



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN IN THE MATTER

*BETWEEN*

*ATUSAYE MWAMBETANIYA.....COMPLAINANT*

*AND*

*ACCOUNTANT GENERAL..... RESPONDENT*

*INQUIRY NO: 15/2019*

FILE NUMBER - LL-16-09-2016

## DETERMINATION

**CORAM:**

- |                       |   |                    |
|-----------------------|---|--------------------|
| <b>MARTHA CHIZUMA</b> | - | <b>OMBUDSMAN</b>   |
| Atasuye Mwambetania   | - | Complainant        |
| Inspector William     | - | Respondent         |
| Samson C. kandulu     | - | Respondent (HRMO)  |
| Jueeka Nyirongo       | - | Respondent (AHRMO) |

## DETERMINATION

1. The complainant lodged a complaint with my office through a letter dated 28<sup>th</sup> August, 2016 alleging unfair practices by the Respondent in that he has been subjected to prolonged interdiction. The complaint was referred to the Respondent for their comments and in their response they informed my office that the Complainant was still on interdiction as they were waiting for the conclusion of his criminal matter. Several communications were made to the Respondent guiding them on the position of the law in such circumstances, however, they maintained their position. In the circumstances, the matter was heard through a public inquiry in order for me to make a decision, which once delivered becomes binding on the both parties.
2. During the Public Inquiry which was held on 23<sup>rd</sup> November, 2017 the Complainant stated that he was working for the respondent as an Accountant and was posted to police Headquarters in July 2010.
3. In October 2011, someone wrote cheques in the name of System Links and Supplies amounting to K 10, 500,000.00 (ten million and five hundred thousand Kwacha). In the same month, the Complainant and his two colleagues were picked up by the police for questioning.
4. In February 2012, the police came back to his office and began calling all officers in the office individually for questioning. When it was his turn, he was informed that the handwriting on the cheque matched his. After the questioning he was taken to area 18 police station where he stayed in a police cell for three days and he was eventually released on bail. At the time of inquiry, the Complainant was still appearing for bail.
5. The respondent informed the inquiry that the matter was being handled by the Anti-Corruption Bureau (ACB) as one of the "Cash Gate" cases. However, when asked, ACB stated that they were not working on the case of the Complainant. The matter had been sent to fiscal department in the police and later to the Legal Service Department for a Legal opinion.
6. The representative from the Accountant General stated that their position was to go with directives from my office to proceed with disciplinary charges against the Complainant as the criminal processes can run parallel to the disciplinary processes. He further stated that they intended to serve the Complainant the disciplinary charges two weeks from the date of the inquiry. I gave the Accountant General up to 15<sup>th</sup> December, 2017 to give me their position on how they will conclude this matter.

7. As of November 2018, my office had not heard anything from the office of the Accountant General on the progress of the disciplinary charges to be levelled against the complainant, although from the documents submitted by the Complainant to my office in September 2018 I am aware that the Accountant General served the complainant with disciplinary charges.
8. Without belabouring with the matter and looking at the time gone by, I direct the Office of the Accountant General to finalise disciplinary processes against the Complainant by 30<sup>th</sup> June, 2019 so that the complainant is relieved of the uncertainties surrounding his employment. Any withheld salary during the time of interdiction if any should also be paid to the Complainant by the same 30<sup>th</sup> June, 2019. The rate of payment should be equivalent to the salary of an Accountant as of the date of this determination.

9. RIGHT REVIEW

Any party dissatisfied with this determination and with sufficient interest in the matter is at Liberty 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 23rd day of April, 2019

  
MARTHA CHIZUMA  
OMBUDSMAN