

Issue of Jurisdiction: Tribunal has jurisdiction to hear appeals entered against a Ministry acting under delegated power of the PSC.

The Appellants have lodged an appeal against the decision of a Ministry

Counsel for Respondent raised a preliminary point in law to the effect that the Appellants have appealed against the Ministry and that the PBAT does not have jurisdiction to hear cases against decisions taken by the Ministry in question.

Referring to the PBAT Form I, Counsel highlighted that it is Form I of the PBAT which contains the grounds of appeal, and is the document on which the Tribunal has to base itself to decide on the case. Submitting that it is trite law that the PBAT can only hear cases against an appointment exercise made by the PSC or LGSC and referring to section 3(1) of the PBAT Act, Counsel maintained that the decision appealed against was clearly that of the Ministry and not that of the PSC.

Counsel also drew the Tribunal's attention to section 6(1)(a) of the PBAT Act where it is clearly stipulated that the Grounds of Appeal should be concise and precise and emphasized on section 6(5) of the PBAT Act which states that the Tribunal shall not entertain any new grounds of appeal.

Referring to the Grounds of Appeal of the Appellants, Counsel highlighted that all of them made reference to the fact that appointment was made by promotion instead of selection. Since any such decision is always linked to the scheme of service, it was submitted that, since there has been a change of the scheme of service made by the Ministry and not by the PSC, the decision that was being challenged was therefore that of the Ministry and not that of the PSC.

However, to a question put to the Respondent by the Tribunal, the representative of the PSC admitted that the decision to appoint was ultimately made by the PSC upon the recommendation of the RO

Counsel for Appellant replied on the two salient issues, first addressing that of jurisdiction and second on the issue related to the grounds of appeal. While conceding that the Tribunal only had jurisdiction to hear cases against the PSC or LGSC, as per section 3(1) of the PBAT Act, he maintained that the fact that the Appellant had mentioned the Ministry in Form 1 is not fatal to Appellant's case.

According to him, as long as an appeal is made within delay and that the Appellant is not travelling outside his pleadings as per section 6(5) of the PBAT Act, an appellant should be allowed to proceed with his appeal. Referring to Form I of the PBAT which asks the Appellant to choose between the name of a public body and/or Ministry/Department, Counsel submitted that an Appellant should not be penalised for mentioning the name of the Ministry as requested in the prescribed form. Referring to section 7(5) and 7(6) of PBAT Act, Counsel submitted that the Tribunal should not be tied down with unnecessary procedural questions, save for section 6(5) of the PBAT Act regarding new grounds of appeal and section 3(2) (a) of the PBAT Act in relation to the delay of 21 days for the lodging of an appeal. Regarding fairness to the parties as per section 7(5) of the PBAT Act, Counsel for Appellants stated that no unfairness has been caused to the Respondent by the fact that the Ministry has been made a party and that therefore the appeal should be proceeded with and not stopped on the basis of a technicality, the more so as the public body was not misled as witnesses all the documents filed by the public body itself in the case. Counsel also referred to Section 10(8) of the Constitution concerning the principle of fair hearing.

Finally, referring to the grounds of appeal, Counsel for Appellant submitted that it is premature for the Tribunal to entertain any request made by the Respondent with regards to the actual grounds of appeal and whether they are devoid of merit or not.

In reply, Counsel for Respondent said that PBAT Form I cannot take precedence over section 3(1) of the PBAT Act. She maintained that it is not just a question of labeling and that grounds of appeal are the most important part of the appeal.

RULING

The Tribunal notes that both Counsel agree on section (3)1 of the PBAT Act which provides that :

“Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made by any public officer, or any local government officer, against any decision of the Public Service Commission or the Local Government Service Commission, as the case may be, pertaining to an appointment exercise or to a disciplinary action taken against that officer.”

It is important to underline that this preliminary point of law has been raised in several cases. This also implies that many Appellants do not in fact understand the need for them to appeal against the public body and not their employer, whether it concerns a Ministry or a local authority.

It is obvious that when a notification letter is sent, it may not emanate from the public body but from the employer. This is the case here.

Now when the aggrieved party reached the Tribunal, he is given a Form I to fill in which he is invited to fill in the “name of the Public Body and/or Ministry/Department”. Naturally he may be confused. Indeed Form I has now been amended to avoid such confusion.

We must also bear in mind that Appellants are often *inops concilii* and it is only later that some of them retain services of counsel. The Tribunal wants to rely entirely on the PBAT Act, and stresses that the very purpose of creating the PBAT was to help aggrieved public officers both from Central and Local Government to appeal against decision which frustrate their legitimate expectations. The Tribunal is a quasi-judicial body which must according to section 7(5) “endeavour to combine fairness to the parties with economy, informality and speed..... ”

Section 7(6) provides that

In the hearing of an appeal, the Tribunal is not bound by the procedures or legal forms of a court of law, and rules of evidence, but shall –

- (a) *observe the principles of natural justice;*
- (b) *keep a written record of its proceedings; and*
- (c) *give reasons for its decision on the appeal.*

According to Section 7(6) (a), the Tribunal shall “*observe the principles of natural justice*”

Further the Tribunal has full power to decide how an appeal shall be made. Section 3(2) b provides that an appeal shall be made “*in such form and manner as may be prescribed by the Tribunal*”

The Tribunal had decided that Form I, in its old version, would be the prescribed form for lodging an appeal.

Clearly if an Appellant has noted the Ministry concerned as is the case here, this cannot preclude the Tribunal from hearing the case. If need be it could even ask the Appellant to amend that part of Form I or even its Statement of Case merely by making a motion to that effect. Indeed this does not in anyway prejudice the Respondent. The only avenue which is open to the Respondent is to state that the impugned decision was not at all, whether by delegated power or not, that of Respondent. If this fact can be proved during a Hearing of the case, the Tribunal can adjudicate on the issue. The Tribunal relies on section 89(1) and (2)(a) of the Constitution which provides clearly as follows:

89 Appointment of public officers

(1) *Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting such offices and to remove such persons from office shall vest in the Public Service Commission.*

(2) (a) *The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any Commissioner of the Commission or to any public officer.*

(b) *The Public Service Commission may, subject to such conditions as it may prescribe, delegate by directions in writing, its powers under this section to enquire and report to it –*

- (i) *in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body;*
- (ii) *in the case of a public officer who has been seconded for duty or transferred to a body corporate established by law for public purposes, to that body corporate.*

Further, new section 91(A) of the Constitution which relates to the PBAT provides as follows:

“91A Public Bodies Appeal Tribunal

(1) There shall be a Public Bodies Appeal Tribunal which shall, notwithstanding section 119 but subject to subsection (3), have jurisdiction to hear and determine appeals made by public officers against such final decisions of such Commission established under this Constitution, as may be prescribed, or of any Commissioner or other person exercising powers delegated by that Commission.

It would be most unfair, and against the spirit of the PBAT, to strike out the Appeal at this preliminary stage.

The Tribunal therefore holds that it has jurisdiction to hear the case on the merits.