

UGANDA / JUDGMENT

**Maxol Uganda Limited v Uganda Electricity
Generation Company Limited (Application No.
3
of 2023) [2023] UGPPDPAAT 5 (27 February 2023)**
[2023] UGPPDPAAT 5

COURT

Public Procurement and Disposal of Public Assets
Appeals Tribunal

BEFORE

Isanga, Ag. Chairperson, Kakira, Panel Member,
Kyarisiima, Kalumba

CASE / FILE NUMBER

Application No. 3 of 2023

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

APPLICATION NO. 3 OF 2023

BETWEEN

MAXOL UGANDA LIMITED:.....

AND

UGANDA ELECTRICITY GENERATION COMPANY LIMITED:.....

APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT FOR SUPPLY OF HEAVY FUEL
OIL (HFO) FOR NAMANVE THERMAL POWER PLANT UNDER PROCUREMENT REFERENCE
NUMBER UEGCL/SPLS/202223/20090.

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

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Generation Company Ltd

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DECISION OF THE TRIBUNAL

A. BRIEF FACTS

- On 11th October 2022, the Respondent invited sealed bids for \$1. the procurement of supply of Heavy Fuel Oil (HFO) for Namanve Thermal Power Plant using open international Number Reference Procurement under bidding UEGCL/SPLS/202223/20090.
- The bidding document was issued to 9 bidders of which only 3 \$2. bidders namely Maxol (U) Ltd (the Applicant), Rubis Energy Uganda Limited and Jaguar Petroleum Ltd submitted bids by the closing date of November 23, 2022.
- Upon conclusion of the evaluation process, the Best \$3. Evaluated Bidder Notice was displayed on January 9, 2023 with a date of removal being January 20, 2023. The notice indicated that Rubis Energy Uganda Limited was the Best Evaluated Bidder at a Total contract price of USD 17,296,320.4992.
- The Best Evaluated Bidder Notice indicated that the \$4. Applicant's bid was rejected because "the bidder presented the Net Calorific value of 40,483 KJ/kg and Gross Calorific value of 42,103 KJ/kg. The bidding document required a net calorific of min 40,585 KJ/kg and Gross Calorific Value of min 43,100 KJ/kg using ASTM $\overline{D}$ 4868 test method"
- The Contract award to Rubis Energy Uganda Limited was \$5. challenged by Maxol (U) Ltd through administrative review process before the Accounting Officer of the Respondent on January 12, 2023.
- In a decision dated 27th day of November 2022, the 6. Accounting Officer dismissed the Applicant's complaint for being devoid of merit.

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\$7. The Applicant being dissatisfied with the decision of the Accounting Officer, filed the instant application with the Tribunal on February 6, 2023, seeking to review the decision of the Respondent.

$\mathbf{B}$. APPLICATION TO THE TRIBUNAL

- The Applicant contested the disqualification of its bid on the \$1. grounds that the Applicant presented a Net Calorific Value of 40,483 KJ/Kg, which was lower (although insubstantially) than the 40,585 KJ/Kg Net Calorific Value required in the bidding document. The Applicant contented that the variance in the net calorific value was not a material deviation within the meaning of the substantiality test in the law and bid document. The Applicant submitted that the Respondent flouted the requirements in the bid document and erroneously

disqualified the Applicant's bid which was substantially responsive.

- \$2.\$ The Applicant contended that its bid was substantially responsive and had the lowest priced bid of United States Dollars \ \$ 15,133,007.2320 as opposed to the best evaluated bidder's price of United States Dollars \ \$ 17,296,322.69. The Applicant averred that the Respondent should have awarded the contract to the lowest priced bid as required in the solicitation document.
- \$\overline{3}\$. The Applicant submitted that with such a huge difference in all aspects of the substantiality test including correction of a nonmaterial deviation should have been given weight and consideration they deserve in line with the principles of maximisation of competition and ensuring value for money. That this minor deviation should have been corrected during contract negotiations bearing in mind the nature of delivery and testing of each batch of HFO.
- The Applicant prayed that the Tribunal finds merit in the 4. application, recalls the Best Evaluated Bidder Notice dated 9th January 2023, orders the Respondent to re-evaluate the bids

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in strict adherence to the law, practice and the bidding documents and for costs of the application.

\$\mathbf{C}\$. RESPONDENT'S REPLY TO THE APPLICATION

- \$1.\$ The Respondent contended that it is factual that the Applicant's Bid that stated a Net Calorific Value of 40,483 KJ/kg, was non-responsive to the Bid Solicitation Document which clearly stipulated that the minimum Net Calorific Value to be met was 40,585KJ/Kg that indicated the lowest threshold value to be considered for responsiveness.
- \$2.\$ The Applicant averred that when the Applicant made an offer to supply Heavy Fuel Oil (HFO) with a Net calorific Value that is lower than the expressly stated minimum required by the Respondent in the Bid Solicitation Document, the Applicant's bid was outrightly non-responsive at the Technical Evaluation Stage.
- \$3.\$ The Respondent further contended that the minimum Net Calorific Value was informed by the requirements of the Power Purchase Agreement between the Respondent and the Uganda Electricity Transmission Company Limited for the sale of the net electrical output generated from the Namanve Thermal Power Plant to UETCL and the Generation and Sale Licence No \$ERA/LIC/GEN/021/209\$ for the generation and sale of electricity generated at the Namanve Thermal Power Plant issued to the Respondent by the electricity industry regulator the Electricity Regulatory Authority.

- \$4.\$ The Respondent asserted that the Lower Heating Value (LHV) approved by Electricity Regulatory Authority for the monthly energy payments under the terms and conditions of the Power Purchase Agreement is indicated as 40,585Kj/Kg and that informed the drafting of specifications and thresholds indicated in the Solicitation Document.

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- \$5.\$ The Respondent avowed that any deviation by the Respondent from the conditions of the Power Purchase Agreement and the Generation and Sale Licence would expose the Respondent to risk exposure of regulatory sanctions in form of monetary fines or revocation of the Generation and Sale Licence, with the ripple effect of halting the operations of the Namanye Thermal Power Plant.
- 6. The Respondent maintained that the calorific value is a material and vital property of fuel because it determines not only the efficiency of the fuel but also the amount of energy released by the combustion of fuel. The said amount of energy is arrived at at measuring the quantity of heat released per unit of weight of the fuel. That any deviation from the minimum is material as it affects the efficiency of the fuel and ultimately the operation of the Namanve Thermal Power Plant.
- The Respondent averred that the applicant's bid having been \$7.\$ found to be non-responsive and substantially non-compliant at the technical evaluation stage rendered a further financial evaluation and comparison with responsive bids an illegality and unnecessary exercise. The Respondent contended that it was not bound to consider the said lowest lowest quoted bid of the Applicant because the Applicant's bid was found to be non-responsive at the Technical Evaluation Stage and could not proceed to or be considered at the Financial Comparison Stage of evaluation.
- 8. The Respondent prayed that the Tribunal finds that the Applicant is not entitled to the remedies and prayers sought and that the Application be dismissed with costs.

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BEST EVALUATED BIDDER'S REPLY TO THE APPLICATION \$\mathbf{D}\$

- \$\mathbf{1}\$ The Best Evaluated Bidder raised a **preliminary objection** to the effect that the instant application is **frivolous and vexatious**, a fishing expedition aimed at frustrating the procurement process. The Best Evaluated Bidder prayed that the Application be dismissed with costs.

- 2. The Best Evaluated Bidder contended that the Applicant's Bid failed to meet the minimum requirements and downplayed the Applicant's reliance of its past experience in having supplied similar products to Jacobsen.
- The Best Evaluated Bidder argued that the Applicant had 3 acknowledged that it had deviated from the requirements of the solicitation document and thus had no merits in pursuing this Application. The Best Evaluated Bidder relied on the decision of Roko Construction Limited v Public Procurement and Disposal of Public Assets Authority & Ors (Civil Appeal 59 of 2017) to buttress its submission that the Tribunal should not be compelled to condone an illegality.
- 4. The Best Evaluated Bidder averred that the Applicant's bid having failed at the Technical Evaluation Stage, did not qualify for financial evaluation.
- 5. The Best Evaluated Bidder prayed that the Tribunal dismisses the Application with costs and allows the procurement process to continue to its logical conclusion.

E THE ORAL HEARING

The Tribunal held an oral hearing on 22 February 2023 via zoom software. The appearances were as follows:

1. Counsel Alex Rezida, Owen Henry and Richard Wanyina Bwayo

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from Nangwala, Rezida & Co Advocates represented the Applicant.

2. The Respondent was represented by Mr. Davis Othieno, the Legal Officer; Mr. Mark Martin Obia, the Company Secretary and Beatrice Kulume Manager Legal Affairs.

In attendance were Mr. John Kokas Omiat the Head Procurement and Disposal Unit; Eng. Ezra Wenka - Mechanical Engineer; Albert Murungi Chairperson Contracts Committee; Allen Asasira Senior Procurement Officer; Ronald Sekitene Electrical Engineer-Namanve; David Lubega - Generation Manager Namanve and George Tusingwire Mutetweka- Chief Operations Officer

3. The Best Evaluated Bidder was represented by Ms. Mercy Makabayi, the Legal Officer; Mr. Olivier Gatera, the Country Manager of the Best Evaluated Bidder.

F . PRELIMINARY OBJECTION

During the hearing, the Best Evaluated Bidder raised a preliminary objection to the instant application before the Tribunal.

- 1. That the instant application is frivolous and vexatious, a fishing expedition aimed at frustrating the procurement process. The Best Evaluated Bidder prayed that the Application be dismissed with costs.
- 2. In reply to the preliminary objection, the Applicant submitted that the Best Evaluated Bidder is ordinarily not a party to this application and was not named as a Respondent. That the grievances and the cause of action of the Applicant is against the Respondent.
- 3. The Applicant further submitted that the preliminary objection is merely academic and an exercise in futility. It is based on the false premise that this application is against it or that it is partly to same.

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- 4. The Applicant submitted that in determining whether the matter is frivolous and vexatious, it is imperative for the Tribunal to look at the laws granting the application right to lodge complaint as well as the actual facts and issues at hand, which the Tribunal is called upon to determine. The Applicant prayed for a finding that the preliminary objection is baseless and unfounded and should be dismissed.
- 5. The Respondent in reply to the preliminary objection submitted that the instant application is a clear example of a frivolous and vexatious suit as it is devoid of any legal merit and the Applicant is fully aware of this but rather seeks to simply waste time.
- 6. The Tribunal having listened carefully to the submissions by the parties in respect to the preliminary objection raised by the Best Evaluated Bidder, in the interest of time, directed the parties to make submissions on the merits of the application and that the ruling on the preliminary objection will be made later in the detailed decision of the Tribunal

\$G\$. SUBMISSIONS

During the oral hearing, the Applicant, Respondent and the Best Evaluated Bidder highlighted their written submissions and made oral arguments before the members of the Tribunal.

Applicant

- 1. The Applicant re-affirmed that Clause 2.1 and 6.2 of the Instructions to Bidders of the Bidding Document explicitly provided that preference shall be given to a bid that is the lowest priced, is eligible, compliant and substantially responsive to the technical and commercial requirements of the Bid Document as long as there is no material deviation.
- \$2.\$ The Applicant contended that the variance between the requirements in the bidding document and the specifications of the Applicant were non-material in light of Clause 30.2 and met the substantiality test required in the bidding document.

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- \$3.\$ The Applicant submitted that a matter of mere comparison, the Applicant's unconsidered bid is USD 2,163,315.453 less than the best evaluated bidder's evaluated price and urged the Respondent to be frugal where spending public funds is involved. The Applicant cited the decision of the Tribunal in Application \$No.1\$ \$of\$ 2016; China National Aero Technology **Engineering** International Corporation (CATIC) vs Public Procurement and Disposal of Assets **Authority** to buttress its submissions.
- \$4.\$ The Applicant argued that the explanations of the Respondent grounded on the Power Purchase Agreement between the Respondent and the Uganda Electricity Transmission Company Limited for the sale of the net electrical output generated from the Namanve Thermal Power Plant to UETCL and the Generation and Sale Licence are novel, alien to the procurement process and do not demonstrate the alleged impact or the materiality of the deviation at hand.
- Regarding the preliminary objection the Applicant argued \$5.\$ that Preliminary Objection is merely academic and an exercise in futility, that the Best Evaluated Bidder is not a party to the Application and has no locus to make any submissions as this Application is not against it but rather against the Respondent. The Applicant prayed that the preliminary objection be over ruled.

Respondent

- The Respondent adopted its written submissions and prayed \$1.\$ that the Application be dismissed with costs.
- Regarding the preliminary objection, the Respondent \$2.\$ associated itself with submissions of the Best Evaluated Bidder on the Preliminary Objection.

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Best Evaluated Bidder

- 1. The Best Evaluated Bidder reiterated the contents of its written submissions and prayed that the Application be dismissed with costs.
- 2. In rejoinder to the replies made to the preliminary objection, the Best Evaluated Bidder retorted that it had a right to make a response and raise preliminary objections to the Application as an interested party duly invited by the Tribunal.

- 3. The Best Evaluated Bidder argued that it is not enough for the Applicant to merely alledge that it has a right to institute an administrative complaint, the Applicant must also demonstrate in its Application that it has good grounds and a legal basis for the Application and that the application is not manifestly insufficient as a matter of law. The Best Evaluated Bidder reemphasised that the Application is devoid of merit and should be dismissed

H. RESOLUTION BY THE TRIBUNAL

RULING ON THE PRELIMINARY OBJECTION.

Issue: Whether the instant application is frivolous and vexatious?

- 1. S91I (1) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021 provides that the following may apply to the Tribunal for review of a decision of a procuring and disposing entity-
- (a) A bidder who is aggrieved, as specified in section 89(7) or (8);
- (b) A person whose rights are adversely affected by a decision made by the Accounting Officer; and
- (c) A bidder who believes that the Accounting Officer has a conflict of interest as specified in section 89(9).
- 2. The cause of action in a procurement or disposal process before the Tribunal arises under three circumstances as provided above in

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S.91I(1) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021. In the instant application before the Tribunal, the cause of action arose when the bidder was dissatisfied with the decision of the Accounting Officer.

- 3. Once an Accounting Officer makes and communicates an administrative review decision or does not make and communicate an administrative review decision and a bidder is dissatisfied or aggrieved with the said decision, then the right of such an aggrieved bidder or person whose rights are adversely affected by the decision to apply to the Tribunal for review of the decision of a procuring and disposing entity arises.
- 4. In our view, Applicant's cause of action as defined in TORORO CEMENT Co. LTD VS FROKINA INTERNATIONAL LIMITED, SCCA No.2 of 2001; accrues as soon as the bidder falls within the ambit of S911 (1)(a)-(c) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021.

- 5. At the hearing, the Applicant vehemently objected to the presence of M/s Rubis Energy Uganda Limited as the Best Evaluated bidder in the instant Application or the Tribunal's hearing of a preliminary objection raised by the Best Evaluated Bidder who is not named as a respondent or party to the instant Application.
- 6. The Tribunal's practice of informing the Best Evaluated Bid of an Application and simultaneously inviting the Best Evaluated Bidder to make representations (if any) to the Tribunal has been informed by the need to avoid multiplicity of pleadings and to further ensure that parties such as the best evaluated bidder who have a high interest in the Application and whose rights may be affected directly or indirectly by the nature of orders sought from the Tribunal, to be given an opportunity to make representations before the Tribunal in order to achieve justice. See Decision of Odoki J in MJB Technologies Ltd v Public Procurement and Disposal of Public Assets Authority and 2 Others (Miscellaneous Cause 171 of 2021) [2021] UGHCCD 59, para 55-58

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- 7. Further in **ACACIA PLACE VS ZHANG HAO & LIU MING SHU**, PPDA & ELECTORAL COMMISSION, CIVIL APPEAL No.058 of 2018, Justice Ssekana Musa held that "hearing of the appeal without the applicant's involvement would likely and or occasioned an injustice to the appellant (Best Evaluated Bidder). According to the record of proceedings, it is clear that the 1st Respondent (Best *Evaluated Bidder)* was an interested party and it is not clear why he was never joined to the proceedings in the PPDA Tribunal".
- 8. It was therefore prudent and incumbent on the Tribunal to notify and/or involve the Best Evaluated Bidder of the Application and to take into account representations (if any), made by the said Best Evaluated Bidder; even in circumstances where the Best Evaluated Bidder is not impleaded as a Respondent to the instant Application.
- 9. M/s Rubis Energy Uganda Limited being the Best Evaluated Bidder is an interested party in the procurement process and ought to be involved in the administrative review process. The Best Evaluated Bidder was therefore within its rights to raise a preliminary objection in its representations to the Tribunal and to further attend the hearing of the Application before the Tribunal.
- 10. For the above reasons, the preliminary objection is overruled. We now turn to resolve the issues raised in the main application.

Issues

The Application raised four issues for determination of the Tribunal which have now been reframed as follows:

- *i) Whether there is a competent Application before the Tribunal*

- ii) Whether the Applicant's bid which stated a Net Calorific Value of 40,483 Kj/Kg when the bid document required a minimum Net Calorific Value of 40,585 Kj/Kg was substantially responsive within the meaning of the bid document, the law and practice, and if so whether that bid should have been *considered it being substantially responsive?*

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- iii) Whether or not the Respondent was in breach for failing to *consider a bid that was substantially responsive?*
- iv) Whether or not disqualifying a bid that was substantially responsive, which bid was the lowest quoted bid at USD 15,133,007.2320 as opposed to the best evaluated bid which was quoted at USD17,296,322.69 was in beach of the requirement of considering the lowest priced bid?
- *v) What remedies are available to the parties?*

Resolution of Issues

Issue 1: Whether there is a competent application before the Tribunal?

- 1. The pertinent question to be determined by the Tribunal at the onset therefore is whether there is a valid and competent Application before the Tribunal. The determination of the of the competence application is on premised the determination of two significant questions: Whether the Applicant has locus standi to file this application with the *Tribunal,* and *whether the application was filed within time.* See Application No.2 of 2023 Fara Gostar Bistoon versus Uganda Electricity Transmission Company Limited and Application No.31 \$of\$ 2022 Kafophan and SIAAP Consortium versus **Ministry** of Agriculture Animal Industry and Fisheries & Youth Alive Uganda
- \$2.\$ The Tribunal is duty bound to inquire into the existence of the facts in order to decide whether it has jurisdiction. This is because jurisdiction must be acquired before judgment is given. See **World Standardization Certification & Testing Group (Shenzen) Co. Ltd Vs. Uganda National Bureau of Standards**, Application No. 46 of 2022.
- \$3.\$ In the instant Application, the Applicant participated in the impunged procurement albeit unsuccessfully. Attempts to also challenge the procurement process through a complaint to the Accounting Officer of the Respondent was also dismissed on

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27th day of November 2022 exercising his powers under section 89 (7) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021.

- \$4.\$ The Applicant is an aggrieved bidder who exercised the right to apply to the Tribunal for review of a decision of a procuring and disposing entity made under section 89 \$(7)\$ or \$(8)\$, in accordance with Section 91I(1)(a) of the Public Procurement and Disposal of Public Assets Act as amended by Act 15 of 2021 and therefore has locus standi to file this application with the Tribunal.
- 5. Regarding the second determinant for competence of whether the application was filed within time, the Tribunal is guided by the timelines set within the *Public Procurement and Disposal of* Public Assets Act as amended by Act 15 of 2021 and Regulations made thereunder.
- 6. At the hearing, the Applicant, Respondent and Best Evaluated Bidder were invited to make submissions to the Tribunal, regarding the question of whether the instant Application was filed within the statutory timelines. The said oral submissions have been taken into consideration, in resolving the said question.
- 7. Under Section 89(7) of the Public Procurement and Disposal of Public Assets Act, the Accounting Officer must make and communicate a decision within ten (10) days of receipt of a complaint. The ten days started running on January 12, 2023 the date the application was filed with the Respondent and would have expired on **Sunday, January 22, 2023**.
- Section 34 \$(1)\$ (b) of the Interpretation Act provides that in 8. computing time for the purpose of any Act, if the last day of the period is a Sunday or a public holiday ("excluded days"), the period shall include the next following day, not being an excluded day. Since Sunday, January 22, 2023 was not working days, the last day was **Monday, January 23, 2023**.

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- 9. Therefore, the Accounting Officer was bound to make and communicate his decision on the complaint to the applicant latest on Monday, January 23, 2023.
- The Accounting Officer however, purported to make and 10. communicate the administrative review decision to the Applicant on **January 27, 2023**. That decision was made out of time, in breach of the law and is of no legal consequence. See Application No.44 of 2022 Ateker Community Energy Cooperative Ltd vs Katakwi District Local Government and Application No.28 of 2022 Frida B Kwikiriza vs Buliisa District Local Government.

- Where an Accounting Officer does not make or communicate a \$11.\$ decision within ten days of receipt of the complaint, the complainant has a right to make an application to the Tribunal within ten days of the expiry of the period given for the Accounting Officer to make and communicate a decision. See sections 89(8) and 911 (2) (b) of the Public Procurement and Disposal of Public Assets Act as amended. The ten days started to run on Tuesday, January 24, 2023 and expired on February 2, 2023.
- 12. "The objectives of the Public Procurement and Disposal of Public Assets Act are to formulate policies and regulate practices in respect of public procurement and disposal activities among others..... There is no way the Act can regulate practices in respect of public procurement and disposal of public assets unless if the provisions are adhered to strictly to the letter. The provisions cannot be merely directory. They are for all purposes and intents mandatory and non compliance with them makes the proceedings fatal. Procurement and Disposal activities are processes, one cannot move to another stage of the processes without fulfilling the first one". See *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd* (Civil Appeal No.8 of 2017) [2018] UGSC 19
- 13. We are not convinced by the submissions of the Applicant and Best Evaluated Bidder to the effect that non compliance with

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the timelines stipulated in the Public Procurement and Disposal of Public Assets Act is a mere technicality that can be cured by Article 126(2)(e) of the Constitution of the Republic of Uganda that enjoins courts and the Tribunal alike, to administer substantive justice without undue regard to technicalities.

- Time limits set by statutes are matters of substantive law and \$14.\$ not mere technicalities and must be strictly complied with. See: *Uganda Revenue Authority v Uganda Consolidated Properties Ltd* (Civil Appeal 31 of 2000) [2000] UGCA 2.
- It is also immaterial that the Applicant claims to have been 15. misled by the Respondent's Letter dated January 17, 2023 which stated as follows:

"We are commencing investigations into your complaint and will inform you of the investigations' outcome in accordance with Section 90(2)(b) of the Public Procurement and Disposal of Public Assets Act 2003, within 15 days from the date of receipt and acknowledgment of payment of the prescribed administrative fee"

- The impugned letter of January 17, 2023 was grounded on \$16.\$ Section 90(2)(b) of the Public Procurement and Disposal of Public Assets Act 2003, which was repealed by section 34 of the Public Procurement and Disposal of Public Assets (Amendment) Act, \$N_0\$ 15 of 2021.

- Secondly, an Accounting Officer should not therefore abdicate 17. his duty to make and communicate a decision within statutory timelines simply because the procuring and disposing entity has not yet received the prescribed fees. The duty still lies on the Accounting Officer to promptly guide an aggrieved bidder on the prescribed administrative review fees and the mode of payment thereof upon receipt of a complaint. See: **Application No. 1 of 2023 Apple Properties Ltd v Uganda Human Rights Commission and High Court Civil Appeal No. 93 of 2020- Mbarara University of Science & Technology v**

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Public Procurement and Disposal of Public Assets Authority & Steam Investments (U) Ltd.

- This is because the Tribunal has been consistent on the 18. principle that late payment of administrative review fees is not necessarily fatal, and that even actual non-payment of prescribed or court fees has been held not to be fatal so long as the proper fees can be assessed and paid. See VCon Construction **Uganda** Development Bank. Application No. 22 of 2021, Samanga Elcomplus Jv Vs. Uganda Electricity Distribution Company Limited, Application No. 17 Of 2021, Kasokoso Services Limited Vs. Jinja School of Nursing And Midwifery, Application No. 13 of 2021. In the said decisions, the Tribunal has relied on the Supreme Court decision in Lawrence Muwanaa V Stephen Kyeyune (Legal Representative of Christine Kisamba, Deceased) Supreme Court Civil Appeal No. 12 of 2001.
- 19. From the previous decisions of the Tribunal, we have affirmed and continue to affirm that the time limits set in the Public Procurement and Disposal of Public Assets Act were set for a purpose, are couched in mandatory terms, are a matter of substantive law, are not mere technicalities and must be strictly complied with. 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 at this point in as far as the matter is concerned See **Application No. 44 of 2022 Ateker Community Energy Cooperative Ltd versus Katakwi District Local Government.**
- 20. The digest of our findings is that the instant Application lodged with the Tribunal on February 6, 2023 was therefore filed out of time set by law and is incurably defective and incompetent.

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21. In the result, there is no need to delve further into the merits of the Application.

I. DISPOSITION

- 1) The Application is struck out.
- 2) The Tribunal's suspension order dated February 6, 2023 is vacated.
- 3) Each party to bear its own costs.

Dated at Kampala this 27th day of February 2023.

GEOFFREY NUWAGIRA KAKIRA MEMBER

PAUL KALUMBA MEMBER

THOMAS BROOKES ISANGA MEMBER

Tuma

CHARITY KYARISIIMA MEMBER

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