

**THE REPUBLIC OF UGANDA
IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
APPEALS TRIBUNAL AT KAMPALA**

**INTERLOCUTORY APPLICATION NO. 2 OF 2022
(ARISING FROM REGISTRY APPLICATION NO. 18 OF 2022)**

NUMANI MUBIAKULAMUSA =====APPLICANT

VERSUS

- 1. JOHN R. MUSINGUZI**
- 2. RUTH CHEBET**
- 3. UGANDA REVENUE AUTHORITY**
- 4. MEERA INVESTMENTS LIMITED:.....RESPONDENTS**

**BEFORE: NELSON NERIMA; PATRICIA K. ASIIMWE, THOMAS BROOKES
ISANGA; GEOFFREY NUWAGIRA KAKIRA; AND CHARITY KYARISIIMA,
MEMBERS**

Representation:

Mr Peter Mukidi Walubiri and Mr. Hannington Mutebi for the Applicant
Ms. Patricia Ndagire and Ms. Christa Namutebi for the 1st, 2nd and 3rd Respondents
Mr. Nelson Walusimbi for the 4th Respondent

RULING

Uganda Revenue Authority (the 3rd Respondent herein), initiated a procurement for the provision of office space for Kampala Metro- *Retender*, South and North Tax Offices, under Procurement Ref No: URA/CSD/NCON/21-22/01385/02398 using Open Domestic Bidding Method.

The Applicant was declared as the best evaluated bidder vide a notice of best evaluated bidder dated 30th May 2022.

On 7th June 2022, Meera Investments Limited (the 4th Respondent), one of the unsuccessful bidders, applied to the Accounting Officer for administrative review of the award decision. On 22nd June 2022, the 4th Respondent filed Registry Application No. 18 of 2022 in this Tribunal against Uganda Revenue Authority (the 3rd Respondent herein), seeking

administrative review of the decision to award the tender to the Applicant. The 4th Respondent averred that the Accounting Officer had failed to make and communicate a decision regarding the complaint filed on 7th June 2022.

The Tribunal issued a suspension order of the procurement process on 22nd June 2022 in accordance with section 89(11)(a) of the *Public Procurement and Disposal of Public Assets Act*.

The Tribunal also notified the Applicant herein of the Application and invited him to file a response/submission if he deemed it necessary. The Applicant herein filed its written arguments on 30th June 2022.

However, on 23rd June 2022, *M/S Walusimbi & Co. Advocates*, counsel for Meera Investments Limited (the 4th Respondent herein), had filed a withdrawal of their Registry Application No. 18 of 2022. The Tribunal nevertheless fixed the matter for hearing on 7th July 2022, since a party seeking a withdrawal is subject to approval by the Tribunal when the matter is called for hearing.

The Applicant herein filed this Application on 7th July 2022, seeking the following orders:

- a) that the Respondents be held in contempt of the Tribunal's suspension order dated 22nd June 2022;
- b) that the 1st and 2nd Respondents be ordered to pay a fine of shs. 100,000,000 each to the Government of Uganda and general damages each for contempt of the suspension order;
- c) that the 3rd Respondent pay a fine of shs. 500,000,000 each to the Government of Uganda and general damages of shs. 400,000,000 to the Applicant for the contempt;
- d) that the 4th Respondent pay a fine of shs. 400,000,000 to the Government of Uganda and general damages of shs. 300,000,000 to the Applicant for the contempt;
- e) that if any of the 1st, 2nd, 3rd or 4th Respondents fails to pay the fine within fourteen days such respondent or entity's officer liable should be committed to civil prison for six months;
- f) that the suspension order issued on 22nd June 2022 be extended until Registry Application No. 18 is determined;

- g) that hearing of withdrawal of registry application No. 18 of 2022 lodged by the 4th Respondent be stayed/and/or adjourned sine die pending the determination of the instant application; and
- h) that costs of this application be paid by the 3rd and 4th Respondents.

According to the Applicant's affidavit in support of the application, the 2nd Respondent herein, at the instance of the 4th Respondent herein, adjudicated over the procurement dispute; cancelled the notice of best evaluated bidder in favour of the Applicant; and issued a new notice of best evaluated bidder in favour of the 4th Respondent herein. The new notice of best evaluated bidder dated 29th June 2022, is attached as Annexure "D" to the Applicant's affidavit in support.

The Applicant contends that the acts of the Respondents were in contempt of the Tribunal's suspension order dated 22nd June 2022.

There are affidavits in reply deponed as follows-for the 3rd Respondent by John Musinguzi (Commissioner General and Accounting Officer of the 3rd Respondent); and for the 2nd and 3rd Respondents by Ruth Chebet (Manager Procurement and Disposal Unit).

The 4th Respondent filed an affidavit in reply deponed by Prabhat Mishra the acting General Manager

On 7th July, 2022 the Tribunal decided to adjourn the hearing of the request to withdraw Registry Application No. 18 of 2022 and first determine this contempt application and a related application by the Applicant to be added as a Respondent to Registry Application No. 18 of 2022.

We have carefully studied the notice of motion, affidavit in support, affidavits in reply, and also considered the submissions of counsel and authorities cited.

The pertinent legal issue we must resolve first is whether the Applicant herein has *locus standi* to institute contempt proceedings arising from the suspension order issued in Registry Application No. 18 of 2022. The parties in Registry Application No. 18 of 2022 are *Meera Investments Limited* (4th Respondent herein) as Applicant; and *Uganda Revenue Authority* (3rd Respondent herein) as Respondent.

In ***HIGH COURT AT ARUA CIVIL APPEAL No. 0017 OF 2016- DOMNIC PORO versus INYANI GODFREY and APIKU MARTIN***, Hon Justice Stephen Mubiru cited with approval the case of *Njau and others v. City Council of Nairobi [1976-1985] 1*

EA 397 at 407 whereby he defined *locus standi* to literally mean a place of standing; a right to appear in court, and that to say that a person has no *locus standi* means that he has no right to appear or be heard in a specified proceeding.

In ***HIGH COURT CIVIL DIVISION MISCELLANEOUS APPLICATION NO.843 OF 2021-ATTORNEY GENERAL versus MALE MABIRIZI K KIWANUKA***, it was again held by Ssekaana, J that a proceeding of civil contempt is regarded as a form of execution and enforcement of the order alleged to have been isolated to the detriment of a private party of a private party. A civil proceeding for contempt is a form of an appeal for execution or enforcement of a Court's order for the benefit of a party. That the right of a private party to move Court for civil contempt is therefore regarded as remedial and it is governed by the limits of the civil jurisdiction of court.

According to *Halsbury's Laws of England 4th Edition*, Volume 9(1), paragraph 463, a person not a party to a cause or matter, who obtains an order or in whose favour an order is made, is entitled to enforce obedience to it by the same process as if he were a party.

In ***HIGH COURT CIVIL DIVISION MISCELLANEOUS APPLICATION NO.843 OF 2021-ATTORNEY GENERAL versus MALE MABIRIZI K KIWANUKA***, the Attorney General was not a party but was granted *locus standi* to initiate an Application for contempt, as a private litigant to preserve and safeguard the interest of the public in the due administration of justice and to protect the integrity of court. That the Attorney General as the head of the Bar had locus to raise an application for contempt.

In the instant case, the applicant for contempt proceedings is not a party to Registry Application No. 18 of 2022. He cannot enforce or execute any orders made in Registry Application No. 18 of 2022 because they were not made for his benefit or in his favour. In the same vein, the Applicant has no legal basis for claiming damages for the alleged contempt. Moreover, he has no *locus standi* to represent the interest of the public.

He was simply invited to make submissions as an interested person but he is not a party to Registry Application No. 18 of 2022. Indeed, he has also filed Interlocutory Application No. 3 of 2022 seeking to be joined as a party to Registry Application No. 18 of 2022.

A bidder or other person who seeks to have an order made in his favour must file an application in the Tribunal under Part VIIIA of the *Public Procurement and Disposal of Public Assets Act*.


Whether or not the impugned decision of the 3rd Respondent's Accounting Officer was lawful is a matter to be adjudicated in Registry Application No. 18 of 2022, and we would not want to pre-empt that adjudication.


The upshot of our determination is that the Applicant herein has no *locus standi* to commence or prosecute these contempt proceedings.


In the result the application is struck out. Each party shall bear its own costs.


Dated this 11th day of July 2022.


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NELSON NERIMA
MEMBER


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PATRICIA K. ASIIMWE
MEMBER


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THOMAS BROOKES ISANGA
MEMBER


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GEOFFREY NUWAGIRA KAKIRA
MEMBER


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CHARITY KYARISIIMA
MEMBER