

A REPORT ON SETTLED CASE COMPLAINT OF 2007 BY KALANI G.F.M. MALEMA : (MERIT NKHANA VS THOMSON CHIRWA - EMPLOYER)

BRIEF SUMMARY OF THE CASE COMPLAINT

The case complaint No. MZU.INT 454/07 involving Merit Nkhana aged 24 of Village Chiwato, T/A Mtwalo – Mzimba district (C/O Box 611, Mzuzu) – the female complainant and Pastor Thomson Chirwa aged 43 of Village Kajulamondo, T/A Mankhambira – Nkhata-Bay district (of Life Bible College, Box 20017, Mzuzu 2) – the employer, was lodged and registered at Mzuzu Labour Office on 1st October, 2007 by Miss E. Mpando, the interviewing Labour Officer.

The complaint interview sheet shows that Merit Nkhana was employed as a teacher and had worked for 10 months from 16th January to October 2007 for the Employer, Thomson Chirwa, at a monthly wage salary of MK7, 000.00. The interview sheet also shows the complainant's claim of wage arrears amounting to MK42, 000.00 and other unspecified allowances from the Employer through Labour Office. Further more, the interview sheet shows that Employer was called for a joint discussion.

On 1st November 2007, both Employer and complainant called at Labour Office. The Labour case interviewing officer received them and was ready to attempt mediate their case but instead the two parties presented to Labour Office – Mpando – a duly signed certificate of payment by the Employer (Chirwa); the complainant (Nkhana) and the Police witnessing signature with a Police official stamp. The signed certificate of payment indicates an amount figure of MK42, 000.00 as total salary arrears to be paid or having being paid by Chirwa to Nkhana.

In presentation, Mr Thomson Chirwa told Labour Officer - Miss E. Mpando and others that the complainant Nkhana had also lodged her same complaint to Police and that the Police had handled the case which resulted into the conclusion as constituted in the said signed certificate of payment. Further more, Chirwa told Labour office that he had disputed such Police settlement arguing that MK42, 000.00 was more than what he knew was to be paid to the complainant as her salary arrears and thus, the Police failed to proceed with the case and instead referred the two parties to have their Labour case handled by Labour office.

Miss E. Mpando referred the case complaint to my office for mediation where it was collectively agreed by both parties (employer and employee) that the case be started as a fresh one on the next day of 2nd November, 2007. This collective agreement thus cancelled the Police conclusion / resolution as had been wanted by the Employer-Chirwa.

I started a joint discussion by posing the first question to the disputed parties that was to help establish whether, the complainant had been indeed employed as a Secondary School teacher for the Employer's secondary school or not. In response, the employer stated that he had employed her as a volunteer teacher and that she was to be paid her monthly dues just as a "thank you". The employer then produced an offer letter that was signed by the complainant to have accepted the job as a volunteer worker

with salaries to be paid based on considerations by the employer as well as on profits by the institution. Whereas the complainant argued that she was first employed as a volunteer worker to do computer/secretarial related duties for the employer's institution and that thereafter, was re-employed as a Secondary School teacher but that no new offer letter was issued and signed between the employer and the complainant.

When the employer was asked to respond to the complainant's argument, he agreed with the complainant but further stated that it was his considerations by faith to help the then jobless complainant get job as a Secondary School Teacher after she had been proved not to be computer competent for her earlier volunteer job offered. Finally employer stated that he therefore never bothered to produce a new job offer letter to the complainant. It was at this juncture when I observed that indeed there was employment (by oral agreement) between the employer and the complainant regarding their second set of service relationship that was the subject to their wage dispute. I then clarified my observation to the employer who thereafter accepted having employed the complainant without clear written conditions / communication being signed between them. Mediation of the case then proceeded.

During the rest mediation process both parties cooperated with Labour office very well, produced their relevant documents of their employment relationship along with various signed monthly salary receipts used to pay the employee – complainant. Joint discussion resolved that a total sum amount of MK71, 250.00 was the total salary wage bill to be paid by Chirwa to the complainant for the 10 months she had served for him. However a sum total of MK27, 000.00 was found (through records of payments produced by the Employer and verified with complainant) to have been paid already to the complainant. Thus the difference of **MK44, 250.00** (forty-four thousand two hundred and fifty Kwacha) i.e. MK71, 250.00 – MK27, 000.00 was the remaining salary arrears to be paid by Chirwa to the complainant through Labour office. Both parties accepted this resolution and signed for it with Labour office witnessing.

The employer requested Labour office if he would be accepted to settle the claim of MK 44,250 by instalments. His request was accepted. Thus on the same day of joint discussion, 2nd November 2007, Mr Chirwa paid down **MK11,000.00** which was received by Miss E. Mpando and paid by same Mpando to the complainant (Nkhana). I witnessed the transactions myself on behalf of Labour office. This first payment appears on Triplicate book receipt **No. 021**. The second payment of **MK3, 000.00** which appears on Receipt **No. 029** was received by Mr C.M. Mkandawire on 6th February 2007, Labour Assistant and I witnessed. The third payment of **MK11, 000.00** which appears on Receipt **No. 041** was received by C.M. Mkandawire on 27th December, 2007 and I witnessed. The forth (last) payment of **MK19,250.00** which appears on receipt **No. 0054** was received by C.M. Mkandawire on 30th January, 2008 and Mr Mwanyongo Labour Officer witnessed. Thus the whole claimed wage balance of K44, 250.00 was settled by the employer in four instalments and was being further remitted to the complainant also in instalments with the last one of K4, 000.00 signed by the complainant as serial **No. 10/2008** of the direct payment register on 4th February, 2008.

This case complaint was closed in Labour office by Mr L.A. Mkisi, Assistant Labour Officer, on 4th February, 2008 after being settled in full.

In conclusion regarding this case complaint, I am thus in total view that I handled the case correctly while under close supervision of my immediate bosses – the District Labour Officer – Mr C.H. Mazoni and the then Acting Regional Labour Officer – Mrs Glory Nkuna.

POST CASE COMPLAINT DEVELOPMENTS

In January 2008 Mr Thomson Chirwa, the employer wrote Regional Labour Officer a letter complaining that his house had been invaded by some Policemen who were with merit Nkhana, the complainant. Mr Chirwa, further stated that the invading Policemen had alleged to Mr Chirwa's wife found at home that they had been sent by Labour officers to take household materials for claimed wages. He also stated that one Policeman of the group was identified to be MR Kaunguza of ID No. B1086. His letter to Regional Labour Officer was copied to the Commissioner of Police, Northern Region Headquarters, Mzuzu.

In response to Mr Chirwa's letter of house invasion complaint, the then acting Regional Labour Officer Mrs Nkuna through myself advised Mr Chirwa to lodge such a complaint to the Police since it was a Police case and the complainant through myself was also advised to use one organisation at a time and to avoid telling lies to Police that Labour Office can allow Police officers with complainants to take Employers' household materials for claimed wages. I thoroughly communicated Regional Labour Officer's advice to both parties.

Secondly on 2nd June 2008, Ministry of Justice - department of Legal Aid, Mzuzu wrote Regional Labour Officer a letter headed "*Re: Complaint by Rev. Thomson Chirwa*". This letter asks the Regional Labour Officer to help Mr Chirwa get back his paid wage access of MK17, 130.00 from Labour Office. The same letter indicates that Mr Chirwa had told department of Legal Aid that he had paid MK88, 380.00 instead of MK44, 250.00 which was Labour office's claimed salary arrears for Merit Mkhana. (*See paragraph 8 of the brief summary of the case complaint*).

In response to this, current Regional Labour Officer, Mrs Grace Kamlomo, summoned me to her office to present to her how I had handled the case because I was mentioned in the Legal Aid letter as an officer who had handled the case. I organised every case relevant documents from my office including the Triplicate books (used to receive payments from Employers) and the direct payment Register (used to pay claimed and received wages to complainants) for Regional Labour Officer. Thereafter we checked all monies Labour office got from Mr Chiwa for the complainant and found out that it was **MK44, 250.00** and not **MK61, 380.00** (more by K17, 130.00) as would have been the case if indeed I had received K17, 130.00 more than what had been claimed for from Mr Chirwa, i.e. Mk44, 250.00 + Mk17, 130.00 (*again see paragraph 8 and 9 of the brief case summary*). This meant that Mr Chirwa had lied to Legal Aid department that he had paid K88, 380.00 to Labour office instead of MK44, 250.00 which he paid to Labour office. It is this K44,250.00 when added to K27,000.00 which Mr Chirwa had already paid to the complainant outside Labour office which gives a total sum of

MK71,250.00 that was found as joint discussion resolution wage bill due to the complainant for the whole services she had rendered to the employer.

Mr Chirwa, the employer, was called by Regional Labour Officer at the office. I was also called along with Mr C.H. Mazoni by Regional Labour Officer to hear together from Mr Chirwa on how he arrived at paying Labour office an access of MK17, 130.00. Chirwa was proved to have “cooked” the amount figure because he also had all payment receipts whose duplicates were in our Triplicate books. There was no excessive payment. Chirwa was asked whether he had paid privately Mr Malema his claimed excessive sum. He said no. It was at this point after which, Mr Chirwa complained a lot to Regional Labour Officer regarding his complaint of Police invasion as well as stating by reversing that he had accepted to have employed Merit Nkhana during the joint discussion just because he was influenced to do so by Malema.

The Regional Labour Officer was reasonable enough and made a decision that Mr Chirwa’s case be re-investigated by the Regional Labour Officer herself along with District Labour Officer. I find this was just a good decision made.

Thirdly, on 28th July, 2008 Mr Chirwa wrote Regional Labour Officer another letter in which he raised the following four issues: (1) that Mr Malema had written Chirwa a letter of intimidation through a certain person on 3rd November 2007; (2) that he (Chirwa) had received a telephone call that he believed was from Labour Office to him. On this point, the letter stated that: (a) the new Regional Labour Officer to carry out her duties depend on juniors, (b) the new Regional Labour Officer was posted to head Regional Labour Office – North on political grounds and (c) that the new Regional Labour Officer cannot help him (Chirwa) because she had just started her work in the North in January or February, 2008; (3) the letter stated that Merit Nkhana, the complainant, challenged him (Chirwa) because she has a half brother at Labour office as well as a Police Officer who is her relative; and finally (4) he (Chirwa) in his same letter asked Regional Labour Officer to be given back his extra money taken from Chirwa himself by Malema.

In response to Mr Chirwa’s 28th July 2008 letter, Regional Labour Officer summoned him to call at Labour office on 31st July, 2008. In this 31st July, 2008 meeting, Regional Labour Officer invited me along with District Labour Officer – Mr C.H. Mazoni. When I was given opportunity to speak after both Regional Labour Officer and the employer Chirwa had spoken, I requested through Regional Labour Officer that Mr Chirwa should respond to each of the four major issues raised in his letter to Regional Labour Officer so that truth of the matter should be established in presence of my immediate bosses (RLO and Mr Mazoni). I wanted this to be done because a day prior to this meeting, Regional Labour Officer had strongly concluded that it was myself as a Labour Officer who had rang Chirwa telling him of the three baseless facts highlighted as (a), (b) and (c) above that I myself cannot even dream of saying as a professional Civil Servant at the same time, Regional Labour Officer never wanted to hear anymore from myself.

It was very unfortunate that, Mr Chirwa told us in the meeting that he was not in a position to trace back the caller details for us and also told us that Merit Nkhana, the complainant, had been using certain person who could identify himself falsely as a Labour Officer to be ringing and insulting Mr Chirwa on phones. Similarly, Mr Chirwa

failed to justify his extra money talked about in his letter as I still referred him to the receipted process of how Labour Office had received the total complainant's salary arrears from him. And I further produced a copy of my 3rd November, 2007 letter mentioned by Chirwa as intimidatory. The letter was not written to Chirwa and was not intimidatory but that I wrote it to Mr Tembo, College Director of Mr Chirwa's institution, to call at Labour Office to help us with some information we had required for the case. Indeed Mr Tembo responded to my requests positively and helped us. Finally, the complainant's half brother at Labour Office referred to in Chirwa's letter is Mr Mwanyongo and not I. Mr Mwanyongo was not involved at every stage while I was handling this case in question.

What did not please me in the meeting was that despite Mr Chirwa's failure to help us with information to establish truth of the matter, Regional Labour Officer seemed to maintain her earlier concluded stand regarding myself (which was that it is me who had called Mr Chirwa). This is why I did not hesitate to suggest to her that Mr Chirwa's letter be sent to Labour Commissioner for his intervention. Regional Labour Officer re-investigated the case and in her view found out that I had made a mistake to receive and handle a case which was not within our jurisdiction as Labour Office. She therefore arranged that a memorandum of understanding be written on which the employer Mr (Chirwa), the Regional Labour Officer, District Labour Officer and myself should sign. Regional Labour Officer said, among others, that memorandum of understanding should stipulate that Labour Office made a mistake and thus withdraws the case.

However, I did not accept the case re-investigation outcome thus I suggested to Regional Labour Officer that I should not be part of the signatory officials. I felt that: (i) the case re-investigation process was incompletely done because the complainant was not involved through out the process; (ii) secondly I felt Regional Labour Officer had made a mistake not to involve Mrs Nkuna with whom I had handled the case under her supervision despite the fact that she was around at the office and not on holiday; (iii) finally I felt there was no need for me to be a signatory if the memorandum was between Labour Office and the employer where Regional Labour Officer and District Labour Officer were already to be signatories. On this same point, I further thought, there was no problem if the memorandum was to be done without my signature because the re-investigation process was not done by me. It was like an appeal case to the high office of Regional Labour officer, what needed me to be responsible for provision of relevant case documents that I had used to handle the case. With this responsibility I did it as expected.

Finally, it is my hope that this report's information will be useful for authorities to make proper decisions regarding the case I handled and that I remain looking forward to be properly guided and advised through my Regional Labour Officer.

Compiled by: Kalani Malema, Labour Officer – the case mediator.