

## Det 05 of 2018

- **If an Appellant produces a document it must be shown from where it emanates.**
- **In the absence of any direct evidence against Co-Respondent, the Tribunal will not interfere in an appointment exercise.**

The Appellant has lodged an appeal to the Public Bodies Appeal Tribunal (PBAT) with regards to the fact that he was not appointed by selection to the post of MOA.

The Appellant was represented by Counsel.

The Respondent was also represented by Counsel.

Several Co-Respondents were also represented by Counsel.

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

*The grounds of Appellant were as follows: (reproduced verbatim)*

- *I am qualified for the post of MOA*
- *I am a trustworthy, reliable and hardworking officer*
- *I am not under report*
- *I am appealing against the results of the examinations set by the PSC on*
- ...
- *How could my address appear on another selected candidate? There must have been mistaken of identity since we apply on separate application forms*
- *My fitness for promotion and PMS was not sent to MCSAR on time. (SIC)*

The statement of case of Appellant mentions that he reckons more than ... years in the Public Service, that he possesses all the necessary qualities, skills and experience, that he has never been under report and has carried out all duties

assigned to him with due diligence and professionalism. He is not aware of the marks he obtained for the examination held by the Respondent.

Appellant further mentions that there may be mistaken identity between himself and another candidate, namely ... (a Co Respondent) in as much as both have the same surname. It is also the contention of Appellant that his "fitness for promotion" form as requested by the Respondent from all relevant Ministries and Departments was not submitted in time.

The Appellant is praying the PBAT that all appointments in the grade of MOA made by the Respondent be quashed or to make any such order it deems fit.

Appellant swore as to the correctness of his statement of case before the PBAT.

In the course of his cross examination by the Respondent, Appellant stated that after some three or four months of the examination carried out by the Respondent, he came across a list of successful candidates and amongst the names on the list, he saw his surname with another name together with his residential address. This has created a doubt in his mind and he decided to appeal to the PBAT. However Appellant cannot say whether the list emanates from the Respondent.

Under further cross examination by Counsel for the ... Co Respondents, Appellant agreed that there could not be a mistake as to his identity as the examinations are sat using Index Numbers instead of candidates' names.

Respondent's Representative swore to the correctness of the Statement of Defence which provided that posts of MOA is filled by selection from among officers in the grade of MOS who:

*(a) reckon at least four years' service in a substantive capacity in the grade or an aggregate of at least four years' service in a substantive capacity in the grade of MOS and the former grades of ORE and/or CORE/HIGHER CORE; and*

*(b) have the required knowledge and skills as laid down in the Scheme of Service.*

Respondent averred that the Responsible Officer of the concerned Ministry recommended that ... vacancies for which funds were available be filled.

Respondent also averred that all candidates concerned with the written competitive examination were fully qualified in accordance with the Scheme of Service. It further averred that the appointment to the post was made on the basis of the performance of the candidates at the written competitive examination and taking into consideration the number of vacancies to be filled, Regulation 14 of the Public Service Commission Regulations and the requirements of the post.

Respondent averred that Appellant and Co-Respondents all had a good performance record.

Respondent averred that there could not have been any mistake in the identity of the candidates as each candidate had an index number.

Respondent averred that it did receive confidential reports, performance appraisals reports and fitness for promotion report for the Appellant.

It averred that the appeal had no merit and should be set aside.

We have perused thoroughly the statement of case of Appellant and his evidence before the PBAT and note that we cannot give any credence to the list which he produced (Annex 1) as this list is part of a list with no indication from where it emanates.

We also note that Appellant was not forthcoming as to what he considers was wrong exactly with the appointment of the Co-Respondents. His contention that his "fitness for promotion" form as requested by the Respondent from all relevant Ministries and Departments was not submitted in time, was not explained by him and no evidence was adduced to that effect.

Whilst we are alive to the hesitant manner in which the Representative of the Respondent deponed, we do not find any ground to make any order as prayed for by the Appellant.