**FR1 of 2013**

**Grounds of Appeal must be precise and concise. But when Respondent and Co-Respondents have shown through their stand and/or pleadings that they have understood what the grounds were that will be sufficient. What is important is for everyone concerned to understand the grounds.**

This is an appeal by the Appellant against the appointments made by way of a selection exercise for the posts of …

The appeal was filed with the Tribunal and Appellant had annexed to her appeal form information regarding her academic qualifications, courses she had followed, her work experience, workshops she had attended and her publications. She considered these as her grounds of appeal.

As is the practice with this Tribunal, the appeal was sent to the Respondent for any objections. The Respondent sent its objections on the facts of the case but did not raise any objection in law.

Later Appellant submitted her Statement of Case. This was followed by a Statement of Defence of the Respondent.

There was a long delay before the appeal was heard for the first time. The Tribunal will not go into the reasons for this delay.

Then came the judgement of the Supreme Court given on 14 November 2011 in Public Service Commission v. The Public Bodies Appeal Tribunal (2011 SCJ 382) where it was decided that in any appeal before the Tribunal in appointment cases the appointees should be made party to the appeal as Co-Respondents. Counsel for Appointees, who were summoned by the Tribunal and became Co Respondents, raised several points in law, namely as to who should summon Appointees and also that Appointees could not be summoned after such a long delay.

The Tribunal gave its ruling as follows:

1. It was for the Tribunal to summon Appointee/s as Co-Respondent/s and not for Appellant nor Respondent to do so.

2. In this case, the delay was indeed very long but as the judgement of the Supreme Court (SCJ 382 of 2011) had drawn the attention of the Tribunal to the need to give appointees a chance to be heard, they HAD to be summoned. But the Tribunal decided to establish new rules to ensure that Co-Respondent/s would be summoned within a reasonable delay, at any rate before 21 days of such appeal being lodged.

The Appellant and the Respondent were, therefore, requested to submit an amended Statement of Case and an amended Statement of Defence, which they did. Co-Respondents were invited to submit a Statement of Defence.

The appeal came for hearing by the new bench. At this hearing, when the new Chairperson was seeking information on the Appellant's application form, Counsel for the Respondent raised a point of law as to the grounds of appeal. She argued that Section 6(1) (a) of the PBAT Act 2008 says clearly that an appeal "*shall set out concisely and precisely the grounds on which the appellant seeks to have the decision of a public body quashed or dealt with otherwise*". Further, Section 6(5) says that "*The Tribunal shall not entertain any ground of appeal not raised in the grounds of appeal".* It is not possible for Appellant to aver that her grounds of appeal were that she was more qualified and had more experience than the Co-Respondents at this stage of the proceedings. The attachment to the Appellant's application was only her curriculum vitae and was not concise and precise as to the grounds of appeal.

Counsel for Appellant had earlier withdrawn the ground of appeal referring to discrimination contained in Appellant's Statement of Case. However, she maintained that the grounds of appeal are clear in the attachment to her application for appeal. Appellant had later expatiated on what she had in the attachment and Respondent did prepare a Statement of Defence which was based on the original Statement of Case. The same thing was repeated when the Statement of Case and the Statement of Defence were amended. When the appeal was heard for the first

time, there was no objection in law raised about the grounds of appeal. Can the Tribunal accept any objection in law at this late stage?

The Tribunal is conscious that the PBAT Act is clear about the need for an appeal to be precise and concise and that no new grounds of appeal can be added once the proceedings have started. Thus, on a purely legalistic approach to the Act, the points raised by Counsel for Respondent, this Tribunal will have no jurisdiction to hear this appeal if the grounds are not in line with these provisions of the Act.

However, the point raised by Counsel for the Appellant that no objection had been raised all this time cast doubt about the state of understanding of the clarity of the grounds of appeal and whether all the parties were not clear about the intention of the Appellant when she appealed. The fact that the Respondent prepared a Statement of Defence in response to the Statement of Case tends to prove that the Respondent was aware of the grievance of the Appellant. Similarly, the fact that the Co-respondents had been quiet all this time is also an indication that the parties knew what were the issues at stake.

The Tribunal feels that there was a tacit understanding as to the grounds of appeal until the point of law was raised. The Tribunal, without trying to wear the cloak of the diviner but looking at the problem through the eyes of an independent right-minded observer, is of the opinion that the Appellant was genuinely making her case on the grounds of her advanced qualifications and the fact that she had more years of experience than those who were appointed Deputy. While her intention was clear, the way she couched her grounds of appeal was definitely not concise and precise as the Act would want them to be.

The question then is whether the Appellant should be denied the chance to have her appeal considered. What she wanted was clear in her mind and the Tribunal tends to believe that all parties were looking in the same direction. However, probably because she is not familiar with adjudication matters, she had been loose in her language when she prepared her appeal.

The Tribunal is firm on principles and on the provisions of the Act. But the Tribunal wants to be flexible in the appeal handling process and make it a user-friendly institution that combines lawfulness with “economy, informality and speed”

as the legislators wanted it to be. After all, this Tribunal does not function as a court of law. The Tribunal must have the liberty to use its discretion where it thinks it fit. The use of such discretion is not incompatible with the rule of law, which only controls its exercise. In the present appeal, the proceedings went on for two years and Appellant has a legitimate expectation that her appeal would be heard.

This Tribunal rules that, in the spirit of fairness, the Appellant is given the chance to proceed with her case, provided that she limits herself to only these two grounds.