

UGANDA / JUDGMENT

National Information Technology Authority
Uganda v Gulf Africa Limited (Civil Appeal 126
of 2024) [2025] UGHCCD 38 (26 February 2025)
[2025] UGHCCD 38

COURT
HC: Civil Division (Uganda)

BEFORE
Musa Ssekaana, J

CASE / FILE NUMBER
Civil Appeal 126 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL APPEAL NO. 126 OF 2024

[Arising from the decision of the Public Procurement and Disposal of Public Assets Appeals Tribunal Application No. 39 of 2024]

NATIONAL INFORMATION TECHNOLOGY

AUTHORITY UGANDA ----- APPELLANT

VERSUS

GULF AFRICA LIMITED ----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal from the decision of the Public Procurement and Disposal of Public Assets Appeals Tribunal delivered on 23rd September 2024. The appellant was dissatisfied with the decision and appealed to this court seeking to set aside the entire decision.

The appellant initiated a procurement for the supply of two thousand devices (1,000 desktops under Lot 1 & 1,000 laptops under Lot 2) under procurement reference no. NITA – U/UDAP/SUPLS/2023 – 2024/00012 using the Open International Competitive Bidding method. The procurement is financed by the International Bank for Reconstruction and Development of the World Bank under the Uganda Digital Acceleration Project Government Network (UDAP – GOVNET).

The respondent submitted a bid in the tender process and its bid was unsuccessful because it did not meet the requirement in the bidding document to demonstrate specific experience of having executed at least two contracts within the last three years prior to bid submission, each with a minimum value of Four Billion Uganda Shillings.

The respondent challenged the disqualification of its bid through an administrative review application to the Accounting Officer of the appellant. The Accounting Officer dismissed the application.

An application for administrative review of the decision of the Accounting Officer was made to the Public Procurement and Disposal of Public Assets (PPDA) Appeals Tribunal in Application No. 39 of 2024 by the respondent. The PPDA Appeals Tribunal rendered a decision to cancel the procurement process based on the failure by the Appellant to provide the Tribunal with the procurement action file and the bids.

The appellant filed a Notice of Appeal in accordance with Section 118 (1) of the Public Procurement and Disposal of Public Assets Act challenging the decision of the Tribunal on four grounds which include;

1. *The PPDA Appeals Tribunal erred in law and contravened Section 3 (1) of the PPDA Act Cap. 205 when it decided that there was no evidence adduced by the parties to show that the PPDA Act conflicts with an obligation of the Republic of Uganda arising out of a financing agreement between the Government of Uganda and the International Development Agency regarding the Uganda Digital Acceleration Project Government Network, to activate the need for the provisions of the agreement to prevail over the PPDA Act.*
2. *The PPDA Appeals Tribunal erred in law and contravened Section 3 (1) of the PPDA Act Cap. 205 when it decided that the jurisdiction of the Tribunal does not conflict with any obligation of the Republic of Uganda arising out of the financing agreement between the Republic of Uganda and the International Bank for Reconstruction and Development or International Development Association.*
3. *The PPDA Appeals Tribunal erred in law and denied the Appellant a fair hearing, when it served the Appellant with a witness summons on 23rd September 2024 which required the Accounting Officer of the Appellant to attend as a witness at the hearing to be conducted on 23rd September 2024.*

4. *The PPDA Appeals Tribunal erred in law when it cancelled the procurement process for the supply of two thousand devices (1,000 desktops under lot 1 and 1,000 laptops under lot 2) in procurement reference no. NITA – U/UDAP/SUPLS/2023 – 2024/00012 without jurisdiction to order the cancellation and without giving the Appellant a fair hearing.*

The Appellant sought the following prayers:

1. ***That the appeal be allowed.***
2. ***That the decision of the PPDA Appeals Tribunal in Application No. 39 of 2024 be set aside and the Entity proceeds with the procurement process to its logical conclusion.***
3. ***That the court finds that the PPDA Appeals Tribunal did not have jurisdiction to determine Application No. 39 of 2024.***
4. ***That the court finds that the PPDA Appeals Tribunal did not give the Appellant a fair hearing in Application No. 39 of 2024 prior to making a decision to cancel the procurement process in procurement reference no. NITA – UDAP/SUPLS/2023 – 2024/00012.***
5. ***That costs be provided for.***

The appellant was represented by *counsel John Kallemera*, the Respondent was represented by *counsel* *Yovino Okwir*.

The parties were ordered to file written submissions, and the same have been filed. I have duly considered the submissions of the parties.

Determination

The Appellant made its submissions on grounds 1 and 2 jointly, followed by arguments on grounds 3 and 4 jointly. The Respondent argued grounds 1, 2, 3 and 4 independently. Given the similarity of grounds 1 and 2, and grounds 3 and 4, this court shall determine grounds 1 and 2 jointly, and thereafter grounds 3 and 4.

Duty of the High Court on appeals from decisions of the PPDA Appeals Tribunal

As a first appellate court, it is the duty of this court to re – evaluate the evidence and come up with its own conclusion.

In ***Kasozi Lawrence v. Uganda SCCA No. 13 of 2009***, the Supreme Court held that it has laid down the duty expected of a first appellate court in a number of decisions, most notably in ***Henry Kifamunte v. Uganda (1999) 2EA 127*** where it held;

“The first appellate court has a duty to re – hear the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it.”*

A decision made by the High Court on appeal from a decision of the PPDA Appeals Tribunal is final and not subject to any further appeal under Section 118 (6) of the Public Procurement and Disposal of Public Assets Act Cap 205.

In considering this appeal, I have taken into account the above principles, the record of proceedings, the documents submitted to the Tribunal, the decision of the Tribunal and the written submissions of the parties.

Determination of grounds of appeal 1 and 2

The appellant argued that that the Tribunal found that under the financing agreement for UDAP – GOVNET there were subsidiary agreements and manuals, including a Project Management Manual which provides for a complaints management procedure.

The appellant submitted that the impugned procurement was conducted using World Bank Standard Procurement Documents. That in such procurements, the administrative review process specified in the PPDA Act, including complaints to the PPDA Appeals Tribunal, is not applicable under the Procurement Management Manual.

The appellant argued that this causes a conflict with the PPDA Act in accordance with Section 3 (1) of the Act, because the Procurement Management Manual is a subsidiary document under the Financing Agreement and that as a result the Tribunal had no jurisdiction to entertain the application.

The respondent submitted that the appellant frustrated the hearing of the application before the Tribunal by refusing to produce the procurement action file which frustrated the Tribunal's capacity to hear evidence in the case. That the appellants are precluded from raising ground one because they did not adduce evidence to show that the PPDA Act conflicts with the obligations of Uganda arising out of the financing agreement.

The respondent argued that if the appellant was faced with any controversy in implementing the project regarding the complaints handling procedure in the World Bank Procurement Regulations, the appellant should have referred the controversy to the Attorney General.

The respondent also argued that the Procurement Management Manual is not a legally binding document and should not be held to take precedence over an Act of Parliament or a statutory legislation.

The Tribunal decided that a procurement – related complaint, whether originating from a Standard Procurement Document under the World Bank or a National Bidding Document, is resolved by the Appellant as the borrower. That the only difference is that for complaints involving contracts where World Bank Standard Procurement Documents are used, the Appellant's resolution of the complaint is subject to prior review and clearance by the World Bank while complaints involving contracts using National Standard Bidding Documents are not subject to any prior review or clearances.

The Tribunal decided that there was no evidence adduced by the parties that ousts the appellant as the borrower to handle and resolve procurement – related complaints. That on the contrary, the resolution of procurement – related complaints is left to the Appellant.

Analysis

The respondent's argument is that the appellant failed to submit the procurement action file and the bids to the Tribunal and as a result the Tribunal did not have the opportunity to consider this evidence to determine the issue of its jurisdiction.

I observe that the information contained in the procurement action file and in the bids was not relevant for determination of the issue of jurisdiction. The documents relevant for the determination of this issue included the Financing Agreement, the Project Operational / Implementation Manual and the Procurement Management Manual, which were all submitted to the Tribunal by the appellant. All of these documents were considered in the decision of the Tribunal. I also observe that the Appellant submitted on the issue of jurisdiction in its written submissions to the Tribunal.

Where the PPDA Act conflicts with an obligation of the Republic of Uganda arising out of an agreement with one or more States, or with an international organization, the provisions of the agreement shall prevail over the Act. *See* Section 3 (1) Public Procurement and Disposal of Public Assets Act Cap 205.

The impugned procurement is financed by the International Development Association of the World Bank. The terms of the financing are contained in a Financing Agreement for the Uganda Digital Acceleration Project – GOVNET between the Republic of Uganda and the International Development Association.

At paragraphs 10, 11, and 12 of the detailed decision of the PPDA Appeals Tribunal, it was correctly established that the Financing Agreement provided for additional conditions of effectiveness consisting of a Subsidiary Agreement and a Project Implementation Manual which were both subsequently executed and adopted by the appellant.

The Tribunal also rightly found at paragraph 13 of its detailed decision that the Project Implementation Manual provides for the adoption of a procurement manual in Annex 6, and that the Procurement Management Manual dated May 2023 for the Uganda Digital Acceleration Project Government Network provides for a complaints management procedure.

The Respondent did not cross – appeal the finding of the Tribunal that the complaints management procedure in the Procurement Management Manual is binding on the Government of Uganda.

This court agrees with the Tribunal that the Procurement Management Manual is formed under the provisions of the Financing Agreement between the Government of Uganda and the International Development Association of the World Bank. Accordingly, the provisions of the Procurement Management Manual are an obligation of the Government of Uganda.

The question is whether the complaints management procedure in the Procurement Management Manual conflicts with the complaints - handling procedures in the Public Procurement and Disposal of Public Assets Act Cap. 205.

The Oxford Advanced Learner's Dictionary, 5th Edition defines conflict (with something) as “*to be very different (to something); to be in opposition*”

The Procurement Management Manual provides for *Complaints Management* at 6.11. It specifies two complaints handling mechanisms;

1. *Complaints involving contracts where World Bank Standard Procurement Documents are used.*
2. *Complaints involving contracts using National Standard Bidding Documents.*

The procedure for handling complaints involving contracts where World Bank Standard Procurement Documents are used is prescribed in the Procurement Management Manual:

1. *They shall follow the complaints mechanism specified in the Annex III of the World Bank Procurement Regulations for IPF Borrowers July 2016 Revised January 2021.*
2. *The PC shall provide the Bank with all the relevant information and documents for the Bank's review.*
3. *The draft response to the complainant shall be reviewed and cleared by the Bank prior to transmittal to the complainant.*
4. *The PC shall not proceed with the next stage / phase of the procurement process, including the awarding of the contract, without receiving confirmation of the satisfactory resolution of complaint(s) from the Bank.*
5. *All complaints will be entered in the STEP system and submissions / responses with the Bank processed in the STEP.*

The Procurement Management Manual also prescribes the procedure for complaints involving contracts using National Standard Bidding Documents:

1. *They shall be subject to the complaints mechanism under the PPDA law.*
2. *The Act provides two – tiers (levels) of handling the procurement complaints which are by the Accounting Officer and the Public Procurement and Disposal of Public Assets Appeals Tribunal.*
3. *The PC shall inform the Bank about the actions taken regarding the complaint.*
4. *The PC shall provide to the Bank all the relevant documentation, as requested.*

I have reviewed the bidding document issued by the appellant for the impugned procurement and it is indicated on the cover page that it is a World Bank Document. The respondent has not challenged the fact that the World Bank Standard Procurement Documents were used in the impugned procurement. This court finds that a World Bank Standard Procurement Document was used for the impugned procurement.

Therefore, a procurement related complaint in the impugned procurement is subject to the complaints - handling mechanism in Annex III of the World Bank Procurement Regulations for IPF Borrowers. I have reviewed these Regulations and I find that they specify in detail who is eligible to make a complaint, the steps that a bidder must comply with to lodge a complaint and the timelines for responding to a complaint. Item 47.1 of the Instructions to Bidders in the bidding document states that a complaint should be addressed to the Executive Director of the Appellant.

The World Bank Procurement Regulations do not provide for the application of the Public Procurement and Disposal of Public Assets Act in the resolution of a procurement - related complaint. I have thoroughly reviewed the World Bank Procurement Regulations, the bidding document for the impugned procurement and the Procurement Management Manual. I have not found any provision permitting a bidder to make an administrative review application to the Public Procurement and Disposal of Public Assets Appeals Tribunal where the World Bank Standard Procurement Document was used as was the case in the impugned procurement.

Furthermore, the Procurement Management Manual specifically provides that the PPDA laws, and the two – tier process for handling complaints in the PPDA laws involving the Accounting Officer and the Public Procurement and Disposal of Public Assets Appeals Tribunal, are only applicable for complaints involving contracts using National Standard Bidding Documents.

In the impugned procurement, the Procurement Management Manual and ITB 47.1 of the bidding document provide for only one stage for making and handling a procurement related complaint, that is, making a complaint to the Executive Director of the Appellant.

The Procurement Management Manual states that the Bank must review and approve a draft response made by the Executive Director of the Appellant to a complainant and that Appellant cannot take any further step in the procurement process, including awarding a contract without receiving confirmation of the satisfactory resolution of the complaint from the Bank.

This court finds that under the Procurement Management Manual and the bidding document, a procurement related complaint in the impugned procurement could only be made to the Executive Director of the appellant and not to the PPDA Appeals Tribunal.

In the circumstances, there is conflict between the Procurement Management Manual and provisions in the Public Procurement and Disposal of Public Assets Act Cap 205.

In the Act, a bidder participating in a public procurement process can make a complaint to the Public Procurement and Disposal of Public Assets Appeals Tribunal in accordance with Sections 106 (8) and (9) and 115 of the Act. These Sections state that if a bidder is aggrieved by a decision made by the Accounting Officer, or by the failure of an Accounting Officer to make a decision as prescribed in the Act, or if a bidder alleges that an Accounting Officer is not impartial or has a conflict of interest, the bidder can make an administrative review application to the Tribunal.

In accordance with Section 3 (1) of the Public Procurement and Disposal of Public Assets Act Cap 205, the provisions in the Procurement Management Manual prevail over Sections 106 (8) and (9) and 115 of the Act.

Therefore, this court finds that the Public Procurement and Disposal of Public Assets Appeals Tribunal did not have jurisdiction to hear the Respondent's Application No. 39 of 2024.

I also find that it was erroneous for the Tribunal to make a determination regarding the jurisdiction of the Accounting Officer of the Appellant. This was not the proper issue to be determined. The issue for determination was whether the Tribunal had jurisdiction over the impugned procurement.

The Supreme Court guided in ***Uganda Railways Corporation v. Ekwaru D. O and Others SCCA No. 07 of 2019*** that proceedings undertaken by a court without jurisdiction are a nullity.

I find that the proceedings and the decision of the Tribunal in Application No. 39 of 2024 are null and void.

Grounds 1 and 2 are resolved in favour of the appellant.

Determination of grounds of appeal 3 and 4

The appellant submitted that it was not afforded a fair hearing by the Tribunal on account of lack of sufficient notice. That the Appellant received a witness summons from the Tribunal on 23rd September 2024, which required the Accounting to appear as a witness and to submit various documents to the Tribunal at the hearing before the Tribunal on 23rd September 2024. That the Tribunal did not give the appellant any notice prior to the hearing on 23rd September 2024, that it was going to cause the appellant to show cause why the procurement process should not be cancelled.

The respondent argues that the appellant and the appellant's Accounting Officer were aware of the proceedings having been served with a hearing notice on 19th September 2024 for a hearing on 23rd September 2024.

Analysis

Article 28 (1) of the 1995 Constitution of the Republic of Uganda guarantees the right to a fair hearing before an independent and impartial court or tribunal established by law.

In this appeal, the appellant alleges that its Executive Director was not given sufficient notice to appear before the Tribunal and to submit various documents to the Tribunal. It is also alleged that the Tribunal did not give notice to the appellant that it would require the appellant to show cause why the procurement process should not be cancelled.

I have reviewed the witness summons issued by the Tribunal to the Accounting Officer of the Appellant. It states:

WITNESS SUMMONS

(Under Section 116 (2) of the PPDA Act, 2003 as amended and Regulation 19 of the PPDA (Tribunal) (Procedure) Regulations, 2016)

To:

1. ***The Accounting Officer, NITA – U***

WHEREAS your attendance is required as a witness on behalf of the Respondent during the hearing of the above application, you are by this summons required to appear before this Tribunal on ***Monday, 23rd day of September, 2024, at 2.30 O'clock*** in the afternoon at the Tribunal premises, 7th Floor Communication house and to bring with you the following books, documents or things to the Tribunal:*

1. ***The invitation for bids to the various bidders***
2. ***Original Bid proposals submitted by the bidders (if any)***
3. ***Copy of the original detailed bidding documents issued to the bidders (including any addenda)***
4. ***Record of issue and receipt of bids***
5. ***All forms, reports, minutes related to this procurement***
6. ***All correspondence and any other documentation related to this matter***

Failure to respond or obey this summons renders you liable to penalties.

The summons was signed on 20th September 2024, and it has a stamp of receipt from the appellant dated 23rd September 2024. It was certified by the Tribunal as a true copy on 4th December 2024.

The witness summons was served on the appellant on 23rd September 2024 and the witness was expected to attend the Tribunal as a witness on that same date and to submit to the Tribunal the various documents required in the summons.

In its submissions, the respondent introduced a hearing notice purportedly received by the appellant on 19th September 2024. I have noted that the hearing notice only directed the appellant to attend the hearing at the Tribunal on that date. The hearing notice did not summon the Accounting officer of the appellant to appear as a witness and to submit the documents referred to in the witness summons received on 23 September 2024.

This court has already decided that it is a settled principle that the purpose of summons is to let the other party know of the case against him and also enable them to take the right course of action. *See* ***Dr. Kayina Vincent v. Uganda Medical and Dental Practitioner's Council HCMA No. 0163 of 2024***.

This court finds that the witness summons issued by the Tribunal was not personally served on the Accounting Officer and yet it was addressed to him. Furthermore, the Tribunal did not afford the Accounting Officer sufficient notice to attend the hearing and submit the required documents given that the summons was served on the same day as the date when the hearing was scheduled.

I have reviewed the record of proceedings and both the summary and detailed decisions of the Tribunal. I find that the appellant was asked to show cause why the procurement process should not be cancelled during the hearing on 23rd September 2024 without any prior notice.

The Tribunal proceeded to cancel the procurement process on 23rd September 2024.

I find that the failure by the Tribunal to give the appellant and the Accounting Officer of the appellant sufficient notice was a violation of the sacrosanct principle of a fair hearing and in breach of Article 28 (1) of the 1995 Constitution of the Republic of Uganda.

Grounds 3 and 4 are resolved in favour of the Appellant.

This appeal succeeds and the decision of the Tribunal in Application No. 39 of 2024 is set aside.

The appellant can proceed with the procurement process in procurement reference no. NITA – U/UDAP/SUPLS/2023 – 2024/00012 to its logical conclusion.

The appellant is awarded costs of the appeal.

I so order.

SSEKAANA MUSA

JUDGE

This Judgment has been delivered by the Registrar this.....day of February 2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccd/2025/38/eng@2025-02-26>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/national-information-technology-authority-uganda-v-gulf-africa-limited-civil-appeal-126-of-2024-2025-ughccd-38-26-february-2025-unknown-topic-unknown---6a3ea4d83b1caa91297e541a>

Prepared on 14 October 2026 · Esheria