

UGANDA / JUDGMENT

Chogm Tour Agents 2007 (U) Ltd v Masaka Municipal Council Local Government (Civil Appeal 7 of 2010) [2010] UGSC 34 (25 January 2010)

[2010] UGSC 34

COURT

Supreme Court of Uganda

BEFORE

Odoki, CJ, J.W.N.Tsekooko, JSC, G. M. Okello, JSC,
Tumwesigye, JSC, Kisaakye, JSC

CASE / FILE NUMBER

Civil Appeal 7 of 2010

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA**AT KAMPALA**

(CORAM:

ODOKI, CJ; TSEKOOKO; OKELLO; TUMWESIGYE; AND KISAAKYE; JJSC)

CIVIL APPEAL NO. 07 OF 2010**BETWEEN****CHOGM TOUR AGENTS 2007 (U) LTD: ::::: ::::: APPELLANT****\$A\$ \$N\$ \$D\$****MASAKA MUNICIPAL COUNCIL LOCAL GOVERNMENT:****<pre>..... </pre> RESPONDENT**

{An appeal from the judgment and orders of the Court of Appeal at Kampala, (Mukasa-Kikonyogo, DCJ; Twinomujuni and Kitumba; JJA) dated 25th day of November 2009, in Civil Appeal No. 32 of 2009.

JUDGMENT OF OKELLO, JSC:

This is a second appeal from the decision of the Court of Appeal which affirmed a decision of the High Court in consolidated Misc. application Nos. 1 and \$27\$ of 2009.

The facts which gave rise to this appeal, as found by the two lower courts, were that M/s. Equator Touring Services Ltd had a contract with the respondent to collect revenue from Taxi Parks/stages in Katwe/Butebo and Nyendo/Ssenyange Divisions within the respondent council for the financial year 2007/2008. M/s. Butata Ltd also had a similar contract with the respondent to collect revenue from taxi parks/stages in Kimanya/Kyabakuzza Divisions for the same financial year.

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However, there were teething problems of illegal transit taxi stages which impeded the smooth operation of the revenue collection service providers. These problems were compounded by the vested personal interest which the Mayor and some members of the executive committee of the respondent had in the matter. The problems developed into a dispute between the two service providers with IWs. Equator Touring Services Ltd complaining that its operation was being suffocated by these illegal transit tax stages operated by IWs. Butata Ltd.

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It raised complaints over this matter with the Town Clerk as the accounting officer of the respondent. The Town Clerk set up an investigating committee which investigated the matter and filed its report with the Town Clerk. The latter placed the report before the Contract Committee of the respondent that referred the report to the Public Procurement and Disposal of Public Assets Authority (PPDA) for technical advice.

On receipt of the report the PPDA convened a meeting which was attended by the Mayor of the respondent, the Contract Committee of the respondent, M/s. Equator Touring Services Ltd and the Audit Team of PPDA. Following that meeting, PPDA by a letter dated 25-01-2008, addressed to the Town Clerk, advised amongst others that the respondent should stick to the designated and approved taxi parks in the respective divisions. That all transit stages should be declared illegal and in that regard Kimanya/Kyabakuzza transit stages were declared illegal. All biddings and management should be according to the respective divisions. The Town Clerk was specifically wamed not to unilaterally award confacts for

collection of revenue from Kimanya a/Kyabaktza without involving the Contract Committee.

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Following the above advice, the Contract Committee terminated the interim contract of one Kayondo Muhammed for collecting revenue from transit stages in Kimanya/Kyabakuza Division. This communication was copied to all relevant organs of the respondent for implementation.

M/s. Batata Ltd felt aggrieved by that development and sued the respondent in HCCS No. 07 of 2008. The Mayor who appeared to have had personal interest in the retention of the transit stages initiated an out of court settlement of the case. The settlement was later recorded by court as a consent order giving M/s. Batata Ltd power to collect revenue from the transit stages in Kimanya/Kyabakuza Divisions. It also extended M/s. Batata Ltd's contract to 30-08-2009. In effect, the consent order reversed the advice given by PPDA after the meeting of 25-01-2008.

M/s. Equator Touring Services Ltd was not amused. It wrote a further complaint to PPDA and the Minister of Local Government about the management of Taxi Parks within the respondent Council.

On receipt of this complaint the Executive Director of PPDA convened a meeting with the Town Clerk, Chairman Contract Committee, Head, Procurement and Disposal unit of the respondent and M/s. Equator Touring Services Ltd for 02-09-2008, at the office of PPDA.

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PPDA later, by a letter dated 14-09-2008, rescheduled the meeting from 02-09-2008 to 22-09-2008. The Town Clerk also by a letter dated 15-09-2008, extended the date for opening the bids from 19-09-2008 to 30-09-2008. By then, no bids had been submitted yet.

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On 22-09-2008, the meeting re-scheduled by PPDA was held. Following that meeting, the Executive Director of PPDA, by a letter dated 24-09-2008, communicated to the Town Clerk what had been agreed on and recommended in the meeting as follows:

- r) The on going Procurement Process for taxi parks/stages in Kotwe/Bulego, Kimanya/Kyabakuza and Nyendo/Ssenyange Divisions be halted.
- 2) The contract with M/s. Equator Touring Services Ltd be extended as well to 30-08-2009.
- -t) The Entity (council) in consultation with the Ministry of Works and Transport should engage a consultant to carry out a study of Taxi Parks/stages in the council.
- 4) The consultant to complete work before August 2009,

In the letter, the Executive Director of PPDA requested the respondent to implement the above recommendations and to report the results to PPDA within two months.

On 04-09-2008, the appellant picked the bid form and submitted it on 29-09-2008, to the Procurement and Disposal Unit of the respondent in response to the advertisement of 02-09-2008. M/s. Batata Ltd also submitted its bid form on 01-10-2008. The opening of the bids apparently had not been carried out on that day as planned and on 03-10-2008, the office of the Town Clerk communicated to all bidders that the bids' opening had been halted until consultation with the Attorney General.

The appellant who felt aggrieved by the decision to halt the bids opening and the procurement process, coupled with the fact that the contract of M/s. Equator Touring Services Ltd had been extended as well to 30-08-2009, filed Misc. Application No. 01/2009 on 27-01-2009, in the High Court, Masaka. In the application, the appellant sought two reliefs, namely, (a) ^ajudicial Review of Prohibition to prohibit the respondent's Town Clerk from signing any agreement with M/s. Equator Touring Services Ltd extending the latter's expired contract; (b) a judicial Review of Mandamus to compel the respondent's Contract Committee and the Town Clerk to open up bids in respect of revenue collection from Taxi Parks in Katwe/Butego and Nyendo/Ssenyange Divisions.

While the above application was still pending, the applicant on 02-03-2009, filed another Misc. Application, No. 27 of 2009, in the same court seeking a judicial Review of Certiorari to quash the decision of the respondent's contract committee dated 25-11-2008 that extended the contract of M/s. Equator Touring Services Ltd to 30-08-2009.

At the hearing, the two applications were consolidated and heard by Mukiibi, J, who dismissed them. The applicant's appeal to the Court of Appeal was also dismissed; hence this appeal to this court on five grounds.

Representations And Arguments:

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At the hearing of this appeal, Mr. Joseph Luzige with Mr. Isa Kavuma appeared for the appellant while Mr. John Matovu represented the respondent. Counsel of both parties filed written arguments.

Consideration Of The Grounds And Arguments:

Learned counsel for the appellant argued the five grounds of appeal in three batches as follows: grounds 1, 2 and 3 together and grounds 4 and 5 separately.

Learned counsel for the respondent replied in the order counsel for the appellant argued his appeal. I propose to consider the grounds and arguments in the same order.

Grounds 1, 2 and 3 are couched as follows:

- 99 1. The learned Justices of Appeal erred in law and fact when they ruled that PPDA and the respondent did not contravene the law governing Public Procurement and Disposal of Public Assets thus reaching a wrong conclusion.
- 2. The learned Justices of Appeal erred in law and fact when they quoted and applied the law governing Public Procurement and Disposal of Public Assets selectively thus misdirecting themselves.

3. The learned Justices of Appeal erred in law and fact when they held that there was no on going procurement process by the time the appellant submitted its bid."

On the above grounds, learned counsel for the appellant advanced four arguments namely:

That the respondent and PPDA entertained a complaint from M/s. \$(a)\$ Equator Touring Services Ltd in contravention of section 90 of the Public Procurement and Disposal of Public Assets Act, 2003, herein after referred to as "the Act", and Regulations 138 and 139 of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations, 2006, hereinafter referred to as "the *Regulations.*" According to learned counsel, the said section requires that complaint by a bidder against a procuring and disposal entity shall first be submitted in writing to the Accounting Officer.

Learned counsel submitted that in the instant case, the complaint was handled by PPDA before the same was submitted to the accounting officer. He stated that this was evidenced by the letter dated 24th September 2008, regarding the meeting held on the 22nd day of September, 2008.

That the meeting held on 22-09-2008, between the respondent and \$(b)\$ PPDA also contravened sections \$8(e)\$, \$9(1)\$ and \$10(1)\$ of the Act. He argued that the letter dated 24th September 2008, showed that the meeting composed of the Town Clerk; Chairman, Contract \$\overline{7}\$

Committee, Head, Procurement and Disposal Unit, M/s. Equator Touring Services Ltd and PPDA staff. In counsel's view, the meeting acted on a complaint made by M/s. Equator Touring Services Ltd, one of the bidders, and made recommendations which were, under section 8(e), 9(1) and 10(1) of the Act, supposed to have been made by the Board of Directors of PPDA.

- (c) He further criticised the extension of the contract of M/s. Equator Touring Services Ltd by the respondent's contractor committee on 25- 11-2008, when the contract had expired on 31-08-2008. According to counsel, the extension was made as recommended by the meeting of 22-09-2008. He submitted that since by the time the extension was made, the contract between M/s. Equator Touring Services Ltd and the respondent had already expired, there was no contract to extend. What happened was actually a fresh award of the tender in disguise.

- (d) That the respondent and PPDA also contravened regulation 57 of the Regulations when they extended the contract of IWs. Equator Touring Services Ltd with the respondent amidst the ongoing procurement process. He submitted that the procurement process continued before and after the 22ⁿ day of September 2008, when the respondent and PPDA met to halt and cancel the same. He reasoned that on 15-09- 2008, the respondent made an extension of the bids' opening date from 19-09-2008 to 01-10-2008. Further, that on 03-10-2008, the respondent made an announcement to the bidders that the bids' opening date would be communicated in due course. Learned counsel argued that the above acts of the respondent showed that the

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procurement process had never been halted or cancelled and therefore, that the extension of M/s. Equator Touring Services Ltd's contract which had expired was illegal. He cited Makula International Ltd vs - His Eminence Cardinal Nsubuga and Anor., Civil Appeal No. ⁴of 1981 (1982) HCS I I.

He concluded by praying that grounds 1,2 and 3 be allowed.

In response, learned counsel for the respondent submitted on argument (a) above that by the time M/s. Equator Touring Services Ltd made its complaint to PPDA, there had been numerous correspondences between M/s. Equator Touring Services Ltd and the Town Clerk as the Accounting Officer of the respondent. Secondly, that the Town Clerk had been a parry to the meeting of 22-09-2008, which made the decision reflected in PPDA's letter of 24-09-2008. He concluded that there had been no contravention of section 90 of the Act and that the Court of Appeal had been aware of that fact. He submitted that regulations 138 and 139 of the Regulations were not applicable to the circumstances of this case.

As regards argument (b) above, learned counsel denied that sections 8(e), 9(1) and 10(l) of the Act had been contravened. He contended that in its day to day functions, the Board of Directors acts through the Executive Director of PPDA. He concluded that the meeting of 22-09-2008, had therefore, been proper and legally convened. He added however, that the appellant had no locus standi to challenge the legality of the said meeting as he was not a stakeholder in the process under discussion.

On argument (c) above, learned counsel denied that the meeting of 22-09-2008, contravened sections 79 and 80 of the Act and Regulation 32 of the Regulations when it extended the contract of M/s. Equator Touring Services Ltd that had expired. He submitted that there was evidence before the High Court that prior to that meeting, several meetings had been held as far back as January 2008, on M/s. Equator Touring Services Ltd complaints. The meeting of 22-09-2008, was therefore, a culmination of the earlier ones. As PPDA had yet to decide on the complaint, revenue collection from the affected divisions could not remain un collected for that period; hence the extension of M/s. Equator Touring Services Ltd which had still occupied the parks pending the decision of PPDA on the complaint.

As regards argument (d) above, learned counsel contended that when PPDA allowed M/s. Equator Touring Services Ltd to continue operating, there was no ongoing procurement process. The process had been halted at the meeting of 22-09-2008 and the fact thereof had been communicated to the stakeholders in PPDA's letter of 24-09-2008. Failure by the Town Clerk to pass that information to the intending bidders, like the appellant, had been penalised by the trial judge who denied the respondent costs in the High Court. Learned counsel denied that any legal right of the appellant had been violated by the said omission.

The first complaint raised in this first batch of the grounds of appeal was that the respondent and PPDA contravened section 90 of the Act and regulations 138 and 139 of the Regulations, when PPDA entertained the complaint of M/s. Equator Touring Services Ltd regarding the issue of illegal stages before the complaint had first been made in writing to the Town Clerk as

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required by section 90(I) of the Act. Further that the Court of Appeal erred when it considered only section 91 of the Act in isolation of section 90 and Regulations 138 and 139 of the Regulations.

In my opinion, learned counsel for the appellant, with all due respect, criticized the learned Justices of Appeal unfairly. First of all, he had not challenged in the Court of Appeal, the entertainment of the complaint of M/s. Equator Touring Services Ltd by PPDA on the ground that the complaint had not first been submitted in writing to the Town clerk as required by section 90(I) of the Act. The complaint before the Court of Appeal was that M/s. Equator Touring Services Ltd did not follow "the procedure which is further reproduced in regulations 136 - 140 of the Regulations.

Regulations 136 - 140 provide procedure for Administrative Review Process and this procedure is not mandatory both under the Act (s. 89) and under the Regulations. A bidder does not have to follow that procedure and M/s' Equator Touring Services Ltd did not opt for it.

Be that as it may, I should point out that whether or not the complaint was first submitted in writing by M/s. Equator Touring Services Ltd to the Town Clerk is a matter of fact to be determined by evidence. This court, as a second appellate court, is not required to re-evaluate the evidence like the first appellate court except where it is clearly necessary. This is trite law on the role of a second appellate court.

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In *Milly Masembe - vs - Sugar Corporation and Anor.* Civil Appeal No. 01 of 2000, this court (Mulenga" JSC, as he then was) said:

"The Supreme Court as a second appellate court is not required to, and will not re-evaluate the evidence as the first appellate court is under a duty to do so, except where it is clearly necessary,"

In the instant case, there is no such exception to necessitate such a course of action. In any case, the record shows that the learned trial judge had found that IWS. Equator Touring Services Ltd had first submitted its complaint in writing to the Town Clerk when he said:

"It has been established by evidence that M/s. Equator Touring Services Ltd. complained to the Town Services Ltd complained to the Town Clerk of the council about the alleged operation of illegal stages by M/s. Batato Ltd."

My perusal of the record revealed that there was evidence to support that finding. There were numerous repetitions of the same complaint in writing by M/s. Equator Touring Services Ltd to the Town Clerk stretching from November 2007 through to 2008 but without any solution. In submitting its complaint first to the Town Clerk, as the accounting officer of the respondent, M/s. Equator Touring Services Ltd had complied with section 90(1) of the Act which provides:

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"A complaint by a bidder against a procuring and disposing entity shall first be submitted in writing to the Accounting Officer within fifteen working days from the date the bidder first became aware of the circumstances giving rise to the complaint."

When the problem persisted without satisfactory solution from the Town Clerk, M/s. Equator Touring Services Ltd raised the complaint with PPDA. In doing so, M/s. Equator Touring Services Ltd acted under section 90(3Xb) of the Act which provides thus:

"Where the bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer."

The Authority (PPDA) in entertaining the complaint of M/s. Equator Touring Services Ltd, acted under section 91(1) of the Act which provides:

"Upon receipt of a complaint, the Authority shall promptly give notice of the complaint to the respective procuring and disposing entity, suspending any further action thereon by the procuring and disposing entity until the Authority has settled the matter."

The respondent and PPDA therefore, did not contravene section 90 of the Act and regulations 138 and 139 of the Regulations when they entertained M/s. Equator Touring Service Ltd's complaint at their meeting held on 22-09-2008.

The first argument has therefore, no merit.

The second argument was that the meeting of 22-09-2008, between the respondent and PPDA contravened sections 8(e), 9(1) and 10(1) of the Act in that it was not held by members of the board of directors of the Authority but rather by the officials of the PPDA and the respondent. It was submitted that the recommendations that emanated from the meeting were also invalid as under the above sections they should have been made by the board of directors of PPDA.

Kitumba, JA, as she then was, who wrote the lead judgment with which the other two Justices of Appeal agreed dealt with the issue as follows:

"I do not agree with the submissions of appellant's counsel that what PPDA did contravened sections 7, 8 and 10 of the Act because it was done by the members of staff and not the board. The day to day functions of the PPDA are carried out by the Executive Directors and the other staff on the board's behalf. The respondent was bound to follow the recommendations of the PPDA."

I agree with the above statement. Under section 10(2)(a) of the Act the board of directors of the Authority is responsible for development and formulation of policies of the authority.

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The relevant section 10(2)(a) of the Act reads as follows:

"10(2) Notwithstanding the provisions of sub-section (1) the Board shall be responsible for:

(a) the formulation of policy of the Authority - - - .

The management of these policies which constitutes the day to day operation of the Authority is performed by the Executive Director and his support staff under section 17(2)(a) of the Act which provides:

'17 (2) Subject to the general supervision and direction of the Board, the Executive Director, who shall be the accounting officer of the Authority shall be responsible for the:

(a) Management and operation of the Authority. "

There was therefore, no contravention of sections 8(e), 9(1) and (l) of the Act in the meeting of 22-09-2008.

The third argument was that the extension of the expired contract of M/s. Equator Touring Services Ltd by the contract committee on 25-11-2008, when the contract had already expired amounted to a fresh award of the contract contrary to the procedure laid down.

Kitumba, JA, as she then was, found that no contract had been signed between IWS. Equator Touring Services Ltd and the respondent extending the services of M/s. Equator Touring Services Ltd she said:

"It is clear from the record that by the time the appellant filed this suit in the High Court, the respondent had not signed any contract with M/s. Equator Touring Services Ltd"

I have perused the record of proceedings of the trial in the High Court and I am satisfied that there was evidence to support the finding of the lower court that no contract had been signed between the respondent and M/s. Equator Touring Services Ltd extending the services of the latter. The affidavit in reply sworn by Nic Begyira Rukika, Town Clerk, on 16-03-2009, shows that although the contract committee had agreed to extend the contract of M/s. Equator Touring Services Ltd as recommended by PPDA, no contract document to that effect had been signed between the respondent and M/s. Equator Touring Services Ltd.

The record shows that prompted by the need to ensure that the laws relating to procurement process are adhered to and that the procurement process proceeded smoothly, PPDA recommended the extension of the service of M/s. Equator Touring Service Ltd under section 91(1) of the Act for two reasons:

Firstly, to demonstrate equal and fair treatment to all service providers' The service of a competing service provider, M/s. Batata Ltd, had been extended by the consent order to 30-08-2009. So PPDA recommended a similar extension of the service of M/s. Equator Touring Service Ltd. This point had been discussed and agreed on at the meeting of 22-09-2008. That was the best decision in the circumstances.

The second reason was to prevent revenue collection in the affected Divisions from being halted during that period as PPDA considered a lasting solution to the dispute. There was therefore, no fresh award of contract to M/s. Equator Touring Service Ltd.

The fourth argument was that when PPDA met on 22-09-2008 and decided to extend the contract of M/s. Equator Touring Services Ltd the procurement process was ongoing, thus contravening regulation 57 of the Regulations'

Kitumba, JA, as she then was, found that the procurement process for revenue collection from taxi parks/stages in Katwe/Butego; Kimanya/Kyabakuza and Nyendo/Ssenyange Divisions had been halted on 22-09-2008 and that "there was no ongoing process by 3dh September 2008," when the appellant submitted its bids. She found that the appellant submitted its bids on 29-09-2008, after the procurement process had been halted. She later agreed with the learned trial judge that had the Town Clerk informed the appellant and other bidders in accordance with regulation 57 of the Regulations, of that fact, the application which gave rise to this appeal would not have been filed.

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I cannot fault those findings because the record shows that there was evidence to support them. The affidavit in support of the appellant's application which gave rise to this appeal confirms that the appellant submitted its bids on 29-09-2008. This was ten days after 19-09-2008, the date declared to be the closing date for submission of bids. The procurement process for revenue collection from Taxi parks/stages in Katwe/Butego, Kimanya/Kyabakuza and Nyendo/Ssenyange Divisions had been halted on 22-09-2008, and that fact was communicated to the Town Clerk by PPDA in a letter dated 24-09-2008. It follows therefore, that when the appellant submitted its bid on 29-09-2008, the procurement process for revenue collection from taxi park/stages in Katwe/Butego, Kimanya/Kyabakuza and Nyendo/Ssenyange had closed on 19-09-2008. The process was therefore, no longer ongoing. Regulation 57(4) provides that:

"In all cases of cancellation of the bid procedure, the procurement and disposal unit shall inform the bidders who are still bound by their bids, and immediately release their bid security, and in case bids have not yet been opened, return them to the bidders unopened"

Regulation 57(4) enjoins procurement and disposal unit in all cases of cancellation of bid procedure, to inform the bidders who are still bound by their bids. The appellant who had submitted its bids after the closing date for submission of bids did not submit its bids in accordance with the Bid Notice. The process was no longer ongoing. It was therefore, not a bidder within the meaning of the wording in section 3 of the Act.

In view of what I have endeavoured to explain above, I find no merit in grounds 1, 2 and 3 and they would fail.

- This now brings me to consider grounds 4 and 5 which are couched as follows:
- 4. The learned Justices of Appeal erred in law and fact when they ruled that the appellant had no legal rights which could be enforced by way of judicial review.
- 5. The learned Justices of Appeal erred in law and fact when they ruled that the respondent was bound to follow the recommendations of the PPDA."

On ground 4 above, learned counsel for the appellant criticized the learned Justices of Appeal for ruling that the appellant had no legal right that could be enforced by judicial review. He pointed out that section 3 of the Act defines a bidder as a person intending to participate or participating in Public Procurement or Disposal Proceedings. According to counsel, regulations 57(4) and 1A0(a)(c) of the Regulations give such a person the right to information, release of his bid security and return of his bids unopened if not yet opened, in the event of cancellation of the process or in the event of an application by PPDA for an administrative review. He prayed that this ground be allowed.

Learned counsel for the respondent supported the decision of the Court of Appeal and relied on section 3 of the Act.

Kitumba, JA, as she then was, dealt with this matter in this way:

"I appreciate the submissions of the respondent that the appellant had by the time the procurement process was halted, simply picked the bid forms and done nothing more. The advertisement in the News Paper inviting tenders was not an offer. It did not give the appellant legal rights which could be enforced by way of judicial review."

I respectfully agree with the above statement. Section 3 of the Act defines a bidder as a physical or artificial person intending to participate or participating in public procurement or disposal proceedings. In my considered opinion, the appellant who had picked bid forms after the procurement process had closed and had done nothing more, had not shown intention to participate in the public procurement or disposal proceedings because it had not submitted its bids in accordance with the Bid Notice. Therefore, any rights accorded to a bidder under regulations 57(4) and 1A0(a)(c) of the Regulations did not apply to the appellant. The appellant therefore, had no legal right which could be enforced by way of judicial review.

This ground would therefore, fail.

The complaint in ground 5 was that the learned Justices of Appeal erred when they ruled that the respondent was bound to follow the recommendations of the PPDA.

Learned counsel argued that whereas section 9 of the Act gives the PPDA powers to make recommendations, paragraphs 2 and 3 thereof give the respondent discretion to accept or to reject the recommendations in writing. He pointed out that in the instant case, the Mayor had rejected the recommendations of 22-09-2008, in a letter dated 02-11-2008, challenging the said recommendations as contravening sections 83(1), 7(a) and 8 of the Act. He submitted that PPDA could not direct the respondent.

Learned counsel for the respondent contended that the respondent was bound to follow the recommendations of the PPDA. Firstly, because the respondent had totally failed to resolve the dispute regarding the taxi parks in its area and had submitted the matter to mediation of PPDA. Secondly, M/s. Batata Ltd had taken the respondent to court and secured extension of its tender period. Thirdly, the respondent was party to the resolutions reflected in PPDA's recommendations and therefore, it was bound to accept those recommendations.

This ground of the appeal arose from the statement by Kitumba, JA, as she then was, in her lead judgment that "the respondent was bound to follow the recommendations of the PPDA. "

As was, in my opinion, correctly pointed out by learned counsel for the respondent, the recommendations were prompted by the respondent which sought the Authority's technical advice, to solve the teething problem of taxi parks/stages within the respondent's Council.

In reviewing that dispute, the Authority called a meeting for 22-09-2008,, to find solution to the problem. The meeting was attended amongst others by the respondent and M/s. Equator Touring Services Ltd, the complaining Service provider. The resolutions made at that meeting were reflected in the recommendations in issue. The respondent was therefore a party to the resolutions that formed the basis of the recommendations. The recommendations were a legitimate temporary measures aimed at ensuring fair, transparent and non-discriminatory procurement and disposal standards and practices within the respondent council as the Authority considered a lasting solution to the problem.

In those circumstances, the respondent was bound to follow the recommendations.

In my considered opinion, section 9 of the Act which learned counsel for the appellant referred to is not applicable to the recommendations in question. These recommendations were not targeting any official concerned with procurement and disposal process in issue. The recommendations were aimed at ensuring fair, transparent and nondiscriminatory procurement and disposal standards and practices.

I therefore, find no merit in this ground and it would also fail.

In the result, I find no merit in the appeal which I would dismiss with costs in favour of the respondent here and in the Court of Appeal.

rh Jqn,er. Duted at Kampalo this ;I= day of 2010.

G. M, OKELLO JUSTICE OF THE SUPREME COURT

REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA

CORAM: ODOKI CJ., TSEKOOKO, OKELLO, TUMWESIGYE AND KISA AKYE JJSC)

CM APPEAL No 7 OF ²⁰¹⁰

BETWEEN

CHOGM TOUR AGENTS (2007) Ltd ::::::::::::::: APPELLANTS

AND

MASAKA MUNICIPALCOUNCIL LOCAL GOVERNMENT ::::::::::::::: RESPONDENT)

lAn appeal from the judgment of the Court of Appeal at Kampala (Mukasa - Kikottyogo, DCJ., Twinomujuni antl CNB Kitumba, J. JA) dated 25'1' November,2009 in Civil Appeal No. 32 of2009l

. IUDGEMENT OF TSEKOOKO JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother the Hon. Mr. Justice GM. Okello, JSC, and I agree with his conclusions that this appeal should be dismissed with costs to the respondent in this Court and the two Courts below Delivered at Kampala this..... day of 2010

ko J The Supreme Court NT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, CJ: TSEKOOKO; OKELLO; TUMWESIGYE; AND

KISA AKYE; JJSC.)

CIVIL APPEAL NO: 7 OF 2010

BETWEEN

CHOGM TOUR AGENTS (2007) LTD:..... APPELLANTS

AND

MASAKA MUNICIPAL COUNCIL

LOCAL GOVERNMENT:.....

[An appeal from the Judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Twinomujuni, and C. N. B. Kitumba, J. A) dated 25th November 2009 in Civil Appeal; No32 of 2009.]

JUDGMENT OF TUMWESIGYE, JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice G. M. Okello, JSC, and I agree that this appeal should be dismissed with costs in this court and the courts below.

\$2S\$...day of \$\frac{\text{Jannom}}{2010.201}\$ Delivered at Kampala this Jothan Tumwebigy
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C. J., TSEKOOKO, OKELLO, TUMWESIGYE, KISA AKYE, JJ. S. C.)

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Okello JSC, and I agree with it and the orders he has proposed

As the other members of the Court also agree, this appeal is dismissed with costs in this Court.

day of 011

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CHIEF JUSTICE

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CASE PAGE <https://chat.esheria.ai/case-law/uganda/chogm-tour-agents-2007-u-ltd-v-masaka-municipal-council-local-government-civil-appeal-7-of-2010-2010-ugsc-34-25-january-2010-unknown-topic-unknown-cou--6a3ea4d83b1caa91297e579f>

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