

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

**APPLICATION NO. 20 OF 2023**

**BETWEEN**

**GLOBE WORLD ENGINEERING (U) LTD:.....APPLICANT**

**AND**

**JINJA CITY COUNCIL:.....RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE PROCUREMENT  
FOR THE PROVISION OF NON-CONSULTANCY SERVICES FOR  
REVENUE COLLECTION FROM HOTEL TAX IN SOUTHERN  
DIVISION UNDER PROCUREMENT NO. JC854/SRVCS/23-  
24/00025.**

**BEFORE: FRANCIS GIMARA, S.C; NELSON NERIMA; THOMAS  
BROOKES ISANGA; GEOFFREY NUWAGIRA KAKIRA; PAUL  
KALUMBA; AND CHARITY KYARISIIMA, MEMBERS**

## DECISION OF THE TRIBUNAL

### **A. BRIEF FACTS**

1. Jinja City Council (the Respondent) initiated a procurement for the provision of non-consultancy services for revenue collection from Hotel Tax in Southern Division under Procurement No. JC854/Srvcs/23-24/00025.
2. The bid notice for the procurement was published in the New Vision Newspaper on Monday, June 19, 2023. The notice listed 31 revenue centres under the classification of “markets” wherein the impugned procurement was listed as item no.22.
3. The Respondent received bids from 5 bidders namely *Globe World Engineering (U) Ltd, Fun Fair Uganda Ltd, Bangoma Investments Ltd, Elegant Supplies Ltd and Ziontex Meat Experts Ltd*.
4. Between July 24, 2023, and July 26, 2023, the Respondent published the notice of best evaluated bidder for 30 revenue centres under the classification of “markets” excluding information on revenue collection from Hotel Tax in Southern Division.
5. The Applicant (Globe World Engineering (U) Ltd) wrote a complaint to the Accounting Officer on August 18, 2023, seeking a review of the procurement process considering the delays to complete the evaluation of bids by the Contracts Committee.
6. The Applicant on August 21, 2023, further sought guidance from the Accounting Officer on the details of the bank account where they could pay the prescribed administrative review fees.
7. The Respondent in a letter dated August 21, 2023, Ref CR. 105, informed all the bidders in the impugned procurement process that the same been cancelled with the approval of the Contracts Committee in their meeting held on July 27, 2023.

8. The Applicant being dissatisfied with the cancellation of the procurement, filed the instant application with the Tribunal on August 31, 2023, seeking to review the decision of the Respondent.

**B. APPLICATION TO THE TRIBUNAL**

1. The Applicant averred that the decision of the Respondent's Accounting Officer and the procedure adopted to handle the administrative review process were in breach of the procurement laws.
2. The Applicant averred that it was the obligation of the Accounting Officer to guide the Applicant and furnish it with the details of the bank account where to deposit the administrative review fees however, the Accounting Officer failed to provide the said guidance.
3. The Applicant further averred that the procedure used to arrive at the decision communicated in the Respondent's letter dated August 21, 2023 and the contents therein contravene Section 43 of the PPDA Act (as amended), Regulation 43 of the PPDA (Local Government) Regulations 2006 (as amended) and Regulation 5(1) (a)PPDA (Evaluation) Regulations 2014.
4. The Applicant accordingly prayed that the Application be allowed, the impugned cancellation of the procurement process be set aside and the Respondent be advised or directed to finalize the procurement process.

**C. RESPONDENT'S REPLY TO THE APPLICATION**

Whereas the Tribunal issued summons to the parties in which the timelines for filing responses and written submissions were stated, no response to the Application was filed by the Respondent.

#### **D. THE ORAL HEARING**

The Tribunal held an oral physical hearing on 13<sup>th</sup> September 2023. The appearances were as follows:

1. Mr. Kiiza Joseph, a Director of the Applicant represented the Applicant.
2. Ms. Nabwonso Janet, the Head Procuring and Disposing Unit represented the Respondent.

#### **E. SUBMISSIONS BY THE PARTIES**

1. The Applicant adopted the arguments made in its pleadings to the Tribunal.
2. The Respondent made oral submissions during the hearing. The Respondent requested for more time to file a response because the entire procurement action file for the impugned procurement was with the Public Procurement and Disposal of Public Assets Authority (Authority).

#### **F. RESOLUTION OF ISSUES RAISED IN THE APPLICATION**

1. The Application raised 4 issues for determination by the Tribunal which have been reframed for resolution as follows:
  - i. Whether the Tribunal has jurisdiction to hear and determine the Application?
  - ii. Whether the Application is competent?
  - iii. What reliefs are available to the Applicant?

#### **Case management Issue:**

**Whether the Application should be heard without a response from the Respondent being on record?**

2. When the Application was filed in August 31, 2023, the Tribunal issued summons to the parties in which the timelines for filing responses and written submissions were stated. The Respondent was directed to file a reply to the application before close of business on September 5, 2023 and written submissions if any, before close of business on September 11, 2023.
3. When the matter came up for hearing, the Applicant informed the Tribunal of the Respondent's failure to comply with the summons and prayed that the Tribunal makes a finding to the effect that the Respondent had by failing to file a response, conceded to the entire application.
4. The Tribunal was in an email sent by the Respondent's Principal Procurement Officer *Janet Nabwonso*, dated September 5, 2023, at 16:47 pm, informed that the entire procurement action file for the impugned procurement was with the Public Procurement and Disposal of Public Assets Authority (the Authority). The email contained an attachment by way of Letter, addressed to the Executive Director of the Authority dated 4<sup>th</sup> September 2023, Ref CR. 105, authored by Lwanga Edward the City Town Clerk. The Applicant was also copied in the said email communication.
5. The letter requested the Executive Director to grant the Respondent access to the procurement action file and bids in the impugned procurement so that the Respondent can comply with the Tribunal's production order.
6. The Authority in a letter addressed to the Respondent dated September 8, 2023, informed the Respondent that the procurement action file and bids could be picked and transmitted to the Tribunal. In the same letter, the Applicant was further informed that considering that the administrative review process was before the Tribunal, the Authority had terminated any further investigations into the Applicant's earlier complaint.

7. The impugned procurement action file and bids were thus availed and submitted to the Tribunal from the Authority on September 11, 2023.
8. In light of the fact that the Respondent had from August 15, 2023 to September 8, 2023, not had access to the impugned procurement action file and bids by reason of the fact that the documents were in the custody of the Authority, we are unable to fault the Respondent for having omitted or failed to file a response to the instant Application.
9. With respect to the Applicant's prayer for the Tribunal to consider the default as the Respondent's concession to the Application, we are unable to grant the said prayer for the simple reason that an Applicant before this Tribunal is not automatically entitled to the remedies sought simply on the ground that the Application is undefended. Failure by the Respondent to file a response is not a waiver of the legal burden imposed on an Applicant to prove their case to the required standard.
10. It follows that even in the absence of a reply, the Tribunal has a duty to review all the evidence put before it to assess whether or not there was compliance with the provisions of the PPDA Act, 2003 (as amended). Furthermore, having already noted that the failure or omission by the Respondent to defend the Application by filing a response thereto was neither wilful nor negligent, it stands to reason that the Applicant still bears the onus to prove his case notwithstanding the Respondent's default.
11. The Tribunal will therefore proceed to decide the Application as if the Respondent had filed a Response to the Application, pursuant to Order 9 Rule 10 of the Civil Procedure Rules S.I. 71-1. See decision of **Honourable Mr. Justice FMS Egonda-Ntende** (as he then was) in **Dembe Trading Enterprises Ltd vs. Uganda Confidential Ltd and Teddy Ssezi Cheeye, High Court (Commercial Court Division), Civil Suit No. 612 of 2006**

**Issue No. 1:**

**Whether the Tribunal has jurisdiction to hear and determine the Application?**

12. The Public Procurement and Disposal of Public Assets Tribunal is a creature of the *Public Procurement and Disposal of Public Assets Act 2003* and its jurisdiction arises out of the instances listed in section 91I (a)-(c) of the *Public Procurement and Disposal of Public Assets Act*.
13. The Tribunal must therefore inquire into the facts of whether the Tribunal is seized or clothed with Jurisdiction to interrogate the merits of Application before it.
14. Section 75 of the *Public Procurement and Disposal of Public Assets Act* provides as follows:

***75. Cancellation of procurement and disposal processes and rejection of bids***

- a. *A procuring and disposing entity may, on the approval of the Contracts Committee, cancel a procurement process or a disposal process at any time, before a contract is awarded to the best evaluated bidder, as may be prescribed.*
- b. *A procurement process may be cancelled where—*
  - i. *the money available for the procurement is not adequate;*
  - ii. *there is a significant change in the technical details or circumstances of the procurement requirement; or*
  - iii. *the circumstances that gave rise to the request for procurement change significantly.*
- c. *A procuring and disposing entity may reject a bid during the evaluation stage, as may be prescribed.*

15. Section 91I(3) of the *Public Procurement and Disposal of Public Assets Act* provides as follows:  
(3) *For the avoidance of doubt, the following matters shall not be subject to review by the Tribunal—*  
(a) *a decision by a procuring and disposing entity to reject or cancel any or all bids prior to award of a contract under Section 75;*  
(b) *a decision of a procuring and disposing entity to discontinue a procurement or disposal process, after receiving submissions from bidders following an expression of interest or a pre-qualification; and*  
(c) *decision by a procuring and disposing entity to limit the participation of bidders under a preference scheme or a reservation scheme.*
16. Tribunal therefore has no jurisdiction to review a decision by a procuring and disposing entity to cancel a procurement in accordance with the law. The Tribunal however has jurisdiction to inquire into the decision-making process leading to the cancellation, in order to determine whether there is a valid cancellation within the meaning of section 75 of the *Public Procurement and Disposal of Public Assets Act*.
17. The Tribunal has extensively guided on processes leading to cancellation and legality of cancellations in light of sections **75(1)** and **91I (3) (a)** of the PPDA Act, 2003 as follows;
- i. The Tribunal has jurisdiction to inquire into the decision-making process leading to the cancellation, to determine whether there is a valid cancellation within the meaning of section 75 of the PPDA Act, 2003 as amended.
  - ii. The Tribunal can only lack jurisdiction when it satisfies itself that the purported cancellation was conducted in full accordance and compliance with the PPDA Act, 2003 as amended.



- iii. For the Tribunal to be precluded from having jurisdiction, such action of the PDE must have been done prior to the award of the contract to the Best Evaluated Bidder.
- iv. Once it is determined by the Tribunal, as a fact that there exists a cancellation which was effected in accordance with section 75 of the PPDA Act, the Tribunal would have no jurisdiction to inquire into the reasons for the said cancellation.

**See Application No. 45 of 2023-Impiger Technologies Pvt Ltd Versus Higher Education Students Financing Board; Application No.40 of 2022 Seyani Brothers and Co. (U) Ltd & Parbat Siyani Construction Ltd Joint Venture vs Directorate of Govt Analytical Lab; Application No.34 of 2022 Kingdom Kampala Ltd vs Judicial Service Commission; Application No. 25 of 2022: Impiger Technologies Pvt Ltd Versus Higher Education Students Financing Board; Preg-Tech Communications Limited v Uganda Police Force Application 32 of 2021 and DOTT Services Ltd versus UNRA & PPDA Application 3 of 2017.**

18. We have perused through the procurement action file of the Respondent that was submitted to the Tribunal by the Authority. We found that the Contracts committee minutes at its sitting of July 27, 2023, under minute JC-CC 054/2023, approved the cancellation of the procurement. The said minute is reproduced as herein below.

**“APPROVAL OF CANCELLATION OF ONGOING PROCUREMENT PROCESS OF REVENUE COLLECTION FROM PROPERTY RATES AND GROUND RENT, HOTEL TAX IN SOUTHERN DIVISION AND LOCAL SERVICES TAX.**

*The user department through the Town Clerk requested for cancellation of procurement process for revenue collection from Property Rates and Ground Rent, Hotel Tax in Southern Division and Local services Tax. The reasons cited are;*

*The assessment of hotel tax in Northern Division was not yet conducted and yet it would be prudent to get one tenderer to manage both Divisions to avoid conflicts and overlap between the tenderers in the Division.*

*Property rates and Ground rent be changed from lumpsum contract to framework contract arrangement for proper supervision and management and-for Local service tax the department is in the process of updating records of all employees of Government Entities and Companies for the smooth collection of the Tax. The Department will be managing the above revenue centers as they conclude the assessments and updates.*

*The committee approved the cancellation in accordance with Regulation 57 of the Local Government (PPDA) Regulations 2006 and Procurement and Disposal of Public Assets Act 75”.*

19. It can therefore be deduced that a specific request for cancellation was made by the User Department to the Contracts Committee, because the circumstances of the procurement requirement and circumstances that gave rise to the request for procurement had significantly changed as provided for in section 75 (2)(b) and (c) of the PPDA Act 2003.
20. **Furthermore**, the request for cancellation was approved by the Contracts Committee. There had been no award of contract to any Bidder in the tender for revenue collection from Hotel Tax in Southern Division under Procurement No. JC854/Srvcs/23-24/00025.

21. The approval of cancellation was therefore in accordance with Section 75 of the *PPDA Act 2003* read together with *reg 57(1)-(4)* of the *Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006*
22. Having determined that the cancellation in the impugned procurement was effected in accordance with section 75 of the *Public Procurement and Disposal of Public Assets Act*, the Tribunal therefore has no jurisdiction to inquire into the reasons for the said cancellation.
23. There is no need to delve into the merits or resolve any other issues raised in the Application.
24. **This issue is resolved in the negative.**

**G. DISPOSITION**

1. This Application is struck out.
2. The Tribunal's suspension order dated August 31, 2023 is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 21<sup>st</sup> day of SEPT 2023.



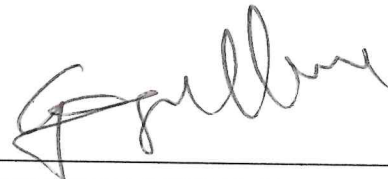
**FRANCIS GIMARA S.C**  
**CHAIRPERSON**



**NELSON NERIMA**  
**MEMBER**



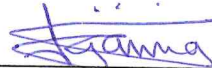
**THOMAS BROOKES ISANGA**  
**MEMBER**



**GEOFFREY NUWAGIRA KAKIRA**  
**MEMBER**



**PAUL KALUMBA**  
**MEMBER**



**CHARITY KYARISIIMA**  
**MEMBER**