

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

APPLICATION NO. 33 OF 2023

ECLIPSE EDISOIL JVC LTD:..... APPLICANT

AND

NAPAK DISTRICT LOCAL GOVERNMENT:..... RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE CONSTRUCTION OF SEED
SECONDARY SCHOOLS IN MAGAMAGA SUB COUNTY IN ABIM
DISTRICT LOCAL GOVERNMENT AND LOPEEI SUBCOUNTY IN
NAPAK DISTRICT LOCAL GOVERNMENT RESPECTIVELY UNDER
PROCUREMENT REFERENCE NO. NAPA 907/WRKS/22-23/0027
(LOT 3) PURSUANT TO THE UGANDA INTERGOVERNMENTAL
FISCAL TRANSFERS (UGIFT) PHASE III**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. The Ministry of Education and Sports invited bids from eligible firms for the construction of seed secondary schools in Magamaga Sub County in Abim District Local Government and Lopeei Sub county in Napak District Local Government respectively under procurement reference No. Napa 907/WRKS/22-23/0027 (Lot 3) pursuant to the Uganda Intergovernmental fiscal transfers (UGIFT) phase III.
2. Napak District Local Government was designated as lot leader for the construction of seed secondary schools in Abim and Napak districts
3. Seven bidders namely *Eclipse Edisoil JVC Limited* (the Applicant), *Ben & Dok Enterprises Limited*, *SMS Construction Limited*, *Moha Construction Limited*, *Uganda Martyrs Housing Construction Company Ltd*, *CAB Uganda Ltd* and *Vavic Technical Services Limited*
4. The Respondent displayed a Best Evaluated Bidder Notice on November 7, 2023, naming *CAB Uganda Ltd* as the best evaluated bidder at a contract price of UGX 5,761,912,500/= VAT Exclusive.
5. The Applicant being dissatisfied with the procurement process, the Applicant lodged an administrative review complaint before the Accounting Officer of the Respondent on November 16, 2023. The complaint alleged irrelevant and post qualification evaluation and due diligence; illegal award of a tender to a disqualified company *CAB Uganda Ltd*; and unfair and unjust treatment of the Applicant and denial of fair hearing.

6. The Accounting Officer of the Respondent appointed an administrative review committee to study the complaint.
7. In a report dated December 5, 2023, the administrative review committee found no merit in the complaint.
8. The Accounting Officer of the Respondent communicated the findings of the administrative review committee to the Applicant on December 6, 2023.
9. The Applicant being aggrieved by the decision of the Respondent filed the instant Application, before the Tribunal on December, 12, 2023.
10. The Respondent reiterated the findings of the administrative review committee.

B. ORAL HEARING

1. The Tribunal conducted an oral hearing via Zoom on 20th December, 2023.
2. Counsel for the parties highlighted their written submissions, which the Tribunal has considered.

The appearances were as follows:

3. Mr. Hassan Kamba of M/S Turinawe, Kamba & Co. Advocates, counsel for the Applicant.
4. In attendance was Mr. Robert Bautu, Director of the Applicant.
5. Mr. Rwamwana Hanningtone, State, Attorney, counsel for the Respondent.

6. In attendance was Mr. Abraham Dove Lokawa, Supervisor of Works, Napak District.
7. Mr. Ongareno Bosco, Director, represented CAB *Uganda* Limited, the best Evaluated Bidder.

C. RESOLUTION

1. The Application raises 4 issues for determination by the Tribunal as follows:
 - 1) Whether the Accounting Officer of the Respondent entity acted legally in awarding a disqualified bidder (CAB, *Uganda Ltd*) the tender?
 - 2) Whether the Accounting Officer of the Respondent erred in fact and law when he conducted the post qualification evaluation without involvement of the Applicant which resulted in the unfair treatment of the applicant in the said process and being condemned unheard?
 - 3) Whether the Accounting Officer of the Respondent erred in fact and law when he decided that the recommendations and report of the Evaluation Committee was valid even when the report was signed by only some members of the Evaluation Committee Contrary to Regulations 5(3) and 35(3) of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*?
 - 4) Whether the Accounting Officer of the Respondent erred in fact and law when he conducted the post qualification evaluation of the applicant outside the information provided in the Bidding Document.

Preliminary point of law

2. The Respondent's counsel also raised a point of law that the Application is time barred.
3. The Tribunal must inquire into the facts to determine whether it is seized or clothed with jurisdiction to interrogate the merits of Application before it.
4. The Applicant applied for administrative review before the Accounting Officer on November 16, 2023.
5. In accordance with section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*, the Accounting Officer of the Respondent was obligated to make and communicate a decision regarding the Complaint within ten days.
6. The days started to run on **Friday, November 17, 2023** and expired on **Sunday, November 26, 2023**.
7. The last day for communicating the administrative review decision by the Accounting Officer in the instant application fell on **Sunday, November 26, 2023**, which is considered an excluded day in accordance with section 34(1)(b) of the *Interpretation Act, cap. 3*. The next working day being **Monday, November 27, 2023** became the last day on which the Accounting Officer was expected to comply with the law.
8. The Accounting Officer purported to make and communicate an administrative review decision on December 6, 2023. That purported decision was made out of time, in breach of the law and of no legal consequence. See: ***Application No. 38 Of 2022- Principal Company Ltd v Ministry Of Defence And Veteran Affairs; Applications No. 26 and 27 of 2022- Vision Scientific & Engineering Limited Vs. Makerere University; Application No. 29 of 2021-Sanlam General***

Insurance v UNRA, and Application no. 24 of 2022.Mugabi David v Sembabule District Local Government.

9. Where an Accounting Officer does not make or communicate a decision within ten days of receipt of the complaint, the complainant has a right to make an application to the Tribunal within ten days of the expiry of the period given for the Accounting Officer to make and communicate a decision. See sections 89(8) and 91I (2) (b) of the *Public Procurement and Disposal of Public Assets Act*.
10. The ten days within which the Applicant could file an application in the Tribunal started to run on **Tuesday, November 28, 2023** and elapsed on **Thursday, December 7, 2023**. The instant Application was lodged with the Tribunal on **December 12, 2023**.
11. The timelines in the Public Procurement and Disposal of Public Assets Act 2003 are mandatory. We have consistently relied on the Supreme Court decision in ***Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19***.
12. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. See: ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000/31) [2000] UGCA 2***.
13. In ***Makula International Ltd versus Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981***, it was held that a court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute. This precedent was authoritatively relied on by the Supreme Court of Uganda in ***Sitenda Sebalu versus Sam K. Njuba & Another Election Petition Appeal No. 5 of 2007*** wherein it held that if there is no statutory provision or rule, then the court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute or rule.

14. 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 ***JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd Vs. Private Sector Foundation Uganda, Application No. 29 of 2022, Pages 14-15.***
15. In the circumstances, the authorities cited by counsel for the Applicant on extension of time in election matters, are not applicable to the *Public Procurement and Disposal of Public Assets Act*.
16. In conclusion, the Application lodged with the Tribunal on **December 12, 2023** was therefore **filed 5 days** out of time and the Tribunal has no jurisdiction to entertain it. The Application is incompetent.
17. 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 ***Sanlam General Insurance vs UNRA, Application No.29 of 2021*** and ***Mugabi David v Sembabule District Local Government, Application no. 24 of 2022.***
18. The Application is time barred. In the circumstances we shall not delve into the merits of the Application.

D. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated December 12, 2023 is vacated.
3. Each party to bear its own costs.

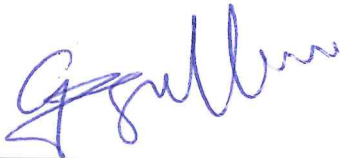
Dated at Kampala this 21st day of December, 2023.



**NELSON NERIMA
MEMBER**



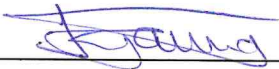
**THOMAS BROOKES ISANGA
MEMBER**



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**PAUL KALUMBA
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