

Det 18 of 2014

Appellants cannot found their appeals only on their own qualities but must show that the Co Respondents had less qualities, whether in terms of qualifications , experience and merit. Seniority alone is not a determining factor during an interview.

The Appellant is appealing against the decision of the Respondent not to appoint him to the post of DIR and appointing the Co-Respondents instead.

Appellant's Case

The Appellant averred that "*the decision of the Respondent not to select him for the post of DIR despite him satisfying all the requirements and exigencies of the post, and having the experience required for the post, was most unfair and unreasonable*".

The Appellant was holder a special diploma "He joined the public service in ... and had been DIR at the Ministry of ... for more than 2 years. He is appealing against the appointments of the Co-Respondents " *...to the extent that the list does not represent a fair ranking commensurate to the Appellant's experiences, suitability and seniority*". Based on his number of years of experience and aptitude, he should have been among one of the candidates selected for the said post.

He further averred that since joining the Ministry of ..., his monthly report filed by the ...Officer has always been 'very good'. He stated that " *...on issues of seniority, job knowledge, experience, personality as well as aptitudes and in light of the monthly returns filed, unequivocally justify him being selected for the post of DIR, thus causing his legitimate expectations to be thwarted*"

The Appellant prayed that the decision of the Respondent to appoint the Co-Respondents to the post of DIR be quashed and that he be appointed to the post for the reasons he had set forth in his appeal.

Respondent's Case

The Respondent, in a plea *in limine litis* moved that the prayer of the Appellant requesting the Tribunal to order the Respondent to appoint him be set

aside as the Tribunal has no jurisdiction to entertain same. The Respondent averred that the post of DIR was filled by selection. The Appellant had set out, as one of his grounds of appeal, his seniority position but this ground did not stand as, in a selection exercise, seniority is not a determining factor.

The Respondent stated that the Co-Respondents had passed their Certificate of Primary Education (CPE). This was a core requirement in the Scheme of Service. The Appellant did not specify in his application form to Respondent that he was not holder of the CPE. He was called for the interview and it was only then that the interview panel found out that he had not passed his CPE. He was however interviewed after he showed that he was literate, as the Scheme of Service included a note that those who were not holder of the CPE would be considered if they showed that they were literate.

The Respondent conceded that the Appellant had a special Diploma. However, the Co-Respondents also had additional qualifications. Co-Respondent No 2 had studied up to GCE 'O' level. Co-Respondent No 3 studied up to Form IV and had followed a special relevant course.

The Appellant was assigned the duties of DIR for about 17 months at the Ministry of ... as at the time of the interview. Co-Respondent No 1 had been DIR of since 2009. Co-Respondent No 2 had 9 months experience as DIR while Co-Respondent No 3 had 20 months experience.

The Appellant averred that there was no adverse report against him. In fact he stated that he had 'very good' reports but Respondent stated that there was no record at the Ministry of ... regarding such reports.

The Respondent submitted that the Appellant had nothing to show that he was more qualified, more experienced and more deserving than the Co-Respondents. The interview was carried out and criteria were used to assess the candidates. The claim of the Appellant that he was senior to the Co-Respondents was not determinant in a selection exercise. The Respondent moved that the appeal be set aside. The Respondent agreed to request the Ministry to communicate the criteria, weightage and markings and copies of the log book for the eyes of the Tribunal only.

Determination

The fact that the post is filled by selection is not disputed. It seems that the Appellant was not aware of certain facts when he lodged his appeal and only came to know about them during the proceedings and at the hearing. In cross-examination, the Appellant conceded that he was not aware that the Co-Respondents had the CPE which was a core requirement of the Scheme of Service and that they had additional qualifications. He knew that the Co-Respondents were DIR but did not know for how long. He also did not know whether the Co-Respondents had adverse reports against them.

In short, the Appellant has not brought in elements in support of his grounds of appeal which will allow this Tribunal to adjudicate in his favour. The Appellant probably genuinely believed that since he was performing the duties of DIR at the Ministry he should have been appointed. However, he has not taken into account the merits of the Co-Respondents which Respondent unfolded at the hearing.

The confidential documents shared with the Tribunal by the Ministry has not brought in any positive information concerning Appellant.

The Tribunal also agreed with the Respondent that the power to appoint in the public service is vested with the Respondent under section 89 of the Constitution and the Tribunal cannot interfere with that power.

The appeal is set aside.