



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

PETER MWANGUPILI .....COMPLAINANT

AND

MZUZU UNIVERSITY .....RESPONDENT

INQUIRY NO: 14/2020

FILE NUMBER: MZ/2015/OMB/05

## DETERMINATION

### CORAM

- Hon. Martha Chizuma - Ombudsman
- Peter Mwangupiri - Complainant (Representing Respondent)
- Gareth Mwenefumbo - Executive Officer
- Joseph Chagona - HRMO
- Dr. Munthali - Associate Professor
- Dalo Njera - Senior Lecturer

## DETERMINATION

1. The Complainant lodged a complaint against Mzuzu University with our Mzuzu office through a letter dated 28<sup>th</sup> January, 2015 alleging unfair withdrawal from College.
2. The matter went through a number of investigation processes but it was not resolved until it was set down for public inquiry which took place on 6<sup>th</sup> August, 2018 and 11<sup>th</sup> February, 2019. Both parties were represented.
3. The undisputed evidence is that the Complainant was admitted to Mzuzu University to study Bachelor of Science, Forestry for 3 years as a mature entry student. In 2008 he was withdrawn for failing a course in Tree Improvement where he scored 38%. He immediately asked for a remark which was not granted in good time and he actually came and lodged a complaint at this office in 2008.
4. However later on the Respondents allowed him to go and repeat the course in 2011 and he did close the file in our office and proceeded to go and repeat the course from August 2011. At the time they had withdrawn him in 2009 he was on level 4 semester 7. So upon being readmitted he resumed level 4 (4<sup>th</sup> year) and one of the courses he was studying was Tree Improvement.
5. According to the Complainant during this study he wrote the continuous assessment of this course from which he scored 85% which according to University Regulations was supposed to contribute 42% to the final mark. However the final mark he received was 38% and with that he was withdrawn again. He alleged that he was subjected to a lot of threats by his lecturer Dr Munthali who was always biased against him because the Complainant had led the protest against his mode of teaching.
6. The alleged conduct of Dr Munthali was corroborated by Mayamiko Chiundu who was present during the inquiry and was also taking the same course. He said that the whole class was not happy with Dr Munthali's mode of lecturing and they wrote the University to remove him which they did and found a Dr Chanyeka From Zomba who taught the subject. He further stated that Dr Chanyeka did give them a continuous assessment but still after the final result most students had failed. He was also one of the students that failed but after remark he passed and graduated.

7. In response the Respondent's Executive Officer Gareth Mwenefumbo confirmed almost everything that the Complainant had said. Suffice to say that he disputed the assertion that the Head of Department has individual mandates over grades and stated that this is done by committees and that in event of a remark the same is done by a different lecturer. He admitted that continuous assessment contributes to 50% of the final grade. He further admitted that the Complainant did score 42% for his continuous assessment but insisted that there is a process of moderation that is done to the results.
8. Dr Munthali testified that at the time of this incident in 2012 he was Head of Department of Forestry and not a lecturer. He thus was involved in processing the grades and submitting to the Dean. He also took part in the moderation of exams and the results.
9. In the instant case after the students had finished writing the exams he sent the scripts to the adjunct lecturer in Zomba who after marking he sent them back to the Department. The Department moderated the results and presented the results to the faculty and then later to the Senate which then approved to release to the students. The Complainant scored 38% on the Tree Improvement subject.
10. He further stated that the Complainant asked for a remark on this course whereby he ended up scoring 32%. When questioned about the continuous assessment that the Complainant alleges to have taken Dr Munthali told the inquiry that from their inquiry on the issue there was no continuous assessment and that they were only given an exercise.
11. Another witness for the Respondent was Dalo Njera who is currently the Head of Department for the Forestry Department. He explained that students' assessment consists of Continuous assessment and end of semester assessment. He stated that continuous assessment is not moderated. He explained that moderation is a process where all lecturers in particular department come together to assess the exam questions and also after the exams have been written to discuss the exam grades before submission to the faculty. On the other hand it is only one lecturer that sets the final grade for continuous assessment.
12. Accordingly in the instant case after engaging the adjunct lecturer they did not have a way of following up on how many continuous assessments were done. When the students wrote the end of year exams which were moderated the papers were submitted to the Adjunct lecturer for marking. What the Department expected was that the lecturer after

marking the end of semester exams would submit the aggregate grade to the Department.

13. In the case of the Complainant what was submitted was 38% and after remark it came to 32%. According to him this was the aggregated mark. When asked how this could have been an aggregated final mark when the continuous assessment was obviously not considered Mr Njela later changed statements and said that what was submitted was just the final mark.

#### THE LAW AND ANALYSIS

14. As per the reading of the Constitution and the Ombudsman Act the Ombudsman mandate is to investigate allegations of:

- i. Injustice
- ii. Unfair treatment
- iii. Abuse of power
- iv. Manifest injustice
- v. Conduct qualifying as oppressive or unfair in an open democratic society
- vi. Exercise or performance of duties in an unreasonable, unjust or unfair way.

15. In the instant case what I need to determine is whether the withdrawal of the Complainant herein amounts to any of the instances mentioned above.

16. It is not in dispute that the Complainant herein was withdrawn after failing the Tree Improvement subject which he was actually repeating after initially failing at first try. What is being disputed is how the final grade of 38% and thereafter a remark grade of 32% was arrived at by the Respondent.

17. Section 2.2.8 of the Respondent's Student Handbook says that the End of Semester grade in any course shall comprise 50% continuous assessment and 50% final examination. It should be noted that this provision is more mandatory than permissive. There is no use of the word 'may' but rather "shall".

18. The Complainant alleges that he actually scored 8.5 out of 10 during his continuous assessment which going by the above provision contributed to 42% to the final semester grade and wonders how his final semester grade could have been 38%.
19. The Executive Officer for the Respondents Mr Gareth Mwenefumbo admitted during the inquiry that the Complainant did indeed score 8.5 out of 10 during the continuous assessment but attributed the change of grade to the process of moderation of the exam results.
20. Dr Munthali insisted that there was no continuous assessment and that what the students thought was continuous assessment was simply an exercise. However Mr Dalo Njera who is a senior lecturer and the current Head of Department stated that what was submitted by the adjunct lecturer as final semester grade was an aggregate of the continuous assessment and end of term assessment although on further inquiry he said the final semester grade did not consist of the continuous assessment.
21. On the file is the evidence of the alleged continuous assessment score which clearly shows that the Complainant scored 8.5 out of 10. There is no evidence to actually dispute this except for one of Dr Munthali who says that this was just an exercise. It is my considered view that getting the Adjunct lecturer's in put or clarification on this was the easiest thing to do and I do not understand how they probably failed to do this very simple act.
22. Their failure though leaves the evidence of the Complainant herein unchallenged that he indeed scored 8.5 out of 10. Moreover being continuous assessment it means that this is the final grade and not subject to moderation process. Accordingly the continuous assessment had contributed 42% to his final semester grade.
23. As already stated going by the Respondents' own student handbook, continuous assessment is mandatory. Every final semester grade should take into consideration the continuous assessment grade. The Respondents agreed this handbook binds the Respondents and the Students.
24. Thus even if I was wrong in holding such view that there was no assessment as Dr Munthali would want to make us believe then it means that the final assessment grade of 38% and the subsequent 32% after the remark was invalid as it did not incorporate the continuous assessment which is contrary to their own Handbook.

25. However if indeed the 42% continuous assessment grade was indeed incorporated in the final assessment grade then I am at pains to understand how the final assessment grade would have come to 38%.
26. As stated above, continuous assessment is mandatory as per Respondents own rules and is not subjected to the moderation process. And thus at the time the Complainant was writing the final semester exams he already had 42% towards the final assessment grade. Now even if the Complainant scored zero at the final exams he still should have maintained 42% as his final mark. But as it happened herein not only was this not maintained but the said mark was reduced to 38%. No justification for that reduction has been given except to say that it was because of the moderation process.
27. I need to be clear here that as Ombudsman my job is not to mark exam papers or to question the grades given to students; this is at the complete discretion of the lecturers. However it is a discretion that needs to be exercised with a lot of care regard being had to prevailing and relevant guidelines or regulations. My Job is simply to look at the reasonableness and fairness of that process.
28. Whichever way one looks at this, it is easy to note that something wrong happened here. Either the Continuous assessment grade was not incorporated into the final assessment grade which makes the final assessment grade invalid going by the Student Handbook. Or indeed if it was incorporated then the same was not rightly aggregated into the final semester grade as its reduction was wrong.
29. By letter dated 22<sup>nd</sup> October, 2012 the Respondents informed the Complainant that after his appeal for remark he actually scored 32% which was a fail. It was based on this grade and fact that he was already repeating this course that he was withdrawn from Respondents College in his final year of study.
30. Going by the above, the manner in which this final grade was computed leaves a lot to be desired. It was either invalid by virtue of respondent's own rules or indeed wrongly aggregated into the final grade. With all this the credibility of the process that came up with the final semester grade cannot be trusted thereby making the grade itself untrustworthy.
31. To the extent that it is this untrustworthy final assessment grade that resulted in the withdrawal of the Complainant from the Respondents' University it is therefore my finding that the said withdrawal was unjust, unreasonable and amounted to unfair treatment. It is maladministration.

32. Where maladministration has been established the law under section 126 of the Constitution and section 8 of the Ombudsman Act mandates me to provide the appropriate remedy for the injustice suffered. The remedy is supposed to as much as possible put the Complainant in a place he would have been had the maladministration not occurred.
33. In the instant case the Complainant has since retired from Government. It was his assertion that if he had passed the course and received his academic qualification he would have been promoted at his office and retired at a much higher grade than one he retired at and therefore receive much higher terminal benefits. He wants compensation for this.
34. I note however that the Complainant did not provide any evidence of this expectation of promotion. This however does not in any way take away the fact that the Respondent unfairly and unjustly treated the Complainant when they withdrew him. The Complainant was denied a fair chance to attain his degree.
35. Looking at all the circumstances of this case it is my considered view that a compensatory award of K1, 000,000.00 would to a greater extent pacify the injustice suffered by the Complainant as a result of the unfair withdrawal from the Respondent University. As stated above this compensation is being awarded for failure by the Respondents to give the Complainant a fair chance to attain his degree. This money should be paid to the Complainant by 31<sup>st</sup> May, 2020.

#### RIGHT OF REVIEW

36. 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 27<sup>th</sup> Day of February, 2020



Martha Chizuma

OMBUDSMAN