

4. The Applicant contends that by recommending to PPDA to suspend the Applicant in the letter dated 29th September 2016, the Respondent seems to have taken a decision without giving the Applicant the opportunity to explain itself. It was therefore a violation of the Applicant's right to be heard under Article 28 of the Constitution.
5. The record demonstrates that on 25th March, 2013, the Respondent invited interested persons for open domestic bidding for the procurement, supply and installation of CCTV cameras at the Respondent's offices at workers house in Kampala.
6. The Applicant submitted its bid on 2nd March 2013 and later emerged the best bidder. As a result the Applicant was awarded the contract on 26th June 2013. It went ahead to supply and install CCTV cameras at the Respondent's offices. However the cameras installed were of a different type from those specified for procurement and they did not function.
7. On realizing these Defects in the procurement, the Respondent carried out an internal audit which revealed variations in the bid documents submitted by the Applicant. On 30th September, 2015 the Respondent wrote to the Commission Secretary Local Government Finance Commission seeking confirmation of the Local Purchase Order (herein after LPO) serial no. 00267804 which was submitted by the Applicant during the bidding process. The Commission wrote back to the Managing Director of the Respondent on 2nd October 2015 stating that the LPO was a forgery and that the Commission had never dealt with the Applicant. On 29th September, 2016 the Respondent made a recommendation to the Executive Director PPDA to suspend the Applicant from engaging in public procurement.
8. If the Respondent thought the Applicant did a shoddy job after being contracted or that the Applicant's LPO was a forgery as presented by the Commission Secretary on inquiry, it was well within the Respondent's discretion to refer the matter to PPDA for remedial action. Any recommendations as part of this process cannot be precluded. As demonstrated by the Respondent after the Respondent wrote, PPDA instituted investigations, asked the Applicant to file its defence by a letter dated 15th December

2016, wrote another letter to the Applicant dated 7th February 2017 reminding the Applicant to file its defence and called the Applicant to be heard on 21st February, 2017 at PPDA offices at 09:00am. The Applicant neither filed its defence nor attended the said hearing. Instead the Applicant filed for judicial review in this court.

9. Regulation 12 (1) of the PPDA Regulations, 2014 empowers the Respondent to make recommendations to PPDA including a recommendation to suspend a service provider like the Applicant now before me from engaging in any public procurement or disposal process. However in the same Regulation the decision to suspend remains the preserve of the PPDA. While the Respondent made such recommendations it remained up to PPDA to take the decision to suspend. In order to arrive at this decision in a fair and just manner PPDA invited the Applicant to file its defence.
10. By bringing this judicial review application the Applicant is attempting to intimidate the Respondent and shoot down the investigative process that the PPDA has embarked on. This is abuse of court process.
11. Instead of coming for judicial review, the Applicant should have taken more interest in exercising his right to be heard before the PPDA since PPDA has not even taken any decision regarding the matter.
12. In the circumstances of this case the reference to PPDA by the Respondent was proper and within the provisions of Regulations 12 and 13 of the PPDA Regulations 2014 since the matters in issue concerned procurement by a procuring and disposing entity.

13. Based on all the above, I find that this is not a proper case for judicial review and the application is premature as there is no decision to warrant judicial review. The preliminary objection succeeds. The judicial review application is dismissed with costs for the Respondent.

I so order

LYDIA MUGAMBE

JUDGE

7TH JULY, 2017

7th July, 2017

Mr. Albert Turyahabwe for the Applicant and Ms. Kimuli Faith for the Respondent

Ruling delivered in the presence of both counsel.

Kabagye Bahinguza Joy

ASSISTANT REGISTRAR

7th July, 2017