

THE REPUBLIC OF UGANDA

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS
TRIBUNAL**

APPLICATION NO. 10 OF 2023

BETWEEN

APONYE HOUSE LIMITED ===== APPLICANT

AND

UGANDA REVENUE AUTHORITY =====RESPONDENT

**APPLICATION FOR REVIEW OF THE DECISION OF UGANDA REVENUE
AUTHORITY IN RESPECT OF THE PROCUREMENT FOR PROVISION OF
ADDITIONAL PARKING SLOTS FOR KAMPALA METRO OFFICE UNDER
PROCUREMENT REFERENCE NUMBER URA/CSD/NONCONS/22-
23/01831.**

**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. On 6th February 2023, the Uganda Revenue Authority (the Respondent), through publication of a bid notice, initiated a procurement for **provision of additional parking slots for Kampala Metro Office under Procurement Reference Number URA/CSD/NONCONS/22-23/01831**, using Restricted Domestic Bidding Method. The bid notice was published in the New Vision newspaper of 6th February 2023 on page 47.

On 22nd March 2023, Invitations to Bid (ITBs) and the bidding document were sent by email by the Respondent, to 4(four) shortlisted providers namely: *Meera Investments Limited, Uganda House Investments Limited, Aponye House Limited, and Apple Properties Limited.*

2. On 30th March 2023, a pre-bid meeting was held at the premises of the Respondent. The meeting was attended by Wepukhulu Joshua, the Estates Officer of the Respondent, Akampurira Alex a Civil Engineer with Aponye House Limited and Abdul Kadhi the property manager of *Meera Investments Limited.*
3. On 6th April 2023, only one bid, being that of *Meera Investments Limited* was received by the Respondent at 9:40 am before the bid AA.
4. On 13th April 2023, the Applicant filed a written complaint with the Accounting Officer of the Respondent *inter alia*, challenging the refusal to accept the submission of its bid.
5. In a letter dated 20th April 2023, the Accounting Officer dismissed the complaint, and directed the Procurement and Disposal Unit to proceed with the procurement process. The Applicant avers that the said decision of the Accounting officer was never communicated.

Page 2 of 11

6. The Applicant being dissatisfied with the decision of the Accounting Officer, filed Application **No.10 of 2023** with the Tribunal on **9th May 2023**, seeking to review the decision of the Respondent.

B. APPLICATION TO THE TRIBUNAL

1. The Applicant averred that it was unfairly denied to submit its bid in total disregard of the basic principles of public procurement and disposal of public assets.
2. The Applicant averred that the Procurement and Disposal Unit (PDU) of the Respondent offended the provision of **Section 67** of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) on submission methods and section 69 of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) Act, 2003 (as amended) that provides for bid receipt and opening.
3. The Applicant contended that the Respondent's procurement process for provision of Kampala Metro Tax Office under procurement reference number URA/CSD/NCONS/21-22/01385/02398 (*an earlier procurement conducted by the Respondent*) had all through the procurement activities violated the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended).
4. The Applicant prayed that the Tribunal finds merit in its application.

C. REPLY TO THE APPLICATION

The Respondent

1. The Respondent raised a preliminary objection that the instant Application before the Tribunal is time barred and is thus not properly brought before the Tribunal.

2. The Respondent cited the case of ***Yaya Farajallah versus Obur Ronald & Others HCCA No. 0081 of 2018*** where Justice Mubiru stated that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit.
3. The Respondent relied on section 91I(2)(b) of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) and the precedent of ***Uganda Revenue Authority versus UCDA Civil Appeal No. 31 of 2000*** where court held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.
4. The Respondent prayed that the Tribunal finds the application to be time barred; and that this application be dismissed with costs to the Respondent.

D THE ORAL HEARING


The Tribunal held an oral hearing on **23rd May 2023** via zoom software. The appearances were as follows:

1. Mr. Akampurira Alex represented the Applicant.
2. The Respondent was represented by Counsel Ndagire Patricia and Tracey Ahumuza.
3. The Best Evaluated Bidder was represented by Counsel Nelson Walusimbi.

E. SUBMISSIONS

During the oral hearing, the Applicant and Respondent highlighted and referred the members of the Tribunal to their written submissions that had been submitted earlier as follows:

Applicant

1. The Applicant averred that it was unfairly denied to submit its bid in total disregard of the basic principles of public procurement and disposal of public assets.
2. The Applicant averred that the Procurement and Disposal Unit (PDU) of the Respondent offended the provision of section 67 of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) on submission methods and section 69 of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended) that provides for bid receipt and opening.
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4. The Applicant prayed that the Tribunal finds merit in its application. 

Respondent

1. The Respondent raised a preliminary objection that the instant Application before the Tribunal is time barred and is thus not properly brought before the Tribunal.

2. The Respondent cited the case of ***Yaya Farajallah versus Obur Ronald & Others HCCA No. 0081 of 2018*** where Justice Mubiru stated that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit.
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4. The Respondent prayed that the Tribunal find the application to be time barred; and that this application be dismissed with costs to the Respondent.

F. RESOLUTION BY THE TRIBUNAL

Issues

We now revert to the substantive issues in this application:

- i. *Whether there is a competent application before the Tribunal?*
- ii. *Whether the Accounting Officer of the Respondent erred in law and fact when he omitted to make and communicate an administrative review decision within statutory timelines [deduced from summary statement of complaint (1)]*
- iii. *Whether the refusal to accept the Applicant's bid submission was lawful [deduced from summary statement of complaint (2)]*
- iv. *Whether the Respondent erred in law and fact when it delayed to open bids as stipulated in the issued bidding document [deduced from summary statement of complaint (3)]*

- v. Whether the impugned procurement was conducted in contravention of the basic principles of public procurement [deduced from summary statement of complaint (4 & 6)]
- vi. Whether the choice of method of procurement was lawful [deduced from summary statement of complaint (5)]
- vii. What reliefs are available to the parties?

Resolution of Issues

Issue 1

Whether there is a competent application before the Tribunal?

1. The Tribunal is duty bound to inquire into the existence of the facts 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. In this regard therefore, one of the pertinent questions to be determined by the Tribunal at the onset is whether there is a valid and competent Application before the Tribunal. The determination of the competence of the application is *inter alia*, premised on the determination of 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**
3. The timelines for filling an application before the Tribunal are stated in section 91(2)(a) - (c) of the *Public Procurement and Disposal of Public Assets Act, 2003* (as amended). We reviewed the entire procurement action file and all pleadings in this Application.

4. The compliant before the Accounting Officer was filed on April 13, 2023. The email address of the Applicant indicated in its compliant is aponyehouseltd@gmail.com. The email address of the Applicant's authorised representative indicated in the invitation to bids and reply thereto is akmpurirabsc@gmail.com.
5. The decision of the Respondent's Accounting Officer was by a letter dated April 20, 2023, attached to an email sent using the email address dogwang@ura.go.ug to aponyehouseltd@gmail.com and akmpurirabsc@gmail.com on April 20, 2023 at 9:18pm.
6. The Respondent sent the administrative review decision to the correct email aponyehouseltd@gmail.com, and a wrong email address akmpurirabsc@gmail.com.
7. The tribunal in ***Kasokoso Services Ltd v Jinja School of Nursing and Midwifery, Application No. 13 of 2021*** handled a similar circumstance where electronic communications between a procuring and disposing entity and a bidder was sent to the wrong or incorrect email address. The Tribunal held that where the wrong email address is used, then questions or discussions on receipt or propriety of the receipt of an email cannot arise because, there was no email sent to the intended recipient and none could be received.
8. Clearly, the email addresses akmpurirabsc@gmail.com was not the known email addresses of the Applicant but aponyehouseltd@gmail.com was the Applicant's email address to which the Respondent duly dispatched the decision. It is therefore our finding that the email to aponyehouseltd@gmail.com was dispatched to the correct email address .

9. An email communication is a valid data message as defined in the *Electronic Transactions Act 8 of 2011*. Under section 8(2) of the Act, a person seeking to introduce a data message or an electronic record in legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be. See ***Application no. 17 of 2021; Samanga Elcomplus JV v Uganda Electricity Distribution Company Limited***.
10. In the instant case, Respondent has produced the printed email addressed to a correct email address of the Applicant. The Applicant has not disputed the email address aponyehouseltd@gmail.com.
11. The decision of the Respondent's Accounting Officer was communicated to the Applicant on April 20, 2023.
12. Under sections 89 (8) and 91I(2) of the *Public Procurement and Disposal of Public Assets Act*, a bidder dissatisfied with decision of the Accounting Officer must make an application to the Tribunal within ten working days from the date of receipt of the decision of the Accounting Officer. The ten working days started to run on April 21, 2023 and lapsed on May 5, 2023. The Applicant ought to have filed the Application not later than May 5, 2023. The instant Application lodged with the Tribunal on May 9, 2023, was therefore filed out of the timeline set by law and is incurably defective and incompetent.
13. Time limits set in the *Public Procurement and Disposal of Public Assets Act* were set for a purpose, are couched in mandatory terms, are a matter of substantive law, are not mere technicalities and must be strictly complied with. 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 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 at this point in as far as

the matter is concerned. See *Application No.3 of 2023 Maxol Uganda Limited v Uganda Electricity Generation Company Limited*.

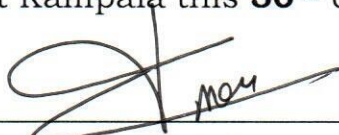
14. Issue no. 1 is resolved in the negative. The Application, being incompetent, will be struck out. There is no need to delve into the merits of the Application.

d


G. DISPOSITION

1. The Application is struck out.
2. The suspension order dated May 9, 2023 is vacated.
3. The Respondent may continue with the procurement.
4. Each party to bear its own costs.

Dated at Kampala this **30th** day of **May, 2023**.



FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



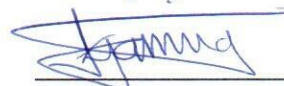
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER