



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

PAULUS MALUWA.....COMPLAINANT

AND

MINISTRY OF AGRICULTURE.....RESPONDENT

INQUIRY NUMBER: 01/2019

FILE NUMBER- OMB/MZ/C/07/2010

CORAM

Martha Chizuma

Paulus Maluwa

Adam Mzembe

- Ombudsman

- Complainant

- PHRMO Respondent

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### DETERMINATION

1. The Complainant lodged his complaint against the Respondent Ministry of Agriculture with the Office of the Ombudsman through a letter dated 20<sup>th</sup> September, 2010. In the stated letter he was alleging that the Respondent had unfairly terminated his services and thus was seeking assistance of the office. He further alleged that the Respondent had treated him unfairly by not recognizing that at the time of the said termination he had been promoted to Assistant Agriculture Research officer Grade K.
2. The Respondent responded through a letter dated 3<sup>rd</sup> November, 2010 in which letter they denied the allegations made and stated that they had decided to terminate the Complainant's temporary services because of his insubordination to the Station Manager.
3. The Complainant disputed the Respondent's account of events leading to his dismissal and after a number of failed attempts by the office for an amicable solution of the matter, it was recommended for a public inquiry which I undertook on 28<sup>th</sup> June, 2017.
4. The evidence shows that the Complainant was employed in November 2005 as a field assistant and was based at Lunyangwa Agriculture Research Station in the Entomology section. During the period, he enrolled for a diploma course in Agriculture and Natural Resource Management which he finished in 2009.
5. He used to work with Mr. S.P.M. Nyirenda as head of section who left for studies in the United Kingdom on 23<sup>rd</sup> June, 2010. This became the root cause of this present matter. After Mr. Nyirenda had left for school, the acting officer in-charge wanted keys to the office of Mr. Nyirenda and she thought the keys were

being kept by the Complainant. The complainant was called to give the keys and when he said he did not have the keys; it is clear by the unfolding facts that the acting OC did not believe him to an extent that the police were involved. The complainant ended up being arrested by Mzuzu Police on 6<sup>th</sup> July, 2010. He was only released after the wife to Mr. Nyirenda came forward and produced the keys that had been left in her custody by her husband.

6. The main mandate of my office is to investigate instances of maladministration. Maladministration basically means bad administrative decisions or actions made or taken by public officials or offices. Both our constitution and Ombudsman Act list out a number of instances that constitute maladministration. According to section 123 of the Constitution and section 5 of the Ombudsman Act, for maladministration to be proved 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.
7. The complaint herein is that the decision by the Respondent to dismiss him from employment was unfair. To establish whether the decision to dismiss was unfair what needs to first be established is whether there were sufficient grounds for them to make the decision to dismiss and whether a hearing took place before

reaching the decision to dismiss. For short whether the process to dismiss followed the law.

8. On the facts, it is undisputed that after this issue, the Respondent sent some of its staff to Lunyangwa to investigate a number of issues. In some of their correspondences in respect of this matter like the letter dated 3<sup>rd</sup> November, 2010 mentioned above which was addressed to my office, the Respondent states that it sent a team to Lunyangwa on 9<sup>th</sup> and 10<sup>th</sup> July, 2010 to investigate this matter and found the Complainant guilty of a misconduct of refusing to obey instructions.
9. This letter did not attach minutes of how the inquiry was conducted. Later, during investigations, my office managed to get minutes of a meeting that happened on 10<sup>th</sup> July, 2010 and the minutes also referred to a general meeting that happened on 9<sup>th</sup> July, 2010 with an agenda of settling down management disputes at the station.
10. These minutes are quite revealing of what was happening at Lunyangwa. For instance the team from Headquarters wondered on the constant use of the police at the station and the station manager's explanation of their presence indicates someone who seems not capable enough of controlling her members of staff and resorted to using the police at every opportunity.
11. Looking at these minutes, it is clear that the team had not gone to Lunyangwa to conduct a disciplinary hearing for the Complainant. Rather, they went on a fact finding mission on the issues that were coming from Lunyangwa. I am more convinced in this thinking because to date the Respondent has not produced the notice of such disciplinary hearing with the alleged misconduct spelled out nor minutes of a disciplinary hearing for the Complainant and its findings that warranted a dismissal.

12. What is clear is a Station Manager who wanted to flex her muscles and show the Complainant who was in control. The Respondent was so blinded by this and forgot the good principles of conducting a disciplinary hearing. This was unfair labour practice contrary to the intents of section 31 of the Constitution and section 57 of the Employment Act.
13. Coming now to the issue of the Complainant's position as at the time of the said termination the same letter of 3<sup>rd</sup> November, 2010 stated above asserted that the Complainant had been dismissed at the grade of field assistant which was the grade given at the time of his employment. This was because the appointment process to Assistant Agricultural Research Officer had not been finalised in some government departments and ministries such as the Civil Service Commission. The Complainant argues that he was Assistant Agricultural Research Officer.
14. I find the Respondent's argument lacking in the sense that when one looks at the appointment letter of 23<sup>rd</sup> June, 2010 it starts by saying " I am pleased to inform you that on the direction of the Civil Service Commission, you have been offered appointment as Assistant Agricultural Research Officer (Grade K) existing in this Ministry." One wonders what kind of appointment process when it is the same Civil Service Commission that gave directives to promote the Complainant. This just goes to show how lightly the Respondent treated the whole issue. The responsible officers did not give it the seriousness it deserved and took an easier way out by dismissing the Complainant without following proper procedures thereby causing an injustice to the Complainant.
15. For the reasons stated above, I find that the Respondent wrongly dismissed the Complainant by not according him a disciplinary hearing before dismissal. Again the punishment meted out was disproportional to the misconduct as it is clear the

Complainant did not hide the keys. He was a victim of the management chaos going on at the station that warranted a team from Headquarters to go and investigate what was happening. Indeed their findings convince me in my own findings.

16. Accordingly, by the powers vested in me by section 126 of the Constitution of Malawi, I hereby direct that:

- a. The Respondent should reinstate the Complainant back to work on the position of Assistant Agricultural Research Officer immediately.
- b. If there are no vacancies to fulfil my directive in (a) above, the Respondent should pay the Complainant 3 years' worth of salary as compensation for unfair dismissal. The said compensation should be calculated at the rate of a present salary of Assistant Agricultural Research Officer. The payment should be made by 30<sup>th</sup> June, 2019.
- c. The Respondent should pay the Complainant all the lost salary from the date of the alleged dismissal to the date when they fulfil my directives in (a) and (b) above.

#### 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 12<sup>th</sup> day of February, 2019

  
Martha Chizuma

OMBUDSMAN