

FR 9 of 2013

An Appellant who was not eligible for appointment in a selection exercise cannot later challenge the merit list which was drawn up after that same selection exercise.

This is the second appeal from Appellant concerning appointments for the post of...

In the first appeal, the Appellant was contesting the appointment of a Co Respondent to the said post. In the meantime another candidate had been appointed.

Appellant had averred that at the meeting of the Mediation and Conciliation Commission, and at which there was a representative of Respondent, the Appellant was given the opportunity to either go for judicial review or request his Ministry that the Scheme of Service be amended. The Appellant chose the second option. He appealed against the decision on the grounds that the Scheme of Service was not amended and appointment was made on the original Scheme of Service. This was done in spite of an undertaking given, with the result that he could not compete for the filling of vacancies for the said post. The Tribunal gave a ruling (FR6) that it had no jurisdiction to entertain any claim on the Scheme of Service and the necessity to amend same before an appointment is made.

The second appeal relates to the appointment of the Co-Respondent to the said post following a vacancy that arose subsequently. The Co-Respondent was on the merit list following the previous selection exercise and was appointed. Appellant is challenging the appointment on the same grounds relating to the Scheme of Service as in the first appeal and that the Respondent chose from the merit list while the selection exercise was being contested by the Appellant. Respondent resisted the appeal and filed a plea *in limine litis* to the effect that the first ground had been ruled out by the Tribunal. On the second ground, Respondent argued that, since the merit list was based on the selection exercise, Appellant had no leg to stand on as he was not eligible

for selection in the first place as he did not meet the qualifications requirement at that time.

The Tribunal agrees with the view of Respondent which is based in law.

The appeal is set aside.