

REPUBLIC OF MALAWI



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

WILLARD JOHN *COMPLAINANT*

AND

MINISTRY OF GENDER, CHILDREN & COMMUNITY DEVELOPMENT *RESPONDENT*

INQUIRY NO: 16/2020

FILE NUMBER: OMB-BT-C-14-2013

CORAM

- MARTHA CHIZUMA** - **OMBUDSMAN**
- Willard John - Complainant
- Vincent Njere - Chief Human Resource Officer
- Arnold Mdolo - Assistant Human Resource Officer

DETERMINATION

1. The Complainant lodged a complaint with my office claiming unpaid allowances owed to him by the Respondent, Ministry of Gender, Children & Community. Upon receipt of the said complaint, the office of the Ombudsman referred it to the Respondent for their input. Our efforts proved to be futile as our investigations culminated in a deadlock thus, the matter was set down for inquiry held on 26th November, 2019.
2. In the inquiry the Complainant testified that he was employed by Government as a cook and was working in various government Ministries. In 2008 he was working at Mpemba Boys Home and whilst there he was invited to the Staff room by Mr. Loga and Mr. Namasani to testify on allegations levelled against a teacher by the name of Mrs. Mwafulirwa, who was being accused that she was having sexual relationships with boys whom she was teaching. He stated that in his evidence he told them that he did not know anything concerning the matter and the accused teacher was shocked upon hearing the allegations levelled against her and as a result of shock she collapsed and died.
3. The Complainant states that thereafter, he wrote a letter seeking transfer, but was told to wait since his retirement was near. After that he started getting his salary at Ministry of Gender. He was receiving K7000.00 and he was spending K4000.00 in transport to and from Lilongwe. He claimed for the travel allowances for this period and this claim he lodged before Mr. Namasasu and Mr. Navitcha. He contended that the total subsistence allowance owed to him is K66, 000.00 which the Ministry of Gender told Mpemba Boys Home to pay him, however of that amount he was only paid K48, 000.00.
4. The Complainant in response to the cross examination from the Respondent stated that indeed he was paying K2100.00 for one trip and not K1320, 00.00. He also agreed that he signed that he received his salary. Further he stated that he was not getting his salary through the bank but by hand.
5. The Respondent in their testimony testified that they have documents indicating that on 5th May, 2013 Mpemba Boys Home wrote them, denying the amount claimed by the claimant but only admitting the K66, 100.00.
6. The Respondent then stated that the said amount of K66, 100.00 was paid as evidenced in the IPC minutes of 9th July, 2011.

7. They also added that the other amount of K17, 600.00 which he is claiming for travelling is invalid as it is for the period that he was retired.
8. After hearing both sides I observed that I needed proper evidence of Complainant's employment and whether there was any point in time where his pay changed from Mpemba to Ministry of Gender as claimed by the Complainant; as this is the basis of his claim. Hence I told the Respondent that I will give them up to 6th December, 2019 as time to verify the issues and revert to me with the position of Ministry of Gender and that thereafter I would then make further directions on the matter once I receive this information.
9. On the agreed date, the Respondent submitted information confirming that he was employed from 7th July, 2008 to 21 January, 2011. They also submitted documentation indicating that he his pay point had been transferred to Lilongwe as a way of monitoring him since he was a perpetual absentee. And from their assertions it appears his pay point was changed in 2010 and not in 2008 as alleged by him.
10. As per the reading of the Constitution and the Ombudsman Act, the Ombudsman's mandate is to investigate allegations of Injustice; Unfair treatment; Abuse of power; Manifest injustice; Conduct qualifying as oppressive or unfair in an open democratic society; Exercise or performance of duties in an unreasonable, unjust or unfair way.
11. The Complainant alleges unpaid allowances to which the Respondent refutes by stating that all that was owed to him was duly paid. It is undisputed that the Complainant was employed by the Respondent. What is in contention is whether his pay point changed and what dues arose from that occurrence.
12. The Respondent admit that they changed his pay point due to his alleged misbehavior and that it was in or about 2010. The Complainant states that his pay point changed after Mrs. Mwafulirwa died in 2008 and his collection of salaries commenced then. The Respondent in response to this assertion declares it to be erroneous as according to them Mrs. Mwafulirwa died in 2009. These being specific claims they required specific and strict proof on the part of the Complainant. In this regard the Complainant should have furnished me with something to prove that the Mrs. Mwafulirwa died in 2008 and also some documents proving he started collecting salaries since that period.

13. He has submitted some request to travel documents, however they do not have an authorizing signature from the Respondent as is required in such documents, and therefore they will not hold water or add value, thus rendering his claim for K508, 000.00 baseless.
14. Nevertheless, the gist of the matter is that both the complainant and the Respondent agree that he was owed K66, 000.00. The issue now is that the Respondent states they paid the dues which according to the Complainant is untrue. The Respondent attached internal procurement Committee (IPC) minutes and a letter stating that they paid the dues. However, in my view the IPC minutes and the letter are not enough for them to establish that the dues were paid. Such documents indicate that there was intention to pay but not that he was actually paid. I would much rather have seen a cheque or payment voucher which for me suffices as a clear sign of payment.
15. Therefore without such evidence I am left with no option but to conclude that he was not paid the dues. I will further mention that this overdue nonpayment of this dues amounts to unfair-and unjust treatment and it is maladministration.
16. Accordingly, by the powers vested in me by section 126 of the Constitution of Malawi, I hereby direct the Respondent to pay the Complainant the transport dues. There is no information that shows how many days the K66, 000.00 was for. This information ought to have come clear from the Complainant. Having failed to do that I have no other option but to simply award the same amount to him. This money should be paid by 31st May, 2020.
17. **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