

A Public Body may appoint an officer from a merit list which is still valid and need not have recourse to a new interview.

The Appellant averred that she had been appointed officer at principal level in 2001 and she had eleven years experience in this position. Appellant averred that she was assigned duties in the relevant post. She stated that her assignment of duties was then terminated upon a recommendation of the Chief Executive of the Municipality where she was posted and she was reverted to her post at principal level at another Municipality where she was still posted. She claimed that she was never told that her transfer to the other Municipality was a disciplinary action against her. She stated that she never had any adverse report against her as officer at principal level. She claimed that it was the practice that, for the filling of the post in question, there was always an interview. The Appellant requested the Tribunal to quash the decision of the Respondent or make such other order as it deemed fit on the grounds that she should have been called anew for an interview *“for a fair chance of an evaluation by the Respondent of her qualifications, experience and merit, particularly as regards her experience as Acting in the relevant post and her enhanced merit through the award of a relevant University degree course”*.

The Respondent averred that the post was filled by selection as per the Scheme of Service for the post. The Respondent conceded that the Appellant had performed the duties on several occasions but contested parts of the Statement of Case of Appellant as these were not in the original Grounds of Appeal. The Respondent denied that it was the current practice that each time posts were filled in the local authorities, there was an advertisement and an

interview of candidates before the posts were filled. In fact, the Respondent could establish a merit list following an interview from which the Respondent could draw for filling of posts as and when vacancies arose. The merit list was valid for a period of two years. The Appellant was wrong to question this practice and to make it one of the Grounds of Appeal, if not the main one. The Respondent stated that a proper interview and assessment was done following the advertisement and the appointment of Co-Respondent could not be challenged.

The Respondent denied that Appellant had diligently and conscientiously fulfilled the assignments of duties to the satisfaction of her superiors. The Respondent stated that the Appellant was reverted back to her post as various shortcomings were reported by the Responsible Officer of the Municipality during Appellant's period of actingship and these shortcomings were brought to the attention of Appellant at the relevant time.

The Appellant could not raise the issue of legitimate expectation which was not raised in the Grounds of Appeal. The Respondent claimed that it had in the selection exercise taken into consideration the maintenance of efficiency necessary in the Local Government Service and adhered to Regulation 13 (1) (b) of the LGSC Regulations which required the Respondent to take into account qualifications, experience and merit before seniority in the Local Government Service.

The Tribunal determined that the stand of the Appellant that Respondent had not carried out a fresh advertisement and allowed officers to apply and be interviewed anew was not correct as the Respondent had the discretion and power to decide as to whether to carry out a new selection exercise or select from the merit list. It is not the practice to always have fresh

advertisements and Appellant could not contest this. The Tribunal also determined that it is clear that in a selection exercise seniority gives way to other criteria as provided for by LGSC Regulation 13 (1) (b). In the assessment of candidates for the post, there were a number of criteria that the selection panel used and the final choice of best candidates was based on the overall markings. Also it was determined that assignment of duties is done for administrative convenience and could not give the Appellant any claim for substantive appointment.

It was noted from confidential information provided to the Tribunal that the Co-Respondent was also assigned the duties of the relevant post on a number of occasions and in terms of experience, the Appellant and the Co-Respondent were ranked *pari passu*. Performance at the interview made the difference and this was to the advantage of the Co-Respondent. The shortcomings of the Appellant were not to be thrashed out before the Tribunal which does not need to adjudicate on this issue.

The Tribunal found that an exercise of selection had been carried out. The Appellant could not challenge the decision of the Respondent to appoint the Co-Respondent from the merit list which Respondent was fully empowered to do. There was no evidence that Respondent had erred in the recruitment process. The appeal was set aside.