

THE REPUBLIC OF UGANDA

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

APPLICATION NO.7 OF 2014

**APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND
DISPOSAL OF PUBLIC ASSETS AUTHORITY TO SUSPEND M/S MEDIA FLOAT
INTERNATIONAL**

APPLICANT: M/S MEDIA FLOAT INTERNATIONAL

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

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

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BACKGROUND/ FACTS

- 1.1 Media Float International Limited (the Applicant) participated in Procurement of Batch A, Community Access Roads under the Community Agricultural Infrastructure Improvement Programme- Project 3 (CAIP-3). The Project was initiated by the Ministry of Local Government which also advertised the procurement. The Applicant submitted a bid to Hoima District Local Government.
- 1.2 In a letter addressed to Chief Administrative Officers (CAOs) dated 7th October 2013; the Permanent Secretary Ministry of Local Government (PS MLG) informed the CAOs that a number of forgeries had been detected in a number of construction firms that had bid for the rehabilitation under CAIP-3. In this letter, the CAOs were directed to further examine the forgery issues and proceed with submissions to the Public Procurement and Disposal of Public Assets Authority (Authority) for suspension of the affected firms.
- 1.3 On 25th November 2013, the Authority wrote to MLG and advised it to request all the affected Local Governments to submit all the bids and relevant documents to MLG which would then handover the documents, including detailed reports on the forgeries and Contracts Committee minutes, to the Authority.
- 1.4 On 7th February 2014, the Authority received a letter from MLG dated 3rd February 2014 forwarding copies of the bid documents of each affected firm and all relevant documents on the matter for the Authority's action. The list indicated forgeries in 21 District Local Governments including Hoima District Local Government.

- 1.5 The Applicant in this case (Media Float International Limited) was one of the firms listed as having submitted forged completion certificates from Uganda National Roads Authority (UNRA) and Pallisa District Local Government.
- 1.6 The Authority opened a case file for investigations into these forgeries. By letter dated 29th July 2014, the Authority wrote to the Applicant informing it of the suspension proceedings and requested the Applicant to file a defence by 4th August 2014 and to attend a hearing on 8th August 2014. Following the hearing by the Authority, in its letter dated 3rd September 2014, the Authority suspended the Applicant from participating in public procurement and disposal of public assets proceedings for a period of three (3) years with effect from 3rd September 2014.
- 1.7 The Applicant is not satisfied with the decision of the Authority, hence this application for review of the decision of the Authority (the Applicant refers to it as an appeal).

2.0 **APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.**

- 2.1 By letter dated 10th October 2014, the Applicant wrote to the Public Procurement and Disposal of Public Assets Appeals Tribunal (the Tribunal) seeking to have the decision of the Authority reviewed. In the Application to the Tribunal, the Applicant 'appealed for a fair hearing, a review and a pardon'. The Application further stated that 'it should be noted that the alleged documents were submitted way back on 4th April 2013, yet PPDA based their action of suspending us (the Applicant) on the Regulations of 2014'.
- 2.2 On 27th October 2014, the Tribunal wrote to the Authority (letter copied to Applicant) requesting the Authority to provide the Tribunal with:-

- (1) written response to the allegations or grounds of appeal;
- (2) record of proceedings;
- (3) all documents that the Authority relied on to arrive at its decision.

2.3 In the same letter, the Tribunal directed both parties to file and serve the written submissions and any rejoinder to the submissions. This was done and the Application was set down for hearing on 5th November 2014.

3.0 **DISPOSAL OF APPLICATION**

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

- (1) Letter dated 10th October 2014 appealing against the decision of the Authority and the letter of the Authority suspending the Applicant attached to the Application.
- (2) Written response and written submissions to the Applicant's application by the Authority and Annexes attached to the response and the submissions;

3.2 When the matter came up for hearing, the Applicant was represented by Mr. Wafula Stephen, a Director of the Applicant. The Authority was represented by Ms. Esther Kusiima and Shiela Nakiwala.

- 3.3 At the beginning of the hearing, Counsel for the Authority raised a preliminary objection, which had also been expounded on in their written submissions. Counsel submitted that the appeal is incompetent having been filed outside the ten days required by section 91L (1) (c) of the Public Procurement and Disposal of Public Assets Act, 2003 the Act.
- 3.4 Counsel further submitted that the instant Application was filed with the Tribunal on the 23rd October 2014 making the application almost two months late from the date when the decision being appealed against was received by the Applicant. The decision being appealed against was served on the Applicant by the Authority on the 15th September 2014; that the time within which the Applicant should have appealed expired on 29th September 2014; it thus follows that the appeal is time-barred.
- 3.5 Counsel relied on the cases of **James Basiime v. Kabale District Local Government Miscellaneous Application No. 20 of 2011** and **Muwanguzi v. Uganda Railways Corporation and Attorney General Miscellaneous Cause No. 3 of 2012**. She contended that in **James Basiime (supra)**, a case where an application for judicial review was filed outside the statutory period of there (3) months, the judge held that the failure to bring the application within time made the application invalid for reasons that it was filed out of time. In **Muwanguzi (supra)**, the respondents raised a preliminary objection at the commencement of the hearing of the application to the effect that the application for judicial review was time barred. Justice Musota Stephen decided that the application for judicial review was not properly before court for having been filed out of time.
- 3.6 The Authority asked the Tribunal to strike out the application as being incompetent for being filed out of time.

3.7 In response to the preliminary objection, Mr. Wafula informed the Tribunal that he did not know that the Tribunal existed nor was he aware of the 10 days limitation period. He further stated that he went to the Authority to find out about the Tribunal; that it took him time to find the Tribunal Registrar. He pleaded for natural justice.

4.0 Resolution of preliminary objection by the Tribunal

4.1 In resolving the preliminary objection, the Tribunal looked at the working of section 91L (1) (c) of the Act. For ease of reference, the section is reproduced here below:

“91L. Application for review by the Tribunal.

(1) An application to the Tribunal for review of a decision of the Authority made under section 91 I shall—

(a);

(b);

(c) be lodged with the Tribunal within ten working days of being served by the Authority with its decision”.

4.2 The section clearly requires that an application must be filed within ten (10) days from the date when the Applicant receives the Authority’s decision.

4.3 The Tribunal has not been given power under the Act to allow Applicants to file their Applications outside the ten days, a power that has been given to the High Court under section 91M of the Act, when the High Court is receiving appeals against Tribunal decisions.

4.4 Section 91M (1) of the Act provides that where a party to proceedings before the Tribunal who is aggrieved by the decisions of the Tribunal, may, within thirty days after being notified of the decision of the Tribunal or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court (emphasis ours). It can be seen from section 91M that the High Court may allow a party to file an appeal against the Tribunal's decision outside the 30 days. The Tribunal lacks a similar power.

4.5 Accordingly, the Tribunal is unable to handle the instant application for being filed outside time. The Tribunal is in agreement with the authorities cited where the judges held that an application filed outside time is invalid.

4.6 The Tribunal did not therefore handle the substantive issues raised in the Application as doing so would, as Justice Kwesiga held in *Muwanguzi (supra)* 'be purely an academic exercise'.

4.7 In the premises, Counsel for the Authority's preliminary objection is upheld.


5.0 DECISION OF THE TRIBUNAL.

Having found that the Application is time barred the Tribunal dismisses the Application. Each party shall bear their own costs.

Dated at Kampala this 5th Day of November 2014.

SIGNED by

]


.....

OLIVE ZAALE OTETE]

CHAIRPERSON

SIGNED by

MOSES JURUA ADRIKO

SIGNED by

DAVID KABATERAINE

SIGNED by

JOEL KATEREGGA]

SIGNED by]

ABRAHAM NKATA