

Det 30 of 2019

When a post requires leadership and supervisory skills, the candidates who have already led teams will be marked more positively than those who have only the job skills, however varied they may be.

The three Appellants are challenging the decision of the Respondent to appoint the two Co-Respondents to the post of FEN in a temporary capacity. As it concerns the same selection exercise, all three appeals are consolidated and only one determination will be delivered.

Appellants' Case

The three Appellants solemnly affirmed as to their Grounds of Appeal(GOA).

Appellants Nos 2 and 3 also solemnly affirmed as to the correctness of their respective Statements of Case (SOC). Appellant No1 did not submit any SOC.

Case of Appellant No 1: In his GOA which was in the form of a letter, he relied on "*experience and seniority - years of service*". He explained that he possessed the relevant and additional qualifications, both from a recognised institution. He also had the basic certificate and a leaving certificate from a College. He averred that he had "*leadership and supervisory skills since ...*" in the relevant field and he gave examples of the work he did. He averred that the two Co-Respondents possessed experience in only one specific field: Co-Respondent No 1 had only worked as TACTR while Co-Respondent No 2 only had experience as ASM.

He averred that Co-Respondent No1 joined service in ... and Co-Respondent No 2 joined in or around the year Appellant joined service in ... as CML. He was promoted to TAPF in ... and appointed TSP in He reckoned ... years of service.

Case of Appellant No 2: The GOA were:

“I am most senior and qualified, also interview was not in a proper channel, only after writing letter to Commission. I did job in all fields as I am qualified in all the fields”.(SIC)

In his SOC, he explained that he joined the service before both Co-Respondents and he did different kinds of work as mentioned in his grounds of appeal. He averred that Co-Respondent No 1 had not completed his course.

Case of Appellant No 3: His GOA were: *“I am the most senior and most Qualified, also interview was not in a proper channel only after writing letter to LGSC”.* (SIC)

In his SOC, he averred that he had been a team leader for his first 19 years of work and that he had two assistants working with him under his supervision. He claimed that *“all the necessary information has not been circulated correctly and if not so why have I not been selected for the POST”.* (SIC)

Appellant No 3 stated during the Hearing that it had been the policy of the Council to sub-contract all mechanical duties to private organizations. His job then was to check the works being done by the private contractors.

Co-Respondents' Case

Co-Respondent No 1 solemnly affirmed as to the correctness of his Statement of Defence (SOD). He averred that seniority was not an overriding consideration and only a peripheral one. He listed his qualifications and his exposure to different kinds of jobs. He listed some of the works he undertook, which he averred made him more meritorious.

On being cross-examined by Appellant No 1, Co-Respondent No 1 averred that he had not seen the Appellant working at the Council and that there were assistants helping him. The two other Appellants did not rebut the averment of Co-Respondent No 1.

Co-Respondent No 2 decided to abide by the decision of the Tribunal.

Respondent's Case

The Respondent solemnly affirmed as to the correctness of the SODs in each appeal.

In reply to the appeals of the Appellants, the Respondent explained how the post of Supervisor was filled as per the Scheme of Service

There was an advertisement issued as per a Circular Note ...of ... dated.... Fourteen candidates applied for the post and four candidates, excluding Appellants, were found eligible and they were convened for interview on ... to assess their suitability for the post.

The Appellants were not convened for the interview in the first instance as the Responsible Officer (RO) of the Council of ...had informed the Respondent that the Appellants did not "*possess the appropriate skills to lead and supervise workers performing different kinds of jobs*". However, the Respondent averred that in line with this Tribunal's Determination (website reference Det No 11 of 2016), it decided to call the Appellants for interview and same was done prior to their writing to the Commission to inform Respondent that they had not been called for interview.

The Respondent averred that the post was filled by selection and seniority was not a criterion of appointment.

The Respondent again relied on the information provided by the RO that the Appellants did not possess the appropriate skills to lead and supervise workers in different kinds of work.

The Respondent averred that Appellant No 1 had submitted the following in his application form:

- (i) The basic Certificate;
- (ii) The Leaving Certificate;
- (iii) TT Certificate in PF and

(iv) TT Certificate in PG.

Respondent also averred as follows:

- Appellant No 2 held a substantive post of TAM since
- Appellant No 3 holds the post of TACM and had been involved in specific works assisting in other jobs at operational level.
- Co-Respondent No.1 was appointed as TACM but since there is no workshop at the Council, he has been involved in MS works etc. Co-Respondent No 1 was assigned higher duties as Ass. IRW from ... to ..., wherein he performed supervisory duties to the satisfaction of the Council whereas Co-Respondent No 2 had never been assigned higher duties.
- Co-Respondent No 2 had been involved in ASM works and fixing of TLS. As a TDSM, Co-Respondent No 2 had supervised TAAM Assistants and other Workers who had been working in his team, which confirmed that he possessed the skills to lead and supervise workers performing different kinds of tasks.

Respondent further averred that the RO had by letter dated ... stated that Co-Respondents possessed the appropriate skills to lead and supervise workers performing different kinds of tasks whereas Appellants did not possess same.

Nonetheless, the Respondent stated that it had decided on the suitability of candidates for the post based on their performance at the interview, and consequently the more meritorious candidates had been appointed. The Respondent had taken into account all the information disclosed by the Appellants and the Co-Respondents with regards to their qualifications and experience. The Respondent averred that all procedures had been followed and the appointments had been done as per the requirements of the Scheme of Service for the post.

The Respondent averred that the appeals had no merit and should be set aside.

Determination

The two grounds of appeal of Appellant No1 relate to (i) seniority; and (ii) experience. Those of Appellants Nos 2 and 3 were seniority and better qualification.

As regards to seniority, the Respondent has averred that the appointment was made by selection and seniority is not a determining factor. This is in line with LGSC Regulation which clearly states that in connection with appointment, it must “*take into account qualifications, experience and merit before seniority in the local government service*”. The Tribunal sought the mark sheet from the Respondent. As usual, these were provided to the Tribunal for its eyes only. It was noted that years of service was a criterion but it carried low weight as compared to the other criteria. This ground of appeal does not hold.

On the ground of experience, it has been averred that the RO had certified that the Appellants did not possess skills to lead and supervise workers performing different kinds of jobs. The Appellants were not called for interview initially based on the RO's certificate. The Respondent subsequently decided to call them, following the Tribunal's Determination in a previous appeal concerning the same issue to the effect that the RO cannot predetermine the selection process. The Appellants were thus given the chance to participate in the selection exercise. However, at the Hearing, Co-Respondent No 1 averred that the Appellants were not leading or supervising workers. This averment was not challenged by the Appellants. Appellant No 3, who is a TAM, went further to say that it was the policy of the Council to sub-contract mechanical works and that he was only checking the work being done. This in itself suffices to show that Appellants were not supervising or leading. Instead, it put in question as to what duties were in fact being performed by the TA in these circumstances.

Furthermore, the Respondent listed the duties performed by Co-Respondents Nos 1 and 2 and these were not rebutted by Appellant, specially with regard to the higher duties performed by Co-Respondent No 1 and supervisory duties by Co-Respondent No 2. It is a poor reflection of the way the Council manages its human

resources. The Tribunal finds from the mark sheet of the selection panel that all candidates scored the same marks for qualification as per the Scheme of Service, which is normal. However, on “*additional TAT Certificate and others*”, Appellants Nos 1 and 3 had an extra point and Co-Respondent No 2 had none. However, the Co-Respondents obtained more marks than the Appellants overall and the Appellants fared less well on the criteria related to the supervisory duties. The Appellants had been given the chance to be interviewed but did not do better than the Co-Respondents.

The Tribunal does not find any flaw in the assessment of the Appellants and Co-Respondents.

The appeals are, therefore, set aside. A copy of this Determination shall be filed in each case file of the present appeals.