



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

GANIZANI CHISALE.....COMPLAINANT

AND

MALAWI HOUSING CORPORATION.....RESPONDENT

INQUIRY NO.: 95/2019

FILE NUMBER - BT/14-15/OMB/021

DETERMINATION

CORAM:

- MARTHA CHIZUMA** - **OMBUDSMAN**
- Ganizani Chisale** - **Complainant**
- Legal Officer** - **for the Respondent**

DETERMINATION

1. The Complainant lodged this claim against the Respondents Ministry of Education claiming compensation. The letter of complaint was received by our Blantyre office on 22nd August, 2014.
2. Our efforts to solicit comments from the Respondents proved futile as they were not forthcoming in providing the same. Thus the matter was recommended for public inquiry which took place on 31st January, 2019. In attendance for the Respondents was their legal counsel.
3. In his evidence the Complainant stated that he was employed by the Respondents on 7th June, 2010 as a builder grade 3. He was dismissed in August and only received K4, 000.
4. The Complainant stated that during his term of contract the Respondent did not tell him how much his salary was but K4, 000.00 seemed small to him.
5. When he went to inquire about his monthly salary the Respondent did not advise him properly. However during his second month in employment he got K5, 000.00 but he was still not satisfied.
6. The Respondent told the Complainant that they would rectify the salary later. Later he started receiving K10, 000.00 from the bank. But still his salary was not satisfactory, by this time he had worked for the Respondent for nine months. Thus when the Respondent dismissed the Complainant because he was pestering them.
7. The Respondent showed the Complainant a pay slip but the amount on the pay slip was not the amount he was receiving at the bank. The money was K24, 000.00 plus.
8. The Complainant went back to the Respondents where he was then referred to Malawi Revenue Authority. Then MRA called the Respondent to give the Complainant correct documentation so that he can access his money but the Respondent did not help him.
9. The Respondents' representative stated that the Complainant was employed as a temporary worker for nine months. His final terminal benefits were K24, 948.15. The Respondent made first deposit on 12th August, 2011 for K15, 730.31. The second deposit was on 1st September, 2011 for K4, 150.41. Thus the Respondent owe the Complainant the sum of k5, 067.43 but they failed to give him because his account was closed.
10. During cross examination the Respondents' representative stated that by the time they were depositing the money the Complainant's employment had already been terminated.
11. 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. 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.

12. The question that I need to determine is whether the conduct of the Respondents fit into any of the stated instances in paragraphs 11 above. In particular I need to determine whether the Respondents' failure to pay the remaining money that they owe the Complainant amounts to injustice or unfair treatment or abuse of power or unreasonable or unfair conduct or omission.

13. The evidence before me indicates that the Complainant's services were terminated and upon his termination he was supposed to get MK24, 948. 15 as his terminal benefits. The Respondents paid the Complainant the sum of MK19. 880.72 towards his terminal benefit. The Respondent admitted that they owe the Complainant the sum of MK5, 067.43 which they are yet to pay.

14. I bear in mind that this amount of money became due in August 2011 when the Respondent terminated the Complainant's services. There is delay on the part of the Respondents to pay the Complainant the remaining terminal benefits and delay is maladministration.

15. In view of this I make the following directives;

- a) The Respondents do pay the Complainant the sum of MK5, 067.43 being balance of his terminal benefits and in order to ensure that the said payment maintains value, there should be a 30% mark-up of the amount.
- b) The payment should be made by 30th September, 2019.

16. 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 hereof.

DATED THIS 20th DAY OF June, 2019


Martha Chizuma
OMBUDSMAN