

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

**REGISTRY APPLICATION NO. 22 OF 2022**

**BETWEEN**

**MBARARA CITY SOUTH BODA BODA  
OPERATORS SACCO :::::::::::::::::::::::::::::::::::APPLICANT**

**AND**

**MBARARA CITY COUNCIL:::::::::::::::::::::::::::::::::RESPONDENT**

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF  
THE PROCUREMENT BY MBARARA CITY FOR COLLECTION OF  
REVENUE FROM NYAMITYOBORA WEEKLY BIKKADE MARKET  
VIDE PROCUREMENT REF NO. MBAR852/SRVCS/2022-  
2023/00001/A**

**BEFORE: NELSON NERIMA; THOMAS BROOKES ISANGA;  
GEOFFREY NUWAGIRA KAKIRA; PAUL KALUMBA; AND CHARITY  
KYARISIIMA, MEMBERS**

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Mbarara City, the Respondent, invited eligible bidders to participate in the procurement of collection of revenue from Nyamityobora Weekly Bikkade Market vide procurement Ref No. MBAL852/SRVCS/2022-2023/00001/A on Friday, May 13, 2022.
2. Bids were received from 3 bidders namely *Mbarara City South Boda Boda Operators SACCO*, *Nyamityobora Bikkade Vendors Cooperative Society Ltd* and *Byabo Mak Suppliers & Contractors Ltd*. The Bids were opened on June 2, 2022 at 11:00am.
3. After the evaluation of bids, *Nyamityobora Bikkade Vendors Cooperative Society Ltd* was recommended for award of the contract at a total weekly remittance of UGX. 1,519,000/= exclusive of VAT.
4. The Best Evaluated Bidder Notice was displayed on June 28, 2022 with a removal date of July 11, 2022.
5. The Best Evaluated Bidder Notice indicated that the bid from *Mbarara City South Boda Boda Operators SACCO* (Applicant) failed for the following reasons:
  - a) Lacked proper address i.e. name, telephone number and physical contact.
  - b) Lacked a list of directors/proprietors and their current passport photographs
  - c) Lacked a copy of valid certificate of registration or equivalent.
  - d) Lacked a copy of registered powers of attorney (only applicable to registered companies or co-operative society) and their bid was not signed by anybody hence not authentic and non-existent.

- e) Lacked copy of memorandum and articles of association or a copy of byelaws in case it is a company/co-operative society respectively.
6. The Applicant, being dissatisfied with the outcome of the procurement process, applied for administrative review to the Accounting Officer of the Respondent on July 7, 2022.
7. The Applicant filed the instant application with the Tribunal on July 27, 2022, contending that the Accounting Officer had not issued a decision within ten days as the law requires.
8. The Applicant denied and challenged the reasons given for the failure of their bid and raised the following issues for determination by the Tribunal:
- 1) *Whether the Accounting Officer erred in law and fact by failing to deliver the decision within ten days as required by law?*
  - 2) *Whether the evaluation committee erred in law and fact having found No. 1,2,3,4 & 5 as reasons for our co-operative being unsuccessful whereas not.*
  - 3) *Whether the entity erred in law and fact to declare Nyamityobora Market Vendors as the best evaluated bidder while indebted to the same council.*
  - 4) *Whether the Applicant be declared the best evaluated bidder.*
  - 5) *Whether the Applicant be refunded the administrative review fees, costs of this application and other relief.*
9. The Applicant annexed copies of documents it claims to have submitted as part of its bid.
10. The Respondent filed a response and contended as follows:
- 1) The Applicant had no authority either through a resolution or minutes of a meeting of the members to engage in the bidding as mandated under article 2 of its bye-laws.

- 2) The Applicant has no authority to institute this application before the Tribunal and did not have authority to institute the same before the Accounting Officer.
  - 3) That based on the above the Applicant has no locus standi to institute this application.
  - 4) The Applicant has not attached the decision that it claims to be aggrieved by.
  - 5) The applicant's bid was not substantially compliant and responsive as the annexures to the application were not part of the bidding documents.
  - 6) The documents attached to the bid were not signed or dated by the Applicant.
  - 7) The decision of the Accounting Officer was delivered in time.
  - 8) *Nyamityobora Market Vendors* is not the best evaluated bidder. The best evaluated bidder is *Nyamityobora Bikadde Vendors Cooperative Society Ltd.*
11. The Tribunal invited *Nyamityobora Bikadde Vendors Cooperative Society Ltd* to make a response to the application and also attend the hearing if they so wished. They did not respond.

**C. THE ORAL HEARING**

1. The Tribunal held an oral hearing on 10<sup>th</sup> July 2022 using the Zoom online platform. The appearances were as follows:
  - 1) Ms. Kasande Daphine, Counsel for the Applicant.
  - 2) Bintukwaga Ronald Kiggundu, Chairman of the Applicant, attended.
  - 3) Timothy Arinaitwe, Counsel for the Respondent.
  - 4) Abirebe Assy Tumwesigire the City Clerk of the Respondent, attended.

The Tribunal noted that *Nyamityobora Bikadde Vendors Cooperative Society Ltd* though invited did not attend the hearing.

**D. SUBMISSIONS**

1. The parties highlighted their written submissions as follows:

**Applicant**

2. Counsel for the Applicant submitted that the Applicant lodged an application for administrative review with the Accounting Officer of the Respondent on July 7, 2022. That, contrary to section 89(7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer of the Respondent did not make or communicate any decision.
3. Counsel submitted that the Applicant met all the criteria for eligibility and fully satisfied each of the requirements. That neither the Accounting Officer nor the Respondent has authority to inquire into the internal administrative affairs of the Applicant.
4. Counsel prayed that the Tribunal quashes the decision of the Respondent; cancel the procurement and order the Respondent to pay the Applicant's costs.

**Respondent**

5. Counsel for the Respondent raised a preliminary objection that the Applicant does not have the mandate to bid in the procurement or *locus standi* to institute this application. Counsel submitted that this procurement does not fall under any of the objects of the Applicant as stated in its bye-laws. That contrary to its bye-laws, the Applicant had not obtained permission from its members, which had to be evidenced by either a resolution or minutes of the meeting. That without such authority this application is a frolic of a few busy bodies. Counsel cited *Njau and others v City Council of Nairobi* [1976] 1 EA 397 at page 407. He therefore submitted that the Applicant has no cause of action. That the lack of authority to engage in

this procurement is an illegality brought to the attention of this Tribunal.

6. Counsel submitted that the Accounting Officer's decision was delivered on 18<sup>th</sup> July 2022, which was the last day according to **Section 34 (1) (b) of the Interpretation Act**.
7. Counsel submitted that the Applicant's bid was non-responsive with material deviations as it did not meet the mandatory requirements. That the Applicant has annexed to the application annexures that were not included in its bid. That crucial documents like the bid submission sheet or the list of services and price schedule were not signed or dated by the applicant and even those annexed to the Application were are incomplete.
8. Counsel prayed that the application be dismissed with costs.

**F. RESOLUTION BY THE TRIBUNAL**

**Preliminary objections**

1. The gist of the Respondent's objection is three fold;
  - (i) That the Byelaws of the Applicant do not permit the Applicant to indulge in bidding
  - (ii) The Applicant did not have the authorisation to institute administrative review process before the Accounting Officer and the Tribunal
  - (iii) That the Applicant did not attach the decision which it seeks the Tribunal to review.
2. A Savings and Credit Cooperative Society (SAACO) is established for the purpose of promoting and mobilising savings and extending credit and financial services to its members. See *Section 55A (1) of the Cooperative Societies amended by Act 5 of 2020*.

3. Under section 55A(4)(b) and (c) of the *Cooperative Societies Act* as amended by Act 5 of 2020, in the discharge of its functions, a Savings and credit co-operative society (SACCO) is empowered to *inter alia*, enter into contracts, institute and defend lawsuits and other legal proceedings.
4. According to article 2 of its bye-laws, the main objects of the Applicant revolve around savings, financial services. However, article 2 (e) provides that for the attainment of the objects, the society may do all acts and things that are permissible under the Co-operative Act, the Co-operative Regulations and the bye-laws.
5. We do not agree that there should be a specific object for this type of procurement in the bye-laws of the co-operative society. It suffices that the co-operative society carries out activities which are allowed either expressly or impliedly under the Co-operative Societies Act, the Co-operative Societies Regulations and the bye-laws. The Applicant's participation in this procurement, which is a business opportunity, can be considered incidental to the attainment of the main objects of the Applicant.
6. Any dispute about exceeding the mandate of the society is an internal management matter for the society members and the executive.
7. At common law, a person dealing with or acting in good faith and without knowledge of any irregularity, need not inquire about the formality of the internal proceedings of the corporation, but is entitled to assume that there has been compliance with the articles and bye-laws. This principle, is known as the 'indoor management rule'. Per Ssekaana, J in ***HIGH COURT MISCELLANEOUS APPLICATION NO. 680 OF 2021-WANDERA STEPHEN VERSUS GOODMAN AGENCIES LTD & OTHERS.***

8. An administrative review as filed by the Applicant falls within the ambit of the statutory power of the co-operative society to institute and defend lawsuits and other legal proceedings under section 55A (4) (c) of the *Cooperative Societies Act* as amended by Act 5 of 2020.
9. In ***Kasaala Growers Co-operative Society v Kakooza & Anor (Supreme Court Civil Application 19 of 2010)*** it was held that a resolution of the board of directors of a company is not always necessary for institution of a suit in the name of the company. Any director who is competent to exercise the powers vested in the board of directors of the company can give instructions for filing a suit in the name the company. Also see ***United Assurance Co. Ltd. - Vs - A. G., Civil Appeal No. 1 of 1986.***
10. In the instant case, the application to the Accounting Officer and this application were signed by Bintukwaga Ronald Kiggundu, chairman of the Applicant. In the absence of any evidence to the contrary, we are entitled to take it that the said chairman was duly acting on behalf of the Applicant.
11. Regulation 6(2) (i) of the *Public Procurement and Disposal of Public Assets (Tribunal Procedure) Regulations, 2016* requires that an application to the Tribunal shall be accompanied by *inter alia* the decision to be reviewed, *where applicable*. In the instant case, the Applicant complains that the Accounting Officer failed to make and communicate a decision. As far as the Applicant is concerned, there is no decision of the Accounting Officer to be reviewed. The Applicant cannot be faulted for not annexing any decision of the Accounting Officer. In any case, the requirement to annex a decision is found in the regulations but not the parent Act. Therefore, even if the requirement to annex the decision was applicable, failure to do so would be a non-fatal technicality which is easily curable by the Tribunal obtaining the decision from the concerned entity/Respondent.



12. In conclusion, **we find no merit in the preliminary objections, which are accordingly overruled.**

Substantive issues

13. In view of the pleadings and submissions, we have recast the issues as follows:
- 1) Whether the Accounting Officer failed to make and communicate a decision within ten days as required by law?
  - 2) Whether the Respondent erred in law and fact when it found that the Applicant's bid had failed.
  - 3) Whether the Respondent erred in law and fact to declare *Nyamityobora Bikadde Vendors Cooperative Society Ltd.* as the best evaluated bidder while indebted to the same council.
  - 4) What remedies are available to the parties?

**Issue no. 1**

***Whether the Accounting Officer failed to make and communicate a decision within ten days as required by law?***

14. Under Section 89 (7) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021, the Accounting Officer must make and communicate a decision within ten (10) days of receipt of a complaint. Upon receipt of the Applicant's complaint on July 7, 2022, the Accounting Officer had a statutory duty to make and communicate an administrative review decision by or before **Monday, July 18, 2022** (This is because the last day being July 17, 2022 was a Sunday and is an excluded day under Section 34(1) (b) of the *Interpretation Act cap 3*).
15. The Respondent contended in its response to the application that the decision of the Accounting Officer was delivered in

time. The Respondent attached Annexure “R” to its submissions, which is said to be the decision of the Accounting Officer dated 15<sup>th</sup> July 2022. At the top of the document is a handwritten endorsement that the document was purportedly received by someone on 18<sup>th</sup> July 2022 who affixed a signature and telephone number. The Respondent has not identified that person or even the person who delivered the letter. The Respondent has therefore not proved that the decision was made and communicated to the Applicant within the statutory time.

16. Therefore, by July 27, 2022 when the Applicant filed the instant Application before the Tribunal, no decision had been communicated by the Accounting Officer contrary, to *Section 89(7) of the Public Procurement and Disposal of Public Assets Act 2003*. See *Meera Investments Limited vs URA & Numani Mubiakulamusa, Application No.18 of 2022*, page 7, para 12.
17. Under section 89(8) of the *Public Procurement and Disposal of Public Assets Act* as amended, where an Accounting Officer does not make or communicate a decision within the specified period, a bidder may make an application to the Tribunal. Under section 91 I (2) (b), of the *Public Procurement and Disposal of Public Assets Act* as amended, such application to the Tribunal shall be made within ten (10) days from the date of expiry of the period within which the Accounting Officer should have communicated his decision.
18. This application, having been made on 27<sup>th</sup> July 2022 was within the time prescribed under section 89(8) of the *Public Procurement and Disposal of Public Assets Act* as amended.

**Issue no. 1 is answered in the affirmative.**

**Issue no. 2**

**Whether the Respondent erred in law and fact when it found that the Applicant's bid had failed**

19. The reasons for failure of the Applicants bid were given in the best evaluated bidder notice referred to in the brief facts above. The reasons revolve around alleged failure to submit eligibility documents; and alleged failure to sign the bid.
20. The bidders were expected to bid for the services by completing, signing and returning the bid submission sheet, the list of services and price schedule in Part 2 and the documents evidencing eligibility. See part 1: Bidding procedures on page 4 of the bidding document.

Eligibility documents

11. The eligibility criteria and documents evidencing eligibility are stated on page 5 of the bidding document, *Part 1: Bidding Procedure, 3: Eligibility Criteria (1)-(7)* as follows:

Documents Evidencing Eligibility:

*You are requested to submit copies of the documents as evidence of following of your eligibility and sign the declaration in the Bid Submission Sheet:*

1. *Proper address i.e. Name, telephone number and Physical Contact.*
2. *A copy of original receipt in the proposal document as evidence of having paid non- refundable fees for obtaining the bid document.*
3. *A fully stamped recommendation letter from either City Town Clerk, Division Town. (Only applicable to Individuals/ Natural persons).*

4. *A list of directors / proprietors and their current passport photographs.*
5. *A copy of identification in form of National Identity Card, passport, driving permit. (Only applicable Individuals/ Natural persons and registered companies)*
6. *A copy of valid certificate of registration or equivalent. (Only applicable to Companies or cooperative society).*
7. *A copy of registered powers of Attorney. (Only applicable to registered Companies).*
8. *Income tax clearance certificate addressed to the Procuring and disposing entity. (Only applicable to registered Companies).*
9. *Current trading licence for the year 2022 and is applicable to all bidders. (Both applicable to Individuals/ Natural persons and registered companies).*
10. *Bid security of Ugx. 1,000,000/= in form of Bank draft only from recognised commercial bank.*
11. *Two copies of submitted bids.*
12. *Memorandum and Articles of Association or a Copy of byelaws in case it is a Company/ Cooperative society respectively.*
21. *We have perused the procurement action file and also reviewed all the 3 bids submitted in the impugned procurement.*
23. *The requirement in the bidding document to submit a copy of identification in form of National Identity Card, passport driving permit was only applicable to Individuals/ Natural persons and*

registered companies. It was not applicable to the Applicant, which is a co-operative society.

24. The requirement to submit a copy of registered powers of Attorney was only applicable to registered Companies according to the bidding document. It was not applicable to the Applicant, which is a co-operative society.
25. The Applicant did not submit a specific document for its *proper address*. We note that the bidding document did not prescribe a format for submission of a *proper address* i.e. Name, telephone number and Physical Contact. However, the address, name and telephone contact of the Applicant could have been objectively deduced from page 4 of the submitted bye-laws of the Applicant which indicate the name of the Applicant, physical location, area of operation and telephone number of the person appointed to be its secretary and email address.
26. The Applicant did not submit a list of directors/proprietors and their current passport photographs. We again note that the bidding document did not prescribe a format for submission of a list of directors / proprietors and their current passport photographs. We also note that under its bye-laws, the Applicant does not have *directors*. Article 26 of the bye-laws provides for a committee of 9 members who are responsible for overall direction of the society.
27. Based on our review of the bid and file submitted to the Tribunal we find that the Applicant did not submit a copy of valid certificate of registration or equivalent, although the Applicant claimed it submitted that document.
28. The Applicant is a duly registered co-operative society with an address and has a committee, which is equivalent to directors. The omission to submit an address; list of directors/proprietors and their current passport photographs; and a copy of a valid

certificate of registration or equivalent was not a material deviation, or omission, and could be cured by clarification. See *Regulations 45(9), 74, 79 and 75(4) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations 2006*. Also see **MY MAKA GROUP LTD VS. UNBS, TRIBUNAL APPLICATION NO.9 OF 2021** and **TRIBUNAL APPLICATION NO. 13 OF 2020 - SMILEPLAST LTD versus PPDA & NAADS**.

Signature of the bid

23. The bidding procedures at page 4 of the bidding document required a bidder to complete, sign and return a bid submission sheet bid and; the list of services and price schedule in Part 2; and the documents evidencing eligibility.
24. The Applicants Bid Submission sheet and the list of services and price schedule were not signed.
25. At page 7 of the bidding document, the format of the Bid Submission Sheet contains the following instructions:

**Bid Submission Sheet**

*[Complete this form with all the requested details and submit it as the bid. with first page of your bid, with the documents requested above attached. Ensure that your bid is authorised in the signature block below. A signature and authorisation on this form will confirm that the conditions of this document prevail over any attachments. If your bid is not signed, **it may be rejected.**]*

26. We observe from the above instructions if a bid is not signed, it may be rejected. Rejection is not mandatory. The evaluation committee therefore retains a discretion to reject an unsigned bid or to waive the omission. In the instant case, the evaluation report does not cite non-signing as one of the reasons for rejection of the Applicant's bid. This reason was cited for the first time in the notice of best evaluated bidder. However, the Accounting Officer, procurement and disposal unit or any other

person has no power to add to or subtract from the findings and recommendations of the evaluation committee as contained in the evaluation report except to reject or approve such findings/recommendations.

27. The evaluation committee should have exercised its discretion to determine whether to accept or reject the Applicant's bid due to non-signing thereof and state such in the evaluation report.
28. In conclusion, there was failure of the evaluation committee to properly apply the eligibility criteria; to consider the possibility of clarification; and to determine the consequence of the omission by the Applicant to sign the bid. It is not the duty of this Tribunal to evaluate bids. This calls for re-evaluation of the bids by the entity.

**Issue no. 2 is answered in the affirmative.**

**Issue no. 3**

**Whether the Respondent erred in law and fact to declare Nyamityobora Bikadde Vendors Cooperative Society Ltd. as the best evaluated bidder while indebted to the same council.**

29. In view of our finding that the bids should be re-evaluated, we need not resolve this issue.

**Issue no. 4**


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

30. We shall remit the procurement back to the entity for re-evaluation in a manner consistent with this decision; the applicable laws and the bidding document.

**G. DISPOSITION**

1. The Application succeeds in part.
2. The Respondent is directed to re-evaluate the bids in a manner consistent with this decision; the applicable laws and the bidding document.
3. The Respondent shall refund the Applicant's administrative review fees.
4. The Tribunal's suspension order dated July 27, 2022 is vacated.
5. Each party to bear its own costs.

Dated at Kampala this 16<sup>th</sup> day of August, 2022.



**NELSON NERIMA**  
**MEMBER**



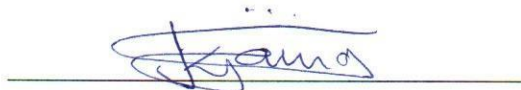
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