

LGSC Regulation 43(1) provides that “The Commission may declare the office of a local government officer to be vacant or summarily dismiss the officer where the officer is absent from duty without leave or fails to resume duty on expiry of leave”.

The Appellant lodged an appeal before the Public Bodies Appeal Tribunal as his post had been declared vacant due to absence without leave.

Appellant’s Grounds of Appeal were as follows:

“(1) The Respondent erred in relying on the fact that the Appellant was absent without leave from the ... until the ... as the Appellant reported to work on the ... but was asked to go home by the Respondent.

(2) The Respondent did not deal with the Appellant in a just and fair manner.

(3) The Respondent acted in breach of Regulations and its action is procedurally improper;

(4) The Appellant was absent due to suffering from a dependency syndrome hence justified, and in the circumstances it was unreasonable for the ... District Council (hereafter the Respondent) to declare his post vacant”.

It must be noted that originally the case was entered against the District Council, and the Respondent had raised a preliminary objection in law regarding the jurisdiction of the Tribunal. Later on, it was agreed that

Appellant could change its heading and put the LGSC as Respondent. In fact, this issue had been the subject of a Ruling of the Tribunal in a previous case in which it was held that if the action was taken by a Ministry or a Local Authority acting under delegated powers, the Appellant should be able to substitute the relevant Public Body and, if need be, also amend the body of the pleadings.

The Respondent averred in its Statement of Defence that: “according to records, Appellant has been absenting himself regularly and frequently from work”. His record of absence for a period of three years on the grounds of illness was annexed and it reveals a very impressive series of regular absence, often with late submission of a medical certificate. It was averred that it was never stipulated that the absence was due to the specific syndrome.

The Respondent took note that the Appellant stated that he was hospitalised 6 times but never for problems related to the syndrome from which he was allegedly suffering.

In his written submissions at the stage of Arguments, Counsel admitted that the employer had sent the required notices as per the Respondent Regulations but stated that since Appellant was suffering from a particular syndrome, he could not have received them as he could neither read them nor understand their contents.

In his written submissions, Counsel related facts which were not all stated by Appellant himself. Unfortunately, there was no reference made to any precedents which could have helped the Tribunal.

Counsel for the Respondent, in his written submissions, stated clearly that there was no evidence that Appellant was suffering from the “disease” in a chronic manner while he was absenting himself from work. He laid emphasis on the fact that Appellant not only did not attend work, but he failed to reply to the letters issued to him regarding imminent disciplinary action to be taken against him. Worse still, while the Disciplinary Committee was working on its findings, the Appellant was again absent from work without leave. He stated that the Respondent could have there and then declared his post vacant but gave him a last chance, asking him to attend his work, failing which his post would be declared vacant. He again ignored the said notices.

In the meantime, Counsel for Appellant wanted to find an amicable settlement. As the Tribunal is not mandated to act as mediator, parties were allowed to discuss between themselves and the Hearing was withheld.

The case finally came for Hearing after Counsel on both sides did not find any solution and Appellant maintained his appeal. His Counsel decided to call him to depone only on what happened after a specific date, that is, on point 1 of his Grounds of Appeal. He deponed that on that particular

date he did not work as he was sick. But the following day, he went and looked for the attendance book but could not find it. He went to his office and met the Assistant Personnel Officer who said “ *Ouontan res lacaze, alle lacaze, alle amisé ou pou gagne ou lettre*”. So, he went back home and waited for the letter which came. It said that his post had been declared vacant. But on cross-examination, despite being given several chances to reply clearly and correctly to the question regarding the date when he was told to go home and wait for his letter, he was unable to remember clearly what had happened. However, he said that he had the letter with him when he went to see one officer. When preparing his Grounds of Appeal, he also agreed that he had given the date as the date that he was told to go home.

In his final submission, Counsel for Appellant referred to LGSC Regulation 43. While admitting that Appellant had a history of unauthorised absence, Counsel submitted that if the Tribunal believed him when he said that he had gone back to work after the day he had been absent and was not allowed to do so, then Regulation 43 would not apply.

Counsel for Respondent submitted that Respondent strongly denied that Appellant had reported for duty on the relevant date.

The Tribunal concluded that this was a very sad case as, whichever way any reasonable person would look at the facts averred by both parties, one inevitable, undisputable fact was at the heart of the predicament of

Appellant: He had a long history of absence. According to his Counsel, he was suffering from an acute dependency syndrome and this was a “disease”. Respondent, however, averred that there was never any evidence of this “disease” anywhere and none of his rare medical certificates referred to this.

The whole case, in fact, rested on the exact dates when he tried to attend duty but was refused to do so. During cross-examination, he was unable to confirm the version that on the next day following his absence he went to report duty and was refused access. He said on the contrary that he went with his letter, which implied that he must have gone on the date as averred by him in his Grounds of Appeal and Statement of Case. But in any case, it was after the letter had been received by him.

LGSC Regulation 43(1) provides that “*The Commission may declare the office of a local government officer to be vacant or summarily dismiss the officer where the officer is absent from duty without leave or fails to resume duty on expiry of leave*”.

There had never been any evidence to the effect that Appellant was suffering from a dependency syndrome and was therefore ill. We only have the Grounds of Appeal to that effect but no expert evidence either produced to Respondent at the relevant time, or even produced to the Tribunal.

On the other hand, it was amply clear from the Statement of Defence that he had been given several opportunities to give explanations. A decision to declare his post vacant had even been withheld but, as he continued to be absent, the procedure was applied and his post was finally declared vacant.

Counsel appearing for Appellant, in fact, admitted that the procedure had been followed but wanted to see if the Respondent would be prepared to make him retire on medical grounds.

In the circumstances, it could not be said that Respondent “did not deal with Appellant in a fair and just manner” nor that its actions were procedurally improper or unreasonable.

The appeal was therefore dismissed.