

Det 21 of 2015

To have recourse to a disciplinary sanction under Regulation 36, the LGSC must bear in mind that the hearing must not be a mere formality. Further the said Regulations only concern offences committed which are not minor offences not entailing fraud and dishonesty.

The Appellant has appealed to this Tribunal against the decision of the Respondent to dismiss him from his post of Supervisor, REC at the Municipal Council of ... He received a letter from the Chief Executive of the said Council dated ... which reads as follows:

“I am directed by the Local Government Service Commission to inform you that the Commission has taken note that you were on ... sentenced by the District Magistrate of the ... Court to pay a fine of Rs 2,000/- plus Rs100/- as costs for the offence of ... (related to his conjugal life) The Commission has also noted that you have a heavy disciplinary record, in that, for the period ..., you have been reprimanded twice and severely reprimanded four times. Your increment was deferred for a period of six months subsequent to your conviction before the District Court of ... for (another offence)”. It was also noted that most of the time you failed in your supervisory duties, leaving your site of work without authorization, refusing to carry out your duties and failing to record your attendance.

In light of the above and in exercise of the powers vested in it by Section 4(1)(b) of the Local Government Service Commission Act 1975 and in accordance with the provisions of Regulation 36 of the Local Government Service Commission Regulations 1984, the Commission has decided to dismiss you forthwith from the Local Government Service.

You are hereby dismissed from your post of Supervisor, REC from the Local Government Service.

You are requested to acknowledge receipt of this letter by signing and dating on the enclosed copy thereof.

Appellant's Case

The Appellant was a Supervisor, REC at the time of his dismissal. He joined the local government service at the Municipal Council of as ... on ... Subsequently, he was promoted to different posts.

The Appellant challenged the decision of the Respondent to dismiss him on the following grounds of appeal:

- The offence of ... referred to in his letter of dismissal was not of such a nature as to warrant dismissal
- The Appellant had already been dealt with by the Municipal Council having regard to the so-called “heavy disciplinary record” and conviction of “...” invoked in the grounds for dismissal
- Performance at work in general, the fourth reason for dismissal, had already been addressed and dealt with by the Municipal Council

The Appellant conceded during cross-examination that he was given two reprimands and four severe reprimands and he also conceded that his attention was drawn to his performance at work but he did provide written explanations to the Municipal Council on the issues raised.

He was given a hearing after he was sentenced by the Court but he was never informed that there was a possibility that disciplinary action was to be taken against him with a risk of dismissal.

When the letter of dismissal was issued to him he was not made aware of his right to appeal to the Local Government Service Commission (LGSC) and/or to the Public Bodies Appeal Tribunal against the decision to dismiss him.

The Appellant averred that that the decision was wrong in law. He was dismissed under LGSC Regulation 36 which referred to action taken when an officer was convicted and sentenced by a Court. This only referred to the two police cases referred to in the letter of dismissal. The Respondent could not dismiss for the other reasons given as these should have been considered under LGSC regulation 37 which required the Respondent to set up a formal disciplinary committee to hear him before any sanction was taken.

The Appellant, while recognising the record against him, averred that inspite of all these he continued to be employed by his employer and was offered promotions.

The Appellant found the decision of the Respondent to be unfair and unlawful and invited the Tribunal to quash the decision of the Respondent.

Respondent's Case

The Respondent did not deny the averment of the Appellant as to his various appointments at the Municipal Council but drew the attention of the Tribunal to the fact the Appellant's appointments to the post of ... and that of Supervisor were done after a selection exercise.

The Respondent averred that following the Court sentence in the case of ... the Appellant was given a hearing at the Municipal Council on wherein he accepted his guilt. The hearing was not of a disciplinary nature. However, the hearing was given following the advice of the Respondent to Responsible Officers contained in Circular No 9 of 2008 that a hearing be given to officers convicted in Court and the proceedings of the hearing be sent to the Respondent together with their recommendations.

In its Statement of Defence, the Respondent went over the shortcomings of the Appellant and actions taken against him, which were taken up in the letter of dismissal. Respondent emphasised that it took into consideration the heavy disciplinary record of the Appellant, in whole and not separately and considered its decision to be only fair, just and reasonable.

As to the averment of the Appellant that he was not told of his right of appeal, the Respondent asserted that local government officers were informed by a circular letter No. 6 of 2009 that should they feel aggrieved by any decision made by the LGSC pertaining to an appointment exercise or to a disciplinary action, they may appeal to the Public Bodies Appeal Tribunal. The fact that the Appellant appealed to the Tribunal on time only confirms that Appellant was aware of his right.

The Respondent moved that the appeal had no merits and should be set aside.

Determination

The fact that the Appellant has a heavy disciplinary record is not disputed. This was not denied by the Appellant. The whole issue rests on the way the Respondent proceeded to dismiss the Appellant. The Appellant's Counsel argued that the proper procedure was not followed and the decision must be quashed.

The Tribunal has listened carefully to the two parties. There was a hearing given on the This was done at the level of the Municipal Council and the Responsible Officer submitted the minutes of the hearing to the Respondent and he recommended that a reprimand be given to the Appellant. It was clear that the hearing concerns only the Court case of ... and nothing else. Evidence was adduced that the Responsible Officer recommended a reprimand.

The Respondent does not have to limit itself to the recommendation of the Responsible Officer. On its own and without consulting the Responsible Officer, Respondent went into the file of the Appellant and used the past disciplinary proceedings against the Appellant to dismiss him under LGSC Regulation 36. The letter of dismissal to the Appellant clearly shows that other issues were considered in addition to the two criminal cases mentioned in the letter.

The Tribunal finds that the Respondent has committed a serious procedural error.

LGSC Regulation 36 reads as follows:

36. (1) *Where a local government officer is found guilty of a criminal charge likely to warrant disciplinary proceedings, the responsible officer shall forthwith forward to the Secretary a copy of the charge and the proceedings relating thereto together with his own recommendation.*

(2) *The Commission shall determine whether an officer to whom paragraph (1) relates should be dismissed or subjected to some disciplinary punishment other than dismissal or whether his service should be terminated in the public interest if the*

proceedings disclose grounds for doing so, without any of the proceedings prescribed in regulation 37, 38 or 39 being instituted.

(3) Disciplinary proceedings subsequently to a conviction shall not normally be taken in respect of minor offences under the Road Traffic Act and of minor offences not entailing fraud or dishonesty and not related to an officer's employment.

It is obvious, therefore that only the two police cases mentioned in the letter of dismissal are concerned by LGSC Regulation 36.

The Respondent has considered matters which it should not have considered when envisaging action and actually taking action under its regulation 36. If the Respondent had contemplated disciplinary action against the Appellant on the other grounds of dismissal it should have addressed itself to its Regulation 37 which says:

37. (1) Where a responsible officer considers it necessary to institute disciplinary proceedings against a local government officer on the grounds of misconduct which, if proved, would justify his dismissal from the local government service, he shall, after such preliminary investigation as he considers necessary and after seeking legal advice on the terms of the charge or charges to be preferred against the officer –

(a) forward to the officer a statement of the charge or charges preferred against him together with a brief statement of the allegations, in so far as they are not clear from the charges themselves, on which each charge is based: and

(b) call upon the officer to state in writing before a day to be specified by the responsible officer any grounds on which he relies to exculpate himself.

(2) Where the officer does not furnish a reply to any charge forwarded under paragraph (1) within fourteen days or where in the opinion of the responsible officer he fails to exculpate himself, the responsible officer shall

immediately forward to the Secretary copies of his report, the statement of the charge, the reply if any, of the officer and his own comments thereon.

(3) Where, upon consideration of the responsible officer's report, the Commission is of the opinion that proceedings for the dismissal of the officer should be continued, it shall appoint a committee to enquire into the matter.

(4) A Committee appointed under paragraph (3) shall consist of not less than three members as the Commission may appoint after having due regard as far as possible to the standing of the officer charged. One member of the Committee shall be a public officer who is or has been a barrister and the other members Local Government Officers who shall not be in the service of the same Local Authority as the officers charged.

The Respondent cannot, therefore, take action on the other grounds unless and until it sets up a proper disciplinary committee as per its own regulations. The Appellant would then have been given a chance to be heard as natural justice demands and the law requires.

The Respondent did not accept the recommendation of the Responsible Officer for a reprimand which is the lowest punishment under LGSC Regulations and went for the highest one which is dismissal. The Respondent is perfectly entitled to do that, but it must do so within the boundaries of its own regulations. It did not. There was no disciplinary committee.

We therefore turn our attention to whether the offence of a can justify on its own a dismissal which deprives an officer of his livelihood. Section 36(3) provides that *disciplinary proceedings subsequently to a conviction shall not normally be taken in respect of minor offences under the Road Traffic Act and of minor offences not entailing fraud or dishonesty and not related to an officer's employment.* The Tribunal also had the chance to hear the spouse of the Appellant on the matter and she was quite convincing and gave the circumstances leading her (disagreement with her husband which led to the offence committed by him). She is presently living with Appellant and explained that she had no idea that her application would have consequences on his

work. In any case, the Tribunal draws the attention of the Respondent that Responsible Officers of Local Authorities should pay more attention to the hearing recommended when officers are convicted in Court and Regulation 36 is to be applied. They must not just pay lip-service to natural justice and have a short hearing which looks like a mere formality and does not at all address the real issues.

The Tribunal has no alternative but to quash the decision of the Respondent under Section 8(4) and direct the Respondent to reconsider the matter.