

No. ER 7 of 2012

Issue of Jurisdiction: The fact that Appellant has entered his appeal against a Ministry is not fatal if the said Ministry was acting under delegated powers.

Counsel for Respondent raised a preliminary point of law to the effect that the Tribunal does not have the jurisdiction to entertain an appeal from a decision of the Ministry of ...Referring to the PBAT Form I filled in by one of the Appellants in this case, Counsel submitted that the appeal was directed against the Ministry and not the Public Service Commission.

Section 3(1) of the PBAT Act clearly identifies the body against which an appeal must be made and therefore, according to the Respondent, any appeal against a Ministry should not be entertained at all.

However, in answer to a question put to the Respondent by the Tribunal, the representative of the PSC conceded that the appointment exercise in the above cases was made by the PSC.

Counsel for Appellant strongly disagreed with the motion of the Respondent. Drawing the Tribunal's attention to the chronology of events in this present matter, Counsel expressed his surprise that it was only 10 months later, after the appeal had been lodged by the Appellant, that Counsel for Respondent raised the issue of jurisdiction of the Tribunal.

Referring to section 7(5) of the PBAT Act, Counsel drew the attention of the Tribunal that it “ *shall endeavour to combine fairness to the parties with economy, informality and speed* ”. According to him, the motion of the Respondent was of a legalistic and procedural nature. Further, he highlighted that, since the Appellants are all employees of the Ministry..., they were all informed by way of a circular through their Supervisor at the Ministry that an appointment had been made and that they may appeal against that decision to the PBAT. Appellants should therefore not be taken to task for entering the appeal against the said Ministry since they are all laymen and were not legally represented at the time. He further submitted that the

intention of the Appellants was clearly to appeal against the decision not to appoint them and that this should suffice. Referring to section 7(6) of the PBAT Act, Counsel laid emphasis on the fact that the Tribunal was not bound by the strict procedures that are generally applied before courts of law.

Finally, referring to PBAT Form I, Counsel stated that the Appellants could actually have been misled by the prescribed Form I where options provided to the Appellants are as follows: name of public body/ministry/department.

Counsel for Co-Respondent submitted that the Ministry had acted under delegated powers and that Section 89(2)(a) of the Constitution makes provision for bodies acting under delegated powers. He further concurred with Counsel for Appellant that any motion not to entertain the appeal against a decision made by a Ministry under delegated powers is an overly formalistic and legalistic motion. Referring to the spirit of the law and the intention of the legislator, Counsel submitted that the Tribunal was set up in order to expedite matters and promote fairness in the civil service sector and it would almost be against public policy to delay matters before the Tribunal.

A similar point of law has already been argued in another case. (ER4/2012) wherein it was held that

“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.”

Likewise in this case the Tribunal will hear the case on the merits.