

Det 15 of 2019

- **When a job requires supervisory skills and one criterion is knowledge of the job, candidates cannot base themselves merely on their experience in other kinds of work.**
- **In order to win an appeal a party must show that those appointed had no experience and no merit or that they were more suitable for a clear reason**

Both Appellants are challenging the decision of the Respondent to appoint the Co-Respondents to the post of FSR in the Municipal Council of....

All parties agreed to consolidate both cases as they concern the same selection exercise and that only one determination be delivered. A copy will be filed in each Appeal Case.

Appellants' Case

Case of Appellant in Appeal A

Appellant swore to the correctness of his Grounds of Appeal and Statement of Case. He stated in his grounds that:

“The two persons who have been appointed to this post are much less experienced and qualified on the practical side”.

In his Statement of Case which is in fact in the form of a letter, he stated that he was working at the Council for ... years and had spent ... years in the ... Department. He was responsible for the ... ground and believed that working on a vehicle is easier with less responsibilities than in his other place of work. He also explained that he had experience in He was assisted by Counsel.

He was then tendered for cross examination. He admitted that the interview was meant to assess candidates for their ability to perform the duties of FSR and to choose the one who could do the related work. However, he was not in a position to say whether the Co-Respondents were better than him during the interview as he was not present.

Case of Appellant in Appeal B

Appellant solemnly affirmed as to the correctness of his Grounds of Appeal which were as follows:

*“Experience
Meritocracy
and Transparency”*

He also solemnly affirmed to the correctness of his Statement of Case written in the form of a letter. He averred that he had been working in the Council as HWKRS for ...years and that he should have been promoted by now upon consideration of his experience in the field. He further added that he had a clean record with no complaints of negligence *“or any other sort”*. He worked hard and his achievements were known to the department. He concluded by saying that he made this application to request for promotion.

Under cross-examination, he did not agree that the selection exercise was based on meritocracy.

Respondent’s case

The Representative of Respondent solemnly affirmed to the correctness of its Statements of Defence in both appeals.

In its Statements of Defence, Respondent averred that, according to the Scheme of Service, the post of FSR was filled by selection of employees reckoning at least five years' service and satisfying certain specific requirements-

There were two permanent vacancies to be filled and out of ... applicants, ...were found to be eligible including Appellants and they were convened for an interview on ... to assess their suitability for the post.

Following the selection exercise, Respondent decided to appoint the Co-Respondents, holding the post of RECR, as FSR in a temporary capacity at the Council with effect from Later one additional candidate was appointed on ... and he was also called as a Co-Respondent in the two appeals. The Respondent provided the Statements of Service of Appellants and Co-Respondents.

Respondent further averred that FSR are posted in different Departments and that the duties of a FSR, as per the Scheme of Service, are concerned more with management and supervision. The officer therefore does not need to specifically be conversant with the nature of work of the specific section. As the post of FSR is of a supervisory nature, candidates have to show at the interview that they possess supervisory skills. The onus was on Appellant to show his competence at the interview.

Respondent moved that the appeal be set aside.

The Representative of Respondent was cross-examined by Counsel of Appellant in Appeal A. He agreed that the advertisement circular did not make mention of other qualifications and that these would be an advantage. He also stated that he was not aware of the questions put to candidates during the interview. He was cross-examined by Appellant in Appeal B and he stated that the candidates must be aware of supervisory duties.

Co-Respondents' Case

Co-Respondent No 1 solemnly affirmed as to the correctness of his Statement of Defence. He averred that he is an employee of Council of ... with a clean record for the past ... years.

Co-Respondent No ...swore to the correctness of his Statement of Defence in which he averred that being from two different departments and with different nature of work, the Appellants could not say that they are more experienced than him on the practical side. He had ... years of work experience as REC before being transferred to the specific Department.

Both were not cross-examined.

Co-Respondent No 3 decided to abide by the decision of the Tribunal.

Determination

The two appeals concerned appointments as FSR at lower grade. The Tribunal noted that the Appellants and the Co-Respondents were not familiar with the different procedures and regulations governing appointment exercises. However, the Tribunal managed to reassure all parties by explaining to them the way to proceed which enabled them to have an opportunity to express their grievances.

The first Ground of Appeal of both Appellants referred to "*Experience*". It was not disputed that the Appellants and the Co-Respondents did work for several years in the Council. However, the Tribunal had been informed in writing that the interview panel assessed the experience of all candidates under the criteria "*Knowledge of the Job*" and "*Supervisory and Leadership Skill*". The Tribunal requested for markings which were submitted to it under confidential cover. The Tribunal did not find any disturbing features in the markings under these two criteria. However, the Tribunal is still surprised that

candidates were assessed for “*Personality and Attitude*” as it is not quite clear what is expected of candidates for such a post. The ground “*experience*” for both Appellants therefore failed. This was also the only Ground of Appeal for Appellant in Appeal A.

As regards to the two other grounds of Appellant in Appeal B namely “*Transparency*” and “*Meritocracy*”, these were not canvassed during the Hearing.

Both Appeals are set aside.