

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MR. K. N. CHISAMBI & OTHERS.....COMPLAINANT

AND

MINISTRY OF EDUCATION.....RESPONDENT

INQUIRY NO: 09/2016

FILE NUMBER - OMB-MZ-C-102-2007

## DETERMINATION

### CORAM

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

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## 1. THE INQUIRY

The Complainant lodged a complaint with the Office of the Ombudsman, Mzuzu, against Ministry of Education for alleged maladministration of delay and acts of discrimination in paying his training allowance. The letter of complaint is dated 10<sup>th</sup> November 2006. The Office of the Ombudsman referred the matter to the Respondents and after a number of reminders the Respondents responded by a memo dated 13<sup>th</sup> September 2007 to the effect that the Complainant and other students went to school with full knowledge that they would not be sponsored. The Complainant did not agree with this and the Office continued pursuing the matter until a recommendation for a Public Inquiry was made. The Respondents never made it to the Inquiry despite being served with notice of hearing. We proceeded with the inquiry and below is our determination.

## 2. THE EVIDENCE

According to the Complainant, in 2004 he applied for a training course for a University Certificate in Education (UCE) at Chancellor College (Chanco). He was successful and after he inquired about the conditions of training Mr Nthenda the Respondent's training officer informed him that he only needed to proceed to Chanco as all arrangement had been made. Upon arrival at Chanco they were given accommodation but it was for a short time since upon the opening of the college they were told to go find own accommodation outside campus. They then decided to inquire from the college UCE coordinator Dr Zama who informed them that the college had received tuition, medical fee and teaching practice fee from the Ministry totalling K179,000 per trainee, and that that was the reason why the college was not demanding fees from them. They then wrote a letter to the Ministry demanding payment of their allowances in accordance with a Government circular dated 20<sup>th</sup> March 2003 on training allowances and marked RC2. No response was received. They then wrote another letter dated 16<sup>th</sup> August 2005 to which the Respondents replied by their letter dated 13<sup>th</sup> October 2005 and marked RC 4. According to the Complainant in the said RC4 the Respondents undertook to pay them the said allowances at a later stage due to financial difficulties. He however also produced RC5a and RC5 (b). RC5a is a memo dated 26<sup>th</sup> June 2006 by the Education Division Manager Mzuzu to the Secretary for Education in which he was claiming Training Allowance on behalf of Mr Phiri who was in the same training group with the Complainant herein. RC5b is a response from the Respondent's Mr Nthenda dated 11<sup>th</sup> October 2006 in which he made reference to the Ministry's Circular letter dated 31<sup>st</sup> August 2015 Ref HRD 1/11 by which letter he said the Ministry was not obliged to pay the claimed allowances because the allowances were considered part of the beneficiary's contribution to the training. According to the Complainant this was a greatest contradiction by the Ministry itself. According to him in their letter dated 13<sup>th</sup> October 2005 the Respondents were undertaking to pay the training allowances at a later stage whilst in their letter dated 11<sup>th</sup> October 2006 the same Respondents were denying liability to pay.

The Complainant further claimed discrimination in the manner he was treated as compared to the other groups of teachers who underwent the same training after his 2005 group. He stated that the 2007, 2008 and 2013 groups received their training allowances as evidenced by RC6.

He further stated that after he lodged his claim with us, the Respondents then wrote the office through a letter dated 27<sup>th</sup> March 2013 in which they claimed not to have any information as regards the Complainant's claim and invited him to meet their Mrs Mbewe at Headquarters together with all supporting documents of the claim. When he went to meet her he was disturbed by the way Mrs Mbewe was shocked at his going to her office as she was not aware of the visit and referred him back to Education Secretariat. Complainant then both two letters to us both dates 23<sup>rd</sup> November 2013 and marked RCB (a) and RCB (b).

The above was the evidence as narrated by the Complainant. I further took time to read through the documentary evidence on the file so that I can have a very clear picture of the facts in this matter. The first document is a letter dated 31<sup>st</sup> August 2005 which was attached to the letter dated 12<sup>th</sup> November 2008 a response from the Respondents to us after we had sent them the complaint letter. In the 12<sup>th</sup> August 2005 memo the Secretary for Education was writing all Directors of the Ministry of Education informing them that there had been a flood of requests for sponsorship in various trainings by Ministry employees. He stated that however due to financial constraints the circular RC2 which provides for training allowances would not apply. He further stated in the said memo that the only support that would be granted to those employees doing courses at that time was payment of tuition and medical fees (paid by DFID) and that the Ministry would continue to grant paid study leave. It is clear that this was in response to some of the letters written by the Respondent's class as a group in April 2015 and August 2005.

Another document of interest is that which was submitted by the Complainant and is marked RC4. It is again a letter dated 13<sup>th</sup> October 2005 by the Respondents to Mr Kamphonda who was the representative of the Complainant's group. It was a response to the letter that he had written on 15<sup>th</sup> August 2015. Because this RC4 was relied heavily by the Complainant and it is not very long I hereby reproduce it as follows:

Ministry of Education  
Private Bag 328  
CAPITAL CITY  
LILONGWE 3

Ref. No. HRD/2/1

13<sup>th</sup> October, 2005

L.S. Kamphonda  
UCE Student  
Chancellor College  
P.O Box 280  
ZOMBA

IN-COUNTRY TRAINING ALLOWANCE CLAIM

Refer to your letter Ref. No. UCE/FEB/05 dated 10<sup>th</sup> August, 2005 in which you were claiming for Training Allowance.

Please be informed that the Ministry is aware of the provision of Training Allowance for In-Country Training.

It is however, not possible for the Ministry to fulfil this provision due to financial constraints. It is the Ministry's hope that all deserving trainees shall have their tuition paid for and their salaries maintained for the duration of the approved programmes.

Yours faithfully,

Signed

T.M.M. Nthenda

For: **SECRETARY FOR EDUCATION**

Another document that needs a deeper look is the one we mentioned above the, letter dated 12<sup>th</sup> November 2008. In this letter by the Respondents to the office of the Ombudsman, they stated that the Complainant and his friends went to college without the Respondent's consent. They further stated that it was after they had gone to College that they pleaded with the Ministry for help and that the Ministry responded by soliciting funds from DFID for tuition only.

The last document which I believe is also important is RC6 again submitted by the Complainant himself. It is important to note that the Complainant further alleges discrimination by the Respondents in the manner it has been handling its UCE students in that the Respondents granted training allowances to the 2007, 2008 and 2013 groups of students. RC6 is an offer letter for admission to Mzuzu University for one of the 2013 students Ms Esther Mwamlima. The relevant section for purposes of the complaint herein is section 2 which outlines the fees breakdown payable for the course and also estimated upkeep allowance which the offer letter clearly stated would be paid by the sponsor which are the Respondents in this case.

### 3. ISSUES

- a. Whether the Complainant was entitled to the claimed Training Allowance
- b. Whether the Respondents are guilty of administration
- c. Whether the Complainant is entitled to any remedy

### 4. ANALYSIS OF THE ISSUES AGAINST THE LAW

- a. Whether the Complainant is entitled to Training Allowance.

The claim being put forward by the Complainant falls under the category of specific claims. Legally specific claims need to be strictly proved with clear evidence. Thus the question needed to ask is whether the Complainant has provided evidence to prove that he is entitled to K176, 000 he is claiming herein. It is the Complainant's assertion that he is entitled to the said allowance and he bases his claim firstly on the circular Ref No. HRMD /FIN /6 /V/39 dated 20<sup>th</sup> March 2003 marked RC 2 in this inquiry. This is a memo from Secretary for Human Resource to all Principal Secretaries and Heads of Departments. This memo outlines the allowances payable to student on in country short and long terms courses. He further heavily relies on RC4 reproduced above. It is the assertion of the Complainant that in this RC4 the Respondents are admitting liability to pay the allowance but that due to financial constraints they undertook to pay for this later on. With due respect I fail to see what the Complainant is seeing in the wording of this letter and I chose to differ with his understanding. What the Respondents are clearly stating in this letter is that whilst they are aware of the provision for training allowance they cannot fulfil it due to financial constraints. That the best the Ministry was able to provide was tuition and also provide paid study leave for the students. There was literally no undertaking on the part of the Respondents to pay the said Training allowance later as being claimed by the Complainant. Accordingly it is my further view that the allegation by the Complainant that the Ministry contradicted itself with RC4 (b) is indeed is totally against the available evidence because the said RC5 (b) and RC4 are saying the same thing. Which is that the Ministry would not fully sponsor the training due to financial constraints.

This position in my view is further buttressed by the memo dated 31<sup>st</sup> August 2005 mentioned above, written by the Respondent's Principal Secretary to all Directors in the Ministry of Education. In the said memo the Directors are being informed that that due to financial constraints the only support that the Ministry would provide to teacher students undertaking various training courses at that time would be tuition, medical fees and paid study leave. In addition to this, it is important to note that this August 2005 memo was attached to a letter dated 12<sup>th</sup> November

2008 addressed to us which the Respondents were responding to the claim by the Complainant through this office. In this letter the Respondents state that the Complainant and his other colleagues went to Chancellor College without the Ministry's consent and that it was only when they found themselves in financial difficulties that they asked the Respondent to sponsor them. That due to financial difficulties the Ministry only managed to sponsor them with tuition and expected that the students would make their own contribution.

Of course I note that all these letters were written after the Complainant and his friends had already started their studies and had already made a claim for the allowances. Thus it could be argued that the Respondents only made a decision not to sponsor after they had received the complaints. However the Respondents allege that the students proceeded to college without the Ministry's consent. It is important to note that the only document that has been produced by the Complainant in relation to admission to college was the application letter for admission to Chanco which was marked RC1 in this Inquiry. No offer letter of admission was produced nor any letter from the Ministry allowing him to proceed for his studies. Only thing he told this Inquiry was that he received verbal approval to proceed to college. He did not bring anyone of the persons he mentioned to collaborate his evidence. On the other hand he produced RC6 mentioned above which was a formal offer letter for one of the UCE students admitted to study at Mzuzu University in 2013. In the said offer letter issues of fees and upkeep allowance are clearly stated. In the absence of any offer letter for the Complainant as RC 6 above or any other document showing the Respondent approving his proceeding for studies nor any witness to support his evidence I have no other option but to find that the Complainant proceeded to college without the consent of the Respondents and thus there was no arrangement about sponsorship and further that unlike the student in RC 6 he cannot claim discrimination by the Respondents because in RC6 there was clear undertaking of support by the Respondents.

Accordingly from the foregoing it is my finding that the Complainant is not entitled to Training Allowance as is being claimed

b. Whether the Respondents are guilty of maladministration

The main maladministration claim was delay in the payment of the training allowance. Having found that that Complainant is not entitled to the said Training Allowance in the first place then the Respondents cannot be found guilty of delay in payment of the same.

However I note from the evidence that whilst this matter was still in this office the Respondents invited the Complainant to Lilongwe to meet a Mrs Mbewe on this issue. It turned out that the said Mrs Mbewe was not informed about this arrangement and expressed shock at seeing the Complainant. She did not have

anything substantial to tell him other than referring him to another office. The Respondents obviously gave the Complainant wrong information which on his acting upon it, he ended up losing money in form of transport to Lilongwe. This was maladministration in my view.

- c. Whether the Complainant is entitled to any remedy  
Without much ado the answer should be in the affirmative. Following from (b) above the remedy is refund of his transportation costs to and from Lilongwe.

#### 5. FINDINGS

- a. That the Complainant has failed to prove his claim for Training Allowance and therefore this claim is dismissed
- b. That the Respondents are not guilty of delay in payment of the said Training allowance because the Complainant was not entitled to it in the first place
- c. That the Respondents are guilty of giving the Complainant wrong information which resulted in him incurring unnecessary transport costs

#### 6. DIRECTIVE

From the above I hereby direct that the Respondents repay the transport costs incurred by the Complainant when he travelled to Lilongwe to meet Mrs Mbewe. This payment should be made within 21 days from the date of this determination.

#### 7. 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.

Made this 25<sup>th</sup> April 2016.

  
Martha Chizuma Mwangonde

OMBUDSMAN