

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO.8 OF 2014**

**APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND  
DISPOSAL OF PUBLIC ASSETS AUTHORITY TO SUSPEND M/S CLIDO COMPANY LIMITED**

**APPLICANT: M/S CLIDO COMPANY LIMITED**

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

**(Before: MOSES JURUA ADRIKO- MEMBER, DAVID KABATERAINE-MEMBER and  
ABRAHAM NKATA, MEMBER)**

## **DECISION OF THE PPDA APPEALS TRIBUNAL**

### **1.0 BACKGROUND/FACTS**

- 1.1 Clido Company Limited (the Applicant) participated in Procurement of Batch A, Community Access Roads under the Community Agricultural Infrastructure Improvement Programme- Project 3 (CAIIP-3). The Project was initiated by the Ministry of Local Government which also advertised the procurement. The Applicant submitted bids to both Kabarole and Kyegegwa District Local Governments.
- 1.2 On 2<sup>nd</sup> December 2013, the Authority received a letter from Kabarole District Local Government submitting firms that had forgeries under the Procurement of Batch A, Community Access Roads under the Community Agricultural Infrastructure Improvement Programme- Project 3 (CAIIP-3); verification of their bid securities by Equity Bank and verification of their Uganda Revenue Authority (URA) Income Tax clearance certificates.
- 1.3 The Applicant in this case (Clido Company Limited) was one of the firms listed as having submitted a forged bid security and a forged Income tax clearance certificate.
- 1.4 The Authority opened a case file for investigation into these forgeries and by letter dated 7<sup>th</sup> May 2014 requested the Applicant to submit any information or evidence in its defence not later than 13<sup>th</sup> May 2014 and to appear for a hearing on 16<sup>th</sup> May 2014.
- 1.5 By another letter dated 29<sup>th</sup> July 2014, the Authority wrote to the Applicant informing it of the suspension proceedings and requested the Applicant to

submit any information or evidence in its defence not later than 4<sup>th</sup> August 2014 and to appear for a hearing on 8<sup>th</sup> August 2014.

1.6 By letter dated 4<sup>st</sup> August 2014 (Annex 2), the Applicant informed the Authority that due to other commitments, it was unable to respond by 4<sup>th</sup> August 2014 nor to attend the hearing on 8<sup>th</sup> August 2014 as required by the Authority. In the same letter, the Applicant requested the Authority to respond by 13<sup>th</sup> August 2014 and further requested the Authority to reschedule the hearing from 8<sup>th</sup> August 2014 to a date after 13<sup>th</sup> August 2014.

1.7 By letter dated 11<sup>th</sup> August 2014 (Annex 3), Mr. Joshua Cloude Kagaba, the Managing Director of the Applicant wrote to the Authority informing it, among others, that the acts of forgery of documents referred to by the Authority were committed by the staff of the Applicant without the knowledge or instructions of the Applicant and that internal disciplinary action had been taken against the said staff. In the said letter, the Applicant regretted the forgeries and promised to shed more light on the matter at the hearing date to be fixed by the Authority.

1.8 By letter dated 3<sup>rd</sup> 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 3<sup>rd</sup> September 2014.

1.9 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 5<sup>th</sup> November 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 and or cancelled. In the Application to the Tribunal, the Applicant states that the Authority made the decision to suspend the Applicant without according the Applicant a fair hearing; that this is an injustice and in total breach of the rules and principles of fair hearing "more especially after we had indicated that we were available for a hearing". ... .

2.2 The Applicant also stated that " We also believe that the action by PPDA of suspending our Company for a period of three years reached at after condemning our Company without a free and fair hearing was harsh, biased, contrary to the established PPDA rules and regulations and unconstitutional.

2.3 The Applicant's letter was received by the Tribunal on 26<sup>th</sup> November 2014.

2.4 On 26<sup>th</sup> November 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.

2.5 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 9<sup>th</sup> December 2014.

### 3.0 **DISPOSAL OF APPLICATION**

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

(1) Letter dated 5<sup>th</sup> November 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. Ssenoga Maweno Advocate and Mr. Joshua Cloude Kagaba, its Managing Director was in attendance. The Authority was represented by Mr. John Kallemera and Ms. Sheila Nakiwala (Advocates).

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 26<sup>th</sup> November 2014 making the application more than one (1) month late from the date when the decision being appealed against was received by the Applicant. The decision being appealed against was made by the Authority on 3<sup>rd</sup> September 2014 and served on the Applicant by the Authority on the 17<sup>th</sup> October 2014; that the time within which the Applicant should have appealed expired on 31<sup>st</sup> October 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 **Mwanguzi v.**

**Uganda Railways Corporation and Attorney General Miscellaneous Cause No. 3 of 2012.** He contended that in **James Basiime (supra)**, a case where an application for judicial review was filed outside the statutory period of three (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 also relied on **Application 7/2014 Media Float International Ltd – vs- Public Procurement and Disposal of Public Assets Authority** in which the Tribunal held at page 7 as follows;-"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.....It can be seen from section 91M(1) 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".

3.7 The Authority asked the Tribunal to strike out the application as being incompetent for being filed out of time.

3.8 In response to the preliminary objection, Mr. Ssenoga informed the Tribunal that the Authority was equally in breach of Regulation 350(4) of The Public Procurement and Disposal Regulations SI 70/2003(now repealed), which in his view made it mandatory for the Authority to communicate its decision to suspend the Applicant within 21 days of receipt of the recommendation to suspend the Applicant from the Ministry of Local Government (MLG). MLG wrote to the Authority on 2<sup>nd</sup> December 2013. Counsel complained that the Applicant

received communication from the Authority of its intention to suspend the Applicant more than seven (7) months after the Authority had received the letter from MLG, therefore it could not be the beneficiary of the preliminary objection since it was in default under its obligation under the law to inform the Applicant of its intention to suspend the Applicant within 21 days from the date it received the letter from MLG. Counsel submitted that the Authority was estopped from benefitting from its illegality, because it had not observed the maximum that “he who comes to equity must come with clean hands.” Counsel requested the Tribunal to dismiss the objection and hear the matter on its merits.

#### **4.0 Resolution of preliminary objection by the Tribunal**

4.1 In resolving the preliminary objection, the Tribunal looked at the wording 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, notwithstanding the substantive ground raised by the Applicants about the Authority not granting them a fair hearing.
- 4.6 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 10<sup>th</sup> Day of December 2014.*



SIGNED by

MOSES JURUA ADRIKO

SIGNED by

DAVID KABATERAINE

SIGNED by

ABRAHAM NKATA