

No. R/01 of 2023

Parties are entitled to call for any witness provided the testimonial is within the ground of appeal

Appellant is challenging the decision of the Respondent to appoint the Co-Respondent to the post of DRD in the Public Body.

On the day the matter was fixed for hearing, Counsel for Appellant made a motion to the Tribunal that he intended to call a former DRT as witness to testify in favour of Appellant. Counsel for the Respondent and the Co-Respondent objected to the said motion and the matter was fixed for arguments.

Counsel argued the main points from their respective written and oral submissions. In reply, Counsel for Appellant argued that the evidence that will be provided by the former DRR as to the competency of the Appellant and Co-Respondent up and until his retirement in May 2016 will be and will go only to the weight of his evidence and not to the admissibility of testimony which he intends to give. Secondly, the Appellant and the Co-Respondent worked under the supervision of the proposed witness who had direct evidence of their experience and competence up and until his retirement day in 2016. He added that the proposed witness is perfectly entitled to give evidence on the composition of the interviewing panel as this is a live issue before the Tribunal and that it is among the grounds of appeal of the Appellant. It is the contention of Counsel that the proposed witness is well versed in TDP matters and therefore he is in a position to give his opinion on the composition of the interview panel as to whether the members of the interviewing panel had the required competence in International TDP Matters to assess the suitability of a candidate and will be able to assist the Tribunal factually on this point

He further submitted, even if the Respondent has taken into consideration the Performance Appraisal Forms, this cannot prevent the proposed witness who has direct

knowledge of the work of both the Appellant and the Co-Respondent up and until his date of retirement to give evidence on their competence.

Counsel for Respondent relied on her written submissions and raised two objections namely that the evidence of the proposed witness would be irrelevant to the present issue as his evidence is about experience acquired by the Appellant and the Co-Respondent when they were still SPTA whilst the current post, subject matter of the present dispute, the requirement is at least 2 years' service in the grade of PPTA and secondly that the proposed witness has no personal knowledge of the interview exercise as he was not privy to that exercise.

She also laid emphasis that the proposed witness had retired since May 2016 and many things have changed since then. The proposed witness had the opportunity to work with the Appellant and Co-Respondent in their capacity of SPTA and the present matter involves their position as PPTA. The proposed witness cannot judge their competencies in the post of PPTA as they were appointed as such after the retirement of the proposed witness. She also argued that the proposed witness was not present in the interview room and, therefore, he cannot rely on somebody else to give his opinion on the competencies of the interview panel.

She laid emphasis on Regulations 16 and 17 of the Public Service Commission Regulations which give the discretion and power to determine its own procedure to be followed in dealing with application for appointment to the Public Service. Allowing the proposed witness or even worse relying on the evidence of the proposed witness in this matter would be tantamount to allowing and eventually opening the flood gate to allow the power and authority of the Respondent to be undermined by someone who is giving his opinion on an interview exercise of which he was not part and at which he was not present.

Counsel for Co-Respondent, is also of the opinion that many things have changed since the retirement of the witness. Even the Scheme of Service was amended to bring down the three years' experience required to two years' experience. He argued that we cannot go back in time to hear the proposed witness on issues that he considers relevant which in fact are not relevant in the present matter and which ought

not to be taken into account. He added that the proposed witness has shown open bias against his client in the written statement by making all sorts of gratuitous remarks about the conduct of the interview. He cannot express his comment and air his views about the constitution of the selection panel which is a matter of law. He drew the attention of the Tribunal that the proposed witness is not authorised to make disclosures regarding confidential matters and which have remained unrebutted. He further stated that the Respondent had been looking at the Performance Appraisal Forms for the last three years and that it cannot be otherwise. He opined that the Appellant cannot travel outside her grounds of appeal and that the Tribunal should not allow the proposed witness to make unfavourable and unfair comments upon his client. According to him, the proposed witness is not coming to enlighten the Tribunal as to matters which are before the Tribunal but to direct us into extraneous issues on his client.

After careful consideration to the arguments made by Counsel on behalf of all parties concerned, the Tribunal is of the view that all parties have the right to call for witnesses to depone in their favour, provided the testimonial is within the grounds of appeal.

As such, the objections of Respondent and Co-Respondent are set aside. However, it would be for the Tribunal to decide upon the relevance and weight to be attached to the evidence being adduced.