

**THE REPUBLIC OF UGANDA**

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL  
(PPDA APPEALS TRIBUNAL)**

**APPLICATION NO. 5 OF 2015**

**APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF THE TENDER (PROCUREMENT) FOR PAWOR MARKET FOR FINANCIAL YEAR 2015-2016.**

**APPLICANT: PAWOR PARK OPERATORS AND MARKET VENDORS SACCO**

**RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY**

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

## **DECISION OF THE PPDA APPEALS TRIBUNAL**

### **1.0 BACKGROUND/FACTS**

- 1.1 On 27<sup>th</sup> April 2015 Arua District Local Government (DLG) published an invitation to bid for the management of Pawor market in the Daily Monitor newspaper.
- 1.2 On 4<sup>th</sup> June 2015, the Contracts Committee of Arua DLG awarded the contract for the management of Pawor market to Abiriga Hassan Enterprises at UGX. 2,520,000.
- 1.3 On 17<sup>th</sup> June 2015 Pawor Park Operators and Market Vendors SACCO applied to the Accounting Officer of Arua DLG for administrative review contesting the award of the contract for the management of Pawor market to Abiriga Hassan Enterprises.
- 1.4 The Chief Administrative Officer of Arua DLG did not find merit in the application for administrative review as stated in a communication dated 3<sup>rd</sup> July 2015.
- 1.5 On 15<sup>th</sup> July 2015 Pawor Park Operators and Market Vendors SACCO applied to the Authority for administrative review.
- 1.6 On 21<sup>st</sup> July 2015 the Authority instructed the Chief Administrative Officer Arua DLG to suspend any further action regarding the procurement process.
- 1.7 By letter dated 8<sup>th</sup> August 2015 the Authority informed the Applicant that their application for Administrative Review had been rejected.
- 1.8 By the same letter the Authority ordered Arua DLG to proceed with the Procurement for management and collection of revenue for Pawor Market and not to refund the Administrative Review fees paid by the applicant in accordance with the Local Governments (PPDA) Guidelines 5/2008.

- 1.9 The Authority undertook a verification exercise in Pawor market on 8<sup>th</sup> August 2015 to verify whether the members listed in the Applicant's bid were actually vendors who owned and operated stalls in Pawor market.
- 1.10 The Authority established after its investigation that the people named in the Applicant's bid were not vendors operating in Pawor market.
- 1.11 By a letter dated 8<sup>th</sup> August 2015, the Applicant communicated to the Authority admitting that all the members whose photographs appeared in its bid for the impugned procurement were 'not operating on the ground'.
- 1.12 The Authority asserts that it was justified in restricting its verification exercise in Pawor market to the members listed in the Applicant's bid for the impugned procurement.

## 2.0 **APPLICATION FOR REVIEW OF THE RESPONDENT'S DECISION.**

- 2.1 By Memorandum dated 26<sup>th</sup> August 2015, the Applicant lodged an Application with the Tribunal for review of the Respondent's decision on the following grounds:

### ***Reservation Scheme***

- (i) *The Government Policy Decision on the Development and Management of markets in City, Municipalities and Towns issued by the Ministry of Local Government 2007 emphasized the need for Saccos and Market Vendors to be given a priority when it comes to the development and management of the said Markets. Membership to Saccos is voluntary and keeps on changing were as the members we submitted on the bid documents have since moved away and others have left the Sacco. It was unfair for PPDA to do its verification in relying only on the members in the bid document despite us bringing to their notice that there are as well other members who are in ground and their list is also attached. We feel it was unfair.*

## 2.2 **DISPOSAL OF APPLICATION**

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

- (1) Memorandum and Annexures in support for review of the Respondent's decision dated 25<sup>th</sup> August 2015 (the Application);
- (2) Respondent's response to the Application and submissions;
- (3) Applicant's submissions and Annexes to the written submissions;

2.3 The Tribunal summoned the Applicant, and the Respondent for a hearing on 8<sup>th</sup> September 2015. The Applicant was represented by Mr. Nelson Cemari and Mr. Wasswa Ramadhan. The Respondent was represented by Mr. John Kallemera. In attendance were officials from Arua District Local Government namely Mr Martin Andua Drani Deputy Chief Administrative officer and Mr. Sam Draku, Procurement Officer.

2.4 The parties raised one issue for determination by the Tribunal:

***(i) Whether the Arua DLG was justified in ignoring the reservation scheme as held by the Authority.***

### **3.0 Submissions by Counsel**

Issue 1: ***Whether the Entity was justified in ignoring the reservation scheme as held by the Authority;***

3.1 The Applicant in their written and oral submissions argued that the sitting vendors within the markets who are organized under cooperative societies are given first priority for the management of markets within their area of operations, the rationale being to promote participation of local Communities and expertise. The Applicant faulted Arua DLG for opting for the domestic bidding method and argued that if they had complied with the policy they would only have used the restricted domestic bidding method under Section 82 of the Act, and limited invitations to bid to Saccos only. The Applicant

argued that Arua DLG should only have opted for the open domestic bidding method if the Saccos had been non responsive to the bid requirement.

3.2 The Applicant criticized the Authority for conducting a due diligence exercise on the Applicant after the Procurement was advertised in their view due diligence ought to have been carried out prior to the Procurement process.

3.3 The Applicant prayers were as follows;-

1. A declaration that the Arua DLG was not justified in ignoring the reservation scheme.
2. Costs of the Application.

3.4 In reply Counsel for the Authority in their written and oral submissions stated that the Authority undertook a verification exercise in Pawor market on 8<sup>th</sup> August 2015 to verify whether the members listed in the Applicant's bid were actually vendors who owned and operated stalls in Pawor market. The verification exercise established that the people whose photographs appeared in the Applicant's bid were not vendors operating in Pawor market.

3.5 By their own admission in a letter dated 8<sup>th</sup> August 2015 the Applicant admitted that the people whose photographs appeared in the bid submission were not market vendors or stall owners at Pawor Market. Therefore the Government Policy on the Development and Management of Markets in Local Governments was inapplicable to the Applicant because they were not sitting tenants who owned stalls (emidala) or kiosks at Pawor Market. The Authority in conclusion asserted that it was justified in restricting its verification exercise in Pawor market to the members listed in the Applicant's bid.

The Authority prayed for dismissal of the application with costs.

#### **4.0 Resolution of Issues by Tribunal**

The Tribunal carefully studied the Application, the responses to the Application and written submissions. It also listened carefully to the oral arguments made during the hearing.

- 4.1 We shall start with the *Government Policy Decision on the Development and Management of Markets in the City, Municipalities and Towns, dated 17<sup>th</sup> September 2007*, issued by the Ministry of Local Government. The main thrust of this Policy is that the sitting tenants who own stalls (emidala) kiosks etc. in the markets shall all register under their associations and that the registered market vendors shall be given the first priority to redevelop and manage the markets.

The Policy Guideline was intended to help Kampala City Council and other local governments resolve the disputes over the management and redevelopment of the markets in Kampala City and other local governments and to allow market vendors and other stakeholders to settle down on their work.

- 4.2 In a nutshell the purpose of the Government Policy on Markets was to prioritize the rights of sitting tenants who owned and operated stalls and kiosks in existing markets. To derive benefit under the policy, it is a requirement that the stall holders and kiosk owners in the markets register associations. After registering such associations the market vendors and kiosk owners were free to redevelop and manage their markets provided they could mobilize funds and had capacity to develop markets.
- 4.3 The Applicant submitted that the Policy Guidelines created a reservation scheme applicable to the Procurement of Services for Management of Pawor Market that was tendered out by Arua DLG. The Applicant argues that it is a Cooperative Society formed by market vendors and kiosk owners in Pawor Market and therefore ought to have been, 'by virtue of this status, been the only invitee in the absence of any other Sacco at the market, to bid for management of revenue collection at the market.

The Authority and Arua DLG argued that the Applicant by letter dated 8<sup>th</sup> August 2015 admitted that all the people whose photographs appeared in the bid document were not stall holders at Pawor Market. Therefore the Government Policy which gave them first priority as bidders was inapplicable.

- 4.4 The Tribunal examined the Applicant's letter dated 8<sup>th</sup> August 2015 addressed to PPDA verification team under reference "Cancellation of Field Visit" the relevant part of the letter reads as follows;-

“ On behalf of Pawor Sacco we have unanimously taken a decision not to waste the time of PPDA *because as a matter of fact all those members with photographs appear on the bid submission sheet are not on the ground* apart from 52 newly registered members who are on the ground. We do apologize for the inconvenience”.

- 4.5 The Tribunal finds that this letter was an admission by the Applicant that none of the people named in the bid were stall holders or kiosk owners at Pawor market and therefore were not within the category of beneficiaries of the Government policy. We find that this admission disposes of the issue and accordingly dismiss this ground of appeal.
- 4.6 However the Tribunal took judicial notice of the fact that Arua DLG had customized the standard bidding document issued by the Authority for public vehicle parking areas (parks) in the absence of a document issued by the Authority to PDE's for the management of markets, taxi parks, produce fee and landing sites. The Tribunal recalls its decision in **Application 3/2015 Peace Gloria Vs. PPDA**, where it considered the issue of customization of a bidding document.
- 4.7 In that application, the issue before the Tribunal with respect to the bidding document used by Arua DLG was whether an entire Standard bidding document could be customized and put to an entirely different use without prior approval by the Authority.
- 4.8 The Tribunal held that regulation 48 of the Local Governments (PPDA) Regulations 2006 which provides for customization of bidding documents limits customization to minor or cosmetic change. The regulation does not give a procuring and disposing entity a blank cheque to change a standard bidding document wholesale under the guise of “customizing” the document.
- 4.9 That indeed to advocate for such a broad reading of regulation 48 of the Local Government Regulations would be sanctioning an abdication of one of the Authority's cardinal roles provided in Section 7 (1) (e) of the Public Procurement and Disposal of Public Assets Act which provides that the Authority shall ensure that any deviation from the use of the standardized bidding documents, procedural forms and any other attendant documents is effected only after the prior, written approval of the Authority.

- 4.10 The Tribunal held that the correct procedure that ought to have been adopted by Arua DLG prior to the use of the Standard Bidding Document was to apply to the Authority, in writing, for approval to deviate from the use of the standard bidding document, as prescribed in regulation 10 of the Public Procurement and Disposal of Public Assets Regulation 6/ 2014.
- 4.11 In the same spirit, the Tribunal faults Arua DLG for using a bidding document which was a deviation from the Standard Bidding document issued by the Authority for a different purpose, without seeking and obtaining express consent from the Authority to use the bidding document.
- 4.12 We therefore hold that the bidding process initiated by Arua DLG pursuant to the bidding document issued for the management of taxi parks, produce fee and landing sites was void *ab intio* and a thus a nullity.

## **5.0 DECISION OF THE TRIBUNAL**

1. The Tribunal sets aside the decision of the Respondent advising the Entity to proceed with the procurement for management and collection of revenue for Pawor Market and not to refund the Administrative Review fees paid by the Applicant.
2. The Tribunal orders the Accounting Officer Arua District Local Government to refund the Applicant's administrative review fees.
3. The Applicant is awarded two million shillings to cover its out of pocket expenses and legal costs.

*Dated at Kampala this 10<sup>th</sup>*

SIGNED by the said  
**OLIVE ZAALE OTETE**

SIGNED by the said  
**MOSES JURUA ADRIKO**



SIGNED by the said  
**DAVID KABATERAINE**

SIGNED by the said  
**ARCHT JOEL KATEREGGA**