

DETERMINATION



**REPUBLIC OF MALAWI**

**INQUIRY BY THE OMBUDSMAN**

**IN THE MATTER**

**BETWEEN**

**LANGFORD MPHANDE & OTHERS .....COMPLAINANT**

**AND**

**DEPARTMENT OF FORESTRY .....1<sup>ST</sup> RESPONDENT**

**MINISTRY OF ENERGY .....2<sup>ND</sup> RESPONDENT**

**INQUIRY NUMBER: 65/2018**

**FILE NUMBER- OMB/MZ/C/195/2008**

**CORAM**

**Martha Chizuma - Ombudsman**

**- Complainants**

**Respondent - Present**

## DETERMINATION

1. My office received a number of complaints against department of Forestry on different dates from a number of their employees, some of which have since retired and other are still working. These claims were filed separately. However, after noting the similarity in the claims, I resolved to conduct a public inquiry for all the complaints at same time and to give one determination on the same. The complaints have been in my office for some time and on most of them there is correspondence between my office and the department as well as their line ministry. One sad fact is that despite all the interventions such as reminders and on spot investigations by my office, none of the cases have been resolved. There have been a lot of undertakings to make payment but have not been fulfilled.
2. As stated, the complaints cover different periods. Below is a brief summary of the complaints:
  - a. LANGFORD MPHANDE  
He stated that he was employed on 21<sup>st</sup> April, 1993. His claim is for unpaid salary arrears for the months of October and November 1996 and then again October and November 1997. He complained to my Office in 2008.
  - b. WYSON NKUNIKA - MZ-OMB-C-2015-45  
Mr. Wyson Nkunika states that he worked for the Respondent at Lusangazi Station and never got his salary for 17 months. He retired from work in February, 2015. He does not remember the actual months or year he was not paid. He only remembers that he was not paid. The Respondent argued that it is possible that the Complainant continued working after his retirement age and that the payment system

automatically deleted him from the payroll. They undertook to bring information to determine when retirement age was reached. According to form PSR 36 that was submitted to my office, it shows that the Complainant was born in 1955 and his last day of service was to be 31<sup>st</sup> December, 2015. Therefore, it is a fact that the nonpayment was not due to the Complainant working after retirement. His complaint was lodged with our office in 2015.

c. GLEX MKANDAWIRE - MZ-2015-OMB-11

His claim is that he was not receiving his salary from July, 2014 to the date he lodged his complaint to my office (February, 2015). At inquiry, the Respondent acknowledged not paying the Complainant and that they started the processes to pay him. I directed them to furnish my office with documentary evidence by the 22<sup>nd</sup>, December, 2017. The information was never provided to my office at the time of writing this determination.

d. M.M. JERE-OMB-MZ-C/002/2006

Mr. Jere worked for the Respondent from 1990 to 2003 when he retired from service. His claim is salary arrears for the months of April to August 2003. The Respondent were of the view that the Complainant might not have received his salary for the months as he had reached the mandatory retirement age such that the payment system might have removed him automatically from the payroll. He lodged his complaint with my office in 2005.

e. ALLAN NYIRENDA - OMB-MZ-C/005/2008

The Complainant came to my office in May, 2013 claiming unpaid salary arrears for the months of September 2006 to July 2007. In July, 2008, the Respondent Ministry wrote my Office that payment vouchers had been prepared and were sent to the Accountant General for payment. My office and even the Complainant himself made further follow ups to this letter. Unfortunately, the Complainant remains unpaid to date.

f. JMP SIBALE - OMB-MZ-C-98-2008

Mr. Sibale was employed as a Forest Patrolman. In 2003 he sat for promotional interviews. After being successful, he was promoted to Forest Guard. His claim is that he was never paid his salary arrears since 2003. He complained to my Office in 2008.

3. The common story among all the Complainants is that they have been following up on their claims firstly with their immediate bosses. And all of them were just being told they will be paid. In some cases, their department would respond that they have referred their cases to the Ministry which is responsible for making such payments. Respondent but the response has been the same, that they will be paid. Seeing that they were not being assisted, that is when they came to the Office of the Ombudsman.
4. For maladministration to be proved 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.

5. Most of the Complaints demonstrate that their claims rose as far back as 2002. To date their salary arrears remain unpaid. Surely this is the worst kind of unfair conduct. The Respondent representatives who came to the inquiry were quick to say that one of the reasons for such delays in payment was due to the fact that the Department of Forestry has over the years being moved around due to the merging of Government Ministries. I find the justification lacking. Rather this is a sign of poor record keeping and someone not doing their work properly in the office. Another disturbing observation I have made is that all those complainants before my office are low grades with low salaries. Again the Respondent was quick to state that there are a lot of other officers in a similar predicament only that they did not come to the Ombudsman. This admission by the Respondent is worrisome and demonstrates a systemic failure in the Respondent Ministry.
6. The Respondent as stated above did not deny liability but gave a number of excuses for the failure to pay the Complainants in time.
7. In view of this, I direct as follows:
  - a. The Respondent finds means and ways of eliminating this problem once and for all and report to me on steps taken by 30<sup>th</sup> December , 2018

- b. The Respondent pays the salary arrears at the same rate of present salary of the grades of the Complainants as of the date of this determination. This is in consideration of the time gone by and that the money has since lost value;
- c. The salary arrears should be paid by 31<sup>st</sup> January , 2018 with evidence of such payment provided to me.

**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 4<sup>th</sup> DAY OF OCTOBER , 2018**

  
**Martha Chizuma**  
**OMBUDSMAN**