

- There is no supersession when there is a selection exercise.
- When candidates are all at par regarding qualification, Respondent will assess the suitability of candidates through the interview.

The Appellant is appealing against the appointment of 5 Co-Respondents by Respondent. He averred that the Respondent had failed “*to apply properly, if at all, the provisions of sec 14(1) (a), sec 14 (1) (c) and sec 14 (5) of the Public Service Commission (Amendment) Regulations 2010.* He further claimed that “*The Commission has failed to give due consideration to my application in spite of my qualification, experience, merit and suitability, and for all other reasons, particulars of which will be further included in my Statement of Case that will be duly filed hereafter*”. The Appellant found that the decision of the Respondent was manifestly unfair and unreasonable and had caused him undue prejudice.

The Appellant stated that he was “*superseded by other officers without any apparent, express or just cause*”. The Respondent had acted irrationally when it took the decision to appoint the Co-Respondents “*having regard to their application and relative lack of merit with regard to experience and qualifications as compared to the particulars contained in the application of the Appellant. The considerations of seniority have had preponderance over other considerations of merit and qualification*”.

The Respondent averred that the post was filled by selection from officers who reckon at least six years' service in a substantive capacity in the grade and who possess a degree from a recognised institution or a Diploma together with a degree in Administration or Economics from a recognised

institution. The Respondent rebutted the averment of Appellant that there was supersession as the vacancies were filled by selection and not by promotion. The Respondent submitted that it acted as per Regulation 14 (1) (c) of the PSC Regulations, the Scheme of Service for the post and performance at the interview. The Appellant was not selected as the Co-Respondents were found more meritorious.

One of the Co-Respondents who had filed a Statement of Case did not find anything wrong in his appointment and stated that the Appellant had not adduced any evidence to that effect. He found that the appeal of the Appellant was *“frivolous, based on irrelevant consideration, misconceived and has no merits”*.

The Tribunal found that the Appellant could not claim that there was supersession in the filling of the vacancies as the post was filled by selection. The Tribunal had sought information from the Respondent on the criteria that were used by the selection panel and found that qualifications and additional relevant qualification were not taken on board by the selection panel. It seemed that the Respondent had not given importance to the qualification issue as they were all eligible and they met the basic qualification criterion. This did not constitute a problem in this particular case as Appellants and Co-Respondents were all officers in the same grade and were *pari pasu* as regards qualification. However the Tribunal invited the Respondent to address its mind as to whether qualifications and additional qualification should not be important criteria. The Respondent has assessed them on other criteria which would determine the suitability of the candidates.

The Tribunal also determined that the Appellant had not shown to the Tribunal that the Co-Respondents were less meritorious for appointment. In

the same interview exercise, the Respondent had established a merit list from which subsequent appointments were made while this appeal was proceeding. There was another appointment made and then there was another vacancy which led to the appointment of the Appellant to the post.

The Tribunal considered that it might be an exercise in futility to probe further into this, the more so that the Appellant had been appointed subsequently. The appeal was set aside.