

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

APPLICATION NO. 23 OF 2024

BETWEEN

FUELESS TECHNOLOGIES LIMITED:.....APPLICANT

AND

MBARARA CITY COUNCIL:.....RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT
FOR THE PROVISION OF NON-CONSULTANCY SERVICES FOR
INSTALLATION OF A STREET PARKING SMART SOLUTION FOR
MBARARA CITY UNDER PROCUREMENT REFERENCE NO:
MBAR609/NON/CONS/2023/2024/00001**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. On February 19, 2024, Mbarara City Council (the Respondent) advertised (initiated)a tender for the provision of non-consultancy services for installation of a street parking smart solution for Mbarara City under Procurement Reference No: MBAR609/NON/CONS/2023/2024/00001 under open domestic bidding method of procurement.
2. The Respondent received bids from eight (8) bidders namely, *M/s. Maco Global Agencies Ltd, M/s Kacyber Security Technologies Ltd (the **Applicant**), M/s Mbarara City Property Owners and Managers Cooperative Society Ltd, M/s. Woodflick Technical Services Ltd, M/s. Joseneous Investments Ltd, M/s Fueless Technologies Uganda Ltd, M/s Digital Chronicles Ltd and M/s Yoya Technologies Limited.*
3. Upon the conclusion of the evaluation process, the Respondent issued and displayed the Notice of Best Evaluated Bidder on March 20, 2024 indicating *M/s Yoya Technologies Limited* as the best evaluated bidder with a Contract Price of 40% commission of the collected revenue per week VAT inclusive.
4. The Applicant's bid was eliminated at the preliminary stage of the evaluation process on the basis of the following:
 - a) *The Power of Attorney presented in the bid was not drawn by an advocate; and*
 - b) *The bidder did not declare the nationality of the bidder in the bid submission sheet as required under item (h) contrary to Part 1 section 1 Instructions to the Bidders (ITB) 13.1 of the bidding document.*
5. Aggrieved with the outcome of the bidding process, the Applicant lodged an application for administrative review before the Respondent's Accounting Officer on April 03, 2024. The Accounting Officer of the Respondent did not make and communicate a decision regarding the complaint.
6. It is on the basis of the foregoing that the Applicant lodged the instant application to the Tribunal on May 02, 2024.

B. APPLICATION BEFORE THE TRIBUNAL

1. The Applicant avers that whereas its bid was rejected on the ground that the Power of Attorney was not drawn by an advocate, there is no law that requires the same to be drawn up by an advocate. What the law requires is that the Power of Attorney must be commissioned by a Commissioner for Oaths and registered by the Registrar of Documents.
2. The Applicant avers that whereas its bid was disqualified for failing to declare the nationality of the bidder in the bid submission sheet, the Respondent could have requested for clarification from the Applicant since this did not constitute a material deviation.
3. Without prejudice to the foregoing, the Applicant avers that the best evaluated bidder M/s. Yoya Technologies Limited has a relationship both direct and through common third parties that puts them in position to have access to information and influence on the Respondent by virtue of her being the owner and operator of the Integrated Revenue System (IRA) for which all bidders are required to integrate with. The best evaluated bidder still owns the source code for IRAS given that the system is a work in progress and they carry the primary responsibility of operation and maintenance of the same system. Therefore, having M/s. Yoya Technologies Limited would put the procuring entity at a disadvantage of being manipulated since there would be no checks and balances.
4. The Applicant accordingly prays that the Tribunal inter alia reinstates it in the bidding process, disqualifies M/s. Yoya Technologies Limited and orders the Respondent to tender in their MOU, contracts or engagement arrangement with M/s. Yoya Technologies Limited for the supply of IRAS.

C. REPLY TO THE APPLICATION

1. In a response filed on May 08, 2024, the Respondent avers that the application is barred by time and law, res judicata and has been brought in bad faith to frustrate the implementation of the ruling of this Tribunal decision in Application No. 18 of 2024.
2. The Respondent accordingly prays that the application is dismissed with costs.

D. ORAL HEARING

1. The Tribunal held an oral hearing on May 20th, 2024 via Zoom videoconferencing. The appearances were as follows:
 - i) Mr. Jacob Kabigumira, a Director of Fueless Technologies Ltd represented the Applicant.
 - ii) Mr. Alauterio Ntegyereize, the Senior Legal Officer of Mbarara City represented the Respondent.
 - iii) The Best Evaluated Bidder (*M/s Yoya Technologies Limited*) was represented by Mr. Batungwa Frank Tumusiime.

E. RESOLUTION

1. The Tribunal has considered the pleadings, the bids, the procurement action file and the oral submissions of the parties.
2. Whereas the Application raises no issues for the determination by this Tribunal, the following issues are discernible from the pleadings on record:
 - 1) *Whether the instant Application is time barred?*
 - 2) *Whether the instant Application is bared by Res Judicata?*
 - 3) *Whether the Respondent erred in law and fact when it eliminated the Applicant's bid at the preliminary examination stage?*
 - 4) *Whether Yoya Technologies Limited has a conflict of Interest?*
 - 5) *What remedies are available to the parties?*

Issue No. 1:

Whether the instant Application is time barred?

1. An Accounting Officer is duty bound to make and communicate a decision within 10 days upon receipt of a complaint from a bidder. See section 89 (7) of the *Public Procurement and Disposal of Public Assets Act 2003*; regulation 8 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*; and ***Vision Scientific & Engineering Limited v Makerere University Application No. 27 of 2022***.
2. Having received the Applicant's complaint on April 03, 2024, the Accounting Officer had 10 days from April 03, 2024, to make and

communicate a decision regarding the complaint. The said days commenced on April 04, 2024 and lapsed on April 13, 2024.

3. Sections 89 (8) and 911(2) (b) of the *Public Procurement and Disposal of Public Assets Act 2003* provide that where an Accounting Officer does not make a decision or communicate a decision within the period specified in in Section 87 (3), then the bidder can lodge an application before this Tribunal within ten (10) from the expiry of the time within which a decision ought to have been made by the Accounting Officer.
4. In the instant case, the last day for delivering a decision by the Accounting Officer of the Respondent was April 13, 2024. It follows that the time within which to file an application before this Tribunal commenced on April 14, 2024 and lapsed on April 23, 2024.
5. Section 71A of the *Public Procurement and Disposal of Public Assets Act 2003* provides that a procurement process and each stage of the procurement process shall be completed within the period prescribed in the regulations made under this Act. It is therefore imperative that there is strict adherence to the statutory timelines provided for in the procurement process, including the administrative review. See ***Application No. 02 of 2022 APA insurance Ltd v Uganda National Roads Authority, para 19, page 12.***
6. In ***Makula International Ltd v 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 v 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.
7. 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. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. 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 Application No. 29 of 2022, JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd v Private Sector Foundation Uganda, Pages 14-15.***

8. In conclusion, the Application lodged before the Tribunal on **May 02, 2024** was filed out of time. The Application is incompetent, and the Tribunal has no jurisdiction to entertain it.
9. In the circumstances we shall not delve into the merits of the Application.

F. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated May 02, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 24th day of May 2024.



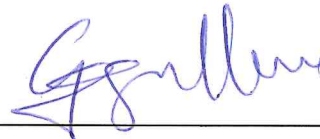
FRANCIS GIMARA S.C
CHAIRPERSON



NELSON NERIMA
MEMBER



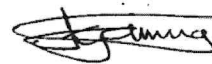
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



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MEMBER