

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO. 4 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 KUBALA MARKET FOR FINANCIAL YEAR 2015-2016.**

**APPLICANT: ARUA KUBALA 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 Kubala market in the Daily Monitor newspaper.
- 1.2 On 4<sup>th</sup> June 2015, the Contracts Committee awarded the contract of the management contract of Kubala Market to Mr. Brian Gogo who had been declared the best evaluated bidder at UGX 4, 330,000.
- 1.3 On 18<sup>th</sup> June 2015 Arua Kubala Park Operators and Market Vendors Cooperative Society Limited applied to the Accounting Officer of Arua DLG for administrative review contesting the award of the contract for the management of Kubala Main market to Mr. Brian Gogo.
- 1.4 By letter dated 3<sup>rd</sup> July 2015 the Chief Administrative Officer of Arua DLG informed the Applicant that he did not find merit in the application for administrative review.
- 1.5 By letter dated 18th July 2015 the Applicant appealed 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 On 4<sup>th</sup> August 2015 the Authority convened an Administrative Review hearing.

- 1.8 On 7<sup>th</sup> August 2015 the Authority carried out a verification exercise at Kubala Market of the Vendors listed in the Applicant's bid.
- 1.9 By letter dated 7<sup>th</sup> August 2015, the Authority informed the Applicant that its application for Administrative Review had been rejected.
- 1.10 By the same communication, the Authority ordered Arua DLG to re evaluate all bids for the procurement for management and collection of revenue for Kubala Market, in light of its observation that the Evaluation Committee of Arua DLG had considered information within its knowledge that was not included in the Applicant's bid.

## 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:

- (i) *That the Authority erred in law and in fact by failure to properly(sic) evaluate the evidence on record thus arriving to a wrong conclusion in finding that the procuring entity correctly ignored the ongoing reservation scheme and policy on development and management of markets.*
- (ii) *That the Authority erred in law and in fact in finding that Arua Kubala Park Operators does (sic) not have vendors in Kubala Market.*

## 3.0 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 26<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;
- (4) Arua DLG Standard Bidding Document for Management of Markets, Taxi Parks, Produce fees and Landing Sites.
- (5) Government Policy Decision on the Development and Management of Markets in the City, Municipality and Towns.

3.1 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.

3.2 The parties raised the following issues for determination by the Tribunal:

***(i) Whether the Authority erred in law and fact by failing to properly evaluate the evidence on record which occasioned the erroneous finding that***

*the Procuring Entity did not need to apply the ongoing reservation scheme and policy on development and management of markets;*

*(ii) Whether the Authority erred in law and fact in finding that Arua Kubala Park Operators and Market Vendors Sacco does not have vendors in Kubala Market.*

### 3.3 Submissions by Counsel

Issue 1: *Whether the Authority erred in law and fact by failing to properly evaluate the evidence on record which occasioned the erroneous finding that the Procuring Entity did not need to apply the ongoing reservation scheme and policy on development and management of markets;*

3.4 The Applicant in their written and oral submissions argued that they responded to a bid notice published in the Daily Monitor Newspaper on the 27<sup>th</sup> April 2015 inviting bids for the management of markets in Arua District.

3.5 That as a savings and credit cooperative society (SACCO) registered under the Cooperative Societies Act, Cap 112, they applied to manage the market. Their expectation was that the procurement process would be undertaken in accordance 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, (hereinafter "Government Policy on Markets")***, in which the Cabinet issued guidelines on the development of markets in Kampala City, Municipalities and Towns.

3.6 The Applicant submitted that they wrote to the Accounting officer reminding him of the reservation scheme for sitting vendors within markets organized under Cooperative Societies as directed in the Government Policy on Markets.

3.7 Counsel for the Applicant submitted that the import of the Government Policy on Markets was to direct Local Governments to create a reservation scheme in consultation with the Authority and restrict the procurement to Cooperative Societies organized within Kubala Market such as themselves, whom in his view were the only qualified bidders. He argued that by opting for the open domestic bidding method of procurement, Arua DLG negated the application of the reservation scheme for the management of markets. That the procurement method should have been the restricted domestic bidding under Section 82 of the Act. Counsel further argued that Arua DLG should have directly given priority to manage Kubala Market to the sitting SACCO, and that by failing to do so, acted contrary to the Government Policy on Markets and the Act.

3.9 In reply, Counsel for the Authority in their written and oral submissions stated that it evaluated all the evidence on record prior to rejecting the application for administrative review by the Applicant. That the Authority had undertaken a verification exercise in Kubala market and established that none of the people listed in Arua Kubala Park Operators and Market Vendors Cooperative Society Limited's bid owned stalls in the said market and that they were not registered as vendors in Kubala market.

4.0 In reply to the argument about the applicability of the Government Policy decision on the development and management of markets in Local Governments, Counsel submitted that the policy was only applicable to sitting tenants who own stalls (emidala), kiosks etc. in the markets. That the Policy was inapplicable in the circumstances pertaining to the bid because the Authority had carried out a verification exercise and found that none of the persons listed in the complainant's bid owned stalls in the market and

therefore could not be construed as vendors within the meaning of the Policy and therefore could not be beneficiaries under the Government policy.

- 4.1 Finally that Arua DLG was not obligated to apply the policy decision since it was inapplicable and were perfectly justified in using the open domestic bidding method.
- 4.2 ***Whether the Authority erred in law and fact in finding that Arua Kubala Park Operators and Market Vendors Sacco does not have vendors in Kubala Market.***
- 4.3 In their submissions in support of this issue, Counsel for the Applicant argued that the verification process conducted by Arua DLG and the entity was flawed because several members of the Applicant who owned stalls at Kubala Market were not present at the time of the verification exercise.
- 4.4 Secondly that the process of verification was biased in that officials of the entity and the Authority travelled together to conduct the verification exercise.
- 4.5 Finally that Arua DLG ought to have conducted the verification exercise prior to advertising for bids for management of Kubala Market by way of open domestic bidding.
- 4.6 In the alternative Counsel argued that verification of membership of the Applicant was irrelevant because the procurement method chosen by the entity was open domestic bidding.

4.7 Counsel prayed that the application be allowed, the decision of the Authority be set aside and fresh procurement be undertaken in accordance with the Act and the Reservation Scheme.

4.8 In reply Counsel for the Authority in his written and oral submissions argued that in accordance with its mandate under the law, the Authority carried out a verification exercise to determine whether the Applicant had vendors who owned and operated stalls in Kubala market. That the verification exercise was carried out in the presence of the Chairperson of Arua Kubala Park Operators and Market Vendors SACCO, Mr. Acidri Kasiano and the legal assistant of Arua Kubala Park Operators and Market Vendors SACCO, Mr. Nelson Cemari, among others .

5.0 The verification exercise established that none of the people listed in the Applicant's bid for the impugned procurement owned any stalls in Kubala market and that they were not vendors in the said market.

5.1 Finally the Authority was justified to find that the Applicant does not have vendors in Kubala market.

Counsel prayed for the application to be dismissed with costs.

#### **6.0 Resolution of Issues by Tribunal**

6.1 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.

6.2 In resolving this application the Tribunal will deal with the Issues in the same order as presented by the parties.



On whether the Authority erred in finding that the Procuring Entity did not need to apply the ongoing reservation scheme and policy on development and management of markets, the Tribunal closely examined the *Government Policy Decision on the Development and Management of Markets in the City, Municipalities and Towns, dated 17<sup>th</sup> September 2007*. The relevant excerpts of the Policy are reproduced here below for ease of reference:

***“September 17, 2007***

***All District Chairpersons***

***All Mayors of Municipalities***

***All Chairpersons of Town Councils***

***As you may be aware, for the last one year or so, there have been a lot of controversy and unrest over some of the markets in Kampala City and elsewhere in the Country.***

.....

***Cabinet has now considered the matter and has taken the following Policy decisions on the development and management of markets in Kampala City, Municipalities and Towns.***

- (a) The Markets shall remain where they are and there shall be no change of user subject to the Town and Country Planning Act.***
  
- (b) 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.*

- (c) The sitting market vendors shall be free to redevelop their own markets on condition that they can mobilize funds, have the capacity to construct modern markets meeting universally acceptable standards and have received planning permission from their respective local councils and the Town and Country Planning Department and the Ministry responsible for urban planning.*
- (d) In the event that the market vendors being unable to raise the required funds to reconstruct and modernize their markets, they shall be free to identify a partner with whom they can pool resources and build and manage new markets together.*
- (e) In the event that the Market Vendors fail to fulfill terms (b) (c) and (d) above, the Government and local governments shall develop the markets and rent them to the vendors giving priority to the sitting/existing vendors.*
- (f) All programmes to redevelop markets in local governments must first be submitted to the Ministries of Local Government and of Urban Development and the respective local government councils for scrutiny and approval; and the sitting /existing vendors shall be kept fully informed well before these programmes commence.*

*The Purpose of this communication is to inform you of the Government decisions on the development and management of markets in Kampala City and other urban centres and to ask you to follow these policy guidelines in*

**the process of developing and managing markets in Kampala City and other local governments. (Emphasis ours).**

***I hope the guidelines will 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 will allow market vendors and other stakeholders to settle down on their work. The letter was signed by the Minister of Local Government.'***

6.3 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 in the development and management of those markets. To benefit from the Policy decision however, it is a requirement that the stall holders and kiosk owners in the markets register associations or cooperatives.

6.4 By letter dated 21<sup>st</sup> May 2015 to Arua DLG, the Authority confirmed that the Policy Decision on Markets was applicable to local government markets.

It follows therefore that any procuring and disposing entity (PDE) putting out a bid for the development or management of a market must take into account this Government Policy. A PDE cannot and should not ignore this Policy at will simply because there exists no registered association or cooperative in a particular market.

6.5 In the present application, following a due diligence exercise by both Arua DLG and the Authority, it was argued that the Applicant was not a Co-operative Society within the meaning of the Government Policy on Markets because none of the people cited in their bid document was a stall holder or kiosk

owner at Kubala Market and that their Co-operative Society was unknown to the vendors and stall holders at Kubala Market as confirmed by the verification exercise undertaken in the presence of the Applicants representatives. That consequently, since there was no registered SACCO in Kubala market, Arua DLG was justified to declare an individual as best evaluated bidder.

It should be noted that the persons to whom the Government Policy on markets were the District Chairpersons, Mayors of Municipalities and Chairpersons of Town Councils.

6.6 In the course of the proceedings, the Assistant Chief Administrative Officer Arua informed the Tribunal that Kubala Market, the market in question has no registered association or cooperative. He further informed the Tribunal that elites have taken over markets because the real stall owners do not know.

6.7 The Tribunal finds that the duty of implementing the Government Policy Decision on development and management of markets falls among others, the district chairpersons. Unless the chairperson and the administration of a local government educate the stall owners in markets on this Policy, the stall owners would not be aware of its existence nor its benefits to the. And therefore the intention and spirit of the Government Policy on markets will be defeated.

6.8 Arua DLG had a duty to inform the stall owners in Kubala market on the Government Policy and to advise them to form themselves into associations or cooperatives in order to benefit from the Government Policy. It should be noted that the Government Policy was made in 2007. The fact that since 2007, Kubala Market has no registered association of stall owners who could have

bid to manage the market tells that Arua DLG has failed to implement the Policy decision.

- 6.9 The Government Policy requires that the Policy be followed in the development and management of markets. Arua DLG, and other procuring and disposing entities for that matter, are therefore not at liberty to ignore the Policy when procuring services for development or management of markets.
- 7.0 The Authority should expedite the process of issuing a standard bidding document on development and management of markets to give effect to the Government Policy Decision on Development and Management of Markets.
- 7.1 In conclusion on this issue, for the reasons detailed above, the Tribunal faults Arua DLG for misapplying the spirit and intention of the Government Policy on Markets. The Tribunal faults the Authority for finding that Arua DLG was justified to ignore the Government Policy on Markets since there were no market vendors organised in associations or cooperatives in Kubala Market.

We find in favour of the Applicant on Issue 1.

- 7.2 With respect to issue 2, to the effect *that the Authority erred in law and in fact in finding that Arua Kubala Park Operators does not have vendors in Kubala Market*, the Tribunal cannot fault the results of the verification exercise which established that the Applicant's bid did not have any of its members listed in the bid as Vendors that operated/ owned stalls at Kubala Market in the absence of compelling evidence to the contrary.

We therefore find in favour of the Authority on the second issue.

7.3 The Tribunal on reviewing the proceedings before the Authority noted that the second ground raised by the Applicant in those proceedings was ***“Whether the Entity had authority to customize the standard bidding document”***. We also 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.

7.4 The Tribunal recalls its decision in ***Application 3/ 2015 PPDA-Vs- Peace Gloria*** at pages 11, where it held with respect to use of the same bidding document as the bidding document in this matter as follows;

***The issue before the Tribunal with respect to the bidding document used by Arua DLG is whether an entire Standard bidding document could be customized and put to an entirely different use without prior approval by the Authority.***

***The Authority as seen earlier in this ruling invoked Regulation 48 of the Local Governments (PPDA) Regulations 2006 in aid of its directive to Arua DLG to “customize its Standard Bidding Document for public vehicle parking areas because in its view the document was for the generic purpose of revenue collection and management. In its decision on the application for Administrative Review the Authority observed as follows;-***

***“The Authority finds that the Entity did not have to seek authority for all subsequent customization of the standard bidding document for revenue collection and management.”***

*Regulation 48 (Supra) is very clear. It provides that Standard Bidding Documents issued by the Authority or any other competent authority, may be customized for use by a procuring and disposing entity by the entry of the contract details of the procuring and disposing entity such as name and address, the addition of a logo or any other form of identification of the procuring and disposing entity. (emphasis ours)*

*The wording of the section on plain reading limits customization to minor or cosmetic change. The section does not give a PDE a blank cheque to change a standard bidding document wholesale under the guise of “customizing” the document. Indeed to advocate for such a broad reading of the parameters of Regulation 48 of the Local Government Regulations would be sanctioning an abdication of the Authority’s cardinal roles provided in Section 7 (1) (d) and (e) of the Act which provides as follows:*

- (d) prepare, update and issue authorized versions of the standardized bidding documents, procedural forms and any other attendant documents to procuring and disposing entities;*
- (e) 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;*

*It is our finding that the bidding document issued by DLG was a wholesale deviation from the Standard Bidding Document that the Authority had issued for the management of public vehicle parking areas. As already seen, this document was used in aid of a completely different purpose i.e. collection and management of revenue from markets. The correct procedure that ought to have been adopted by Arua DLG prior to its use is prescribed in*

*regulation 10 of the Public Procurement and Disposal of Public Assets Regulation 6/ 2014. For ease of reference, regulation 10 is reproduced here below:*

***“10. Deviation from use of standard document***

- (1) A procuring and disposing entity may, where the standard bidding documents, procedural forms or any other attendant documents are not suitable for a procurement or disposal process, apply to the Authority, in writing, for approval to deviate from the use of these documents.***
  
- (2) The Authority shall, in respect of the application made under sub regulation(1), issue its decision within ten working days of the receipt of the application.***
  
- (3) The Authority may-***
  - (a) approve the application for deviation for deviation without modifications or conditions;***
  
  - (a) approve the application for deviation with modifications or conditions;***
  
  - (b) reject an application for deviation.***
  
- (6) Where the Authority approves an application for deviation, the Authority shall state whether the approval is for a single procurement or disposal requirement or for a number of procurement or disposal requirements.***



**(5) Where the approval is for a number of procurement or disposal requirements, the Authority shall state the duration of the deviation, the maximum value of the deviation and the limitations of a deviation, if any, and the circumstances or conditions for using the alternative document.**

**(6) Where the Authority rejects an application, the Authority shall state the reasons for rejecting the application.**

**(7) .....**

**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.**

**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."**

**7.5** For the aforesaid reasons this application succeeds. The Applicant is entitled to a refund of their administrative review fees, as well as costs to cover out of pocket expenses and Counsel's fees.

**DECISION OF THE TRIBUNAL**

**1.** Arua District Local Government should implement the Government Policy Decision on the Development and Management of Markets in the City,

Municipalities and Towns, dated 17<sup>th</sup> September 2007, when procuring services for development or management of markets in the district.

2. The Tribunal sets aside the decision of the Respondent that the Entity should re evaluate the bids.
3. The Tribunal orders the Chief Administrative Officer Arua District to refund the Applicant's administrative review fees.
4. The Applicant is awarded Ugx 2 million to cover its out of pocket expenses and legal costs.

*Dated at Kampala this 10<sup>th</sup> Day of September 2015.*

SIGNED by the said  
**OLIVE ZAALE OTETE**

SIGNED by the said  
**MOSES JURUA ADRIKO**

SIGNED by the said  
**DAVID KABATERAINE**

SIGNED by the said  
**JOEL KATEREGGA**