

THE REPUBLIC OF UGANDA

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

APPLICATION NO. 11 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 OKOLLO MARKET FOR F/Y 2015-2016 IN ARUA DISTRICT.

APPLICANT: PATRICK ALUMA

**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 27th April 2015, Arua District Local Government (the entity) published an invitation for management of Okollo Market in the Daily Monitor Newspaper.
- 1.2 The Applicant together with one Mr. Moses Asega submitted bids.
- 1.3 On 4th June 2015, the Contracts Committee of the Entity awarded the Contract for the Management of the Market to Mr. Moses Asega at UGX 1, 500,000 per month.
- 1.4 On 16th June 2015, Mr. Patrick Aluma applied to the Accounting Officer of the Entity for administrative review contesting the award of the contract for the management of Okollo Market to Mr. Moses Asega.
- 1.5 On 3rd July 2015, The Chief Administrative Officer of the Entity dismissed the application for administrative review.
- 1.6 On 17th July 2015, the Applicant applied to the Public Procurement and Disposal of Public Assets Authority (the Authority) for administrative review of the Accounting Officer's decision.
- 1.7 In a decision dated 8th August 2015 The Authority rejected the application for administrative review and advised the Entity to proceed with the Procurement process.
- 1.8 On 1st September 2015, The Entity executed a contract with Mr. Moses Asega for the management of Okollo Market.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.

- 2.1 By application dated 16th October 2015, the Applicant lodged an Application with the Tribunal on the following ground:

- (i) *Whether the Authority erred in Law in finding that, the entity correctly customized the bid document with the approval of the Authority.*

2.2 DISPOSAL OF APPLICATION

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

- (1) Application for review of the Authority's decision dated 16th October 2015;
- (2) Authority's response to the Application, Annexes to the Response and submissions;
- (3) Applicant's submissions;

2.3 The Tribunal conducted a hearing for the Parties on 29th October 2015. The Applicant was represented by Mr. Nelson Cemari while the Authority was represented by Mr. John Kallemera.

2.4 At the beginning of the hearing, Counsel for the Respondent raised a preliminary objection to continuation of the proceedings relying on two (2) preliminary points of law to wit;- (i) ***The Application before the Tribunal was untenable and fatally defective on account that it was time barred.*** (ii) ***The Applicants bid had expired and that the Entity had executed a contract with the best evaluated bidder.*** The Tribunal noted that these objections had been raised in the Respondents written submissions and allowed both Counsel to address the Tribunal on the preliminary points of law and on the substantive merits of the application.

2.0 Submissions by Counsel.

2.1 **The application is untenable and fatally defective on account that it is time barred.**

2.2 Counsel for the Respondent argued that the Authority made its decision regarding the impugned procurement on 8th August 2015 and that the

decision was received by Mr. Acidri Kasiano on behalf of the Applicant on 18th August 2015.

- 2.3 Citing **Section 91 L (1) (c) of the PPDA Act, 2003** Counsel argued that an application to the Tribunal for administrative review must be lodged within ten working days of service of the Authority's decision.
- 2.4 He argued that the ten working days within which the applicant could have duly made this application to the Tribunal lapsed on 1st September 2015.
- 2.5 Therefore the application lodged before the Tribunal on 18th October 2015 was in contravention of the statutory time frame.
- 2.6 Citing the Tribunals decisions in **Clido Co. Limited v. PPDA Application No. 8 of 2014** and **Media Float International Ltd v. PPDA Application No. 7 of 2014**, Counsel submitted that the Applicant was bound by the statutory limits and that the Tribunal could not enlarge the time for lodging an application.
- 2.7 Concluding his submissions on the first preliminary point Counsel prayed that the Tribunal dismiss the application with costs because it was time barred and fatally defective.
- 2.8 In support of the second preliminary point; - **the Applicant's bid expired and the Entity executed a contract with a provider for the impugned procurement.**
- 2.9 Counsel argued, that the Applicant's bid submission sheet which was dated 18th May 2015 expressly stated that the Applicant's bid would be valid for ninety (90) working days, that the Applicant's bid expired on 21st September 2015 and the instant application was made to the Tribunal on 18th October 2015.
- 2.10 He submitted that the Applicant had no capacity to make this application because he is not a bidder within the terms of **section 91 I (1) of the PPDA Act, 2003**. Citing **Section 91 I (1)** Counsel argued that a bidder who is aggrieved by a decision made by the Authority under section 91 (4), may make an application to the Tribunal for a review of the decision of the Authority.
- 2.11 Relying on **Section 3 of the PPDA Act, 2003**, which defines a bidder as a physical or artificial person intending to participate or participating in public procurement or disposal proceedings, Counsel asserted that the Applicant did not fall under either the category of a person intending to participate or a

person participating in the procurement proceedings since his bid had expired.

- 2.12 Finally Counsel drew the Tribunal's attention to the fact that the Entity had executed a contract with a provider for the procurement which had commenced on 1st September 2015.
- 2.13 Counsel prayed that the Tribunal upholds both objections and dismiss the application with Costs.
- 2.14 Turning to the substantive ground of appeal; - **Whether the Authority erred in Law in finding that, the entity correctly customized the bid document with the approval of the Authority.**
- 2.15 Counsel argued that under **Regulation 48(2) of The Local Government Regulations**, it was a mandatory requirement that all bid documents include a statement of requirements in precise terms to leave no doubt or assumption by the bidder of the Entity's requirements. He argued that the Bidding document included a requirement for bidders to declare their financial capacity, and therefore the Authority could not be faulted for the inclusion of this requirement.

In as far as the procurement based on customization of the Standard Bidding Document for public vehicle parking areas (parks), Counsel argued that the Entity did not have to seek authority for the customization of the standard bidding document. He reiterated his earlier prayers.

- 3.0 In reply, Counsel for the Applicant submitted that, the Applicant only received the Administrative review ruling on 6th October 2015 from Okollo Sub County. Counsel submitted that contrary to the Authority's submission, the Applicant had never consented to one Kasiano Acidri receiving the ruling on his behalf. He argued that the ruling ought to have been served on the Applicant in person or Counsel on record. In his view the application before the Tribunal wasn't time barred because it was filed within 10 days after receipt of the ruling on 6th October 2015. He prayed that the Tribunal dismisses this objection.
- 3.1 With respect to the second objection Counsel argued that it was the responsibility of the Entity to extend the bid. He added that the Entity signed a contract with the best evaluated bidder on 1st September 2015 notwithstanding the fact that the Applicants bid expired on 21st September

2015, this action in his view was proof that the Entity had no intention to extend the Applicants bid on its expiry.

3.2 Turning to the substantive ground framed for review, Counsel relying on the Tribunal decision in *Peace Gloria –vs- PPDA (Application 3/2015)*, argued that the Entity’s use of a bidding document which had been wholly adapted from the approved Standard bidding document issued for collection of revenue for public vehicle parking areas was illegal, and the procurement arising out of the use of such document was a nullity. He prayed that the Tribunal;-

- (i) Upholds the application,
- (ii) Awards costs of the application
- (iii) Orders a refund of the Administrative Fees paid by the Applicant.

4.0 Resolution of issue the Tribunal

4.1 The Tribunal carefully studied the Application, the response to the Application and gave due consideration to both written and oral submissions made by the parties.

4.2 The Tribunal will deal first with the preliminary points of law in the order raised by the parties.

4.3 It is undisputed that the Authority rejected the application for Administrative Review on 8th August 2015, and that the instant application was filed at the Tribunal on 16th October 2015. The Applicant’s arguments in a nutshell are that the their application was brought in time because they only received it on 6th October 2015, a period of 35 working days, after the Authority alleges it was received by the Applicants authorized agent one Kassiano Acidri on 18th August 2015.

4.4 ***Section 91L (1) (c) of the PPDA Act 1/2013(“The Act”)*** provides that “an application for review of a decision of the Authority shall..... ***“be lodged with the Tribunal within ten working days of being served with its decision.***”

Section 91(4) of the Act provides that the Authority shall issue its decision within 21 days after receiving a complaint stating the reasons for its decision and the remedies granted.

4.5 The import of the above cited provisions is that an Applicant must lodge their application with the Tribunal within ten working days after the Authority has served such applicant with its decision. The responsibility of serving the decision, which forms the subject of the intended review by the Tribunal exercising its jurisdiction under Part VIIA of the Act lies with the Authority.

4.6 The Authority therefore is required to serve its decision in the same way that judicial process is served. The mode of service must be on the Complainant in person, on his duly authorized and appointed agent or to his advocate.

4.7 It is clear from the evidence before us that the Authority did not effect proper service of its decision on the Applicant as befitting a body with Quasi judicial powers. The Applicant had not duly appointed Kassiano Acidri his agent for purpose of receiving the decision of the Authority, why then did the Authority assume that delivery of its decision to him (Kassiano Acidri) discharged its obligation to deliver its decision to the Applicant within the 21 days period of receipt of the complaint as stipulated in the Act.

4.8 ***In Kiggundu-vs- Kasujja (1974) HCB 164, The High Court of Uganda held;- "Service should be personal or substituted with leave of Court, otherwise there is no proper service"***

In UTC –vs- Kattongole (1975) HCB 336, "The High Court also held that time for filing process in response to Summons only began to run against the defendant after he was properly served."

4.9 The Tribunal therefore finds that the Authority failed to effect proper service of its decision on the Applicant and that service on a stranger to the complaint (Kassiano Wadri) was not effective service as required by law, because the recipient of the Authority's decision was not an authorized and duly appointed agent of the Applicant.

- 4.10 In the circumstances the Applicant filed this application before the Tribunal in time i.e. within 10 working days from the date he claims to have received the Authority's ruling, because the statutory period of ten days within which to file the application for review at the Tribunal only began to run after the Applicant received the Authority's decision.
- 4.11 We find no merit in the first preliminary objection and it is therefore dismissed.
- 4.12 Turning to the second preliminary objection, it is undisputed that the Applicants bid security expired on 18th September 2015, which for the reasons above was before the period to lodge this application lapsed. This Tribunal has held that once the bid security expires the procurement process comes to an end. (*See Application 5/14 Hoima Taxi Bus Owners and Drivers Savings Credit cooperative Society –vs- PPDA*) We therefore agree with Counsel for the Authority that the Applicant did not fall within the category of a person intending to participate or person participating in public procurement or disposal proceedings as defined in Section 3 of the Act.
- 4.13 In the premises we uphold the second objection and accordingly dismiss this application with costs.
- 4.14 The Tribunal does not find it useful to deal with the substantive ground of appeal having upheld the second preliminary objection raised by the Authority which effectively disposes of this application.

DECISION OF THE TRIBUNAL

1. The Application is dismissed.
2. The Applicant will pay one million shillings (Ugx1,000,000) costs to the Authority.

Dated at Kampala this

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