



REPUBLIC OF MALAWI

INQUIRY BY THE OMBUDSMAN

IN THE MATTER

BETWEEN

WILLY MALUNGA.....COMPLAINANT

AND

MINISTRY OF EDUCATION, SCIENCE & TECHNOLOGY.....RESPONDENT

INQUIRY NO: 18/2020

FILE NUMBER OMB-BT-C-08-222

CORAM

- MARTHA CHIZUMA** - **OMBUDSMAN**
- Willy Malunga - Complainant
- Samson Kandulu - Principal Human Resource Management Officer
- Juweika Nyirongo - Assistant Human Resource Management Officer

DETERMINATION

1. We received a complaint from the Complainant alleging that he was underpaid gratuity. Upon receipt of the complaint we conducted investigation on the matter but reached no tangible conclusion. The matter was thus set down for inquiry which took place on 31st January, 2019. The Complainant passed away so the inquiry was attended by his grandson. The Respondent was also in attendance.
2. In his testimony the grandson stated that the Complainant died last year. He averred that the Complainant was working as a carpenter with Soche Technical College and he was not paid his full terminal benefits. That whilst alive he was pursuing this matter but he died before he got his money.
3. The Respondent stated that this is a very complicated matter and that the period that Complainant was claiming of is not correlating with what they got from Soche Technical College.
4. In response to the Respondent's assertion, I pointed out to them that the letter from Soche Technical College was factual as it stated as a fact that the Complainant was underpaid gratuity by at least 5 years.
5. The Respondent replied that the Complainant did not provide any documentary evidence, which is required more especially the PSR Form 36 which was used to calculate the gratuity that he got so that he can get his very last salary.
6. After hearing the evidence from both parties I decided to adjourn the matter so that the Respondent should look for any relevant information that the Soche Technical College might have on the final payment of the deceased Complainant.
7. Thereafter the Respondent wrote to me stating that having searched, they had failed to trace the Complainant's file.
8. In light of this, I will thus proceed with my determination.
9. My primary function as 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.

10. My task is to determine if the complaint before me fits into any of the instances mentioned above.
11. The Complainant claimed that he is owed gratuity by the Respondent and the Respondent in a letter dated 18th June, 1996 admitted that they owe him the said dues. Now they are saying that they are unable to pay the dues since they cannot trace the file and do not have the necessary forms. Such excuses are not the fault of the Complainant as it is clear from the said letter that they were well aware of his complaint at a period when they could have easily resolved it without facing any of these challenges. Their own tardiness and inefficient attitude with this matter which amounts to maladministration, is what has placed them in this difficult position. It would thus be a great disservice to the Complainant to deprive her of her late husband's dues due to the Respondents failure to do their job properly.
12. Therefore in light of the Respondent's admission in the letter I see no need to belabour myself on the analysis of the evidence before me during the inquiry. Accordingly, by the powers vested in me by section 126 of the Constitution of Malawi, I hereby direct the Respondent to ensure to pay the Complainant's deceased estate the unpaid gratuity. I am aware that in the absence of documentation it may be difficult for the Respondents to process this payment. However they need to find other legal means of making this payment. Moreover To ensure that there is no loss in value of money the payment should be made at the rate of current salary of the carpenter within Government service as of the date of this determination.
13. This money should be paid by 31st May, 2020.

14. **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