

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MR. L. D. MTAMBALIKA.....COMPLAINANT

AND

ADMARC LIMITED.....RESPONDENT

INQUIRY NO: 12/2016

FILE NUMBER - BLK-14-OMB-0022

DETERMINATION

CORAM

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

DETERMINATION

The complainant herein lodged his complaint with the Office of the Ombudsman against the respondents on 10th October 2014. In his story he stated that he got his land in 1970 from Village Headman Chagoma. In or around 1975/76 he was informed by the Chief that he had apportioned the land next to the complainant's to the respondents ADMARC. According to the complainant there was peaceful coexistence between the two until 2006 when the respondents started claiming ownership of the land which complainant claimed to be his.

The matter was discussed at both ADMARC offices in Balaka and District Commissioners office and later on at the chief's place. Such discussion resulted in a finding that it was the complainant who had encroached into the land belonging to the respondents. Being dissatisfied with the said finding the complainant then lodged this complaint with us basically claiming unfair treatment by the respondents in the manner they took the land from him. During the inquiry the complainant simply repeated the above testimony but further claimed;

- a. Compensation for the trees and also the destruction to the house by the respondents.
- b. Actual boundary for his land
- c. Recovery of a wood cutter from the chief (he had initially forcefully taken it from him in order to force the complainant to surrender the land to the respondents)

It was very clear during the inquiry hearing that this whole matter would be conclusively determined by conducting a survey of the land to determine the actual physical boundaries in relation to the boundaries as shown on the title deed belonging to ADMARC. I thus ordered that the said survey be conducted to determine the actual boundaries of the plot.

The survey was conducted on 4th April 2016 by Mr Hozea Lobi of Ministry of Lands. Both parties including the chief and officers from the Office of the Ombudsman attended the survey. It was revealed that the respondents had really encroached into the complainant's boundary and that the disputed piece of land actually belonged to the complainant. To this extent then we find that the respondents are guilty of maladministration.

DIRECTIVES

Pursuant to the powers vested in me by section 123 of the Constitution and section 8 (1) (b) of the Ombudsman Act I direct that;

- a. The respondents immediately surrender the land they had unlawfully trespassed on back to the complainant.

- b. The chief should within 5 days of this determination surrender the wood cutter back to the complainant in the state that it was when he took it from the complainant.
- c. Within 7 days from the date of this determination the respondents should initiate a discussion with the complainant on the appropriate compensation payable for the fruit trees that were unlawfully cut and the destruction to the house that the complainant had built at time of illegal possession. Within 28 days from the date of this determination both parties to report to me on the agreed figure for my ratification.
- d. The complainant to report to our office if by expiry of these days nothing is agreed between the parties whereby I will make an assessment of the compensation myself.

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