

and invited bids. It was indicated that the bidding would be in accordance with the open international bidding method as contained in the Bank of Uganda Procurement and Disposal of Assets Manual 2017. Bids closed on the 20th of August 2019.

Among the companies that submitted bids was Mantra Technologies Ltd in joint venture with Infigo IS D.O.O. On the 18th of November 2019, when the appellant displayed the results of the Technical Evaluation Notice, it indicated that Mantra Technologies Limited in joint venture with Infigo IS D.O.O was unsuccessful on account of failure to meet the technical requirements of the bid.

Mantra Technologies Ltd in joint venture with Infigo IS D.O.O., the unsuccessful bidder, sought administrative review by the Governor of the appellant citing irregularities in the tender. The application was made under Section 90 of the Public Procurement and Disposal of Assets Act, 2003.

On the 28th of November 2019, the appellant's Governor wrote to Mantra Technologies Limited in joint venture with Infigo IS D.O.O. in response to the application, and detailed the reasons for its disqualification.

In response to the appellant's letter of the 28th of November 20219, the unsuccessful bidder filed an application for administrative review by the respondent. On the 10th of December 2019, the respondent gave notice of the application to the appellant and instructed the appellant to suspend the procurement process. The appellant was instructed to send the entire procurement file to the respondent for review.

The respondent fixed a hearing of the matter on the 17th of December 2019 and invited the appellant to attend. The appellant did not attend the hearing nor did it transmit the procurement file. As a result, the respondent conducted an *Ex Parte* hearing of the unsuccessful bidder.

The respondent wrote to the appellant giving an outline of the submission made by the unsuccessful bidder. The appellant was granted an opportunity to respond to the submission in writing.

On 20th December 2019, the Governor Bank of Uganda wrote to the respondent stating that the said procurement process is categorized as a procurement in exercise of the Bank's mandate under Section 4 of the Bank of Uganda Act. That the SIEMS was aimed at ensuring end to end event tracking and remediation for all events especially targeting the Banking and Payments infrastructure in the Bank's effort to ensure a sound and secure financial system. That the procurement was therefore outside the PPDA Act. He made a request that the Bank is left to proceed and complete the tender process to avoid any undesired incidents.

On the 10th of January 2020, the respondent wrote to the appellant notifying it that its Board of Directors at their meeting of the 9th January 2020 considered the Application for Administrative Review and the bank's submissions and found that:

1. The bid notice dated 12th July 2019 in respect to the procurement and the bidding document issued indicated that the bidding process was conducted in accordance with the Open International Bidding Method contained in the Bank of Uganda Procurement and Disposal of Assets Manual 2017
2. The use of the Bank of Uganda Procurement and Disposal of Assets Manual 2017 that has never been accredited by the Authority is contrary to the PPDA Act 2003. Section 40A of the PPDA Act 2003 provides that an Entity that is not able to comply with a particular procurement or disposal procedure may apply to the Authority for accreditation of an alternative system. Where the system is accredited, the Entity submits a Manual containing the system which are approved and accredited by the Authority.

3. The procurement conducted under the Bank of Uganda Procurement and Disposal of Assets Manual 2017 not accredited by the Authority is null and void.
4. Reference to Section 4 of the Bank of Uganda Act was not applicable in the context of the procurement.

Being dissatisfied with the decision of the respondent, the appellant lodged an Application (appeal) on the 24th of January 2020, with the Public Procurement and Disposal of Public Assets Appeals Tribunal, against the respondent.

At the hearing by the PPDA Appeals Tribunal, the Respondent raised a preliminary objection that the Appellant does not subject itself to the jurisdiction of the PPDA Tribunal by virtue of stating that the PPDA Act does not apply to the impugned procurement process.

On the 6th of February 2020, the PPDA Appeals Tribunal delivered its Ruling in favour of the Respondent and issued orders that:

1. The preliminary objection was overruled.
2. The Application was dismissed.
3. The decision of the Authority was affirmed.
4. That until parliament enacts a law to regulate procurement and disposal activities of the Bank of Uganda carried out in exercise of its functions under Section 4 of the Bank of Uganda Act, Act Cap. 51, the Authority is directed to liaise with the Bank of Uganda to propose Regulations to be issued by the Minister of Finance Planning and Economic Development under Section 96 (1) of the PPDA Act 2003 to regulate procurement and disposal activities of the Bank under Section 4 of the Bank of Uganda Act Cap. 51

5. Each party to bear its own costs.

Following the decision of the PPDA Appeals Tribunal, the Appellant lodged this Appeal by filing a notice of appeal on the 27th of February 2020.

A memorandum of appeal with the following six grounds of Appeal was filed subsequently:

1. The Tribunal erred in law in holding that the Appellant's 2017 Manual is ultra vires the PPDA Act and is therefore null and void to the extent of that inconsistency.
2. The Tribunal erred in law in holding that the Appellant is subject to the jurisdiction of the PPDA whether it's a PDE in some instances and not a PDE in others.
3. The Tribunal erred in law and fact in holding that the Appellant should have sought the advice of the Respondent in coming up with the exempt list under Schedule 6 to the Manual.
4. The Tribunal erred in law and fact in holding that the Appellant should have sought the advice of the Respondent on whether procurement of SIEMS falls under the exempt list.
5. The Tribunal erred in law in holding that until Parliament makes a law to regulate the Appellant's procurements referred to under Section 3 (h) of the PPDA Act, the Appellant as a Central Government Institution falls under the

jurisdiction of the Authority when the Authority is exercising its functions under Section 7 (1).

6. The Tribunal erred in law and in fact when it affirmed the Respondent's decision in its letter dated 10th January 2020 in respect of the Administrative review.

Submissions

The parties were granted leave to file written submissions. These submissions shall not be reproduced here but they have been studied and shall be referred to in resolution of all the questions in dispute here.

Preliminary Objection

The Respondent raised a preliminary objection that this Appeal was filed out time. That it was therefore incompetent and ought to be dismissed. The respondent argued that an appeal is a creature of statute and the appellant must comply with all the conditions prescribed in the statute creating the right of appeal.

The respondent submitted that the appellant did not comply with the requirement in Section 91M of the PPDA, 2003 which requires that an appeal shall be lodged within thirty days after being notified of the decision of the Tribunal or within such time as the High Court may allow.

Additionally, that Section 79 (1) (a) of the Civil Procedure Act also stipulates that except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of the Court. That this Section adds in subsection (2) that in computing the period of limitation prescribed,

the time taken by the lower Court in making a copy of the Order or Decree appealed from and the proceedings upon which it is founded shall be excluded.

The respondent also argues that Order 43 Rule 1 of the **Civil Procedure Rules SI 71-1** requires every appeal to the High Court to be preferred in the form of a Memorandum. That instituting an appeal by way of notice of appeal is irregular.

The Appellant's reply to this preliminary point was that the proper procedure should have been to file an application to strike out the appeal. That such an application would have allowed the appellant to respond by adducing evidence by way of an affidavit. That the Appellant complied with Section 91M of the PPDA Act 2003 when it lodged a notice of appeal.

The appellant also argues that that the PPDA Act 2003 is silent on the time within which an appeal must be lodged to the High Court and Section 79 (1) of the **Civil Procedure Act** relied on by the Respondent deals with appeals from decrees or Orders of Courts. It is therefore inapplicable in these circumstances.

That Section 2 (b) of the **Civil Procedure Act** defines a Court as any Court exercising civil jurisdiction. That the decision of the PPDA Tribunal is a decision of an administrative or quasi-judicial authority. That the PPDA Tribunal exercises other jurisdiction conferred by the PPDA Act and does not sit as a Court. It follows that an appeal to the High Court from a decision of the tribunal is not a judicial appeal.

Determination

This court is in full agreement with the submission of the respondent that it is the established law that an appeal is a creature of statute, and a court can only exercise appellate jurisdiction where that jurisdiction is given by such statute. A party who seeks to avail himself or herself of the right of appeal must strictly comply with the

conditions prescribed by the statute. (Refer to the decisions of **Hamam Singh Bhogal T/a Hamam Singh & Co. vs Jadva Karsan (1953) 20 EACA 17** as cited in **Emmanuel Tumusiime vs Perusi Namagembe HCCA 42 of 2013**).

This is an appeal arising from a decision of the PPDA Appeals tribunal. Such appeals are regulated by Section 91M of the **PPDA Act 2003** which states:

- (1) 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.

The decision of the PPDA Appeals Tribunal was issued on the 6th of February 2020. On the 24th of February 2020, the Appellant wrote to the Acting Registrar of the PPDA Appeals Tribunal requesting for a certified copy of the Record of proceedings. On the 27th of February 2020, the Appellant lodged a notice of appeal, against the Ruling of the Tribunal, in this Court.

The provision creating a right of appeal in this case is unambiguous. An appeal from a decision of the tribunal is instituted by filing a Notice of Appeal within 30 days of being notified of the decision. The appellant was notified of the decision on the 6th of February 2020 and filed its Notice of Appeal on the 27th of the same month. That was a period of 21 days and well within time.

In light of that I see no reason to consider the issue of whether this is an appeal within the meaning Judicature Act as the statute is unequivocal regarding the manner and time within which an appeal should be filed.

The preliminary objection is accordingly overruled.

This court will now consider the merits of the appeal.

Ground 4

- 4. The Tribunal erred in law and fact in holding that the Appellant should have sought the advice of the Respondent on whether procurement of SIEMS falls under the exempt list.**

This court is under a duty as a first appellate court, to subject all the evidence to a fresh scrutiny and arrive at its own conclusions.

It was submitted for the appellant that under Article 162 (2) of the Constitution of the Republic of Uganda, the appellant shall not be subject to the direction and control of any person or authority in the exercise of its functions. The tribunal therefore erred when it made its decision on the SIEMS because it was unconstitutional, null and void. The case of **M Buwule vs Asuman Mugenyi SCCA No. 36 of 2019**, in which the Supreme Court held that in order to succeed in a prayer to set aside a judgement, the applicant must prove that it is null and void was cited. The appellant contends the decision of the respondent was null and void.

It was the contention of the appellant that when the respondent concluded that reference to Section 4 of **The Bank of Uganda Act** was not applicable in the context of the manual it gave no reason for that finding.

The appellant argued that the SIEMS is critical for securing the appellant's network through which transactions in the e-government system are processed. Additionally, it hosts critical banking applications and payment systems such as EFT, RTGS SWIFT messaging, the Flex Cube Core Banking System and Automated Clearing House. It was stated that this information was indicated on the bidding document.

The appellant's contention was that the procurement of the SIEMS was therefore in exercise of the appellant's functions in Section 4 of the BOU Act and specifically in its functions of a banker to government and financial institutions, agent in financial

matters for government, and a clearing house for cheques and other financial instruments for financial institutions.

The respondent's submissions, in reply, was that the Bank of Uganda is a procuring and disposing entity in respect of its procurement activities save for those that fall under Section 4 of the BOU Act.

That the SIEMS cannot be categorised as a procurement under Section 4 of the BOU Act because the record of proceedings shows that the purpose of the SIEMS solution was meant for real time threat detection and automated response and other services. Essentially it is a system that collects data and provides reports and alerts regarding the various systems operated by the appellant.

The respondent contends that the PPDA Act only exempts procurements which fall under Section 4 of the BOU Act. Otherwise that Section 40A of the PPDA Act provides for accreditation of alternative procurements systems where an entity cannot comply with the PPDA Act. It states that in such instances the entity may apply for an alternative system.

The respondent states that the procurement was not therefore conducted in accordance with the PPDA Act. That the use of the appellant's procurement manual materially altered provisions of the PPDA Act and should have been accredited. Because it was not accredited, the procurement conducted in accordance with The Bank of Uganda Procurement and Disposal Manual 2017, was null and void.

That as was held in **Galleria in Africa vs Uganda Electricity Distribution Company Ltd SCCA 8 of 2017** the PPDA Act must be adhered to strictly for all public procurements.

Resolution of Ground 4

This was the root of the dispute in the first place. The appellant, The Bank of Uganda, had on the 12th of July 2019, invited bids for the supply of a Security Information and Event Management Solution (SIEMS). Mantra Technologies Ltd in joint venture with Infigo IS D.O.O. was unsuccessful in its bid. When as an unsuccessful bidder they applied for administrative review, the matter went all the way to the PPDA Appeals tribunal.

The bid document indicated in the introduction to the Technical specifications that the bank intended to acquire and implement a Security Information and Event Management (SIEM) solution. That the system was aimed at providing real time threat detection and automated response, alerting, remediation and to support security and operations response. It would also support IT operations.

The appellant indicated that the solution would operate on the Bank of Uganda computing network comprising of a primary site with the eight branch networks connected to the primary site.

This court looked up additional information on SIEMS. The IBM website had a description of a SIEM given at <https://www.ibm.com/topics/siem>. It states:

“SIEM is a security solution that helps organizations recognize potential security threats and vulnerabilities before they have a chance to disrupt business operations. It surfaces user behaviour anomalies and uses artificial intelligence to automate many of the manual processes associated with threat detection and incident response and has become a staple in modern-day security operation centres (SOCs) for security and compliance management use cases.

From the specification, and this additional information, it is clear that the appellant intended to implement a real time security solution across its entire operation and

functionality. It would operate from and be hosted on the existing Bank of Uganda Network.

It would at this stage be imperative to examine what these functions are.

The appellant is created under Article 161 of **The Constitution of the Republic of Uganda** with functions set out in Article 162 (1). Section 4 of **The Bank of Uganda Act** operationalises the Constitutional provisions.

For the avoidance of any doubt, I shall reproduce Section 4 of the BOU Act which stipulates as follows:

- (1) The functions of the bank shall be to formulate and implement monetary policy directed to economic objectives of achieving and maintaining economic stability.
- (2) Without prejudice to the generality of subsection (1), the bank shall,
 - (a) maintain monetary stability;
 - (b) maintain an external assets reserve;
 - (c) issue currency notes and coins;
 - (d) be the banker to the Government;
 - (e) act as financial adviser to the Government and manager of public debt;
 - (f) advise the Government on monetary policy as is provided under section 32(3);
 - (g) where appropriate, act as agent in financial matters for the Government;
 - (h) be the banker to financial institutions;
 - (i) be the clearinghouse for cheques and other financial instruments for financial institutions;
 - (j) supervise, regulate, control and discipline all financial institutions and pension funds institutions;
 - (k) where appropriate, participate in the economic growth and development programmes.

During the hearing when the matter came up at the Tribunal, an officer of the appellant, Lorna E. Karungi, gave additional information on what the SIEMS is and its relationship with the functions of the appellant. She stated as follows (see pages 8-9 of the tribunal record of proceedings):

Under S.4 of the Bank of Uganda Act, Bank of Uganda is a banker to the Government and also acts as an agent where appropriate will act as an agent in financial matters for the Government and then will be the banker to the financial institutions and also the clearing house for cheques and other financial instruments for financial institutions.

Before, banking was conducted in the banking hall even cheques were cleared in the banking hall but by the time this act was passed in 2014 for Bank of Uganda to start complying, the banking and financial intermediary activities were online. Therefore, the banking hall is the network of the bank.

The instructions come online, they go to the various commercial banks online, that's why in that Schedule 3, we included when are carrying out those functions we showed that the supply and maintenance of specialized ICT systems for central banking such as RTGS, CSD, RTGS is used in transferring Government and Banking payments for private individuals, CSD is the central security deposit for trading treasury bills and treasury bonds, SWIFT for enabling messages, electronic funds transfer and related information security systems, disaster recovery, business resumption and security systems related to the Bank of Uganda network.

When the Government payment transactions or any transaction is going through the banking system, there is need for alerts of the Accounting Officers of the Banks of the individuals to ensure that every entity knows when there is any transaction on their bank account. Also to prevent hacking we do encryption of the messages so that the hacker is not able to read that is why

we included them here. To carry out those functions, it's on the network of the bank.

All the foregoing shows that the SIEMS will provide the electronic online cloak of security and monitoring of the operations of the appellant. From the explanation given by Karungi, it is clear that the appellant executes a number of its core statutory functions, such as being a banker to government or acting as the clearing house, online.

When the tribunal examined this matter, it stated that the evidence adduced on the SIEMS was inadequate and could not enable it make a decision on whether the SIEMS was part of the core functionality of the appellant. It therefore determined the matter by examining whether the BOU Procurement manual, under which the procurement was made, was legal.

This court respectfully disagrees with the tribunal in this regard. The bid documents, the law and the statements given by the appellant's officers in attendance at the tribunal were sufficient for this issue to be satisfactorily resolved.

In order to execute its core statutory functions, the bank utilises an online network. The online network is a tool to efficiently deliver on the mandate provided for in Section 4 of the BOU Act. That network is vulnerable and must be secured in real time. My understanding is that the SIEMS is deployed to provide that protection. On that ground alone evidence that the SIEMS goes to fortify the core statutory functions of the appellant is sufficient.

It is my finding based on the foregoing that SIEMS falls under the exempt list of the appellant procurements.

For that reason, the 4th ground of appeal succeeds.

Resolution of Grounds of Appeal.

Grounds 2 & 5

- 2. The Tribunal erred in law in holding that the Appellant is subject to the jurisdiction of the PPDA whether it's a PDE in some instances and not a PDE in others.**

- 5. The Tribunal erred in law in holding that until Parliament makes a law to regulate the Appellant's procurements referred to under Section 3 (h) of the PPDA Act, the Appellant as a central government institution falls under the jurisdiction of the Authority when the Authority is exercising its functions under Section 7 (1).**

When arguing these two grounds, the appellant stated that under Section 3 of the PPDA Act, 2003, the legislature specifically excluded the application of the PPDA Act when the Appellant was exercising its functions specified in Section 4 of the **Bank of Uganda Act**.

The respondent in its reply argued these two grounds jointly with the rest of the grounds of appeal. That is Grounds 2, 3, 4 and 5;

It was submitted for the Respondent that on the basis of Sections 2 (1) (c) and 3 of the PPDA Act 2003, the Bank of Uganda is a procuring and disposing entity in respect of its procurement and disposal activities except those in the exercise of its functions specified in Section 4 of the Bank of Uganda Act. It is therefore subject to the PPDA Act 2003 to the extent that it is not exercising functions under Section 4 of the Bank of Uganda Act.

That in addition to the above, Section 7 (1) of the PPDA Act 2003 stipulates the functions of the Respondent is to advise all government procuring entities on public procurement and disposal policies, principles and practices.

That as part of this mandate, the Respondent as a Regulator is authorised to advise the Appellant in its procurement and disposal activities including the establishment of the list of procurements which fall within the ambit of the PPDA Act 2003 and those which fall under Section 4 of the Bank of Uganda Act (where the Applicant is not a procuring and disposing entity and therefore not subject to the PPDA Act 2003).

The respondent also asserts on ground 3 that the tribunal rightly held that the appellant should have sought the advice of the appellant on which activities are exempted. That such advice would have determined whether the SIEMS falls under the list of exemptions.

Determination

In resolving these grounds this court will start with the provisions of the law regulating procurements initiated by the appellant. The long title of the **PPDA Act 2003**, stipulates inter alia that it is an Act to regulate practices in respect of public procurement and disposal activities and other connected matters. In Section 2 (1) (a) the Act states that it shall apply to all public procurement and disposal activities and in particular to all public finances of a procuring and disposing entity.

The procuring and disposal entities are set out in Section 3 of the PPDA Act. In sub section 3 (h) Bank of Uganda is defined to be a procuring and disposing entity except in exercise of the functions specified in section 4 of the Bank of Uganda Act.

This is an express provision of the law. I have also noted that the Constitution of the Republic of Uganda provides in Article 162 (2) that that in performing its functions,

the Bank of Uganda shall conform to this Constitution but shall not be subject to the direction or control of any person or authority.

Putting these two provisions in context, it would appear that the intention was to ensure that when the appellant was exercising any of its core functions, including procurement decisions related to its functions, then its independence was to be safeguarded and preserved.

In its decision the PPDA tribunal held that Section 3 (h) was not to be read in isolation of Section 7 (1) of the PPDA Act which states that the functions of the respondent include advising all procuring and disposing entities on principles and practices of procurement. It was argued that for that reason, then the all procurements irrespective of whether they fall under Section 3 (h) PPDA Act, are subject to the jurisdiction of the respondent in as far as receiving advice on procurements is concerned. That the appellant could not therefore make a determination exempting the tendering of the SIEM solution from the PPDA without first seeking the advice of the respondent.

It should be noted that both the PPDA Act and the Constitution are concise and unequivocal in expressing the extent of the statutory and constitutional mandate of both parties. And when dealing with interpretation of statutory provisions, the Supreme Court held in *Constitutional Appeal No. 01 of 2015 Hon. Theodore Ssekikubo And 3 Others vs The Attorney General & others* that,

The first and cardinal rule of statutory interpretation is that where words are clear and unambiguous, they should be given their primary, plain, ordinary and natural meaning.

In my view the plain meaning of Section 3 (h) is that as long as the procurement stems from the core functions of the appellant then it is excluded from the jurisdiction of the PPDA Act and by extension the respondent.

All powers of the respondent, including the mandate in Section 7, stem from the PPDA Act. But in view of the Constitution and Section 3 (h), the holding that the respondent retained a residual power over procurement decisions regarding exempt procurements is misplaced. If the legislature had intended for that to be the position, then it would have stated so. The decision of the tribunal appears to imply that it was up to respondent to determine which procurements fall within the ambit of Section 3 (h) of the PPDA Act.

In **Smart Protus Magara & Others vs Financial Intelligence Authority MCMA 138 of 2018**, the court held as follows,

Court cannot legislate under the guise of interpretation against the will expressed in the enactment itself. It is not open to the court to usurp the functions of the legislature. Nor is it open to the court to place unnatural interpretation on the language used by the legislature and impute to it an intention which cannot be inferred from the language used by it...

This Court fully agrees with this holding which applies with full force to the finding by the tribunal that the respondent retained advisory powers over the appellants exempted procurements.

If, for argument's sake the tribunal position was held to be correct, then it would be in contravention of Article 2 (2) of the Constitution which states,

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

As stated before, the appellant in performing its constitutional functions shall be independent and not subject to the control and direction of any other authority. That independence insulates it from any commands from the respondent where it is exercising core constitutional functions.

In the result, Grounds 2 and 5 of the Appeal succeed.

Grounds 1 & 3

- 1. The Tribunal erred in law in holding that the Appellant's 2017 Manual is ultra vires the PPDA Act and is therefore null and void to the extent of that inconsistency.**

- 3. The Tribunal erred in law and fact in holding that the Appellant should have sought the advice of the Respondent in coming up with the exempt list under Schedule 6 to the Manual.**

It was submitted for the Appellant that the Manual in issue was not part of the evidence at the PPDA Appeals Tribunal. Secondly, it was not an issue for determination and the parties did not address the tribunal on it. By making a finding on the Manual, the Tribunal erred.

It was submitted farther for the appellant that when the PPDA Appeals Tribunal made a finding on the Manual before it heard the parties, it contravened the Appellant's right to a fair hearing enshrined under Article 28 of the **Constitution of the Republic of Uganda, 1995**. The appellant cited the Supreme Court decision of **The Executive Director, National Environment Management Authority v Solid State Limited SCCA No. 15 of 2015**.

That without prejudice to its arguments above, the contention of the appellant was that Section 40A of the PPDA Act provides that a procuring and disposing entity which is not able to comply with a particular procurement or disposal procedure required under the Act, may apply to the Authority for accreditation of an alternative system.

However, in view of Section 3 of the **PPDA Act** the appellant did not require accreditation of an alternative system when it is exercising the functions specified in Section 4 of the **Bank of Uganda Act**.

The appellant added that it had lodged an application, dated 13th May 2015, to the Respondent for accreditation of the Bank of Uganda Procurement and Disposal Regulations and the standardisation policy which the Appellant intended to use for all its procurement and disposal activities including the exempt ones.

That the Respondent informed the Appellant it considered its request for accreditation and reviewed the categorization of procurement and disposal activities including those that are required to comply with the PPDA Act and those that fall under Section 4 of the **BOU Act**

It was stated for the appellant that in accordance with Section 40A of the PPDA Act the respondent resolved that the appellant's core and non-core procurements as provided for in Section 4 of the BOU Act was not an area for accreditation. It was an administrative matter. The respondent subsequently granted the request for accreditation only for procurements that fell outside the Section 4 of BOU Act. The rest was not an area for accreditation.

This was way back in the year 2015. Subsequently the Respondent's Board of Directors concluded that it was an administrative matter.

The appellant submits that the Respondent's Board of Directors having held that the matter was an administrative matter, the Respondent cannot now turn around and contend that the 2017 Manual required accreditation for exempt procurements. That in view of the above submission, the PPDA Tribunal erred in law in holding that the Appellant's 2017 Manual is ultra vires the PPDA Act and is therefore null and void. In reply, the respondent's contention is that it is true the appellant had in 2015 applied for accreditation of the Manual it intended to use for its procurement activities. That the respondent had accredited specific areas of the manual for a period of two years effective 24th July 2015. That the respondent in its decision on accreditation found that the manual was not an area for accreditation but an

administrative matter. That on 6th October 2017 the accreditation of specific area was approved.

The respondent submits that the 2017 procurement manual has never been accredited by the respondent. What was presented were the regulations.

Determination of Grounds 1 and 6

At the hearing of this dispute before the PPDA Tribunal, the parties framed the following issues:

1. Whether the Respondent has jurisdiction over procurement and disposal activities by the Applicant in the exercise of its functions specified in Section 4 of the Bank of Uganda Act.
2. Whether the Applicant requires the Respondent's accreditation of a procurement or disposal system in respect of procurement and disposal activities by the Applicant in the exercise of its functions specified in Section 4 of the Act.
3. Whether the procurement of a Security information and Events Management Solution (SIEM) software falls within the ambit of the Applicant's functions under Section 4 of the Act.
4. Remedies, If any.

When the matter was called for hearing before the tribunal, it was resolved that the first two issues be abandoned and arguments heard only in respect of issues No. 3 and 4. It is therefore true that no arguments or evidence was heard in respect of accreditation of the manual which was a matter for determination in issue No. 2.

Therefore, it was prejudicial to the appellant that the tribunal made a finding on a matter where the appellant was not heard.

The above notwithstanding, it is true that the appellant made an application for accreditation of its Procurement Regulations. It was the Respondent which in its response dated the 24th of July 2015 advised the appellant not to refer to the document as **The Bank of Uganda Procurement And Disposal Regulations** but **The Bank of Uganda Procurement And Disposal Manual**.

In this same letter the respondent accredited what was now to be referred to as **The Bank of Uganda Procurement And Disposal Manual**. In its determination of the matter at that time, it was indicated that the accreditation was granted for a period of two years effective from the date of the letter which was 24th of July 2015. Considering that there was no evidence rescinding this decision of the Respondent, then it cannot be said that the formerly accredited manual now need accreditation.

This court has also taken into account that accreditation of the manual was not in dispute when the unsuccessful bidder applied for administrative review, and that the parties were not given an opportunity to adduce evidence and be heard on it.

The PPDA Tribunal could not then have properly and lawfully made a decision on the status of the manual. In such circumstances, the finding of the tribunal on the appellant's manual cannot be allowed to stand.

Grounds 1 and 3 of appeal succeed.

Ground 6

- 6. The Tribunal erred in law and in fact when it affirmed the Respondent's decision in its letter dated 10th January 2020 in respect of the Administrative review.**

In view of the findings in all the foregoing grounds of appeal this ground succeeds.

In the result:

1. This appeal is allowed.
2. The decision of the Public Procurement and Disposal of Public Assets Appeals Tribunal is set aside.
3. The decision and orders of the respondent in its letter of the 10th of January 2020 are set aside.
4. The respondent's instruction to appellant to suspend any farther actions on the procurement process is set aside.
5. Each party shall bear its own costs here and in the tribunal.



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Michael Elubu

Judge

25.1.2024