



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

*BETWEEN*

*KWENDAKUFA AND OTHERS.....COMPLAINANT*

AND

*NATIONAL COUNCIL OF HIGHER EDUCATION .....RESPONDENT*

INQUIRY NO:94

FILE NUMBER: OMB/LL/2016/OMB/099

## DETERMINATION

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CORAM

MARTHA CHIZUMA- OMBUDSMAN

Kwendakufa and others- Complainants

National Council for Higher Education- Absent

## **A. THE INQUIRY**

1. The Complainants herein lodged their complaint against the Respondents, the National Council for Higher Education (NCHE), with our office through a letter dated 14<sup>th</sup> July 2016. Reading through the letter, the allegation against the Respondents is unfair practices in the manner in which the latter revoked the accreditation of the law degree programme that had been offered by the two universities i.e. Blantyre International University (BIU) and Share World University from where they obtained their degrees. They claim that as a result of such revocation their right to education and economic activity together with their citizenry right to legal representation have been infringed.
2. Upon receipt of the complaint we referred it to the Respondents for their comments. The Respondents only responded through their letter dated 7<sup>th</sup> October 2016 in which they denied all the allegations raised by the Complainants' letter. Since it was clear that there was no middle ground that was to be reached in the matter, I proceeded to set the matter down for a public inquiry which I heard on 2<sup>nd</sup> December 2016. Unfortunately despite being served the Respondents did not attend the Inquiry. I nevertheless proceeded to hear the complainants and adjourned the matter for determination afterwards.
3. However on further reflection of the issues that were raised by the Complainants during the inquiry I was convicted that justice would not be served until I get input from other relevant stakeholders on the matter other than the Complainants. Thus I invoked section 6 (1) of the Ombudsman Act and I set up interviews with Professor Charles Chanthunya, the Chancellor of Blantyre International University on 22<sup>nd</sup> June 2017, Mr Eganasio Jimu the Acting Deputy Chief Executive Director of National Council for Higher Education on 7<sup>th</sup> July 2017; two representatives from the Ministry of Education and Dr T Mapemba the Vice Chancellor of Share World International University on 7<sup>th</sup> July 2017.
4. I did send a questionnaire to Malawi Council for Legal Education. However as of the time of writing this determination they had not yet given me any feedback despite undertaking to do the same by a stated period. This determination will take into account all the pieces of evidence gathered during this process.

## **B. THE EVIDENCE**

1. The Complainants were law students who underwent and graduated with degrees in law programme from Blantyre International University (BIU) and Shareworld University by September 2016.
2. BIU and Share world University are privately owned universities that have been in existence for over 5 years or so. Evidence on the file shows that Malawi Government through the Credentials Evaluation Committee in the Department of Human Resources Management and Development accredited BIU and its programmes through a letter dated 1<sup>st</sup> June 2010.

3. In a letter to us dated 2<sup>nd</sup> November 2016 BIU stated that they had applied for accreditation of all its undergraduate programmes including the Law programme in 2008. The letter goes on to say that as for the law programme they were told to seek advice of the Malawi Council for Legal Education which they allege to have done.
4. Before receiving the communication from the Council for Legal Education they received notification of accreditation for all their programmes from the Government in 2010. On that basis they assumed that their programmes had been accredited and proceeded to offer the law degree. Some of the Complainants herein attended their University.
5. The scenario is relatively different from Share World University. They stated that just like BIU they also applied for accreditation of their law programme together with the rest of the programmes in 2008. They received their accreditation on 17<sup>th</sup> July 2012 but they insisted that they were never under the impression that their accreditation includes the law programme as they were aware that it is only the University of Malawi that is legally recognised to offer the degree programme. They said that all their students were informed about this. They nevertheless continued to pursue the matter with the Malawi Council for Legal Education but the latter was never forthcoming with feedback.
6. The version from Ministry of Education was quite similar to that of Share World University but totally different from the one by BIU. They stated that the law programmes that were run by these two private universities had never been accredited ever since these universities were registered and accredited.
7. It was their evidence that before the establishment of the National Council for Higher Education, the committee that was responsible for accrediting higher learning institutions was the Credential and Evaluation Committee which comprised of members from Ministry of Education, Malawi Examinations Board, University of Malawi, Individual Experts in the programmes to be assessed and Department of Human Resource Management and Development which was also the Secretariat for the committee.
8. They stated that whilst the committee was reviewing all the programmes submitted they referred the Law programme and other programmes that required approval by professional regulators to the respective regulators.
9. Accordingly when BIU applied they referred them to Malawi Council for Legal Education on the law programme. Thus unless BIU produced evidence that the Council for Legal Education approved the law programme, BIU was not supposed to proceed to offer the Law Programme.
10. To this end they explained that their letter dated 1<sup>st</sup> June 2010 accrediting BIU and its programmes was to be read with the exception of the Law programme. In contrast they stated that the letter accrediting Share World University accredited Share World University as an institution only and not any of its programmes.

11. My last meeting was with the Deputy Chief Executive of the National Council for Higher Education (NCHE). Without much ado he simply stated that according to the handover notes that they got from the Credential Evaluation Committee the law programmes that were being offered by these two Universities were never accredited.
12. He stated that BIU had even wrote them asking for retrospective accreditation but they responded saying that legally that was not possible. They said that as NCHE they do not have the mandate to accredit the law programme as this lies with the Malawi Council for Legal Education. He further said that although they have been trying to get in touch with the Council on this issue, it has been a real struggle to bring the Council to a discussion table.

### C. THE ISSUES

The main issue for determination is whether or not the revocation of the accreditation of the law programme by NCHE amounted to unfair practices. However to effectively determine the above issue the following sub issues have to be dealt with;

- a. Which institution had at that time and has this time around, the mandate to accredit the law programme in the country
- b. Whether the law programme for these two universities ie BIU and Share world was accredited
- c. Whether the complainants were or ought to have been aware of the accreditation status of the law programme offered at their respective universities.

### D. ANALYSIS OF THE ISSUES AND THE LAW

- a. *Which institution had at that time or has now the mandate to accredit the law programme.*
  1. From the evidence above it is clear that up until 2012 when the National Council for Higher Education Act which established the National Council for Higher Education came into force, there was no established legal regime for accreditation of higher education in Malawi.
  2. However there was an administrative arrangement in the form of the Credentials Evaluation Committee in the Department of Human Resources that was mandated to accredit institutions of higher learning and their programmes. However whether this committee could also accredit the law programme is a matter requiring further analysis.
  3. During the inquiry, the representatives of the Ministry of Education stated that the Credential and Evaluation Committee could not approve programmes

like the law degree which required approval from the relevant regulator in the name of the Malawi Council for Legal Education (the Council).

4. As of today the situation is different in the sense that under the National Council for Higher Education Act, the accreditation mandate has been given to NCHE. This means that as the law stands now, it is NCHE that is mandated to accredit the law degree.
5. However as per the evidence of Mr Egnasio Jimu, the Ag Deputy CEO of NCHE then, that just as their predecessor, the Credential and Evaluation Committee, NCHE cannot proceed to accredit without technical guidance from the Malawi Council for Legal Education.
6. The Malawi Council for Legal Education is a statutory body created under section 3 of the Legal Education and Legal Practitioners Act. The functions of the Council are stated in section 4 of the Act and the relevant ones for purpose of this determination are;
  - i. To make regulations for the syllabus and curriculum of legal education in, and for attendance at a law school or schools in Malawi.;
  - ii. To establish , conduct , regulate , manage, control and supervise the holding of examinations in law in the country;
  - iii. To advise and make recommendations to the Minister generally on matters relating to legal education and the requisite qualifications for the admission and enrolment of legal practitioners.
7. It is clear from reading above and the whole Act, and to this extent I entirely agree with the Complainants that it is not up to the Malawi Council for Legal Education to actually accredit the law programme offered at any law school or University in Malawi.
8. However as per (a) and (b) above the Council is supposed to look into the syllabus and curriculum of legal education at a law school and any law school in Malawi and further plays a big role in overseeing the courses in legal education.
9. What it means is that the Council plays a big role in providing technical guidance on legal education in the country and that no accreditation of law programme at any university can be granted until the Council has given it's approval.
10. Accordingly in response to the issue under discussion at the beginning it was the Credential Evaluation Committee and now since 2015 it is the National Council for Higher Education that has the mandate to accredit the law programme but with prior guidance and approval of the Malawi Council for Legal Education.

*b. Was the law programme offered at BIU and Share World University accredited*

1. As per the evidence before me BIU received its accreditation letter on 1<sup>st</sup> June 2010. In the letter the Government of Malawi was informing the university that it has been accredited together with all its programmes.
2. Although we do not have evidence of the actual letter of application for accreditation that BIU wrote there is sufficient undisputable evidence on file that one of the programmes for which they sought accreditation was the law programme.
3. Accordingly the only conclusion any reasonable man can draw simply by reading the letter is that the law programme offered at BIU was accredited as of 1<sup>st</sup> June 2010. The same goes to the Share World University accreditation letter dated 17<sup>th</sup> July 2012 which shows Government's full accreditation of the University.
4. The difference with Share World University however is that as per the evidence of their own Vice Chancellor Dr Mapemba, they never at any point considered that their law programme was accredited. She said that at the time they were applying for accreditation, on the law programme they were informed by Government to consult with the Council which they did but to date have never received any feedback. She went further to say that she informed all the law students at her university of the same.
5. However going beyond all this is the process of accreditation which I briefly touched on in (a) above. By virtue of section 3 of the Legal Education and Legal Practitioners Act, no law programme at any law school or University could be accredited without the nod of the Council.
6. There is no evidence produced by the two universities nor by the Credential Evaluation Committee or NCHE that there was any such approval from the Council. Of course this brings me to a very important point of who was supposed to approach the Council for such technical guidance and approval.
7. There is no such clear guidance in the law or practise in this regards suffice to say that from the evidence this was and has to date been left to the Universities themselves. In my considered opinion it should have been the Credential Evaluation Committee then and now NCHE which ought to have been in the forefront to seek approval; them being the publicly recognised bodies entrusted with ensuring high quality education in the country.
8. But without dwelling much on this, the fact remains that no technical guidance was provided by the Council on the law programmes offered by these two universities. Accordingly, there was no accreditation of the law programme offered by these two universities.
9. I feel compelled before I proceed to the next issue to clarify one related point that I believe has been a cause of confusion in the understanding of so many people which is that it is only the University of Malawi that can offer the law programme in Malawi.
10. When one reads the Legal Education and Legal Practitioner Act there is no prohibition of any other school in the country to offer the law programme.

Actually when one reads section 4(a) it is clear that the law envisioned more than one law school in the country meaning that there could be other law schools not necessarily under the University of Malawi.

11. The confusion always comes in when one considers the process which one has to go through before he or she can be admitted to practise law in the country as provided in section 9 of the Act. Under section 9 (4) of the Legal Education and Legal Practitioners Act, a person can be admitted to become a legal practitioner if he is a citizen of Malawi or has resided in the country for the prescribed period under the section and holds a law degree from University of Malawi or indeed is admitted to practise as a member of profession of law in England and Wales Scotland , Northern Ireland or the Republic of Ireland and has passed Malawi Law Examinations or holds a foreign law qualification.
12. What this section simply means is that the only way one can become a legal practitioner and *practise law* (emphasis intended ) in Malawi is if she or he holds a law degree from no other university in Malawi except from University of Malawi. Otherwise another route is where one has obtained such qualification from the above stated jurisdictions and fulfils other conditions stated therein.
13. But as already observed this section is for purposes of practise of law and not the study of law. No law prohibits the study of law at any other university in the country. The only catch is as aforementioned. the law programme has to be accredited and no accreditation can be granted without technical guidance and approval from the Council.
14. And as evidence clearly shows the only law school that the Council has granted guidance and approval is the one within the University of Malawi and no other. It is with that knowledge that the Council released the public notice in the Daily Times of 3<sup>rd</sup> August 2015 notifying the public that the only institution recognised to offer the law programme was University of Malawi and that qualifications obtained from the other universities offering the law programmes would not make the holders eligible to practise law in the country.
15. It is only because of that reason alone that the Council did not grant its approval on the law programmes in these two universities and not that the universities could not by law offer the law programme for study, that I find that the law programmes at both Blantyre International University and Share World University were not accredited.

c. *Whether the complainants were or ought to have been aware of the accreditation status of the law programme offered at their respective universities.*

1. The Complainants herein have relied heavily on the letters of accreditation written to the two universities which I have already mentioned above.

These letters did not mention of any exceptions at all. The Representatives from Ministry of Education did not produce any other evidence to show that the applications for accreditation from these two universities excluded the law programme.

2. Indeed if the authors of these letters intended to exclude the law programmes they simply could have done that clearly. They did not. If one was to read those letters without recourse to the law or without any further legal guidance they can be easily misguided into thinking that the law programme is one of the accredited programmes offered by the two universities.
3. However ignorance of the law cannot be used as a defence. One ought to know the law. And this should indeed hold even more truth for the Complainants herein who were studying law programme. They ought to have known that legally the law programme at their university was not accredited by virtue of lack of the Council's approval.
4. However even outside of the law and simply looking at the facts I am compelled to believe that the Complainants herein knew about the accreditation status of the law programs at these two universities. To begin with Share World University stated themselves that they informed their students that the law programme was not accredited. They even told me that they were informed to approach the Council which they did.
5. BIU insists that they were not aware. I notice however that both these two universities applied for accreditation in 2008. I am therefore compelled to believe that they were given similar advice to approach the Council as regards their proposed law programmes otherwise it would not make sense for Malawi Government to provide two different pieces of advice for an issue like this one.
6. I am further fortified in holding that this was a definite position of Malawi Government as a few months after accrediting BIU but before accreditation of Share World University, the Secretary for Public Service Management through a memo Ref HRP &D /POL/4T dated 14<sup>th</sup> November 2010 informed all Principal Secretaries and Heads of Department of the list of accredited institutions and programmes. Whilst BIU was accredited as an institution the memo clearly stated that their law programme was not.
7. I do appreciate that this was an internal memo and not meant for the universities in question. It however presents the Government position on the matter which position as already determined was in accordance with the law. The public notice by the Council which I already referred to above was simply buttressing this position.
8. I must further say that during the investigations on this matter I also took time to talk to some of my officers within my office who also attended



the law programme at BIU and either left before completion or indeed graduated with law degrees. They informed me that the issue of accreditation was such a sensitive one within BIU as most of their lectures clearly told them that even if they get the degree they would not be able to practise law in Malawi. However in the spirit of good faith these so called lectures should even have gone further to tell these students that the law programme was being offered illegally because of lack of Council approval.

9. Therefore from the totality of the evidence before me I am convicted that right from the beginning both Universities and their students knew that their respective law programmes were not accredited. But even if I am wrong in holding such view and that they were in fact not aware, then it is my determination that they ought to have known by the simple reason that is the law.
10. They ought to have known that the Council had not approved their law programme and therefore that the programme was not accredited.
11. This notwithstanding, I must say that I do sympathise greatly with the Complainants herein.
12. For starters I believe a lot of all this could have been avoided if the Council had simply responded to the specific inquiries that were made by these Universities at the time of application for accreditation. It is even worrying that this trend continues to date. The Council does not even respond to queries by NCHC itself.
13. In their public notice of 3 August 2015 they invited all institutions intending to offer the law programme to approach them for guidance. But when such institutions sought that guidance the Council has simply gone quiet on them. It almost gives an impression that these institutions are seeking a favour when in fact they are simply seeking a service which the Council is obliged to provide. This is a clear case of bad administrative practise by the Council
14. Furthermore to think that the law can allow foreign trained students with law degrees from Universities which the Council has not had a chance to monitor the syllabus or curriculum and yet those from within Malawi are prohibited sounds unnecessarily contemptuous for local education to me. It thus is very comforting to note that the proposed amendments to this law are taking care of all these concerns.
15. In addition it is important to make mention of the fact that there is some exploitation element by the Private Universities on the current situation where only limited number of students can be admitted to University of Malawi in any particular year. In view of the law as it stands I do not understand why they have been offering a law programme whilst fully aware that it will come to nought for the students pursuing it. Even when

the law changes which we do not know when, that change would not be applied retrospectively. In short, the so called law students in these universities are simply wasting time and money. If this is not exploitation of desperate students then I do not know what is. All private universities purportedly offering the law degree should just stop until all these legal requirements are met.

## E. FINDINGS

From the foregoing my findings are as follows;

- a. In the beginning it was the Credential and Evaluation Committee and from 2012 the National Council for Higher Education that is mandated to accredit the law programme offered by any law school in Malawi.
- b. The law programme that was offered by Share World University and Blantyre International University was never accredited from the start. This is not because the law prohibits the two universities from offering the law programme for study. But rather because the Malawi Council for Legal Education which is legally mandated to provide technical guidance through regulation of syllabus and curriculum before accreditation of the programme has to date only done so for the law programme at University of Malawi, Chancellor College. Much as I truly sympathise with the Complainants herein and others in similar situation some of whom are actually in my office, this means that other than the two Universities any law programme being offered by any other university in the country is being illegally offered and will result to nought. The qualification attained is not a law degree and the so called graduates cannot be called lawyers.
- c. It is my finding that the Complainants together with their universities were aware that their law programme was not accredited and that if indeed they were not aware in fact, then they ought to have been aware by law as stated in ( b) above.

Accordingly the allegation of unfair practises against NCHE over revocation of accreditation for the law programme cannot hold because in the first place there was never an accreditation that was granted to these programmes for NCHE to revoke. The claim herein of unfair practices against NCHE resulting in human rights abuses is unfounded and I hereby dismiss it in its entirety.

## G. 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 25<sup>nd</sup> DAY OF JANUARY 2019

A handwritten signature in black ink, consisting of a large, stylized letter 'M' with a vertical line through it, and a long horizontal stroke extending to the right.

Martha Chizuma

OMBUDSMAN