

## **Ruling 04 of 2016**

**An appellant cannot challenge a member of an interview panel before the Tribunal which will however examine the markings to see if that member could have negatively influenced the selection exercise.**

The Appellant lodged an appeal before this Tribunal contesting the decision of the Respondent to appoint Co-Respondent No 1 to the post CIPWO at the District Council of....

The Respondent raised a point of law in *limine litis* contesting Ground 5 (a) and (b) of the Appellant's Grounds of appeal as follows:

*“ Respondent avers that the Tribunal has no jurisdiction to entertain an appeal which pertains to the composition of the Interviewing Panel and the Board of the Local Government Service Commission set up by the Respondent, as the Respondent is the sole body entitled and responsible for carrying out appointments and as such, Respondent moves that Ground 5 be expunged”.*

Ground 5 of the Appellant's Grounds of Appeal is as follows:

*“5 Constitution of the Board of Interview on ...*

*(a) Inasmuch as it is of public knowledge that one of the Commission (SIC) who was present on the board of interview was officially removed from the board as he is a suspect in sixteen (16) provisional charges of unlawful acts, the decision of the board thus constituted is therefore viciated*

*(b) The meeting of the Commission of ... for conducting the interview was constituted of only two (2) members namely the Chairman and Mr ... excluding the Secretary who is a public officer and contrary to section (2) of paragraph 7 of the Local Government Service Commission Act 37 of 1975- 18 August 1983 which*

*stipulates that “The Chairman and two members shall constitute a quorum” for meetings of the Local Government Service Commission. Any decision taken by the above meeting of the Commission is therefore null and void.”*

This point of law was argued by counsel for the Respondent while the Appellant decided to abide by the ruling of the Tribunal.

Counsel for the Respondent made reference to the various sections of the Public Bodies Appeal Tribunal Act and circumscribed the powers of the Tribunal. He submitted that the Tribunal had no jurisdiction to hear an appeal on the composition of selection boards as regulation 16 of the Local Government Service Commission Regulations says clearly regarding consultations and selection boards that:

*“16 (1) In exercising its powers in connection with appointment or promotion to any office in the local government service the Commission may-*

- (a) Consult with any person or authority; and*
- (b) Seek the advice of a selection board set up by the Commission.*

*(2) The selection Board specified in paragraph (1) shall be composed of such persons, including one or more members of the Commission, as the Commission shall determine.”*

Counsel for Co-Respondent concurred with the points made by Counsel for Respondent.

The Respondent has wide powers in determining its selection procedures and the composition of selection boards. However, the Tribunal has to ensure that such powers are exercised judiciously, including any flaws that may arise in the composition of selection boards. The Tribunal will not adjudicate on the merits of an appointment exercise if it is done on the wrong footing.

However, the problem with Ground 5 in the Appellant’s Grounds of Appeal concerns the interview panel or board and the composition of the Commission when it took its decision. The Appellant has confused these two bodies when it cited the LGSC

saying that “*The Chairman and two members shall constitute a quorum*”. This sentence refers to the meetings of the Commission and not those of a panel/board which interview applicants. There was no way for the Appellant to know when and how the Commission took its decision as he was not privy to decisions of the Commission. The Appellant was only aware of the composition of the interview panel/board on which only two members sat. There was nothing wrong with this and it was perfectly in order according to section 16 of LGSC Regulation.

As to the point raised in Ground 5 (a) regarding the fact that one of the members of the interview panel had charges levelled against him that led to his removal from office, the Tribunal cannot prejudge that the said member, who in any case is still considered to be innocent until proved guilty, could have acted unreasonably while exercising his duty during the interview. The Appellant must show proof that the interview panel has shown bias in the appointment exercise. This will be done when the appeal is heard on its merits. The Tribunal will also have an opportunity to better judge the matter when it gets the criteria, weight of each criterion and markings of the candidates from the Respondent, under confidential cover.

The Tribunal rules that the appeal be heard on the merits and that Ground 5 (b) be expunged from the grounds of appeal.

The appeal will be heard on....