

- **The decision not to call someone for an interview is related to an appointment exercise and the Tribunal therefore has jurisdiction to hear the appeal.**
- **If an appeal is lodged within a few days after notification of an appointment, the statutory delay of 21 days is respected as it cannot be counted as from the date that an Appellant is not called for interview.**

1. This is an appeal concerning the decision of the Respondent following an offer of appointment by selection made to the Co-Respondents to the post of REGO in a temporary capacity. The complaint of the Appellant is that he was not called for interview for the said post.
2. In the notification of appointment dated ..., the Department refers to section 3 of the Public Bodies Appeal Tribunal Act ("**PBAT Act**") which provides that any public officer who is aggrieved by the decision to offer the appointment may appeal to the Public Bodies Appeal Tribunal ("**Tribunal**") within 21 days of the notification of the appointment.
3. Appellant and Respondent are represented by Counsel and State Counsel, respectively. Co-Respondents No. 1 and 2 are abiding by the decision of the Tribunal. As regards Co-Respondent No. 3, he has stated that he would be defending his case and would file his statement of defence after the ruling on the preliminary objections raised on behalf of the Respondent. Co-Respondent No. 4 has already filed a statement of defence.

Preliminary objections raised by the Respondent

4. The Respondent has raised three preliminary objections in law against the appeal and they are reproduced below:
 - (i) *Appellant is challenging the fact that he was not called for interview. Respondent avers that Appellant was, since ..., aware that he was not called for interview. This ground does not fall within the jurisdiction of the Tribunal;*
 - (ii) *Notwithstanding (i), Respondent avers that given that Appellant was, since ..., aware that he was not called for interview, the Appellant is outside delay to challenge the decision not to call him for interview;*
 - (iii) *Respondent further avers that Appellant was not eligible to apply for the post of REGO as he reckoned only two years' experience, instead of the four years'*

required by the Scheme of Service in the specialised field. Appellant was, on ... offered appointment as CBOR, with effect from ..., the post was advertised on ... and interview carried out on....

5. Further to observations from the Tribunal, State Counsel informed the Tribunal that she would reserve the third point on the merits. She submits that the case for the Appellant is that he has not been called for an interview. There is no averment made by the Appellant against the Respondent or the Appointees. She refers to section 3(1) of the PBAT Act and submits that the ground of appeal concerns the decision of the Respondent not to have called the Appellant for an interview and this is not a valid ground to seize the jurisdiction of the Tribunal.
6. In the alternative, she submits that if the Tribunal holds the view that it has jurisdiction, then the appeal has been lodged outside delay. She submits that the Appellant was aware as far back as the ... of the decision of the Respondent not to have called him for an interview.

Reply of Counsel for Appellant

7. Counsel for the Appellant does not dispute that her client wrote to the Respondent by way of e-mail sent on the ... to enquire why he was not called for an interview. She submits that if the Tribunal has accepted the appeal, therefore the Tribunal has accepted that it has jurisdiction to hear the matter. As regards the point on delay, Counsel for the Appellant submits that the delay of 21 days starts to run at the end of the appointment process.
8. Section 91A of the Constitution and section 3 of the PBAT Act provide, respectively, as follows:

91A Public Bodies Appeal Tribunal

(1) There shall be a Public Bodies Appeal Tribunal which shall, notwithstanding section 119 but subject to subsection (3), have jurisdiction to hear and determine appeals made by public officers against such final decisions of such Commission established under the Constitution, as may be prescribed, or any Commissioner or other exercising powers delegated by that Commission.

3. Jurisdiction of Tribunal

(1) Subject to subsections (2) and (3), the Tribunal shall hear and determine an appeal made 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 against that officer.

Analysis

9. The first question which we must decide is whether this Tribunal has jurisdiction to hear the appeal on the basis of the ground of appeal stated by the Appellant i.e. the decision of the Respondent not to have called him for an interview. The Respondent carried out an interview exercise to fill the post(s). In that regard, further to applications received, the Respondent decided whom to call for the interview exercise. We hold the view that the decision to call an applicant for an interview or not is a decision which pertains to an appointment exercise. The appointments were made after the carrying out of an interview exercise.
10. We now turn to the second objection which concerns whether the present appeal has been lodged outside delay. Section 3(2) of the PBAT Act provides that an appeal must be made within 21 days of the notification to the officer of the decision i.e, the decision pertaining to an appointment exercise or to a disciplinary action taken against that officer, or within 21 days of such public notification of the decision as may have been made, whichever is the earlier.
11. It is not disputed that the Department gave notification of the appointments in writing on.... This notification relates to the decision contemplated in the second limb of subparagraph (a) of section 3(2) of the PBAT Act. It is not disputed that the Appellant did not receive a reply to his e-mail enquiry of the ... sent to the Respondent. Therefore, the Respondent did not send a decision pertaining to an appointment exercise, hence not falling within the first limb of subparagraph (a) of section 3(2) of the PBAT Act.
12. The Respondent having notified its decision pertaining to the appointment by way of a memorandum dated the ... and the Appellant having lodged his appeal on ..., we hold

that the present appeal has been lodged within 21 days of the notification of the decision pertaining to the appointment exercise.

13. We therefore overrule the preliminary objections raised on behalf of the Respondent. The case will therefore proceed after all the parties have filed their stand on the merits.