

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

APPLICATION NO. 10 OF 2024

BETWEEN

REXCO LIMITED ::APPLICANT

AND

BUDAKA DISTRICT LOCAL GOVERNMENT::::::::::::::::::::::::::RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF A
PROCUREMENT FOR THE CONSTRUCTION OF A WARD AT
BUDAKA HEALTH CENTRE IV PHASE 1 VIDE PROCUREMENT
REF NO.BUDA57/WRKS/2023-2024/00003**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Budaka District Local Government (the Respondent) initiated a procurement for the construction of a ward at Budaka Health Centre IV phase 1 vide procurement **Ref No. BUDA57/WRKS/2023-2024/00003** using open bidding method.
2. Bids were received from 3 bidders namely *Midor and Siblings Investment Limited*; *Rexco Limited* (the Applicant), *Eryan Business Solution (U) Ltd* and *Trans World Agencies Ltd*.
3. Upon conclusion of evaluation and adjudication process, the Respondent awarded the Contract to *Midor and Siblings Investment Ltd* at a contract price of UGX 158,290,923/= VAT Exclusive. The Notice of Best Evaluated Bidder was displayed on January 18, 2024 with a removal date of February 1, 2024.
4. The Notice of Best Evaluated Bidder indicated that the Applicant was unsuccessful because it was the second-best evaluated bidder with a total cost of UGX. 158,765,088.
5. The Applicant being dissatisfied with the procurement process, applied for administrative review before the Accounting Officer on February 1, 2024.
6. The Applicant complained about alleged withholding of information about the revised notice of Best Evaluated Bidder; inconsistencies in the Notice of Best Evaluated Bidder; and irregular arithmetic corrections of the bid price of the Best Evaluated Bidder.
7. The Accounting Officer of the Respondent dismissed the complaint by a letter dated February 13, 2024.

8. The Applicant then filed the instant application with the Tribunal on February 23, 2023, seeking to review the decision of the Respondent.
9. The Respondent filed a response to oppose the Application.

B. ORAL HEARING

1. The Tribunal conducted an oral hearing on March 6, 2024. The appearances were as follows:
Mr. Mwima Moses the Managing Director of REXCO LTD appeared for the Applicant.
Mr. Elly Piwang the Accounting Officer of the Respondent and Mr. Kutta Noah the Head Procuring and Disposing Unit appeared for the Respondent
Mr. Naliku Milton the representative of MIDOR & SIBLINGS INVESTMENT LTD appeared for the Best Evaluated Bidder.
2. The Tribunal has considered the pleadings, the submissions, the bids and the procurement action file.

C. RESOLUTION

1. The Applicant had no counsel and was unable to frame proper legal issues. However, from reading the Application and in view of the matters which arose at the hearing, the following are the issues for determination:
 - 1) Whether the Application is competent?
 - 2) Whether Midor and Siblings Investment Limited was lawfully declared as the Best Evaluated Bidder?
 - 3) What remedies are available to the parties?

Issue No. 1:

Whether the Application is competent?

1. The competence of the Application is, inter alia, premised on the determination of whether the Application was filed within time. See **Application No. 1 and 2 of 2024- Pynet**

Technologies SMC Ltd v Ministry of Lands, Housing and Urban Development, Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government.

2. We observed that on February 1, 2024, the Applicant filed a complaint before the Accounting Officer of the Respondent.
3. The Accounting Officer of the Respondent advised the Applicant to pay administrative review fees of UGX. 1,500,000 vide a letter dated February 7, 2024 but delivered on February 9, 2024.
4. The Applicant paid the administrative review fees on February 10, 2024.
5. The Accounting Officer of the Respondent dismissed the complaint on February 13, 2024.
6. Section 89(7) of the *Public Procurement and Disposal of Public Assets Act* requires the Accounting Officer to make and communicate a decision within ten days from receipt of the complaint.
7. The time for reviewing and responding to the complaint lodged by the Applicant on February 1, 2024 started to run on February 2, 2024 and would have elapsed on **February 11, 2024**.
8. **February 11, 2024** was a Sunday and considered an excluded day under *section 34(1) (b) of the Interpretation Act*. It is not an official working day. The next working day when the Accounting Officer of the Respondent ought to have made and communicated the administrative review decision was **Monday, February 12, 2024**.
9. The fact that the Applicant paid administrative review fees belatedly on February 10, 2024 has no effect on the timelines stipulated in section 89 of the *Public Procurement and Disposal of Public Assets Act*.

10. It therefore follows that the decision made and communicated by the Accounting Officer of the Respondent on **February 13, 2024** was made outside the statutory timelines. It is therefore no decision at all and a nullity. See: ***Application No. 3 of 2024- G.E Solutions v Ministry of Lands, Housing and Urban Development*** and ***Application No. 34 Of 2023- Exposed Label Limited Vs. Uganda Civil Aviation Authority***; and
11. Under sections 89 (8) and 91(2) (b) of the *Public Procurement and Disposal of Public Assets Act*, where an Accounting Officer does not make a decision within the stipulated timeframes, the bidder may make an application to the Tribunal in accordance with *Part VIIA* of the *Public Procurement and Disposal of Public Assets Act*, within ten (10) days from the date of expiry of the stipulated period.
12. The ten days within which the Applicant could make an application to the Tribunal started running on February 13, 2024 and expired on **February 22, 2024**.
13. The instant Application lodged with the Tribunal on **February 23, 2024**, was therefore out of time prescribed under sections 89 (8) and 91(2) (b) of the *Public Procurement and Disposal of Public Assets Act*.
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 ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government*** and ***Application 16 of 2023, Vital Capital Investments Limited and 2 Others v Ministry of Housing and Urban Development***. Also see ***Sanlam General Insurance v UNRA, Application No.29 of 2021*** and ***Mugabi David v Sembabule District Local Government, Application no. 24***

of 2022.

15. 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 vs Sembabule District Local Government, Application no. 24 of 2022.***
16. The instant Application Registry No. 10 of 2024 is therefore time barred and incompetent. 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 February 23, 2024 is vacated.
3. Each party to bear its own costs.

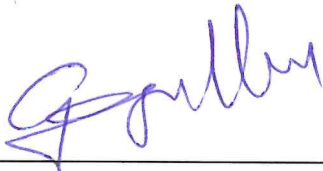
Dated at Kampala this 13th day of March, 2024.



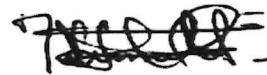
**NELSON NERIMA
MEMBER**



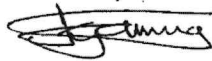
**THOMAS BROOKES ISANGA
MEMBER**



**GEOFFREY NUWAGIRA KAKIRA
MEMBER**



**PAUL KALUMBA
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**CHARITY KYARISIIMA
MEMBER**



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MEMBER**