

Appellants who do not qualify under the relevant Scheme of Service have no *locus standi*

The Appellant is appealing against the decision of the Respondent to appoint the Co-Respondent to the post of Principal PYER.

The Respondent resisted the appeal in a *plea in limine litis* to the effect that “*the Appellant has no locus standi to lodge the present appeal in as much as the Appellant who holds the post of ESP is not eligible for promotion to the grade of Principal PYER and is therefore not an aggrieved party*”.

Counsel for Respondent argued that the post of Principal PYER is filled by promotion from officers in the grade of Senior PYER. This is as per the Scheme of Service for the post that was prescribed and which became effective as from Since the Appellant is an ESP he is not from the relevant stream, less still from being a Senior PYER which is the recruitment grade for the post of Principal PYER. As such, therefore, the Appellant cannot feel aggrieved as he is not concerned by this appointment exercise to which he is not eligible. Counsel referred to a previous appeal lodged before this Tribunal by Appellant on ... when the Co-Respondent was appointed Senior PYER. The appeal was withdrawn by the Appellant on.... Reference to the appeal being withdrawn was strongly objected to by Counsel for Appellant.

Counsel for the Appellant referred to Section 3 (1) of the Public Bodies Appeal Tribunal Act (2008) which reads as follows;

“3 (1) *Subject to subsections (2) and (3) , the Tribunal shall hear and determine an appeal 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”.

He emphasized on the fact that this section of the Act makes it clear that any officer can appeal to the Tribunal and not only those who are directly concerned. In this appeal, the Appellant wanted to have the opportunity to put his case and explain as to why he was not eligible for consideration. Appellant must be allowed to do so as this is provided for under section 3 (1) of the Act.

Counsel for the Co-Respondent supplemented what Counsel for Respondent argued on the issue of eligibility for the post. He further stated that the Appellant had withdrawn the previous appeal and cannot come up with a new appeal along the same line. This can be considered as a vexatious appeal.

The Tribunal will ignore the reference to the withdrawal of the previous appeal by the Appellant. It has been the practice in this Tribunal to give the chance to public officers to proceed with their case and to voice their grievances.

In cases relating to appointment issues, the Tribunal will base its finding on the Scheme of Service for the post. This is a document which has followed an established process with close consultations between the Trade Unions, the management side, the Ministry of Civil Service Affairs before its prescription and after endorsement by the Respondent. The Scheme of Service is therefore, sacrosanct. There can be no departure from it and no party has the discretion nor has the flexibility to amend it without prior consultation.

In the present case there was a Scheme of Service for the post that was effective since ... but it was revised in ... and a new Scheme of Service came in force with effect from.... As from that date, this is the Scheme of Service that governs the filling of the post of Principal PYER. It is clearly

stated in the Scheme of Service that, in order to be eligible to the post, the candidates must be from the cadre.

Therefore, the Appellant, being ESP, does not have *locus standi* to come before the Tribunal and is not eligible and could not be considered for the post.

Counsel for Appellant has given a more general interpretation of section 3 (1) of the Act which refers to “any officer”. However, it is clear that the legislators did not intend that anyone in the public service can lodge an appeal with this Tribunal. This Tribunal would otherwise be overwhelmed by innumerable appeals from all officers who are frustrated or unhappy. It would not then be able to perform its role with “economy, informality and speed” as required under section 7 (5) of the PBAT Act.

Appeals before this Tribunal must be for cases where public officers are genuinely aggrieved and are directly prejudiced by decisions of the Respondent in specific cases. Public officers sometimes appeal on matters which are not even remotely related to an appointment exercise.

The Tribunal has given several rulings on the issue of *locus standi*. In a ruling (Website reference FR5 of 2013) the Tribunal said that the Appellant must be an aggrieved officer. In that case Appellant had already been appointed. He could not contest the appointment of another officer after his own appointment.

In another ruling (Website reference FR 1488 2013), the Tribunal ruled that someone who did not apply for a post is not entitled to appeal against the appointment of others in the said post.

In the case before us, the Appellant does not qualify under the Scheme of Service and therefore has no *locus standi*.

We fully understand the frustration of Appellant but he must seek a remedy in another forum and must seek advice as to how to proceed as we cannot advise him.

In *Mc Naughton v McNaughton's Trustees* (1953 SC 387, 392) Lord Justice Clerk Thomson held that "*Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs*".

The Tribunal rules that the Appellant has no *locus standi* to appeal against the decision of the Respondent to appoint the Co-Respondent.

The appeal is set aside.