

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

APPLICATION NO. 10 OF 2021

BETWEEN




ACACIA PLACE LTD ===== APPLICANT

VS.

- 1. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY
 - 2. ELECTORAL COMMISSION
- } ===== RESPONDENTS

APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF THE PROCUREMENT OF OFFICE PREMISES [PROC REF NO. EC/SUPLS/2020-2021/01739]

BEFORE: THOMAS BROOKES ISANGA, AG. CHAIRPERSON; GEOFFREY NUWAGIRA KAKIRA AND PAUL KALUMBA, MEMBERS

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DECISION OF THE TRIBUNAL

A. Brief Facts

1. On June 11th, 2021, the Electoral Commission (the 2nd Respondent), by advert in both the New Vision and the Monitor newspapers, invited bids for provision of office premises, under procurement reference number EC/SUPLS/2020-2021/01739, using open domestic bidding method.
2. Acacia Place Limited (the Applicant) purchased and was issued with the solicitation document and even attended the pre-bid meeting held on June 15, 2021.
3. On June 24, 2021, the 2nd Respondent received bids from 7 bidders namely *Golf Course Apartments Limited, Simbamanyo Estates Limited, Luwalula Investments Limited, Arian Properties Limited, Canaanze Construction Company Limited, Kagoro Epimac and Visare (u) Ltd*, which were opened and their financial offers read out.
4. On June 17, 2021, aggrieved by the decision of the 2nd Respondent to initiate a procurement process with the same subject matter as the one initiated in 2017 under procurement reference number EC/SUPLS/2017-2018/00001 where he was declared the Best Evaluated Bidder, the Applicant sought administrative review to the Accounting Officer of the 2nd Respondent.
5. On June 18, 2021, the Accounting Officer of the 2nd Respondent in its decision rejected the application by the Applicant for administrative review.
6. On June 22, 2021 the Applicant being dissatisfied with the decision of the Accounting Officer of the 2nd Respondent, applied for administrative review to the Public Procurement and Disposal of Public Assets Authority (1st Respondent). The 1st Respondent in a decision dated July 19, 2021, rejected the Application.
7. On 21st July 2021, the Applicant, being dissatisfied with the decision of the 1st Respondent, appealed to the Public Procurement and Disposal of Public Assets Appeals Tribunal (the Tribunal).

B. Application to the Tribunal

1. The Applicant contends that 2nd Respondent erred in law and fact in deciding the Accounting Officer carried out an investigation without producing an investigation report.
2. The Applicant contends that the 2nd Respondent erred in law and fact in deciding that the procurement process under Procurement Ref No. EC/SUPLS/2017-2018/00001 came to an end when the bids expired.
3. The Applicant contends that the 2nd Respondent erred in law and fact in deciding that, there is no existing procurement process, a contract could not be executed thereafter.
4. The Applicant contends that the 2nd Respondent erred in law and fact in deciding that the Public Procurement and Disposal of Public Assets Authority in respect of procurement under Ref No. EC/SUPLS/2017-2018/00001 could not be binding on procurement under Ref No. EC/SUPLS/2020-2021/01739.
5. The Applicant contends that the 2nd Respondent erred in law and fact in deciding that the under ref Procurement Ref No. EC/SUPLS/2020-2021/01739 is not, in contravention of the presidential directive dated 11th July 2019.
6. The Applicant contended that the 2nd Respondent erred in law and fact in deciding that the procurement under ref No. EC/SUPLS/2020-2021/01739 does not contravene the statutory principles of procurement; non-discrimination; transparency, accountability and fairness; maximization of competition and ensuring value for money; economy and efficiency; and promotion of ethics.
7. The Application named the Public Procurement and Disposal of Public Assets Authority as the 1st Respondent and the Entity, Electoral Commission as the 2nd Respondent to the Application.



C. Replies to the Application

The 1st Respondent's Reply

1. The 1st Respondent denied all claims made by the Applicant and contended that the Accounting Officer of the 2nd Respondent conducted the investigation given the response to the application for administrative review at the Entity level bids and bid security submitted in procurement Reference No. **EC/SUPLS/2017-2018/00001** had expired on June 30, 2018 and as such, there was no existing procurement process for the procurement of office premises, upon which a contract could be executed.
2. The 1st Respondent contended bids validity in procurement Reference No. **EC/SUPLS/2017-2018/00001** expired on June 30, 2018 and as such, the procurement process came to an end.
3. The 1st Respondent contended after procurement Reference No. **EC/SUPLS/2017-2018/00001** coming to an end on June 30, 2018, no contract for provision of office premises could be executed thereafter.
4. The 1st Respondent contended that its decision issued to the 2nd Respondent in Procurement Ref No. EC/SUPLS/2017-2018/00001 was specific and could not be applicable to Procurement Ref No. EC/SUPLS/2020-2021/01739.
5. Further, the 1st Respondent contended that that the new procurement initiated under Procurement Ref No. EC/SUPLS/2020-2021/01739 was not contrary to the presidential directive dated July 11, 2019 which was to proceed with the process of acquiring office premises and not to sign a contract with the Applicant.
6. The 1st Respondent averred that the new procurement initiated under Procurement Ref No. EC/SUPLS/2020-2021/01739 was in line with the public procurement principles given that the procurement is premised on open domestic bidding and the specification were based on the Entity's current office needs.
7. The 1st Respondent averred that the Application before the Tribunal lacked merit



and should be dismissed with each party bearing its own costs.

The 2nd Respondent's Reply

1. The 2nd Respondent contended that it duly investigated the Applicant's complaint and duly issued a decision in accordance with the law in its letter dated June 24, 2021.
2. The 2nd Respondent averred that the bids in Procurement Ref No. EC/SUPLS/2017-2018/00001 had expired and as such, it could not execute a contract in absence of a valid bid.
3. The 2nd Respondent contended that there is no relationship between Procurement Ref No. EC/SUPLS/2017-2018/00001 and Procurement Ref No. EC/SUPLS/2020-2021/01739.
4. The 2nd Respondent admitted that it changed the specifications in Procurement RefNo. EC/SUPLS/2020-2021/01739 as a result of emergent needs of the Entity that could not be dispensed with such as newly acquired printery facilities, installation of facilities for the storage area network and newly created office Units, informing the basis for increase in square meters required by the Entity and that the new specifications were not discriminatory to any bidder
5. The 2nd Respondent contended that it is not aware of any presidential directive regarding Procurement RefNo. EC/SUPLS/2020-2021/01739.
6. The 2nd Respondent contended that in initiating a procurement process under Procurement Ref No. EC/SUPLS/2020-2021/01739, it used Open Domestic Bidding method of procurement, which is the most preferred method of procurement according to the PPDA Act.
7. The 2nd Respondent further contended that in its letter dated June 24, 2021, it advised the Applicant to submit its bid in relation to Procurement Ref No. EC/SUPLS/2020-2021/01739 in light of the fact that the Applicant had purchased bidding documents related to the said procurement.



D THE ORAL HEARING

The Tribunal held a virtual hearing using the Zoom cloud meetings software on Monday, the 9th day of August 2021. The appearances were as follows:

1. Oketcha Baranyanga Micheal, Kafero Alex and Nuwagaba Patrick as Advocates. Agira Sisal, a Valuer and Taban Idro, a Director of Acacia Place Ltd represented the Applicant.
2. Amanda Chrispa Lulu and Mary Akiror from the PPDA Legal Department represented the 1st Respondent.
3. Sabiiti Eric, Jenifer Angeyo, from the EC Legal Department, Robert Borekwa the Head Procurement and Disposal UnitEntity, Twinomugisha Martha, the Senior Procurement Officer and Leonard Mulekwah the Accounting Officer represented the 2nd Respondent.

E. PRELIMINARY OBJECTIONS

1. The Tribunal heard the parties' submissions on the said preliminary objections and reserved its ruling on the same for the final decision.

Whether the Applicant had locus before the Tribunal.

2. Counsel for the 2nd Respondent raised a preliminary objection that the application is incurably defective on account that the Applicant was not a bidder and had no locus to make an administrative review application to the Tribunal. The 2nd Respondent submitted that the Applicant was not a bidder within the definition of section 3 and 89 (2) & (3) of the PPDA Act 2003. That the whole Application is an illegality in itself, relying on MAKULA INTERNATIONAL LTD V HIS EMINENCE CARDINAL NSUBUGA & ANOR (CIVIL APPEAL-1981/4) [1982] UGSC 2 and therefore prayed that the Tribunal upholds the objection and dismisses the Application.
3. The Applicant submitted that having purchased a bidding document for Procurement Ref No. EC/SUPLS/2020-2021/01739, it was a bidder within the definition of the PPDA Act despite the fact that it opted not to submit a bid in the said procurement because it could



not meet the minimum specified office space required. The Applicant prayed that the objection is overruled and the case is heard on merits.

4. The 1st Respondent submitted that its understanding of section 3 and 89 (2) & (3) of the PPDA Act 2003 as cited by the 2nd Respondent is that the Applicant was a bidder and therefore had locus before the Tribunal.

Whether the Applicant's submissions before the Tribunal are valid on the account of non-compliance with Tribunal Directions.

5. Counsel for the 2nd Respondent submitted that the Applicant having been directed to serve written submissions by 30th July 2021, it served the second Respondent by 2nd August 2021 at 11:15am. The 2nd Respondent prayed that the said submissions are disregarded. The 1st Respondent associated itself with submissions of the 2nd Respondent.
6. The Applicant responded to the objection by arguing that it indeed filed its submissions by 30th July 2021. However, owing to the curfew and COVID-19 Standard Operating Procedures issued and enforced by the Government of Uganda, it was not possible to effect service on the Respondents the same day but served them on the next working day.i.e. Monday, August 2, 2021 when the restrictions were eased. It submitted that the Respondents could not be inconvenienced by the said delay. The Applicant argued that the Tribunal only guided and did not issue any directives as per the wording of the said letter.
7. Counsel for the Applicant further relied on the decision of the Supreme Court in ***EXECUTRIX OF THE ESTATE OF CHRISTINE MARY TEBAJJUKIRA VS. MARY NAMATOVU (1992 – 1993) HCB 85*** and the decision of Honourable Justice Stephen Mubiru in ***PPDA V ARUA KUBALA PARK OPERATORS AND MARKET VENDORS CO-OPERATIVE SOCIETY LIMITED, CIVIL APPEAL NO.0005 OF 2016*** to buttress its submissions to the effect that disputes should be investigated and decided on the merits with undue regard to technicalities and that procurement disputes be decided on their merits.

F. SUBMISSIONS

Counsel representing the Applicant and Respondents adopted their written submissions as filed with the Tribunal, highlighted the issues and also provided clarifications orally to the Tribunal.

Applicant

1. The Applicant averred that that there is no record of the evaluation report by the Accounting Officer of the 2nd Respondent and that the Accounting Officer's decision was made in a span of 24 hours without contacting all the bidders as required by law. This action therefore was prejudicial and denied the Applicant's right to fair hearing under Article 28 of the Constitution of the Republic of Uganda.
2. The Applicant averred that having been declared the best evaluated bidder in Procurement Ref No. EC/SUPLS/2017-2018/00001 and having its bid unsuccessfully challenged, it was no longer necessary to ask the Applicant to extend its bid validity according to regulations 52(3), 52(4) and 52(5) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non- Consultancy Services) Regulations, 2014*.
3. The Applicant averred that it was at the discretion of the 2nd Respondent to ask for extension of the bid validity when it deemed necessary to do so, as provided for under regulation 52(5) supra, as was previously requested to the applicant responded to by extending the bid validity up to 30th June 2019. The Applicant relied on the decision of Justice Ssekaana in *ACACIA PLACE LTD VS. ZHANG HAO AND LIU MING SHU, PPDA AND EC, CIVIL APPEAL NO 58 OF 2018* to submit that that they were the best evaluated bidder and entitled to sign a contract with the 2nd Respondent after securing funding in 2021. The action or inaction of the 2nd Second Respondent not to ask for further extension of the bid validity was taken that the applicant had fulfilled the requirement for the formation of a contract. Therefore, there was a valid bid and the procurement process under ref No. EC/SUPLS/2017-2018/00001 was still in existence.
4. The Applicant averred that having been declared the best evaluated bidder in procurement process under Ref No. EC/SUPLS/2017-2018/00001 which was never cancelled, the directive of the 1st Respondent in decision dated 23rd May 2018 and Presidential directive dated 11th July 2019 are binding on procurement process under Ref No. EC/SUPLS/2020-2021/01739.
5. The Applicant contended that initiating a new procurement under ref No. EC/SUPLS/2020-2021/01739 parallel to Procurement Ref No. EC/SUPLS/2017-



2018/00001 is illegal and contrary to the statutory principles of public procurement and against the doctrine of legitimate expectation so as to prevent abuse of power by the 2nd Respondent.

6. The Applicant averred that procurement under ref No. EC/SUPLS/2020-2021/01739, the 2nd Respondent changed the specifications in a manner that it is discriminatory and does not offer value for money to government since it delays relocation of the Entity to pave way for timely construction of the Kampala Flyover project. The Applicant further contends that the use of open domestic bidding method was used as well for the procurement process under Ref. No. EC/SUPLS/2017-2018/00001.
7. The Applicant prayed that the Tribunal finds merit in all the grounds and grants the Application.

1st Respondent

1. The 1st Respondent averred that he was contended with the response given by the Accounting Officer of the 2nd Respondent to the application for administrative review at the Entity level.
2. The 1st Respondent argued that the bids in Procurement Reference No. EC/SUPLS/2017-2018/00001 had expired on June 30, 2019 and as such, there was no valid bid for the procurement of office premises, upon which a contract could be executed.
3. The 1st Respondent Averred after procurement Reference No. EC/SUPLS/2017-2018/00001 coming to an end on June 30, 2018, and as such there no contract for provision of office premises could be executed thereafter.
4. The 1st Respondent averred that its decision dated 23rd May 2018 issued to the 2nd Respondent in Procurement Ref No. EC/SUPLS/2017-2018/00001 was specific and could not applicable to procurement ref No. EC/SUPLS/2020-2021/01739.
5. The 1st Respondent averred that that the new procurement initiated under procurement ref No. EC/SUPLS/2020-2021/01739 was not contrary to the presidential directive dated July 11, 2019 which was to proceed with the process of acquiring office premises



and not to sign a contract with the Applicant.

6. The 1st Respondent averred that the new procurement initiated under procurement ref No. EC/SUPLS/2020-2021/01739 was in line with the public procurement principles given that the procurement is premised on open domestic bidding and the specification were based on the Entity's current office needs.
7. The 1st Respondent averred that the Application before the Tribunal lacked merit and should be dismissed with each party bearing its own costs.

2nd Respondent

1. The 2nd Respondent submitted that the Accounting Officer duly investigated the Applicant's complaint and duly issued a decision in accordance with the law in its letter dated June 24, 2021. It further urged that the law does not require the Accounting Officer to come up with a report at the administrative review at the Entity level.
2. The 2nd Respondent averred that the bids in Procurement Ref No. EC/SUPLS/2017-2018/00001 expired on 30th June 2019 and consequently the procurement process came to an end. It further urged that it could not continue with this procurement because it had not secured funds under the financial year of the procurement, a precondition for execution of a contract with the Best Evaluated Bidder. The Applicant relied on the decision of the Supreme Court in *GALLERIA IN AFRICA LTD V UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD [2018] UGSC 19* to submit that an entity is barred from entering into a contract with a service provider when there is no binding contract between the parties concerned.
3. The 2nd Respondent averred that the bids in Procurement Ref No. EC/SUPLS/2017-2018/00001 expired on 30th June 2019 and as such, could not execute a contract thereafter.
4. The 2nd Respondent averred that there is no relationship between Procurement Ref No. EC/SUPLS/2017-2018/00001 and procurement ref No. EC/SUPLS/2020-2021/01739 and therefore the 2nd Respondent directive in respect of the former procurement process could not be applied to the later procurement process.
5. The 2nd Respondent averred that it is not aware of any presidential directive regarding procurement ref No. EC/SUPLS/2020-2021/01739



6. The 2nd Respondent contended that in initiating procurement under ref No. EC/SUPLS/2020-2021/01739, it used Open Domestic Bidding method of procurement, which is the most preferred method of procurement according to the PPDA Act.
7. The 2nd Respondent prayed that the Application be dismissed with costs to the Respondents.

RESOLUTION BY THE TRIBUNAL

G. DISPOSAL OF PRELIMINARY OBJECTIONS

8. The Tribunal's disposal on the preliminary points of law is as follows;

Whether the Applicant had locus before the Tribunal.

9. The Tribunal also noted that Counsel for both Respondents relied on Section 89 (2) & (3) of the *Public Procurement and Disposal of Public Assets Act 2003* while making submissions on the said preliminary objection. The said Section 89 (2) & (3) of the *Public Procurement and Disposal of Public Assets Act 2003* was repealed and substituted in its entirety by the *Public Procurement and Disposal of Public Assets (Amendment) Act 2021*. The affected section now reads as follows;

"89. Administrative review by Accounting Officer

- 1) *A bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity.*
- 2) *A bidder may also seek administrative review for any omission or breach by a procuring and disposing entity, of this Act, regulations or guidelines made under this Act or any provision of the bidding documents.*
- 3) *A complaint against a procuring and disposing entity shall—*
 - a) *be in writing and shall be submitted to the Accounting Officer, of the procuring and disposing entity on payment of the fees prescribed;*
 - b) *be made within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.*
- 4) *The procuring and disposing entity against which a complaint is made shall on request provide the bidder with a report indicating the reasons for the rejection of the bidder and the stage at which the bidder was rejected and the report shall be used only for the administrative review process.*

10. The Tribunal finds that the Applicant having purchased and was subsequently issued the solicitation document for procurement No. EC/SUPLS/2020-2021/01739, fell within the ambit of the definition of a “bidder” as defined in section 3 of the PPDA Act 2003. See the Tribunal Decision in **CUBEROOT LTD VS. TRINITY COLLEGE NABBINGO AND PPDA, APPLICATION NO. 3 OF 2020**
11. The Applicant not being satisfied with the decision of the 1st Respondent dated July 19, 2021, was therefore within its rights and had locus to appeal to the Tribunal pursuant to section 91(5) of the *Public Procurement and Disposal of Public Assets Act 2003* and Regulation 6(1)(a) of the *Public Procurement and Disposal of Public Assets (Tribunal)(Procedure) Regulation, 2016*.
12. **The Tribunal therefore answers this question in the negative. The preliminary objection is therefore overruled.**
- Whether the Applicant's submissions before the Tribunal are valid on the account of non-compliance with Tribunal Directions.*
13. The directions or guidelines of the Tribunal must be complied with by the parties so that the statutory timelines within which the Tribunal is expected to make a decision in an Application filed before it can be achieved and implemented as per Section 91I (4) of the *Public Procurement and Disposal of Public Assets (Amendment) Act 2021* and this is in the interest of all the parties involved. However, where for sufficient cause, a party is unable to comply with the directions of the Tribunal, such default with convincing justification to the Tribunal, may be excused and the Tribunal may proceed to determine the case on its merits.
14. The Tribunal also notes that the Courts have consistently guided that where any party to a suit to whom time has been granted fails to perform any other necessary act to the further progress of the suit such as filing submissions within the timelines allowed or stated, the Court may exercise its discretion, notwithstanding the default, proceed to decide the suit immediately. See decisions in *MK CREDITORS LTD V OWORA (MISCELLANEOUS APPLICATION-2015/143) [2017] UGCOMM 10*, *AMRIT GOVAL V. HARICHAND GOVAL & 3 OTHERS (CIVIL APPLICATION NO. 109 OF 2009) (CA)* and *KAMPALA FINANCIAL SERVICES LTD. V. MUWANEA & ANOTHER HCCS NO. 228 OF 2013*.
15. The Tribunal is convinced with the reasons advanced by the Applicant for its default in the



service of submissions within the timelines provided.

16. The Tribunal therefore answers this question in the negative. The preliminary objection is therefore overruled.

H. DISPOSAL OF SUBSTANTIVE ISSUES RAISED IN THE APPLICATION.

17. The Tribunal will therefore proceed to determine the Application on its merits and now reverts to the substantive issues in this application:

- (i) *Whether the 1st Respondent erred in law and fact when it decided that the accounting officer carried out an investigation as required by the law.*
- (ii) *Whether the 1st Respondent erred in law and fact when it decided that there is no existing procurement process vide Procurement Reference Number EC/SUPLS/2017-2018/00001 because the Applicant's bid expired.*
- (iii) *Whether the 1st Respondent erred in law and fact when it decided that there is no valid bid of the Applicant upon which a contract could be based.*
- (iv) *Whether the 1st Respondent erred in law and fact when it decided that the directive issued by the Authority in the procurement referenced EC/SUPLS/2017-2018/00001 was not binding on the procurement referenced EC/SUPLS/2020-2021/01739.*
- (v) *Whether the 1st Respondent erred in law and fact when it decided that the new procurement process is not contrary to the presidential directive dated 11th July 2019.*
- (vi) *Whether the 1st Respondent erred in law and fact when it failed to find that the new procurement process is contrary to the principles of procurement.*

Resolution of the Issues

Issue 1

Issue No. 1: Whether the 1st Respondent erred in law and fact when it decided that the accounting officer carried out an investigation as required by the law?

18. The repealed Section 90(2)(a) & (b) of the *Public Procurement and Disposal of Public Assets Act 2003* only required an Accounting officer to *immediately suspend the procurement proceedings; and make a decision in writing, within fifteen working days, indicating the corrective measures to be taken, if any, and giving reasons for his or her*

decisions and submit a copy of the decision to the Authority, upon receipt of a complaint and the prescribed fee.

19. There is no requirement for the Accounting Officer to make a report of its investigations while dealing with an administrative review application before it. The new Section 89 (5), (6) & (7) of the *Public Procurement and Disposal of Public Assets (Amendment) Act 2021* now require an Accounting officer upon receipt of a complaint, to mandatorily undertake the following actions
 - (i) immediately suspend the procurement or disposal process, as the case may be,
 - (ii) request the bidders to extend the period of the bid validity and bid security for the duration of the suspension and;
 - (iii) within ten days of receipt of a complaint, make and communicate a decision, in writing, addressed to the bidder who makes the complaint and indicate the reasons for the decision taken and the corrective measure to be taken, if any.
20. In investigating a complaint filed, the Accounting Officer is required to consider *information and evidence contained in the complaint; the records of the procurement or disposal, kept by the procuring and disposing entity, information provided by the staff of the procuring and disposing entity, where appropriate, information provided by other bidders* and any other relevant information as per Regulation 5 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014*.
21. The Tribunal found no evidence on record to show that the Accounting Officer of the 2nd Respondent did not conduct any actual investigation. In any case, the guidance given in Regulation 5 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014* is silent on how long an investigation should take.
22. As long as a decision following investigations is made within 10 working days, indicating the corrective measures and reasons for the decision and a copy of the decision being submitted to the Authority, the Accounting Officer would have dispensed of his statutory role. In any case, brevity of the ruling or decision is not an error causing a miscarriage of justice as per the **Supreme Court of Uganda** in **BANCO ARABE ESPANOL V BANK OF UGANDA [1999] UGSC 1**.
23. It is the Tribunal's finding that the requirement to refer to *information provided by other bidders* is discretionary to the Accounting officer. There is no mandatory requirement for the Accounting Officer to contact bidders in the conduct of an investigation under



Regulation 5(d) of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2014*.

24. The Tribunal therefore answers this question in the negative.

Issue No. 2

Whether the 1st Respondent erred in law and fact when it decided that there is no existing procurement process vide Procurement Reference Number EC/SUPLS/2017-2018/00001 because the Applicant's bid expired?

25. The purpose of the bid validity is stipulated in Regulation 53(3) of the *Public Procurement and Disposal of Public Assets (Rules and Methods for Procurement of Supplies, Works and Non- Consultancy Services) Regulations, 2014*

26. The Tribunal in **KAZINI FREDRIC Vs. PPDA, PAT APPLICATION NO. 16 OF 2015** held that “*Once the bid validity expires, the procurement process comes to an end. By the time this application for review was made, the bid had expired thereby putting an end to the procurement process in question*”

27. It is the Tribunal's finding that where the Bid Validity and Bid Security of the Applicant in Procurement Reference Number EC/SUPLS/2017-2018/00001 expired on June 30, 2018 before a Contract could be executed with the Applicant and without any extension of bid validity, the procurement process in EC/SUPLS/2017-2018/00001 had come to an end.

28. Section 89(6) of the Public Procurement and Disposal of Public Assets (Amendment) Act 2021 states that “*The Accounting Officer shall request the bidders to extend the period of the bid validity and bid security for the duration of the suspension*”. The suspension contemplated here is the suspension of the procurement or disposal process upon receipt of a complaint by an Accounting Officer pursuant to Section 89(5) of the *Public Procurement and Disposal of Public Assets (Amendment) Act 2021*.

29. The Tribunal therefore answers this question in the negative.



Issue No. 3:

Whether the 1st Respondent erred in law and fact when it decided that there is no valid bid of the Applicant upon which a contract could be based?

30. The Tribunal having resolved issue No. 2 in the negative on the basis that the Bid Validity and Bid Security of the Applicant in Procurement Reference Number EC/SUPLS/2017-2018/00001 had expired on June 30, 2018 bringing the procurement process in EC/SUPLS/2017-2018/00001 to an end, it therefore follows that there was no valid bid upon which a contract could be based and entered into by the Applicant and 2nd Respondent.
31. The Tribunal dealt with a similar circumstance in **TWED PROPERTY DEVELOPMENT LIMITED Vs. PPDA, PAT APPLICATION NO. 9 OF 2015**, where it held that the *only method available for bid extension is provided for under Regulation 52(5) of the PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014*, that is to say the Entity makes the request to the bidders to extend the validity, there being no such request, the bids became invalid on expiry". The Tribunal in the said Application declined to direct the Entity to suspend all attempts at commencing a fresh bidding process in respect to the procurement of office space for Uganda Tourism Board.
32. We find no justification to depart from the decision of the Tribunal in **TWED PROPERTY DEVELOPMENT LIMITED Vs. PPDA**.
33. The Tribunal considered the submissions of the parties on the doctrine of legitimate expectation. The courts have held that the doctrine of legitimate expectation is a fine example of judicial creativity but it is not extra-legal and extra-constitutional. It therefore follows that the doctrine should be applied within the confines of the law. See the decision of **Hon. Justice Ssekaana Musa** in **KATABAAZI V UGANDA CHRISTIAN UNIVERSITY (MISCELLANEOUS CAUSE-2017/268) [2018] UGHCCD 96**. We find the doctrine of legitimate expectation inapplicable to the case at hand.
34. The Tribunal therefore answers this question in the negative.

Issue No. 4:

Whether the 1st Respondent erred in law and fact when it decided that the directive issued by the Authority in the procurement referenced EC/SUPLS/2017-2018/00001 was not binding on the procurement referenced EC/SUPLS/2020-2021/01739?

35. The Tribunal having held that a procurement process comes to an end where the Bid Validity and Bid Security have expired, it is the Tribunal's finding that Procurement Ref No. EC/SUPLS/2017-2018/00001 and Procurement Ref No. EC/SUPLS/2020-2021/01739 are separate and distinct although they relate to office space for the same Procuring and Disposing Entity. Therefore, any directives made by the 1st Respondent in relation to Procurement No. EC/SUPLS/2017-2018/00001 are now inconsequential in as far as the newly initiated Procurement Ref No. EC/SUPLS/2020-2021/0173 is concerned.
36. The 1st Respondent issued no directive to the 2nd Respondent on procurement No. EC/SUPLS/2020-2021/01739. The only directive (dated May 28, 2018) from the 1st Respondent related to Procurement No. EC/SUPLS/2017-2018/00001 and was now inconsequential following the expiry of bids on June 30, 2018.
37. In any case, any directive by the 1st Respondent, directing the 2nd Respondent to award a Contract to the Applicant based on Procurement No. EC/SUPLS/2017-2018/00001 would be unlawful and a fetter on the discretion of the 2nd Respondent. The Tribunal in **JAMES WENDI Vs. PPDA, PAT APPLICATION NO. 1 OF 2015** held that Section 29(c) of the PPDA Act, confers the power to award contracts only on the Contracts Committee, as such the Authority had no power to direct the Entity to award the contract to the Applicant and no such powers were vested in the Tribunal either.
38. **The Tribunal therefore answers this question in the negative.**

Issue No. 5:

Whether the 1st Respondent erred in law and fact when it decided that the new procurement process is not contrary to the presidential directive dated 11th July 2019?

39. Having resolved that the procurement process in Procurement Ref No. EC/SUPLS/2017-2018/00001 had come to an end by reason of expiry of Bid Validity and Bid Security on June 30, 2018, the Tribunal finds that the Presidential Directive (dated July 11, 2019 Ref PO/1) directing the 2nd Respondent to "go ahead with the

procurement process of the office block as you had earlier on planned” was not specific to a particular procurement.

40. The initiation of procurement No. EC/SUPLS/2020-2021/01739 therefore appears to be an attempt to comply with the Presidential Directive and not contrary to it.

41. **The Tribunal therefore answers this question in the negative.**

Issue No. 6:

Whether the 1st Respondent erred in law and fact when it failed to find that the new procurement process is contrary to the basic principles of public procurement?

42. Having resolved that the procurement process in Procurement Ref No. EC/SUPLS/2017-2018/00001 had come to an end by reason of expiry of Bid Validity and Bid Security on June 30, 2018, the Tribunal finds that the 2nd Respondent was bound to initiate a new procurement based on its requirements in accordance with Section 34(1)(e) of the PPDA Act 2003 and Regulation 24(3) of the *PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014*).

43. The 2nd Respondent has submitted that the new requirements are intended to accommodate its newly acquired printer facilities, newly created office units amongst others, which requirements may not have existed by the time Procurement No. EC/SUPLS/2017-2018/00001 was being undertaken, 3 years ago.

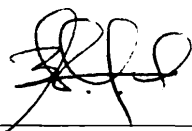
44. The method of procurement adopted is open domestic bidding which is a preferred method of procurement as per section 51 of the PPDA Act and actually promotes the 7 principles of procurement stipulated in Sections 43-49 of the PPDA Act 2003; which actually enabled the Applicant purchase the bidding document. The Applicant on its own volition, opted not to competitively participate, much to its own detriment, despite the encouragement by the 2nd Respondent (as per the letter dated June 18, 2021, ref ADM209/348/01) to participate in the said procurement.

45. **The Tribunal therefore answers this question in the negative.**

I. DISPOSITION

1. The Application is dismissed.
2. The administrative review decision of the Authority is affirmed and upheld.
3. The Tribunal's suspension order dated July 22, 2021 is vacated.
4. The 2nd Respondent/Entity is directed to resume and proceed with the procurement process in Procurement Ref No. EC/SUPLS/2020-2021/01739 to its logical conclusion.
5. Each party to bear its own costs.

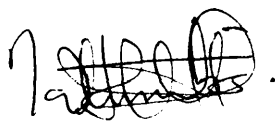
Dated at Kampala this th 10 day of August 2021.



THOMAS BROOKES ISANGA
CHAIRPERSON



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER