

DETERMINATION



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

MRS MATECHETA.....COMPLAINANT

AND

MZIMBA DISTRICT COUNCIL.....RESPONDENT

INQUIRY NO: 17/2020

FILE NUMBER OMB-BT-C-566-02

CORAM

- MARTHA CHIZUMA - OMBUDSMAN**
- Matecheta - Complainant**
- Mzimba District council - Respondent**

DETERMINATION

1. The Complainant lodged a complaint with our office claiming that the Respondent, Mzimba District Assembly omitted its duty to pay her the death gratuity of her late husband. We investigated the claim and when no tangible progress came out of it, the matter was called for a public inquiry which took place on 1st June, 2019 and was attended by only the Respondent. The Complainant informed us that she would not make it as she was bereaved.
2. During the inquiry the Respondent stated that they are ready to pay the Complainant but that they need supporting documentation from the Complainant. I thus advised them that I will communicate to the Complainant to make the documentation available and will make further directives after I get a response from her. Since then, my office called the complainant requesting for the documentation who in turn asked us to give her time to look for it. We gave her that time and thereafter, in February 2020 she informed us that she had failed to find the documentation.
3. In view of the foregoing, I will thus proceed with my determination.
4. The primary function of an Ombudsman is to investigate complaints of maladministration. Maladministration has many facets but for us in Malawi 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; 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. My task is to determine if the complaint before me fits into any of the instances mentioned above. The complaint is unfair treatment to the Complainant following the Respondent's failure to pay her the death gratuity of her late husband.
6. Looking at the evidence, in the absence of the said documents the Complainant has not provided enough proof to substantiate her claim for the death gratuity. It is trite law that government money cannot be paid without the necessary documents. I am therefore, left with no choice but to dismiss her matter in its entirety on the grounds that it lacks merit.

7. RIGHT OF REVIEW

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