

## Det 04 of 2018

- **If a written examination is properly carried out and index numbers are used the Tribunal will not interfere.**
- **There is no duty on the Public Service Commission to publish results of an examination.**

All the four Appellants have appealed to the Public Bodies Appeal Tribunal (hereinafter referred to as PBAT) with regards to the fact that they were not appointed by selection to the post of MOA.

The cases of all Appellants were consolidated as is allowed by law.

Appellant No 1 was represented by Counsel.

Appellants 2, 3 and 4 were also represented by Counsel

The Respondent was also represented by Counsel.

140 of the Co-Respondents were represented by one Counsel.

All the Co-Respondents present and not represented by Counsel were given the opportunity to cross examine the Appellants and the Respondent and they were also given the opportunity to give evidence.

The grounds of Appellant No 1 were as follows:

- That she was better qualified than some of the Co Respondents who do not even have a University degree.
- That she had the necessary experience and had performed duties higher than those of an MOA.
- That she had done better than any other person in the written examinations.
- That the Respondent had failed to publish the results of the written examinations.
- That she had a better attendance and performance record and was more deserving based on qualification, experience, seniority, merit and performance.

- That the decision of the Respondent was unjust, unfair and unreasonable

Appellants 2, 3 and 4 have similar grounds of appeal and they read as follows:

- That there is a lack of transparency following the written competitive examinations.
- That they were not communicated with their results following the said examinations.
- That the absence of the publication of results may lead to the selection of an unmeritorious candidate.
- That they were not notified of the appointment exercise as it was communicated to their Department.

Appellant 1 solemnly affirmed as to the correctness of her Statement of Case before the PBAT and she reiterated the fact that she had all the qualifications, skills and experience to be selected as MOA, that she had been favourably reported by her supervisors, that she had had good marks in her Confidential Report ... and her Performance Appraisal Form ... and ....

She prayed that the exercise of selection be carried anew.

In cross examination by Counsel for Respondent, Appellant 1 stated that the Circular Letter (Invitation for application to the post of MOA) had not mentioned that the written examinations were a determining factor in the selection process.

In a further cross examination by Counsel for the Co Respondents, Appellant 1 agreed that those who were selected met the criteria as set out in the Circular Letter and agreed that examinations papers did not carry the names of the candidates but Index Numbers.

The representative of Respondent deponed before the PBAT to the effect that Appellant 1 was not selected following the competitive written examinations and she was not the only person who had good performance records.

Appellant 2 deponed before the PBAT and swore as to the correctness of his Statement of Case.

In cross examination by Counsel for Respondent, he stated that he did not agree that markings of the examinations are kept confidential. He, however, agreed that all materials and documents necessary for the examinations were available at the Ministries and on line.

Appellant 3 also solemnly affirmed as to the correctness of his Statement of Case. He dropped the ground that the results were not communicated to his Department.

In cross examination by Counsel for the Respondent, he insisted that the results of the examinations should have been published.

Appellant 4 also solemnly affirmed as to the correctness of his Statement of Case.

In cross examination by Counsel for the Respondent, he, however, agreed that the Public Service Commission Regulations do not provide that candidates have to be informed individually of the results of the written examinations.

The representative of the Respondent deponed before the PBAT to the effect that the provisions of the Public Service Commission Regulations do not stipulate that the results of the written examinations should be imparted to all candidates. Prospective candidates are aware on which subjects they would be assessed and the materials for the preparation for the written examinations are available in all Ministries. All candidates are assessed on the same written examinations.

The representative of the Respondent agreed in his examination and cross examination that the results were not published following the written examinations and did not agree that candidates who were not informed of their marks, had been prejudiced.

He stated that skills and competencies of candidates are assessed through their respective Performance Appraisal Forms done at the level of Ministries and further assessed by the Respondent.

No interview of candidates was carried out.

During his cross examination by Counsel for the Co-Respondents, the representative of the Respondent confirmed that Index Numbers were used for the

written examinations by the candidates and even the Index Numbers were hidden for the exercise of correction.

The representative of the Co-Respondent, Mrs S also deponed to solemnly affirm as to the Statement of Case of all Co Respondents to the effect that their appointments were regular.

We have gone thoroughly through the Statement of Cases of all Appellants and Statement of Defence of Respondent and Co Respondents.

Regarding Appellant 1, we find that evidence to the effect that the written examinations were carried out under Index Numbers clearly indicates that such examinations were carried out fairly.

Whilst we are alive to the fact that she did meet all the initial criteria as spelt out in the Circular Letter, we are also alive to the fact that she did not score well during the written examinations in as much that her appointment was not retained.

A perusal of the Circular Letter clearly informs all candidates that a written examination would be carried out.

We also note that the Circular Letter does not mention that interviews would be conducted.

We are also alive to the fact that the Performance Appraisal Forms as assessed by the Supervisory Heads of respective candidates were taken into consideration by the Respondent. We find no reason to believe that such exercises were badly conducted at the time they were so performed or that they would prejudice one candidate to the detriment of another.

Regarding all Appellants on the issue of communication of their marks to them following the written examination and particularly Appellants 2, 3 and 4, we consider that the Respondent had no obligation to communicate the results of the written examinations to the Appellants. We refer to the judgment of the Supreme Court (2000 SCJ 94) in the case of Government General Services Union v Public Service Commission whereby it was pronounced that the Public Service Commission had no duty that results of examinations had to be published.

For all the reasons as mentioned above, we do not find any ground to make any of the orders as prayed for by the Appellants.