

THE REPUBLIC OF UGANDA

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY APPEALS
TRIBUNAL

(PPDA APPEALS TRIBUNAL)

REFERENCE NO. 3 OF 2019

REFERENCE OVER SERIOUS BREACH OF THE PPDA ACT 2003 BY THE KASESE DISTRICT
LOCAL GOVERNMENT IN RESPECT OF THE TENDER FOR REVENUE COLLECTION FROM
LHUBIRIHA MARKET IN MPONDWE-LHUBIRIHA TOWN COUNCIL FY 2019/2020.

APPLICANT

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
AUTHORITY

RESPONDENT:

KASESE DISTRICT LOCAL GOVERNMENT

(Before: OLIVE ZAALE OTETE (CHAIRPERSON), MOSES ADRIKO JURUA-SC (MEMBER),
DAVID KABATERAINE (MEMBER) AND ABRAHAM NKATA (MEMBER)).

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BACKGROUND/FACTS

1. On 11th April 2019, the Respondent initiated the procurement process for revenue collection from Lhubiriha market in Mpondwe-Lhubiriha Town Council.
2. On 21st October 2019 the Respondent issued an administrative review decision in respect to the administrative review application by Kimbulu Investments Ltd.
3. On 22nd October 2019, the Respondent entered into a contract with Kankitsi Association Limited regarding the impugned procurement.
4. On 23rd October 2019, Kimbulu Investments Ltd applied to the Authority for administrative review following the decision of the Accounting Officer of the Respondent.
5. On 19th November 2019, the Applicant issued its administrative review decision regarding the impugned procurement and it was decided therein that a Reference would be made to the Tribunal for breach of Section 90 (7) of the Public Procurement and Disposal of Public Assets Authority, 2003 (PPDA Act, 2003) by the Respondent.

2.0 REFERENCE

- 2.1 On 3rd December 2019, the Applicant filed the instant reference seeking a declaration that there had been a serious breach of the Act by the Respondent in respect of the Procurement in reference because the Respondent had entered into a contract with the provider during the Administrative Review period.

2.2 On 4th December 2019, the Tribunal issued summons to the Respondent to file a written response to the Reference. The Respondent filed a detailed written submission with the Tribunal on 16th December 2019.

3.0 **DISPOSAL OF THE REFERENCE**

3.1 *In disposing of the Reference the Tribunal analyzed the following documents;*

(1) *Reference dated 3rd December 2019 filed by the Applicant and supporting annexes*

(2) *Written submission dated 16th December 2019 filed by the Respondent.*

3.2 The Tribunal conducted a hearing on 18th December 2019. The Applicant was represented by Mr. John Kallemera and the Respondent represented himself.

3.3 Two issues were formulated for resolution by the Tribunal as follows:-

(a) Whether the Accounting Officer of the Respondent entering into a contract with the provider during the Administrative Review period amounted to a serious breach of the Act.

(b) Remedies

4.0 **SUBMISSIONS BY PARTIES**

4.1 Counsel for the Applicant submitted that Section 90 (3) of the PPDA Act, 2003 provides that a bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.

This period is known as the administrative review period under Section 90 (7) (a) of the PPDA Act, 2003.

4.2 Counsel submitted that on 21st October 2019, the Respondent made an administrative review decision regarding the complaint by Kimbulu Investments Limited in respect to the impugned procurement. Counsel further submitted that on 22nd October 2019, the Respondent signed a contract with Kankitsi Association Limited in respect to the impugned procurement. He submitted that the execution of a contract between the Respondent and Kankitsi Association Limited during the administrative review period fettered the mandate of the Applicant and the statutory right of Kimbulu Investments Limited to the remedies provided for by the administrative review process under the PPDA Act, 2003

4.3 Counsel prayed that the Tribunal should declare there was a serious breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account that the Entity executed a contract during the administrative review period and costs of this reference be provided for.

4.4 In reply, the Respondent apologized for the mistake they committed for signing the contract with Kankitsi Association Limited during the administrative review period. The Respondent further submitted that this impugned procurement process had gone through so many administrative review processes and because of that the Respondent was running out of time that is why they had to sign the contract during the administrative review period. The Respondent prayed for leniency on the part of the Tribunal and promised not to commit another mistake of signing contract during administrative review period.

5.0 RESOLUTION BY THE TRIBUNAL

- 5.1 In resolving the Application, the Tribunal considered the documents availed to it, the law applicable and the submissions by the parties.
- 5.2 Section 90(1a)(b) of the Act provides that a complaint by a bidder against a procuring and disposing entity shall be made within ten working days from the date the bidder, first becomes aware or ought to have become aware, of the circumstances giving rise to the complaint.
- 5.3 The Tribunal noted that Section 90 (3) of the Act provides that where a bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.
- 5.4 Section 90(7) (a) of the Act prohibits an Accounting Officer from entering into a contract with the provider during the period of administrative review, set out in Part VII and Part VIIA of the Act.
- 5.5 The Tribunal relied on the admission of the Respondent that it signed a contract with Kankitsi Association Limited (Best Evaluated Bidder) during the administrative review and the reasons justifying their actions.
- 5.6 The Tribunal accordingly finds that the Respondent signed a contract with Kankitsi Association Limited on 22nd October 2019 during the administrative review before the expiry of the ten working days provided for under Section 90(1a)(b). The signing of the contract by the Respondent with the best evaluated bidder was clearly within the ten days provided by the law for administrative review period. Accordingly, the Tribunal therefore finds that there was serious

breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account that the Entity entered into a contract with a provider during the administrative review period in contravention of section 90 (7) (a) of the Act.


6.0 DECISION OF THE TRIBUNAL

1. The Tribunal makes a declaration that there was serious breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account that the Entity entered into a contract with a provider during the administrative review period.
2. In accordance with Section 91K (1) (d) of the PPDA Act, 2003, the Applicant is awarded costs of this Application to be taxed by the Registrar.

Dated at Kampala this day of3rd February..... 2020.

SIGNED by the said

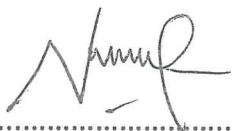
OLIVE ZAALE OTETE


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CHAIRPERSON

SIGNED by the said

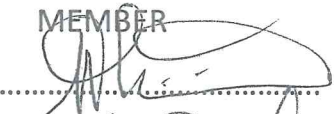
MOSES ADRIKO JURUA-SC


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MEMBER

SIGNED by the said

DAVID KABATERAINE


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MEMBER

SIGNED by the said

ABRAHAM NKATA


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MEMBER