



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN IN THE MATTER

*BETWEEN*

*ALLAN DAVIE MAWINGO .....COMPLAINANT*

*AND*

*COLLEGE OF MEDICINE.....RESPONDENT*

*INQUIRY NO: 84/2019*

*FILE NUMBER OMB/41/BT/2018*

## DETERMINATION

CORAM:

MARTHA CHIZUMA - OMBUDSMAN

Allan Mawingo - Complainant

Respondent:

Dr. Thandie Mwalukomo - MBBS years 5 Coordinator

Stuart Chirambo - Acting Registrar

## DETERMINATION

1. The Complainant lodged a complaint against the Respondent through a letter dated 8<sup>th</sup> October, 2018 alleging that he was unfairly withdrawn from the Bachelor's degree in medicine and surgery by the Respondent. Looking at the nature and urgency of the complaint which involves the right to education the matter went straight to Public inquiry which was held on the 31<sup>st</sup> January, 2019.
2. During the inquiry the Complainant stated that he was admitted to College of Medicine (CoM) on the 6<sup>th</sup> December, 2010 to pursue a Bachelor's degree in medicine and surgery (MBBS) which he studied up to May 2018. In his final year he passed all his exams except for the integrated exam which tests candidates on all the courses covered and passed during the degree program.
3. When one fails the integrated exams they are supposed to write a supplementary exam, there were three of them who failed and wrote the supplementary exam. The rule according to the Complainant is that when you fail the supplementary integrated exam you can repeat one whole year so long as during the whole study you had not repeated, otherwise you are withdrawn. All three of them failed the integrated supplementary exam and they repeated the year.
4. When the Complainant was repeating the year he passed the first three rotations. When he went to the last rotation which is medicine, after writing his exams he was told that he had failed. When one fails a rotation in the repeating year you are withdrawn instantly. After he was informed he had failed, he went to the office of the coordinator who had informed him that he has failed one station. During exams there are many stations but the active are 3. Per rules of the medicine component, one is supposed to pass at least 2 or 3 active stations and the Complainant was informed that he had failed one of the three active stations. The Coordinator did not inform him which active stations he had failed and he did not ask her either. The Coordinator further informed him that there was no way the decision could be reversed and that he had to appeal and wait for the senate to make a decision.
5. He wrote an appeal to the Vice Chancellor, the decision was that since he was repeating and had failed a rotation that he had previously also failed, the withdrawal was upheld. It is the second point that he had a problem

with, he did not fail a rotation in the final year. He was therefore still disappointed with the decision.

6. He further stated that he had quit his job with the Malawi Police Services to pursue the degree programme at CoM and he did not have money to find a lawyer hence lodging his complaint with the Office of the Ombudsman.
7. During the course every student is given a mentor or supervisor and every student is also given a bay. He was given a tutor/ mentor who was a female by the name of Dr Tamara Phiri. There were two of them that she was supervising, the other student was passed.
8. During everyday activities in the ward, he observed that he was treated more harshly than the other student. This other student is the son of a former lecturer at CoM. The way the tutor treated him was clearly unfair against him. He would present a case during rounds in the morning and bring 3 out of 5 results in the morning and she would shout at him. The other student would bring 1 out of 6 and she would not shout. This happened for a long time.
9. During the 4<sup>th</sup> week the assessors came to assess their work in the ward. The tutor informed him that his assessment was not good and there were instances where both of them may have made a mistake like they did not review some patients because an intern has already done that. He was the only one who was named and reprimanded for not checking on the patient. It would have been dangerous to raise these issues because that would have meant failure right away.
10. During cross examination, the Complainant stated that he did not mention about Dr Phiri and the warning letter in his appeal. The reason he did not do this was that he wanted to be nice so that he should be helped, he did not want to complicate matters even more. He agreed that had he stated that he felt he was being victimised by the supervisor it could have made a difference. He further stated that he understands the rules and regulations and that the Respondent complied with the rules and regulations when they gave him an opportunity to repeat. He further stated that the Respondent had informed him that he failed 1 rotation and not 2 rotations. He stated that he was not informed that he had failed the continuous assessment.
11. Mr Stuart Chirambo the Acting Registrar stated that the Complainant joined the course in 2010. He failed in year one but passed supplementary exams. He passed the second and third years. In year four he had a rotation which he failed in one of the semesters. He repeated and sat for integrated exams. He then joined other colleagues in year 5 where he failed first attempt of integrated exams and he failed the whole supplementary.

He was told to repeat the whole year and that is when he failed the fourth rotation and was withdrawn after the senate upheld the decision to withdraw him.

12. On the issue he raised where during the previous year he had passed the rotation, the fact is during the repeat year he failed again, he had only passed one of the three rotations. All of these stipulations are in the rules.
13. In the assessment in the MBBS 5 there is paediatrics, internal medicine, surgery and obstetrics. Each and every department have their own procedure. For Medicine they spend 8 weeks in the department. They are allocated a mentor and are assessed periodically. If someone is not doing well they get a warning. The exam has 3 components, first its continuous assessment, where they assess the ethics, attitude and it contributes to 20% and this is only assessed at midpoint. Then there is the clinical component, it contributes 40% and it constitutes a long case. The candidate spends 45 to 60 minutes with a patient and assesses him or her. The third is obstetric structured clinical exam (OSCE). It is divided into 2 parts. The first part is the main part, they call candidates live because there are two examiners. The first part is to assess if the candidate is safe. That is why the component weighs more. It contains 10 stations with the 3 active ones. The last 40% is contributed by a written exam. He passed the continuous assessment. He also passed the written but the OSCE he failed 2 of the 3 main active stations.
14. In cross examination the Respondent stated that it is the rules which provide that marks of the previous year are disregarded.

#### ANALYSIS OF THE LAW AND FACTS

15. My mandate as per section 123 of the Constitution coupled with section 5 of the Ombudsman Act is to investigate alleged injustices as a result of maladministration. Injustice has not been defined but it includes things like financial loss or unnecessary expenses, hurt feelings distress, worry or inconvenience, loss of right or amenity, time and trouble of pursuing a justifiable complaint. Maladministration on the other hand occurs when a public body does something it ought not to have done for reasons such as *bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness.*
16. Looking at my mandate as stipulated above, I must therefore assess whether the Respondent unfairly withdrew the Complainant from the course, either by misapplication of the rules, or bias or any of the acts mentioned in paragraph 14 above.
17. According to the Complainant he repeated the fifth year after he failed the integrated exam as according to the rules you repeat the whole year

- after failing the integrated exam as long as you had not repeated before otherwise you are withdrawn. This is in accordance with clause 16.2.6 of the approved Rules and Regulations for Undergraduate Studies Curriculum for Bachelor of Medicine and Bachelor of Surgery Programme (the Rules).
18. When the Complainant was repeating the year he passed the first three rotations but failed the last rotation under the Obstetrics and Gynaecology rotation, he failed 2 of the 3 main active stations under the obstetric structured clinical exam (OSCE). According to clause 16.1.5 if a student fails a rotation because of one component, the final grade to be presented to the Senate will be the grade obtained in the failed component, regardless of the passes obtained in other component. This therefore meant he had a fail during his repeating year.
  19. When a student is repeating the year and they have a failing grade, they are withdrawn in accordance with clause 16.3.2 of the rules. From my reading of this clause it means that when one is repeating, regardless of whether they fail one or two rotations or they fail the integrated exam it does not matter what aspect of the repeating fifth year they fail, they are withdrawn. I therefore, find that there was no maladministration on the part of the Respondent in the manner in which they withdrew the Complainant from the MBBS programme.
  20. The Complainant suggested that there was bias by his supervisor Dr Phiri which resulted in his failure. He failed however, to raise his issue during the time of study and also during his appeal to the senate. In trying to find whether the Respondent was fair or unfair to the complainant in their decision to withdraw him, I have to keep mind all the information that was made available to them by the complainant. They could not have taken into account or even investigated the allegations of bias by Dr Phiri because it was not within their knowledge. These allegations were raised by the Complainant too late and are only looking like the Complainant trying to grasp at straws.
  21. He was given a warning on 20<sup>th</sup> April, 2018 which was a very detailed warning on areas he was failing and with encouragement on what he needed to do in order to successfully pass. His academic record during 2016/2017 academic year did not count when he was repeating, he had to prove himself all over again which unfortunately this time he also did not manage to do. I therefore, find no merit in this claim and the matter is therefore, dismissed.

**RIGHT OF REVIEW**

22. 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 19<sup>th</sup> June, 2019



**Martha Chizuma**  
**OMBUDSMAN**

DETERMINATION