



Commission Meeting on Administrative Justice

Date: 28 September 2023

Venue: ZHRC Bulawayo Boardroom

Mkwasine High School, Masvingo Province

Administrative justice, Equality and Non- Discrimination Investigative Report

CASE NUMBER:	ZHRC/B/AJ/03/2023
Complainant:	Joyce Muranga
Respondent:	(1) Headmaster Mkwasine High School (2) School Development Committee Mkwasine High School
Period of Investigation:	29 May to 2 June 2023
Nature of Violations:	(1) Equality and Non-Discrimination (2) Rights of Persons with Disability (3) Abuse of Office

1. FACTUAL BACKGROUND

- 1.1. Albinism is a rare, non-contagious, genetically inherited condition that affects people worldwide, regardless of their ethnicity or gender. It results from a significant deficit in the production of melanin. It is characterised by the partial or complete absence of pigment in the skin, hair, and eyes. In order for a person to be affected by albinism, both parents must carry the gene. In that case, there is a 25 percent chance that a child will be born with albinism during each pregnancy.¹ Persons with albinism face discrimination and barriers that restrict their participation in the society on an equal basis with others every day.
- 1.2. Due to the many challenges faced by people with albinism throughout the world, they are not able to enjoy the full range of human rights as those without albinism. At times, they are not accorded the same standards of equality in different aspects of life. Their rights are sometimes not fully protected, promoted, and respected, and their dignity as human beings is not respected. While some of the challenges they face are global, others have predominantly been identified in certain regions.
- 1.3. There are legal and policy frameworks regarding most of the human rights issues affecting people with albinism. However, these legal and policy considerations have not yet been consolidated. Thus, there are no specific instruments or guidelines for the enjoyment of human rights by people with albinism. Discrimination and stigma against people with albinism remain the norm in many African countries. The investigation was motivated by a complaint received through a message received on the cell phone number being used to follow-up complaints of violation of human rights related to the ZHRC National Inquiry on Access to Documentation in Zimbabwe.

¹ World Health Organisation (WHO) Pilot survey in Africa 2006.

2. METHODOLOGY

2.1. Desktop Research

Extensive research was carried out by the ZHRC on the legal framework governing human rights at the national, regional and international levels. This was to enable the ZHRC to assess and identify the nature of the alleged maladministration and violations of human rights.

2.2. Interviews

Interviews were carried out with the Complainant to fully grasp her complaint and the remedy sought. These interviews were telephonic at the initial stage of the complaint and in person during the field visit. The field interviews were carried out at the Complainant's home. Further, interviews were also carried out with the Deputy Headmaster at Mkwesine High School offices and at the School Development Committee Chairperson's farm. The interviews were used to triangulate the information gathered from the Complainant and the Respondents.

2.3. Observations

This method was used simultaneously with interviews to observe incidents within their natural environment. This assisted the investigator in understanding the complaint through knowledge of the school's setup and the existing institutional arrangements.

3. THE COMPLAINANT

3.1. The complaint was made by Joyce Muranga (the Complainant), a female of full legal capacity who is a resident of Mkwesine Township, Chiredzi District, Masvingo Province. She is a teacher at Mkwesine High School in Chiredzi District, Masvingo Province. The Complainant is a person with albinism and lives with her husband, who is visually impaired.

3.2. The Complainant alleges that she was transferred to Mkwesine High School during the second term of 2019. At the time of her transfer, she was entitled to institutional

accommodation as per the policies of the Ministry of Primary and Secondary Education and the Mkwesine Estate, which runs the school. She alleged that she was advised to look for accommodation four kilometres away from the school in a high-density area known as the R' residential area. She highlighted that despite being co-opted into the Mkwesine School Accommodation Committee, the school headmaster (1st Respondent) and the School Development Committee (SDC) Chairperson (2nd Respondent) had denied her the right to be accommodated at the institution's staff cottages.

3.3. The Complainant further alleged that she reported the issue to the District Schools Inspector, but the matter was never attended to and remains unresolved. The complainant further alleged that four more teachers later joined the school after her arrival, and all of them were allocated houses at the school. This was done regardless of some new staff members having no family as compared to the complainant, who has a husband with a visual disability impairment and a girl child in form one.

3.4. In addition, the Complainant indicated that at one point the school offered her a single room after raising a complaint during an administration meeting. The single room was not suitable for her and her family, considering that her daughter is now grown up. It is the complainant's view that she is facing discrimination due to her disabilities of members of her family.

4. SUBMISSIONS BY THE RESPONDENTS

4.1. 1st Respondent: Mrs Mupemhi-Deputy Headmistress at Mkwesine High School

4.1.1. During the ZHRC engagement with the first Respondent, she highlighted that the complainant's plight was caused by the withdrawal of houses that were provided by the Mkwesine Estate in 2018.

4.1.2. She highlighted that this resulted in the school losing a share of its former housing allocation from the Mkwesine Estate and being left with only

seventeen five-room houses. The members of staff had to share, with the senior members getting three rooms, while the new staff joining the institution were allocated two rooms. Only the school head and deputy were exempted from sharing, against a staff complement of thirty-four. She indicated that five members of staff were not benefiting from the institutional houses since the houses were all occupied.

4.1.3. In response to Complainant's allegations that she walked four kilometres to the school from the 'R' high density residential area where she resides, the 1st Respondent highlighted that there was no vacant accommodation when the complainant joined the school in 2019. She indicated that the teacher she replaced vacated the house after two school terms, citing lack of accommodation at the new school she relocated to. This resulted in the complainant looking for alternative accommodation at the Mkwesine's 'R' high density residential area.

4.1.4. In response to the issue of the Complainant's disability and that of her husband, who is visually impaired, the first Respondent indicated that she was not aware of the situation since the Complainant did not inform the school of her issue. When the school was advised of Complainant's predicament, she was offered accommodation two hundred metres from the school gate in 2022. However, the Complainant did not like the rooms she was offered so she declined the offer. She added that the school offered her another house, which was currently occupied by another teacher who moved to Lalapansi in Gweru, Midlands Province.

4.2. **2nd Respondent: Mr Zireva – School Development Committee Chairperson**

4.2.1. The second Respondent is Shelton Zireva, a male adult with full legal capacity who lives at Mkwesine Estate, Chiredzi District in Masvingo Province. He

indicated that he was the current chairperson of the Mkwesine High School Development Committee, having been voted into office in May 2022.

- 4.2.2. During the engagement with the 2nd Respondent separately from the 1st Respondent, he concurred with the submissions made by the 1st Respondent. He indicated that the Complainant and her husband had approached the SDC and presented their housing request. He also highlighted that since the withdrawal of Mkwesine Estate housing, the school had lost houses previously reserved for school staff accommodation in 2018, a year prior to the arrival of the Complainant. This resulted in staff members sharing accommodation.
- 4.2.3. He explained the criteria followed by the Mkwesine Accommodation Committee (MAC) in allocating staff accommodation. He highlighted the use of the 'first come, first served' model, meaning that the year and date of arrival of a staff member is used to determine the next available accommodation slot when compared to the recent arrivals. He added that Complainant joined the school during the second term of 2019, so she was entitled to a two roomed house instead of three rooms. However, at the time of the complainant's arrival, the school was overstaffed, resulting in her being asked to look for alternative accommodation outside the school premises.
- 4.2.4. On the issue of allocation of houses to new teachers who joined the school after the Complainant, he indicated that he was not privy to these allegations since he joined the SDC in 2022. He highlighted that his committee was operating a 25-hectare sugar plantation in order to raise money to construct more staff cottages.
- 4.2.5. He highlighted that after hearing the Complainant's plight, he directed the Mkwesine Accommodation Committee to offer her the house that became vacant after the transfer of the Deputy Headmaster to Lalapansi in Midlands Province on the 1st day of March 2023. He stated that the delay in occupying the house was due to the fact that the transferred Deputy Headmaster's property was still housed

at the house to be occupied by the Complainant since he had not yet been allocated a house in Lalapansi.

5. APPLICATION OF LEGAL AND HUMAN RIGHTS STANDARDS AND NORMS TO THE FACTS

5.1. Issues for determination

- 5.1.1. Whether the respondents violated the complainant's right to administrative justice.
- 5.1.2. Whether the respondents violated the complainant's right to equality and non-discrimination.

5.2. Legal analysis

Whether the Respondents violated the Complainant's right to administrative justice.

5.2.1. The alleged violation of the right to administrative justice² resulted in the institution of the investigations. This was coupled with the violation of the right of persons with disabilities³. These rights are also supported by national objectives⁴ and are enshrined in the Constitution of Zimbabwe of 2013, which is the supreme law of the country⁵.

5.2.2. The Constitution of Zimbabwe provides that an Act of Parliament must give effect to the rights related to administrative justice, and such a law should ensure the promotion of efficient administration⁶. The ZHRC noted that the school authorities did not take cognisance of the Administrative Justice Act⁷. The Act provides that an administrative authority has the responsibility or power

² Section 68 (1), (2) and (3) (c) of the Constitution of Zimbabwe.

³ Section 83 (c) of the Constitution of Zimbabwe.

⁴ Chapter 2 of the Constitution specifically sections 22 and 28 which provides for the need for policies to protect persons with disabilities and section 28 on the provision of housing.

⁵ Section 2 of the Constitution of Zimbabwe.

⁶ Section 68 (3) (c) of the Constitution.

⁷ Section 3 (1) (a) of the Constitution.

to take any administrative action that may affect the rights, interests, or legitimate expectations of the public in terms of the dictates of the law. the administrative authority is required to give reasons for any of its actions to the aggrieved person.

5.2.3. From the facts, the essential component of the grievance was the procedural fairness in the allocation of houses by the headmaster and the former SDC Chairperson, who were allegedly biased towards other teachers and discriminatory towards the Complainant. The ZHRC noted there was a deviation from the required procedure by the school and the SDC in the allocation of houses. The departure from the Ministry of Primary and Secondary Education guidelines was unreasonable and unjustifiable under the circumstances and was not justified on any grounds provided in section 86 of the Constitution which provides for the limitation of rights. This was against the provisions of section 68 of the Constitution which provides for the right to administrative justice as well as sections 22 and 83 of the Constitution, which seek to protect rights of persons with disabilities.

Whether the respondents violated the Complainant's right to equality and non-discrimination.

5.2.4. The Constitution⁸ provides for the right to equality and non-discrimination⁹. The right not to be treated in an unfairly discriminatory manner on such grounds, including their colour is protected by the Constitution¹⁰. While discrimination based on skin colour is an everyday reality for most people with albinism, discourse on discrimination based on colour has rarely been applied to albinism in Zimbabwe. This is for various reasons, such as the lack of visibility of albinism. This is furthered by the lack of understanding of what persons with albinism experience and, most significantly, the strong historical ties of society.

⁸ Section 2 of the Constitution of Zimbabwe.

⁹ Section 56 (3) and 56 (4) (a) and (b) of the Constitution of Zimbabwe.

¹⁰ Section 53(3) of the Constitution of Zimbabwe.

5.2.5. The ZHRC noted that most of the misconceptions associated with albinism are societal perceptions and myths, which led to attitudinal barriers to disability by members of staff who shunned staying with the Complainant. Although equality and non-discrimination are principles of international, regional and national laws, disability-based discrimination continues to exist, and States parties have obligations regarding the promotion of this right as enshrined in the Convention on the Rights of Persons with Disabilities.¹¹

6. INVESTIGATIVE FINDINGS

The investigations conducted led to the following findings:

- 6.1. The Complainant was transferred to Mkwasine High School and was not issued with institutional accommodation. This resulted in the Complainant searching for alternative accommodation at a place that is four kilometres from the school and travelled the distance to and from work.
- 6.2. The Complainant lived with her husband, who is visually impaired, and her daughter, who is in form one at secondary school.
- 6.3. Other teachers who joined the school after the Complainant were allocated institutional accommodation regardless of the use of the first come, first served system in the allocation of accommodation.
- 6.4. The Complainant made submissions to the school authorities, including the SDC and the District Schools Inspector regarding her plight for institutional accommodation.
- 6.5. She was allocated a room that was not suitable for her family as her child has grown up and could not share a room with her, so she did not agree to occupy the room.

¹¹ Article 5 of the Convention on the Rights of Persons with Disabilities.

- 6.6. Though the Complainant was allocated accommodation, she has not occupied the house as the Deputy Headmaster who was occupying the house had not yet removed his property since he had not been issued accommodation at the new school he transferred to.

7. CONCLUSION

- 7.1. Failure by the school authority and the District School Inspector to investigate the complaint made by the Complainant amounts to a violation of her right to administrative justice.
- 7.2. The allocation of houses to teachers who joined the school after the Complainant were based on discrimination based on colour of skin and are a violation of the Complainant's right to equality and non-discrimination.

8. RECOMMENDATIONS

The following recommendations are proffered.

The Ministry of Primary and Secondary Education

- 8.1. The Ministry should take measures to increase the level of awareness of officials at education institutions on the need to promote and protect the rights of persons with disabilities as well as rights of persons with albinism to combat stereotypes, prejudices, and harmful traditional beliefs that hinder enjoyment of human rights by these vulnerable groups.

District Schools Inspector

- 8.2. The DSI must take appropriate measures to ensure that the Complainant is accommodated in the house she was allocated by the school or any suitable accommodation.

8.3. The DSI should ensure that appropriate measures are taken to ensure that all complaints that are brought to his attention are actioned in time so that complainants to get redress through internal remedies.

Mkwesine High School SDC and Housing Committee

8.4. The school authority must put in place clear policy guidelines that are aligned to the Ministry's Guidelines, which must be followed when allocating houses to staff members.

8.5. The school authority must also act fairly by providing reasons for all decisions that affect the rights, interests, and legitimate expectations of any person as a way of combatting acts of maladministration.

The Complainant

8.6. In the future, the Complainant should document her grievances in the form of a written complaint so that there is evidence for complaints of maladministration or violation of human rights.