

- **The Respondent bases itself on Confidential Reports of officers before offering them promotion.**
- **Appellants must substantiate all allegations made as the onus is on them to prove their case.**

The Appellant, a Principal Officer is appealing against the decision of the Respondent to appoint the Co-Respondent as Chief Officer. His main grounds were as follows: he had repeatedly drawn the attention of the authorities since 2005 to date, to the unprofessional and unethical conduct of the Co-Respondent; he had refused to obey lawful instructions in that he refused to take charge of the morning shift; he had an unsatisfactory sick leave record and was threatened with retirement in the public interest; the he had systematically obstructed the work of his colleagues, incited inmates to rebel, to create mischief and in short to sap the morale of his colleagues.

In his Statement of Defence, the Respondent averred that the appointment of the Co-Respondent, was by way of promotion and was made upon recommendation of the Responsible Officer and after consideration was given to the requirements of the Scheme of Service and the provisions of Regulation 14 (1) of the Public Service Commission Regulations. It is further averred by the Respondent that the Co-Respondent was taken to task by the Respondent for his failure to take charge of the morning shift on 08 April 2010. The Respondent was, by letter dated 10 June 2010, from the Responsible Officer so informed and that “disciplinary action may be initiated against him”. In view of the Co-Respondent’s record of sick leave, he was medically examined by a Medical Board and was found fit to discharge the duties of his job. In the same way, he was informed by the Responsible Officer to improve

his attendance at work falling which action may be initiated for his retirement in the public interest in accordance with Regulation 39 of the Public Service Commission Regulations. Learned Counsel for the Appellant submitted that it is agreed that the Co-Respondent is the senior most Principal Officer and his experience as Principal Officer in a substantive capacity for a period of 2 years is also not in dispute.

In his Statement of Defence, the Co-Respondent averred that despite all the allegations made against him, the Public Service Commission proceeded with his nomination as Chief Officer and that he had not been the subject of any complaints from his colleagues save from the Appellant, who is acting *mala fides*. There has been no official report of any incitation to rebellion or any breach of discipline at the workplace of the parties.

The Tribunal heard the statements under oath of two witnesses. One of them was unable to produce certain documents at the request of learned Counsel of the Appellant, but it is agreed that the Co-Respondent had been sent a letter regarding his record of sick leaves and his refusal to take charge of the morning shift on 08 April 2010 by the Responsible Officer. The representative of the Respondent testified that the post was filled by promotion and admitted two important matters regarding the sick leave taken by the Co-Respondent and a threat of retirement in the public interest where he was strongly advised to improve his attendance.

The Tribunal has also determined that the Respondent had not shown some sort of favouritism to the Co-Respondent in its appointment exercise. There was nothing to point to this conclusion when the Tribunal examined all

the evidence placed before it. However much the Tribunal would like to sympathise with the Appellant on the issue of leave taken by the Co-Respondent and the fact that the latter failed to take charge of the night shift on one occasion, it could not otherwise be denied that the Co-Respondent satisfied the other conditions for appointment to the post of Chief Officer as laid down in the Scheme of Service. The Tribunal determined that the appeal could not be allowed on any of the grounds put forward by the Appellant in his Statement of Case. The appeal was accordingly dismissed.