

Seniority is not a predominant criterion according to LGSC Regulations 13(1) b which takes into account “qualifications, experience and merit” first.

Four officers had been appointed to the post. The Appellant appealed against the appointment of Co-Respondents No.2, 3 and 4 on the grounds that “candidates who were junior to me have been appointed” and that he was more meritorious. Respondent included Co-Respondent No.1 in its Statement of Defence but no specific reference was made to Co-Respondent No.1 who had not been summoned.

Originally this case was consolidated with that of another Appellant who had raised similar issues regarding the same appointment exercise. But the other Appellant withdrew his appeal as he had been appointed in the meantime.

Appellant gave a detailed Statement of Case, expatiating on his grounds. Respondent raised a Preliminary Objection with regard to certain points which did not form part of his Grounds of Appeal. It was decided not to argue the preliminary point but to raise it at the Hearing.

In the Grounds of Appeal, Appellant detailed the history of his career with emphasis on the qualifications he held and his experience:

He concluded that

“Given my various job related qualification enumerated at paragraph No 3 to 9 and the present strategic position I am holding as the main ... officer of the ... department of the both district councils and also that I have been performing higher duties as highlighted above. I feel, I do possess all the

merit than the Co-Respondents to be qualified for promotion to the grade of... .

I do therefore deeply feel that my non-appointment as ... on 28 January, 2013 by the Local Government Service Commission has been causing me serious prejudice to my professional career”.

During his cross-examination, Appellant admitted that he had been interdicted on...for 6 years but had been reinstated to that same date after the Supreme Court had found him innocent. He argued that he had been penalised by this interdiction in that his number of years of experience had decreased and also that he had very little chance of getting actingship. However, he agreed that actingship in itself does not entail automatic promotion.

Regarding the points raised on his special duties to which Counsel for Respondent objected, he was allowed to explain that this constituted higher duties for him. He said that he was in charge of the special Unit and sometimes advised the District Council on these matters.

The Respondent gave a classical Statement of Defence to the effect that Appellant was eligible and was interviewed but was not selected. The fact that he was indeed senior did not give him any edge as Respondent complied with Regulation 13(1) (b) of the LGSC Regulations 1984 and seniority comes after qualifications, experience and merit. It was averred that the special duties referred to were within the duties of his grade, which Appellant denied.

Co-Respondents 2, 3 and 4 had submitted Statements of Defence and solemnly affirmed to the correctness of same. They explained that they were

meritorious and had never had any adverse reports. They were not cross-examined.

The Appellant relied only on his seniority to found his Grounds of Appeal. Nevertheless, the Tribunal asked Respondent to communicate under confidential cover the criteria, weightage and markings which were relevant for the exercise. The Respondent confirmed that the criteria were qualifications, experience, merit and performance at the interview. Unfortunately, the individual weightage and markings were not provided and only the total marks allocated were available regarding the overall performance at the interview. Appellant and Co Respondents were all eligible as regards the requirements of the Scheme of Service. Candidates could apply if they reckoned “four years service in the grade and possessing the diploma in ...” or “six years service in the grade and possessing the certificate in ...”.

Since it is clear according to LGSC Regulation 13(1)(b) that, in appointment exercises, the LGSC must take into account “qualifications, experience and merit before seniority”, the Grounds of Appeal of Appellant have not been proved. In this case, the difference in markings between the last appointee and the Appellant, including the other Appellant who was subsequently appointed, was marginal. There was no evidence that the exercise was in any way unfair, unreasonable or illegal.

The Appeal was therefore dismissed.