



INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

DOUGLAS ZIMBA AND OTHERS.....COMPLAINANT

AND

MALAWI ELECTORAL COMMISSION.....RESPONDENT

Inquiry No: 21/2020

FILE NUMBER: OMB//2010/LL/0124

DETERMINATION

CORAM

- Martha Chizuma** - Ombudsman
- Douglas M Zimba** - Complainant
- David M. Banda** - Legal counsel for the Respondent

DETERMINATION


1. The Complainant lodged this claim on 26th May, 2010 on his own behalf and on behalf of Mr. B. Safiyana, Mr F. Bakali and Mr. D. Mbera against the Respondent, Malawi Electoral Commission (MEC) claiming unpaid wages. The matter was recommended for a public Inquiry which took place on 25th November, 2019. The Complainants were represented by Douglas M. Zimba and the Respondent was represented by their legal counsel Mr. David M. Banda.
2. In his sworn evidence the Complainant stated that MEC engaged them for 38 days as clerks responsible for receiving and distributing election materials in the May 2009 elections. At the end of the exercise the Complainants were offered K1000 yet their colleagues were given K3000 per day. The Complainants refused to receive the K1000 and up to date they have not been paid anything.
3. In response, the Respondent stated that the claim is true and they are not refuting it. He stated that the pay was indeed supposed to be K3000 per day and that they are ready to pay.
4. The primary function of an Ombudsman is to investigate complaints of maladministration. Maladministration has many facets but for us in Malawi 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; the exercise or performance of powers duties and functions in an unreasonable, unjust or unfair way.
5. Based on the admission by the Respondents, I do not need to belabour myself into an analysis of the entire evidence presented before me. Accordingly, by the powers vested in me by section 126 of the Constitution of Malawi, I hereby direct that the Respondent do pay the Complainant the 38 days wages. However the rate of K3000 per day was what was applicable in 2009 and the kwacha has since devalued. As such, in order to obtain value for the money I

direct that the Respondent pay the Complainants using the rate that was used to pay such clerks as the Complainants in the 2019 elections. This money should be paid by 31st May, 2020 through my office.

6. RIGHT OF REVIEW

Any Party dissatisfied by this determination and with sufficient interest in the matter has a right 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 13th DAY OF MARCH, 2020.


Martha Chizuma
OMBUDSMAN

DETERMINATION

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Martha Chizuma - Ombudsman
Douglas M Zimba - Complainant
David M. Banda - Legal counsel for the Respondent