

Mr. Bilika Simamba
PO Box 1393
George Town
Grand Cayman, KY1-1110
Cayman Islands

By email: bsimamba@yahoo.co.uk

08 November 2023

OMB File: 202200622

Dear Mr. Simamba,

Re: Maladministration complaint against the Judicial and Legal Services Commission

On 12 December 2022, you lodged a complaint with the Office of the Ombudsman (**OMB**) alleging that the existing complaints policy maintained by the Judicial and Legal Services Commission (**JLSC**) did not comply with section 106(10) of the Cayman Islands Constitution Order (**CI Constitution**) after amendments were made in 2016.

On 04 April 2023, we notified the Office of the Governor that the OMB was opening a formal investigation under section 18 of the Complaints (Maladministration) Act (***the Act***) regarding the matter.

The specific issues for investigation and a summary of my findings in respect of them are as follows:

Issue 1 - Lack of applicable complaints policy/procedure

Summary of Findings: I found that maladministration had occurred due to the failure of the JLSC to update its complaints policy for judges to bring it in line with the CI Constitution.

Issue 2 - Unreasonable delay

Summary of Findings: I found that maladministration had occurred in the delays in updating the JLSC complaints policy.

A summary of the OMB investigation and findings is set out below. I wish to make it clear that although you raised concerns regarding decisions made by the former Chief Justice Anthony Smellie in 2019 and latterly, by the JLSC complaints committee in 2023, OMB had no jurisdiction to investigate that part of the complaint. You alleged that those decisions were “null & void” for want of a lawful

complaints policy which may or may not be the case, but it is outside the authority for OMB to make a determination on that allegation. Our investigation focused solely on the two aforementioned issues.

A more detailed record of our investigation is as follows:

Findings – Issue 1

When you first brought this matter to the OMB, there was a policy in place for making complaints against judges. Your contention was that it was an outdated policy, incompatible with the 2016 amendments to the CI Constitution.

In response to questions put by the OMB, the JLSC recognised *“that the pre 2016 Rules currently on the website is deficient and is in need of revision to address the procedure for dealing with Complaints referred or directed to the Chief Justice and the President of the Court of Appeal, among other points.”*

The JLSC complaints committee also stated in its review of your 2019 complaint (against a sitting judge):

“Although currently it may be argued there are no rules (something which is by no means certain), the President of the Court of Appeal has ultimate responsibility for adjudicating in respect of a complaint such as this.... It is self-evident therefore that Mr Simamba has been able to make a complaint which has been considered.”

The two statements above by the JLSC and the JLSC complaints committee appear to be but are not necessarily contradictory. A policy which is deficient and not entirely in line with legal requirements may nonetheless contain some rules which are still applicable. Legal advice OMB received on this matter confirms that some of the JLSC’s policy remains active and relevant under the 2016 amendments to the CI Constitution.

Government policies are living documents and may survive, at least in part, after legislative changes. Your complaint could still be (and was) heard under what was termed a deficient set of rules, and as noted above, whether that decision has now prejudiced your position is not for the OMB to review or investigate, for the reasons noted above.

The JLSC acknowledged its complaints policy for judges was deficient and required amendment to bring it in line with the CI Constitution. The JLSC’s complaints policy for judges, by its own admission, needed at least some amendment to meet the current legislative requirements. The policy had still not been fully amended at the time of this investigation, some seven years after the CI Constitution

was amended. The CI Constitution indisputably makes it the JLSC's responsibility for creating a relevant and effective policy for complaints handling.

I found that maladministration occurred due to the failure of the JLSC to update its complaints policy for judges to bring it in line with the CI Constitution.

Findings – Issue 2

Relative to the second issue, section 106(10) of the CI Constitution (2016 revision) provides that:

(10) The Judicial and Legal Services Commission shall— (a) draw up a code of conduct for the judiciary and a procedure for dealing with complaints; and (b) have such other functions as may be conferred on it by a law enacted by the Legislature.

The JLSC membership and staff of the Commissions Secretariat would or should have been aware of the amendments to the CI Constitution. Certainly, by July/August 2021, upon your writing to former Governor Martyn Roper and the JLSC members, they would have been aware of the policy issue raised.

The former Governor noted in his correspondence to you in August 2021 that he considered the matter of your misconduct complaint against a sitting judge closed. Notwithstanding this, the JLSC complaints committee, consisting of two judges of the Court of Appeal, later reviewed the same complaint and upheld the original decision made in 2019. The former Governor did not address the issue of responsibility for drawing up a complaints policy that section 106(10)(a) of the CI Constitution assigned to the JLSC.

The JLSC has stated that a new draft policy for complaints against judges would be completed by October 2023. OMB has today received a final copy of this policy which was made available for public review of the JLSC's website as of 31 October 2023.

Given that the JLSC appears, at the very least, not to have acted with any urgency in complying with its constitutional responsibility to draft a complaints policy, I found that this extraordinary delay of some seven years amounts to maladministration.

Conclusion

In conclusion, I support your complaint with respect to both issues raised above.

I wish to thank you for bringing these concerns to my office and should you have further questions please contact Investigator Brent Fuller at 946-6283 or at brent.fuller@ombudsman.ky



Sincerely,

Sharon Roulstone

Sharon Roulstone

Ombudsman