

Det 10 of 2013

- **Refusal to allow an officer to call witnesses even at a late hour before a Disciplinary Committee amounts to unfairness.**
- **When several officers have a share of responsibility in an action or inaction which had bad repercussion on the normal procedures to be taken in a given case, one officer cannot bear the blame and be penalised.**
- **All documents pertaining to a disciplinary hearing must be sent to the Public Body concerned with a sanction to be administered. This includes written submissions of Counsel.**

The Appellant appealed against the decision of the Respondent to suspend him from work without pay for a period of seven working days after he had been called before a Disciplinary Committee. This decision followed the alleged mishandling of the file of one applicant concerning a permit issued to her by a Municipal Council. The Appellant averred that he joined the Municipal Council well after the offence was committed by the applicant. He also averred that after the Building Inspector had sent a Report, the Town Engineer gave him instructions to take action as required. However, since action under the Building Act was time-barred, he wrote to the then Town Clerk for advice on action to be taken. The latter referred the matter to the Permit and Licenses Committee which the Town Clerk himself chaired. The Committee decided to keep the file in abeyance and this decision was maintained until he came before the Tribunal. The Appellant rebutted the averment of Respondent that he could have taken action without having to refer to the Town Clerk. He claimed that it was the practice for the Town Clerk to give his green light for the prosecution of offenders under the

existing law. The Appellant denied the allegation of Respondent that he had kept the file in his custody all the time and that he had brought the file to the Chief Executive on a given date and stressed that, on the relevant date, he was at a workshop outside his place of work.

Further, the Appellant claimed that the validity of the findings of the Disciplinary Committee was not tenable. He was not given a chance to exculpate himself and all his attempts to do so were resisted or not entertained. The Appellant stated that he was so unhappy with the way the inquiry was being carried out that he initiated action and filed an affidavit in the Supreme Court against the Chairman of the Disciplinary Committee. However, he withdrew the case as he received advice that it was premature to do anything and it would be better to await the report of the Disciplinary Committee. The Appellant appealed against the punishment inflicted on him based on the findings of the Committee of Inquiry, which findings were totally biased and unfair.

The Respondent averred that the Appellant failed to act on instruction given to him by the Town Engineer, who was also acting as Head of the Planning Department, as there was no one in that position at that time. Instead, Appellant referred the matter to the then Town Clerk for advice. The Respondent said that this was not required as when an offence has been committed under the Building Act or the Town and Country Planning Act, the Inspectorate Department should take action for prosecution and the Town Clerk had no authority to approve or not approve any move for legal action. Also the Respondent averred that the Appellant had kept the file of the applicant in his custody and did not take action, resulting in financial losses to the Council in terms of rates and additional permit fees. The Respondent found that Appellant had not acted diligently and

instituted disciplinary proceedings against him under Regulation 38 of the Respondent and he was suspended from work without pay for a period of seven days under Regulation 41.

At Appellant's request and in view of the numerous allegations made and of the apparent complexity of the case, the Tribunal summoned witnesses who could shed more light on the sequence of events.

Counsel for Appellant averred that the proceedings against Appellant were an abuse of process as these were taken several years after the facts and the reason for that inordinate delay is that the Chief Executive was not aware of the file until much later. This undue delay caused prejudice to the Appellant. Further, Counsel submitted that the proceedings were biased and unfair due to the behaviour of the Inquiring Officer who refused to hear Appellant's witness and to accept documentary evidence from the Appellant at the inquiry. It was irrational and unjustified for Respondent to prefer the stand of the new C.E.O who is a "layman" to that of the former Town Clerk who is a "lawyer of experience". In fact, the latter's statement to the Tribunal corroborated the version of the Appellant. Also, Counsel said that the appointment of the inquiring officer was null and void as the approval of the Secretary to the Cabinet was not sought as per Regulation 38 (4) of the Respondent. Counsel referred to the attitude of the inquiring officer which was inimical to the Appellant and denied him a fair hearing. Counsel also drew the attention of the Tribunal to the Chief Executive's admission that he did not know about the existence of the file. He added that his failure to amend the decision of the Permits and Licences Committee amounted to "negligence or poor performance at work".

Counsel for Respondent stated that the Appellant was given a fair hearing at the Disciplinary Committee. The Appellant had been able to secure the presence of Counsel throughout the duration of the hearing before the Committee. At no time did the Appellant make any complaint to the Respondent about the conduct of the inquiry or the attitude of the inquiring officer. Further, Counsel stated that Appellant could not shift the blame to other persons and in particular to the Committee of Inquiry and its Chairman. The Appellant himself had “apologised in writing to the Chief Executive for the keeping of the file of the applicant”. Referring to the calling of Appellant’s witness at the Committee of Inquiry, Counsel stated that there was nothing in the transcript to show that the Committee had acted in such an unreasonable, unfair, irrational or procedurally unsound manner on this issue. She found “such averment gratuitous, unsubstantiated and uncorroborated”. Also, Counsel stated that the Respondent took the right decision after the conduct of the inquiry. The penalty imposed on Appellant was appropriate and proportional in all respects.

Before considering the case on its merits, the Tribunal pointed out that the contention of Counsel for Appellant that the approval of the Secretary to the Cabinet was required in accordance with new Regulation 37 (14), to appoint the Chairman of the Committee of Inquiry does not hold, as rightly stated by the Counsel for Respondent. The person appointed is a local government officer and not a public officer. Furthermore, the file came to the surface only after the Permanent Secretary of the relevant Ministry enquired about it. Applicant had committed two offences when she completed her building. First, the building was not according to the building plans approved by the Council and it was in violation of the Building Act. Second, the building encroached on land not permitted, being still agricultural land, and this was an offence under the Town and Country

Planning Act and was liable to prosecution. Nothing was reported all the time that the building was under construction and, even later, after it was completed and already occupied. The Building Inspector requested the applicant, through her agent, to submit amended plans for the building and to apply for a new land conversion permit. The applicant did not do anything and no action was taken while there was still time for action under the Building Act. Instead the Building Inspector waited more than five months to submit his report to the Head of Works Department, i.e. the Town Engineer. He did not submit it to Appellant who was his immediate supervisor. It was only on 14 February 2005 that when the Town Engineer gave instructions to Appellant to take action as required that two years mandatory period available for legal action under the Building Act had lapsed by just one month. Legal action was, however, still possible under the Town and Country Planning Act.

It was noted that Appellant was not yet at the Municipal Council most of this time. Once the decision of the Town Clerk was taken to send the file to the Permit and Licenses Committee, Appellant had his hands tied by the decision taken by the Head of the Municipality and the Committee. That decision was never re-visited. Later, the Outline Scheme was amended and the land encroached upon automatically came under the permitted zone for residential purpose. Legal action against applicant was no more possible. The then Town Clerk had moved to another Municipal Council and the new Chief Executive had come to the Municipal Council. The Tribunal found that up to this point Appellant could not be accused of any fault for which he can be solely responsible.

The Tribunal found that the sequence of events in the handling of the file of applicant which led to disciplinary action against Appellant was mind boggling. It

appeared that everybody was handling the file with utmost care and did not want to burn their hands. The charge against Appellant by the Chief Executive in his letter “for having failed to take legal action against one applicant..” did not hold. The Tribunal determined that the Appellant’s responsibility, if any, could only have arisen later when legal action under the Building Act and the Town and Country Planning Act was no more possible. The Appellant should have initiated action to send the valuation assessment form to the Valuation Department. He did not do it and instead kept the file in his custody until the new Chief Executive looked for it.

Further, the Tribunal pointed out that what happened in this case was disturbing. The Appellant’s contention was that he did not have a fair hearing before the Committee. There was an averment by Appellant that his two witnesses were not heard. From the record of the Disciplinary Committee, it could be seen that the motion of Counsel for Appellant to call a witness was refused because it was allegedly made late in the day. The refusal in this context was unwarranted as the reason was lame. Also, the Tribunal recommended that the Respondent refrain in future from designating an officer of a local authority of the same rank as any party involved to investigate in a disciplinary inquiry.

The Tribunal determined that another disturbing factor was that written submissions sent by Counsel for the Appellant to the Committee were found missing from the documents that were sent to the Respondent by the Committee of Inquiry. Since the Respondent makes the final decision with regards to the sanctions to be taken against a public officer following a Committee of Inquiry, it is essential that all relevant documents be duly sent to the Respondent for its consideration. Also, the Tribunal highlighted that if the points raised by the

Appellant as regards the proceedings of the Committee of Inquiry were true, and the Tribunal found on a balance of probabilities that they were, then the whole inquiry process was vitiated and the Appellant was treated in an unfair manner.

Further, the Tribunal noted that the Chief Executive stated that he only came to know about the problem of the case of the applicant when the Permanent Secretary of the Ministry phoned him. It was surprising that it took him four years after he joined the Municipal Council to be aware of such a fact. On a final note, it seemed to the Tribunal that the Building Inspector, the Town Engineer, the then Town Clerk and the Permit and Licences Committee as well as the new Chief Executive all had their share of responsibility in the string of actions or rather inactions in this case as there seemed to have been offences under the Building Act and the Town and Country Planning Regulations which are equal or more serious than the property valuation issue.

The Tribunal found that it would be unfair to maintain the penalty against the Appellant. The Tribunal quashed the decision of Respondent to suspend the Appellant and directed the Respondent to take immediate action accordingly so as to give effect to the Determination of the Tribunal. The appeal was allowed.