

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

MISCELLANEOUS APPLICATION NO. 6 OF 2024
ARISING FROM REGISTRY APPLICATION NO. 43 OF 2024

MBARARA CITY TRUCK OWNERS, DRIVERS

& LOADERS COOPERATIVE LTD ::::::::::::::::::::::::::::::::::: APPLICANT

AND

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

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON
NERIMA, GEOFFREY NUWAGIRA KAKIRA, PAUL KALUMBA,
CHARITY KYARISIIMA, KETO KAYEMBA AND ENG. CYRUS TITUS
AOMU, MEMBERS**

Representation:

Mr. Wilbrod Osinde, counsel for the Applicant

Mr. Alauterio Ntegyereize, senior legal officer, counsel for the Respondent

RULING

1. Mbarara City Council (the Respondent) initiated a procurement on July 18, 2024, using the open bidding method to collect revenue from Lorry Parking Fees (Loading and Offloading) in the South and North Divisions under procurement reference number Mbar 609/Srvcs/2024-2025/00015.
2. The Respondent received bids from 2(two) bidders, namely;

Mbarara City Truck Owners, Drivers & Loaders Cooperative Limited (the applicant) and *Ankole United Truck Owners and Drivers Cooperative Society Limited* on August 6, 2024.

3. Upon conclusion the evaluation process, the Respondent awarded the Contract to *Ankole United Truck Owners and Drivers Cooperative Society Limited* at a contract price of **Uganda Shillings 12,000,000** per month. The Respondent displayed the Notice of the Best Evaluated Bidder on September 27, 2024, with a removal date of October 11, 2024.
4. The Notice of Best Evaluated Bidder indicated that the Applicant's bid was unsuccessful because it submitted a bid-securing declaration which expired on August 6, 2024, which was before the end of 120 working days, contrary to the bidding document.
5. The Applicant was dissatisfied with the procurement process and applied for administrative review before the Accounting Officer on October 4, 2024.
6. The Respondent's Accounting Officer made and communicated a decision on the administrative review to the Complainant on October 11, 2024, in which the Respondent dismissed the Complaint for being devoid of merit.
7. On October 15, 2023, the Applicant filed Registry Application No. 43 of 2024 with the Tribunal, seeking to review the Respondent's decision.
8. In a decision dated November 4, 2024, the Tribunal allowed the Application and made the following orders:
 - i. *The Application is allowed.*
 - ii. *The award of contract to Ankole United Truck Owners and Drivers Cooperative Society Limited for collection of revenue from Lorry Parking Fees (Loading and Offloading) in South*

and North Divisions under procurement reference number Mbar 609/Srvcs/2024-2025/00015 is set aside.

- iii. The Best Evaluated Bidder Notice, dated September 27, 2024, is set aside.*
 - iv. The Respondent is ordered to re-evaluate the bids in a manner not inconsistent with this decision, the bidding document, and the law.*
 - v. The re-evaluation in no. 4 above shall be conducted within 10 working days from the date of this decision.*
 - vi. The Respondent shall refund the Applicant's administrative review fees.*
 - vii. The Tribunal's suspension order dated October 15, 2024, is vacated.*
 - viii. Each party is to bear its own costs.*
9. The Applicant has filed the instant application alleging that the Respondent has not complied with orders no. iv, v and vi.
 10. The affidavit of Ssenyomo Moses, the chairperson of the Applicant, supports the Application.
 11. It is alleged that the Respondent did not re-evaluate the bids in accordance with the Tribunal's decision and that the Respondent has not refunded the Applicant's administrative review fees.
 12. The Applicant seeks that the Respondent be cited in contempt, pay **Uganda Shillings 80,000,000** in general damages, be ordered to comply with the Tribunal's orders, and pay the costs of this application.
 13. The Respondent filed an affidavit in reply sworn by Abirebe Assy Tumwesigire, the Town Clerk and Accounting Officer. The Respondent contends that they re-evaluated the bids, and the Applicant failed at the preliminary stage. The Applicant applied for administrative review, and the Accounting Officer found that the Applicant's bid complied with the preliminary evaluation stage. The Accounting Officer directed a fresh evaluation, which was done, and the Contracts Committee is yet to consider the

second re-evaluation report.

14. The Respondent avers that the Entity is processing the re-payment of the administrative review fees to the Applicant.
15. The Respondent prayed that the application be dismissed with costs.
16. We have carefully studied the application and the response and also considered the submissions of counsel and authorities cited.
17. To succeed in a civil contempt application, the following have to be proved;
 - a) That Court issued an order.
 - b) That the order was served or brought to the notice of the alleged contemnor.
 - c) That there was non-compliance with the order by the Respondent.
 - d) That the non-compliance was wilful or *mala fide*.

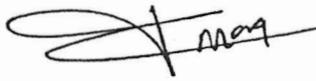
See: ***Obon Infrastructure Development Ltd v Mbarara City and MBJ Technologies Limited, Misc Application No.1 of 2022, arising out of Tribunal Registry Application No.20 of 2021; and K-Solutions Limited v Ministry of Water and Environment, Miscellaneous Application No. 1 of 2024.***

18. According to the notice of motion, the affidavit in support, and the affidavit in reply, the Respondent conducted a re-evaluation of the bids on November 8, 2024 and issued a Notice of the Best Evaluated Bidder on November 15, 2024, whereby the best-evaluated bidder was declared to be *Ankole United Truck Owners and Drivers Cooperative Society Limited*. The re-evaluation was within the ten working days as ordered by the Tribunal on November 4, 2024.
19. There was, therefore, compliance with order no. iv of the

Tribunal.

20. Regarding the allegation that the Respondent did not conduct the re-evaluation properly, the Applicant opted to pursue the remedy of administrative review by making a fresh complaint to the Accounting Officer on November 19, 2024. The Applicant's grievance has already been remedied by the Accounting Officer ordering a second re-evaluation. The second re-evaluation having been conducted, the evaluation report is pending consideration by the Contracts Committee.
21. Without a substantive application, the impugned first re-evaluation cannot be litigated before the Tribunal under the guise of contempt proceedings. After the second re-evaluation, the Tribunal cannot pre-empt the Contracts Committee's decision or any decision that may be made in case a bidder applies for administrative review. If the Applicant was aggrieved by the Entity's perceived delay in completing the process, it was free to file a fresh administrative review complaint.
22. With regards to the allegation that the Respondent has not refunded the Applicant's administrative review fees, the Tribunal is unable to handle that complaint by way of a contempt application. Execution proceedings ordinarily remedy non-payment of awarded monies. In the absence of an application for execution, the Tribunal shall not inquire into the alleged non-payment.
23. The Applicant has failed to prove any of the grounds of this application. As a result, this application is dismissed. Each party shall bear its own costs.

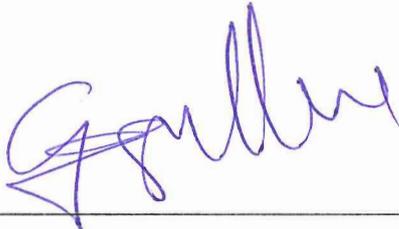
Dated at Kampala this 24th day of January, 2025.



FRANCIS GIMARA S.C
CHAIRPERSON



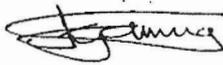
NELSON NERIMA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER



ENG. CYRUS TITUS AOMU
MEMBER