



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

CHAKUAMBA M. CHIUMIA..... COMPLAINANT

AND

ADMARC.....RESPONDENT

INQUIRY NUMBER: 02/2019

FILE NUMBER- MZ-013-OMB-045

CORAM

Martha Chizuma	-	Ombudsman
Chakuamba Chiumia	-	Complainant
Kentrioa Suza	-	Representing Respondent

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## DETERMINATION

1. The Complainant lodged his complaint with our Mzuzu office against the Respondent ADMARC through a letter dated 15<sup>th</sup> July, 2013. He alleged that the Respondent had unfairly treated him in the manner in which they dismissed him from service.
2. Upon receipt of the complaint we forwarded it to the Respondent for their comments and they responded through a letter dated 4<sup>th</sup> January, 2016 in which they denied to have unfairly dismissed the Complainant stating that the Complainant had incurred a shortage and thus they had a good reason to terminate his services, a position that the Complainant continued to dispute.
3. Upon noticing that there would not be middle ground on the matter I undertook a public inquiry on the matter on 28<sup>th</sup> June, 2017. It was attended by the Complainant himself and Mr Kentiora Suza representing the Respondent.
4. The evidence on file shows that the Complainant was employed on 1<sup>st</sup> April, 1985 as an extension clerk and he started his career at Mbawa Area Office and went onto move to other offices within the Respondent's set up.
5. His claim is with respect to unfair dismissal that happened whilst he was working at Kachere market as Unit Market Officer. He was in charge of cash book as well as stores box. Whilst at Kachere, he lost keys to the cash box and other rooms. The incident was reported to the Area Market Supervisor (AMS) who advised the Complainant to requisition for new locks and keys. According to the Complainant, these never came.
6. Later, he was instructed to go to another market at Litende to assist the sales of produce from farmers in the area as the selling season was in progress. The Complainant states that he was advised by his supervisor to use his own money and that he would be refunded when he came back. He went with four laborers and one

security guard and stayed in the field for two weeks. Upon coming back, he found that the keys had not been found and things kept going missing or being misplaced from the cash box as well as other rooms.

7. He confronted the guard whom he suspected to have stolen the keys but he denied. He again reported to the AMS about the missing items. This time, auditors came to the office and found some cash and stock of produce missing. The Complainant attributed all this to the missing keys in that some unknown person had access to the rooms and the cash box. The audit report revealed that a total of K9, 848.77 had gone missing. As a result, the Complainant was suspended 29<sup>th</sup> September, 1995 and finally got dismissed on 7<sup>th</sup> January, 1997.
8. The Complainant is aggrieved that he was dismissed for failure to account for the quoted sum of K9, 848.77 without being accorded a disciplinary hearing. Besides, he is the one who reported the missing keys and that things were being stolen after the keys went missing. Even though he had been told to requisition new keys, which he actually did, the Respondent never bought new keys and locks for the cash box and some of the affected rooms.
9. 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.

10. The complaint herein is that the decision by the Respondent to dismiss him from employment was unfair. To establish whether the decision to dismiss was unfair what needs to first be established is whether due administrative process took place before reaching the decision to dismiss.
11. I take cognisance of the fact that this matter happened before the Employment Act became law. As such in determining this complaint and coming up with my findings, I have dwelt more on the Constitutional provisions.
12. It is clear that the Respondent never accorded the Complainant with the right to be heard before the dismissal was effected. In their letter dated 4<sup>th</sup> January, 2016, the Respondent acknowledge that the Complainant incurred a cash and stock shortage that amounted to 9, 848.77 and that he was suspended pending investigations and later dismissed on 7<sup>th</sup> January, 1997 according to the Conditions of Service at the particular time.
13. It is general knowledge that the Constitution is the supreme law of the land. Therefore, what needs to be borne in mind is that all legality of laws and policies even conditions of service has to be measured against the Constitution and if they are inconsistent with a constitutional provision such law and policies will be invalid to the extent of the inconsistency.
14. Section 43 of the Constitution provides for administrative justice. This provision grants every person a right to a lawful, procedurally fair administrative action which is justifiable to the reasons given where his or her rights or legitimate

expectations are threatened. In addition, section 31 of the Constitution provides for a right to fair labour practices.

15. In the instant case the Respondent relied on their Terms and Conditions of Service in dismissing the Complainant. It is trite to note that they never provided the stated Terms and Conditions of Service and so we are not sure what exactly is contained in the said conditions. What however, is clear is that their decision in dismissing the Complainant was in line with their Terms and Conditions of service.

16. If they had followed the constitution what ought to have happened was for them to establish the real reason for the shortage. In the instant case the fact that he was in charge of stock and therefore responsible was not enough. This is more so in the face of the evidence before us that the Complainant on so many occasions reported on his suspicions about the guard as being the one responsible for the shortage. Furthermore, on a number of occasions he asked for new locks to the store room and cash box but the Respondent simply never heeded to that. In the meantime, more stocks were being stolen.

17. Moreover, the Complainant was never given a chance to defend himself against the allegations made to him. If they did, they obviously could have noted that there probably was more to the story and that he was not the one responsible for the losses. I am even convinced in this position as the evidence shows that after they had suspended him the keys were found to be with the same guard he had suspected all along. However, no due administrative process was followed resulting in clear miscarriage of justice in this case. The fact that their conditions of service did not provide for this process does not hold. This dismissal was unfair.

18. Accordingly, by the powers vested in me by section 126 of the Constitution of Malawi, I hereby direct that;

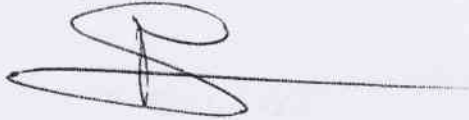


- a. The Respondent calculates and pays the Complainant the salary he lost from the date of dismissal to this date of determination. This is because I cannot order reinstatement as 1997 is a long time ago and much must have changed in the Respondent's organisation. However, the payment should be made based on the present salary of a Unit Market officer to ensure that he gets value for money. The money should be paid by 30<sup>th</sup> May, 2019.
- b. The Respondent should pay the Complainant an equivalent of 5 years' salary as compensation for unfair dismissal. This should be calculated based on the present salary of a Unit Market officer to ensure that he gets value for money. The money should be paid by 30<sup>th</sup> May, 2019.
- c. The Respondent should initiate a negotiation with the Complainant on the other claims relating to Food and accommodation allowance whilst on field trip and during time of suspension, leave grant transfer allowance, lost property and repatriation costs. During the hearing there were so many disputes to these claims. However, I note that there could be some validity to these claims albeit the Complainant not having proper documentary evidence. If the negotiation fails, I will make my directives on the matter. The outcome of such negotiations should be provided to me by 30<sup>th</sup> May, 2019.

## 19. 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 12<sup>th</sup> day of February, 2019

A handwritten signature in black ink, consisting of a large, stylized 'M' and 'C' intertwined, with a long horizontal line extending to the right.

Martha Chizuma  
OMBUDSMAN