



REPUBLIC OF MALAWI

# INQUIRY BY THE OMBUDSMAN

IN THE MATTER

*BETWEEN*

*TRY FANCY SHABA.....COMPLAINANT*

*AND*

*MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY.....RESPONDENT*

*INQUIRY NO: 17/2017*

*FILE NUMBER - MZ/2015/OMB/13*

## DETERMINATION

CORAM

MARTHA CHIZUMA - OMBUDSMAN

Try Fancy Shaba - Complainant

Dzongololo and Mrs Kaliati - Representing Respondents

## DETERMINATION

1. The Complainant lodged a complaint with our Mzuzu office through a letter dated 16<sup>th</sup> March, 2015. The complaint is against Ministry of Education, Science and Technology for unfairly treating her by not considering her for promotion after she had acquired higher qualifications.
2. Evidence on the file suggests that the Respondents were not forthcoming in proving feedback. However, an on spot investigation was conducted in November, 2016 where the Respondents made copies of the necessary documents on the file and promised to revert after getting the necessary information. Noting that the matter was far from being resolved it was recommended for an inquiry which was conducted on 12<sup>th</sup> December, 2017.
3. In her evidence she stated that she started teaching in September, 1986 as a primary school teacher and went to school for upgrading in 2006 after she went through all the required procedures.
4. The Complainant graduated on 18<sup>th</sup> November, 2010 with a Bachelors' Degree in Education from University of Livingstonia. After completion she wrote a letter of completion to the District Education Manager.
5. The Complainant got her certificate on 2<sup>nd</sup> February, 2011 and wrote the DEM who posted her to Malemo Secondary School in Karonga District.
6. On 11<sup>th</sup> April, 2011 the Complainant wrote a letter of change of grade from TG to TI but was told to wait for the Teaching Service Commission since by then it had just been dissolved. However she noted that her other colleagues were being promoted. When the Complainant followed up with the Respondent's Ministry she was advised that it was just a mistake for her name to be skipped.
7. In 2012 the Complainant was skipped again and when she inquired with the Ministry she was told that the policy had changed as such she could not be considered and that it was not a matter of discussion. Thus when she lodged a complaint at our office.
8. However the Complainant stated that she did interviews in 2016 and was successful. She is now a secondary school teacher. The Complainant's grievance is between 2012 and 2016 when due to no fault of her own she was not automatically promoted just like her colleagues. The Complainant wants the Respondents to backdate her promotion to 2012.
9. The Complainant was surprised to note that the Respondents asked her to submit her documents for consideration for promotion. She was also surprised that the policy came in 2015 whilst she graduated in 2010 and wondered why that would affect her.
10. During cross examination she stated TJ was for primary school and that she was not that the grades for primary and secondary school are different. The Complainant also stated that she never saw the deployment list or those considered to be deployed as secondary school teachers.
11. In response Mr.

12. Dzongololo stated that he will have to find out what really happened for the Complainant not to be promoted in 2011.
13. I granted his request and gave him up to 22<sup>nd</sup> December, 2017 to gather information and submit to me. On 22<sup>nd</sup> January, 2018 I received the Respondent's position on the matter where they stated that the fact that someone has acquired a qualification it is not automatic that he/she be recruited or promoted. There must be need and vacancies which could be offered for the post within their career programme per their professional subjects.
14. The Respondents submitted further that the Complainant was not discriminated as the choice to go to school was self-initiated not government initiative which contributed to flooding of market that is the reason why she had to wait for interviews to compete. Therefore the Respondents have no case to answer against the allegations made by the Complainant.
15. 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.
16. 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 Respondents' failure to promote her after she had acquired higher qualifications.
17. For 5 years the Respondents failed to promote the Complainant after she had attained a higher qualification in 2010 and after she had applied for the change of her grade from TJ to TI just as her friends who were promoted did. Even after the Complainant had submitted all the necessary documents to the Respondents she could not be promoted. This is unfair discharge of duties or omission of their duty and therefore maladministration.
18. Moreover in their written submission the Respondents state that the Complainant herein was on a self-initiated training something that led to the flooding of the market and thus she could only be promoted after attending the interviews which only happened in 2016.
19. It is important to note that the Respondents never gave any evidence to support their claim that this was a self-initiated training. In a letter dated 30<sup>th</sup> August

2018 to the Complainant they simply notified the Complainant of their approval of paid study leave for 4 years between September 2006 and May 2010. It is my view that if indeed this submission of it being self-initiated training ought to have been clearly stated and consequences of such put across to her.

20. The Respondents later relied on a policy which came into operation in 2015 way after the Complainant had attained higher qualifications as an excuse not to promote the Complainant. It should be noted that such policies do not operate retrospectively. This policy would have started operating on those who upgraded after the place had been put in place
21. All in all the Respondents' failure to promote the Complainant herein was unfair and unjust treatment on her and therefore maladministration.
22. In view of this and by virtue of powers vested in me by section 126 of the Constitution and 8 of the Ombudsman Act I hereby direct that.
  - a. The Respondent should backdate the Complainant's promotion to 2012 and this should be done by 30<sup>th</sup> November, 2018.
  - b. The Respondent should pay salary arrears to the Complainant from the date she was supposed to be promoted to the date she was promoted in 2016 and this should be paid by 31<sup>st</sup> January, 2019.

#### 20. 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.

INQUIRY NO: 17/2017  
DATED THIS 4<sup>th</sup> DAY OF OCTOBER 2018

FILE NO: 17/2015/OMB/13  
  
Martha Chizuma  
OMBUDSMAN

CC: M

MARTHA CHIZUMA

THE CHIEF JUSTICE

THE ATTORNEY GENERAL

OMBUDSMAN

CHIEF JUSTICE

ATTORNEY GENERAL