

MALAWI HUMAN RIGHTS COMMISSION



**INVESTIGATION REPORT INTO THE ALLEGED SEXUAL HARASSMENT OF
FEMALE EMPLOYEES OF MALAWI BROADCASTING CORPORATION BY MR.
AUBREY SUMBULETA**

March, 2021

EXECUTIVE SUMMARY

Background

In early July, 2020, Ms. Tadala Mussa, a female employee at the Malawi Broadcasting Corporation (MBC), published on her Facebook page the alleged sexual harassment of herself and other female employees at MBC by Mr. Aubrey Sumbuleta. The Commission became aware of the publication within a short timeframe.

On 29th July, 2020, the Commission received a petition from the Women's Wing of the Human Rights Defenders Coalition (HRDC) to investigate the alleged sexual harassment of female employees at MBC and other parastatal bodies.

Pursuant to its Constitutional and statutory mandate, the Human Rights Commission (the Commission) undertook investigations into the matter. This report contains the Commission's factual and legal findings, and; recommendations.

Worth noting, this report uses pseudo names for the complainants. Therefore, the names of the complainants are not real and do not reflect any person with such similar names.

Methodology

1. The Commission carried out investigation into the matter with the purpose to determine the veracity of the allegations of the female employees, that they were sexually harassed by Mr. Sumbuleta.
2. The Commission instituted an investigation team comprising four Commissioners and three members of staff of the Commission. The team was led by Commissioner Martha Chizuma and supported by Commissioners Mrs. Stella Twea, Dr. Bertha Sefu and Mr. Baldwin Chiyamwaka.

3. The investigation was carried out through preliminary inquiries and an investigation hearing which took the following form:
 - a. A quasi-judicial hearing where four Complainants and the Respondent were in attendance and were given a chance to tell their side of the story, rebut and cross examine the other side.
 - b. Ten witnesses, comprising current and former employees of MBC, two former Board Chairpersons and a former member of the Women's Parliamentary Caucus were also interviewed by the Commission.
4. The preliminary inquiries established that there were more than eight women who had allegedly been sexually harassed. Some of them privately explained their ordeal to the Commission during the preliminary inquiries. However, only four of the women expressed willingness to come and testify during the investigative hearing which the Commission had instituted. The rest excused themselves, the major reason being that they had not informed their spouses of the alleged sexual harassment claims and that if the matter was made public, their marriages would be negatively affected.
5. The four women are Ms. Lillian Moyo, Ms. Tadala Mussa, who both are still working for MBC and Ms. Yankho Banda and Ms. Chikondi Phiri who are both ex-MBC employees.
6. It is worth noting that each of the Complainants testified with the assistance of their Counsel namely, Ms. Hilda Soko, Ms. Chikondi Chijozi and Ms. Gloria Mbendera from the Women Lawyers Association and the Respondent with the assistance of his Counsel, Mr. David Kanyenda.
7. The Complainants, Respondent and some witnesses were orally interviewed, whilst some of the witnesses were interviewed over the phone

and others through zoom, in compliance with Covid-19 restrictions. The proceedings were recorded and transcribed.

8. The Commission also collected and reviewed relevant laws, policies and guidelines and all the documents obtained at the time of the investigations including the final submissions provided by Counsel for both sides.

Factual findings

From the foregoing, the following are our factual findings;

1. Around February, 2010, Ms. Phiri had an appointment at 8:30 am with the then Deputy Director for Information Mr. Sumbuleta. Ms. Phiri met Mr. Sumbuleta in his office, there were just two of them.
2. Mr. Sumbuleta pounced on her, grabbed her buttocks and wanted to kiss her, she managed to push him away and ran out of his office.
3. She reported the issue in writing to her Director General (DG), Mr. Bright Malopa who instructed Mr. Harry Chuma to take up the issue.
4. Mr. Chuma in the company of Ms. Phiri, went to meet Mr. Chikumbutso Mtumodzi at the Ministry of Information where the three of them discussed this issue. The Principal Secretary then referred the matter to the Office of the President and Cabinet. The matter however was never pursued beyond that despite so many attempts to have it concluded by Ms. Phiri.
5. When Mr. Sumbuleta later became DG for MBC in 2015, he found Ms. Phiri at MBC. Thereafter, the working environment for Ms. Phiri became hostile, as her immediate supervisor deliberately frustrated her with orders from Mr. Sumbuleta, which led to her resignation.
6. In the case of Ms. Banda, she too was called at odd hours to go and meet Mr. Sumbuleta at his office.

7. Similar incidences continued to occur but each time, Ms. Banda refused to oblige, citing that she had already knocked off.
8. The working environment for Ms. Banda changed thereafter, as her immediate boss did not assign her work. She even appeared before the disciplinary committee twice for allegedly not carrying out her duties but she was acquitted from all the charges.
9. She then resigned when the pressure became unbearable.
10. In the case of Ms. Moyo, she was called by Mr. Sumbuleta after working hours to go to his office, where the two met. Mr. Sumbuleta in this meeting, made a compliment about her work. The odd hour at which the meeting was taking place made her uncomfortable.
11. After the meeting, Mr. Sumbuleta continued to invite Lillian to his office at odd hours. Ms. Moyo ignored the invitations as it did not feel right for her to meet the boss at such odd hours.
12. Observing that Ms. Moyo was not giving in to his advances, Mr. Sumbuleta told Ms. Moyo's friend, Ms. Chifundo Valeta when they met in Shoprite, in vernacular, "*anzanu aja amayerekedwa ndichiyani*"
13. The working environment for Ms. Moyo became hostile and despite being a well- seasoned radio personality, she was never promoted.
14. In the case of Ms. Mussa, Mr. Sumbuleta stated and admitted that he had been in a love relationship with Ms. Mussa sometime in 1997. The Commission found it as a fact that in 1997, Ms. Mussa was 15 years of age and a minor.
15. Ms. Mussa, like Ms. Banda and Ms. Moyo, was also invited to go to Mr. Sumbuleta's office after knocking off and at odd hours in October 2014.

16. On one occasion, Ms. Mussa testified that, having concluded a meeting which had been called by Mr. Sumbuleta after working hours, he asked her in vernacular, " *kodi akudya izi ndindani*". He then moved close to her, unzipped his trousers and fished out his penis and held it in his hands showing her and said "*simungandithandize?*" ("gratify me")
17. She tried to flee the office but the door was locked. He then asked her to bend her waist and pull up her dress so he could masturbate and ejaculate while seeing her nakedness. She refused and he eventually opened the door and let her out.
18. After that incident, Ms. Mussa was removed as head of her department and transferred to the radio section at the directive of Mr. Sumbuleta, which most employees at MBC viewed as a demotion. At the radio section, whilst other colleagues were being given benefits such as phones, she was denied the same. She was subjected to ostracization as her colleagues shunned her apparently for fear of being seen with her, saying she was a "land mine".

Legal findings

The Commission finds that the four female employees were sexually harassed by Mr. Sumbuleta at different occasions and places. During all these occasions, the sexual harassment happened in his office. This is a breach of section 6 of the Gender Equality Act.

1. All the four complainants testified to having not consented to any sexual relationship with Mr. Sumbuleta, either impliedly or expressly. Mr. Sumbuleta on the other hand denies in totality all the allegations by the four complainants. However, an inference of systemic retaliation can be drawn against all the four complainants following their refusal to give in to the sexual demands by Mr. Sumbuleta. The actions of Mr. Sumbuleta were in violation of section 6 of the Gender Equality Act.

2. The four female employees were discriminated based on their gender after turning down the advances of Mr. Sumbuleta. Because they were women, Mr. Sumbuleta's expectation was that they had to give in to his advances. This was evidenced by a narrative of one of the female supervisors and older member of staff, Mrs. Eveless Kayanula who said that the women were being subjected to this treatment by virtue of their gender. This is discriminatory contrary to section 20 of the Constitution.
3. The four Complainants were subjected to all kinds of unfair labour practices as a result of refusing Mr. Sumbuleta's advances. They were transferred, sidelined for promotions and other benefits, such that two of them ended up resigning. This was a clear breach of section 31 of the Constitution.
4. The impunity with which Mr. Sumbuleta sexually harassed the complainants was a clear manifestation of failure or indeed lack of a system that could hold him accountable. The failure to provide a system through which such cases could be handled was a breach of section 43 of the Constitution.
5. In the course of the investigation, the Commission came across an ancillary finding, that Mr. Sumbuleta indecently assaulted a minor Ms. Mussa entering into a sexual relationship with her when she was still a minor.

Recommendations

Pursuant to the powers conferred on it by section 130 of the Constitution, section 22 of the HRC Act and section 8 of the GEA which mandates the Commission to ensure the enforcement of the GEA and in this matter, monitor compliance of section 6 and 7 of the GEA, the Commission makes the following recommendations:

1. The four Survivors herein in the name of Chikondi Phiri, Ms. Mussa, Ms. Moyo and Ms. Banda should through any lawyers of their choice and if they cannot so afford Women Lawyers Association or Legal Aid Bureau should pursue civil action for compensation against Mr. Sumbuleta for the sexual harassment they suffered at his hands.
2. The Board of MBC should reinstate Ms. Phiri who ended up resigning from her job because of the unfavorable environment that was created following the sexual harassment by Mr. Sumbuleta. The reinstatement should be to a post in the Sales and Marketing Division to which she belonged or any other suitable post within MBC she would have attained had she remained in the employment of MBC.
3. The Board of MBC should reinstate Ms. Banda who ended up retiring early because of the unfavorable environment that was created following the sexual harassment by Mr. Sumbuleta. The reinstatement should be to a post she would have attained through promotion had she not resigned.
4. MBC, as an employer is liable for failing to have a workplace policy for sexual harassment, thereby institutionalizing sexual violence thus violating section 7 of the Gender Equality Act. Therefore, MBC should compensate the four survivors. Meanwhile, the survivors should consider pursuing the matter in court for damages.
5. The Malawi Police should institute criminal investigations under the Gender Equality Act and other penal provisions into the sexual harassment allegations against Mr. Sumbuleta. The Commission will follow up on this recommendation at the end of July, 2021.
6. Police should further institute an investigation into the indecent assault of a minor under section 137 (2) of the Penal Code for the

admittedly sexual relationship between Mr. Sumbuleta and Ms. Mussa in 1997. The Commission will follow up on this recommendation at the end of July, 2021.

7. If the above criminal investigation in 5 and 6 establishes criminal liability, then the Director of Public Prosecutions should immediately institute criminal proceedings on the matter. The Commission will follow up on this recommendation at the end of September, 2021.
8. MBC should finalize development and adoption of its sexual harassment policy and ensure that it is in line with GEA and other domestic laws and international standards. The Commission shall expect an update on this matter by 31st July, 2021
9. MBC should ensure that the Board, management and all staff receive training on sexual harassment in the workplace in line with the GEA.
10. The Commission as a custodian of the GEA will undertake an audit of all institutions on their compliance with the provisions of the Act and ensure that they have sexual harassment work place policies.

Conclusion

This report has addressed the human rights issues pertaining to the alleged sexual harassment of female employees at MBC by Mr. Sumbuleta. The evidence gathered by the Commission and contained in this report points to the fact that Mr. Sumbuleta sexually harassed the four complainants. Mr. Sumbuleta therefore violated several human rights of the complainants, in contravention of the Constitution, the GEA and international human rights principles and standards.

The report has made concrete recommendations to relevant authorities and individuals to take action. The Commission is ready to work with all these

authorities and individuals to ensure that the human rights violations are remedied.

A handwritten signature in black ink, appearing to read 'Stella Twea', is centered on the page.

Commissioner Stella Twea

CHAIRPERSON, GENDER AND WOMEN'S RIGHTS COMMITTEE