

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

**APPLICATION NO. 22 OF 2024**

**BETWEEN**

**MAGOMBE BADIRU:.....APPLICANT**

**AND**

**SIRONKO DISTRICT LOCAL GOVERNMENT:.....RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT  
FOR THE COLLECTION OF LOCAL REVENUE FROM  
BUBBEZA/BUWALASI PARISHES FOR THE PERIOD FROM APRIL  
01, 2024 TO JUNE 31, 2024 FOR THE FY 2023/2024 UNDER  
PROCUREMENT REFERENCE NO. SIRO/929/SRVCS/2023-  
2024/0057**

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

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Sironko District Local Government (the Respondent) initiated a tender for the collection of local revenue from Bubbeza/Buwalasi parishes for the period from April 01, 2024 to June 31, 2024 for the FY 2023/2024 under Procurement Reference No. SIRO/929/SRVCS/2023-2024/0057 using open domestic bidding method.
2. Section 1 of the Instruction to Bidders provided that bids should be submitted not later than March 27, 2024 at 10:00 a.m.
3. Before the deadline for submission of bids, two (2) bidders namely; *Nabude Norah and Magombe Badru* (the Applicant) submitted bids.
4. During the process of bid opening, the Town Clerk of Bugusege Town Council, Ms. Mukazi Carol submitted bid on behalf of Mr. Wabulo Godfrey at around 11:30 am and asked the PDU Officials to receive her bid. The PDU and other bidders strongly objected.
5. The Respondent's Accounting Officer subsequently halted the procurement process and scheduled joint meetings with the bidders for April 4, 9 and 11 April, 2024. To date the meetings have never been held.
6. Aggrieved by the actions of the Respondent's Accounting Officer, the Applicant lodged a complaint before the Public Procurement and Disposal of Public Assets Authority on April 5, 2024.
7. The Applicant subsequently submitted this Application before the Tribunal on April 17, 2024.
8. The Applicant avers that the Respondent's Accounting Officer acted against the provisions of the **Public Procurement and Disposal of Public Assets Act** and the regulations made thereunder.
9. The Applicant avers that there is abuse of office and conflict of interest by Muzaki Carol who also doubles as the Town Clerk of Bugusege Town Council.

10. The Applicant accordingly prays that the Tribunal be pleased to award the contract to any of the two bidders who are compliant and responsive to the bid documents.
11. The Respondent did not file a reply or submissions.

**B. ORAL HEARING**

1. The Tribunal held an oral hearing on May 3, 2024 via Zoom videoconferencing. The appearances were as follows:
  - 1) The Applicant, Mr. Magombe Badiru, appeared in person.
  - 2) Mr. Masaba George, Senior Procurement Officer, represented the Respondent.

**C. RESOLUTION**

1. The Application raised six (6) issues for determination by the Tribunal which have been reframed as follows:
  - 1) Whether the Applicant has locus standi before the Tribunal?
  - 2) Whether the Application is time barred?
  - 3) Whether the impugned procurement was conducted in accordance with the procurement laws?
  - 4) What remedies are available to the parties?

**Issue No.1:**

**Whether the Applicant has locus standi before the Tribunal?**

1. Section 89(9) of the ***Public Procurement and Disposal of Public Assets Act, 2003 (as amended)*** and regulation 9 (5) of the ***Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*** provide that 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 that the matter cannot be handled impartially by the procuring and disposing entity, the bidder shall make an application to the Tribunal for determination of the complaint, omission or breach.
2. Section 911 (1)(c) of the ***Public Procurement and Disposal of Public Assets Act, 2003 (as amended)*** provides that a bidder who believes that the Accounting Officer has a conflict of interest

as specified in section 89 (9) can apply to the Tribunal for review. This means that an Applicant whose application is hinged on the premise or belief that the Accounting Officer has a conflict of interest has direct access to the Tribunal without having to first file a complaint before the Accounting Officer.

3. An Applicant bears the onus to demonstrate that its complaint or matters arising out of the impugned procurement could not be handled impartially by the Accounting Officer of the procuring and disposing entity or that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach to the satisfaction of the Tribunal. The Applicant must adduce cogent and reasonable evidence to satisfy the Tribunal that there was in fact such partiality or real likelihood of partiality or conflict of interest. See ***Application No. 31 of 2023 Consortium of EAA Company LTD and East Africa Auto Technical Testing v UNBS*** and ***Application No. 32 of 2023 Auto Terminal Japan Limited, Pal Auto Garage Ltd, Africa Automotive Analysis Ltd JV***.
4. This Tribunal has however, previously held that there is no need to prove that the Accounting Officer is actually biased or partial or has a conflict of interest. The requirement is to demonstrate a sincere belief, and the basis for that belief, that the Accounting Officer has a conflict of interest in respect of the complaint, omission or breach or that the matter cannot be handled impartially by the procuring and disposing entity. See ***Application No.07 of 2022 SMS Construction Ltd, Farrin YYISVT Ltd & STI Joint Venture v Ministry of Justice and Constitution Affairs***.
5. Whereas the Applicant does not expressly contend that the Accounting Officer was impartial he does aver in paragraph 8 of his complaint that following the expiry of the bid submission deadline, Carol Muzaki who also doubles as the Town Clerk of Bugusege Town Council went to the office of the Respondent's Accounting Officer and reported that the bidding process was almost concluded without her bid being accepted. The Accounting Officer consequently halted the entire bidding process.

6. Taking into consideration the foregoing, it is our finding that the Applicant has demonstrated a reasonable basis for this Tribunal to find that the Respondent's Accounting Officer cannot handle the complaint impartially. The Applicant was therefore entitled to make the Application directly to the Tribunal for determination of the complaint under sections 89(9) and 911(1) (c) of the **Public Procurement and Disposal of Public Assets Act, 2003 (as amended)**.
7. **This issue is resolved in the affirmative.**

**Issue No.2:**

**Whether the Application is time barred?**

8. According to section 91I (2) (c) of the **Public Procurement and Disposal of Public Assets Act, 2003 (as amended)**, a bidder who believes that the Accounting Officer has a conflict has to file an application within ten days from the date when the omission or breach by the procuring and disposing entity is alleged to have taken place.
9. In the instant case, the alleged unlawful acts which form the basis of the application occurred on March 27, 2024 during bid submission. It follows that the days started running on March 28, 2024 until April 07, 2024. However, since April 07, 2024 was a Sunday, the day is excluded from computation of time by virtue of section 34 (1) (b) of the **Interpretation Act Cap. 3**. Therefore, the instant application ought to have been filed on **April 08, 2024**.
10. It is trite that the timelines in the Public Procurement and Disposal of Public Assets Act 2003 are matters of substantive law and not mere technicalities. The timelines must be strictly complied with for all purposes and intents and non-compliance with them makes the proceedings fatal. See **Galleria in Africa Ltd vs. Uganda Electricity Distribution Company Ltd (Civil Appeal No. 08 of 2017) [2018] UGSC 19** and **Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal-2000f/31) [2000] UGCA 2**.
11. This Tribunal has previously held that 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.***

12. In conclusion, the Application lodged with the Tribunal on **April 17, 2024**, was therefore filed out of time. The Application is incompetent, and the Tribunal has no jurisdiction to entertain it.
13. In the circumstances we shall not delve into the merits of the Application.
14. **Issue no. 2 is resolved in the positive.**

**D. DISPOSITION**

1. The Application is struck out.
2. The Tribunal's suspension order dated April 17, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 9<sup>th</sup> day of May 2024.



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**FRANCIS GIMARA S.C  
CHAIRPERSON**



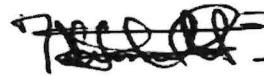
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**NELSON NERIMA  
MEMBER**



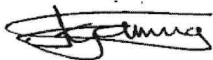
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**GEOFFREY NUWAGIRA KAKIRA  
MEMBER**



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**PAUL KALUMBA  
MEMBER**



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**CHARITY KYARISIIMA  
MEMBER**



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**KETO KAYEMBA  
MEMBER**