

Failure to send a second copy of the application form to the HR Department of a local authority is fatal. The candidate will not be called for interview.

The Appellant, an Assistant BIR at the Municipal Council of ... is challenging the decision of the Respondent of not convening him for interview following his application for the post of BIR.

Appellant's Case

The Appellant averred that he was fully qualified when he applied for the said post. He stated that he sent his application to the Respondent and handed over the duplicate of his application form to an officer at the Human Resource (HR) Section of the Municipal Council.

When he was cross-examined, he stated having nothing to prove and that he actually submitted the duplicate with the Municipal Council but he was not given a receipt nor made to sign any paper to that effect. In fact, he stated that he had applied for different posts in the past and at times he was made to sign and sometimes not. This time he had nothing on record. He maintained that he did submit a duplicate with the Municipal Council but there was nothing on record. He said that the form and documents may have been mislaid.

He referred to a previous application where the officer of the HR Department had phoned him to say that one document was missing in the attachments to his application form though he had given all relevant documents.

He prayed that the appointment of the candidates be cancelled and the interview be conducted again.

Respondent's Case

The Respondent was adamant that the Appellant did not submit the duplicate to the Municipal Council and without this duplicate the application could not be considered. In fact, the Respondent did not find the duplicate and enquired from the Responsible Officer (RO) of the Municipal Council whether the Appellant had submitted same to it. The RO replied on the 7 October 2014 that the Appellant "*has not submitted the second copy of his application form in response to Local Government Service Commission Circular Note No ... to the Human Resource Section of this Council*". A copy of this letter was shown to the Appellant.

The Human Resource Manager of the Municipal Council was called by the Tribunal to provide clarifications on the matter. She stated that, since 2012, it had been the practice for the HR Section to keep a record book for all applications for posts and the candidates had to deposit the second copy of the application form in person. An entry was made in the record book and the candidate had to sign next to the entry. In the present case, there was no such entry as the Appellant did not submit the document to the HR Section as this would have invariably been recorded.

When she was asked whether this second copy could have been misplaced, she said that this was not possible as the entry would have been made on the spot. She further averred during cross-examination that the Appellant, after he made the present application, also applied for the post of Planning and Development Officer. In that case also, the Appellant failed to submit the second copy to the Municipal Council. When the Respondent enquired about this, the HR Section phoned the Appellant and the latter then sent the document but it was not sent to the HR Section. The Appellant sent it to his department and it was then sent to the HR Section. As it was not handed over in person by the Appellant to the HR Section, the HR officer had put a note in the record book next to the entry and the date of

The Respondent could not consider the application nor call the Appellant for interview for the post of BIR as he did not send the second copy of his application through the Municipal Council.

Co-Respondents' Case

Co-Respondent No.4 decided to abide.

Co-Respondent No.6 filed a Statement of Defence in which he declared that he was fully qualified to hold the post of BIR. He stated that the appeal was devoid of merit and moved that it be set aside. He was represented by Counsel who cross examined Appellant on whether he knows who is the Responsible Officer (RO) with whom he must leave a copy of his application. Appellant maintained that he cannot leave anything with the Chief Executive Officer directly but must go through the Human Resource Department.

Determination

The issue is whether the Appellant sent his second copy of the application form through his RO.

It is current practice that serving officers send their application in duplicate, one directly to the Respondent and one through the RO. In this case, the advertisement clearly stated that candidates should submit their applications in duplicate. It is mentioned that *“the original should be sent directly to the Secretary of the Local Government Service Commission and the duplicate one to their Responsible Officer who will forward it to the Commission within one week after the closing date”*. In the same advertisement, under the heading “Important” it was stated that *“incomplete, inadequate or inaccurate filling of the application form may cause the elimination of the candidates from the competition”*.

The Appellant stated that he submitted the second copy to the HR Department of the Municipal Council. This was denied by the Respondent. The Public Bodies Appeal Tribunal Act 2008 clearly provides that it is for Appellant to prove his case.

This Tribunal, after listening to the parties, is of the view that on a balance of probabilities, the Appellant did not submit the second copy of the application form to the Municipal Council. The Tribunal cannot believe him for the following reasons:

- (i) There was no record in the book of the HR Section that the Appellant submitted the said document. The record book was produced at the Hearing. It is unlikely that the HR Section would not have recorded this if he had submitted the form and documents;
- (ii) It is difficult to understand why the Appellant did not ask for a receipt or similar record to prove that he actually produced the document to the HR Section;
- (iii) The fact that the Appellant failed to submit the second copy to the HR Section when he applied for another post of Planning and Development Officer after he had applied for the post of Building Inspector plays against him.
- (iv) The fact also that he did not submit it to the HR Section but deposited it in his department at his place of work strengthens the point that the Appellant is careless about the procedure for applications for posts in the local government service, and
- (v) His statement to the effect that in a previous application, the HR Section had informed him that one document that he indicated was attached to his application could not be found is not proof in his favour. It is equally possible that the Appellant could have simply not included it in his application. The HR Manager was straightforward and stood the test of cross-examination.

The fact that the Appellant has not submitted the second copy to the Municipal Council has eliminated him from the competition. The submission of this second copy to the Municipal Council is a mandatory step as the RO has to transmit this second copy with his comments to the Respondent. In the absence of a second copy in the record of the HR Section, and in the face of convincing evidence to the contrary, Appellant did not abide by the terms of the advertisement and failed to comply with the requirements as stated by the LGSC. In that case, the Respondent was entirely entitled not to call him for interview.

The appeal is set aside.