

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MRS. EMILY MPOKONYOLA.....COMPLAINANT

AND

MINISTRY OF HEALTH.....RESPONDENT

INQUIRY NO: 03/2016

FILE NUMBER – OMB-BT-C-91-07

## RULING

### CORAM

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

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## RULING

### THE BACKGROUND

This matter was set down for a Public Inquiry which took place in Blantyre on 24<sup>th</sup> February 2016. Both Parties were in attendance and I recorded evidence from them. As I was reading the file preparing to write a determination I realised that this is not the kind of a matter that should be disposed of by way of a determination but rather a simple ruling. The reasons for holding such a view will be made clear in the below ruling which I hereby make.

### THE RULING

The Complainant herein lodged a complaint against Malindi Health Centre in Liulanga alleging gross negligence by their clinician who prescribed her with wrong medication whilst 9 months pregnant resulting in her miscarriage. The complaint was dated 22<sup>nd</sup> June 2007. On 11<sup>th</sup> July 2007 the Office of the Ombudsman wrote the Complainant asking for better and further particulars to which the Complainant responded in September 2009. On 6<sup>th</sup> September 2009 the Office of the Ombudsman wrote and rightly so in my view, the Medical Council of Malawi to handle the matter as an oversight body of medical profession in Malawi. Medical Council of Malawi only responded to the letter on 21<sup>st</sup> January 2010 in which they undertook to conduct an investigation into the matter and institute a disciplinary hearing against the alleged clinician. It was only in July 2012 that the Medical Council wrote the office advising that they had now fully disposed of the matter and had found that the Clinician involved had performed sub optimally although the still birth could not be directly attributed to the treatment given by the Clinician

Surprisingly the office kept on pursuing the matter on behalf of the Complainant as evidenced by the letter by the Complainant in which she disputed the letter of the Respondents Medical Council by expressing her discontent with their statement that the treatment did not probably cause her miscarriage. This letter by the Complainant was written on 29<sup>th</sup> September 2012. The Office responded to her on 21<sup>st</sup> November 2012, strangely in my view undertaking to the Complainant to pursue the matter until it was resolved. After this there seems to have been a general blackout in as far as the written communication is concerned. However looking at the notes in the file, the office continued dealing with the Complainant albeit verbally and it would seem going by the notes that she was told in October 2012 to pursue her matter with the Courts.

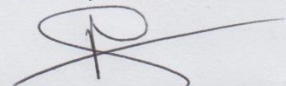


Somehow in July 2015, the Office wrote the Chief Legal Aid Advocate to pursue the matter on behalf of the Complainant for purposes of assessment of proper damages. There is no response from Legal Aid but as I was studying the file I asked our Deputy Director of Legal Services to follow up if there was any progress on the matter with the Courts. Unfortunately she reported to me that when the matter was sent to Legal Aid it was already statute barred.

This is one of those unfortunate cases where the injustice suffered by the victim is right in your face and yet there probably is no way for her to get any remedy before any forum. It is even harder pill to swallow because to a larger extent apart from her loss of the child, the injustice was perpetrated by the institution that should have properly directed her on the right forum for her to take her claim. This claim should not even in the first place have been entertained by the office as it involved a private institution. However having received the complaint the Office should have minimised its involvement to simply overseeing the process after referring the matter to Medical Council of Malawi who have a clear legal mandate to deal with these issues. The Medical Council in Malawi discharged their part although it took time for them to do so. Why the office hang on to this file for almost 9 years to date, when in fact it did not have any mandate so to do, thereby giving false hopes to the Complainant that she was being assisted is one of those things that are very difficult to explain and the consequences of which are even harder to take in.

In the circumstances I have no any other choice but to completely dismiss the claim herein on the basis of lack of Jurisdiction.

Made in Blantyre on 31<sup>st</sup> March 2016



Martha Chizuma-Mwangonde

**OMBUDSMAN**