

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MAHOPERA S.C.E MHANGO.....COMPLAINANT

AND

MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY.....RESPONDENT

INQUIRY NO: 59/2017

FILE NUMBER - OMB/MZ/C/25/2012

DETERMINATION

CORAM

Hon. Martha Chizuma-Mwangonde	-	Ombudsman
Mr. Mahopera S.C.E Mhango	-	Complainant
Mr. Ngatani Banda -Ministry of Education	-	Respondent

DETERMINATION

1. THE INQUIRY

The Complainant lodged his claim with our office through a letter dated 20th March 2012 alleging that his employer Ministry of Education have kept him on interdiction for a long time without concluding his matter. The letter was forwarded to the Respondents for their commenting and the file shows that they did respond on 7th June 2012 where they stated that they had also forwarded the matter to Secretary for Education for decision. However the latter never acted and thus when the matter was recommended for Public Inquiry which took place on 19th October 2016 in Mzuzu.

2. THE EVIDENCE

During the Inquiry complainant testified in person whilst the Respondents were represented by Mr Ngatani Banda. In his evidence the Complainant stated that he was employed by the Respondents in 1990 as a teacher at Mzenga Primary School. In 2008 he was allegedly falsely accused of having raped one of the students at the school. He went through a criminal trial but was later acquitted on 30th April 2008. He got transferred to Katowo CDSS and after teaching for 4 years he received a letter of interdiction the grounds of immoral behaviour for which he was interdicted on 30th April 2008. The interdiction letter was dated 21st December 2011 but was effective from 26th March 2008 and was with half pay. He was later told to send all his records of court proceedings and forward to Headquarters which he did and was told to wait. He had been waiting till the day of the Public Inquiry.

The Respondent representative simply informed the inquiry that they were working on the Complainant issue and asked for two weeks for them to submit their position on the matter. To the date of this determination we have not received any communication from them.

3. THE ISSUES FOR DETERMINATION

- a. Whether the failure to act and prolonged interdiction by the Respondents amounted to maladministration
- b. Whether the Complainant has suffered an injustice
- c. If the answer in 2 above is in the affirmative whether the Complainant is entitled to a remedy and if so what remedy.

4. THE LAW AND ITS APPLICATION TO THE ISSUES.

As it has been stated elsewhere maladministration covers a lot of administrative sins. Unfair treatment, acting in a high handed manner and failure to act are all examples of maladministration.

It further includes omitting ones duty and failure to take action. Moreover failure to apply the law or wrongful application of the law amounts to maladministration. It is important to note at the outset that the claim herein arises out of an employment relationship. To determine whether or not the Respondents are guilty of any maladministration there is need to analyse what employment law says about suspensions.

Under section 56 of the Employment Act, a suspension is one of the disciplinary actions that an employer is entitled to take other than a dismissal. It should be mentioned that the suspension mentioned under this section is one after a disciplinary hearing process has resulted in finding the Respondent in the wrong. However administratively an employer can also suspend pending investigations as it happened to the Complainant herein. Such suspensions or interdictions are simply preliminary measures to ensure that there is no interference with investigations and thus are with pay and usually are for a shorter period. In the instant case the Respondents suspended the Complainant on half pay for 15 years. This is clearly against the law; it is maladministration. **In the State v Malawi Development Corporation exparte Mpinganjira** High Court Civil Cause Number 63 of 2003 it was stated that:

"an employer cannot keep an employee on suspension indefinitely even where there are criminal proceedings pending".

Thus it is clear from above that a suspension pending investigation need to only be for a reasonable time and what amounts to reasonable time depends on circumstances of each case. In the instant case the Complainant has been on interdiction for practically 5 years although going by interdiction letter the interdiction has been for 9 years. Either case its unreasonably long period. The evidence suggests that after the Respondents were informed about the allegations of immoral behaviour by the Complainant they took too long to act resulting in their purported interdiction letter being released only after the criminal proceedings were completed. This was maladministration. However their delays did not stop there even after effecting the stated interdiction. 5 years has passed without concluding the proceedings against him. This delay is unacceptable. It is maladministration.

As a result of the stated delays the Complainant has suffered an injustice. For over 5 years he has been deprived of half of his salary and lived in constant anxiety as to the status of his employment. On the issue of appropriate remedy section 126 of the constitution provides that where an investigation reveals that an injustice has been done the Ombudsman shall direct appropriate administrative action to be taken to address the grievance. Further under section 8(b) of the Ombudsman Act the Ombudsman is empowered to take appropriate action or steps to call or require the remedying or reversal of matters or instances complained. The grievance brought before us was prolonged suspension. It is important that the Respondents finalise the disciplinary proceedings against the Complainant.

Again as analysed above the Complainant has also been illegally deprived of half his salary for 5 years. This also has to be corrected taking into account devaluation in the intervening years.

5. DIRECTIVES

By powers vested in me by section 126 of the Constitution and section 8 of the Ombudsman Act I hereby direct that:

- a. The Respondents should pay the Complainant the withheld half salary for 5 years. This money should be paid by 30th September 2017.
- b. The Respondents should finalise the disciplinary hearing of the allegations they raised against the Complainant 5 years ago. This should be in accordance with the Employment Act. The Respondents should process and report back to this office of the outcome by 28th July 2017

6. RIGHT OF REVIEW.

Any dissatisfied party may apply for review of this Determination by the High Court pursuant to section 123 (2) of the Constitution within 3 months from the date hereof.

Dated this 22nd Day of March 2017



Martha Chizuma- Mwangonde

OMBUDSMAN