement and Disposal of Public Assets Authority v. Peace Gloria, Civil Appeal No. 006 of 2016**.
4. The Applicant also decried the Respondent's continuous breach of the Standstill Period and blatant display of bias against the Applicant. The Applicant submitted that the Respondent signed a contract with *Bukello Investments Ltd* during the standstill period, even after being informed of the Applicant's intention to seek further review from the Tribunal, which was a direct violation of procurement laws. The Applicant also accuses the Respondent of long-standing bias and favouritism toward Bukello, noting a prior similar award in 2023 that excluded the Applicant. The Applicant

contended that these actions, including failure to facilitate administrative review and lack of transparency, reflect a deliberate pattern of discrimination and conflict of interest by the Respondent.

5. Regarding the preliminary objection, the Applicant argued that the Preliminary Objection is an exercise in futility. The Applicant asserted that its application to the Tribunal was filed within the permissible period under sections 106(7), 106(8), and 115(2)(a) of the *Public Procurement and Disposal of Public Assets Act*. The Applicant highlighted that having filed its Complaint on May 25, 2025, it paid the mandatory Administrative Review Fees on 29th May 2025. That, based on standard legal computation, the 10-calendar-day period for the Accounting Officer to respond began on either 29th or 30th May 2025, expiring on 7th or 8th June 2025. That since the Accounting Officer communicated a decision to the Applicant, the Applicant became entitled to approach the Tribunal under section 115(2)(a) of the Act, i.e. that the Applicant had ten working days from the date of receipt of the decision of the Accounting Officer to make an application to the Tribunal.
6. The Applicant submitted that the 10-working-day timeframe for filing with the Tribunal commenced on Tuesday, June 10 2025, given that Monday, June 9 2025, was a public holiday. Thus, the filing on June 23 2025, fell squarely within the statutory period. That even if the Respondent's WhatsApp communication of June 10 2025, were deemed timely, the application would still be valid under regulation 9(1)(b) & (c) of the 2023 *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations*. Therefore, under either legal interpretation, the Applicant's Application No. 15 of 2025 was filed within time and is properly before the Tribunal. The Applicant prayed that the Preliminary Objection be overruled.
7. The Applicant prayed for the annulment of the award to ***Bukello Investments Uganda Ltd***, a declaration that the evaluation was unlawful, recognition of Buu-Lepu as the best evaluated bidder,

and a directive for the contract to be awarded to the Applicant. The Applicant also prayed that the Tribunal exercise its powers to ensure accountability and restore legality in the procurement process.

Respondent

1. The Respondent adopted its written submissions and prayed that the Application be dismissed with costs.
2. The Respondent raised a Preliminary Objection and contended that the instant application was incompetent and ought to be struck out. The Respondent submitted that the Administrative review application was communicated to the Applicant on WhatsApp on June 10, 2025, and as such, the application ought to have been filed on June 20, 2025, before the Tribunal. That the instant application was filed three days outside the stipulated statutory time frame without seeking orders for extension of time to file the application.
3. The Respondent contended that the evaluation criterion of “*active cash flow*” was intended to assess the capacity of bidders in terms of financial strength to pay the stated council reserve price of UGX 20,100,000/=/. That the analysis of the Applicant’s bank statement portrayed few transactions for the last three months compared to that of the best evaluated bidder, and that no foreign evaluation criteria was used in the evaluation of bids.
4. The Respondent argued that the Applicant had not adduced any evidence of bias or conflict of interest or that a contract was entered into with the Best Evaluated Bidder within the suspension period. That the Tribunal should ignore such allegations without evidence.
5. The Respondent prayed that the application be dismissed with costs and that the Tribunal uphold the award to ***Bukello Investments Uganda Ltd.*** as the best evaluated bidder.

Best Evaluated Bidder

1. **Bukello Investments Uganda Ltd**, the Best-Evaluated Bidder, reiterated the contents of its written submission filed on June 25, 2025, to the extent that it was rightfully awarded the contract as the best-evaluated bidder and prayed that the Application be dismissed with costs.

C. THE ORAL HEARING

The Tribunal held an oral hearing via Zoom software on July 9, 2025. The appearances were as follows:

1. **George Gioldie Aporo**, the Applicant's authorised representative, represented the Applicant. In attendance was **Odongo Louis Gerald**, a Director of the Applicant.
2. **Counsel Kakona Joel Geoffrey** represented the Respondent. **Miir Tom**, the deputy town clerk; **Ojuk Denis**, the senior procurement officer; and **Etol Boniface**, the secretary of the contracts committee.
3. The Best Evaluated Bidder was represented by **Okello Patrick**, the Managing Director of Bukello Investment U Ltd. **James Adupa**, the Finance Officer of the Best Evaluated Bidder, was in attendance.

D. RESOLUTION BY THE TRIBUNAL

Issues

The Application raised eight issues for determination of the Tribunal, which have been reframed as follows:

- (i) *Whether there is a competent application before the Tribunal*
- (ii) *Whether the Respondent erred in law and fact in using Undisclosed Criteria to Reject the Applicant's bid.*

- (iii) *Whether the Respondent's Accounting Officer erred in law and fact in introducing a new evaluation criterion of "level of cash flow" and using the same to dismiss the Applicant's application for Administrative Review.*
- (iv) *Whether the Respondent erred in law and fact in failing to seek clarification from the Applicant before rejecting its bid.*
- (v) *Whether the Respondent erred in fact and law in ignoring to avail the Applicant copies of bid documents it requested for to enable it effectively apply to the Tribunal.*
- (vi) *Whether the Respondent Breached the Standstill Obligations.*
- (vii) *Whether the Respondent violated the principles of Fairness, Transparency and Accountability in the Act.*
- (viii) *Whether the Respondent has been biased and Discriminatory against the Applicant and in favour of Bukello Investments Ltd.*
- (ix) *What remedies are available to the parties*

Resolution of Issues

Issue No. 1

Whether there is a competent application before the Tribunal?

1. The pertinent question to be determined by the Tribunal at this point is whether there is a valid and competent Application before the Tribunal. The determination of the competence of the application is premised on the determination of two significant questions: *whether the Applicant has locus standi to file this application with the Tribunal, and whether the application was filed within time.* 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.**
2. Section 115(1)(a)-(c) of the *Public Procurement and Disposal of Public Assets Act Cap 205* and regulation 9(1)(a)-(c) of the *Public Procurement and Disposal of Public Assets (Administrative Review)*

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Regulations, 2023 govern the incidences of filing applications before the Tribunal.

3. Section 115 (2)(a)-(c) of the *Public Procurement and Disposal of Public Assets Act Cap 205* prescribes the timelines for filling applications before the Tribunal and states as follows;

The application shall

- a) *for section 106 (7), be made within ten working days from the date of receipt of the decision of the Accounting Officer.*
 - b) *for section 106 (8), be made within ten days from the date of expiry of the period specified in the section; and*
 - c) *for section 106 (9), be made within ten days from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place*
4. The Applicant, dissatisfied with the procurement process, lodged an administrative review complaint dated May 23, 2025, before the Respondent's Accounting Officer. The Complaint was received on May 26, 2025.
5. Having received the Applicant's complaint on May 26, 2025, the Accounting Officer was statutorily mandated to make and communicate a decision, in writing, addressed to the bidder who made the complaint. The time of reckoning commenced on **May 27, 2025** and elapsed on **June 5, 2025**. See section 106 (7) of the *Public Procurement and Disposal of Public Assets Act Cap 205*.
6. However, the Respondent's Accounting Officer made his Administrative Review Decision on June 10, 2025. This decision was made outside the prescribed statutory timelines and was null, void, and contrary to the law. It is no decision at all and inconsequential. See **Application No. 31 of 2024 - Jilk Construction Company Limited v Kira Municipal Council**,

Application No. 21 of 2024; and *Raxio Data Centre SMC LTD v Bank of Uganda Application No. 21 of 2024.*

7. We have observed inconsistencies regarding the exact date when the decision dated June 10, 2025, was communicated to the Applicant. In paragraph 5.12 of the Application, the applicant states that the Respondent's Town Clerk, using telephone No. +256-782-019***, sent the impugned decision on June 10, 2025, but the Applicant only saw the message on June 12, 2025, and attaches proof of receipt in **Annexure E** of the Application.
8. The Applicant also attached **Annexure F**, which is a copy of the June 10, 2025 decision, but contains a handwritten inscription indicating that Odongo Louis Gerald, the Applicant's managing director, received the said physical copy of the decision from the Respondent's registry on June 16, 2025, at 4:00 pm.
9. In our view, although the act of making and communicating an administrative review decision by an Accounting Officer to a complainant are simultaneous, in the instant application, the date of receipt of the administrative review decision by the applicant is immaterial because the impugned decision was already made out of the prescribed statutory timelines, and was therefore null and void.
10. A bidder who submits an administrative review complaint to the entity should not wait to receive an Accounting Officer's decision once the 10 days prescribed in section 106 (7) of the *Public Procurement and Disposal of Public Assets Act Cap 205* have elapsed. Such a bidder should act with haste and immediately proceed to file an application before the Tribunal within 10 days as provided for under the law. See Section 106 (8) and 115(2)(b) of the *Public Procurement and Disposal of Public Assets Act Cap 205* and **Application No. 15 of 2024 - Multiplex Limited v Masaka City.**
11. In the instant application, the time prescribed for the Respondent's Accounting Officer to make and communicate a decision elapsed on

June 5, 2025. The Applicant was therefore expected to act with haste and file an application for review of the Respondent's decision (including the failure to make a decision within statutory timelines) within ten days from the date of expiry of the ten days. The time of reckoning commenced on **June 6, 2025** and elapsed on **June 15, 2025**.

12. We have observed that the date of **June 15, 2025**, falls on a Sunday, a day on which the offices of the Tribunal are closed, and it is the last day within which the Application was to be filed, the next working day being **June 16, 2025**, became the last date on which the Applicant ought to have filled its application before the Tribunal. See regulation 33(b) of the *Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016* and section 34(1)(b) of the *Interpretation Act, Cap 6*.
13. We are not convinced by the Applicant's submissions and to the effect that it was at liberty to file an application to the Tribunal under any of the two limbs stated in section 115 (2)(a) or 115(2)(b) of the *Public Procurement and Disposal of Public Assets Act*.
14. The position of the law is that if a bidder is dissatisfied with the decision that an Accounting Officer made and communicated within the period specified in subsection 106(7), that is ten days of receipt of the complaint, the bidder is entitled to apply to the Tribunal under sections 115(2)(a) of the *Public Procurement and Disposal of Public Assets Act* within ten working days from the date of receipt of the Accounting Officer's decision or;
15. That if a bidder filed a complaint to the entity and the Accounting Officer did not make a decision or communicate a decision within the period specified in subsection 106(7) that is ten days of receipt of the complaint, the bidder is entitled to apply to the Tribunal under sections 115(2)(b) of of the *Public Procurement and Disposal of Public Assets Act* within ten days from the date of expiry of the

period for the Accounting Officer to make a decision as specified in the section.

16. A bidder cannot *cherry-pick* the most beneficial avenue of filing an application to the Tribunal. The facts and law must support the legal route taken by the applicant to file an application to the Tribunal because each avenue applicable to the Tribunal for review of a decision of a procuring and disposing entity as prescribed in sections 115(1)(a), (b) and (c) of the *Public Procurement and Disposal of Public Assets Act* has a different timeframe prescribed in sections 115(2)(a),(b) and (c) of the *Public Procurement and Disposal of Public Assets Act*.
17. In the instant application, the Respondent's Accounting Officer, having received the complaint on May 26, 2025, ought to have made a decision on or before **June 5, 2025**. This means that the Applicant, having not received the Respondent's decision on June 5, 2025, ought to have filed an Application in the Tribunal on or before June 16, 2025, as sections 106(8) and 115(2)(b) of the Act became applicable.
18. It is therefore our finding that the instant application filed on **June 23, 2025**, was filed out of the statutory time frames and contrary to *Section 115(2)(b) of the Public Procurement and Disposal of Public Assets Act Cap 205*.
19. The Tribunal has consistently held that timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no enabling provision within the Public Procurement and Disposal of Public Assets Act that accords the Tribunal the power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See ***Eclipse Edisoil JVC Ltd v Napak District Local Government, High Court (Civil Appeal) No. 05 of 2024, (arising out of Tribunal Application No. 33 of 2023 - Eclipse Edisoil JVC Ltd v Napak District Local***
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Government); Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal 31 of 2000) [2000] UGCA 2; and Application No. 4 of 2025, D&D Law Publishing House Limited Vs. Uganda Printing and Publishing Corporation.

20. The instant Application is time-barred and incompetent. In the circumstances, we shall not delve into the merits of the Application.
21. **This issue is resolved in the negative.**

E. DISPOSITION

- 1) The Application is struck out.
- 2) The Tribunal's June 23, 2025, suspension order is vacated.
- 3) Each party shall bear its own costs.

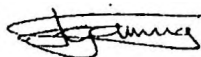
Dated at Kampala this 14th day of **July, 2025**.



**FRANCIS GIMARA SC.
MEMBER**



**GEOFFREY NUWAGIRA KAKIRA
MEMBER**



**CHARITY KYARISIIMA
MEMBER**



**NELSON NERIMA
MEMBER**



**PAUL KALUMBA
MEMBER**



**KETO KAYEMBA
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