

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

*BETWEEN*

*BLIAM SICHALA AND OTHERS.....COMPLAINANT*

*AND*

*MOUNTAIN VIEW SCHOOL*

*MINISTRY OF EDUCATION.....RESPONDENTS*

*INQUIRY NO: 91/2019*

*FILE NUMBER - OMB/BT/C/129/2011*

## DETERMINATION

**CORAM**

**MARTHA CHIZUMA - OMBUDSMAN**

Bliam Sichala - Complainant

Jimmy Phiri - AHRMO, DEM Thyolo

## DETERMINATION

1. The Complainants lodged this claim with our office through a letter dated 3<sup>rd</sup> October, 2011, claiming for unpaid salaries for a period of 13 months from September 2010 to October 2011.
2. When the matter was referred to the Respondent they seemed not to be aware of the issue and they further stated that the Complainants never signed GP1 forms when they were told to continue with the government service as such it was hard for them to process their arrears thus when the matter was recommended for Public inquiry which took place on 31<sup>st</sup> January, 2019.
3. In his evidence he stated that he was employed on 1<sup>st</sup> September, 2010 as a Guard and his fellow colleagues were in various positions at Mountain View School for the deaf. The school was being run by the catholic brothers then.
4. He further stated that they have not been paid since 2010 and they are still working there but others are no longer working there.
5. During cross-examination by the Respondent, he explained that they are still working there because they were assured that their money would come.
6. The Respondent stated that, the Complainants were employed by brothers of Catholic Church and when they realise that they did not have enough resources they wrote to the Ministry advising them that, they would retrench the staff but the Ministry asked them to leave a few people which include the Complainants herein.
7. He further stated that the plan was that the Ministry would eventually employ them officially but he was not sure of what happened at that time whether the Department of Human Resource Management and Development(DHRMD) was informed but what he knew was that there was a period which they did not receive any salary.
8. The witness also stated that in or about 2014 or thereabout they started paying them at a minimum wage from the Other Recurrent Transactions (ORT) Funds they received and that they have been paying them since 5 or 6years ago and that the only money remaining is that of the period 2010 -2013.
9. Following the above evidence, I inquired from the Respondent when they will be able to pay the 2010- 2013 salaries, He responded that they do not even have the money for that. He however said if the Ministry could take the burden of paying the salaries then they would start paying their arrears using

the ORT Funds and that they are pushing the Ministry so they can have them properly employed.

### ANALYSIS OF THE LAW AND FACTS

10. The main mandate of the Ombudsman is to investigate instances of maladministration. For maladministration to be proved, according to section 123 of the Constitution and section 5 of the Ombudsman Act 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.
11. Instances of maladministration though are not limited to above and as stated by S De Smith and R Braize " Constitutional and Administrative Law, 6th edition p 649  
*'maladministration covers a multitude of administrative sins; sins of commission and omission, corruption, bias, unfair discrimination, harshness misleading members of the public as to his right, failing to notify him properly of his rights or to explain the reason for decision, general highhandedness, using powers for wrong purpose, failing to consider relevant materials, taking irrelevant materials into account or failing to reply to correspondence.*
12. The question that I need to determine is whether the conduct of the Respondents fit into any of the stated instances in paragraphs 10 and 11 above. In particular I need to determine whether the Respondents' failure to pay the Complainants amounts to injustice or unfair treatment or abuse of power or unreasonable or unfair conduct or omission.
13. Despite not being formally recognized by the Government; the Complainants are effectively employees of the Malawi Government. They have been providing services to the Respondent of which they were not paid for a period of 13 months. The Respondents' representative Mr. Jimmy Phiri admitted and assured me that they are trying to push the Ministry through their letter

dated 5<sup>th</sup> February, 2019 but nothing has been done till date. The failure to pay the salaries to the Complainant amounts to unfair treatment. It is maladministration.


#### 14. DIRECTIVES

- a. In view of this and by virtue of powers vested in me by section 126 of the Constitution and 8 of the Ombudsman Act I hereby direct that the Respondent pay the Complainants the 13 months' salary for the services that the Complainants provided. In order to obtain value for money, the salary scale to be used should be for the current grade for the said workers. This should be done by 30<sup>th</sup> October, 2019.

#### 15. 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 19<sup>th</sup> DAY OF JUNE 2019

  
Martha Chizuma  
OMBUDSMAN