

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

BENJAMIN SALEYA..... COMPLAINANT

AND

**MIN OF HOME AFFAIRS.....1ST RESPONDENT
& INTERNAL SECURITY**

MACHINGA DISTRICT COUNCIL.....2ND RESPONDENT

INQUIRY NUMBER: 94/2019

FILE NUMBER- OMB-18-BLK-02

CORAM

Martha Chizuma - Ombudsman
Benjamin Saleya - Complainant
Respondents - Absent

DETERMINATION

1. The Complainant states that his uncle was arrested in 2016 by Nayuchi Police on attempted theft charges. He was taken to Zomba to one of the Prisons.
2. He was convicted and sentenced to 18 months imprisonment. The Complainant decided to be following up on him. The Complainant and his family went to check at Domasi, then at Mpyupyu. When they went to Mpyupyu, they were told that his uncle was sick and he had been sent to the Central Prison to be close to the General Hospital. When the Complainant went to the Central Prison, he did not find him. He even went to check at the hospital and the uncle was not there either. After which the Complainant went back to Mpyupyu prison and they referred him to Mikuyu prison but the Uncle was not there. Seeing the walls he was hitting, the Complainant went to his Member of Parliament (MP) to complain. It was the MP who referred him to my Office.
3. It was during one of the tripartite meetings held on 2nd August, 2018 that the Complainant learnt that his uncle had died. In attendance at this meeting were the Complainant, Mr Bazilio Chapuwala, (Legal Officer for the Malawi Prison) and two of my officers from the Eastern Region Office.
4. It was established at this meeting that Jafali Sanudi was arrested by Police in 2016 at Nayuchi; he was later transferred to Liwonde Police. Liwonde First Grade Magistrate convicted him on 7th October, 2016 and sentenced him to 18 months Imprisonment with Hard Labour.
5. The first prison Late Jafali Sanudi was sent after sentence was Domasi and his prisoner number was 240/2016 DO. He was later transferred to Mpyupyu prison where his prisoner number was 194/2016 MPY. He was transferred to Mpyupyu because he qualified to be at a Minimum Prison.
6. He later fell sick, and his condition prompted Health officials at the prison to conduct HIV testing. He tested HIV positive and it was discovered that his immunity had lowered. This was on 4th April, 2017. On 6th April, 2018 he was sent to Zomba Central Hospital where he was admitted. He was in Ward 11, a special Ward for patients who are prisoners, and was in custody of prison officials. Although Jafali Sanudi was not physically received by Zomba Maximum prison, it was recorded that he was received by the prison because they provide security to Ward 11 at Zomba Central Hospital.

7. The prisoner died on 7th April, 2017 of Immunosuppression/Pneumonia according to death report. According to law Malawi Prison is supposed to inform relatives of the deceased of the death of a prisoner. The relatives may collect the body if they wish. Where the body is not claimed after 30 days Prison informs Local Government which buries the body.
8. In the case of Late Sanudi, he indicated Joso Simonga as his Next of Kin. There was no phone number or contact address. He registered his permanent address as Namputo Village, STA Chinguza, Machinga. Zomba Central Prison wrote a report of the death of Jafali Sanudi on 7th April, 2018. It was addressed to the Coroner; Chief Commissioner of Prison; and District Commissioner Machinga. It was copied to Police Headquarters; Zomba Police Station; and Eastern Region Police Headquarter. The report indicates that District Commissioner Machinga was addressed to inform relatives of the deceased.
9. At the expiry of 30 days Zomba City Council was informed of the unclaimed body who proceeded to bury the body of Late Jafali Sanudi.
10. My Regional Officer for the Eastern Region confirmed that during one of the meetings, prison authorities said they informed the District Commissioner, (DC) about the death so that they could relay the message to the family. And the office of the DC said that they were waiting for the prison to set a date to deliver the message which did not happen.
11. The Complainant states that all they want is compensation for the money they have lost whilst following up on this matter.
12. Looking at the facts, and that they did not attend the inquiry, I decided to give the Prison and the Office of the DC until 20th January, 2019 to make their submissions. Seeing that I had not gotten anything from the two offices until May, 2019, I asked the Regional Officer to remind the two offices to make their submissions which they never did. Seeing that time was going and the Complainant deserved to have his matter concluded, I proceeded to write my determination.
13. The main mandate of my office is to investigate instances of maladministration. Maladministration basically means bad administrative decisions or actions made or taken by public officials or offices. Both our Constitution and Ombudsman Act list out a number of instances that constitute maladministration. According to section 123 of the Constitution and section 5 of the Ombudsman Act, for maladministration to be proved the complaint against the public authority 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; the exercise or performance of Powers, duties and functions in an unreasonable, unjust or unfair way. As per section 5 (2) this further includes decision or recommendation 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.

14. Going by what the Complainant narrated at the meetings and the documentation on file, it is clear that the deceased, Jafali Sanudi was convicted on theft charges by the Liwonde First Grade Magistrate Court on 7th October, 2016 and was sentenced to 18 months imprisonment with hard labour. The warrant of commitment further shows that the deceased was sent to Domasi Prison to serve his sentence. However, when the relations went to visit their relation at Domasi, they were told that he was not there. Records showed that the deceased was at Mpyupyu but he was not physically there.
15. My office also conducted tripartite meeting which was attended by the legal officer from the Prison where he narrated the respondent's side of the story and also submitted a document titled 'the Law relating to death of the Prisoner'. What is clear from the submission is that the law obligates the Officer in Charge of a prison to report death of a prisoner to five people namely the Magistrate of a nearby court; medical officer of a prison or nearby hospital; in-charge of a nearby police station; a relative or friend of a deceased person who is close to the Prison; a minister of the religious denomination of the deceased. Further, they need to be advised that the body will be buried by the municipality or township authority, unless they themselves wish to make other arrangements. The submission further highlights that the law puts the onus of reporting the death of a prisoner to a relative or friend who is close to the prison and nothing more or less.
16. With respect to the present matter, it is clear from the minutes of the Tripartite meeting where the Complainant was in attendance that the Respondent had followed prescribed legal requirements when the uncle of the complainant died. However, there is a communication breakdown in the process to be followed where the Prison said they left the task of tracing the relations to the DC and the DC said they were

waiting for the Prison to inform them of the date they would go to do tracing of the deceased's relations.

17. Another communication breakdown I note is when the Complainant and his family were doing the prison hunt for their relation, surely one of the Prisons should have known the whereabouts of the deceased. The legal officer for the Respondent stated that the Complainant did not search for information from the right offices and I note that the Complainant admitted that they only sought assistance from the gate when they were told that their relation was not there. Now I have been to almost all prisons in Malawi and I know how the prison environment and even how the prison officials speak to visitors can be intimidating. This coupled with deep rooted fear that most Malawians have to demand their rights, I know that it is not easy for a visitor most times to demand meeting anyone beyond the officer at the prison gate.
18. In this case, surely one of the gateman at any of the prisons should have properly advised the Complainant which office to go to get the correct information. But they did not and kept on tossing the Complainant from one prison to another. I am actually impressed that the Complainants herein went on and on to search for their relation this far regardless. For that reason, I cannot fault the Complainant.
19. Culturally, the deceased's family were deprived of an opportunity of decently burying their relation and they perhaps do not even know where he was buried to date. The law as it stands, but also fairness, decency and justice acknowledge the importance of a decent burial and the need for information on the details of the death of a prisoner to help bring closure for the remaining relations.
20. The blame game that happened in this case between the office the DC and the Prison Authorities should not be condoned at all as their inaction has caused unnecessary suffering to the relations of the deceased. Their conduct amounted to unfair and unreasonable discharge of public function. I find them guilty of maladministration.

Directives

21. As per section 126 of the Constitution, where am satisfied that an injustice has been done, I am empowered to redress that grievance, therefore on that note I direct by virtue of powers vested in me by section 126 of Constitution and 8 of the Ombudsman Act I direct as follows:

- a. Both Respondents should issue a letter of apology to the family of the deceased and if possible show representatives of the family the burial place of the deceased.
- b. Both Respondents should come up with some more streamlined and effective guidelines that will make handling of prison deaths more efficient in as far as information to the relations is concerned.
- c. Malawi Prison service should pay the Complainant a total of K150,000.00 to compensate for the transport costs incurred by the Complainant when he was looking for his relative.
- d. All the directives above should be complied by 30th October, 2019 and I shall expect documentary proof of such compliance by same date.

22. RIGHT OF 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 19th day of June, 2019


Martha Chizuma
OMBUDSMAN