



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

GILBERT MULEZO.....COMPLAINANT

AND

MALAWI POLICE SERVICE.....RESPONDENT

INQUIRY NO: 42/2018

FILE NUMBER - OMB/BT/C/216/2009

DETERMINATION

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| Hon. Martha Chizuma | - | Ombudsman |
| Mr. Gilbert Mulezo | - | Complainant |
| Inspector William | - | Respondent |

DETERMINATION

1. The Complainant lodged his complaint with our office through a letter dated 23rd March, 2009. He alleged unfair practices by the Respondent over the manner in which they calculated his gratuity.
2. Investigations failed to resolve the matter and it was eventually recommended for Public Inquiry which took place on 12th December, 2016. The Complainant represented himself and the Respondent was represented by Inspector William.
3. The evidence shows that the Complainant was employed by the Respondent on 1st May, 1967 and he retired in April 1988. Upon his retirement he was given K3, 860.88 as gratuity but he feels that he was underpaid because he was informed by colleagues in the accounts office that other officers who retired on the same level as him received in excess of K2 million. On cross examination the Complainant stated that he could not remember what salary he was on at the time he was retiring but stated that if the documents show he was receiving K1, 086 P/A then they were correct.
4. In response, the Respondent demonstrated through exhibit GM1 that they had not miscalculated his benefits as they used the formula given to them by the Accountant General.
5. The primary function of an Ombudsman is to investigate complaints of maladministration. Maladministration has many facets but for us in Malawi, the 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; and the exercise or performance of powers, duties and functions in an unreasonable, unjust or unfair way. As per section 5 (2) of the Ombudsman Act, this further includes decisions or recommendations 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.
6. The complaint herein is the underpayment of gratuity. In the evidence before me in the form of exhibit GM1 is a calculation of the terminal

benefits for the Complainant based on government rates and again there is no evidence submitted to the contrary by the Complainant. I find that the Respondents calculations were in order and that there is no maladministration on their part.

7. In view of this and by the powers vested in me under the Constitution and the Ombudsman Act, I hereby dismiss the Complainants claim for lack of merit.

8. 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 4th DAY OF OCTOBER , 2018


Martha Chizuma
OMBUDSMAN

DETERMINATION