

FR 2 of 2013

Issue of delay for lodging an appeal before the Tribunal. The delay of 21days is mandatory and there is no provision to extend this delay. Reference made to the Hansard to find out the intention of the legislator.

The Appellant lodged an appeal on 22 January 2012 against one off the Public Bodies, as his post had been declared vacant “for being absent from duty without leave”.

His grounds of appeal were set out as follows:

- “A Never been informed that my leave without pay has been rejected (even though I have regularly been communicating with Ministry ...*
- B Refusal of Ministry... to grant me study leave even though section 15.4.64 PRB 2003 supported my claim”*

When completing PBAT Form I, he inserted the date of notification as being the 27 January 2011 and he submitted a letter from the Ministry of ...which in fact bore that date. Later, he explained that the year should read 27 January 2012 and indeed, in its Grounds of Objection, the Respondent itself referred to that same letter as being dated 27 January 2012 and annexed the letter dated 27 January 2011 but the year has been corrected in pencil to read 2012.

It was also averred by Respondent that the said letter had been sent to the Appellant on 30 January 2012 by registered post to his last known address “in accordance with Regulation 47 of the PSC Regulations”.

In its Statement of Defence, the Respondent raised three points as preliminary objections in law, namely:

- (a) Respondent moves that the present appeal be set aside in as much as it has been lodged outside the prescribed delay of 21 days in breach of section 3(2) of the Public Bodies Appeal Tribunal Act.*
- (b) Respondent avers that the averments contained in paragraph 1(b) under the heading ‘Dispute’ and 2 of the Amended Statement of Case should not be*

entertained by the Tribunal as same were not raised in the Grounds of Appeal filed by the Appellant on 27 February 2012, pursuant to section 6(5) of the Public Bodies Appeal Tribunal Act.

- (c) *Respondent avers that the Tribunal has no jurisdiction to entertain this appeal.*

When the case was called for Argument, It became clear that the date of the notification letter was 27 January 2012. The Appellant who was questioned as to the exact date when he received the letter was unable to do so. However, his Counsel promised to get proof of the date of receipt from the post, which he did. The letter was received on the 31 January 2012, which is the day after it was sent.

This means that the case was lodged after 23 days of receipt of notification.

Counsel for Appellant submitted that “the procedure before the Tribunal is not such that it would bar him from making an appeal within a reasonable delay, even if it is outside his 21 days.”

He submitted that, if good cause is shown, the Tribunal should accept that an appellant lodges an appeal outside the prescribed delay. But in fact no good cause was shown by Appellant who merely contented himself by saying that “I can only say that I received it in February.” He explained that it was most likely his parents who received it. He further tried to explain that he was under “a big shock” and did not know what to do thereby explaining his delay in reacting.

Counsel for Respondent referred to Section 3(2) of the PBAT Act. She submitted that the Appellant had filed the appeal after 27 days. She failed to mention that, according to the Grounds of Objection and Statement of Defence, Respondent admitted having sent the letter on 30/01/2012. She stated that good cause shown could apply if the Appellant was sick or out of the country. But he merely stated that, at that time, “I did not know what to do”. She further laid emphasis on the fact that Appellant was not a “lay person who is not aware, but “we are talking of a professional”...

Counsel for Appellant also stated, in reply to Counsel for Respondent’s submission, that there is nothing in the letter of notification to direct the attention of

the Appellant that he has a right of appeal. To which Counsel for Respondent replied that it was normal since, according to the Respondent, the PBAT has no jurisdiction to hear an appeal on the grounds raised by the Appellant and it was therefore proper...

Ruling

Section 3(2) provides for the delay for an appeal to be lodged:

Section 3(2) provides specifically for the delay for an appeal to be lodged:

An appeal shall be made –

- (a) *within 21 days of the notification to the officer of the decision referred to in subsection (1), or within 21 days of such public notification of the decision as may have been made, whichever is the earlier; and*
- (b) *in such form and manner as may be prescribed by the Tribunal.*

There is no procedure for showing good cause if an appeal has been lodged after 21 days. This issue has been fully thrashed out in a previous case and we reproduce the relevant extract which is the official ruling of the Tribunal "*The delay is mandatory and there is no provision for any extension of such delay, but it only refers to the time frame within which the Appellant must lodge an appeal.*" In the above cases the issue was the delay for summoning Appointees and nothing being provided for in the law, the Tribunal ruled that this must be done as soon as the appeal is lodged and at any rate within 21 days of the appeal.

It may be relevant to refer to the Hansard to see what was the intention of the legislator. During debates in the National Assembly, the Prime Minister, who was presenting the PBAT Bill, did take time to tell members about his views concerning the 21 days limit. He said that "*the 21 days time limit is the standard time limit specified to other Tribunals as well as from decisions of lower courts... We therefore have preferred to keep this coherence in our law and further more, I should add, the very idea of setting the Tribunal is precisely to expedite matters*".

In view of the fact that this appeal was entered two days late, it is purely and simply set aside.

The Tribunal therefore does not propose to rule on the issue of jurisdiction or any other issues.