

OMBUDSMAN NEWSLETTER



ISSUE 1 OF 2016



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EDITORS NOTE



I have the pleasure of presenting to you the latest edition of The Office of the Ombudsman newsletter. This platform is one of the key avenues that we employ to ensure that many people get to know about not only the existence of the Office of the Ombudsman, but also how to access and use it.

The year 2016, has started at a high note for the office. In this quarter, we have seen a steady rise in the number of cases we handle and we expect the upswing to continue throughout the year and in the coming years.

In this issue you will hear about the repositioning process the office of the Ombudsman is taking and you will also have the chance to know more about the new Ombudsman, Mrs. Martha Chizuma Mwangonde who assumed office on 5th December, 2015. Mrs Mwangonde is the fourth Ombudsman. She succeeds Retired Justice Tujilane Chizumila whose contract ended in June last year.

We are humbled by the public support we receive during our on spot investigations, public inquiries, civic education activities and our interactions with our desk officers from public institutions which continues to flow every day.

Enjoy your reading!!!

OFFICE OF THE OMBUDSMAN TAKES A PARADIGM SHIFT

MESSAGE FROM THE OMBUDSMAN

OFFICE OF THE OMBUDSMAN TAKES A PARADIGM SHIFT



Dear Readers,

As you go through the content of this Ombudsman Newsletter for the first quarter of the year 2016, you are witnessing the dawn of a new era for the Office of the Ombudsman.

I am very pleased to inform you that the office is taking a paradigm shift in the way it has been doing its business and that it will now fully exploit its constitutional mandate of being an auditor of public service delivery in Malawi. In the past, the majority of complaints received and investigated were labour related. This resulted in the regard of the office as a mere labour complaint handling institution. Going forward, we intend to fully utilise our unique legal mandate which encompasses monitoring of public service delivery by investigating alleged complaints of maladministration. When my Office considers complaints, we would like to see whether the person complaining has received a poor service, or not received a service they were entitled to. If this is the case, and the person has suffered an injustice as a consequence, we aim to put things right for them. Where possible, we will try to put them

back into the position they would have been in had nothing gone wrong. However, that's only part of the work of an Ombudsman. As well as looking to put things right for individuals, we are also looking to ensure that mistakes are not repeated. We aim to ensure that public services are improved through learning from mistakes.

My dream is that , the Office of the Ombudsman will contribute sufficiently to correcting bad systems in public bodies and setting of standards for provision of public services in Malawi. Through this, the Office of the Ombudsman will contribute greatly to the improvement of public service delivery in the country which is a very crucial ingredient to the development of the country. This paradigm shift further aligns very well with the Government Public Service reform which aims at creating an effective and efficient Public Service.

Amongst the items that are sure to interest you in this newsletter, is the story of 11 widows and their children in Balaka who complained about Balaka district council's misappropriation of deceased estates. The widows lost their husbands between 2005 and 2009. They stated that, at first they had no problems in accessing the money, but in 2013, the District council started telling them stories, that there books had been sent to Blantyre since there were some irregularities and they later discovered that all their money was depleted. See on page 3 why the widows and their children are in smiles. This is one of the many stories that put a spotlight on the impact of our pursuit of justice for ordinary people. It also puts to light a series of Maladministration issues in public offices.

Lastly, I would like to encourage you to write and give feedback on how we can improve our services. Your views are important in helping the Ombudsman to continue to give the people a voice in so far as exacting accountability in the exercise of public power is concerned.

Till next time,

Martha Chizuma Mwangonde

OMBUDSMAN

OMBUDSMAN DIRECTS DISTRICT COUNCILS TO ADMINISTER DELAYED DECEASED ESTATES

11 widows and their children in Balaka are counting their blessings after the Ombudsman brokered a deal, which saw Balaka District Assembly agreeing to pay them their deceased husband's estates.

Mrs. Khwalala and others filed a complaint against Balaka DC on 19th May, 2015 for misappropriating deceased estate money meant for their children. She stated that most of the Complainants lost their husbands between period of 2005 and 2009. She further stated that in the earlier days they never experienced any problems in accessing their money. However from 2013, the Respondents, Balaka District Council started giving them excuses that their books had been sent to Blantyre as there were irregularities in them. Because of that they were told that they would not be given the monies until the issues are sorted out. She further explained that by this time there was new personnel manning the deceased estate office and when they inquired from her how the processing of their payments were being done, she explained that whenever they withdrew some money, they always signed in a hardcover and not the actual books. The new officer then showed her the discrepancies in the figures between the books and the hardcover which showed that some monies had been withdrawn but not given to them.

The Complainants stated they had been told that all their children's money has since been depleted, a fact which they deny because according to them there should still be some money left in their accounts. They

further stated that since 2013 they have been told to wait for an audit that was in the process. To this have not been able to access their money which now through the Office of the Ombudsman, they seek.

In response, the Respondent's confirmed everything that the Complainants stated and that in line with this, they instituted an audit in 2014 which showed that money approximately K12Million had been misappropriated.

The Ombudsman found the Balaka District Assembly guilty of maladministration by delaying to pay Deceased Estate Funds to the Complainants whose children are the rightful owners. The Council is further guilty of maladministration by not instituting disciplinary hearing proceedings against the alleged suspect in the scam.

According to the Ombudsman's Determination of 16 March, 2016, Balaka District Council should within 21 days from the day of the determination, establish the amount of money misappropriated for each of the Complainants herein and ensure that payment of the same resumes by 29th April 2016 in accordance with applicable law. In addition, Balaka District Council should ensure that based on the preliminary audit findings it undertakes disciplinary proceedings against the suspect for the alleged offence of misappropriation of funds belonging to the Complainants and or any other relevant offence that the Council might find fit in order to prevent recurrence of the same kind of acts which unfortunately are very common in Public service and has resulted in

Government losing millions of Kwacha's that could have gone a long way in improving the much bemoaned public service delivery in Malawi.

In a similar case, Machinga district council is also faulted of Maladministration in the case of Mrs. Chisale and others who complained to the Ombudsman that Machinga district council failed to administer their deceased husbands estates to their children's account which they were later told that their children's money was stolen by an officer who was arrested after an audit report. The complainants complained to the district council in 1995, 22 years ago and nothing was done. They were told that they are still investigating and an audit was in place. The Ombudsman found out that, Machinga District Council unjustifiably delayed in paying back the money misappropriated by one of their officials to the Complainants and are therefore guilty of maladministration and as a result of such maladministration the Complainants herein have suffered a lot of hardships and are entitled to a remedy.

In her determination, of 14th April, 2015, the Ombudsman stated that **"I must say that it is always disheartening to see how deceased estates are handled in most District Councils in Malawi. Going by the number of complaints that this office receives on this issue and also media reports it would seem there is a tendency by Public Officials charged with administration of deceased estates in District Councils to consider deceased estate money as their own personal property and misappropriate it as they wish at the ex-**

pense of bonafide beneficiaries who most times having lost a parent or spouse have no any other means of survival but that money alone. It is further disheartening to see how public offices like Machinga District Council taking too long to investigate such cases let alone pay back the same to the concerned beneficiaries. In the present case the Respondents admission that the Complainants are owed money is of little comfort to them because a wrong was committed and 22 years later nothing has been done to remedy it. This is totally unjustifiable and it is maladministration in its purest sense.

The Ombudsman made a determination which states that within 30 days from the day of this determination, the Respondents should pay the Complainants their money and the amounts should be paid at the value that accounts for devaluation over the 22 years that the money has been outstanding. She also adds to say that the Respondents should within the same period also demonstrate to the Ombudsman by way of writing up the systematic changes that they have effected in their office that would ensure that deceased estate funds are protected and that the kind of maladministration as what happened herein does not happen again. In addition, the Respondent's Principal Secretary should write a letter to the Complainants herein that acknowledges the wrong that happened and apologises for the injustice suffered by the Complainants looking at the manner this issue was handled by the Respondents, to delay re payment for 22 years.

A PENSIONER PAID UP AFTER OMBUDSMAN'S INTERVENTION.

The Office of the Ombudsman has helped a retired teacher based in Ntcheu recover his pension which was miscalculated by the accountant general. Mr. Wasborn Zumazuma turned to the Ombudsman for assistance when he realized that the formula that was used by the accountant general to calculate his terminal benefits after his retirement in 2009 was not the one he anticipated, hence he was not comfortable with the retirement package that the accountant general wanted to give him.

Upon receipt of the complaint, the Office of the Ombudsman exchanged correspondence with officials from the accountant general and they furnished the office with information that they used the formula that was in force during that particular time to calculate the complainant's terminal benefits which was effective from 1st October, 2009. The accountant general also gave a sheet showing how the calculations were done. In the course of its investigations, the Office of the Ombudsman then found out that there were some recalculations of pensions taking place at the accountant general for those who were paid using the three or five year averaging method which the complainants pensions calculations was used. The Office of the Ombudsman made inquiries on whether the complainant was among the list to be paid. The Accountant general confirmed that the complainant was indeed on the list of those people whose pensions were miscalculated, following the review of the terminal benefits calculations ruling of 2010-2011 and a circular of 17th October, 2012 which followed the ruling. The accountant general recalculated the complainants pension and the complainant was at last paid what he deserved.

ADMARC PAYS UP AT LAST

Mr. Diness Siliya, was employed by the Respondents in May 1971 as a Clerk at Malangalanga Depot. In 1984 he was working as a Clerk at Mkwinda Depot and it was whilst he was there that he was told that he had resigned and he went home. After three months he went to inquire about his employment status at Malangalanga administrative offices. They told him that since he had done nothing wrong he would be called back to work. However this never happened and he wrote Head Office in Limbe where he was informed that the people who were in the know of the issue were no longer working with ADMARC and that there was no way that they could help him.

Through investigations and public inquiry, the Ombudsman found out that, ADMARC was guilty of maladministration in the manner which they handled the complaint

discretion should be exercised in favour of the complainant because he suffered injustice.

The Ombudsman remedied that the Respondents (ADMARC) should pay the Complainant the lost salary for the period between 2009 and 2016 when the matter was with this office or if by then the Complainant would have retired the salary he would have received in the last 7 years to his retirement. If the latter then the Respondent should factor in devaluation of the Kwacha on the date of payment.

ABOUT THE OFFICE OF THE OMBUDSMAN'S REPOSITIONING : TOWARDS UNLIMITED SERVICE DELIVERY

In response to the experiences of the past 20 years and the prevailing circumstances (dominance of impunity culture and misconceptions of the role of the ombudsman), the office will take the following interventions to improve its service delivery as well as promote justice to the fully.

Beyond remedying a complaint

Ending at resolving a complaint has proved insufficient to compel officials to comply with set standards and perform their responsibilities effectively. The office will strive to identify public official or institutions responsible for manifested injustices and direct appropriate disciplinary actions on them and follow-up the very end of the direction.

Own motion investigations

The office will no longer only investigate complaints upon receipts. It also initiate investigations of any alleged based on media or any other reports as well as from tip-offs. Mechanisms for the own investigations are currently being devised. In order to showcase the total scope of mandate of the office, majority of the own investigations will be service delivery related investigations.

Systemic investigations

Based on complaints patterns, both handled and observed, the office will take a holistic approach to address injustices by comprehensive study service delivery processes include decision making process. This will be done to address rooted maladministration practices including impunity culture which are negatively impact service delivery.

THE REPOSITIONING cont.

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Full utilization of investigative powers

Lately there have been rise in instances of unresponsiveness or non-cooperation by some MDA's. These are some of the offences one can commit against the ombudsman. The office will no longer tolerate such instances and any public officials who will commit these offenses will not escape wrath of the laws.

Establish strong linkages with CSOs

Not all injustices can be understood and reported by the public. In fact the office has not investigate a complaint by third party (CSOs) except referrals. The office will engage with CSOs including CBOs to assist the public by reporting injustices to the Ombudsman on behalf of the general public.

THE ESSENCE OF THE OFFICE OF THE OMBUDSMAN

Modern dispute resolution processes in Malawi were introduced in the Nyasaland Protectorate by the British set up administration in the late 19^h century. A legal system based on the common law developed over the years. The 1994, Malawi constitution creates the Judiciary, which has jurisdiction over all issues of judicial nature and has exclusive authority to decide whether or not an issue is within its competence. The Judiciary comprises the Malawi supreme court of appeal, as the highest court, the high court and the subordinate magistrate courts. Virtually, the judiciary can handle matters, including matters which are handled by the Ombudsman. However, the Ombudsman is not a competitor of the courts system but rather a complementary institution to the existing complaint handling structures. The Ombudsman must be understood as having been created to fulfill special needs of the people. Internationally, the Ombudsman concept is about speedy resolution of ordinary citizens complaints against maladministration at no cost on the part of the Complainant.

The Office of the Ombudsman investigates complaints of unfair treatment and maladministration occasioned by public officers and where appropriate recommends redress. The Office acts as a voice for the most vulnerable and marginalized groups especially to those that cannot afford legal representation to take up their matters to the formal court system. It thereby has a crucial role to play in ensuring that there is access to justice and also consolidating democracy in Malawi.

The existence of the Office of the Ombudsman also acts as a deterrent against abuse of official powers by public officials and public Institutions in their public service delivery. They are kept on guard of the fact that lapses might be reported to the Ombudsman. This promotes a culture of transparency, accountability, fairness, responsiveness, reasonableness and the fulfillment of the rule of law and good governance.

Among the constitutional bodies, the Office of the Ombudsman is uniquely positioned to identify and address cases of maladministration and provide recommendations to public bodies to prevent reoccurrence of that maladministrative acts. In this case, the Ombudsman acts as a change agent, by making recommendations for systemic change after making systemic investigations. The Ombudsman look within each complaint for the possibility of a recurrence take steps to change the structure in order to prevent a similar case in the future.”

Although the Ombudsman is often viewed as an enemy by most public officers, many of the complaints investigated by the ombudsman do not result in findings of wrongdoing on the part of the authority /public bodies investigated. On the other hand, the Ombudsman may find the complaint groundless and may close the case in favour of the public body. In this case, the Ombudsman's impartial and independent report, may well serve to enhance the morale and restore the self-confidence of the public employees impugned. In all investigations, the Ombudsman tries to reduce friction between citizens and government.”

The office of the Ombudsman is very vital in fostering administrative justice, good governance and the rule of law. It was established to shield all people against arbitrary government action.

KNOW YOUR OMBUDSMAN

Martha Chizuma Mwangonde (Mrs.) was appointed in December 2015 as the 4th Ombudsman of the Republic of Malawi in line with section 122 of the constitution. The editor spoke with the Honorable Ombudsman on her personal and professional life.

Editor: Who is Martha Chizuma Mwangonde?

Hon Ombudsman: I am Christian, I am a daughter, I am a wife and a mum of two toddler boys. I hold a Bachelor of Laws Degree from Chancellor College and a Master of Laws Degree from UK. I deferred my PhD studies but I hope to resume my studies once I feel things settled around me. In as far as my career is concerned, I joined the judiciary as Senior Resident Magistrate in 2002 soon after my law school. I left Judiciary in 2011 at this time I was holding the position of Deputy Chairperson of the Industrial Relations Court. In 2011 I joined Limbe Leaf Tobacco Company. I worked for Limbe Leaf from 2011 to December 2015 when I resigned following my appointment as Ombudsman of Malawi



Editor: In three words, can you describe yourself professionally.

Hon Ombudsman: Strategic. Strategic. Strategic

Editor: How does a typical day look like for you?

Hon Ombudsman: I think my day is just as ordinary as any young mum with two energetic toddler boys! My early morning hours are mainly taken up with ensuring that the boys are ready for school and that there is enough for the home to run. I try to be at the office at 7.30 unless there are very good reasons why I cannot make it on time.

As the office of the Ombudsman, we deal with people's complaints against Government bodies. So I would say the large part of the day I am dealing with files; reading through complaints deciding on the course of action, issuing directions, following up on progress, and presiding over Public Inquiries. But over and above this, as a controlling officer of the Office of the Ombudsman I also have to deal with a lot of finance and administrative issues. So in short my day is full.

Editor: What inspired you to consider becoming the Ombudsman of the Republic of Malawi?

Hon Ombudsman: At the heart of Ombudsman job is serving justice to the vulnerable many. To stand in the gap between the mighty powerful and vulnerable poor I think thus what really resonates well with who I am as a person. But as an addition to that an Ombudsman helps to correct rotten, archaic oppressive systems and processes in gov

ernment. This is the part that I also truly like. To use my job for positive change. This is what attracted me to this job. It is not easy to get a job that sits well with ones passions. I am one of the few lucky ones that are doing what they are passionate about and getting paid for it. For this am grateful

Editor: Briefly share with us what it entails to be an Ombudsman?

Hon Ombudsman: Being an Ombudsman entails a number of things. Firstly it ensures knowing the law and the spirit behind the law. This is because everything I do has to be in accordance with the law. I can only know what to do if I know the law. Secondly it means seeking the truth all the time and loving the truth. Justice cannot be served based on lies. So ultimately in all the processes the truth has to come out. Thirdly one needs to be bold and determined. The Respondent in all our complaints is Government. Governments are always powerful and most times

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KNOW YOUR OMBUDSMAN

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not easy to correct. Accordingly it is always important to always stand on the law and the truth and be able to say it as it is regardless of who your audience is. The determination comes because just like any other job you meet setbacks, frustrations and sometimes you even fail or make mistakes. However it is important that one keeps determined to look ahead keep on keeping on.

Editor: What aspects of your role as Ombudsman do you like most?

Hon Ombudsman: Thus a tough one because I can't think of any aspect of this job that I don't like and enjoy. However I think there is a certain level of great satisfaction when I see my determination on a particular matter complied with. You see unlike the courts this office does not have such strict enforcement procedures. Other than the part played by Parliament, compliance with our determinations really lies on the willingness of the Respondent. So whenever I see a determination complied with there is sense of satisfaction that a wrong has been made right, justice has been served and that ultimately this office's relevancy and existence is validated.

Editor: What is your vision for the office in five years' time?

Hon Ombudsman: In five years' time I want the relevancy of this office in Malawi to be unquestionable. I have always said to people at the office and other stakeholders in different forums that the framers of the constitution surely put a great thought into creating this institution. There was a specific purpose that this office was supposed fulfill that no other institution could fulfill and this is from reading the constitution itself. Probably that purpose over the two decades got lost. Office of the Ombudsman is supposed to be a mirror of how Government conducts its business. Thus in short it is an office that is supposed to check on maladministration in Government. This is what I want the office to focus on in the next 5 years that I am here. Accordingly my vision is to ensure that by 2020 the Office of the Ombudsman be recognized as undoubted and effective tool in correcting bad administration by public offices in Malawi.

Editor: How do you define success, and how do you measure it, in your own definition?

Hon Ombudsman: For me success means accomplishment of set goals or plans. I usually have daily goals, monthly goals and some goals I have are indeed long term. So for me every day I have managed to achieve those daily goals and plans I call that success. And every time I have taken a step towards my long time goals I call it success.

Editor: How relevant is the Office of the Ombudsman in Malawi?

Hon Ombudsman: To the extent that the office is legally

mandated to operate as a watchdog of government operations its relevancy cannot be overstated. This is more so in this day and age when we are talking about the public service reforms which are aimed at improving public service delivery in Malawi. The Ombudsman checks how those services are delivered. It ensures amongst other things that there is no abuse of power by the public officials, that there is no unfair treatment of the service users, that public officials do not delay or provide the service negligently. Thus the office of the Ombudsman is a tool that should be used to set the much needed standards of public service delivery in Malawi.

Editor: Apart from what your office does, what more, do you think can be done in order to enhance administrative justice in Malawi?

Hon Ombudsman: You see I honestly believe that there are a lot of administrative sins that take place in public service. It is only a small fraction of them that get reported to the office of the Ombudsman. And so it is only a few that get corrected. It is the uncorrected ones that put a big dent on administrative justice in Malawi. Accordingly there is a great need for institutions and public officers to effectively coordinate to enhance principles of rule of law, accountability and transparency that are entrenched in the constitution.

Editor: What drives you, in your professional life?

Hon Ombudsman: A passion to serve.

Editor: If you were to write a book about yourself, what would you name it?

Hon Ombudsman: Actually the book has already been conceptualized. Have done 5 pages already and I hope to get it published in 2019 as I get closer to finishing my term here. Currently the title is 'Alone on the second Floor of St Martins Building'. I know over time I will change it. But it will be more of my biography with much focus on my work as Ombudsman

Editor: What is your favourite dish?

Hon Ombudsman: Give me beans with anything. Am good to go.

Editor: What is your hidden talent?

Hon Ombudsman: Believe it or not. Am quite a good dancer! My nieces think I lost it. But I know I still got it!

Editor: Any last words to the service users?

Hon Ombudsman: To the Clients my message is this office is for you. Use it and we promise to give the best service possible. To our stakeholders lets work together to ensure that administrative justice become a reality in Malawi.

OMBUDSMAN MAKES COURTESY VISITS

During the quarter, the Honourable Ombudsman Mrs. Martha Chizuma Mwangonde, made various courtesy visits. Below is a brief summary of the visits made.

• MEETING WITH THE STATE PRESIDENT

On 5 January, 2016 the Ombudsman made a courtesy call to the His Excellency the State President of the Republic of Malawi, Professor Arthur Peter Mutharika. The objective of the meeting was to inform the State President on the status of the Office of the Ombudsman and the repositioning process the office the office is undergoing.

• MEETINGS WITH PARLIAMENTARIANS

In January 2016 the Ombudsman met the Speaker of the National Assembly, and on 2nd March, she met the Chairpersons of parliamentary committees. The main objective of these meetings was to enhance the relationship between the Office of the Ombudsman and Parliament. The Ombudsman emphasized the need to enhance this working relationship as Parliament is the Ombudsman's employer and hence oversees the operations of the office.

• DEVELOPMENT PARTNERS

In January, 2016 the Honourable Ombudsman met the US ambassador, Virginia Palmer and the United Nations Resident Representative, Ms Mia Seppo. In February, she met UN Heads of Agencies. In March, she met the Norwegian Church Aid's Head of Programmes. The objectives of the meetings was to inform the development partners on the role and functions of the Office of the Ombudsman. During the meetings also shared the repositioning process the office is undergoing which will see it effectively address administrative deficiencies in public sector .

The courtesy visits helped the Ombudsman and the office to understand the different perceptions stakeholders have pertaining the role and functions of the office which will help the office to mold its service delivery so that its relevance is clear. These meetings also provided a platform to identify possible areas of partnerships with these development partners.

The office was also visited by the UNDP Global Centre for Public Service Excellence mission to Malawi who wanted to have an understanding of what the Office of the Ombudsman does and the views of the office on what support the centre can provide to the Public Sector Reform Commission and its secretariat.

STRATEGIC PLAN DEVELOPMENT: INTERNAL TRAINING

The Office of the Ombudsman is in the process of developing its five year Strategic Plan (July 2016– June 2021) . On 5/02/2016, middle and senior managers of the office were trained on the processes and steps involved in developing a Strategic Plan. The objective of the Training was to impart skills on the Members of Staff on how to set Strategic Goals, Objectives and Activities. The training was conducted at the Office of the Ombudsman Headquarters in Lilongwe and was facilitated by Mr. Bodwin Chiyamwaka .



The Honourable Ombudsman (Front Row, Centre), The Facilitator and members of Staff of the Office of the Ombudsman after the training

NEW MEMBERS OF STAFF



Boniface Munthali, joined the office in February, 2016 as the Under Secretary. He holds a Master of Science in Organizational Change and Development and Postgraduate Diploma in Human Resource Studies from the University of Manchester



Snowden Serenje, joined the office in March, 2016 as a Procurement Assistant. He holds CIPSL6 Graduate Diploma in Purchasing and Supply. He is also a member of the Malawi Purchasing Association

The emblem of the Office of the Ombudsman of Malawi is a large, stylized orange graphic. It features a central scale of justice, symbolizing fairness and equity. Below the scales is a map of Malawi, representing the national jurisdiction. At the bottom of the emblem is a circular arrangement of human figures holding hands, signifying community and social justice. The entire emblem is set against a background of radiating lines, suggesting a sun or a source of light and truth.

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