

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

**MISCELLANEOUS APPLICATION NO. 1 OF 2023**

**BETWEEN**

**EAA COMPANY LIMITED:..... APPLICANT**

**AND**

- 1. UGANDA NATIONAL BUREAU OF STANDARDS**
- 2. QUALITY INSPECTION SERVICES INC.**

**JAPAN:.....RESPONDENTS**

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

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**Representation:**

Mr. Richard Nsubuga together with Ms. Monica Namuli for the Applicant  
Mr. Hassan Walusimbi together with Ms. Jane Nanvule for the 1<sup>st</sup> Respondent

Mr. Michael Okecha together with Mr. Saad Seninde for the 2<sup>nd</sup> Respondent

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## **RULING**

On May 26, 2020, Uganda National Bureau of Standards (the 1<sup>st</sup> Respondent) executed a 3-year contract with the Applicant (EAA Company Limited) for provision of Pre-Export Verification of Conformity to Standards (PVoC) for Used Motor Vehicles under Procurement ref. UNBS/SRVCS/2019-20/00149, with the commencement date set as June 01, 2020. The 1<sup>st</sup> Respondent executed a similar contract with the 2<sup>nd</sup> Respondent (*Quality Inspection Services Inc. Japan -QISJ*)

Cognizant of the imminent expiry of the contracts, the 1<sup>st</sup> Respondent initiated a new procurement under Procurement ref. UNBS/NCONS/2022 – 2023/00033.

Pending completion of the new procurement process, the 1<sup>st</sup> Respondent twice extended the duration of the contracts with both the Applicant and the 2<sup>nd</sup> Respondent as follows;

- (i) On May 23, 2023, for a period of one month from June 1, 2023, to June 30, 2023; and
- (ii) On June 27, 2023, for a period of two months from July 1, 2023, to 31 August 2023.

On August 8, 2023, this Tribunal in Application Nos. 15, 17 and 18 of 2023, cancelled the new procurement under Procurement ref. UNBS/NCONS/2022-2023.

The 1<sup>st</sup> Respondent was advised by the Tribunal to re-tender the procurement if it so wished.

In a letter dated August 23, 2023, the 1<sup>st</sup> Respondent extended the 2<sup>nd</sup> Respondent's contract for 12 months to allow sufficient time to retender the procurement.

On August 31, 2023, 1<sup>st</sup> Respondent informed the Applicant of an investigation into the procurement processes concerning PVoC motor

vehicle service providers since 2018 and that the Applicant would not be considered for any contract extension beyond August 31, 2023.

The Applicant being dissatisfied with and feeling adversely affected by the decision of the 1<sup>st</sup> Respondent, filed the Application No. 21 of 2023 with the Tribunal on September 1, 2023, seeking to review the said decision of the 1<sup>st</sup> Respondent.

On September 1, 2023, the Tribunal issued a suspension order of the procurement process.

The Applicant filed the instant Miscellaneous Application No. 1 of 2023 on September 13, 2023, seeking inter alia the arrest and detention in civil prison of the 1<sup>st</sup> Respondents Accounting Officer and the Executive Director of the 2<sup>nd</sup> Respondent, and payment of a fine of \$ 500,000 by the Respondents for contempt of the Tribunal suspension order.

The application is supported by the affidavit of Mercy Kiconco, a legal assistant with *Nsubuga & Co. Advocates*, counsel for the Applicant.

The 1<sup>st</sup> Respondent did not file an affidavit in reply.

The 2<sup>nd</sup> Respondent filed an affidavit in reply deponed by Ceasor Otengo, a legal assistant with *Okecha Baranyanga & Co. Advocates*.

We have carefully studied the notice of motion, affidavit in support, affidavits in reply, and also considered the submissions of counsel and authorities cited.

In order to succeed in a civil contempt application, the following have to be proved;

- 1) That an order was issued by Court.
- 2) That the order was served or brought to the notice of the alleged contemnor.
- 3) That there was non-compliance with the order by the Respondent.
- 4) That the non-compliance was willful or mala fide.

**See: *Obon Infrastructure Development Ltd vs. Mbarara City and MBJ Technologies Limited, Misc Application No.1 of 2022, arising out of Tribunal Registry Application No.20 of 2021.***

The suspension order was also sent to the 1<sup>st</sup> Respondent and the Applicant by email from the Tribunal on September 1, 2023 at 18:15pm.

An email correspondence between the Accounting Officer of the 1<sup>st</sup> Respondent and a Director of the Applicant on September 3, 2023 at 20:06 IST (annexure D to the affidavit in support) shows that the Accounting Officer of the 1<sup>st</sup> Respondent was aware of the suspension order from the Tribunal.

The suspension order to the Accounting Officer of the 1<sup>st</sup> Respondent stated that *“YOU ARE HEREBY ORDERED TO SUSPEND ANY FURTHER ACTION ON THE PROCUREMENT PROCESS”*.

By the time the suspension order was issued on September 1, 2023, the 1<sup>st</sup> Respondent’s Accounting Officer had already issued the letter dated August 23, 2023 to extend the 2<sup>nd</sup> Respondent’s contract for 12 months effective 1<sup>st</sup> September 2023. There is no evidence that the 1<sup>st</sup> Respondent’s Accounting Officer took any further action on the process after September 1, 2023. The Applicant has not proved to the satisfaction of the Tribunal that there was any willful or malafide non-compliance by the 1<sup>st</sup> Respondent’s Accounting Officer.

Regarding the 2<sup>nd</sup> Respondent, Mercy Kiconco depones in paragraph 6 of the affidavit in support that *“On the 5<sup>th</sup> day of September, 2023 we received information from the director of the Applicant company that the 2<sup>nd</sup> Respondent (QISJ had adamantly taken fresh bookings after the 1<sup>st</sup> day of September 2023, in violation of the suspension order”*. Copies of the inspection certificates allegedly issued by the 2<sup>nd</sup> Respondent were attached to the affidavit. It is deponed in paragraph 7 that *the Respondents’ actions defy the suspension order.*

As stated above, the suspension order was directed to the Accounting Officer of the 1<sup>st</sup> Respondent to suspend any *further* action on the procurement process. The order did not retrospectively apply to past actions.

We are not persuaded that the suspension order required the 2<sup>nd</sup> Respondent to stop providing Pre-Export verification of Conformity to Standards (PVoC) for Used Motor Vehicles, pursuant to the impugned contract extension dated August 23, 2023.

The Applicant has not proved that there was any willful or malafide non-compliance with the suspension order or defiance thereof by the 2<sup>nd</sup> Respondent.

In the result, the application is dismissed with no order as to costs.

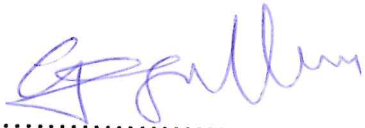
Dated at Kampala this 22<sup>nd</sup> day of September, 2023.



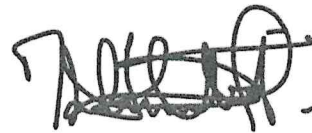
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**NELSON NERIMA**  
**MEMBER**



.....  
**THOMAS BROOKES ISANGA**  
**MEMBER**



.....  
**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



.....  
**PAUL KALUMBA**  
**MEMBER**



.....  
**CHARITY KYARISIIMA**  
**MEMBER**