

## FR 5 of 2013

**Issue of locus standi : if a person is not an aggrieved party regarding an appointment exercise, he cannot lodge an appeal under section 3(1) of the PBAT Act 2008.**

Appellant has appealed against the decision of the Public Service Commission (PSC) to appoint the Co-Respondent by selection to the post of ... as from the 27<sup>th</sup> July 2012.

Respondent has, from the outset, raised a preliminary objection to the effect that the appeal should be set aside in as much as the appellant has already been appointed in that same post in a temporary capacity with effect from 14 November 2011 and he therefore has no *locus standi* to lodge the present appeal.

Counsel made reference to section 3(1) of the PBAT Act, which reads as follows

### **3. Jurisdiction of Tribunal**

*(1) 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.*

She highlighted the fact that the decision appealed against should be one taken against the public officer that is, the Appellant, and that, in this case, the Appellant has already been appointed to the post in 2011. He therefore cannot, now, challenge the appointment of someone else who has been appointed in the post in another appointment exercise, albeit based on the same selection exercise, in 2012. Moreover, the Appellant was not an aggrieved officer and that any decision reached by the Tribunal could only be an academic one. Finally, Counsel submitted that accepting this appeal and hearing it would open the floodgates.

Appellant has a different point of view. He submitted that the PBAT should hear any appeal against any public officer. He was of the view that it was his constitutional

right to appeal against any appointment of any public officer and that any public officer could challenge any other officer's appointment, whether he is concerned by this decision or not and that he therefore had a *locus standi* to appeal. He found support in the fact that he received a Letter of Notification when the Appellant was appointed even though he was not concerned with this appointment exercise.

Counsel for Co-Respondent stated that he was supporting the submissions of Counsel for Respondents. He asked the Tribunal to adopt a common sense approach. The Appellant had not and could not have been mandated in this case to enter an appeal on behalf of these 21 officers who have been aggrieved by the appointment of the Co-Respondent.

### **Findings**

A cursory look at the Notification of Appointment by Selection shows that the letter of notification has been sent to the Appellant in his capacity as head of his department in order for him to bring the contents of this letter to the attention of all officers concerned including those who are on leave locally or abroad so that they may, if they wish, appeal to the PBAT.

Moreover, the wording of section 3(1) of the PBAT Act clearly states that the

*“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”.*

Since, in the present case, the Appellant was not one of those being considered for appointment no decision could have been taken by the PSC against him pertaining to the appointment exercise where the Co-Respondent was appointed, for the simple reason that he was already appointed in the previous batch and therefore, it follows that the Appellant is not an interested party and has no *locus standi* to enter this appeal.

It is also apposite to refer to an extract of the Prime Minister's Speech when presenting the Constitution (Amendment) Bill (No. VI of 2008) and the Public Bodies Appeal Tribunal Bill (No. VII of 2008) to the National Assembly whereby he laid emphasis on the following:

"The Public Bodies Appeal Tribunal which is being created has the jurisdiction of a body or court in "appeal" cases. On appeal, any aspects of the decision of a lower authority may be reconsidered and this implies that an **aggrieved officer may ask the Tribunal to rule that he is more meritorious**"

(Emphasis ours)

In the circumstances the appeal is dismissed.