

THE REPUBLIC OF UGANDA

IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO.15 OF 2018

TRINITY TECHNICAL SERVICES LIMITED ===== **APPLICANT**

VS.

1. PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY }
2. AMOLATAR DISTRICT LOCAL GOVERNMENT } ===== **RESPONDENTS**

DECISION OF THE TRIBUNAL

1.0 BRIEF FACTS

- 1.1 On 15th December 2016, the Applicant's Managing Director received an e-mail from a one Mr. Simon Mugabi, an employee of the Authority about its alleged complaint to investigate irregularities in the award of a tender for supply of materials for tarmacking a 1km road in Amolatar Town Council.
- 1.2 By letter dated 16th December 2016, the Applicant's Managing Director, responded to the email informing the Authority that it had not participated in any bid process with Amolatar District Local Government.
- 1.3 On 2nd May 2018, the Authority wrote to the Managing Director of the Applicant informing him that the Authority had received a letter from Amolatar District Local Government recommending suspension of the Applicant for submission of forged powers of attorney in its tender for the renovation of a four classroom block at Amai Primary School. In the same letter, the Authority invited the Applicant to appear before the Authority for a hearing the 15th May 2018 at PPDA offices.
- 1.4 The Authority placed a public advertisement in the New Vision of 31st May 2018 inviting the Directors of firms, including the Directors of the

Applicant, to appear for a suspension hearing slated for 19th June 2018. By email dated 11th May 2018, the Managing Director of the Applicant informed the Authority that he would not be able to attend the hearing because he was sitting for exams at Makerere University on the said date. In the same email, he requested the Authority to reschedule the hearing date.

- 1.5 On 31st July 2018, the Applicant's Managing Director received a suspension letter from the Authority for "*submitting a forged Power of Attorney in its bid in Amolatar District Local Government, which was confirmed as forged by the Uganda Registration Services Bureau*".
- 1.6 On 2nd August 2018, the Applicant being dissatisfied with the Authority's decision filed this Application before the Tribunal challenging the Authority's decision.

2.0 ISSUES

Issue No.1: Whether the Applicant was duly suspended by the Respondent.

Issue No. 2: What remedies are available to the parties?

3.0 Hearing before the Tribunal

The Tribunal conducted a hearing on the 15th August 2016. The Applicant was represented by Mr. Ramadhan Waiswa while the Authority was represented by Mr. John Kallemera. In attendance were representatives of the entity.

3.1 Submissions by Counsel

In respect to the two issues above, Counsel for the Applicant submitted that the Applicant never participated in any procurement process for Amolatar District, or authorised a one Latim Copper to bid on behalf of the Applicant. He submitted that Latim Copper is passing off as an unauthorised agent of the Applicant. He submitted that the letterhead used by Latim Copper was forged because it is different from the Applicant's usual letterhead. He submitted that the Applicant is a victim of identity theft, that there is no correlation between the documents and the Applicant.

He further submitted that the power of attorney which the Authority based itself on to suspend the Applicant was in respect to a different procurement process in Kween district, not Amolatar district, and the donee in this power of attorney was Chelimo Louis Pius, not Latim Copper. He prayed that the Tribunal sets aside the decision of the Authority suspending the Applicant.

In response, Counsel for the Authority adopted his pleadings and written submissions. He submitted that the Authority carried out thorough investigations as prescribed by the law. He further submitted that the suspension for three years was based on a breach of the Code of Ethical Conduct of Providers. He stated that the Applicant was summoned for the suspension hearing but did not appear on the hearing date, therefore the Authority heard the matter *ex parte* and suspended the Applicant. Counsel asked the Tribunal to dismiss the Application and uphold the decision of the Authority.

4.0 Findings of the Tribunal

- 4.1 As far back as 2016, the attention of the Authority was drawn to the fact that there were two conflicting agents corresponding on behalf of, and submitting bids for the Applicant. This is evidenced by exchange of correspondences between a one Latim Copper to the Executive Director PPDA Gulu Branch dated 8th August 2016 which triggered another set of correspondence between Mr. Simon Mugabi on behalf of the Authority and Chelimo Louis purportedly on behalf of the Applicant dated 15th December 2016 and 16th December 2016 respectively. The Tribunal infers from the above correspondence that the Authority was on notice that there were two persons purporting to act on behalf of the applicant which raised doubt as to whether the Applicant had indeed participated in public bidding processes in Amolatar District.
- 4.2 The Tribunal scrutinised the Bidding Document in which the impugned power of attorney was obtained and noted there were two powers of attorney submitted by the Applicant as part of the Bid for renovation of a four classroom block at Amai Primary School in Amolatar District (Ref AMOL564/WRKS/2015-2016/00007). The first power of attorney dated ... October 2014 granted powers to Chelimo Louis Pius and the second power of attorney dated 18th August 2018 granted powers to Latim Copper David. Having regard to the correspondence referred to in 4.1 above, and the agents identified in both powers of attorney, the Authority ought to have been put on notice to conduct further inquiries about the discrepancy between the persons purportedly acting on behalf of the Applicant and secondly, on whether the Applicant had properly submitted the aforesaid bid.
- 4.3 The Tribunal perused the document from Uganda Registration Services Bureau

to the Chief Administrative Officer of Amolatar dated 5th October 2015 in respect to confirmation of authenticity of registered powers of attorney for a number of providers, including the Applicant. In serial number 22, against the Applicant's name, URSB stated "not registered". This statement begs more questions than answers. It is not clear from this statement what is not registered. It could be inferred that the Applicant is not registered, or that the power of attorney is not registered or that stamp duty was not paid and therefore the power of attorney was not registered, or that the Registrar's stamp and signatures on the face of the document were forged.

- 4.4 The reason given by the Authority for suspending the Applicant was due to forgery "as confirmed by URSB". The document from URSB does not mention forgery, rather it mentions "not registered". The two words "not registered" and "forgery" are not synonymous.
- 4.5 Given the anomalies and ambiguities identified above, the Tribunal is not satisfied that the Authority conducted an exhaustive investigation to arrive at a finding that the Applicant had submitted forged power of attorney leading to a suspension of the Applicant for a period of three years.

5.0 DECISION OF THE TRIBUNAL

1. This Application is allowed.
2. The decision of the Authority is set aside and the suspension of the Applicant is quashed.
3. Each party to bear its own costs.

SIGNED and sealed this 16th day of August, 2018 by the said

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CHAIRPERSON

ABRAHAM NKATA

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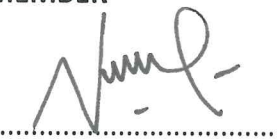

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MEMBER

MOSES JURUA ADRIKO

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MEMBER