

Det 17 of 2015

Seniority and assignment of duty in the post are not criteria which are relevant in a selection exercise.

Applicants must prove that the Co-Respondent did not deserve to be appointed.

This is an appeal against the decision of the Local Government Service Commission (LGSC) to appoint Co-Respondent as CBUITR.

Appellant's Case

Appellant based his appeal on the following grounds:

1. That he had more experience as BUITR in the Local Authority, having been appointed to that post on ..., whereas Co-Respondent was appointed some three years later; **(ground b)**
2. That he held more experience as SBUITR in the Local Authority, having been appointed to that post on the ..., whereas Co-Respondent was appointed on or about one week later; **(ground c)**
3. That he held experience as CBUITR, having been assigned the duties in that post since ... at the Municipal Council of **(ground d)**

During cross-examination, Appellant agreed that Co-Respondent was appointed SBUITR on ... but was not aware that Co-Respondent had been assigned duty on several occasions.

Respondent's Case

In its Statement of Defence, Respondent averred that both Appellant and Co-Respondent were fully qualified under the Scheme of Service and were convened for an interview.

The Respondent averred that experience was not the sole criterion for selection to the post.

The Respondent also stated that assignment of duties “would not give him (Appellant) any claim to permanent appointment in the post. It laid emphasis on the fact that the appointment is made by selection and that it followed all the procedures and the appointment was made in accordance with Regulation 13(1)(b) of the Local Government Service Commission Regulations. It averred that the appeal had no merits and should be set aside.

Respondent's representative could unfortunately not reply to several questions relating to the interview but averred that the criteria of selection were qualifications, experience and performance at the interview. Qualifications did not mean any specific academic qualification but qualification to perform the duties listed in the Scheme of Service.

Co-Respondent's Case

Co-Respondent solemnly affirmed as to the correctness of his Statement of Defence in which he provided details of the several times when he was assigned duties, the most relevant being as BUITR on several occasions in He was appointed as BUITR at the Municipal Council of ... in ... and SBUITR at the Municipal Council of ... in.... He listed his qualifications.

Co-Respondent also averred that he had more experience as he was “manning the ... Section” at ... for more than a year.

Co-Respondent explained that he was not assigned duties as CBUITR at the Municipal Council of ... as he was then working at the Municipal Council of

He stated that he had submitted all his qualifications when he submitted his application form. He was even questioned on one of them.

Determination

Appellant having based himself on experience and assignment of duty was bound by these grounds to prove his case against Co-Respondent. He could not raise new grounds. Here what he termed experience was in fact an issue of seniority, specially as Appellant's ground (c) referred to the appointment of Co-Respondent as SBIR one week after his own appointment. Co-Respondent explained that he received his letter two days later. This has no bearing on experience gathered but merely relates to seniority.

Ground (d) refers to assignment of duties which is not accepted as it is the most senior officer who is usually called upon to be assigned duty. Further administrative convenience will also prevail and someone who is already "in place" will be preferred to someone who is in another local authority. The assignee is always told that assignment will not give him any right to be appointed in the said post on a permanent basis.

Ground (a) is not a ground as it refers to the fact that Appellant satisfied all the requirements of the advertisement, which was also the case for Co-Respondent.

Ground (b) relates to seniority which is not the most important criterion for a selection exercise.

The onus to prove his case lies on the Appellant who has unfortunately not been able to show that Co-Respondent was not deserving.

The Tribunal, in the circumstances, did not feel that it was important to call for more information from Respondent.

The appeal is set aside.