



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

*BETWEEN*

*CIVITAS NYASULU.....COMPLAINANT*

*AND*

*MZUZU HIGH COURT..... RESPONDENT*

*INQUIRY NO: 03/2019*

*FILE NUMBER - OMB/MZ/C/010/13*

## DETERMINATION

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**CORAM**

<b>MARTHA CHIZUMA</b>	-	<b>OMBUDSMAN</b>
Civitas Nyasulu	-	Complainant
T. Masoamphambe	-	Deputy Registrar of the High Court
P Chitcha	-	Principal Resident Magistrate- Mzuzu

1. The Complainant herein lodged his complaint against the judiciary (Mzuzu High Court) with our Mzuzu Office through a letter dated 22<sup>nd</sup> January 2013. The essence of the complaint was delay by Mzuzu High Court to deliver a judgement from 10<sup>th</sup> February 2009 to date.
2. We forwarded the complaint to the Respondents for their comments on the matter but the evidence on the file shows that there was no any response from them. The matter then went for various on spot investigation where the Respondents undertook to look into the matter but nothing came out of it.
3. It was then when the matter was recommended for a Public Inquiry which I undertook on 12<sup>th</sup> February 2019. In attendance was the Complainant himself and the Respondents who were represented by the Hon T Masoamphambe the Deputy Registrar and His Worship P Chiotcha the Principal Resident Magistrate.
4. It was the evidence of the Complainant that he started his action in 2000 and it was being heard by Mzikamnda J. He stated that he used to be represented by lawyers but due to numerous adjournments at the instance of the defendant and the courts, the lawyers abandoned him.
5. He further stated that the matter was last heard in February 2009 and on that day it was presided over by Chikopa J who after the hearing, stated that the judgement would be delivered by Mzikamanda J within 30 days from that date.
6. However after the said 30 days he started following up on the matter but was told that the file had gone missing. He provided the Respondents a photocopy of the record which he had been reproducing from the court record throughout the whole trial. This record through did not include the recording of the hearing by Chikopa J. Contrary to this, Mzikamanda J did not conclude the matter.
7. He complained that a decade later he still is waiting for justice. Moreover the land in question has since been settled in by numerous other villagers and that his witnesses have since passed on.
8. In response the Respondents stated that when they made inquiries on the matter they found a file which had been photocopied from the Complainant but that it showed that the last hearing took place in February 2007 and that it was done by Mzikamanda J.
9. They further stated that the record they had also showed that the Complainant had finished presenting his case such that what was remaining

- was simply the defence case. They thus proposed that the matter can go for a continued hearing based on the available record.
10. A combined reading of the jurisdiction of the Ombudsman under both the Constitution and the Ombudsman Act is to investigate any allegation of injustice including allegation of abuse of power, unfair treatment, and manifest injustice, oppressive or unfair conduct.
  11. It is obvious from the evidence that the Complainant herein has suffered a great injustice as a result of the unreasonable delay to conclude the case by the Respondents. The good thing however is that the Respondents did not waste time in admitting their wrong and make proposals on how they intend to remedy this injustice.
  12. Having heard from both parties on the way forward, by powers vested in me by section 126 of the Constitution I direct the following:
    - a. That the Registrar of Mzuzu High Court should photocopy the current court file and give a copy to the Complainant for his use.
    - b. The Complainant should get services of a lawyer and if he does not have enough finances to get one at Legal Aid Bureau to help him in handling of the matter.
    - c. The Registrar of Mzuzu High Court should set the matter down for hearing in the April sitting of the High Court for continued hearing.

Dated this 19<sup>th</sup> day of February 2019.



**Martha Chizuma**  
**OMBUDSMAN**