

The Tribunal will not expect a well legally drafted Grounds of Appeal by an Appellant who was not assisted by a legal person at the time the Grounds of Appeal were submitted.

The Appellant was challenging the decision of the Respondent to appoint the Co-Respondents to the post of OPE in the Public Body.

It is to be noted that the appointments were made by promotion from the grade of ESPE and that the Appellant was also appointed in this promotion exercise.

The Appellant filed the following Grounds of Appeal (GOA) in support of his appeal:

“Grounds of Appeal for the case on Seniority placement for the post of OPE .

1. *Mr...., the applicant, I joined the service with **Teachers’ Diploma in OPE** to teach in the State Secondary Schools from **08 June 1998** as **Education Officer (Grade B)**.*
2. *I entered the grade of **Education Officer (Grade A)** since **11 February 1999** after successfully completing my **Bachelor of Arts (Education) in OPE**.*
3. *I completed my **P.G.C.E in OPE** on **23 December 2001** to progress in my career path as per the qualifications required to be promoted to the rank of OPE.*
4. *I completed my **MSc in Educational Administration and Technology** on **23 July 2009** to consolidate my position for the promotion to the rank of OPE.*

5. I reckon **24 years of service post “A” level degree** and am eligible for the post of OPE since 2004, when the Scheme of Service prescribed dated 12 June 1995 was still in force.

6. I was the **first** to be upgraded to **Grade A**, I was the **first to cross the Qualification Bar (QB)** and I was the **first to reach the maximum point** (top salary) in the salary amongst the three. **I am at level 9 in the qualification bar whereas other two are at level 8.**

7. Much to my dismay, I am not the first in the seniority list when the other two colleagues have less years of service as Grade A, as well as **they do not possess the qualifications** required in the Scheme of Service, that is, **a degree in OPE and a P.G.C.E.**

8. My Seniority in the present grade can be easily verified and compared to my colleagues. I have reached maximum points on the salary scales (**R 68,000**) as I have served longer period as Education Officer Grade A, now restyle Educator (Sec) OPE (**24 years**).

9. When Seniority or length of service is the criterion for appointment in the **Grade to Grade promotion, qualification is a core criterion selection, candidates without the prescribed qualifications are not eligible for the post.**

10. The **qualifications** for the post of Physical Education Organiser set out in the **Scheme of Service prescribed on 29 November 2009** was same as that of 12 June 1995, inter alia, as follows: SC/G.C.E “O” level, HSC/G.C.E “A” level, a Degree in OPE, a **PGCE** in OPE or **Master’s Degree** or **equivalent** qualifications acceptable to PSC and also reckon at **least five year** teaching experience in OPE after graduation in a State Secondary School on the basis of experience and merit, of officers who hold substantive appointment in the grade of Educator (Secondary) (OPE) in the OPE Cadre.

11. The post of PEO would be filled from the list of Education Officers (Grade A), **now restyled Educator (Sec) PE**, and who were **Senior** in that grade and possessing all the required qualifications prescribed Scheme of Service.

12. **Seniority** being one of the main criteria for the promotion as PEO, it is good to refer to the **PSC regulations 2(1) 'Seniority'**. As per PSC regulations as soon as I had entered grade of Education Officer Grade A, I was deemed to be Senior most of the colleagues mentioned above and other Educators OPE as well." SIC

The Respondent filed a preliminary objection in law which reads as follows:

"The Respondent moves that the present appeal be set aside on the following grounds:

- (i) Insofar as the issue as per the ground of appeal is not one pertaining to the appointment exercise, the Tribunal has no jurisdiction to proceed with the present appeal;*
- (ii) Ex facie the grounds of appeal, the Appellant is not seeking to challenge the appointment of any person so that the Tribunal cannot validly proceed given the ambit at section 8 of the Public Bodies Appeal Tribunal Act;*
- (iii) The Tribunal cannot determine seniority as same does not fall within its remit and/or is in any event, time-barred; and*
- (iv) The grounds of appeal as set out do not constitute valid grounds of appeal." SIC*

Counsel for Respondent argued that under Section 6(1)(a) of the Public Bodies Appeal Tribunal Act the GOA must be concise and precise. She added that grounds 1 to 7 of the GOA are more of a complaint rather than setting out the reasons why the Appellant is seeking to have such a redress and that ground 8 is merely in the form of a

comment. Whereas grounds 9 to 12 are in the forms of comment and description. She submitted that by looking at the wording of all these grounds, one does not find the elements of what constitute of valid grounds of appeal. She referred to ground 7 and submitted that by mere saying that to his dismay, he is not the first on the list and that the Co-Respondents do not possess the qualifications required as per the Scheme of Service cannot constitute a valid ground of appeal. She further submitted that the issue of seniority cannot be dealt with by the Tribunal as it predates the appointment exercise and is time barred.

Counsel for Appellant argued that the Tribunal has jurisdiction to hear the matter even if it is a promotion exercise as the notification letter attached to the appeal clearly mentioned that if anyone feeling aggrieved by the decision of the Respondent may file an appeal to the Tribunal. She also referred to ground 7 which is a clear and valid ground of appeal. It made reference to seniority together with qualifications. According to her, it is not only seniority but seniority and qualifications. She added that the Appellant is not contesting his own appointment as he possesses the required qualifications but Co-Respondents Nos 1 and 2 are not qualified for promotion. Counsel concluded that all grounds of appeal are valid grounds of appeal.

Counsel for Co-Respondents supported the objections of Respondent. He argued that there was not even a cause of action which trigger the jurisdiction of the Tribunal. There is nothing mentioned in the GOA that the Appellant is challenging the appointments of the Co-Respondents No 1 and 2. There is no prayer as such. He admitted that the GOA may have been drafted by a lay person but he is the only one to blame for that and nobody else.

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The Tribunal has examined the GOA as couched and concludes that the Appellant, feeling aggrieved by the decision of the Respondent appealed to the Tribunal. The Tribunal recognized that the Appellant is a lay person and cannot expect a well legally drafted GOA. The important issue is that he clearly expressed in ground 7 that the two Co-Respondents do not possess the qualifications required in the scheme

of service. This is a matter that the Tribunal has jurisdiction to adjudicate after hearing the parties even though it was a promotional appointment.

Consequently, the objections raised by Respondent are set aside and the appeal is set to be heard on the merits.