

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MAJOR GENERAL B. NAMWALI (RTD).....COMPLAINANT

AND

MALAWI DEFENCE FORCE.....RESPONDENT

INQUIRY NO: 13/2016

FILE NUMBER - BT-14-15/OMB-026

DETERMINATION

CORAM

Hon. Martha Chizuma-Mwangonde	-	Ombudsman
Complainant	-	Present
Respondent	-	Present

DETERMINATION

The complainant lodged his claim with our Lilongwe office on 28th July 2014 claiming failure and or delay to act by the respondents in sorting out his terminal benefits. The respondents never responded to any of the letters that were written by our office for their comments on the matter. During an on spot investigation our officers were shown a letter dated 13th February 2012 which was written by the respondents to the complainant in which they were informing the complainant that they could not entertain his claim. It was at this time that the matter was recommended for public inquiry.

During the inquiry the complainant stated that he was Officer Cadet in the King's Rifles from 22nd December 1963 until he got commissioned as 2nd Lieutenant into Malawi Rifles in July 1964. He rose up the ladder until he rose to the rank of Major General a position he held until his unceremonious verbal dismissal from service in 1977. According to him it was the Army Commander then who verbally dismissed him on very personal grounds. Nine days after the dismissal he received communication about his gratuity which amounted to K6, 903.25. In 1995 the Ministry of Defence wrote the complainant asking for letter of dismissal to which he responded to them that it was verbal dismissal. Later in 1997 at an Army Council sitting in September 1997 he was recommended to receive pension. He stated that he received his pension from 1963 to 1977. The reliefs he is seeking from this office are compensation for loss of service from September 1977 when he was dismissed to September 1992 when the Army Council found him innocent. He further claimed miscalculated pension and gratuity which they calculated up to 1977 instead of 1992. Lastly he claims his salary up to the date of retirement either 1993 when he would have attained 55 years or to 1998 when he would have attained 60 years of age.

During cross-examination by Colonel Kuwali who represented the respondents during the inquiry it was clear that they were not disputing the claim at all. Actually the questioning was more on ascertaining some dates and figures. Colonel Kuwali further questioned the complainant on a circular dated 28th July 1996 in which it was directed that all people who were retired on political grounds be compensated up to 1994. It was his explanation that the complainant was one of those to benefit from the circular and that all he needed was to verify if the cheques were given to the complainant. He also undertook to pay all the fringe benefits and I further ordered that the issue of miscalculated pension and gratuity need to be sorted out up to 1994. It was a further direction that the total final amount should take into consideration the devaluation of the kwacha to date of payment.

The respondents undertook to revert to us with the suggested figures within 21 days from the date of the inquiry which fell somewhere mid-April. To date we have received nothing. It is for this reason and by powers vested in me under section 126(a) of the Ombudsman Act that I now make the following directives:

DIRECTIVES

1. As per their own undertaking the respondents pay the complainant all lost salary and fringe benefits from 1977 when he was dismissed to 1994 which is the cut off point for compensation as per the aforementioned circular.
2. The respondents recalculate the pension and gratuity payable to the complainant taking into consideration 1994 as the date he would have retired from service
3. The amounts in (a) and (b) should take into consideration the kwacha devaluation to the date of payment
4. The final payment should be made to the complainant by ^{3rd} June 2016.

RIGHT OF REVIEW

Any Party dissatisfied by this determination and with sufficient interest in the matter has a right to apply for review to the High Court in accordance with section 123 (2) of the Constitution within 90 days from the date of this determination.

DATED THIS 18th Day of May 2016


Martha Chizuma-Mwangonde
OMBUDSMAN