

THE REPUBLIC OF UGANDA

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

APPLICATION No. 11 OF 2017

**APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT OF A SUSPENSION FROM
PARTICIPATING IN PUBLIC PROCUREMENT AND DISPOSAL PROCEEDINGS**

APPLICANT: RESERVE PROTECTION SERVICES LTD

**1st RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY.**

2nd RESPONDENT: FORT PORTAL REGIONAL REFERRAL HOSPITAL

**CORAM: OLIVE ZAALE OTETE (CHAIRPERSON), MOSES JURUA ADRIKO (MEMBER),
DAVID KABATERAINE (MEMBER), AND ABRAHAM NKATA (MEMBER).**

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BRIEF FACTS AND BACKGROUND

1. The Applicant participated in the procurement process for supply of food stuffs to Fort Portal Regional Referral Hospital.
2. During the evaluation of bids, the Entity found that the Applicant in its bid submitted a forged tax clearance certificate and recommended to the Authority to suspend the Applicant from participating in public procurement and disposal proceedings.
3. The Authority investigated the matter and confirmed from Uganda Revenue Authority in its letter dated 22nd July 2015, that the Applicant submitted a forged tax clearance certificate. By letter dated letter dated 24th October 2016, the Authority suspended the Applicant from participating in public procurement and disposal proceedings for a period of two years.
4. The Applicant in its letter dated 16th January 2017 accepted the suspension by the Authority but requested for the reduction of the suspension period to six (06) months.
5. The Authority in its letter dated 20th February 2017 declined to grant the Applicant's request to reduce the suspension period on grounds that it was functus officio.
6. The Applicant being dissatisfied with the decision of the Authority filed an Application on 6th July, 2017 before the Registrar vide MA No. 1 of 2017 seeking leave to file this application out of time and the same was granted.
7. On 12th July 2017, the Applicant filed this application before the Tribunal challenging the decision of the Authority to suspend it for two years from participating in public procurement process on ground that it was unfair and that it should be reconsidered.

2.0 DISPOSAL OF APPLICATION

- 2.1 In disposing of the Application for review, the Tribunal analysed the following:

(i) The Applicant's Application to the Tribunal dated 12th July 2017, Annexes to the Application, the written and oral submissions.

(ii) The 1st Respondent's response to the Application, Annexes to the response, the written and oral submissions.

(iii) The 2nd Respondent's response to the Application, Annexes to the response and oral submissions.

2.2 The Tribunal conducted a hearing for the parties on 24th July 2017. The Applicant was represented by Counsel Namata Harriet and Mutyaba Nasser, the Authority was represented by Counsel John Kallemera.

3.0 SUMMARY DECISION

In accordance with Section 91I (7) of the Act, the Tribunal delivered a summary of this decision on Tuesday 26th July 2017. What follows is the detailed reasoning in support of the Tribunal's decision.

4.0 ISSUES

4.1 Two (2) issues were formulated by the parties for resolution as follows;

1. *Whether the Applicant's suspension from participating in Public Procurement and Disposal of Public Assets processes should be reduced to six months?*
2. *What remedies are available to the parties?*

5.0 SUBMISSIONS BY COUNSEL

5.1 Counsel for the Applicant submitted that the Applicant, having been found guilty of presenting a forged tax clearance certificate, pleaded guilty and was suspended from public procurement for two years. She submitted that the Applicant does not dispute the fact of suspension but rather the harshness of the punishment of suspension for two years. She submitted that the Applicant had already served for eight months and that the Tribunal should hold that the eight months of suspension is good enough.

5.3 Counsel for the Applicant further submitted that the Applicant had never been involved in such malpractice and it accepted responsibility of one of its staff members for having forged the tax clearance certificate. Counsel stated that the Applicant was remorseful; it thereafter cleared its taxes and should therefore not have been given a maximum sentence.

5.4 Counsel for the Applicant argued that under Section 94 of the Trial Indictment Act, Cap 23, mitigation should come before punishment and yet the Applicant was not given chance to mitigate the punishment and that was unfair. Counsel submitted that the above position is true for criminal matters but even in torts/ civil matters.

Counsel relied on the case of *African Highland Produce Ltd Vs. Kisiro (Unreported)* 'the test that Court applies when dealing with mitigation is the subjective test or what is reasonable in the circumstances. The Courts may be more liberal when determining reasonableness...' Counsel submitted that the point to be observed is that the appeal for mitigation was not heard on the ground that the Authority was functus officio and that this Tribunal however has powers as an appellate Tribunal to hear the Applicant's plea in mitigation.

5.5 Counsel for the Applicant submitted that the Applicant demonstrated its remorsefulness by pleading guilty immediately and thus it did not waste time of the Authority by going through a lengthy and expensive trial process. Counsel submitted that the Applicant has taken responsibility for the offence committed by its employee and has dismissed the employee and also rectified the anomaly by filing correct tax returns. Counsel further submitted that the Applicant is a first offender and it offers employment to several persons who have suffered loss due to the suspension. Counsel prayed that the Honorable members of the Tribunal deem it fit to reduce the sentence imposed by the Authority from two years to eight months, and considering the period already served, the Tribunal should deem it fit to lift the suspension to enable the Applicant perform its duties to the general public.

5.6 In response, Counsel for the Respondent submitted that Section 94 of the Trial Indictments Act is not applicable to disciplinary proceedings under the PPDA Act. He submitted that the Trial on Indictment Act applies to criminal proceedings and it therefore cannot apply to this matter before the Tribunal.

- 5.7 Counsel for the Respondent submitted that forgery is a grave offence and the Authority imposed a deterrent sanction. He cited Application NO. 2 of 2014, *Wako Construction Limited Vs PPDA*, Application No. 3 of 2014 where the Tribunal agreed with the decision of the Authority to suspend the Applicant for a period of two years for submitting a forged tax clearance certificate in its bid.
- 5.8 Counsel for the Respondent argued that the suspension period given in the instant matter was in accordance with Section 94 of the PPDA Act, 2003 and in accordance with the directives of the PPDA Board. The Respondent asserted that this application lacks merit, is untenable and it should be dismissed with costs.

6.0 RESOLUTION BY THE TRIBUNAL

- 6.1 **Issue 1:** *Whether the Applicant's suspension from participating in Public Procurement and Disposal of Public Assets processes should be reduced to six months?*
- 6.3 Section 94 of the PPDA Act 2003 provides that the Authority may on the recommendation of a procuring and disposing entity or after investigations on its own initiative, suspend a provider from engaging in any public procurement or disposal process for a period determined by the Authority. It is clear from the wording of this section that the period of suspension of a bidder from participating in public procurement and disposal proceedings is determined by the Authority. The Authority in a document approved by its Board of Directors (MAC Manual) has laid down guidelines for periods of suspension. The Tribunal does not have any reason to interfere with a sanction lawfully imposed by the Authority. The Tribunal agrees with the submission of Counsel for the 1st Respondent that the Trial Indictments Act applies to criminal proceedings and cannot be applied to this matter. The tribunal accordingly declines to reduce the period of suspension from two years as prayed by the Applicant.

7.0 DECISION OF THE TRIBUNAL

1. The Tribunal finds no merit in this application and dismisses the same.
2. The decision of the Authority suspending the Applicant for two (2) years is upheld.

3. No orders to costs.

SIGNED and sealed this 8th day of Sept., 2017 by the said;