



**INQUIRY BY THE OMBUDSMAN  
IN THE MATTER**

**BETWEEN**

**WYSON NKUNIKA.....COMPLAINANT**

**AND**

**DEPARTMENT OF FOREST.....RESPONDENT**

**Inquiry No: 20/2020**

**FILE NUMBER: MZ-OMB-C-2015-45**

**DETERMINATION**

**CORAM:**

- Martha Chizuma - Ombudsman**
- Wyson Nkunika - Complainant**
- Nyirenda - For the Respondent**

### DETERMINATION

1. The Complainant lodged a complaint against the Respondent the Department of Forest through our Mzuzu office on 27<sup>th</sup> July, 2015 alleging that the Respondent subjected him to unfair treatment by failing to pay him his salary.
2. Investigations failed to resolve the matter as such the matter was referred to a Public Inquiry in order for it to be resolved and the inquiry was held on 14<sup>th</sup> December, 2017.
3. During the inquiry the Complainant stated that his claim is about 17 months' unpaid salaries whilst he was working. He started working in 1989 and retired in 2015. He stated that he does not know which months or year he was actually not paid. All he knows is that he was not paid. He was working as a patrol man in Chibwaka in Lusangadzi.
4. Whilst still in active employment he enquired about his unpaid salaries and the Respondent kept telling him that his money would be paid. To date his money has not yet been paid. He further stated that he did not receive the money in 2013 and 2014.
5. In cross examination he reiterated that he retired in 2015. His retirement letter was home however. He further stated that he was born in 1946 and he stopped working in 2015.
6. The Respondent in Response stated that his file was at Lusangadzi and that their suspicion is that he continued working whilst already retired but they gave an undertaking to go and check for the records and make a submission. I therefore, gave them up to 22<sup>nd</sup> December, 2017 to make a submission to me to enable me to reach a fair decision. At the time of writing this determination there was no submission from the Respondent.

### ANALYSIS OF THE LAW AND FACTS

7. 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.

8. My task is to determine if the complaint before me fits into any of the instances mentioned above. The complaint herein is of unfair treatment in that the Respondent omitted their duty to pay the Complainant his salary for 14 months whilst he was working for them.
9. The Respondent did not make a submission despite making the undertaking to do so. There is therefore no contrary evidence that has been presented in this matter to refute the claim for the 17 months' salary arrears. I am however, not doubtful as to the veracity of this claim as my office on numerous occasions such as on the 9<sup>th</sup> May, 2016 visited Viphya plantations in Mzimba where they met with Mr. S.D. Harawa the Human Resource Officer, who informed my office that the matter had been sent to the Secretary for Natural Resources to process the payment as payments are done at the headquarters.
10. It is on this basis that I am of the view that it is more probable than not that the Respondent omitted their duty to pay the Complainant his salaries for 17 months.
11. In light of the above I therefore, make the following findings:
  - 11.1 The Respondent is guilty of maladministration for omitting to pay the Complainant his salaries for 17 months.
  - 11.2 The Respondent is also guilty of maladministration for failing to resolve this issue and give the Complainant a response in writing or any response for that matter when he raised the issue with them.
  - 11.3 The Respondent is guilty of maladministration for failing to give concrete responses to my office since July 2015 when this matter was brought to their attention.

### DIRECTIVES

12. Section 126 of the Constitution provides that where an investigation reveals that an injustice has been done the Ombudsman shall direct the appropriate administrative action to be taken to address the grievance. Accordingly, by the powers vested in me by the said section, I hereby direct the following:
  - 12.1 The Respondent should pay the Complainant his 17 months' salary.
  - 12.2 The payment in 12.1 above should be calculated at the salary rate of a patrol man as at the date of this determination in order to ensure that there is no loss of value to the salary considering he was supposed to have received it

years ago and also in order to ensure that the Respondent does not benefit from their maladministration.

12.3 The payment should be effected by 31<sup>st</sup> May, 2020.

**RIGHT OF REVIEW**

13. 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 13<sup>th</sup> Day of March, 2020.

  
Martha Chizuma  
OMBUDSMAN

Inquiry No: 20/2020  
FILE NUMBER: #Z-FMS-C-2018-45

**DETERMINATION**

COMRA:

Martha Chizuma

Walter J. Muzila

T. Muzila

Ombudsman

Complainant

For the Respondent