

THE REPUBLIC OF UGANDA
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL
(PPDA APPEALS TRIBUNAL)

APPLICATION NO 17 & 18 OF 2017

**APPLICATION FOR REVIEW OF THE DECISION OF PUBLIC PROCUREMENT AND
DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF TENDER OF YUMBE
MAIN MARKET AND YUMBE TAXI PARK.**

**APPLICANT: YUMBE TAXI PARK OPERATORS AND MARKET VENDORS
SAVINGS & CREDIT SOCIETY**

**1st RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC
ASSETS AUTHORITY (AUTHORITY)**

2nd RESPONDENT: YUMBE DISTRICT LOCAL GOVERNMENT (ENTITY)

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

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BRIEF FACTS

- 1.1 On 8th May 2017, Yumbe District Local Government initiated a procurement process for revenue collection for Yumbe Main Market and Yumbe Taxi Park. The bid notice was published in the New Vision Newspaper of 16th May 2017.
- 1.2 The Evaluation Committee recommended award of tender for revenue collection for Yumbe Main market to Yumbe Town Central Vendors Cooperative Savings and Credit Society Ltd and the Taxi Park to Yumbe Taxi Park Operators Cooperative Society Limited as the Best Evaluated Bidders.
- 1.3 On 19th July, 2017, the Contracts Committee approved the Evaluation Committee's recommendation and awarded the contracts to Yumbe Town Central Vendors Cooperative Savings and Credit Society Ltd at a bid price of UGX 4,720,000 and Yumbe Taxi Park Operators Cooperative Society Limited at a bid price of UGX 3,894,000 respectively.
- 1.4 On 6th July 2017, Yumbe Taxi Park Operators and Market Vendors Savings and Credit Society Ltd (the Applicant) filed a complaint to the Accounting Officer for Administrative Review challenging both awards.
- 1.5 On 24th July 2017, the applicant applied for Administrative Review to the Authority.
- 1.6 On 26th July 2017, the Accounting Officer issued a decision rejecting both complaints.

1.7 On 28th August 2017, the Authority upheld the administrative review complaints of the Applicant. In both applications, the Authority ordered the entity to re-tender the procurement activity.

1.8 On 12th September 2017, the Applicant being aggrieved with the decision of the Authority filed separate applications No. 17 & 18 of 2017 before the Tribunal challenging the Authority's decision.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION

2.1 On 12th September 2017, the Applicant applied to the Tribunal for a review of the Authority's decision to uphold Application 17 and 18 of 2017.

2.2 The Applicant sought an order for disciplinary action against Yumbe District Local Government Officials, for award of tender to the Applicant and for costs

2.3 At the time of hearing Applications No. 17 and 18, the Tribunal on its own motion and discretion consolidated Applications No. 17 and 18 in accordance with Order 11 Rule 1 of the Civil Procedure Rules, SI 71-1 because they raise same questions of law and facts. During the hearing, the parties had no objection to the consolidation of Applications 17 and 18.

3.0 DISPOSAL OF APPLICATION

3.1 In disposing of the Application for review, the Tribunal analyzed the following documents:

- a) The Applicant's Applications to the Tribunal dated 12th September 2017, annexes to the Application, the written and oral submissions.
- b) The 1st Respondent's (Authority's) response to the Application, annexes to the response, the written and oral submissions.
- c) The 2nd Respondent's (Entity's) response to the Application annexes to the response and its written and oral submissions.

3.2 The Tribunal conducted a hearing for the Parties on 22nd September 2017. The Applicant was not represented. The 1st Respondent (Authority) was represented by Mr. John Kallemera. In attendance were members of the Applicant led by Mr. Mawa Abdul Aziz and Ibrahim Abdulmajid.

4.0 SUMMARY DECISION

4.1 In accordance with Section 91 I (7) of the Act, the Tribunal delivered a summary of this decision on Tuesday 26th September 2017. What follows is the detailed reasoning in support of the Tribunal's decision.

5.0 ISSUES

5.1 Three (3) issues were formulated for resolution by the Tribunal as follows:-

- a) *Whether the Authority erred in law and fact to find that the Applicant sought redress under Section 90 (3) (a) of the PPDA Act 2003 as a remedy when the Accounting Officer failed/delayed to respond to the Applicant's complaint within the statutory 15 working days?*

b) Whether the Authority has powers to order an entity to re-tender and whether a re-tender is a corrective measure?

c) What remedies are available to the parties?

6.0 SUBMISSIONS BY PARTIES

6.1 In respect of the first issue Ibrahim Abdulmajid stated that the Authority erred to find that the Applicant sought redress under Section 90 (3) of the PPDA Act, 2003 because the Act stipulates a time frame for administrative review from the Entity level to the Tribunal. He further stated that any party that omits to perform its obligation and fails to deliver decision within the statutory time frame provided by the Act, breaches the provision which infringes the rights of the complainant. He further submitted that such acts if left unchallenged can create impunity within the procurement process which includes administrative review and the meaning of the PPDA Act, 2003 shall totally be distorted. He also stated that it has become a culture for the Entity to ignore administrative review processes and all these have been brought to the attention of the Authority but nothing has been done not even taking punitive measures against the Accounting Officers.

6.2 The Applicant stated in respect to the second issue that the Authority does not have power to order an Entity to re-tender a procurement process and that a re-tender is not a corrective measure but a new process. The Applicant relied on the case of ***Arua Kubala Vs PPDA & Arua Municipal Council, Application No. 1 of 2014*** where the Tribunal held that the Authority has no powers to order re-tender and upheld that a re-tender is not a corrective measure but a new one.

The Applicant argued that the law only allows the Authority to give recommendation on corrective measures like conducting re-evaluation and that serious breach should be forwarded to the Tribunal. The Applicant further submitted that the Entity shall never re-tender the process because they were not given time frame within which to re-tender. The Applicant

that it has already become the Entity's enemy because of its resilience to pursue justice and it will never be awarded any tender by the Entity. The Applicant submitted that the Entity deliberately refused to follow the Government policy decision of development and management of markets.

- 6.3 The Applicant prayed that the tender be awarded directly to it Applicant, disciplinary action be taken against the Entity and costs of the Application to be borne by the 2nd Respondent.
- 6.4 In respect to the first issue, Counsel for the 1st Respondent submitted that Section 90 (2) (b) of the PPDA Act 2003 provides that on receiving a complaint, the Accounting Officer shall make a decision within fifteen working days indicating the corrective measures to be taken, if any, giving reasons for his or her decision and submit a copy of the decision to the Authority. Counsel submitted that on 27th June 2017, the Applicant applied for Administrative Review to the Accounting Officer, but due to delayed payment of administrative review fees, the amended application for administrative review was received on 6th July 2017 which was within the fifteen (15) working days provided for under the law. He therefore asserted that this issue has no merit since the Accounting Officer issued the decision within the statutory timeline.
- 6.5 Counsel for the 1st Respondent submitted in respect to the second issue that the Authority found that the Entity did not adhere to the use of selective bidding method in accordance with the Government policy decision on the development and management of markets in the cities, Municipalities and Towns issued by the Ministry of Local Government on 17th September 2007 and Revised Policy Guidelines on the Management and Levying of parking fees in Local Governments' public service vehicle

parking areas. The Authority therefore advised the Entity to re-tender the procurement processes for the Yumbe main market and taxi park.

- 6.6 Counsel for the 1st Respondent submitted that this application lacks merit, is untenable and it should be dismissed with costs.
- 6.7 The Accounting Officer who concurred with the submission of the 1st respondent in respect to the first issue submitted that the entity received the Applicant's complaint on 6th July 2017 and not 5th July 2017 as the Applicant alleges and therefore the Accounting Officer acted within the 15 working days as required by the law.
- 6.8 The Accounting Officer in respect to the 2nd issue that the decision of the 1st Respondent should be upheld because it was consistent with Regulation 140 (7) (a) and (c) of the Local Governments (PPDA) Regulations 2006/SI No. 39 of 2006 which provides that the decision of the Authority shall indicate whether the application was upheld or rejected, the reasons for its decision and any corrective measures to be taken. That therefore the 1st Respondent had the power to order an Entity to re-tender as provided by the law.
- 6.9 The Accounting Officer prayed that this application be dismissed with costs for it was the Applicant's failure to comply with Section 90 (3) (a) of the PPDA Act, 2003 and disciplinary action should not be taken against the Accounting Officer.

7.0 **RESOLUTION BY THE TRIBUNAL**

The instant application raises three issues which the Tribunal will resolve in the same order as raised by the Parties.

7.1 The Tribunal carefully studied the Application, the responses to the Application and the written submissions.

7.2 **Issue 1:** *Whether the Authority erred in law and fact to find that the Applicant sought redress under Section 90 (3) (a) of the PPDA Act 2003 as a remedy when the accounting officer failed/delayed to respond to the Applicant's complaint within the statutory 15 working days?*

7.3. In order to determine this issue, the Tribunal considered Section 90 (2) of the PPDA Act, 2003 and Regulation 140 (1) of the Local Governments (PPDA) Regulations, 2014/SI No. 39 of 2006. For ease of reference, they are reproduced below:

7.4 Section 90 (2) (b) of the PPDA Act 2003 provides that the Accounting Officer shall on receipt of the complaint, issue a decision in writing, within 15 working days..

Regulation 140 (1) of the Local Governments (PPDA) Regulations, 2014/SI No. 39 of 2006 provides that a bidder may submit an application for administrative review to the Authority where the accounting officer does not issue a report within 15 working days or a bidder is not satisfied with the decision of the Accounting Officer.

7.5 The Tribunal is in agreement with the submission of Counsel for the 1st Respondent and the Accounting Officer that on 27th June 2017, the Applicant applied for Administrative Review to the Accounting Officer, but due to delayed payment of administrative review fees, the amended application for administrative review was received on 6th July 2017.

The Tribunal finds that the 15 working days within which the Accounting Officer was to issue a decision lapsed on 26th July 2017, the day on which the Accounting Officer issued the decision. Therefore the

decision by the Accounting Officer was issued within the time prescribed by the law.

7.6 *Issue No.2: Whether the Authority has powers to order an entity to re-tender and whether a re-tender is a corrective measure?*

In order to determine this issue, the Tribunal examined Regulation 140(7) of the Local Governments (PPDA) Regulations, 2014/SI No. 39 of 2006 which provides that the decision of the Authority shall indicate

(a) whether the application was upheld or rejected; the reasons for its decision and any corrective measures to be taken.

7.7 The Tribunal distinguished *Arua Kubala vs. PPDA & Arua Municipal Council, Application No. 1 of 2014*, cited by the Applicant from the instant application before it.

In the above cited Application, at page 25 of the decision, *'the Tribunal finds that a corrective measure does not include re-tender because a re-tender is a fresh procurement. A corrective measure can only be ordered if there is an on-going procurement or disposal process. In the instant case, the Accounting Officer in his decision had set aside the procurement process and therefore there was nothing to correct'*.

However, in the matter before the Tribunal, the Accounting Officer of Yumbe District Local Government rejected the Applicant's complaint and there was an on-going procurement process, therefore the Authority acted within its mandate to recommend a re-tender of the procurement activity.

7.8 The Tribunal finds that the Authority has mandate to re-commend re-tender in the impugned procurement process. The re-tendering of the procurement process is a corrective measure intended to cure the non-compliance of the Government Policy Decision on the Development and

Management of Markets in the Cities, Municipalities and Towns issued by the Ministry of Local Government on 17th September 2007 and the Revised Policy Guidelines on the Management and Levying of Parking Fees in Local Government Public Service Vehicle Parking Areas issued on 13th February 2017.

9.0 DECISION OF THE TRIBUNAL

1. The Application is dismissed.
2. The decision of the Authority is affirmed with minor changes. The procurement activity be re-tendered if the entity so wishes, using Standard Bidding Documents for the markets and the parks issued by the Authority and in accordance with the Government Policy Decision on the Development and Management of Markets in the Cities, Municipalities and Towns issued by the Ministry of Local Government on 17th September 2007 and the Revised Policy Guidelines on the Management and Levying of Parking Fees in Local Government Public Service Vehicle Parking Areas issued on 13th February 2017.
3. Each party shall bear its own costs.

Dated, signed and sealed by the Tribunal this 18th day of Dec. 2017.

SIGNED by

OLIVE ZAALE OTETE]

[Signature]

CHAIRPERSON

SIGNED by
MOSES JURUA ADRIKO

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MEMBER

SIGNED by
DAVID KABATERAINE

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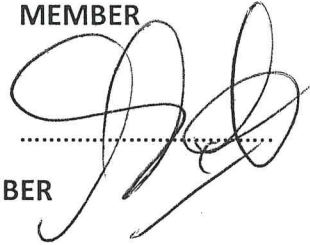


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MEMBER

SIGNED by
ABRAHAM NKATA

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MEMBER