

Ruling 07 of 2016

A point of law can be raised at any time by any party before the Tribunal, unless the point of law is based on facts in which case the issue of time bar may be applicable.

The Appellant who is a PNDLO has entered an appeal concerning the appointment of Head of ... Department.

In his Grounds of Appeal he raised several points but, later on, his Counsel raised a preliminary point of law to the effect that

“A member of the LGSC at that very time, when the decision was being taken to appoint or when the interview was done being a member of the board he was involved in several offences of There is an issue of the decision of the LGSC being tainted and bias at that very time. I am trying to explore this avenue of bias before you and of course, it will be up to the Tribunal to decide whether there is bias or not bias.”

Both Co-Respondent No.1 and Respondent raised the point that this was not raised as a ground of appeal.

Counsel for Respondent referring to a Ruling of PBAT (WEBSITE Reference ER1 of 2012) stated:

“This is an objection I feel which the Tribunal must have to rule upon before actually dealing with Point in Law raised by learned Counsel for the Appellant. I have before me a Ruling from this Tribunal whereby a Preliminary Point in Law and this Tribunal evoke Section 6 Subsection (5) of PBAT Act which says that the Tribunal shall not entertain any Grounds of Appeal not raised in the Grounds of Appeal and you have to note the language used here which is sharp which is impel in another

word a law is commanding not to hear anything which is outside the Grounds of Appeal”

He maintained that Appellant is barred from raising the issue now.

Co-Respondent stated to the Tribunal that, since the ..., there was no communication and he objected to it being raised at the stage of hearing only. He also submitted that a full Board was sitting on the day and the decision of the Board is a collective one and not that of the member only.

Counsel for Appellant explained that the point was not raised as Appellant only became aware of the issue when the information came out in the National Assembly on ... in reply to “Parliamentary Question No ...”. He explained that it was a matter of public interest and filed a copy of the Parliamentary Debates (Hansard). Further Counsel for Appellant asked the Tribunal to give a Ruling of a general nature whether concerning this case or any other cases that came before the Tribunal or not. Surely the Tribunal is not empowered to do that.

Counsel for Respondent did not agree to the Tribunal giving a ruling on both points together and proposed that, only the issue raised by him regarding the fact that this was not raised in the Grounds of Appeal should be ruled upon.

In this case the only issue before us at this stage is whether a point of law can be raised by an Appellant outside the delay of 21 days provided for by the PBAT Act 2008. If it is indeed a point of law, it can be raised at any time of the proceedings by any party. The Tribunal however finds that the point raised is based on facts. Even if these facts came to the attention of the Appellant after the delay of 21 days, he is debarred from raising the point.

The Tribunal rules that when the Appeal is heard on the merits it will have an opportunity to better judge the matter when it gets the criteria, the weight of each criterion and the markings of the candidates from the Respondent, under confidential cover. Irrespective of the point raised, it will be able to see if there has been any bias in the appointment exercise.

The appeal is now to proceed on the merits.