



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

BENEDICTOR MALCOM KANJADZA.....COMPLAINANT

AND

MALAWI PRISON SERVICE RESPONDENT

INQUIRY NO: 73/2019

FILE NUMBER: OMB/BT/C/141/2010

DETERMINATION

CORAM

- Hon. Martha Chizuma - Ombudsman
- Benedict Kanjadza - Complainant
- George P.F Chibwe - Senior Superintendent of Prison

DETERMINATION

1. The Complainant lodged his complaint with our office through a letter dated 2nd September, 2010 claiming unfair treatment. He alleged that he was detained in a prison cell for no apparent reasons and that he was forced to resign.
2. Investigations failed to resolve the matter and it was recommended for Public Inquiry which took place on 29th January, 2019. The Complainant represented himself and the Respondent was represented by Senior Superintendent George Chibwe.
3. In his sworn evidence the Complainant stated that he was employed in 2007 as a Recruit Warder. In 2010 whilst working at Mikuyu Prison he was arrested by Mr Simwaka who simply stated that based on his powers he was arresting the Complainant but no reasons were given for the arrest. He was detained in a cell at Mikuyu Solitary Confinement for three days. Upon being released he was transferred to work at Zomba Central prison.
4. He stated that after some time he was transferred to Chikwawa prison. He objected on health grounds but the officials failed to consider his condition. Instead they ultimately asked him to resign and he indeed resigned. He alleged that all this was just a way to get rid of him because he once worked with the Daily times and they therefore suspected him of leaking information to the press.
5. The Respondent's representative stated that he was not competent to give evidence during this time and he needed more time. They were then given 21 days to make written submissions. In his submission the Respondent stated that the Complainant was indeed detained but the detention was due to the unruly conduct of the Complainant which includes beating his own wife, use of abusive and obscene languages against senior prison officers and blocking women from collecting water at a public borehole. They further stated that upon his release, some junior officers were very angry against him that they wanted to beat him. He was thus transferred to Zomba Central Prison as a protective measure.
6. The Respondent allege that whilst at Zomba Central Prison, the Complainant continued with uncivil and quarrelsome behaviour with other officers and he was usually absent from duty because he had a tendency of going to his home village in Magomero-Thondwe. It was the Respondent's story that the decision to transfer him to Chikwawa was made so as to distance him from his home village. They further alleged that the Complainant did not want to go there and he protested by submitting his resignation letter.

ANALYSIS OF THE LAW AND FACTS

7. The primary function of an Ombudsman is to investigate complaints of maladministration. Maladministration has many facets but for us in Malawi, the first port of call to establish maladministration is section 123 of the Constitution and section 5 of the Ombudsman Act. Under these provisions, for maladministration to be proved, the complaint lodged has to allege either or several of the following instances: injustice; abuse of power; unfair treatment; manifest injustice or conduct qualifying as oppressive or unfair in an open and democratic society; and the exercise or performance of powers, duties and functions in an unreasonable, unjust or unfair way. As per section 5 (2) of the Ombudsman Act, this further includes decisions or recommendations made by or under the authority of any organ of Government or any act or omission of such organ that is unreasonable, unjust or unfair or based on any practice deemed as such and also that the powers, duties and functions which vest in any organ of Government are exercised in a manner which is unreasonable, unjust or unfair.
8. The complaint herein is that of unfair treatment. My task in this case is to determine if the Respondent is guilty of this. Based on the written submissions and letters/reports which were made available to my office, there is clear evidence that indeed the Complainant was very unruly and uncontrollable. There is evidence that several officers from both Mikuyu and Zomba Central Prison wrote letters of complaints against the Complainant's behaviour. One of such letters dated 9th March, 2011 revealed that the Officer in charge at Mikuyu Prison wrote a complaint against him to the Chief Commissioner of Prisons. The Report indicated that he was always coming late to work, insulting his fellow officers, overstaying his leave as well as threatening to beat his seniors.
9. Section 43 of the Prisons Act provides for offences against discipline by prison officers. Among other things the section states that any prison officer who conducts any of the following shall be guilty of an offence:-
 - i. absents himself without leave or overstays his leave
 - ii. is slovenly, inattentive, uncivil or quarrelsome,
 - iii. is guilty of any neglect of duty.

10. Section 44 of the Prisons Act provides that any prison officer may arrest without warrant any prison officer, not being an officer of his own or of senior rank or grade, whom he suspects on reasonable grounds of having committed an offence under section 43. A prison officer effecting an arrest under this section shall forthwith bring the accused before the officer in charge, who shall cause the case to be heard without undue delay and may order the remand of the accused in custody for so long as may reasonably be necessary.
11. The arrest of the Complainant was not in any way false imprisonment as he was arrested in accordance with Section 44 of the Prisons Act which gives power to any prison officer to arrest without warrant any prison officer whom he suspects on reasonable grounds to have committed an offence under section 43. The Complainant was summoned by the officer in charge after he had threatened and blocked women and prisoners from collecting water as well as using abusive and obscene languages. The Complainant refused to go and the Officer in charge ordered other prison officers to arrest him. I have evidence on record which shows that before the arrest, the officer in charge reported the matter to his immediate boss the Regional Commanding Officer who directed that the Complainant be arrested and put under guardroom until he sobered up.
12. The evidence before me also shows that the Complainant is not honest. I have before me a resignation letter which he wrote dated 7th February, 2011 in which he did not even bother to give reasons for his resignation. The evidence also shows that he was also called by the officer In- Charge of Zomba Central Prison to explain why he was resigning and he chose to keep the reasons to himself. I therefore believe that the Complainant resigned voluntarily and that no one forced him to do so. It seems that the Complainant is now regretting his decision hence he came up with this claim. The totality of the evidence before me reveals that the Complainant was so irresponsible both at work as well as in his social life. He was not in any way treated unfairly as it was his own reckless behaviour that led to his predicament.
13. For this reason, I find that the treatment herein was for all intents and purposes fair and I cannot find fault in terms of the Constitution and the Ombudsman Act by the Respondent.
14. In view of this and by the powers vested in me under the Constitution and the Ombudsman Act, I hereby dismiss the Complainant's claim for lack of merit in its entirety.

RIGHT OF REVIEW

15. 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 18th Day of June, 2019



Martha Chizuma

OMBUDSMAN

DETERMINATION