

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

APPLICATION NO. 26 OF 2023

BETWEEN

**1. AUTO TERMINAL JAPAN LIMITED
2. PAL AUTO GARAGE LTD
3. AFRICA AUTOMOTIVE ANALYSIS LTD
(T/A AUTO TERMINAL JAPAN LIMITED, PAL AUTO GARAGE LTD
AFRICA AUTOMOTIVE ANALYSIS LTD JV) =====APPLICANT**

AND

UGANDA NATIONAL BUREAU OF STANDARDS=====RESPONDENT

APPLICATION NO. 27 OF 2023

BETWEEN

EAA COMPANY LIMITED =====APPLICANT

AND

UGANDA NATIONAL BUREAU OF STANDARDS=====RESPONDENT

**APPLICATION FOR REVIEW OF THE DECISION OF UGANDA
NATIONAL BUREAU OF STANDARDS IN RESPECT OF THE PUBLIC
NOTICE DATED OCTOBER 25, 2023 REGARDING THE PRE-EXPORT
VERIFICATION OF all imported USED MOTOR VEHICLES FROM
JAPAN, UNITED KINGDOM, SINGAPORE, SOUTH AFRICA AND
UNITED ARAB EMIRATES BY QUALITY INSPECTION SERVICES INC
JAPAN (QISJ)**

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

RULING OF THE TRIBUNAL

1. The Tribunal heard and determined Application No. 21 of 2023, *EAA Company Limited V Uganda National Bureau of Standards* on September 22, 2023, in which it inter alia, set aside the purported extension of a contract for the provision of pre-export verification of conformity to standards-service providers for used Motor vehicles issued to Quality Inspection Services Inc. Japan and directed Uganda National Bureau of Standards to conduct an emergency procurement of interim service providers within 30 days, pending substantive retendering of the service.
2. Consequently, Uganda National Bureau of Standards ("the Respondent") initiated an emergency procurement.
3. Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV and EAA Company Ltd were among the bidders who submitted their bids.
4. The Respondent further filed an appeal against the decision of the Tribunal in the High Court vide Civil Appeal No. 154 of 2023. The Respondent secured an interim order vide Misc Application No. 966 of 2023 from the High Court, staying the execution of the Tribunal's decision in Application No. 21 of 2023.
5. Before the conclusion of the newly initiated emergency procurement process, the Respondent issued a public notice dated 25th October, 2023 in which it informed the public that effective October 25, 2023, all imported used motor vehicles from Japan, United Kingdom, Singapore, South Africa and UAE would be assessed for conformity using the UNBS-approved service provider Quality Inspection Services Inc. Japan.
6. Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV and EAA Company Ltd separately filed Applications No. 26 of 2023 and 27 of 2023 (as Applicants) respectively, being aggrieved by the said alleged decision of the Respondent.

7. The Tribunal held a hybrid hearing on 14th November 2023. (A mix of physical and virtual zoom cloud meeting). Mr. *Mark Kizza* represented the Applicant in Application No. 26, Mr *Richard Nsubuga* and Ms *Monica Namuli* represented the Applicant in Application No. 27 of 2023, Mr *Joachim, Ssenkatuuka* and Mr *Saad Sseninde* represented *Quality Inspection Services Inc Japan (QISJ)* an interested party while Ms *Nanvule Doreen*, Mr. *Kakuru Luke* and Mr. *Hassan Walusimbi* represented the Respondent.
8. By consent of all the parties, Application No. 26 of 2023 and Application No. 27 of 2023 were consolidated on the grounds that both applications arose from the decision of the Respondent in publishing public notice dated October 25, 2023, and as well had similar common questions of law and fact, and there was need to avoid contradictory decisions.
9. At the hearing, the Tribunal requested the parties to address it on the effect on the interim order dated October 16th, 2023, issued by the High Court regarding the jurisdiction of the Tribunal, and whether the tribunal was *functus officio*.
10. Counsel for the Applicant in Application No. 26 of 2023 argued that the order of the High Court did not validate the extension of the contract between Quality Inspection Services Inc Japan (QISJ) and the Respondent since the duration of the impugned contract had lapsed. That the initiation of procurement no UNBS/NCONS/2023-2024/00052 was not an interim but a substantive procurement rendering the High Court Order inconsequential to the instant applications.
11. Counsel for the Applicant in Application No. 26 of 2023 submitted that in any case, the interim order was issued after bidders had responded to and submitted bids in the newly initiated procurement and was therefore overtaken by events. The Tribunal therefore had jurisdiction to inquire into matters relating to procurement no UNBS/NCONS/2023-2024/00052. The applicant contended the public notice of October 25, 2023 communicated an award of contract

to QISJ without following procurement processes and that an inquiry into such extension was not functus officio to the Tribunal.

12. Counsel for the Applicant in Application No. 27 of 2023 agreed with the submissions of the Applicant in Application No. 26 of 2023 and hastened to add that the impugned notice did not indicate the subject of the procurement or its reference number. The High Court Order did not mention which procurement process was being halted and as such, it had no effect on the jurisdiction of the Tribunal to inquire into the processes leading to the issuance of the public notice on October 25, 2023.
13. Counsel for Respondent submitted that the High Court order was in respect of the entire PPDA Appeals Tribunal decision in Application No 21 of 2023 and the procurement of interim service providers pending the outcome of the main application of stay, and invalidating the extension of contract with *Quality Inspection Services Inc Japan* for being illegal. The Notice of October 25, 2023 was a communication of the status quo and therefore, the Tribunal is estopped from inquiring into matters arising out of Application No. 21 of 2023.
14. Counsel for the interested party *Quality Inspection Services Inc Japan* contended that the Tribunal cannot review matters arising out of Application no. 21 of 2023, which matters were stayed by the High Court. The Tribunal is therefore functus officio in as far as matters determined in Application No. 21 of 2023 including contract extension to QISJ is concerned.
15. The Public Procurement and Disposal of Public Assets Tribunal is a creature of Part VIIA of the Public Procurement and Disposal of Public Assets Act and its jurisdiction arises out of the instances listed in *section 911 (a)-(c) of the Public Procurement and Disposal of Public Assets Act 2003*.
16. The Tribunal must therefore inquire into the facts of whether the Tribunal is seized or clothed with Jurisdiction to interrogate the merits of Application before it. See ***Application 21 of 2023-EAA Company Limited v Uganda National Bureau of Standards, Application No.11 of 2023 China Civil Engineering and***

Construction Corporation vs Uganda National Roads Authority and Application No. 45 of 2022-Impiger Technologies Pvt Ltd Versus Higher Education Students Financing Board.

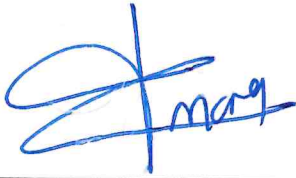
17. The Application is premised on challenge of the exclusive authorisation of *Quality Inspection Services Inc. Japan* to exclusively conduct assessments for conformity of imported used motor vehicles from Japan, United Kingdom, Singapore, South Africa and UAE by the Respondent; on the backdrop of an existing procurement for the provision of non-consultancy services via the Electronic Government Procurement system for the provision of pre-export verification of conformity to standards-service providers for used motor vehicles No. UNBS/NCONS/2023-2024/00052, which is yet to be concluded.
18. The Tribunal duly pronounced and made definite findings on the legality of the impugned extension of the contract between *Uganda National Bureau of Standards* and *Quality Inspection Services Inc. Japan* in Application No. 21 of 2023.
19. The Tribunal having fully and finally exercised its authority over the subject matter arising out of the Tribunal's decision in Application No. 21 of 2023, it therefore has no authority to correct, alter or supplement its findings on the same (including the legality of the Public Notice dated October 25, 2023). For this reason, the Tribunal became ***functus officio***, and its jurisdiction over the subject matter has ceased. See decision of the Constitutional Court of Uganda in ***Goodman Agencies Ltd v Attorney General and Anor, Constitutional Petition No. 3 of 2008***.
20. The Tribunal is therefore estopped from freshly delving into matters arising out of the Tribunal's decision in Application No. 21 of 2023, which matters are now the subject of appeal in the Civil Division of the High Court in Civil Appeal No 154 of 2023 between *Uganda National Bureau of Standards vs EAA Company Limited*.
21. If the Applicant in Application No. 27 of 2023 was aggrieved by the Respondent's failure or omission to implement the Tribunal's decision in Application No. 21 of 2023, the prudent course of action for the Applicant, who was a party to the said decision, was to file civil contempt proceedings with the Tribunal but not to file a fresh application.

22. Similarly, in the case of Applicant in Application No. 26 of 2023, the impugned notice of October 25, 2023, arises out of Tribunal's decision in Application No. 21 of 2023, a fortiori, filling a fresh application with facts premised on the impugned notice would be in vain especially where the Tribunal is *functus officio*.
23. It is trite law that if a court has no jurisdiction, its decision is a nullity. Jurisdiction cannot be conferred on court by consent of the parties. A court cannot give itself jurisdiction in a case otherwise outside its jurisdiction on the ground that it would be for the convenience of the parties and witnesses. See **Cyprian Obbo v Onyango & Ors (HCT-04-CV-CA 130 of 2012) [2017] UGHCFD 7**
24. The digest of our findings is that the Tribunal is *functus officio*, in as far as the matters arising touch on the concluded decision of the Tribunal in Application No. 21 of 2023 is concerned. The Tribunal therefore downs its tools in respect of the matter. The jurisdiction of the Tribunal was extinguished at this point as far as the matter is concerned.
25. In the result, there is no need to delve into further in the merits of Applications No. 26 and 27 of 2023.


DISPOSITION

- 1) The Applications No. 26 and 27 of 2023 are struck out.
- 2) Each party to bear its own costs.

Dated at Kampala this 15th day of November 2023.




FRANCIS GIMARA S.C
CHAIRPERSON



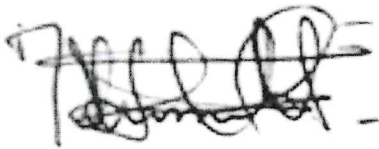
NELSON NERIMA
MEMBER



THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER