



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**  
**JUDGMENT**

Case no: HC-MD-CIV-MOT-GEN-2016/00374

In the matter between:

**UNITED SECURITY SERVICES (PTY) LTD**

**APPLICANT**

and

**CHAIRPERSON OF THE TENDER BOARD OF NAMIBIA**

**1<sup>ST</sup> RESPONDENT**

**MINISTER OF FINANCE**

**2<sup>ND</sup> RESPONDENT**

**MINISTER OF POVERTY ERADICATION AND SOCIAL  
WELFARE**

**3<sup>RD</sup> RESPONDENT**

**PERMANENT SECRETARY OF THE MINISTRY OF  
POVERTY ERADICATION AND SOCIAL WELFARE**

**4<sup>TH</sup> RESPONDENT**

**EPUPA INVESTECH (PTY) LTD**

**5<sup>TH</sup> RESPONDENT**

**URAN SECURITY TECHNOLOGY CC**

**6<sup>TH</sup> RESPONDENT**

**SHILITECH MONITORING TECHNOLOGY CC**

**7<sup>TH</sup> RESPONDENT**

**LMH INVESTMENT CC**

**8<sup>TH</sup> RESPONDENT**

**A FUDHENI TRADING CC**

**9<sup>TH</sup> RESPONDENT**

**REGISTRAR OF COMPANIES**

**10<sup>TH</sup> RESPONDENT**

**Neutral citation:** *United Security Services v Chairperson of the Tender Board of Namibia* (HC-MD-CIV-MOT-GEN-2016/00373) [2017] NAHCMD 270 (20 September 2017)

**Coram:** USIKU, J  
**Heard on:** 07 June 2017  
**Delivered on:** 20 September 2017

**Flynote:** Review – Terms and conditions of tender requiring letter of good standing from a bank – Applicant submitting letter of good standing from bank in name of another company – Applicant alleging Tender Board awarded tender to a non-existent entity – Court holding that Applicant has not established grounds for review – Application dismissed.

**Summary:** Applicant tendered for award of a tender to render services to government, to effect cash payment of basic state grants – Applicant one of the unsuccessful tenderers – Applicant alleging that tender was awarded to a non-existent entity and was unfairly or irregularly awarded – Court finding that Applicant has not made out ground for review – Application dismissed.

---

### **ORDER**

---

1. The Applicant's application is dismissed.
2. The Applicant is ordered to pay the costs of the 1<sup>st</sup> Respondent.
3. The Applicant is ordered to pay the costs of the 5<sup>th</sup> Respondent, such costs to include the costs of one instructing and one instructed counsel.

---

### **JUDGMENT**

---

USIKU, J:

Introduction

[1] In this application the Applicant challenges a decision by the Tender Board of Namibia to award a tender to the 5<sup>th</sup> Respondent. The tender in question is in respect of rendering services to effect cash payment of social grants and allowances to beneficiaries, for the period of 01 December 2016 to 30 November 2021. The Applicant was one of the unsuccessful tenderers. The 1<sup>st</sup> and the 5<sup>th</sup> Respondents have moved to oppose the application.

[2] In this application, the Applicant prays for an order in the following terms:

'(a) Reviewing and setting aside and/or correcting the decision of the First Respondent (Tender Board of Namibia), taken on 13 October 2016 in respect of tender MR33-2/2016 which was awarded to Fifth Respondent and wherein Applicant was disqualified.

(b) Ordering and directing the Respondents opposing the relief sought to pay the Applicant's costs on a punitive scale, the one paying the other to be absolved.

(c) Further and/or alternative.'

[3] At the hearing of the application, the 1<sup>st</sup> Respondent applied for condonation for the late filing of its answering affidavit and its heads of argument. This application was unopposed. I am satisfied with the explanation and reasons given for the non-compliance with the Rules and grant condonation for the non-compliance aforesaid.

### Background

[4] In 2016, the Tender Board invited tenders to submit bids to render services in respect of the abovementioned tender. The Applicant, as well as the 5<sup>th</sup> to the 9<sup>th</sup> Respondents submitted their bid documents with the Tender Board.

[5] On the 13 October 2016, the Ministry of Poverty Eradication and Social Welfare, the line Ministry in regard to the tender, recommended to the Tender Board that the tender should be awarded to *Epupa Investment Technology (Pty) Ltd.* On the same day, the Tender Board resolved to award the tender to *Epupa Investech (Pty) Ltd.*

[6] On the 10 November 2016, the Tender Board justified its decision as follows:

- '(a) The assessment of the documents requested through the tender bid yielded that there was no bank letter of good standing in the name of United Security Services (Pty) Ltd.
- (b) The proposal for social responsibility by United Security Services was not submitted, although such letters and commitments of social responsibility received was made in the name of other companies of the group company but not from United Security Services.
- (c) As far as the compliance to the technical and operational specifications is concerned Messrs United Security Services' core business is not in line with the field of tender.'

[7] The Applicant, aggrieved by the above decision and the reasons given, launched the present proceedings, seeking the redress aforesaid.

#### Applicant's contention

[8] The Applicant contends that it had complied with all tender terms, conditions and specifications, yet it was unfairly and irregularly disqualified.

[9] The Applicant further argues that, the tender document never required the submission of a letter of good standing from a bank, to be in the tenderer's name.

[10] In addition, it further contends, the tender document did not require the social responsibility proposal to be in the tenderer's name. Moreover, the tender document, the Applicant argues, does not measure technical and operational specification against a core business requirement.

[11] "Epupa Investment Technology" did not submit a tender. The tender was submitted by "Epupa Investech". The Ministry recommended that the tender be awarded to "Epupa Investment Technology", and the Tender Board awarded the tender to "Epupa Investech". There was no document before Tender Board that showed that Epupa Investment Technology and Epupa Investech is one and the

same entity. As there is no registered company in the name of “Epupa Investech”, the Tender Board awarded the tender to a non-existent entity.

[12] On the abovementioned grounds the Applicant argues that its bid was unreasonably and unfairly disqualified, for irrelevant criteria, therefore the decision of the Tender Board is subject to be reviewed, set aside and corrected.

### 1<sup>st</sup> Respondent’s contention

[13] The 1<sup>st</sup> Respondent contends that the Applicant did not meet all the conditions and specifications as required by the tender document.

[14] In particular the Applicant did not comply with clauses 28 and 42 of the tender conditions, which provide as follows:

#### **‘28. Financial Viability**

- 28.1 A letter of good standing from the Bank indicating financial viability of the Contractor to deliver services must be provided with the bid.
- 28.2 A guarantee of N\$ 10 million, issued by a registered financial institution in Namibia must be issued before the conclusion of the agreement. The guarantee will be kept by the Ministry for the duration of the contract. An acceptable form/document satisfying this condition must be provided with the bids.’

#### **‘42.Social Responsibility**

- 42 The successful tenderer must commit themselves to contribute at least to three (3) social and developmental projects per year in a given region(s), during the term of the contract. Each tenderer should indicate the areas or fields e.g education, agriculture, science etc to which such social and developmental contributions will be made.’

[15] The Applicant did not submit a letter of good standing in its name. The letter of good standing submitted by the Applicant is in the name of United Africa Group which is the holding company of the Applicant (i.e. Applicant is a subsidiary of United Africa Group).

[16] Furthermore, the Applicant did not submit a social responsibility proposal in its name. The social responsibility proposal submitted by the Applicant is in the name of United Africa Group.

[17] Applicant's core line of business is not in line with the field of tender and does not comply with the operational start-up plan as provided for in the tender conditions.

[18] On the foregoing aspects, clauses 30 and 31 of the tender conditions read as follows:

### **'30 startup Plan**

30.1 Tenderers must submit together with the tender documents, a detailed start up plan showing how they propose to prepare for delivering service within the required time scale. Costs involved in implementing their start up plan will be borne by the contractor.

### **31. Operational Plan**

30.1 Tenderers must put forward proposals on how they would meet service requirements and as a minimum, provide the information required in Schedule E.'

[19] With regard to the name of the successful tenderer, the 1<sup>st</sup> Respondent contends that the Tender Board treated "Epupa Investech (Pty) Ltd" as one and the same company as "Epupa Investment Technology (Pty) Ltd.

[20] The fact that the Applicant submitted a letter of good standing in the name of another company, was enough reason to disqualify the Applicant.

[21] Furthermore, the fact that the Applicant did not submit a social responsibility proposal in its name was also enough reason to disqualify it.

[22] The 1<sup>st</sup> Respondent further contends that the tender process was fair, reasonable, and in compliance with the tender procedure. The Applicant failed to meet the mandatory requirements of the tender and was disqualified on that ground.

### 5<sup>th</sup> Respondent's contention

[23] The 5<sup>th</sup> Respondent contends that Epupa Investment Technology (Pty) Ltd abbreviates its name as “Epupa Investech (Pty) Ltd”, company registration No. 2004/493. Epupa Investment Technology is registered in Namibia, and is wholly owned by previously disadvantaged Namibians, and the 5<sup>th</sup> Respondent is the holder of the tender for the same services since November 2010.

[24] The 5<sup>th</sup> Respondent further argues that it submitted all the required tender documents i.e. a certificate of good standing, Affirmative Action Compliance Certificate etc. in its own name (Epupa Investment Technology), and did not use a name of another company. The Tender Board was at all times aware that Epupa Investech and Epupa Investment Technology was one and the same entity, and therefore no one was misled by the use of the abbreviated name.

[25] The 5<sup>th</sup> Respondent existed in law and has standing in these proceedings, it being the successful tenderer.

[26] The 5<sup>th</sup> Respondent further argues that the Applicant has not advanced grounds for review and did not make out a case for the relief it seeks, and its application should therefore be dismissed.

### Analysis

[27] It is now incumbent upon this court to decide whether the Applicant has made out grounds for reviewing, setting aside or correcting the decision of the Tender Board.

[28] It is common cause that the court is entitled to review, set aside or correct an administrative act, where an administrative body or official has:

- (a) failed to apply his/her mind;
- (b) taken into account irrelevant or extraneous factors;
- (c) been prompted or influenced by improper or incorrect information or motives;
- (d) not complied with the requirements of the rules of natural justice;

- (e) not acted fairly or reasonably; and
- (f) not complied with the requirements imposed by common law or any relevant legislation.

[29] In the instant matter, Tender Board says that it disqualified the Applicant on the ground that the Applicant did not comply with the tender terms and conditions. By its own admission the Applicant did not submit:

- (a) a letter of good standing from a bank or
- (b) a social responsibility proposal,

in its name. However, the Applicant maintains that it was not a tender requirement that such letter and proposal be in the name of the tenderer.

[30] I find the above argument by the Applicant unpersuasive. Clause 28.1 requires that the letter of good standing from a bank be provided with the bid. It further requires that such letter should indicate the financial viability of the contractor. Given the underlying purpose of the requirement to furnish a letter of such nature, it makes no sense to furnish such letter in a name of any person other than the tenderer. A letter indicating the financial viability of a person other than the tenderer would not help the Tender Board to determine the financial viability of the tenderer. Therefore, such letter does not qualify as a letter of good standing required in terms of clause 28(1) of the conditions of tender.

[31] Equally, clause 42 of the conditions of tender, requires a tenderer to set out a social responsibility proposal. Such a proposal should certainly be in the name of the tenderer, and not in the name of a person other than the tenderer. Submitting a social responsibility proposal by anyone other than the tenderer would not meet the requirements of clause 42 of the conditions of the tender.

[32] Based on the foregoing reasoning, the Applicant cannot argue convincingly that it has complied with all the conditions and specifications set out in the tender documents. I am in agreement with the argument of the 1<sup>st</sup> Respondent when he contends that any-one of the non-compliance with the tender conditions aforesaid, was sufficient to disqualify the Applicant's tender.



[33] The Applicant has argued that the decision of the Tender Board should further be reviewed on the ground that the relevant tender was awarded to a non-existent entity. The 1<sup>st</sup> Respondent indicated that the Tender Board treated Epupa Investech and Epupa Investment Technology as one and the same entity.

[34] On the evidence available, it is clear from the documents that served before the Tender Board, that Epupa Investech and Epupa Investment Technology, were used interchangeably and the company registration No.2004/493, was used consistently respect of both names.

[35] It was not shown that the 5<sup>th</sup> Respondent in using the abbreviated name, intended to deceive or mislead anyone, neither was it shown that anyone was deceived or misled thereby. Indeed the Tender Board indicates that it regards both names as referring to the same entity. I did not find any authority, and none was cited to me, in support of the proposal that using an unofficial abbreviated name, in the circumstances, constitutes a ground for review.

[36] On the basis of the foregoing reasoning, I find the argument of the Applicant that the tender was awarded to a non-existent entity, as unsustainable and without merit, and I therefore reject it.

[37] I find that the Tender Board acted fairly, reasonably and in accordance with the law, when it considered and awarded the tender in question. I further find that the Applicant did not meet all the requirements of the tender conditions, and was disqualified on that account.

[38] For the foregoing reasons, the Applicant's application stands to be dismissed with costs.

[39] In the result I make the following order:

- (a) The Applicant's application is dismissed.
- (b) The Applicant is ordered to pay the costs of the 1<sup>st</sup> Respondent.

(c) The Applicant is ordered to pay the costs of the 5<sup>th</sup> Respondent, such costs to include the costs of one instructing and one instructed counsel.

-----  
B Usiku  
Judge

APPEARANCES:

APPLICANT:

J Diedericks  
Of Diedericks & Co Inc.  
Windhoek

1<sup>st</sup> RESPONDENT:

T Chibwana  
Of the Office of the Government Attorney  
Windhoek

5<sup>th</sup> RESPONDENT:

G Coleman  
Instructed by AngulaCo Inc.  
Windhoek