

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

**APPLICATION NO. 26 OF 2021**

**BETWEEN**

**CENTRAL INVESTMENT AGENCIES LTD ===== APPLICANT**

**VS.**

**MPALE CITY COUNCIL===== RESPONDENT**

**APPLICATION FOR REVIEW OF THE DECISION OF THE ACCOUNTING OFFICER OF MPALE CITY COUNCIL IN RESPECT OF THE PROCUREMENT FOR MANAGEMENT OF REVENUE SOURCES (STREET PARKING FEES) REF. NO. MPAL856/SRVCS/21-22/00008**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON NERIMA; THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA AND PAUL KALUMBA, MEMBERS**

## DECISION OF THE TRIBUNAL

### A. BRIEF FACTS

1. The Respondent invited bids from competent firms for numerous procurements including the management of revenue sources (street parking fees) REF. NO. MBAL856/SRVCS/21-22/00008 and published by the Respondent in the New Vision newspaper on Monday, August 2, 2021 at page 30.
2. Bids were received from **6 bidders** namely *Nalu Tour and Travel Ltd, Globe World Engineering (U) Limited, Kampala Access and Parking Services Limited, Joseneous Investments Ltd, Central Investment Agencies Ltd* and *Bangoma Investments Ltd*. The Bids were opened on **August 24, 2021 at 11:00am**.
3. During the evaluation of bids, *Kampala Access and Parking Services Limited* and *Joseneous Investments Ltd* were disqualified at the preliminary examination stage.
4. At the detailed commercial and technical evaluation stage, *Central Investment Agencies Ltd* and *Globe World Engineering (U) Limited* were both eliminated for failure to attach and submit resumes and copies of certificate or diploma or transcripts of their respective managers.
5. Two firms namely *Bangoma Investments Ltd* and *Nalu Tour and Travel Ltd* passed the detailed evaluation stage and progressed to the financial comparison stage wherein *Nalu Tour and Travel Ltd* was ranked first with a bid price of **UGX 17,700,000/= per month** and recommended for award of contract as the best evaluated bidder as per the evaluation report dated 30<sup>th</sup> September 2021.
6. The Contracts Committee of Mbale City at its sitting of October 4<sup>th</sup> 2021, at vide minute MC/CC/020/2021-22 (b) approved the evaluation report and recommendations. It awarded the contract for revenue collection from street parking fees to *Nalu Tour and Travel Ltd*.



7. The Notice of Best Evaluated Bidder (NOBEB) was displayed on October 4, 2021 with a removal date of October 18<sup>th</sup>, 2021 indicating that *Central Investment Agencies Ltd* (the Applicant) was disqualified at the preliminary examination stage for failure to submit a CV for its manager Watsemba Slyvia in accordance with ITB 5.1 (b) section 3 of the bidding document.
8. The Applicant being dissatisfied the procurement process, applied for administrative review to Accounting Officer of Respondent on October 12, 2021. An addendum to the Complaint was filed on 15<sup>th</sup> October 2021
9. The Accounting Officer replied to the said Complaint on 8<sup>th</sup> November 2021 dismissing the Complaint.
10. The Applicant being dissatisfied with the decision of the Accounting Officer filed the instant Application on November 15, 2021 before the Tribunal challenging the decision of the Accounting Officer.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant argued that the Respondent erred in law and fact when it found and declared Nalu Tour & Travel as the Best Evaluated Bidder under PROCUREMENT NUMBER MBAL856/SRVCS/21-22/00008
2. The Applicant averred that Nalu Tour & Travel had not submitted a specific power of attorney for the Procurement Process under number MBAL856/SRVCS/21-22/00008.
3. That the power of attorney submitted by Nalu Tour & Travel was not registered in the BRS and EDMS (registration systems) of Uganda Registration Services Bureau.
4. The Applicant contended that the Respondent and its agents directly or indirectly manipulated the procurement process in favour of the Nalu Tour & Travel Ltd by admitting fraudulently procured documents and insisted on the relying on the said documents despite notification of the invalidity of the same.

5. The Applicant contended that it had dully submitted Curriculum Vitae for its Manager, Watsemba Sylvia in accordance with Clause 5.1 (b) Section 3 of the Bidding Document. The Applicant further prayed that the Tribunal finds that the award of contract to Nalu Tour & Travel as Best Evaluated Bidder was wrong and misconceived and a nullity. The Applicant named Mbale City Council as the Respondent to the Application and prayed for costs to be awarded to the Applicant.

**C. REPLY TO THE APPLICATION**

1. The Respondent argues that the Applicant did not attach Curriculum Vitae for its Manager, Watsemba Sylvia in accordance with Clause 5.1 (b) Section 3 of the Bidding Document.
2. The Respondent contended that the Nalu Tour & Travel duly submitted a specific power of attorney for the Procurement in Question and that it was duly registered with Uganda Registration Services Bureau on 20<sup>th</sup> August 2021 by Abalo Lillian as Registrar.
3. The Respondent contended that the Applicant is highly indebted to the Respondent, having managed the revenue source and failed to remit monies worth UGX. 246, 640,333/= as at 18<sup>th</sup> November 2021.
4. The Respondent prayed that Tribunal uphold the decision of the Respondent in dismissing the Application and that the procurement be allowed to proceed to its logical conclusion.

**D. THE ORAL HEARING**

The Tribunal held an oral hearing on 2<sup>nd</sup> December 2021 via zoom software. The appearances were as follows:

1. Counsel Nangulu Eddie assisted by Rebecca Kasirye represented the Applicant. In attendance was Mr. Wafuga Mohamed, the Director of the Applicant
2. The Respondent was represented by Stuma Fredricks, the Senior



Procurement Officer and Ali Wodero the Procurement Officer of Mbale City Council

3. The Best Evaluated Bidder was represented by Luzze Robert Kanya, the Managing Director of Nalu Tour and Travel Ltd.

**E. SUBMISSIONS**

During the oral hearing, the Applicant and Respondent highlighted their written submissions and also provided clarifications to the Tribunal.

Applicant

1. The Applicant argued that the Accounting Officer was expected to make a decision by or before 25<sup>th</sup> October 2021. Therefore, a decision made and communicated after 27 days is a blatant breach of the law specifically Section 89(7) of the *Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021* and no decision at all. Applicant relied on the decision of **Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd () [2018] UGSC 19**
2. The Applicant submitted that it is beyond any reasonable doubt that the impugned Power of Attorney is forged and / or was fraudulently executed. Applicant argued that the impugned power of attorney was allegedly registered on the 29<sup>th</sup> day of September 2021 and backdated to indicate the 20<sup>th</sup> day of August 2021.
3. The Applicant posited that it is therefore clear that by date of bid submission of 24<sup>th</sup> August 2021, Nalu Tour and Travel Limited did not possess a specific Power of Attorney specific to the procurement process.
4. The Applicant argued that submission of a forged power of attorney was a corrupt or fraudulent practice which is criminalised under section 95 (1) (g) of the Public Procurement and Disposal of Public Assets Act, and contrary to regulation 73 (1) and (2) of the Local Governments (Public Procurement and Disposal of Public Assets)



Regulations, 2006 and ITB 28.2, 28.3, 30.3 and 30.4 of the Bid document and Administrative Compliance Criteria 4.1 (c).

5. The Applicant argued that it had duly submitted curriculum vitae for three of its management personnel; Watsemba Sylvia, Nabwire Harriet and Nasiyo Rose at pages 63 to 71 of the Applicant's Bid Document.
6. The Applicant submitted curriculum vitae for three of its management personnel; Watsemba Sylvia, Nabwire Harriet and Nasiyo Rose at pages 63 to 71 of the Applicant's Bid Document and that if there was any uncertainty, it would suffice for the entity to seek clarification on who as amongst Watsemba Sylvia, Nabwire Harriet and Nasiyo Rose would be the manager for purpose of compliance with the Commercial and Technical Criteria 5.1 (a) in the bidding document in accordance with **Regulation 74(1)(a)** and **74(3)** of **Local Governments (Public Procurement and Disposal of Public Assets ) Regulations 2006**.
7. The Applicant therefore concluded that the Respondent's evaluation committee erred in law and fact when it disqualified the Applicant's bid for on compliance with the Commercial and Technical Criteria 5.1 (a) in the bidding document.
8. The Applicant submitted that the decision of the Accounting officer was both erroneous, illegal and had the unfortunate effect of awarding a contract to an unqualified and fraudulent bidder and excluded the Applicant on unjustified reasons thereby occasioning injustice to the Applicant
9. The Applicant argued that its Application before the Tribunal was competent and arose out of the decision of the Respondent's Accounting Officer. That even if it is Application is by any stretch found to be out of time, the validity of the Application would not be challenged because the procurement statute must be construed in a liberal and not restrictive manner. The Applicant relied on the decision of the Supreme Court in **Kampala Capital City Authority v Kabandize & 10 Ors (Civil Appeal 13 of 2014)** to buttress its submission that the use of "shall" without penalties prescribed for



noncompliance means that the usage of “shall” is directory and not mandatory.

10. The Applicant further argued that where Fraud and illegality have been pleaded as was done in the instant application, the Tribunal like any court of law cannot sanction what is illegal or fraudulent and illegality once brought to the attention of court overrides all questions of pleading, including any admission made thereon. As such, the issue of time of filing application should not arise because fraud and illegality had been brought to the attention of the Tribunal. The Applicant relied on the Supreme Court decision of ***Fang Min v Belex Tours & Travel Ltd (Civil Appeal 6 of 2013)*** to fortify its submissions.
11. The Applicant therefore prayed that the Tribunal nullifies the Contract Award made to Nalu Tour and Travel Limited, suspends Nalu Tour and Travel Limited from this procurement process or any other procurement process on account of its corrupt and fraudulent conduct, reprimands the Respondent for engaging, undertaking or participating in fraudulent and corrupt practices, orders a re-evaluation of the remaining competent bidders. The Applicant prayed for both punitive and general damages and costs

#### Respondent

1. The Respondent adopted its written reply to the Application in submissions.
2. The Respondent further acknowledged that it had indeed received correspondences from Uganda Registration Services Bureau on the non-registration of the power of Attorney submitted by Nalu Tour and Travel Limited and that it was awaiting for guidance on how to deal with the matter.
3. The Respondent clarified that the failure to issue a decision to the Applicant within the statutory timelines by the Accounting Officer was due to misinterpretation of timelines for administrative review.

#### Best Evaluated Bidder

1. The Best Evaluated Bidder raised a preliminary objection to the effect that the Application was filed out of time contrary to Section 89(8) of the PPDA Act, as amended.
2. The Best Evaluated Bidder contended that it was lawfully evaluated as the Best Evaluated Bidder and that all allegations raised by the Applicant had no merit.
3. That the Applicant is indebted to the Respondent to a tune of UGX 240,000,000/= and is still illegally collecting revenue within the City.
4. The Best Evaluated Bidder contended that its power of attorney was lawfully registered on 20<sup>th</sup> August 2021 and that there is no document from Abalo Lillian the Registrar indicating that the said power of attorney was not registered by her.
5. The Best Evaluated Bidder submitted that having received the offer letter from the Respondent, it had already taken steps to enforce the contract including payment and remittances to the Respondent of the required initial payments under the contract.
6. The Best Evaluated Bidder therefore prayed that the Application is dismissed and the Applicant be directed to halt its operations in the City with immediate effect.

**F. RESOLUTION BY THE TRIBUNAL**

**Issues**

The Applicant raised 6 issues for determination by the Tribunal. In light of the **Preliminary Objection** raised by the Best Evaluated Bidder, the Issue to be determined by the Tribunal have been recast as follows;

- (i) *Whether there is a competent Application before the Tribunal*
- (ii) *Whether the Respondent's Procuring and Disposing Entity erred in law when it found and declared Nalu Tour & Travel as the Best Evaluated Bidder under **vide MBAL856/SRVCS/21-22/00008?***
- (iii) *Whether the Respondent's Procuring and Disposing Entity and Accounting Officer erred in law when he held that Nalu Tour &*



*Travel complied with ITB 30.3 and 30.4 of the Bidding Document together with administrative compliance criteria 4019(c) that required a bidder to submit a specific power of attorney for the **Procurement Process vide MBAL856/SRVCS/21-22/00008?***

- (iv) *Whether the Respondent Accounting Officer erred in law when they held that the Applicant failed to comply with ITB 31.2 of the Bidding Document in not showing the minimum experience of its Manager, Watsemba Sylvia; under **MBAL856/SRVCS/21-22/00008**;*
- (v) *Whether the Respondent's Accounting Officer erred in law when he upheld and/or approved a specific Power of Attorney fraudulently executed / procured by Nalu Tour & Travel and allegedly registered on the 20<sup>th</sup> day of August 2021 by Abalo Lillian.*
- (vi) *Whether the Decision of the Respondent's Accounting Officer has occasioned a substantial miscarriage of justice.*
- (vii) *What remedies are available to the parties?*

## **Resolution of Issues Raised**

### **Issue 1**

#### ***Whether there is a competent Application before the Tribunal***

1. The Tribunal has in recent decisions of **Abasamia Hwolerane Association Ltd Vs. Jinja City Council, Application No.18 of 2021, K-Solutions Ltd Vs. Ministry of Energy and Mineral Development, Application No.16 of 2021** and in **Beautiful Engineering & Equipment Ltd vs. Uganda Electricity Transmission Company Limited, Application No.15 of 2021** held that it is duty bound to inquire into the existence of the facts in order to decide whether it has jurisdiction. This is because Jurisdiction must be acquired before judgment is given. As such, the Tribunal must inquire into the facts of whether the Applicant has locus to file an Application before it and secondly whether the Tribunal is seized or clothed with Jurisdiction to interrogate the merits of Application before it.



2. The term *locus standi* literally means a place of standing. It means a right to appear in court, and, conversely, to say that a person has no *locus standi* means that he has no right to appear or be heard in a specified proceeding. To say that a person has no *locus standi* means the person cannot be heard, even on whether or not he has a case worth listening to. See ***Njau & Others vs. City Council of Nairobi [1976–1985] 1 EA 397*** at 407.
  
3. In ***OWNERS OF MOTOR VESSEL “LILLIAN S” VS CALTEX OIL (KENYA) LTD (1989) KLR 1***, Justice Nyarangi JA (as he then was) stated:
 

*“.....A question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, court has no power to make one more step. Where court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of a matter before it the moment it holds the opinion that it is without jurisdiction”*
  
4. There are only four instances under which the Tribunal can exercise its jurisdiction when an Application is filed by a bidder. These instances are provided for under sections 89(8) and 89(9), read together with section 91I(1)(a)-c) of the *Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021* namely;
  - (i) *Where an Accounting Officer does not make a decision or communicate a decision within the period specified in subsection (7), or*
  - (ii) *where a bidder is not satisfied with the decision made by the Accounting Officer under section 89(8), or*
  - (iii) *Where a bidder believes that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach that would be made under this section; or*
  - (iv) *where a Bidder believes that the matter cannot be handled impartially by the procuring and disposing entity,*
  
5. The periods for the various modes of application are stated section 91I (2) of the ***Public Procurement and Disposal of Public Assets Act*** as amended by Act 15 of 2021.



6. The Applicant in paragraph 3.6, page 3 of the Application pleaded that its Complaint to the Accounting Officer was lodged on 12<sup>th</sup> October and an addendum lodged on 15<sup>th</sup> October 2021. Then in para 3.7, the Applicant further pleaded that the Accounting Officer made a decision on 8<sup>th</sup> November 2021.
  
7. Section 89(7) of the **Public Procurement and Disposal of Public Assets Act** as amended by Act 15 of 2021 requires the Accounting Officer to make and communicate a decision within ten days of receipt of a compliant. The Accounting Officer was expected to make a decision by or before 25<sup>th</sup> October 2021. Therefore, a decision made and communicated **after 27 days is a blatant breach of the law and no decision at all.**
  
8. We are fortified in our finding by relying on the Supreme Court decision of **Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19** where **Mwondha, JSC** held that  
  
*“The objectives of the Act are clear from the long title already reproduced in this judgment as to formulate policies and regulate practices in respect of public procurement and disposal activities among others. The provision for a written contract is an indication that without it, the obligations of each party have not been spelt out and if the party proceeds to implement, the implementation will be premature. **So there is no way the Act can regulate practices in respect of public procurement and Disposal of public assets unless if the provisions are adhered to strictly to the letter. The provisions cannot be directory merely. They are for all purposes and intents mandatory and non-compliance with them makes the proceedings fatal” EMPHASIS ADDED***
  
9. We are of the view that the Supreme Court decision of *Fang Min v Belex Tours & Travel Ltd (Civil Appeal 6 of 2013)* as cited by the Applicant is inapplicable to the instant Application. We are inclined to borrow the latin maxim “*generalia specialibus non derogant*” (simply put “*general laws do not prevail over special laws*”) and thus find that the Supreme Court decision of *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19* is more applicable to matters concerning



procurement law and the instant Application than *Fang Min v Belex Tours & Travel Ltd (Civil Appeal 6 of 2013)*.

10. It therefore follows that the Accounting Officer having not made a decision as required under section 89(70 of the **Public Procurement and Disposal of Public Assets Act** as amended by Act 15 of 2021 on or by 25<sup>th</sup> October 2021), the Applicant ought to have made an application to the Tribunal within the statutory time limit of **ten days** from 25<sup>th</sup> October 2021, in accordance with Part VIIA of the **Public Procurement and Disposal of Public Assets Act** as amended by Act 15 of 2021. This relief is provided for under sections 89(8) and 91I(1)(a) of the *Public Procurement and Disposal of Public Assets* as amended by Act 15 of 2021.
11. Accordingly, the time period for application to the Tribunal pursuant to facts pleaded under sections 89(8) and 91I(1)(a) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021 is **within ten days from the expiry of the period specified in the section** as stipulated in section 91I(2)(b) of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021
12. Simply put, the Applicant ought to have lodged this instant application within 10 days from 25<sup>th</sup> October 2021. That is to say the Application should have been lodged with the Tribunal latest, by November 5, 2021. Therefore, the application lodged with the Tribunal on November 15, 2021 at 3.00 pm was lodged out of time
13. We are fortified in our finding by the decision of Hon Justice Twinomujuni in ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000/31) [2000] UGCA 2*** where he stated that “*Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with*”
14. The Tribunal has 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 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 ***Kiyindi Electrical and Engineering Ltd Vs. PPDA, Misc Application No 1 of 2020*** and ***Empire Tools Vs PPDA, Application No. 8 of 2019***.

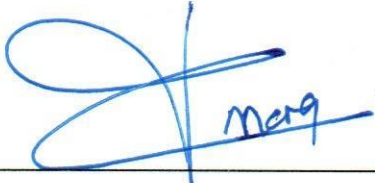
15. The Tribunal had clarified in the ***Abasamia Hwolerane Association Ltd Vs. Jinja City Council, Application No.18 of 2021***, that Section **91L (1) (c) of the PPDA Act 2003** referred to in the above decisions of “*Kiyindi*” and “*Empire Tools*” were repealed by section 40 of the *Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021. Instead, new time lines for the various modes of application are stated *section 91I (2) of the Public Procurement and Disposal of Public Assets Act* as amended by Act 15 of 2021.
16. The said new timelines changed from **10 working days** of being served by authority with its decision as was earlier stated in the repealed Section 91L (1) (c) of the PPDA Act 2003 to *within ten calendar days from the expiry of the period specified in section 89 (7) as stated in Section 91I (2) (b) of the Public Procurement and Disposal of Public Assets* as amended by Act 15 of 2021.
17. The Application lodged with the Tribunal on **November 15, 2021** at **3.00 pm** was therefore **lodged 10 days late and out of time** and the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. The Application is therefore incompetent.
18. In view of our finding under issue no.1, it is not necessary to interrogate the merits of the Application and the Applicant is not entitled to any remedy. The Respondent is entitled to continue with the procurement process.

**G. DISPOSITION**

1. The Application is struck out.
2. The Respondent may continue with the procurement process to its logical conclusion
3. The Tribunal’s suspension order dated November 15, 2021 is vacated.

4. Each Party to bear its own costs.

Dated at Kampala this 6<sup>th</sup> day of December 2021.



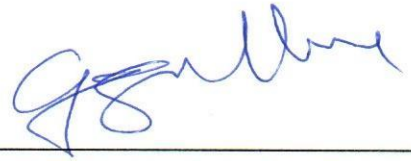
**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



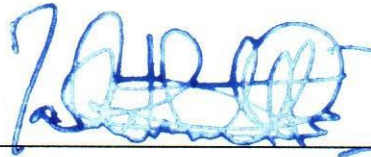
**NELSON NERIMA**  
**MEMBER**



**THOMAS BROOKES ISANGA**  
**MEMBER**



**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



**PAUL KALUMBA**  
**MEMBER**