



**REPUBLIC OF MALAWI**

**INQUIRY BY THE OMBUDSMAN**

**IN THE MATTER**

**BETWEEN**

**J. JUGA.....COMPLAINANT**

**AND**

**ESCOM.....RESPONDENT**

**INQUIRY NO.: 88/2019**

**FILE NUMBER - OMB/MZ/C/73/2009**

**DETERMINATION**

**CORAM:**

**MARTHA CHIZUMA**

**J. Juga**

**Thokozani Mdyetseni**

**- OMBUDSMAN**

**- Complainant**

**- Respondent**

## DETERMINATION

1. The Complainant lodged this claim against the Respondents, ESCOM claiming compensation for his electrical appliances which got damaged due to high voltage caused by failure of the Respondent's transformer to function properly. The letter of complaint was received by our office in Blantyre in November, 2008.
2. The evidence on the file suggests that the Respondents were not forthcoming in providing feedback. Thus when the matter was recommended for public inquiry which took place on 31<sup>st</sup> January, 2019. The Complainant appeared in person whilst for the Respondent was their legal counsel Thokozani Mdyetseni.
3. In his evidence the Complainant stated that in or about October 2008 whilst he was staying in Namiyango a transformer burnt his electrical appliances and that of his neighbours.
4. He reported the matter at the Respondent's Limbe office where he was made to fill complaint forms and told to wait. Then he started following up on the matter with their Blantyre office but he was surprised to learn that their Blantyre office was yet to receive the complaint forms. When the Complainant went back to Limbe office he was simply told to wait. There was a back and forth between the Complainant, Respondent's Limbe office and Blantyre office until a year passed. Thus when he lodged the complaint at our Blantyre office.
5. The Respondents' Ms Mdyetseni admitted that there was delay on their part to conclude the matter. She however stated that the Respondents cannot even trace the officers the Complainant was dealing with as most of the officers either retired or were transferred to other stations.
6. Then the Complainant stated that he knows one Zione Malembo who was a guard and Jonathan Chakwana and these two can be in the know as to who were the officers at that time.
7. In the circumstance I directed that the Respondents should get information about the matter from the 2 mentioned officers and submit their position within 21 days. To date, 4 months after the inquiry the Respondents have not yet submitted their position. Efforts by my officers to have the Respondents' position on the matter proved futile as they always find an excuse as to why they have not yet filed their position.
8. For maladministration to be proved against Government according to section 123 of the Constitution and section 5 of the Ombudsman Act the complaint against the public authority 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.

9. In short it is a mirror that reflects the operations of Government. It is important that the Public institutions conduct their functions in such a manner that they would not be ashamed of the reflection they would get when a complaint is lodged against them in this office. Or if indeed they are incapable of shame for their actions, they should still conduct themselves in a manner that does not cause outrage in the people that they are supposed to serve. Otherwise they would be found to be guilty of maladministration.
10. The question that has to be determined is whether the Respondents conducted themselves in a manner that fits into any of the instances mentioned in 8 above. According to the complaint letter the incident happened due to high voltage which was caused by failure of the transformer to function properly.
11. Section 3 (2) of the Electricity Act which governs the mandate of the Respondent with relation to this matter, instructs them as a license holder to
  - a) generate electricity for sale;
  - b) Operate a transmission network;
  - c) Operate a distribution network for supply of electricity;
  - d) Import electricity into Malawi; and
  - e) Export electricity out of Malawi.
12. And Section 44 (1) of the Electricity Act is crooked in the following terms:

*"The licensee shall make good to the reasonable satisfaction of the local or other authority, or the owner, as the case may be, of all public and private roads, streets and paths opened or broken up by the licensee in the course of its operations and shall also pay fair and reasonable compensation or rent or both for all losses or damage caused in the execution of any of its powers conferred by this Act."*
13. The Complainant in order to successfully claim damages from the Respondent will first have to establish that there was negligence occasioned by the Respondent.
14. In W.S. Kalonga and Escom Civil Cause No. 3844 of 2002 Hon, Justice H.S.B. Potani stated that what constitutes negligence is well defined by a compendium of case authorities the leading one being Donoghue V Stevenson (1932) AC 562;

*'In essence three essential elements must be proved for a defendant to be held liable in negligence. First and foremost the defendant must owe a duty of care to the complaining party. Secondly the defendant, by his act or omission must be in breach of such duty of care. Thirdly*

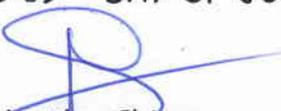
*the defendant's breach of duty must be the cause of the damage complained of and such damage must be foreseeable and not remote.'*

15. In the instant case by virtue of ownership of the transformer which supplied power to the Complainant the Respondent did owe a duty of care to him. The failure of the transmitter to function properly caused it to supply high voltage to the Complainant which caused the appliances to burst. It can therefore be said that the duty of care which the Respondent owed the Complainant was breached as a result thereof caused damage to the Complainant.
16. The Complainant's undisputed evidence suggests that the Respondents investigated the matter soon after it was reported to them way back in 2008 and advised him that the accident occurred due to high voltage which was caused by the failure of the transformer to function properly.
17. Where an allegation complained of has been proved Section 126 of the Constitution gives me powers to direct an appropriate administrative action to be taken to redress the grievance complained of and section 8(1) (b) gives me powers to take appropriate action or steps to call for or require the remedying or reversal of matters or instances complained of.
18. In view of this I hereby direct that:
  - a. The Respondent do compensate the Complainant for the loss he suffered as a result of the high voltage which was supplied to his house by the transformer. As such both parties should source quotations for the electrical appliances which got damaged. Such appliances being television screen, Daewoo DVD Player, 210 litres fridge and Samsung 3 CD Changer Radio. The quotations should be submitted to our Blantyre regional office by 30<sup>th</sup> July, 2019.
  - b. After (a) above has been carried out I shall make further directives herein.

**19. 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 19<sup>TH</sup> DAY OF JUNE, 2019**

  
**Martha Chizuma**  
**OMBUDSMAN**