

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MRS. L. BANDA.....COMPLAINANT

AND

MALAWI DEFENCE FORCE.....RESPONDENT

INQUIRY NO: 07/2016

FILE NUMBER – OMB-MZ-C-272-2005

DETERMINATION

CORAM

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

DETERMINATION

According to the evidence given by the Complainant during the Inquiry, her husband was employed by the Malawi Army in 1994 and died in 2004. His death gratuity only came out in December 2006. She noticed that about K75, 000 had been deducted from the gratuity. When she went to the Respondent's Headquarters in Lilongwe they told her that the money had been deducted because at the time of his death, her husband had a loan with the Army. The Respondents were represented by Lieutenant Pindani during the inquiry. He told the Inquiry that he had been sent to simply observe the proceedings without proffering any evidence.

The question that I have to decide on is whether the Respondents herein were guilty of maladministration in this case and whether the Complainant herein suffered an injustice which should be remedied.

According to the complaint letter that the Complainant wrote which was received by this office in September 2005 the Complainant was challenging the loan deduction because according to her, the husband never told her about taking any loan. There was then communication between our office and the Respondents herein. In a letter dated 12th December 2005 the Respondents clarified on the matter by stating that the deduction from the gratuity was a result of their continued paying the deceased's salary even after his death between the months of May 2004 to February 2005. The Respondents went even further to produce evidence of such payments by way of a salary schedule but also pay slips. However the Complainant expressed dissatisfaction with the said explanation stating that she never received the said salary. The record shows that the matter was then set down for Public Inquiry which was presided over by my predecessor Hon T. Chizumila. Although it has been incredibly difficult to decipher the writing on file it shows that the Inquiry stopped where the Hon Ombudsman ordered that there should be some investigation done on the Deceased's Bank Account through which the Complainant allegedly was receiving the money. However there is also a letter which apparently was received by this office in June 2009 from the Complainant in which she stated that when they went to the bank they found the account closed.

It is very unfortunate therefore that the Respondents' representative never gave any evidence to clarify the issues that are being raised herein. I however note that on file there is quite substantive evidence to show that salary for the Complainant's deceased husband continued to be paid even after his death. Question is where did this money go if what the Complainant is stating herein is true? I do not have very big problems with the manner in which they handled the Complaint as such but the sense of laxity in the manner they have handled this matter during this Inquiry is to say the least a bit annoying and not helpful at all and in my view maladministration.

At the end of the day what an Ombudsman seeks to do is to get to the truth of the matter and serve justice. This is one of those rare cases where having heard

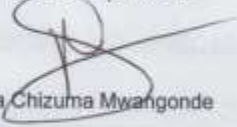
it all from the Parties and having read all the documents supporting the evidence one still finds him or herself uncomfortable with any decision that is intended to be taken. Accordingly I am of the view that the best way forward is to give a chance to the Respondents to bring to us evidence that actually shows the deposit of the money in the Complainant's late husband Bank Account and further evidence that show that the said money was withdrawn by the Complainant. I have deliberately asked the Respondents to get this evidence because compared to the Complainant they are in better position to get this document from the Bank.

Accordingly I hereby direct that the Respondents do bring to this office evidence of the deposits into the Complainant's deceased husband bank account and also evidence of any withdraws made by the Complainant thereon. This should be done within the next 21 days from the date of this determination. If the Respondents fail to do this then I will go ahead and make an assessment of an appropriate remedy for the Complainant without any further recourse to the them.

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 11th of April 2016.


Martha Chizuma Myangonde

OMBUDSMAN

DETERMINATION

CORAM

Mr. Martha Chizuma Myangonde

Complainant

Respondent

Complainant

Present

Present