

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO.860 OF 2016**

**(ARISING FROM MISC. CAUSE NO. 278 OF 2016)**

**CHINA NATIONAL AERO-TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION :: APPLICANT**

**VERSUS**

- 1. THE PARLIAMENTARY COMMISSION**
- 2. THE CLERK TO THE PARLIAMENT OF UGANDA**
- 3. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY(PPDA)**
- 4. ATTORNEY GENERAL :: RESPONDENTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**RULING**

**a) Introduction**

1. This is my ruling in the application for a temporary injunction in Misc. Application No. 860 of 2016.
2. The Applicant is represented by Mr. Alexandra Kibandama of M/s. ENAfrica Advocates, the first and second Respondents are represented by Ms. Bukenya Jackie and Mr. Kirunda Solomon from the Department of Legal and Legislative Services of the Parliament of Uganda

and the 3<sup>rd</sup> Respondent was represented by Mr. Uthman Segawa and Mr. John Kalemera from the Public Procurement and Disposal of Public Assets Authority (PPDA) Chambers.

3. For the avoidance of doubt, I have read all the pleadings on file and considered all the arguments and submissions of the parties at the hearing.
4. The standard for the grant of a temporary injunction is now well established in our jurisdiction. The Applicant must prove that;
  - a) he/she has a prima facie case with high chances of success,
  - b) if the injunction is denied, he stands to suffer irreparable loss and
  - c) if the court is in doubt, it makes a determination on a balance of convenience.
5. On a prima facie case, Counsel for the Applicant made long winded arguments claiming violations of his client's constitutional right to be heard under Article 28 of the 1995 Constitution of Uganda; violations of Sections 43-49 of the Public Procurement and Disposal of Public Assets Act, 2003 as amended ( the PPDA Act) by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and violation of the Public Procurement and Disposal of Public Assets Regulations, 2014 (the PPDA Regulations) when the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents connived to ensure that the Applicant is excluded from the bidding process for the construction of the new Parliamentary Chambers.
6. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents argued that in all their actions, they had basis in law. They cite sections of the PPDA Act and Regulations for this.

**b) Analysis**

7. It is hard for me to say that the Applicant has a prima facie case with high chances of success when it fails to demonstrate only violations of the law as it claims. The plethora of jurisprudence from this court and courts above demonstrates that violations of fair hearing rights like the one that the Applicant claims can be atoned in damages. Mindful that this is a

judicial review application and having labored extra to appreciate the arguments of the Applicant here, I am not satisfied at all that the Applicant, which is a company, stands to suffer irreparable loss if the injunction is denied.

8. In fact, I am more inclined to consider that the Applicant can be atoned in damages if the judicial review application succeeded. Besides the argument that its reputational damage cannot be atoned cannot stand on its own if the prima facie case is not established.
9. I will now consider the balance of convenience in this case. First of all I wish to say with all due respect that the argument by Mr. Kirunda for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that allowing this application would disenfranchise some constituencies in this country is an unnecessary exaggeration of the issues at hand.
10. Be that as it may, if the application is allowed, it would have the effect of denying the 3<sup>rd</sup> Respondent its statutory mandate in the national procurement process; of investigating wrong doing in this process and ensuring that procurement laws are followed. This task is vested with the 3<sup>rd</sup> Respondent and I find no justifiable reason to put it on hold.
11. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents argued that it was not disputed that if the application is allowed, there is a fear of the money allocated for the chambers' construction project in issue being recalled if it is not completed within 36 months from August 2016. At the time of this hearing and ruling, over 3 months have been wasted. Counsel also submits that apart from the 500,000/= non-refundable fee paid, all other monies like security fee, paid by the Applicant get to be refunded.
12. The Applicant Counsel makes vehement allegations of connivance between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents but considering they found all their actions under the law, it is so hard to attach much value to these allegations at this stage.

13. So in weighing whether to allow the application and stall the construction of the parliamentary chambers or disallow the application so that the said construction can commence, based on all the above, I am more inclined to deny the application.

**c) Conclusion**

14. Accordingly the application is denied. Each party shall bear its own costs.

I so order

**LYDIA MUGAMBE**

**JUDGE**

**15/11/2016**