

**The evidence of an independent witness may shed light on whether Appellants did actually know that there was a vacancy to be filled.**

The Appellants, REC at the Municipal Council of..., have lodged an appeal to this Tribunal to the effect that they had not been informed about the vacancy for the post of ... Supervisor and they are challenging the decision of the Respondent with respect to this appointment exercise.

The Respondent raised a point *in limine litis* which reads as follows:

*“Respondent moves that the present appeals be dismissed in as much as the Appellants have no locus standi to challenge the appointment of the Co-Respondents, given that they failed to apply for the post of ... Supervisor, even though the vacancy was advertised on the ...”* The Respondent has produced a copy of the advertisement with regard to the post and certificates to the effect that the vacancy was brought to the attention of all eligible candidates.

The point of law was argued before the Tribunal after hearing parties and witnesses on the relevant issue of facts. The Tribunal allowed the parties to argue on the notice of vacancy and whether the Appellants had knowledge of same only to see whether injustice had been caused to the Appellants by keeping them out of the picture.

According to the Appellants, they were not aware that vacancies were being filled for the post of ... Supervisor. They had not been informed by anybody and they did not know that there was an advertisement that was issued inviting applications for the post. Even if there was a notice of vacancy, this was posted at places which they did not normally access as they worked on site. It was only after the closing date for submission of applications that they came to know about the intention to fill the vacancies. They, therefore, together with colleagues working in the same team went to see the Temporary Principal ... Inspector, who is the responsible officer for the section. They

were advised to apply in spite of the expiry of the date limit. They were told that a case would be made to the Respondent to consider their applications. However, their applications were not considered.

Appellants have, therefore, appealed to this Tribunal.

The Respondent argued that the Appellants could not appeal as they were not candidates in this exercise. The Representative of the Respondent and the Temporary Principal ...Inspector did concede that the Appellants had applied after the date limit after they met him. A case was made to the Respondent to consider their late applications but the Respondent did not agree to this request.

The Respondent stated that the advertisement had been posted at four places including on the Notice Board at the market. These should have been visible. In addition, Mr ...had given instructions to the Clerical Officer to make same known to all concerned as was the normal procedure at the Municipal Council. The attention of the representative of the Respondent was drawn by the Tribunal to the effect that in other cases the Notice of Vacancy was circulated to eligible officers and they were made to sign on the document that they had seen same. The representative of the Respondent could not show that this was done in this case. There was also the allegation of the Appellants that the officer who was supposed to inform the eligible candidates was also the president of a Trade Union and at a meeting he had only informed members of his Trade Union. The representative of the Respondent agreed that this could have happened.

The situation seemed blurred as to whether the Appellants were in fact not aware of the intention to fill vacancies in the post. However, the Tribunal had the benefit of hearing ... the ... Supervisor replacing the ... Supervisor normally in charge of this team of REC. He testified that, on the ..., i.e two days before the cut off date for applications, he did inform Appellant No.1 and one Mr ...about the advertisement and Appellant No 1 replied to him that he was aware of this. On cross-examination, Appellant No 1 did not rebut this statement.

The Tribunal is in a quandary in this matter as to whether the Appellants were really not aware that there was an advertisement for filling the post of ... Supervisor. It is the version of the Appellants against that of the Respondent. The statement of the witness, who appeared to be a credible witness, does shed some light on what may have happened.

Otherwise, the Appellants would have no *locus standi* if they did not apply under normal circumstances.

But since there is doubt as to whether the Appellants knew about the Notice of Vacancy, the Tribunal can only rule that, in the event that new vacancies in the post of Field Supervisor are to be filled, this should be properly advertised following the procedure already established by the Local Authority. A fresh selection exercise should be done and the merit list established after this present appointment exercise must be discarded.

The appeals are set aside.