



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

GRACE NYALI..... COMPLAINANT

AND

ESCOM..... RESPONDENT

INQUIRY NUMBER: 23 of 2020

FILE NUMBER- BT/14-15/OMB/006

CORAM

Martha Chizuma

Grace Nyali

Mdyetseni

- Ombudsman
- Complainant (Present)
- Respondent representative

DETERMINATION

1. The Complainant lodged her complaint with our office through a letter dated 14th June, 2014 alleging that ESCOM wires fell on her house on 15th December, 2013 which burnt her house and surrounding tress.
2. The Complainant's efforts in requesting the Respondent to compensate her for the damages caused and also for the Respondent to remove the electricity poles and wires which passed on the roof of her house or to build her another house as it poses a heavy risk on lives of inhabitants proved futile hence, her complaint to our office.
3. The evidence suggest that the matter was referred to the Respondent by the Complainant several times for their action but nothing came into fruition.
4. Having seen that she was not being assisted, the Complainant came to my Office and my office wrote a number of letters which also went unanswered until July 2017, when we got a response. The respondent wanted my office to furnish them with the details of the allegations and also provide name of the Officer who was handling the matter.
5. On 26th March, 2018, my office met the Respondent's counsel, Mr. D. Kambauwa who stated that they did not have information with respect to the Complainant and that how would follow up the matter and undertook to come back to us by 29th April, 2018.
6. On 27th June. 2018, my office had a tripartite meeting with the Complainant and the Respondent's representative, Timothy Phinifolo. The Respondent acknowledged receipt of the complaint but asked for some time to check if the same was forwarded to their Headquarters. My office was to check with Liwonde ESCOM by 5th July, 2018. Nothing came forward.
7. Noting that the matter was not getting concluded due to non-responsiveness of the Respondent, the matter was recommended for public inquiry which took place on 13th December, 2018 at our Balaka office. In attendance for the Respondent was Ms. Mudyetseni and the Complainant Mrs. Grace nyali.
8. In her evidence the Complainant stated that she stays near wamanolo school along the road to Mangochi and the accident happened on 15th December, 2013 as it was on a Sunday afternoon when She got back from church. On

that day they were strong stormy rains in which the heavy storm damaged ESCOM pole which fell on top of her house and caused fierce fire.

9. The Complainant rushed to Mangochi ESCOM office to report about the incident and when technicians from ESCOM came to inspect the scene, they alleged that they removed the wires that caused the fire.
10. There was substantive damage to the glasses on same rooms and the following morning personnel's from ESCOM came again to fix the wires.
11. The complainant stated that she expected that the ESCOM personnel will assess the damage and offer compensation on the same but they never did.
12. The Complainant wrote to the Respondent a letter and personally delivered it to Mangochi Turn-off Office and they informed her that they will refer the matter to their Head Office for their action.
13. The complainant stated that she had been following up on the matter with the Respondent for the whole of 2013 but nothing came into fruition.
14. The Complainant stated that she informed the ESCOM personnel's not to put their lines along her compound. Furthermore, she wants the Respondent to remove their lines or they should build her another house as they found her house on the site when they were erecting their powerlines.
15. In response the Respondent stated that she did not gather more information on the matter consequently, she requested to be given more time so that she could conduct inquiries. I requested the Respondent to give their written submission by 20th January, 2019. I never received the submission.
16. The main mandate of the office of the ombudsman is to investigate instances of maladministration. For maladministration to be proven, according to section 123 of the constitution and section 5 of the Ombudsman act the complaint against the public authority has to allege either on the 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 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 matter which is unreasonable, unjust or unfair.

17. The Complaint herein is unfair or unjust exercise of functions by ESCOM. What needs to be determined is whether the Complainant herein was unfairly treated and if so whether circumstances and processes surrounding the unfair treatment herein amount to any of the circumstances mentioned in 16 hereinabove.
18. As stated above, the Respondent was given a chance to make written submissions which they never did. In another determination, *Renex Kalanje and Others v ESCOM*, I bemoaned the laissez faire attitude by the representative of the Respondent which is also evident in this matter. I have noticed other cases where even the Complainant's case lacked merit but because they were put on a wild goose chase by the Respondent, they believed they had merit, only to be told many years after, that their claim lacked merit.
19. This seems to me that their officers are more concerned with making allowances they receive other than the cases at hand which is a further injustice to the Complainants on top of the delay it takes your office to respond to their cases. The delay it has taken the Respondent to finalize this matter is in itself an act of maladministration.
20. All in all, in the absence of any evidence to the contrary by ESCOM, the Complainant's case is made out.

21. DIRECTIVES

By powers vested in me by section 126 of the Constitution and section 8 of the Ombudsman Act, I hereby direct that the Respondents remove the poles on the Complainant compound by 31st May 2020. On the claim for the loss of trees the Complainant did not provide the estimated value. This claim therefore fails.

RIGHT OF REVIEW

22. 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

ORDER OF THE OMBUDSMAN

IN THE MATTER

BETWEEN

SHARON MUALI

COMPLAINANT

AND

ESKOM

RESPONDENT

THROUGH MEMORANDUM DATED 13 MARCH 2020

FILE NUMBER BT/16-DV/00000000

2020
Martha Chizuma
Esrom Mual
Mdyatani

Ombudsman
Complainant (Present)
Respondent (Present)