



CURBING IMPUNITY

AN INVESTIGATION REPORT IN THE MATTER OF THE ALLEGED UNPROCEDURAL AND IRREGULAR RECRUITMENT OF THE CHIEF EXECUTIVE OFFICER OF THE MALAWI ENERGY REGULATORY AUTHORITY: MR HENRY KACHAJE

1.0 INTRODUCTION

1.1 THE COMPLAINT

- 1.1.1 The Office of the Ombudsman (OoO), received a written complaint on 28th June, 2021, from Mr. Richard Chapweteka (hereinafter the first Complainant). He alleged that he had suffered injustice in the manner in which the Malawi Energy Regulatory Authority (MERA), conducted the recruitment process for the position of Chief Executive Officer (CEO), to which he had applied for.
- 1.1.2 The particulars of the Complaint were that the first Complainant was one of the applicants for the post of CEO which MERA advertised. He was amongst the 8 candidates who were invited for the interviews for the position of CEO carried out on 29th April, 2021.
- 1.1.3 The first Complainant stated that on 1st May, 2021 one of the Directors/Board Members of MERA informed him through a WhatsApp message that he performed well during the interviews. On 9th June, 2021 he was appointed as Commissioner for Malawi Electoral Commission (MEC). However, he was still hopeful for the MERA position, as such, he intended to decline the MEC Commissioner appointment and he expressed this position to a few of his trusted friends.
- 1.1.4 It is the first Complainant's assertion that the same Director/Board Member of MERA who called him on 1st May, 2021, called him again on 10th June, 2021, through a WhatsApp call. The MERA Board Member advised him that if he were to decline the MEC appointment he would embarrass the President

and secondly, that if he were to decline the appointment at MEC he would be left without a job as he was not going to get the MERA job either.

- 1.1.5 The first complainant indicated that on hearing this he inquired from the Director/Board member whether he had performed badly during the interviews. The Board member amongst other things, responded by informing him that the MERA Board had discussed him as an 'anointed' candidate, and that the Chairperson of the Board had urged the other Board members not to hire him as doing so would mean the Board was not independent.
- 1.1.6 He stated that he suffered an injustice since according to him he was deliberately given low marks despite performing well during the interviews. He further stated that he tried to have the issue resolved by speaking to the MERA Board Chairperson about what he had been informed and that the Chairperson stated that there was not much he could do rather than to fire from the MERA Board the member who divulged the confidential proceedings of the Board.
- 1.1.7 Following the lodging of the above Complaint, the OoO advised the Complainant that it was premature for the OoO to investigate the Complaint as the results of the said interviews were not out. The OoO proceeded to still put his Complaint on record. However, it was decided that as the Ombudsman had transitioned to another office, the handling of the Complaint would substantially continue on the appointment of a successor Ombudsman.
- 1.1.8 On 7th September, 2021, the Complainant followed up through telephone and informed the OoO that he had noted that the interview results had since been released and the successful applicant had since taken up the position. In this regard, he submitted a supplementary complaint against MERA, stating that he was reliably informed that the person the MERA Board had hired, Mr. Henry Kachaje, did not have a Master's Degree, which was a minimum requirement for the CEO position. As an interested party and someone who attended the interviews for the position he felt aggrieved because he had the necessary qualifications. The OoO advised him to put this second complaint in writing, which he did through email communication on the same day.
- 1.1.9 Further, on the same date 7th September, 2021, I received a referral letter from the Anti-Corruption Bureau (ACB), of a complaint they received from the Forum of National Development (FND), (hereinafter second Complainant). FND alleged that the Candidate that had been hired as CEO of MERA Mr. Henry Kachaje did not have the minimum requisite qualifications, i.e. a Master's Degree. FND therefore requested the ACB to investigate the alleged irregular recruitment of Mr. Henry Kachaje as CEO of MERA. The ACB opined that the issues raised in the complaint of FND fell within the

jurisdiction of the OoO and not the ACB and could thus, be best handled by the OoO, hence making the referral to OoO. It must be pointed out that the initial complaint that the ACB received from FND dated 25th August, 2021, which was the subject of the referral to the OoO was also copied to the OoO.

- 1.1.10 The OoO merged the two complaints for purposes of processing of the complaints and the further handling thereof, as they emanated from one subject matter, i.e. the issue of the recruitment of the MERA CEO. Further, the complaints had a common allegation, that the CEO of MERA was recruited in spite of not possessing the required minimum qualifications for the job, i.e. a Master's Degree. It was therefore more effective in terms of cost and time to merge the complaints.
- 1.1.11 On 29th October 2021, I received a referral letter dated 28th October 2021 from the Public Appointments Committee of Parliament on the same matter in line with the Committee's resolution of their meeting held on 25th October 2021.
- 1.1.12 On 10th September, 2021, I wrote MERA through the Chairperson, Mr. Leonard Chikadya asking MERA to comment on the allegations that the Board recruited a candidate who at the time of the interviews did not have the minimum qualifications.
- 1.1.13 On 30th September, 2021 the OoO received a written submission from the Chairperson of MERA responding to the allegations made. The content of the written submission is covered under the section on evidence in part 3.0 below.
- 1.1.14 Noting that there were still some questions on the submission provided to the OoO by MERA, a decision was arrived at to hold a series of public inquiries with MERA and other individuals who were connected with the matter. This was pursuant to the powers vested on the OoO under the Constitution and under the Ombudsman Act.
- 1.1.15 Accordingly, the series of the sessions of the Public Inquiry, the findings of which have led to this Determination, were held in the period from 21st October 2021 to 8th November, 2021.

1.2 LEGAL MANDATE OF THE OFFICE OF THE OMBUDSMAN

- 1.2.1 The OoO is an independent institution established by the 1994 Republic of Malawi Constitution and is complemented by the Ombudsman Act (Chapter 3:07 of the Laws of Malawi).
- 1.2.2 The OoO has powers under section 123(1) of the Constitution to investigate any and all cases where it is alleged that a person has suffered an injustice and there is no remedy available by way of court proceedings or by way of appeal

from a court or there is no practicable remedy available to that person, provided that in exercising such powers the Ombudsman shall not oust the jurisdiction of the courts and the decisions and exercise of powers by the Ombudsman shall be reviewable by the High Court.

- 1.2.3 In addition, under section 5 of the Ombudsman Act, the Ombudsman has the mandate to inquire into and investigate any complaint laid before him/her concerning: any alleged instance or matter of abuse of power or unfair treatment of any person by an official in the employ of an organ of Government; or manifest injustice, or instances where any decision or recommendation taken by or made by or under the authority of any organ of Government or any act or omission of such organ is unreasonable, unjust or unfair or is biased; or any practice which may be deemed as such. Further to inquire into or investigate allegations that the powers, duties and functions which vest in any organ of Government are exercised or performed in a manner which is unreasonable, unjust or unfair.
- 1.2.4 In line with the two provisions above, the law provides that the Ombudsman should investigate ANY and ALL cases where an allegation of an injustice has been made and also to investigate ANY complaint laid before the Ombudsman.
- 1.2.5 In the present case, the merged complaint was alleging unprocedural and irregular recruitment of the CEO of MERA therefore, *prima facie* fell in the ambit of the OoO.
- 1.2.6 However, we had to make a preliminary assessment relating to the further criteria listed down in the Constitution in relation to matters over which the OoO can exercise jurisdiction, i.e. whether there was any remedy reasonably available to the Complainants by way of proceedings in a court or by way of appeal from a court or whether there was any other practicable remedy.
- 1.2.7 In our assessment, the Complainant could not take this matter before the courts as it required interfacing with various offices from the executive branch of the government such as the Department of Statutory Corporations (DSC) and Department of Human Resource Management and Development (DHRMD) and MERA itself, in order to gather the necessary documents to demonstrate the merit in the complaint and substantiate the claims. Largely, this kind of information is confidential and cannot easily be released without a formal request and under certain strict requirements, it is therefore, not accessible to everyone.
- 1.2.8 The courts therefore were not a viable option for the complaint as the courts decide cases on the facts and the law presented to them by litigants, unlike the powers vested on the OoO which include investigative powers to

establish the facts and evidence in relation to complaints or allegations lodged before the office, where such complaint or allegation raises a prima facie case that the concerned complainant suffered an injustice.

- 1.2.9 This matter therefore needed the powers of the Ombudsman which include the ability to demand the release of any information and documentation a concerned respondent or persons connected to a matter in question may have in relation to the subject matter of the complaint in line with section 6(c) of the Ombudsman Act.

1.3 APPARENT CONFLICT OF INTEREST ON THE PART OF THE OMBUDSMAN

- 1.3.1 It became necessary right at the outset of my conduct of this matter as Ombudsman for me to address my mind to the issue of the apparent conflict of interest that comes up in this matter. This is in respect of the fact that as Ombudsman, I was amongst the 101 persons that applied for the position of the MERA CEO in January 2021, following the advertisement on the same in December 2020.
- 1.3.2 Indeed, it must be put on record that this point was also raised by both the MERA Board and Mr. Kachaje when they appeared before the Inquiry and was duly noted and accordingly recorded. As Ombudsman I notified the parties that I was cognizant of this fact, and that this issue had exercised my mind and a position had been adopted on the same.
- 1.3.3 I must put on record the fact that on commencement of my handling of this matter, as well as at the commencement of all the sessions in the Public Inquiry, I put on record the fact that that the issue of the apparent conflict of interest had been noted and duly considered. I opined to proceed with handling of the matter for the reasons which I restate below.
- (i) Other than being an applicant, I never proceeded beyond any substantive and material steps of the recruitment process in question, so as to hold a prejudicial interest over this matter.
 - (ii) Furthermore, one of the complaints which had led to the Investigations and Inquiry was lodged with the Ombudsman in June 2021, 28th June to be precise. Therefore since that time the OoO has had conduct of the matter before commencement of my term of office on 1st September, 2021, thus, curtailment of handling of his matter when I assumed office would not have been in the interest of justice.
 - (iii) To curtail the handling of this complaint, in which as Ombudsman while remotely connected to, I did not have a prejudicial, substantive and material interest, and which the OoO had already been handling would not have been in the interest of justice.

- (iv) The remote connection with the recruitment process in question does not affect my objectivity, impartiality and independence in the conduct of this matter.
- (iv) Moreover, while the law makes provision for cases which the OoO may refer to other offices if the OoO finds that it does not have jurisdiction over a matter in question, the law does not make provision for transferability of a complaint in an instance such as the one at hand.
- (v) The OoO took cognizance of instances whereby in adjudication processes, persons presiding over a matter in which they have a connection have proceeded to declare such as an apparent conflict of interest and to continue to have conduct of the matter in instances where such connection does not raise a prejudicial interest, and whereby continuation of handling of the matter is such that the interest of justice would so require. This is the case in the present circumstances.

1.3.4 For the record, while mindful that as Ombudsman, I do not in any way exercise judicial powers, when faced with the situation as in the present case, I opined that it was necessary to have recourse to some case authorities from the Courts of Law in Malawi, Courts of Law in comparable jurisdictions and international tribunals/courts, from which I drew incisive guidance in relation to this situation, with respect to my reasoning and position. The following cases were instructive:

- (i) *The Government of Malawi vs. Malawi Mobile Limited, The Common Market for Eastern and Southern Africa (COMESA) Court of Justice, Appeal Number 1 of 2016.*
- (ii) *James Phiri vs. Attorney General and Another, Constitutional Case Number 1 of 2008*
- (iii) *The State vs. The President of the Republic of Malawi, the Minister of Finance, the Secretary to Treasury, Ex Parte Malawi Law Society (Constitutional Cause no.6 of 2006)*
- (iv) *Simuka Enterprises V African Businessmen Association, 10 MLR 264 at 268*
- (vi) *Elton Magalasi vs DAPP Malawi, High Court, Civil Appeal Number 15 of 2014*
- (vii) *The State vs Council of the University of Malawi, 2011 MLR, 381*
- (viii) *President of the Republic of South Africa &ors v South African Rugby Football Union 1999(4) SA 147 CC*
- (ix) *Attorney General of the Republic of Kenya v Professor Anyang' Nyong'o [EACJ Application No.5 of 2007], and*
- (x) *The Republic vs Paul Montfort Mphwiyo and 18 Others, High Court, Criminal Case Number 35 of 2014*

- 1.3.5 In these cases the judgement was in favour of the position taken by respective judicial officers not to recuse themselves from matters in which it was claimed such judges had a conflict of interest thereby raising a possibility of bias.
- 1.3.6 While I must limit the scope of my discussion not to go into a comprehensive elucidation of these cases, it suffices to mention that based on the general legal principles of the law in relation to issues of conflict of interest and bias as discussed and laid down in these case authorities I took the position outlined above and proceeded to have conduct of this matter.

1.4 METHODOLOGY

- 1.4.1 On 10th September 2021, a notice of investigation was issued to the Board of MERA through the Board Chairperson informing the Board of the allegations that the complaint raised and asking them to respond to the same and also provide supporting documentation.
- 1.4.2 A public Inquiry was then held through a number of sessions from 21st October up to 8th November 2021 with the Board Members of MERA, the candidate Mr. Kachaje, and concerned officials from the Department of Statutory Corporation (DSC), and the Department of Human Resource Management and Development (DHRMD) respectively, as well as Professor Chinthenga, the African Regional Representative for AZTECA University from which the candidate Mr. Henry Kachaje indicated to the Inquiry that he obtained a Master's in Business Administration (MBA) Degree.
- 1.4.3 I also sought for information from relevant institutions as follows: the Malawi University of Science and Technology (MUST); the DHRMD and the National Council for Higher Education (NCHE).
- 1.4.4 In the very first session of the Inquiry, a platform was afforded to the MERA Board to engage with the Complainants. In addition, I engaged with the Candidate Mr. Kachaje in the course of the Inquiry since after interacting with the MERA Board I was of the view that he also needed to be given an opportunity to comment on the allegations and evidence gathered as he is an interested party.

1.5 ISSUES

- 1.5.1 The issue as emanating from the complaint raised by the complainants which this Determination is addressing are as follows:
- (1). Whether or not Mr. Henry Kachaje was procedurally, regularly and lawfully recruited as the CEO of MERA i.e. the process was in accordance with the applicable laws, procedures, policies and existing good practices.
 - (ii). Whether the first Complainant was unfairly treated by the conduct of the Board of MERA in the recruitment process for the CEO of the organisation

2.0 FINDINGS AND EVIDENCE GATHERED

2.1 ENGAGEMENT WITH THE BOARD OF MERA THROUGH CORRESPONDENCE

- 2.1.1 On 10th September, 2021, I wrote to the Chairperson of MERA Mr. Leonard Chikadya asking him to comment on the allegations that the Board recruited a candidate who at the time of the interviews did not have the minimum qualifications.
- 2.1.2 On 30th September, 2021, I received a written submission from the Chairperson of MERA responding to the allegations. In the written submissions the MERA Board made submissions that I have captured in the ensuing paragraphs.
- 2.1.3 Noting that I still had some questions on the submission provided to me by MERA I decided to hold a series of public inquiries with MERA and other individuals (listed in the methodology section) who I was of the view held information which was crucial for this investigations.

2.0 EVIDENCE GATHERED

- 2.1 On 21st October, 2021, we held the first session of the Public Inquiry. Present were the Chairperson of MERA Mr. Leonard Chikadya and Mr. Pempho Likongwe Director/Board Member of MERA. They appeared in the presence of MERA's Legal Counsel Mr. John Suzi Banda.
- 2.2 The two Complainants Mr. Richard Chapweteka and Mr. Fryson Chodzi accompanied by Mr. Robert Mkwezalamba representing Forum for National Development were also present.

2.3 SUBMISSIONS OF THE FIRST COMPLAINANT MR. RICHARD CHAPWETEKA

- 2.3.1 Mr. Richard Chapweteka stated under oath that MERA floated an advert for the position of CEO in December 2020. He responded by submitting an application as an interested party and he was one of the lucky candidates who was shortlisted for the interview. He attended the interviews on 29th April, 2021. After he attended the interviews there was silence as to when the interview results would come out, until on the 9th June, 2021 when he was appointed as Malawi Electoral Commission Commissioner.
- 2.3.2 The following day on 10th June, 2021 at 8:48 am Counsel Likongwe one of the Directors of MERA called him on WhatsApp. He missed the call and returned it at 8:54 am. Counsel Likongwe informed him that he was calling for two reasons, the first one was that Counsel Likongwe had heard that Mr. Chapweteka wanted to decline the appointment as MEC Commissioner. Counsel Likongwe advised him not to decline the appointment as he would embarrass the President who appointed him. The second issue that Counsel Likongwe informed him was that he might not be appointed as CEO of MERA which would leave him hanging in the balance looking for a job. In reaction to this, Mr. Chapweteka stated that he asked Counsel Likongwe

whether he had performed poorly in the interviews. In response to this query, Mr. Chapweteka averred that Counsel Likongwe in response started narrating the sequence of events that happened during the week of interviews.

- 2.3.4 According to Mr. Chapweteka, Counsel Likongwe informed him that a day before the interviews, the Ministry of Energy held a technical meeting, which was meant to inform the Board members the technical issues knowing that they were going into the interviews the following day. He further stated that Counsel Likongwe informed him that on the day of the interviews, the interviews started late because the Chairperson of the Board convened a meeting the subject matter of which was Mr. Chapweteka. During this meeting, the Board Chairperson told the board members that amongst the 8 candidates there is an anointed candidate that is Richard Chapweteka. The Board Chairperson further told the Board members that since the Board is an independent board, they should all make sure that Mr. Chapweteka does not succeed in the interviews because if he succeeds then it will be as if the Board is bowing down to political pressure.
- 2.3.5 Mr. Chapweteka further told the Inquiry that on the day of the interviews, they were requested to make a presentation based on a case study which they had to present within 20 minutes. Mr. Chapweteka stated that he was informed that after he finished making his presentation, the whole Board was shocked as his presentation was exactly on the technical issues that were discussed the previous day. The Board Chairperson then informed the Board members that Mr. Chapweteka must have gotten information from MERA members of staff as they know that he will be appointed as CEO as such they do not want to lose their jobs once he reports for duty. He therefore, informed the Board members to ensure that they give him a low score so that he does not succeed.
- 2.3.6 Mr. Chapweteka further stated that Counsel Likongwe also informed him that as matter of fact, if he was to check the scores from the Board members he will note that they gave him low marks. As a result, he came fourth or fifth in the interviews. Counsel Likongwe further informed him that if he did not believe what he was informing him then there were two independent observers, one from DHRMD and another from DSC who were observing the interviews. He also stated that Director Likongwe had informed him that he was the only panelist who gave him a high score, the rest of them gave him a low score.
- 2.3.7 According to the interview rating form by the panelists provided to the Inquiry by MERA, Mr. Chapweteka was scored as follows:

S/N	Panelist	Score
1.	L. Chikadya	65
2.	Innocencia Chirombo	66

3.	P. Likongwe	92
4.	T.V.E Chimkono	80
5.	Phyllis Manguluti	59
6.	C. Chiwambo	78.5

2.3.8 Mr. Chapweteka stated that he was devastated because here was a Board manipulating the results and trying to cut off his economic pipeline as he survives on income earned from working. Later in the afternoon, after consulting his wife he decided to lodge the complaint with the OoO.

2.3.9 On Monday 14th June, 2021, at 6:53 am he informed Counsel Likongwe that he had lodged the complaint with the OoO and that he had also informed the Secretary to the President and Cabinet (SPC) of the same. At 9:00 am Counsel Likongwe called him on WhatsApp and informed him that he needs to withdraw that complaint as he was going to finish him career-wise as he would be forced to resign. Mr. Chapweteka stated that he informed Counsel Likongwe that he will think about it and revert to him. After speaking to Counsel Likongwe and whilst considering his request, Mr. Chapweteka stated that he decided to call the Chairperson of MERA, Mr. Chikadya who did not pick up his call but returned his call later that day. During their conversation, the Chairperson Mr. Chikadya congratulated him on his appointment as MEC Commissioner and asked him what he wanted to discuss. Mr. Chapweteka informed Mr. Chikadya that he wanted to discuss how he manipulated the interview results. Mr. Chikadya's response was *"oh, is that the issue? Then that is not an issue we can discuss over the phone, I am coming to Lilongwe within a week, I will give you a call so that we can meet and discuss about it."*

2.3.10 On Sunday 20th June, 2021, they met at Mount Soche Hotel at 9:00 am. During that meeting, Mr. Chikadya repeatedly stated *"Chifundo chinaphetsa nkhwali."* The Complainant stated that he understood that phrase to mean he was crucifying Counsel Likongwe by reporting the matter to the Ombudsman. According to Mr. Chapweteka, Mr. Chikadya informed him that Counsel Likongwe had earlier approached him and informed him that he was embarrassed for divulging information he ought not to have divulged. After the discussion with Mr. Chikadya they agreed to disagree, Mr. Chikadya informed him that *"tidzafunana kutsogolo."*

2.3.11 At that stage he decided to proceed with the complaint at the OoO. His intention of approaching the Board Chairperson in the first place was that when he had consulted other people, they had advised him that he should resolve the issue internally as it would be embarrassing for the Board if this matter is resolved through the OoO. However, looking at the comments Mr. Chikadya had made during their conversation, which were intended to trash

him and the fact that he was not cooperating, as such leaving him without a remedy he decided to proceed with the matter.

2.3.12 Mr. Chapweteka stated that he then made a follow up complaint to the OoO as he read on social media that Mr. Kachaje was the successful candidate but he did not have a Master's Degree at the time of application and interviews. He further informed the Inquiry that his wife has a friend at MERA, whose name he would not disclose who called his wife and informed her that when Mr. Kachaje was asked to present his Master's Degree Certificate during the interviews he stated that he had forgotten the Certificate.

2.3.13 In response to Mr. Chapweteka's oral evidence MERA Chairperson Mr. Chikadya confirmed that the advert for the position of MERA CEO went into the media in December 2020. He further confirmed that Mr. Chapweteka was amongst the 101 candidates who applied and one of the 8 that were shortlisted and attended interviews on 29th April, 2021. He stated that there are three issues which he wanted to address and set the record straight.

2.3.14 Firstly, he stated that he is not aware of and neither did he attend any technical meeting held a week prior to the interview at the instance of Ministry of Energy. He stated that this is something that can be easily established by my office as there is no one who would wish to lie to the OoO.

2.3.15 Secondly, he refuted that the interview commenced later than the scheduled time because he as the Chairperson was holding a meeting with the Directors of MERA to discuss Mr. Chapweteka. He stated that they commenced late by two hours because the Hotel where the interviews were being held had to set up another room rather than the one that was earlier allocated for the interviews. As the Chairperson of the interview panel he addressed each candidate to apologise for the delay and to explain the reasons behind the late start. There was therefore, no meeting that was held to discount Mr. Chapweteka. In any case, he as the Chairperson of MERA, he has nothing against Mr. Chapweteka and their paths have never crossed before. If he had an issue with Mr. Chapweteka and did not want him to even appear before the panel, as the Board they had the power to ignore him completely and even ensure that he does not appear before the panel. However, they allowed him to get that far in the process based on the record that he submitted and based on the belief that he could be one of the potential CEOs of MERA.

2.3.16 Thirdly, that Mr. Chapweteka called him to register his concerns after what he had allegedly been informed by Director Likongwe. Before Mr. Chapweteka had called him, Mr. Likongwe had called the Chairperson informing him that Mr. Chapweteka was someone Mr. Likongwe had worked closely with in the last presidential elections case as his witness and because they became close when he saw him refusing to take the position of

Commissioner of MEC, on an account that he was going to MERA, looking at the results of the interview, he did not even come close to the position, such as even if the Board was to discount the first, second or third candidate he still would not be the one to be appointed to the CEO position. Director Likongwe further told the Chairperson that it was on that basis that he decided to tell Mr. Chapweteka but Mr. Chapweteka had distorted the story. Mr. Chikadya further stated that in addition, Mr. Likongwe pointed out that he had decided to inform the Chairperson of his engagement with Mr. Chapweteka just in case Mr. Chapweteka contacted the Chairperson.

2.3.17 Mr. Chikadya stated that he offered to get in contact with Mr. Chapweteka in order to reason with him. He further confirmed that he did meet Mr. Chapweteka on Sunday 20th June, 2021 at Mount Soche Hotel. After spending an hour talking to Mr. Chapweteka he concluded that he was essentially talking to himself. He therefore informed Mr. Chapweteka that Malawi is a free country as such Mr. Chapweteka was free to go to the Ombudsman and the Chairperson would avail himself to the Ombudsman to explain his position if the need ever arose.

2.3.18 In Cross examination by Director Likongwe, Mr. Chapweteka confirmed that he and Mr. Likongwe met during the elections case and they met frequently during that period. He further confirmed that even after the presidential election case they were in touch. Mr. Chapweteka also confirmed that he was unemployed but he denied that he had cash flow problems. He further confirmed that he did tell Mr. Likongwe that he wanted a job but he denied that he was the one who told Mr. Likongwe that he was given the MERA job.

2.3.19 Mr. Chapweteka further stated that he did not state at Baraza, a drinking bar he frequents that he is the next CEO of MERA, what he instead stated was that he was likely to be the next CEO of MERA, because he was confident he performed very well and he only told the people he sits with who are his friends. Mr. Chapweteka confirmed that Mr. Likongwe advised him in one of their conversations to refrain from telling people that he is going to MERA as CEO and he further stated that he had indeed informed Mr. Likongwe that he had been promised the MERA CEO position.

2.3.20 Mr. Likongwe refuted that during his time at MERA he has ever met the Minister of Energy. He further stated that he is not in any technical committees at MERA, instead he is on the Staff Appointment and Disciplinary Committee, Energy Pricing Committee and Arbitration, Mediation and Legal Affairs Committee.

2.3.21 Mr. Chapweteka agreed that Mr. Likongwe called him as a friend and that Mr. Likongwe's concern was that Mr. Chapweteka would turn down the position

as MEC Commissioner and remain unemployed. He further stated that Mr. Likongwe did not tell him the position he was in the interviews but he reiterated that Mr. Likongwe informed him that the Chairperson rounded all the Directors in order to discuss Mr. Chapweteka.

2.3.22 Mr. Chapweteka stated that after the interviews he did call Director Chiwambo of MERA who did not respond to his call but he sent him a message and informed him that he did well in the interviews but he did not inform him of which position he was in the interview. Mr. Chapweteka stated that he called Mr. Chiwambo because he is his friend and because he wanted to get some information about the interviews.

2.3.23 Mr. Chapweteka also stated that he called Mr. Likongwe twice to get information about the interview results and Mr. Likongwe had informed him that he did not know anything yet. He further confirmed that he sent Mr. Likongwe WhatsApp messages asking him the likely outcome of the interview results, in particular whether he was in or not. He further confirmed that he sent Mr. Likongwe a WhatsApp message telling him that Mr. Henry Kachaje does not have a Master's Degree, he did so because Mr. Likongwe is a Board member and the message was for his information. He denied that he sent the message in order to influence Mr. Likongwe so that Mr. Kachaje is not employed. He further denied that he was interfering with the recruitment process in sending the various messages to Mr. Likongwe.

2.3.24 When Mr. Likongwe inquired from Mr. Chapweteka what evidence he had that Mr. Kachaje does not possess a Master's Degree, he stated he got the information from the media and then two weeks after the interviews he bumped into Professor Mkwambisi of Malawi University of Science and Technology (MUST) who informed him that Mr. Kachaje went to the Vice Chancellor of MUST requesting for a letter of acknowledgement that he is studying for a Master's Degree in Entrepreneurship at MUST. The Vice Chancellor referred Mr. Kachaje to the said Professor who was his supervisor. Professor Mkwambisi informed Mr. Kachaje that Universities do not issue letters of acknowledgement, they only issue certificates after one has successfully completed the course.

2.3.25 In responding to Counsel Likongwe's question on whether he thought his conduct of contacting the Directors that were involved in the interview process to solicit information was ethical, Mr. Chapweteka stated that he does not know whether it is ethical or not for an employee from an institution to be disclosing confidential matters that have not been published. Mr. Chapweteka further stated that the employee from MERA who discussed the issue of Mr. Kachaje's qualifications with his wife was doing it on a personal

level. He denied that he felt entitled to be a CEO of MERA, he stated that he complained to the Ombudsman because he feels justice was not done.

2.3.26 The Board Chairperson put it on record that Mr. Kachaje was never asked about his qualifications during the interviews, as such the information provided to Mr. Chapweteka was misleading.

2.3.27 The Chairperson in reaction to Mr. Chapweteka's evidence further stated that he had wanted to ensure that by the end of the Inquiry they all would have preserved each other's integrity and maintain the decorum of the office of MERA, however, looking at the assertions made by Mr. Chapweteka he was persuaded to inform the Inquiry that on 23rd April, 2021 he was forwarded a message on WhatsApp from the Minister of Finance Mr. Felix Mlusu which the said Minister had received from Mr. Chapweteka. The message stated:
"Good Morning Honourable Minister, I have been invited for an interview for MERA CEO position on 29th April next week, it is probably the best time for you to speak to Mr. Chikadya on why I really need this job. I fully qualify for this job and I am working hard to prepare for this interview."

2.3.28 Mr. Chikadya stated that when he received the message, he and the Minister laughed it off and his response to the Minister was that *"he hopes Mr. Chapweteka is preparing well for the interviews"*.

2.3.29 Mr. Chapweteka confirmed that he did indeed send the message to Honourable Mlusu. He stated that his motive for sending the message to Honourable Mlusu was that he qualified for the position and he was working hard to prepare for the interviews, as such this was for Honourable Mlusu's attention and noting. He further stated that he wrote to Honourable Mlusu in particular because Honourable Mlusu and the Chairperson are personal friends. He denied that he did this in order to influence the Chairperson.

2.3.30 Mr. Likongwe reiterated that no one influenced each other in regards to the interview and Mr. Chapweteka's assertions of what he informed him are incorrect. He further stated that despite Mr. Chapweteka's various attempts to influence him, he was not influenced.

2.3.31 When I enquired from Mr. Likongwe after his cross examination of Mr. Chapweteka whether it was ethical to make the advisory call to Mr. Chapweteka regarding a process to which Mr. Likongwe was privy, he categorically stated that it was not ethical. Mr. Likongwe stated that he made that call because he was trying to help out a friend, a friend who it turns out is stabbing him in the back. When he realized he had made a mistake he informed the Chairperson.

2.3.32 I further enquired from Mr. Chapweteka as to who had made a promise to him regarding the MERA CEO position, he informed the Inquiry that the State House made the promise. He further stated that he never proceeded to confirm with the President as to the authenticity of this promise as he did not think it was that important.

2.3.34 I also enquired from Mr. Chikadya whether the assertions made by Mr. Chapweteka that he and the Minister of Finance are personal friends is true, and he informed me that the Honourable Minister of Finance is indeed a personal friend who he has known for many years.

2.3.35 I concluded the section of Mr. Chapweteka's evidence by asking him as a matter of practice and procedure as to what remedies he is seeking from the OoO. He stated that he did not have a specific remedy in mind, his expectation is that in the event that the Ombudsman finds wrong doing then she will prescribe the corrective measures. He further stated that he suffered an injustice in that he suffered manipulation. He concluded by stating that everything he stated was the truth and what he was informed by Director Likongwe.

2.4 MALAWI ENERGY REGULATORY AUTHORITY'S RESPONSE TO THE 1ST COMPLAINANT.

2.4.1 Mr. Chikadya adopted the submission which they sent to my office on 30th September 2021. In the said submission, Mr. Chikadya informed my office that during the process of recruitment of the new CEO, the Board applied its professional judgment to ensure that the successful candidate to take up this strategic position, meets all the requirements as specified in the job which was advertised in the media for a month during the month of December 2020.

2.4.2 According to the job advertisement which he provided to me which appeared in the Daily Times on Monday 4th January, 2021, the minimum Education Qualification and Experience which the applicants were supposed to have were: *"A Bachelor's Degree and Master's Degree in Engineering or Economics/Finance or Law or Management plus a minimum of 10 years' experience at senior management position in a reputable organization and...Experience in the Energy Sector is an added advantage."*

2.4.3 The advert further stated that *"Interested applicants should send their application letters and detailed Curriculum Vitae with three (3) traceable referees, including last employer, not later than 8th January, 2021 to The Comptroller of statutory Corporations..."*

2.4.4 Mr. Chikadya further stated that Mr. Kachaje was initially shortlisted by DSC as it is the procedure with all similar senior positions in the Statutory Corporation. There were 92 candidates shortlisted in this initial listing.

2.4.5 The Board of MERA reviewed the initial list of 92 candidates and selected the best eight candidates who were invited for interviews. For the purposes

of transparency and accountability the interviews were conducted by the full Board of MERA witnessed by Representatives from Statutory DSC and DHRMD.

- 2.4.6 The Board then convened 70th Extraordinary Board Meeting on the 12th April, 2021 to shortlist the candidates to be invited for the interviews for the position of CEO of MERA on 29th April, 2021.
- 2.4.7 On the day of the interview the Board interviewed Mr. Kachaje and seven other shortlisted candidates. Following the interview process, it transpired that Mr. Kachaje performed outstandingly and emerged as the best candidate based on both quantitative and qualitative assessment of the Board after the interviews.
- 2.4.8 Mr. Chikadya further stated that having checked Mr. Kachaje's CV and from his performance during the interviews, the Board was convinced that the candidate did not only meet the set minimum qualifications for the position, but also that he possessed the relevant experience to carry out duties of the Strategic position of CEO of MERA.
- 2.4.9 He stated further that Mr. Kachaje has served in various Senior Managerial positions for over 20 years as General Manager and Managing Director. He has relevant expertise in the energy sector having worked in the fuel transport brokerage, consulted extensively with the oil industry and the energy sector. He demonstrated strong leadership skills, a thorough understanding of the energy sector and its strategic importance to the socioeconomic transformation of the Nation and a very good understanding of the political-economic environment.
- 2.4.10 Academically and professionally, the said candidate has all the relevant qualifications for the job. He is a respected economist, a holder of a Master's Degree in Business Administration, possesses an international post-graduate certification in Business Consulting and Organizational management. He is also a holder of the following relevant certificates: Diploma in Downstream Petroleum Management (PETRAD); Trade Negotiating Techniques (International Trade Strategies); Public Finance Governance (African Development Bank Group).
- 2.4.11 Mr. Chikadya stated that it was noted during the interview that Mr. Kachaje did not bring an original copy of his MBA Certificate during the interviews. The Board requested the Chairperson to get a copy and share with the Board before the Board could make the final decision. The Board was mindful that Mr. Kachaje was a public personality who is an advocate of business entrepreneurship and has demonstrated some good level of integrity in his business activities. It would be unfortunate for him to make any lies to MERA Board claiming that he has an MBA when he does not have such qualification.
- 2.4.12 After this agreement by the Board, the Chairperson requested Mr. Kachaje to submit an original copy of his MBA Certificate for inspection of the Board. Mr. Kachaje submitted a copy of Reference letter dated 8th April, 2021 from Azteca University that gave Confirmation that Mr. Kachaje successfully

completed an MBA Degree Program with the University on 30th March, 2021. Mr. Kachaje indicated that the University was yet to send the copy of the certificate to him. Mr. Chikadya provided my office with the minutes of the 75th Extraordinary Board meeting held on 27th May, 2021 which contained observations of the Board on this Reference letter.

- 2.4.13 According to the said Minutes, present at the Extraordinary Board meeting were the Chairperson Mr. L. Chikadya, Mrs. I Chirombo, Mrs. P.C. Manguluti, Dr. T. V. Chimkono and Mr. P. Likongwe. The Minutes under the paragraph 75/2021/04 titled “APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER” state: *“It was noted that at the end of the interviews held on 29th April, 2021, Mr. Kachaje was the number one candidate with 89.83 per cent. The Board unanimously agreed that Mr. Kachaje was indeed the best candidate. However, the Board had noted that a Master’s Degree was not amongst the original certificates that Mr. Kachaje presented at the interview. The Board had therefore asked Mr. Kachaje to present his Master’s Degree certificate before an offer letter could be written to him. The Chairperson reported that Mr. Kachaje had informed him that he had completed all the Course work for his Master of Business Administration Degree course. In addition, Mr. Kachaje had presented some books which were reports of studies, academic work and consultancies that Mr. Kachaje had undertaken under the auspices of the World Bank, the European Union and other international organisations, to show that the knowledge he possessed was more than a Master’s Degree. The Board was satisfied that the documents presented showed that Mr. Kachaje had done academic and professional work higher than a Master’s Degree in value. However, since the advertisement for the position specifically stated that the candidates must have a Master’s Degree, the Board resolved that Mr. Kachaje must produce a Master’s Degree certificate before he could be offered the position. It was resolved that if Mr. Kachaje failed to produce a Master’s Degree certificate, the position of Chief Executive Officer for MERA should be offered to Mr. Alfonso Chikuni who came second in the interviews and scored 78.08.”*
- 2.4.14 When the Chairperson of the Board received the copy of the reference letter, he requested for a Board meeting for the Board to consider this document and assess its authenticity as a substitute for copy of the required certificate. The Board held a 76th Extraordinary Board meeting on 9th July, 2021 to consider the document submitted by Mr. Kachaje.
- 2.4.15 At the 76th Extraordinary Board meeting under minute 76/2021/08 titled “APPOINTMENT OF CHIEF EXECUTIVE OFFICER” it states *“...upon further consultations, Mr. Kachaje had presented a letter from Azteca University dated 8th April, 2021 showing that Mr. Kachaje had actually completed a Master’s Degree programme from Azteca University in the Republic of South Africa and that his Degree certificate would be available within seventy days from 8th April, 2021. The Board agreed that if there was evidence that Mr. Kachaje had completed his Master of Business Administration (MBA) Degree course before the date of the interview, the Board could offer Mr. Kachaje the position of Chief Executive Officer. It was resolved that Mr. Kachaje’s transcript and Degree certificate should be presented to the Board before the Board could make the final decision.”*

- 2.4.16 In the written submission, the Chairperson stated that according to the above minutes the Board clearly rejected the Reference letter as a substitute for copy of certificate. The Board further resolved that if Mr. Kachaje fails to submit a copy of the certificate, the Board will be left with no choice but to offer the position of CEO of MERA to the second placed candidate Mr. Alfonso Chikuni. The Board requested the Chairperson to communicate with Mr. Kachaje accordingly.
- 2.4.17 The Chairperson duly communicated the message to Mr. Kachaje who requested for one more week to contact his University. Mr. Kachaje then submitted a transcript of his MBA to the Chairperson. The Board held another 77th Extraordinary Board meeting on 22nd July, 2021 to consider this new document. The Board considered the examination transcript and resolved to accept it as proof that Mr. Kachaje completed his course and holds a Master of Business Administration (MBA) Degree completed on 30th March, 2021 before he attended interviews on 29th April, 2021. The minutes of the Extraordinary Board meeting read: *“77/2021/05 APPOINTMENT OF CHIEF EXECUTIVE OFFICER: The Chairperson presented to the Committee Mr. Kachaje’s transcript from Azteca University in the Republic of South Africa. It was explained that Mr. Kachaje had enrolled with two universities: Azteca University and the Malawi University of Science and Technology where he was also a lecturer. The Board studied the Transcript and noted from the transcript that Mr. Kachaje had studied for a Master of Business Administration Degree with Azteca in the Republic of South Africa. It was explained that the Degree certificate itself was not yet available the professor in charge of the faculty was on a teaching assignment in Mozambique and the Degree would be available once the professor returned to the Republic of South Africa. The Board considered a press statement issued by the National Council for Higher Education (NCHE) in 2019. The press statement listed some Universities which were not allowed to offer higher education in Malawi. Azteca University was listed in the press statement. Director Chimkono (himself an academic) explained that what the press statement showed was that Azteca University was not accredited to NCHE. Otherwise he had researched on Azteca University and it was a genuine community University in Mexico. Every National university like Azteca, is an accredited University in its Country of origin. Accreditation with NCHE is for offering Degrees in Malawi. However, that does not invalidate Degrees obtained from reputable Universities outside of Malawi which may not need to be accredited with NCHE as they are not operating in Malawi. The mention of Azteca in the NCHE press statement was because Azteca had attempted to partner with the Malawi Institute of Management (MIM) but the partnership had fallen through. The Board was assured that a Master of Business Administration Degree from Azteca University was a good and genuine Degree. It was agreed that Mr. Henry Kachaje should be appointed Chief Executive Officer of the Authority. The Board resolved that once Mr. Kachaje presents the Master of Business Administration Degree from Azteca University, the Board Chairperson shall proceed to write a letter offering Mr. Kachaje the Position of Chief Executive officer.”*
- 2.4.18 The Board in their submission stated that they also noted that advertising in the media for the position of CEO had closing deadline of 8th January, 2021.

The Curriculum Vitae of Mr. Kachaje submitted together with his application letter showed that he had an MBA in January, 2021. Mr. Kachaje claimed that the delay in completion date was occasioned by his delay to pay the last instalment of his fees. He confirmed to the Board that at the time he was responding to the advertisement for the position, he knew that he had completed his MBA program.

- 2.4.19 Mr. Kachaje was given the offer letter on 19th August, 2021 and he accepted the offer on 24th August, 2021. Mr. Kachaje has since submitted the original copy of his MBA as demanded by the Board.
- 2.4.20 The Board in concluding their written submission stated that they were aware that the appointment of Mr. Kachaje as CEO of MERA has attracted public interest for obvious reasons bearing the diversity of vested interests of stakeholders of MERA and the economic and social impact of MERA activities to the Country in general. The Chairperson assured the Inquiry that the Board exercised due diligence and care to ensure that the selected candidate meets the expectation of the Board to rebuild the reputation of MERA and win public trust of MERA as regulator of the Energy sector in Malawi.
- 2.4.21 In his oral evidence during the public Inquiry he stated that in March 2021 the OoO issued a damning report against MERA termed 'Institutional Anarchy'. MERA took the report seriously as such as the Board they were mindful that they would not want to repeat the exact same shortfalls that the said report has highlighted, as it would be a betrayal of the integrity and reputation of the Board.
- 2.4.22 He confirmed that the advert was floated in the newspaper with a closing date of 8th January, 2021. They received an overwhelming response from the public, with 101 candidates applying for the position. When they had their meeting they knew that the acting CEO would be an interested party and as a Board they do not have a secretariat, as such they decided that the DSC should be the address where the applications should be sent to. His communication to the Comptroller was very clear in that the Comptroller's office was going to serve purely as secretariat.
- 2.4.23 The position of CEO being the highest position in the institution, it was decided that the whole Board would participate in the recruitment process and this is why on 12th April, 2021 they convened a Board meeting to conduct the shortlisting exercise. The DSC had done summaries of all applications received. The Board started sieving through the summaries and they narrowed down the list from 101 candidates to 25 candidates and then finally they brought the list down to the best 8 candidates.
- 2.4.24 When they were going through the list they picked up Mr. Kachaje who had two folios on that list. There was a folio that showed that he had a Master's Degree and then there was another folio which showed that he had no Master's Degree certificate. The Chairperson stated that he asked why there were two folios and asked the secretariat to confirm whether or not Mr.

- Kachaje has a Master's Degree certificate and they were assured that he has a Master's Degree and they proceeded to shortlist him accordingly.
- 2.4.25 During the interview process as the candidate came into the room, they were introduced by the Chairperson of SADC and then he as the Chairperson of the Board would take over. The candidate was then invited to make available the original certificates that he has and the certificates would pass through all the members of the Board.
- 2.4.26 After the interview, after the delays that have already been stated, by the time they finished the interviews they were finishing around 23:00 hours. After they had finished the assessment, the first person to approach the Chairperson was Senior Counsel Likongwe who informed him that Mr. Kachaje had emerged as the successful candidate, however, when his certificates were being circulated amongst the Board members Mr. Likongwe did not see a copy of his Master's Degree. The second person to raise the same issue was the Vice Chairperson of the Board Ms. Innocentia Chirombo. Mr. Chikadya informed the two Board members that since during the shortlisting they were assured that Mr. Kachaje has all the necessary certificates, he informed the Board members that he would speak to Mr. Kachaje.
- 2.4.27 When he called Mr. Kachaje to send him a copy of Master's Degree certificate, he sent him a letter of reference from his University. He shared with the Board the reference letter and the Board members were not interested in this reference letter. The Board members informed the Chairperson that if Mr. Kachaje does not bring the copy of his Master's Degree certificate then they will go to the next best candidate and they requested the Chairperson to communicate as such to Mr. Kachaje.
- 2.4.28 Mr. Chikadya confirmed to me that he informed Mr. Kachaje that he needs to produce a copy of his Master's Degree certificate in one week, failure of which the mission would be abandoned. He further stated to Mr. Kachaje that he might have been the best candidate according to the assessment of the Board but without a copy of the Master's Degree certificate the journey would be finished. When the one week elapsed Mr. Kachaje sent over to him an examination transcript of his Master's Degree which indicated that Mr. Kachaje completed his Master's Degree on 30th March, 2021.
- 2.4.29 When Mr. Chikadya submitted the examination transcript with all pass marks to the other Board members, one of the Board members by the name of Dr. Thokozani Chimkono, who is an academician was able to confirm to the other Board members using his academic advice, that the examination transcript is indicative that the person has a Master's Degree despite the certificate not being available. It was on the basis of this examination transcript that the Board resolved that they can only offer the position to Mr. Kachaje if he can undertake to bring a copy of his Master's Degree certificate. Mr. Kachaje subsequently brought in a copy of his Master's Degree Certificate.

- 2.4.30 Mr. Chikadya further informed the Inquiry that it is extremely unfortunate that issues that should have been restricted to the Board became completely blown out of proportion with so much distortion. One has to look at the composition of the Board of MERA, he does not want to beat his own drum, however, the country has seen how the Board has stood up for what is right for the country. It would therefore be extremely unfortunate for a Board of professionals to stoop so low to just give someone a position without them having the necessary qualifications. He further stated that he does not have any personal interest for Mr. Chapweteka, Mr. Kachaje or the second best candidate Mr. Alfonso Chikuni who almost got the job.
- 2.4.31 Mr. Chikadya stated that he has been a practicing manager for at least 38 years, he has sat on a number of Boards and he has recruited CEOs including expatriate CEOs. For him to be sitting in the OoO on some simple issues that they thought they had managed in terms of housekeeping issues is unfortunate.
- 2.4.32 Counsel Likongwe stated that the process went the way it should go. They did the shortlisting, then then had the interviews and every Board member scored on their own. Afterwards is when the DSC added up the scores and got the averages and gave the summary. He further stated that he does not remember giving Mr. Chapweteka the highest scores, however he recalls that at some point their summaries were leaked to the media.
- 2.4.33 Mr. Likongwe further stated that they did a perfect job in this recruitment process and they chose Mr. Kachaje after analyzing the scores where he emerged highest, followed by Mr. Chikuni, then there were others. Mr. Chapweteka was the fifth best candidate. The Board is professional and they met several times on the issue of Mr. Kachaje's certificate. The Board had a position that if Mr. Kachaje did not produce his Master's Degree certificate then they would not recruit him, however, there was a transcript that he produced which actually showed that Mr. Kachaje had completed the course before 31st December, 2020. Mr. Kachaje had therefore attained the qualification of a Master's Degree, but the actual certificate just came later. The key date for them was the date of shortlisting which is 12th April, 2021 and as stated he had already attained the Master's Degree at this stage, he just did not have the certificate with him.
- 2.4.34 When I pointed out that the transcript shows that he completed the course on 30th March, 2021 Mr. Likongwe confirmed the same but stated that Mr. Kachaje had still attained the qualification before shortlisting which took place on 12th April, 2021.
- 2.4.35 Mr. Chikadya further clarified that Mr. Kachaje had applied twice, on one CV it showed that he had a Master's Degree and then on the other folio showed that he was a student at MUST. Mr. Chikadya stated that he did not provide my office with the duplicated CV and that if need be he would provide the same.

2.4.36 Mr. Likongwe stated that when they received the schedules, Mr. Kachaje had applied twice, on one it showed that he had a Master’s Degree and on the other it showed that he did not have a Master’s Degree as he was a student. On folio 52 it says Mr. Kachaje has Master’s Degree (MBA) from Azteca University.

2.4.37 The documents provided to me by MERA titled “**Summarised Applicants for the Position of Chief Executive Officer for the Malawi Energy Regulatory Authority (MERA)**”, Folio 52 appears as follows:

Folio No.	Names and Contact details	Sex	Age	Qualifications	Work Experience	Remarks
52	Henry Kachaje P.O. Box *** Cell: *** Email: ***	M	49	MSc in Entrepreneurship, MUST Bachelor of Social Science (Economic) UNIMA, 1994 Advanced Diploma in Business Counselling, University of Durham, UK, 2002	Managing Director at Business Consult Africa from 2004 to date. Senior Business at Consult Africa from 200 to 2004. General Manager at International Haulage Brokers Malawi Limited from 1997 to 1999. Senior Distribution Officer at Manica Malawi limited from 1995 to 1997.	

2.3.38 I requested them to clarify why Mr. Kachaje provided two applications. The two Board members stated that this is not the first time that they have seen candidates applying more than one time, some actually apply at least four times just to ensure that they do not miss out on the opportunity. The number of candidates on the summarized list was 101 but the actual number of candidates was 92, therefore he is not the only who applied twice.

2.3.39 Mr. Chikadya further stated that when he queried why there were two folios, the explanation that he was given was that Mr. Kachaje sent the first CV which he withdrew and then sent the correct CV however, the cover letter was the same. That is why there were two folios.

2.3.40 When I inquired how the Board got the assurance during the shortlisting exercise that Mr. Kachaje had a Master’s Degree, Mr. Chikadya stated that they got the assurance by looking at the folio which showed that he had a Master’s Degree.

2.3.41 I queried the two Board members why the process did not capture that Mr. Kachaje did not have the required qualifications before the interviews were administered when the advert is very clear on the required qualifications of

the candidates and the letter of invitation for interviews also specifically stated that candidates should bring their original certificates. Mr. Chikadya stated that he trusted the secretariat that was collecting the information that they had gotten all the information for each of the candidates. Furthermore, during the interview, they were indeed asking the candidates to submit a copy of all their certificates and the certificates were being shared and pass around all the Board members. They did notice that there was a missing certificate, however, they did not curtail his interview because there are some circumstances in which the candidates are able to produce the certificate after the interviews.

2.3.42 Mr. Likongwe further added that during the interview process, the candidate walks into the room and him as the Chairperson of SADC introduces the candidate to the panel, then the candidate sits down. Mr. Likongwe then takes the certificates from the candidate and as the certificates are being handed over to the panelist the candidate must start projecting as they only had an hour for each candidate and they were running late. After the projection they had agreed on set questions. There was no specific time where the panelists just sat to look at the certificates, as the candidate is presenting the certificates were moving around the directors. Afterwards the certificates go back to the candidate. Therefore, they could not have stopped the candidate to discuss the qualifications as it would have disturbed the flow.

2.3.43 Mr. Chikadya stated that the position of CEO is a position of trust, one aspiring for that office will therefore be given the benefit of the doubt unless otherwise. He stated that he did not even notice that Mr. Kachaje did not have his Master's Degree certificate as he was busy chairing the interview and when you are busy chairing you just hope that one of the directors has seen the documentation properly, as he stated it was Mr. Likongwe who approached him about it first. This only because an issue and came to light because Mr. Kachaje came first. Had it been it was the third or fourth candidate we would not even be having this discussion at all.

2.3.44 When I queried as to whether the fact that the candidate does not have the required certificate available is not a defining criteria for whether they do indeed come to the interview or proceed with the interviews or not, Mr. Likongwe stated that the defining moment was during shortlisting and as they have stated they were assured that the Candidate has a Master's Degree and as the Chairperson had stated they would not believe that he would lie that he has Master's Degree at that level of a position. The secretariat had also confirmed that he had a Master's Degree certificate.

2.3.45 Mr. Likongwe stated that at the point of application what is required is an application letter and a CV. When the candidate comes that is when they are required to bring a copy of their certificates.

2.3.46 I enquired why the Board made an offer to Mr. Kachaje on 19th August, 2021 which he accepted on 24th August, 2021 which is prior to him bringing the Master's Degree certificate which is dated 26th August, 2021. I asked this because the Board had made a resolution during its 77th Extraordinary Board

meeting on 22nd July, 2021, that once Mr. Kachaje presents the Master's of Business Administration Degree from Azteca University is when the Board Chairperson could proceed to write an offer letter to Mr. Kachaje. In response Mr. Likongwe stated that when one has a transcript then he has the qualifications. The deciding factor was therefore the transcript. When there was no transcript the Board refused to make an offer. When the transcript was provided that is when the Board informed the Chairperson to make an offer.

- 2.3.47 When I informed him that his explanation is not reflected in their resolution and the minutes of the 77th Extraordinary Board meeting minutes, he stated that if the Chairperson came to the Board and stated that he signed Mr. Kachaje's letter on the 19th August, 2021 and he accepted the offer on the 24th August, 2021 and the certificate came on 26th August, 2021 should the Board really revoke the offer?
- 2.3.48 Mr. Chikadya's response was that he called Mr. Kachaje and asked him where the certificate was and Mr. Kachaje stated that the certificate is coming that week and that week I came and if one looks at the 24th and 26th August, 2021 it is neither here nor there.
- 2.3.49 I queried the Board whether they engaged NCHE as the relevant Authority when verifying and ascertaining the recognition of Azteca University, Mr. Likongwe stated that as mentioned, on their Board there is Dr. Chimkono who is a lecturer at the Polytechnic. He is in the academia and when this issue came up, the Board asked him. Dr. Chimkono had also Googled Azteca University, which according to him is a national University in Mexico and all national Universities, according to him, which they believed, are valid universities and accredited. They did not go to NCHE as they have an academician right amongst them. He suggested that the Ombudsman should equally google Azteca University. Mr. Chikadya stated that they were also interested in checking the authenticity of Azteca as they were alerted that Azteca had started a relationship with Malawi Institute of Management (MIM) just as Derby University has a relationship with MIM, however the relationship between Azteca and MIM had been discontinued. NCHE is an authority within Malawi and they did not allow Azteca to work within Malawi. However, Mr. Kachaje registered directly with the Azteca University in Mexico and anyone can register with any foreign recognized University and it is an accepted qualification.

2.4 2nd COMPLAINANT FORUM FOR NATIONAL DEVELOPMENT

- 2.4.1 Mr. Chodzi on behalf of Forum for National Development (FND) stated under oath by first highlighting that they do not have a personal vendetta against Mr. Kachaje, but their complaint is based on principle and that due process is followed when dealing with matters to do with public institutions.

On 25th August, 2021 they wrote to the ACB with a copy to the office of the Ombudsman raising a complaint on the recruitment of Mr. Kachaje based on outcries on social media and also based on complaints lodged to FND by some concerned citizens.

- 2.4.2 He pointed out that the concerns were premised on three allegations, the first one was that Mr. Kachaje did not meet the minimum qualification and minimum experience as advertised in the advert for the position as it appeared on 4th January, 2021 in the Daily Times. The second assertion was that the appointment of Mr. Kachaje was premeditated and preplanned by the Tonse Administration as a token of thanks for his role in helping Tonse Government to be ushered into power. The third assertion was that the whole process starting from advertisement, shortlisting, the interviews and results management were a cover-up and a sham, just to ensure that Mr. Kachaje gets appointed as a CEO whilst being seen as following due process.
- 2.4.3 Mr. Chodzi stated that after the social media outcry the Board of MERA did not come out to clarify any of the issues and concerns being raised unlike other institutions who do so where their integrity is at stake.
- 2.4.4 He further stated that the first question which needs to be addressed is whether Mr. Kachaje meets the minimum educational qualifications and experience that was stipulated in the advert. On 4th January 2021, the advert that was floated stated that the candidate must have a minimum of a Bachelor's Degree and Master's Degree and also have 10 years' experience at senior management in a reputable organization. He stated that FND also had access to the copy of the certificate, the transcript, the reference letter and other copies of certificates that Mr. Kachaje presented, which he received from a Malawian who is based in the United Kingdom. He stated that they noted that on 4th January, 2021 when Mr. Kachaje made his application for this position, he indicated on his CV that he has a Master's Degree and even at the close of the application period on 8th January, 2021.
- 2.4.5 Mr. Chodzi pointed out that when one looks at the documents available, the Master's Degree that is purported to be used was completed on 30th March, 2021 there was therefore, no master's Degree available at the time of application. Even when one looks at the reference letter that was written on 8th April, 2021 and which states that Mr. Kachaje completed a master's Degree on 30th March, 2021, it means during the time of application, Mr. Kachaje had not completed his Master's Degree as such his claim on his CV of 8th January, 2021 that he had a master's Degree was misleading.
- 2.4.6 He further pointed out that related to the same, Mr. Kachaje's transcript is dated 30th June, 2021 and his Master's certificate is dated 26th August, 2021 and that was two days after he had already accepted the position as CEO on 24th August, 2021. It defies logic and the legal consideration that an individual

who could not produce his Master's Degree certificate was vetted, interviewed and subsequently hired as CEO when the vetting process is supposed to determine the suitability of the one to serve as a public officer. This means that Mr. Kachaje applied for a job, was invited for interviews and recruited by the Board of MERA without having a Master's Degree.

- 2.4.7 Mr. Chodzi stated that in addition, the advert was very clear in terms of the minimum years' of experience in senior position in a reputable organization. According to Mr. Kachaje's CV he indicated that he worked in Business Consult Africa (BCA), from 2000 to date, having worked first as a Senior Business Consultant for four years and then as the Managing Director for the rest of the period. He also indicated that he worked as a General Manager for International Haulage Brokers between 1997 to 1999 and the third being a Senior Distribution Officer for MANICA Malawi Limited. The question, therefore is whether the experience Mr. Kachaje has is in tandem with the requirements as stipulated in the advert.
- 2.4.8 Mr. Chodzi submitted that according to the information he had gathered, Mr. Kachaje owns Business Consult Africa and the question is whether that suffices as a reputable institution for the purposes of the advert in question. He further stated that if one measures the turnover of Business Consult Africa, would that give Mr. Kachaje enough experience as compared to the turnover of MERA? If BCA has a reputation warranting its Managing Director to be employed by MERA, is it not mind baffling that such an organization of high repute the owner would leave and seek employment elsewhere?
- 2.4.9 In regards to the issue of premeditation of the employment of Mr. Kachaje, FND stated that Mr. Kachaje applied for a job in January 2021 claiming to have an MBA while he was well aware that he was still a student at the university. He further stated that the CV ought to have had a qualifying term such as 'under study 'or 'prospective'. In addition, he stated that on the interviews held on 29th April, 2021 the Board of MERA realized that Mr. Kachaje does not possess a Master's Degree.
- 2.4.10 He further stated that Azteca University has a representative in Malawi Professor Malango Chinthenga. They approached Professor Chinthenga who alluded to the fact that at the time of interviews, Mr. Kachaje was not yet awarded his MBA as he had outstanding issues with his MBA. Mr. Chodzi further stated that there were some questionable traits with the university regarding some Doctorates and Master's Degree programmes. He stated that there is one person who recently applied to Azteca University, the said person emailed Azteca University and in response he was advised that if he pays school fees, they might give him a waiver not to do all the subjects but just go straight to write his thesis and then be awarded his Master's Degree

Certificate. They wondered therefore, whether MERA verified with NCHE. In their view there were too many red flags surrounding the Master's Degree Certificate.

- 2.4.11 Mr. Chodzi further submitted that Mr. Kachaje had an unfair advantage over other applicants as there was a back and forth discussion between the Board and Mr. Kachaje which they are of the view that the other 7 applicants had no similar opportunity.
- 2.4.12 When I queried Mr. Chodzi what their interest in this matter is, they stated that MERA is a public institution and them as a Civil Society Organization which deals with a lot of people, there is a lot of vested public interest in this issue that MERA must behave with integrity as an institution. FND as a CSO that upholds values of good governance they have sufficient interest in the matter to follow through similar patterns. It is not only MERA but there are other public institutions that deal with Public interest issues that as FND they have interest in.
- 2.4.13 I further probed Mr. Chodzi why they are taking up issues of public interest now, when they did not feel moved to do so before, on other issues which were deemed of public interest such as the circumstances that led to the release of the OoO reports namely, 'Unhealed Wounds, Institutional Anarchy and Secure in Deception' to name a few. Mr. Chodzi stated that they did not have the necessary evidence and information. I still asked him why the lack of information would be a challenge then considering that the complaint herein which was initially sent to ACB by them was very brief and unsupported. In response, he stated that prior to this complaint they had lodged two other complaints with the OoO, one on Covid-19 funds and the other they lodged with HRCC on Parliament. They therefore have sufficient interest in other matters, not just the MERA matter.
- 2.4.14 In cross examination by MERA, Mr. Chodzi withdrew the aspect that the appointment of Mr. Kachaje was premeditated and preplanned as he was not allowed to present the evidence on that part as it related to trends in other public institutions which I pointed out to him, were not the subject matter of the Inquiry.
- 2.4.15 On being cross examined as to what according to him would qualify for a reputable institution, he stated that a reputable organization is one of high integrity and an organization with a track record. When it comes to applications, when assessing if an organization is reputable you look at the similarities between the two institutions. He stated that they are not satisfied that someone working for BCA could be reputable enough in terms of experience to run a multi-Billion company like MERA. In another scenario BCA would be reputable perhaps in regards to private companies but not when it comes to a Public Institution, it is not reputable enough. The risk is

that each and every person who has been running a sole business proprietor for 10 years will start claiming they have sufficient experience at senior management level.

- 2.4.16 He further stated that he has no idea what the turnover of BCA is all he knows is that it is that small as it has one office which was closed in Limbe. He further stated that International Haulage Brokers (IHB), is also not reputable as their conduct surrounding the transportation of oil has placed many questions on IHB, even before Parliament. When asked by MERA as to whether there has been any court processes that have faulted IHB, he stated that there has been no determination. When further asked about his own organisation and its reputation, he further stated that FND is a reputable organization in the NGO circles, but it cannot be reputable in terms of MERA. He stated that it was for the Board of MERA to determine whether or not Mr. Kachaje's places of previous employment qualifies as reputable for purposes of employment at MERA.
- 2.4.17 When the MERA Board asked him if he had knowledge of the extensive experience of Mr. Kachaje, Mr. Chodzi stated that he does not have facts on the jobs Mr. Kachaje has done except for those on his CV. He further stated that it really all depends how MERA defined '10 years' experience in reputable institution'. He stated that the clarity is important because if it is not qualified then even he can qualify to be the CEO of MERA.
- 2.4.18 MERA put it on record that as the Board they were satisfied that Mr. Kachaje had 10 years' experience at senior Management position in a reputable institution. They further pointed out that just because one is a managing director in his own company does not mean the company he was working for is not reputable. The way forward after all is self-employment. The Board was looking for a person of high level skills set. Mr. Chikadya made an observation that it was it is important that we are fair with each other, citing examples of situations where he had been privileged to attend some of Mr. Kachaje's high level engagement on various major projects. He has listened and read what he has been able to articulate in various institutions including multinational and international organizations where you just admire his skills in terms of his visioning. Thus, he indicated that for them to come to the OoO and to run down that kind of a person is unfair to Mr. Kachaje. He further stated that it is important to respect his professionalism and his acquired special skills. It is important to recognize and celebrate that.
- 2.4.19 Mr. Chodzi responded that the Board's sentiment only goes to show the unfair consideration Mr. Kachaje got over the rest of the applicants. He further stated that the statements by Mr. Chikadya which show that he has high regard of Mr. Kachaje and views him as a national asset probably played

a role in the acts of the Board trying to ensure that they do not lose Mr. Kachaje, forgetting that all 101 candidates are national assets as well.

2.4.20 I enquired from Mr. Chikadya whether he treated Mr. Kachaje differently because he is respectable. Mr. Chikadya denied giving preferential treatment to Mr. Kachaje and he stated that the position of the Board was very categorical, they followed a specific criteria that is why when Mr. Kachaje was failing to bring the documents they wanted, they would even have considered giving it to another candidate.

2.4.21 MERA further stated that the criteria are contained on page 3 of their meeting minutes of 12th April, 2021 which I have already reproduced in a relevant section.

2.4.22 When FND asked MERA whether academic qualifications were part of the criteria, they answered in the affirmative and stated that as the Board they were satisfied Mr. Kachaje had a Master's Degree at the time of application and shortlisting. When I enquired from MERA whether they record information as to the reason why each of the rest of the applicants were not shortlisted, Mr. Likongwe stated that they do not have such records but they had a discussion which was minuted. If he was to write for each candidate what was discussed regarding their applications, then minutes would be over 50 pages. He further stated that he has been conducting interviews for many years, since 1988 and he has never written minutes or coded the reasons why the applicants which did not make it to the interview, were left out.

2.4.23 Mr. Chodzi concluded by stating that in January 2021 Mr. Kachaje did not have a Master's Degree as such he should not even have been invited for the interviews. They are of the view that there was unfairness in the manner in which Mr. Kachaje was handled in comparison to the other candidates looking at the interaction between the Board and Mr. Kachaje. It was as if the Board was fishing for the Master's Degree until the time when it was made available, which was unfair to the other candidates.

2.4.24 Mr. Likongwe concluded by stating that he told Mr. Chapweteka as a friend not to refuse the MEC appointment, he was trying to be a friend, however, professionally he has admitted that he did a wrong and he has learned from this and going forward he will not disclose any information of the Board if they would affect one of his friends even if he saw the friend going into a ditch.

2.4.25 The MERA Chairperson Mr. Chikadya concluded by stating that this is a process that is meant to administer justice. To error is human and it is important to look at the bigger picture. The intention of the Board was not to be disrespectful to the office of OoO vis-à-vis the last determination that the Ombudsman released relating to MERA.

2.5 ENGAGEMENT WITH DEPARTMENT OF STATUTORY CORPORATION

- 2.5.1 Having heard from the complainants and the respondent and also on the basis of the written submissions of the respondent, it became necessary in the course of the Inquiry to also engage the DSC to shed light on key issues that were emerging. As such I invited Mr. James Nkhokwe who the records of the interviews indicated that he was the DSC official that was in charge of the processes that DSC handled with respect to the MERA CEO Recruitment process. The Public Inquiry session with Mr. Nkhokwe was held on 25th October 2021.
- 2.5.2 Mr. James Nkhokwe stated under oath that he is the Deputy Director responsible for Human Resource at the DSC and that as the DSC they are involved in the recruitment of CEOs and Directors in various parastatals. In the matter at hand, they were involved as a depository point where the candidates were submitting their applications letters as well as their CVs.
- 2.5.3 After the period for receiving application letters passed they produced the summaries of the all the applications received. The summaries were merely summarizing the CVs and applications letters submitted by all applicants into a template. The summary was done prior to 12th April, 2021 when the shortlisting took place.
- 2.5.4 When the summary was done they submitted it to the Board on the day of shortlisting along with all the applications letters and CVs submitted by the candidates. The purpose of doing that is simply that in the event of an error in the summary they should be able to go back to the documents to verify. He further stated that before the date of shortlisting on 12th April, 2021 the summary was not provided to MERA. Mr. Nkhokwe stated that they did not do any shortlisting on their own. They submitted a summary containing each and every applicant they received, who according to their records were 101 candidates.
- 2.5.5 He stated that on the template there is a column for remarks which is not filled. It was filled by the members of the committee on the day of the shortlisting. The members of the committee would indicate whether one was shortlisted or not and the reasons why. The meeting itself was chaired by the Board Chairperson of MERA and from his recollection the whole Board was present.
- 2.5.6 He stated that there was a document containing the remarks against each and every candidate from the various shortlisting panelist. The document contains the name or initial of each member of the committee and it is dated and signed on the front page.
- 2.5.7 He stated that under the summary that they compiled, Mr. Kachaje is appearing under folio number 52. On his CV he indicated under his qualifications that he is a student pursuing Master's in Entrepreneurship from MUST. That is why in the summary they did not capture the Master's Degree

he had indicated as he was only a student. Mr. Nkhokwe further stated that as DSC they only received one CV from Mr. Kachaje which they received before the closing date of receiving the applications. He stated that they do not allow resubmission of updated CVs unless it is coming by way of re-advertisement so that all persons who have also updated their CVs can resubmit. Where one makes an error and they resubmit before the closing date they will accept it but they are put together under one folio. There was no scenario where Mr. Kachaje came back with a second CV.

2.5.8 Here I must turn to the information that was provided to the Inquiry by MERA with respect to the composition of the shortlisting Panel. According to the minutes of the 70th Extraordinary Board meeting that took place on 12th April, 2021, present in the shortlisting exercise were:

- (i) Mr. L. Chikadya;
- (ii) Mrs. I. Chirombo;
- (iii) Mrs. P. Manguluti;
- (iv) Dr. T. V. Chimkono;
- (v) Mr. P. Likongwe;

and by invitation

- (vi) Mr. B.F. Tembo;
- (vii) Mrs. J. Tambala;
- (viii) Mr. K. Nkhokwe; and
- (ix) Mrs. H. Mpito

2.5.9 The summary documents that Mr. Nkhokwe provided to the Inquiry show that there are 101 candidates and Mr. Kachaje on each of the Committee member's summary h appears on folio number 52 only. Out of the 101 candidates, at least 21 candidates had in their remarks column the words "Certificate not provided" typed by DSC. There were no remarks typed in Mr. Kachaje's remarks column.

2.5.10 When the panelists did the shortlisting, some of the reasons for not shortlisting or shortlisting some candidates as recorded by the members of the committee on their forms as they assessed the candidates were "Not qualified based on experience," "No based on lack of integrity," "yes," "No leadership experience," "No Master's Degree," "No based on age," "No information," "Qualifies" and "Recommended" to name a few.

2.5.11 Mr. Nkhokwe further stated that, for Mr. Kachaje during the shortlisting exercise there was doubt on the information that the Secretariat had provided that Mr. Kachaje did not have a Master's Degree. They were requested to cross check their records and they provided the same, i.e. confirmed that he did not indeed have a Master's Degree. He stated that he cannot recall what discussions took place which informed the decision for Mr. Kachaje to be shortlisted despite their own records showing that he did not have a Master's Degree.

2.5.12 The following were the shortlisting panel remarks under folio 52 for Mr. Kachaje which were in hand written form as extracted from the forms provided to me by DSC during the Inquiry

S/N	Name of Shortlisting Committee member	Remarks on form
1.	I. Chirombo	✓ Master's
2.	P. Manguluti	Blank
3.	T.V.E. Chimkono	✓
4.	No name	✓ MSC in Strategic Management
5.	Blank (Form bears a name of a person who was not part of the process)	✓

Observers

1.	B.F. Tembo	Master's Degree in strategic Management Recommended
2.	J. Tambala	✓ Master's in Strategic Management
3.	J. Nkhokwe	Qualifies. Master's Degree in Strategic Management

2.5.13 Mr. Nkhokwe stated that their role is advisory, there are some who take their advice and others who do not, in this case, some members doubted that Mr. Kachaje does not have a Master's however, DSC provided them with the information as it was on his CV. He stated that he cannot recall which of the Board members who doubted that Mr. Kachaje does not have a Master's Degree was. What he recalls is that the members kept on discussing and made a decision to proceed and shortlist Mr. Kachaje.

2.5.14 Mr. Nkhokwe stated that there is a debate on the role and involvement of the DSC in interview processes and it was made clear their role was observation only, they therefore only chip-in and give advice where they make an observation. Whether the Board takes the advice or not is up to them. He stated that in this case they did not sit quiet, they informed the Board that according to the CV Mr. Kachaje indicated that he is still a student that is why the summary showed that he does not have a Master's Degree. They also submitted the actual submission of the candidate.

2.5.15 He reiterated that the DSC only have the one CV, if at any point there was more than one CV he would have known as he was the one doing the

- summary and the one who took it before the shortlisting committee. He stated that he is not aware that Mr. Kachaje has a qualification from Azteca University. They are only aware that he was at MUST and as a student.
- 2.5.16 He further stated that the interview process was 100 percent controlled by the Board, it was only Board members involved in the scoring. He was in the room as the observer and secretariat. There was also an officer from DHRMD who was also there as an observer. During the interviews, there was an aspect where candidates were requested to bring their original certificates, in order for the Board to be able to verify that what they claim to have in their CV is what they actually possess. For the 8 candidates who were shortlisted to the interviews, their summaries were once again given to the interview panel, just to verify that what they claimed to have during the application stage is what they possess at the time of the interview.
- 2.5.17 He stated that normally when a candidate is ushered in, at the same time they hand in the documents for the candidate. While the candidate is being interviewed they pass the documents from one panelist to another. The reason for doing this is so that there is no rush for the panelists to look at the documents. They can browse through them as the candidate is in the interview room. If they have issues they can raise them at the appropriate time.
- 2.5.18 As the secretariat he was the one going to get the candidate and ushering them into the room, he cannot recall whether he noted any discrepancies between the certificates Mr. Kachaje provided and what he held out to have. He informed me that he would have to cross check his written notes and would furnish me that information later. When he subsequently furnished the form on which he recorded proceedings of the interview, his form showed an entry of Masters Degree in Entrepreneurship from MUST under the qualifications column for Mr. Kachaje, on which he inscribed 3 question marks.
- 2.5.19 He further stated that normally the procedure is that panelists are advised to formulate questions, which are not disclosed to the other members of the panel until such a time as when they meet. That discussion is done before meeting the first candidate. In view of his position, I asked whether it was proper for this Board to have the meeting formulating questions for the interview the day before the actual interview. He responded that it depends on the professionalism of the panel but as DSC they do not allow the discussion of the questions the day before, they prefer that it is done an hour before the interview.
- 2.5.20 When I asked him whether he was aware that a meeting preparing for the interview took place, he stated that he was called the day before the interview as he was knocking off. The Board wanted the interview rating form, he sought guidance from his superiors who approved for him to provide the form. At this stage the form is considered a draft form. He provided the draft interview rating form to Counsel Likongwe who he found with the Board members having dinner at Capital Hotel. Counsel Likongwe changed some

aspects of the form in order for the form to fit what MERA wanted. One of the changes he recalls was made to the form is the aspect on legal instruments, which addressed legal instruments that the CEO would rely on when discharging his duties. Counsel Likongwe stated that these are not lawyers but administrators so that part was unnecessary.

- 2.5.21 He stated that after interviewing all the candidates and after they had handed in the summaries of the results, he and his colleague from DHRMD were requested to leave the room to pave the way for a Board discussion. He stated that this was at or about 20:00 hours. After they waited for an hour outside they were then called back into room where they were informed to take their documentation and that they would continue the other processes as the Board. At this stage no decision was made on who the candidate to be appointed was. He stated that this to him is unsurprising as the interview panel despite having all the Board members, was meeting as an interview panel, they therefore needed to constitute a Board meeting in order to make this decision.
- 2.5.22 They later called him requesting for the results summary which was already submitted to them. He shared the document with the Board Chairperson. A few weeks later in or about August or September 2021, he was informed that a memo was written by MERA directly to Office of the President and Cabinet (OPC) informing OPC that the Board had appointed Mr. Kachaje. OPC wrote to DSC asking them if they were aware that Mr. Kachaje was the successful candidate and he had been appointed as CEO, in their response they indicated the extent of their knowledge. He is not sure why MERA wrote to OPC informing them of the same, but from his experience it could be for security checks.
- 2.5.23 When I inquired why OPC was asking DSC if they were aware that Mr. Kachaje was the appointed CEO for MERA, Mr. Nkhokwe stated that he would provide me with the communication. When I further inquired why DSC did not take the opportunity to inform OPC that Mr. Kachaje does not have a Master's Degree, in line with the documents he had at shortlisting stage he stated that he would have to check the communication as they were responding to a specific issue that was asked by OPC.
- 2.5.24 He stated that he is not aware of any discussion by the panel on a preferred candidate or any discussion on Mr. Chapweteka.
- 2.5.25 Following the conclusion of the 25th October sessions of the Inquiry I requested Mr. Nkhokwe over and above the documents he had undertaken to provide me in the Inquiry, to also provide the forms that Mr. Mwasola of DHRMD had mentioned during his Inquiry (which is presented below). The said forms according to Mr. Mwasola were filled by the 8 candidates on the day of the interview detailing their personal details and the qualifications they possess. In the pictures below I am reproducing the forms (as they were furnished to me during the Inquiry) of the following candidates: Mr. Henry Kachaje, Mr. Richard Chapweteka and Mr. Alfonso Chikuni.

MALAWI ENERGY REGULATORY AUTHORITY

INPUT DATA FORM 'A'

Name: HENRY KACHATE

Age: 49

Contact Numbers: [REDACTED]

Postal Address: [REDACTED]

Email: [REDACTED]

Academic Qualifications: POST GRAD. BUSINESS COUNSELLING, T.D.T., BA IN SOCIAL SCIENCE (ECONOMICS)

Post-qualification Experiences: OVER 20 YRS SENIOR MANAGEMENT & BUSINESS CONSULTING

Employment Record:

Period	Position	Firm
JUNE 2004 To Date	Managing Director	BUSINESS CONSULT AFRICA LTD
2000 - 2004	SENIOR BUSINESS CONSULTANT	BUSINESS CONSULT AFRICA LTD
1997 - 1999	GENERAL MANAGER	INTERNATIONAL HAWKAGE BROKERS LTD
1995 - 1997	MANICA (M.W) LTD SENIOR DISTRIBUTION OFFICER	MANICA (MW) LIMITED
1994 - 1997	TEACHER	MULUNGWZI SPEC. SCHOOL

Current Levels of Responsibility + Reporting

- Ministry of Transport and Public Works for Policy matters
- Department of Statutory Corporations for Administration matters
- Ministry of Finance for Budgeting matters
- Board for Corporate and Industry Strategies

Relevant Achievements/ Success Stories (most recent)

- Have turned around NAC both financially and operationally - Respected by stakeholders
- Developed Policy and Strategic Plans over the years
- Successfully implemented strategies

IT Skills set (most recent)

- Power Point
- Enterprise Resource Planning System - Navision
 - Accpac
 - Sage
- Word
- Excell

Referees

- ① MS LAURYN NYASHILI - ECAMA PRESIDENT
- ② MR JOHN Mc GRATH - IMANI DEVELOPMENT LTD
- ③ DR BETTY CHINYAMUNYAMU CEO - NASFAM

I H. KACHAJE..... hereby declare that the information provided above is correct to the best of my knowledge.

Signature: .....

Date: 29/04/2021.....

MALAWI ENERGY REGULATORY AUTHORITY
INPUT DATA FORM 'A'

Name: ALFONSO CHIINKUNI

Age: 49

Contact Numbers: [REDACTED]

Postal Address: [REDACTED]

Email: [REDACTED]

Academic Qualifications: MSc Project Mgt, BSc. Civil Engineering

Post-qualification Experiences:

Employment Record:

Period	Position	Firm
DECEMBER 2019 - APRIL 2021	Chief Director	Ministry of Water & Irrigation
MAY 2014 - DECEMBER 2019	Chief Executive Officer	Lilongwe Water Board
MARCH SEPTEMBER 2014 APRIL MARCH 2014	Project Director Director of Technical Services	LWB
FEBRUARY 2007 - MARCH 2014	Project Implementation Unit Manager	LWB
FEBRUARY 2003 - JANUARY 2007	Projects Engineer	LWB

Current Levels of Responsibility + Reporting at LWB

- 1 - Leadership, stewardship & direction of the organisation
- 2 - Designing, planning & implementation of a corporate strategy
- 3 - Management of circa 1500 staff under the guidance of the board of directors

Relevant Achievements/ Success Stories (most recent)

- 1 - Turned around an ailing, perpetually loss making organisation (LWB) in Africa's leading water utility exp exemplified by the 2 awards at the Cape Town utility week in 2018 & 2019
- 2 - Twice a finalist in individual category of water personalities of the year in 2018 & 2020 IWA Congress
- 3 - Project financing: mobilized the largest amount of infrastructure project financing (\$5 mil in 2013 to circa \$300 mil by 2019)
- 4 - IT Skills set (most recent)

1. Project management office (PMO) + CARD, PRIMAVERA, NETWORK, SCHEDULING.
2. Microsoft office

Referees

1. Prof K. Schwartz THE Selt University Netherlands Tel: [REDACTED]	2. Ddate MUKUMPAIA WORLD BANK COUNTRY OFFICE MALAW [REDACTED]	3. H. Schögel European Investment Bank [REDACTED]
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I ..ALFONSO CHIKUMI.. hereby declare that the information provided above is correct to the best of my knowledge.

Signature: ..[Handwritten Signature].....

Date: ..29th April 2021.....

MALAWI ENERGY REGULATORY AUTHORITY
INPUT DATA FORM 'A'

Name: RICHARD CHAPWETEKA

Age: 50

Contact Numbers: [REDACTED]

Postal Address: [REDACTED]

Email: [REDACTED]

Academic Qualifications: 1) Master of Science in Strategic Management
2) Bachelor of Social Sciences (Economics)

Post-qualification Experiences: Worked as senior manager as listed below

Employment Record:

Period	Position	Firm
May 2016 to April 2019	Business Innovation Manager	Imani Consultants Ltd
September 2014 to March 2016	Enterprise Development Specialist	LTS International
October 2010 to May 2013	Programmes Director	RUMARK
February 2008 to September 2010	Senior Policy Adviser for Africa Region	CNFA
December 2001 to January 2008	Country Director Malawi, Mozambique and Zambia	CNFA

Referees

① Dickie Kampam	Email: [REDACTED]
	Mobile: [REDACTED]
② John McGrath	Email: [REDACTED]
	Mobile: [REDACTED]
③ Dr. Haldon Njiko	Email: [REDACTED]
	Mobile: [REDACTED]

I Richard Chigwetere hereby declare that the information provided above is correct to the best of my knowledge.

Signature: [Signature]

Date: 29/04/21

2.6 ENGAGEMENT WITH DEPARTMENT OF HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

- 2.6.1 Mr. Helix John Mwasola stated under oath that on 27th April, 2021, they received an invitation as a Department to participate in the interview at MERA as an observer. He stated that DHRMD is one of the key organs in the government that looks at recruitment. It has the mandate to ensure that the process of recruitment is in accordance with the Public Service Regulations. He was delegated by his superiors to attend on behalf of the Department.
- 2.6.2 On the 28th April, 2021 they were supposed to meet at Capital Hotel in order to prepare for the interviews. Questions were prepared during this meeting and roles were assigned. As an observer he did not take part in the formulation of the interview questions.
- 2.6.3 On 29th April, 2021, the interviews took place at Bingu International Conference Centre. The role that he was assigned in relation to the interviews was to collect the score sheets from the individual panelists and then check if the scores were correct. He would then pass it to the secretariat which was the DSC.
- 2.6.4 As an observer he did not see much wrong with process. The only issue that bothered him and which he was planning on raising with the Board later was that the candidates were showing their certificates. When Mr. Kachaje came he did not see his highest qualification, he only saw his first Degree. He noted this observation down as he was going to bring it up towards the end. He stated that he does not recall seeing a reference letter amongst Mr. Kachaje's documents, but then again some people brought bulky documents. He recalled however, that even during the self-introduction by the candidate, when he was mentioning his qualifications, Mr. Kachaje never mentioned that he has a Master's Degree.
- 2.6.5 At the end of the interviews, the last candidate was leaving around 22: 00 hours. Soon after the last candidate left, the secretariat brought the sheets which were not electronically produced and it was given to everyone to check against errors. From these score sheets he noted that Mr. Kachaje came first in the interviews.
- 2.6.6 According to Mr. Mwasola normal interview procedures dictate that at the end of interviews the panel discusses the scores for the purposes of minutes. Before this was done however, he and his colleague from DSC were requested to leave the room for a while. The Board stated that they wanted to meet as a Board as they had a few things to discuss. When they were called back into the room they were informed that they were not proceeding to discuss the interview and that they would be communicated to at a later date to finalise the interview discussion and process. He and his colleague did not object.
- 2.6.7 Before they left the room, his colleague from DSC collected all the documents including his. Months passed without any communication. In August 2021

Mr. Nkhokwe from DSC came to his office and brought him forms to sign from OPC. Mr. Nkhokwe informed him that they were being directed to sign the forms. He stated that he read the form a bit and signed it. The document was confirming the results of the interviews which to him, ought to have happened on the day that the interviews were done.

- 2.6.8 When I asked him what the contents of the document were, he stated that he did not read the whole document, he just saw where he was supposed to sign. Everyone else had already signed, only his name was blank.
- 2.6.9 I probed him whether signing a document without reading properly is in tandem with human resource principles and his years' of experience in government. He stated that he just saw that the document was about the interviews which were conducted and which he served as an observer on. Normally that sheet would indicate the results of the candidate and who has emerged as the successful candidate. He stated that he knew that he was signing a document that bore the indication that Mr. Kachaje is the successful candidate.
- 2.6.10 I enquired from him what he did regarding the observation he had made about Mr. Kachaje not having his highest qualification certificate during the interviews and he stated that his role was to advise if anything. He was not heard because of the circumstances in that the board curtailed the process before the final discussion. He stated that he signed the document because it came to him in a different manner, not as they do normally. His conscious was reminding him of that observation, however, everyone had signed it. He therefore did not have an option but to sign.
- 2.6.11 When I asked him whether he had reported to the Principal Secretary after the interviews, he stated that he reported to his boss the Director of Management Services Mr. Joso. Mr. Mwasola stated that he however, did not inform him who the successful candidate was as it is confidential information and he also did not inform him about the missing Master's Degree certificate. He only informed him that the process was curtailed as such they never concluded. He did not mention about the certificate because he thought it was an oversight and it was a small thing which he was planning on bringing it up at the end.
- 2.6.12 He stated that their understanding is that when people are coming for interviews if they have been shortlisted then they met the prerequisites. Furthermore, when candidates come for the interviews, each candidate is supposed to sign a form in which they indicate the qualifications they have and have brought with them to the interviews. If the candidate did not bring those qualifications, it is up to the secretariat and the Board to question the candidate on this. Mr. Kachaje came without a certificate and he was interviewed. His assumption was that the candidate would bring it at a later stage, that is why he was going to raise it at the end to get clarification from the Board.

- 2.6.13 He further pointed out that one can proceed to interviews when they do not have a copy of their certificate. A candidate could have forgotten it or lost it but he or she has shown assurance that he will bring the certificate. He stated that he did not seek for that assurance from Mr. Kachaje as he was only there to observe.
- 2.6.14 He indicated that it was unfortunate that the time to air out all the comments they had was not provided. He had expected that they would be called to continue the meeting at some point.
- 2.6.15 He explained that questions for the interviews are supposed to be formulated on the day of the interviews and that is always their advice. He said when he was invited to go to Capital hotel the day before the interviews he did not even know what the agenda was. After dinner that was when the Board started formulating the questions, he was not part of this he just observed.
- 2.6.16 On the interview date, they were delayed because the Hotel were assembling and setting up the equipment. He arrived at BICC at or about 7:30 am but the interviews started around 9:00 am.
- 2.6.17 He denied being a witness to a discussion by the Board where Mr. Chapweteka was being discussed by the panel. He stated that if he had heard such a discussion he would have objected to it as they do not allow conferring of any kind before or after the interviews. When I asked him how sure he was that he would have objected considering he had demonstrated that he failed to object to the signing of the results and failed to raise his observations on the fact that Mr. Kachaje had not presented his Masters Certificate at the interviews, he reiterated that he failed to object because he did not want to interrupt the interviews as such his plan was to raise it at the end during deliberations.

2.7 ENGAGEMENT WITH MR. HENRY KACHAJE

- 2.7.1 On 5th October, 2021 I sent a letter to Mr. Kachaje, informing him that there was a complaint by Mr. Richard Chapweteka and Forum for National Development, alleging that he was unprocedurally and irregularly recruited as CEO of MERA in that he does not have minimum qualifications as is required for the job. In this same letter I invited him for a Public Inquiry as he is at the center of this matter and is an interested party. I interacted with Mr. Kachaje on 21st October, 2021.
- 2.7.2 Mr. Kachaje stated under oath in the presence of his Legal Counsel Mr. Charles Mhone, that on the 4th January, 2021 he saw an advert in the papers advertising the position of CEO of MERA. The advert indicated that amongst other things, the ideal candidate should have a Bachelor's Degree and a Master's Degree in Engineering, Economics, Finance, Law or Management. The advert further stated that interested applicants should send their applications and detailed CVs with three traceable referees, including last employer not later than 8th January, 2021. He was interested in the position because he knew that he was qualified for the position. On top of having

academic qualifications, he also felt that it was a position that would enable him to contribute significantly to the transformation of this Nation, specifically in the energy sector.

- 2.7.3 He further stated that his application for the job listed the qualifications that he had. He sent an application letter and when he was cross checking the information on his application letter he noted that he did not edit a section of the qualifications on the CV. He therefore, sent a second submission with a corrected CV. Both of these were done on the same day, on or about the 5th or 6th January, 2021. The first one was sent through speed Courier and the second one was sent through Posts Corporation with the corrected version. Both of these were sent before the closing date of 8th January, 2021.
- 2.7.4 In the corrected version of the CV he indicated that amongst his qualifications he has a master's Degree in business Administration from Azteca University, which is a Mexican University. He also indicated that he has a Bachelor's of Social Sciences in Economics from the University of Malawi and a diploma in Downstream Petroleum Management which was offered by PETRAD.
- 2.7.5 At the time he was submitting his application he had completed all his course work and he had submitted all the relevant paperwork, the last being his dissertation. He was at that stage waiting for the official endorsement of the success of his completion as this was a revised version of the thesis.
- 2.7.6 The recruitment process involved his invitation to the interview by MERA on the 29th April 2021. He attended the interviews and being part of what was requested in the invitation letter, he brought all his certificates which he presented except for the Master's in Business Administration as he had yet to received his certificate, because he had some outstanding fees which he had not cleared and the University had stated that they would not release the results until he cleared the fees. Prior to the interview, he did however, request the University to provide him with a Reference letter which they obliged, and that is the one he presented as a reference for the attainment of his MBA qualification.
- 2.7.7 Following the interviews, he received communication from MERA requesting that he provides them with a transcript as a backing reference to the letter. He requested the University to provide him the transcript and he submitted it to the MERA Board.
- 2.7.8 It was on 19th August, 2021 when he next heard from MERA through a letter offering him employment which they said was following his success in the interviews. He accepted the offer and he reported for duties on the 24th August, 2021. He further stated that in his view he had the minimum qualifications that were required for the job as it was advertised and he duly accepted the appointment.
- 2.7.9 He stated that in his view since he was not fully aware of the nature of the complaint against him, that the allegations were probably rooted in a misunderstanding by the Complainants as to the point in the time when he obtained the qualification, but he is also of the view that the misunderstanding

was also as a result of someone having access to the first CV that he had submitted which he had replaced with a correct one as that one did not include the MBA qualification.

- 2.7.10 He has since cleared the outstanding amount of fees with the University and they did send him the certification just to conclude the process.
- 2.7.11 When I enquired from him whether in his application letter he stated the qualifications he possessed he stated that he did not carry with him the copy of the application letter but he recalled that he stated it in his CV. He further indicated that in the first version of the CV he had indicated that he was a student of another programme that he was studying which is a Master's in Entrepreneurship at MUST. He pointed out that when he had enrolled at MUST he did not complete the Master's Programme because when he sat through a few modules he found it shallow in the sense that it was very theoretical and it did not encompass the practical aspect of entrepreneurship that he has been exposed to. He engaged the Chancellor and informed her of the same. The University then engaged him to assist them as they developed the Master's Programme further, to include the practical aspect that was lacking.
- 2.7.12 He stated that at the time of writing his application letter on the 5th of January, 2021 he was qualified for the MBA in the sense that he had submitted all his work and he was only waiting to be awarded the Degree. When I put it to him that according to the University Documents he had completed his programme on the 30th of March, 2021, he responded that, that is the information that came from the University after they had completed doing the assessment. Between the date that he submitted his final thesis there was no other work he did on his Master's. As far as he was concerned, he had completed his programme the time he submitted his thesis. He further gave me an example that if he as a student writes an exam on the 25th of January and the examiner decides to mark it in March, then he does not know whether as a student one would say he completed the course in march or January when he completed his part of the programme which according to him should be the date that wrote the exam.
- 2.7.13 From his explanation, I asked him whether after I sit for fourth year law school examination for an LLB Degree, and I write my final paper, after leaving the examination room would I then be at liberty to inform people that I am an LLB Degree holder? He stated that his experience should not be extrapolated on everybody's experience. When he sits for something he knows how well he has done. At that stage he had 100% confidence that he had gotten the Master's Degree programme. This is how he has gone through life. He always knows after he has written an exam, or sometimes an interview that he has passed the exam or gotten the job. At that stage he is simply waiting for someone to confirm it.
- 2.7.14 He confirmed that on this basis he held out to the MERA Board that he had the Master's Degree when he did not have it in terms of feedback from the

University however, as can be seen when the MERA Board invited him for interviews it had been confirmed that he had the qualification. For him, in terms of timelines the critical elements and components in the recruitment process are not so much at the application stage. The critical stage is at the time they are interviewing the candidate because several people can apply but not everyone can be invited. He further pointed out that there was also a possibility that he could not have been invited for the interview.

- 2.7.15 He reiterated that when he went to the interview room he went with his reference letter and sometime after the interview that is when the Board called requesting the transcript. He stated that he does not know what the Board saw or did not see during the interview but he had amongst his documents his reference letter. When he was submitting his transcript he also resubmitted the reference letter.
- 2.7.16 When I asked him why he did not indicate on his CV that his Master's Degree is pending or awaiting results or is prospective considering that by 5th of January, 2021, when he was applying for the position he did not have his results, he stated that it was an element of ignorance on his part. He stated that he cannot respond whether the manner in which he presented his CV would have misled those shortlisting, as he does not know how they would have perceived it. He stated that the advert indicated that candidates should bring copies of their certificates to the interview, he believed that if he was going to be invited to the interview then he would bring a copy.
- 2.7.17 He indicated that his element of faith drives a lot of the decisions that he makes. Faith is the evidence of things hoped for and things not yet seen. He sees things and then they materialize. He however, understands the perceived misleading that could have occurred to someone who does not see what he sees. He further stated that he is unique and he has chosen to take the path of uniqueness in his life and it has paid off for him.
- 2.7.18 He informed the Inquiry that for the Master's Degree it was offered in the same manner as other programmes, students are given assignments to write and some practical work that must be completed. He further stated that his case was unique in the sense that he had submitted to them previous work that he had done on a different programme and Azteca University accepted a transfer of credit from Leeds Metropolitan University and gave him a waiver on a few of the modules.
- 2.7.19 Mr. Kachaje clarified that when he informed the Board Chairperson that he was not able to get his Master's Degree certificate because the lecturer had travelled to Mozambique, the real issue was that the Professor who needed to deal with the issue was not available.
- 2.7.20 Mr. Kachaje stated that he has the invoice informing him of the outstanding fees. The communication that the University would not release the results if he does not clear the balance was relayed to him orally by Azteca's local coordinator of the programme. He undertook to make available to the OoO the invoice.

- 2.7.21 He stated that the main Campus of Azteca is in Mexico and they have a coordinator in Malawi, therefore, if there is a word South Africa appearing somewhere it is an error. The Local coordinator is Professor Malango Chinthenga. Mr. Kachaje stated that he checked whether Azteca was accredited and saw that it is accredited with UNESCO and to him UNESCO is a more reputable international body than a local body. On the strength of that he had no doubts on their credibility.
- 2.7.22 Mr. Kachaje denied that he was ever given an ultimatum by the Board Chairperson that if he fails to furnish him with a copy of the Degree certificate within a week then they would not give him the offer and instead offer the position to someone else. From his recollection he spoke to the Board Chairperson once after the interviews regarding his certificate. This is the time when the Board Chairperson wanted the Transcript.
- 2.7.23 Mr. Kachaje pointed out that when it comes to the issue of issuance of the Degree certificate, he was made to understand that they have a sequenced system within which the printed certificates come out. When he had cleared his arrears, that is when in their system they started the processing of the printing of the certificates. He stated that he cleared his arrears on or about the 4th August, 2021. He graduated in the August, 2021 congregation.
- 2.7.24 He indicated that the Transcript was prepared on the 30th June, 2021 that is why he presented it to the Board in July 2021.
- 2.7.25 During the interviews when the Board asked him to explain to them about his qualifications, over and above informing them about his qualifications, he also submitted to them that he also considers that the professional programmes that he has ran and that he has been accredited in, in his view, they accumulate to a value equal to or higher to a Master's Degree programme. He also explained to the Board that the course he did in the United Kingdom with Durham University was 18 months and yet most Master's Degree programmes run for 12 to 18 months. He also informed them of the Education training with the Sector for Education Training Authority in South Africa, which in his view is also a high level training. He attended a three year post graduate programme which he considered as a high dense quality education and what he produced was of a higher value. He also did a training with a German institution called InWent capacity building International, which led to him producing a publication and exporter's guide for exporters' in Southern Africa, the volume of it is thicker than his Master's thesis. Unlike a Master's thesis which only a few professors read, this was a publication which was adopted in the whole Southern Africa to be used as a tool to enhance export development within the Southern Africa region. He was of the view that this was rich enough to add value to his professional qualifications.
- 2.7.26 When I asked him why he felt the need to emphasize and highlight that his various professional qualifications were of a higher value or equal to a Master's Degree, he answered that it was just for the Board's information.

2.7.27 As stated above I had requested Mr. Kachaje to provide my office with documents relating to his payment of fees, enrolment into the programme, a copy of his Thesis and proof of post by courier of his application letters. He provided the Thesis. However, through his letter to me dated 3rd November 2021, he advised that he was unable to provide the information as he believed he had left the documents thereof in Blantyre when he moved to Lilongwe. He undertook to submit the said documents at his earliest opportunity.

2.8 FOLLOW UP ENGAGEMENT WITH OTHER BOARD MEMBERS OF MERA

2.8.1 After I had conducted all of the sessions of the Public Inquiry I was still of the view that I needed to interact with the other 4 Board members of MERA, namely, Mrs. Innocencia Chirombo, Ms. Phyllis Manguluti, Dr. T.V.E Chimkono and Mr. C. Chiwambo who was the ex-officio member. I therefore, invited them to a Public Inquiry on 2nd November, 2021.

2.8.2 On the date of the Inquiry, only Mrs. Innocencia Chirombo, Ms. Phyllis Manguluti and Mr. C. Chiwambo came for the session. Dr. Chimkono did not show up for the Public Inquiry neither did he have the courtesy of providing a justification for failure to attend the Public Inquiry, despite being timely served with the notice on the same. Mrs. Chirombo informed my office that Counsel Banda would call me directly to inform me the reason why Dr. Chimkono did not avail himself. Counsel Banda never called me. I did not receive this communication. The 3 Board members were in the presence of Counsel Pawene Nkhata from Kita and Company who I was informed are the retained Lawyers for MERA.

2.8.3 They stated that the DSC produced a table which summarized applicants' details including qualifications. According to Mrs. Chirombo under Mr. Kachaje's folio it indicated that he had an MBA, it did not include which University he attained it from. Even the other candidates it did not include details of Universities.

2.8.4 When I put to Mrs. Chirombo the assertion by DSC that in their documents Mr. Kachaje did not have a Master's Degree, she stated that there were 101 applicants and in those there were some who had two applications as such she would like to concentrate on the MBA one. Mrs. Manguluti added that if you look at the list of the 25 candidates after they were trimmed down from 101, Mr. Kachaje appears to have a Master's Degree in Business Administration. She cannot comment on the list which had 101 candidates.

2.8.5 Mr. C. Chiwambo stated that from the documents they have, folio number 52 indicates that in his letter of application Mr. Kachaje had MSc in Entrepreneurship from MUST. He stated that as a Board they verified with the DSC on Mr. Kachaje's qualifications and DSC confirmed that on his CV he had a Master's Degree. They needed to verify because on the list of 101 applicants Mr. Kachaje was appearing twice. He said it was a debate during the interviews, however, they debated over all candidates as they had to look

- at other factors in order to trim the list to 8 people. They therefore, referred to the Secretariat over things like age and experience.
- 2.8.6 They stated that it was DSC who brought all this confusion. They ought to have done their due diligence before and not just provide the Board with each and every application they received, because the Board's duty is to make decisions on the information that they were given by DSC whom they entrusted to receive the applications on behalf of MERA as MERA could not receive the application as Mr. Chioko who was the Acting CEO of MERA also applied for the position.
- 2.8.7 When I enquired from them whether the mandate from the Board Chairperson to DSC extended to scrutinize the list of candidates, doing due diligence and removing double applications, the Vice-Chairperson stated that as the secretariat they were not just supposed to receive and forward every application. According to her, it was almost like garbage in and garbage out.
- 2.8.8 For the interviews, each candidate had to present on a case study that was given to them. After the presentation, the Board members asked the candidates some questions. When the candidates walked into the interview room, the secretariat would collect their certificates and pass them around the room, in order for the panelists to see what the interviewees had brought. For Mr. Kachaje his Master's Degree was not amongst his certificates. Soon after he left, as a Board they conferred and the Vice- Chairperson informed the Chairperson that a Master's Degree certificate was not amongst the certificates he had brought to the interview.
- 2.8.9 The Vice- Chairperson stated that the certificates were going around as Mr. Kachaje was presenting, they therefore allowed him to proceed. It would have been different if it was a requirement that before the candidate comes the Board must see the certificates.
- 2.8.10 When I asked them why then at tabulation of the results Mr. Kachaje scores were not disregarded, as their letter of invitation to the interviews was clear that the candidates had to bring their original copies of certificates, Mrs. Manguluti stated that fortunately or unfortunately the candidate who failed to bring the certificates is the one who emerged the best. That is why they decided to make a follow up as from their knowledge the Secretariat had informed them that he had a Master's Degree.
- 2.8.11 The Vice- Chairperson further stated that according to human resource principles you can proceed to tabulate one's scores even when they have failed to bring their certificates. She further stated that if you remove the degree issue, this is one of the cleanest interview processes she has ever seen. Mr. Kachaje had scored way above the other candidates. He did not come with the backing or under instructions of someone, he simply applied and pulled himself out of the group.
- 2.8.12 She stated that as the Board they were comforted by the responses from Mr. Kachaje on his certificates. They reiterated that the reference letter was presented to them and deliberated on almost a month after the interviews on

27th July, 2021. She stated that as a Board, they do not have prescribed meeting dates as they all have other careers. The 27th July, 2021 was therefore the date that they could meet. During this meeting they rejected the reference letter and in this meeting they almost took the second candidate. They stated that they went to such lengths because he was the best candidate.

- 2.8.13 Mr. Chiwambo stated that for those who might know Mr. Kachaje he is a person who used to state that he cannot be employed as he employs himself. Even when he starts a course for Mr. Kachaje, it was a waste of time. He used to know Mr. Kachaje as an entrepreneur but not personally. Mr. Kachaje was doing two Master's degree at once. He recalls that at MUST Mr. Kachaje was requested to pay fees after he completed his course, Mr. Kachaje refused and opted to invest that money in his business. He does not recall whether MUST gave him a reference letter, but fortunately for him when he went to Azteca they gave him the reference letter and then all the other documents.
- 2.8.14 He further stated that when it was taking time for Mr. Kachaje to bring the documents that is when they wanted to offer the position to the second candidate. When I queried the board members as to why they were overly accommodating this candidate to bring his papers when according to their Board Minutes they had resolved to "promptly" fill the position of CEO which had fallen vacant in November 2020, Mr. Chiwambo responded that as was stated by other Board members, it is not easy to set a date where all board members are available. He pointed out that, if the issue of the Master's Degree is set aside, the point is that Mr. Kachaje proved that he could take charge of MERA and transform it from where it used to be to another level.
- 2.8.15 He further stated that had they been hasty and cast him aside he also could have taken them to the courts or even the OoO for the Board's failure to appoint him and appoint the second best candidate instead.
- 2.8.16 They stated that the offer letter was written by the Chairperson after the Board had seen Mr. Kachaje's transcript and the Chairperson had already provided a response to the issue regarding the dates of offer of employment and acceptance of the same, in light of the date on the certificate, when he appeared for the Inquiry, therefore they did not respond on this. For them as a Board, the transcript was enough for them to proceed to employ Mr. Kachaje.
- 2.8.17 Mr. Chiwambo informed the Inquiry that he is not aware that there was a technical meeting that was called by the Ministry of Energy. All the members stated that they are not aware of any discussions or comments regarding Mr. Chapweteka that were made in respect of the recruitment process.
- 2.8.18 The Vice-Chairperson concluded by stating that some of the issues I asked them were not supposed to go to them but to either the Chairperson or even Mr. Kachaje himself. By asking them I was trying to get them to contradict one another. The three of them came to the Inquiry without documents such as the minutes and their intention when they came was to come and hear what it is that I wanted to ask them. However, what they stated in the Inquiry is

what they remember without going through the documents and that is the best they could do. She further stated that people have got the right to complain if they are of the view that the appointment of Mr. Kachaje did not go well, but I should be assured that the process that was followed was as had been narrated and from that process Mr. Kachaje was the best out of the 8 candidates. They would have painfully gone to the second candidate but for them they really wanted Mr. Kachaje because of the way he presented the strategic plan and everything during the interview. They thought they had appointed the right person to steer the ship that is MERA.

2.9 EVIDENCE FROM NCHE

- 2.9.1 In light of the allegations relating to the recruitment process pertaining to the assertion that the successful candidate Mr. Kachaje did not hold the requisite minimum qualification, i.e. a Master's Degree qualification, and the subsequent assertions by both Mr. Kachaje and the Board of MERA that Mr. Kachaje in fact held a qualification obtained from AZTECA University, I was compelled in the course of the Inquiry to engage the National Council of Higher Education (NCHE), for information and clarification in light of their legal mandate, on the accreditation or recognition status of the qualifications obtained from the said University. On 25th October, 2021 I had a meeting with officials from NCHE.
- 2.9.2 They stated that one of the functions of the Institution as per its mandate as laid down in the NCHE Act is to vet, and evaluate qualifications. Section 15(m) of the NCHE Act stipulates that the function of NCHE is to assess, evaluate and recognise qualifications attained at a foreign higher education institute.
- 2.9.3 According to NCHE, there are two possibilities of doing distant studies with international schools, those that attend classes with branch campuses in the local universities and those that register with the school through its country of jurisdiction. For those that do their studies with Azteca University through its branch campus here in Malawi, NCHE's position was made clear through its press release that appeared in the local papers like the Nation on 30th January, 2019. The satellite campus associated by Azteca University in Malawi was classified by NCHE as an illegal institution in 2019. The position of NCHE on the status of the satellite campus has not changed to date.
- 2.9.4 Again, since the qualification before me was said to have been offered by the main campus of Azteca University in Mexico, NCHE went on to inquire from the Regional regulatory bodies within its network to determine the recognition status of the programme. According to the South African Qualifications Authority (SAQA), the University is not accredited by the local authority in Mexico and its MBA is not among those authorised by the Federal or State Education authority of Mexico.

- 2.9.5 NCHE indicated that they had sent correspondence to the Mexican Authorities on the matter, but they were not responsive.
- 2.9.6 NCHE also indicated that they checked with the Council for Higher Education in the United States of America (USA), and they indicated that they do not have Azteca University in their Register.
- 2.9.7 NCHE went further to provide my office with a website where I could check on information regarding programmes that are authorised by the State Education Authority (RVOE Mexico), <https://universidadAzteca.edu.mx/oferta-academica/>: The Masters of Business Administration Degree (MBA), Programme is not included in the accredited programmes
- 2.9.8 NCHE also indicated that when they checked the website of their equivalent body in Mexico, they noted that Azteca University is not on the list of accredited institutions. When I inquired that however Azteca is listed under UNESCO website as accredited by the said UNESCO, NCHE pointed out that UNESCO is not a regulatory body where issues of the accreditation/recognition of qualifications or higher academic institutions is concerned. Further that as NCHE they were therefore not sure as to what standards UNESCO used for the said recognition of Azteca University.
- 2.9.9 NCHE stated that in its mandate to regulate the higher education subsector as guided by the NCHE Act No. 15 of 2011, it does not recognise Azteca University and its MBA programme.
- 2.9.10 On the issue of the legal acquisition of academic qualifications NCHE stated that a person becomes certified for an academic qualification upon conferment of the academic qualification, which is usually indicated on a duly and authoritatively signed certificate.

2.10 Evidence from Mr BF Tembo of Department of Human Resource and Development

- 2.10.1 Mr. Bernard F. Tembo, Deputy Director of Human Resource in DHRMD stated under oath that he was in attendance at the time of the shortlisting for the position of CEO for MERA which took place at BICC. He pointed that he was representing the PS for DHRMD. He further explained that before the shortlisting started, he and his colleagues from government were advised by the Chairperson of the shortlisting exercise that they would be observers in the whole process. Therefore, they were not to take part in the deliberations and in the decision making process itself.
- 2.10.2 He told the Inquiry, that DSC at this exercise provided the secretariat services and one of the reference papers provided by the secretariat was a summary of the candidates who applied for the CEO position. Mr. Kachaje was one of those applicants. His profile on that summary, which the secretariat stated was extracted from his application for the post, showed that he had a

Bachelor's of Social Science in Economics obtained from Chancellor College and this was his highest qualification according to the summary.

- 2.10.3 However, one of the Board members indicated that he recalled that Mr. Kachaje has a Master's Degree in Strategic Management and that perhaps as the summary was being prepared by the DSC, through inadvertence that element of his Master's Degree was not captured. After this observation by the Board member, the process then continued with the rest of the summary.
- 2.10.4 He stated that he was meeting the Board members for the first time as such he was not in a position to state the Board members' names, but he recalled and shared with the Inquiry the physical description of the gentleman who chaired the Shortlisting Exercise and also recalled further that this person was also the Chairperson of the Board of MERA. In regards to the Board member who stated that Mr. Kachaje has a Master's Degree in Strategic Management he also stated that he could not recall who the Board member was as they were all new to with the exception of Counsel Likongwe whom he had interacted with before.
- 2.10.5 Mr. Tembo confirmed that the copy of the summary that had been furnished to the Inquiry by the DSC was indeed the summary that was used and it was the actual copy of the form which he used and filled during the shortlisting exercise. He told the Inquiry that despite just being an observer he made notes and comments on the summary template that was provided by DSC, because at the beginning he was under the impression that the shortlisting would be conducted the way they normally did where they would come in as advisors on one or two issues.
- 2.10.6 He stated that to him, proceeding at this stage was in order because the interjection that Mr. Kachaje had a Master's Degree was coming from a Board Member and these are people who are supposed to have integrity, as such tell the truth. Besides, in applications sometimes people exaggerate and provide flowery qualifications which they might not even have as they are trying to sell themselves in order to be shortlisted. They therefore, really count on the next stage which is the interview stage, as the candidates are expected to bring their original certificates. He therefore, thought that the issue would be dealt with at that second hurdle.
- 2.10.7 He confirmed that the Board did ask the Secretariat to cross check if they had captured Mr. Kachaje's summary correctly and DSC checked and there was no indication that he had a Master's Degree and accordingly informed the Board. He pointed out that he cannot recall any issue of two submission of CVs by Mr. Kachaje, he is only aware of the one entry where he put his comments.
- 2.10.8 He explained that after the shortlisting exercise he briefed the Director of Human Resource Mr. Dumisani Banda. He indicated that he did make mention of the issue of the Master's Degree and the Director was also of the view that it would be dealt with at the interview process as the candidate

would have to come with his original certificates and prove that he holds a Master's Degree.

2.11 Evidence of Professor Chinthenga African Regional Representative of Azteca University

- 2.11.1 I invited Professor Chinthenga to an Inquiry that took place on 26th October 2021, to find out more about the qualifications of Mr Kachaje as this issue formed the main line of inquiry. I also wanted to appreciate how the Azteca University is structured in its country of domicile, how it operates in Malawi, the accreditation of the MBA, and also his role in Azteca University seeing he was the representative of Azteca in Africa.
- 2.11.2 Professor Chinthenga told the Inquiry that he is the Regional Representative for Azteca University in Africa since 2016. The University operates in several continents. However, in Africa they are not on the ground, but operate through what is called Distance Supported Learning. He travels in various parts of Africa to wherever there are students for him to provide support.
- 2.11.3 In Malawi, they have students who have used the internet to know about the University. His role is that he handles problems that students will face in the course of their studies.
- 2.11.4 With respect to his professional and qualification background, he stated that he joined Azteca in 2016. Before that he was the Registrar for Pentecostal University. From 2011 to 2013, he had been Deputy Registrar for Skyway University. He holds a BSC in Economics from Copperstone University, in Copperbelt, Zambia which was obtained in 2020. He studied the course for four years. He has an MSC in Strategic Management which he studied between 2010 and 2012- (he was not sure of the period of study), with the University of Derby. He is a Professor (he did not specify the discipline). He obtained an Advanced Diploma in Marketing (2004-2009) from the United Kingdom. According to the UK system, once you study with the chartered institute of marketing, you go straight to Master's studies. This is why he was eligible to study and acquired a Master's Degree from being a Diploma Holder without going through a Bachelors Programme.
- 2.11.5 He also has a PhD in Economics which he studied from 2013 to 2017 from Azteca University. The study period was about three years. When it was put to him that his PhD studies were overlapping with the period he was studying for his BSC in Economics, he stated that he might not be so clear with the years but that there was a bit of exemption in his PhD studies, mainly due to the courses he had done during his Advanced Diploma studies.
- 2.11.6 He stated that he was awarded Professorship by the Chartered Institute of Management domiciled in Canada and that his award of professorship was a special case through what he called outstanding publications. When questioned how many works he has published which had been peer reviewed, he stated that he had done a number of academic papers but his passion is on

- books. In the Inquiry he only referred to his work called ‘Dissertation Genius’ which is widely used in academic circles. He could not remember some of his academic works off the top of his head.
- 2.11.7 Azteca University was established in 1984. It is domiciled in Mexico and is registered with the Ministry of Higher Education. He was not sure whether they have an equivalent of NCHE in Mexico. It has a good student base at campus and also has a huge number of off campus students.
- 2.11.8 Azteca University is not accredited in Malawi as they did not submit any application to be accredited or to register as an institution of higher learning in Malawi. In Malawi, they did not see the need to register looking at the economic situation because of the model of recruitment and international support in Africa. The main reason why they did not set up a satellite campus in Malawi is the economy. The fact that students have to pay in dollars and looking at Malawi’s economy and financial status, they do not have a vast market. He cited the example that as from January to the date of the Inquiry, they had only registered three students. If in future, the economy becomes vibrant enough, they might resolve to have it accredited in Malawi. This is mainly because it is also an investment and they need to have returns on the investment.
- 2.11.9 As a regional representative, he has to travel to countries like Mozambique, Tanzania and Zambia to support students especially in their research so that at the end of the day when they finalise their studies, they are all rounded.
- 2.11.9.1 He refuted the assertion that there ever was a time when they had wanted to partner with Malawi Institute of Management (MIM).
- 2.11.10 According to him, Azteca University likes to establish their University in countries that are economically sustainable looking at geo-politics, geo-economics and geo-polarity, such that they are in countries like Canada where they are registered as well as accredited and they have conventional campuses.
- 2.11.11 He went on to state that the United States registration and accreditation had just been received as he was informed by his Director, Professor Dr Ricardo. He had not yet received the document of accreditation itself. When asked on how soon he could provide the said documentary proof, he responded that as a matter of their work ethic, he could not provide the proof of accreditation to a third party. They can only provide to the regulator. When told that we had checked with the United States before the Inquiry on the accreditation status of Azteca, he said that then the OoO had to check with Mexico. He responded that in the USA, there so many accreditors or regulators. However, he agreed that at the federal level, there might be one regulator for accreditation.
- 2.11.12 Azteca University has never changed its name since its Constitution. He refuted that the University also goes by such names as Amity University, Jerusalem University or Cyprus University, which according to him are more like bogus institutions such that if you check in their countries of origin, you

will not find them. However, for Azteca University it can be found in the records of accreditation in the country of domicile.

- 2.11.13 He furnished my office with the UNESCO handbook of Universities 2018 and 2020 editions where Azteca University was appearing as a recognised institution. He indicated that UNESCO is not an accrediting authority of institutions of higher learning, however, the UNESCO handbook lists universities that are recognised worldwide and therefore not bogus. He went on to state that for any job one is applying for in the United Nations, there is a clause that advises one to ensure that they have studied in any of the listed universities under the said UNESCO Handbook. When it was put to him to confirm if indeed this was a requirement in United Nations recruitment processes, he affirmed that for the applications he had done which was two years ago, it came up as a requirement. He could not remember the position he was applying for.
- 2.11.14 Regarding the qualifications of Mr Kachaje, Professor Chinthenga stated that Mr Kachaje enrolled with Azteca on the 31st July, 2019 and he completed and passed his program on 30th March, 2021. His program was structured in such a way that he had to complete 12 courses plus a research. The program runs for a period of 24 months for off campus. Where there is an exemption then the period may be lesser like 18 months which was the case for Mr Kachaje as he had started a program with Metropolitan University which was in a partnership with MIM. When one is studying on campus, the period is one year. Mr. Kachaje was conferred the Degree of Master of Business Administration in August, 2021.
- 2.11.15 For one to be exempted, they must show the document that shows they are exempted which is highly technical and confidential, and they got that information which Mr Kachaje submitted to Azteca thus he indicated that it could only be Mr Kachaje that could furnish me with the exemption document.
- 2.11.16 The Degree certificates are sent through shipping and Mr. Kachaje got his Degree in September 2021. After getting a request from Mr. Kachaje, the institution sent electronically his Degree certificate between the 10th and 17th September. The electronic copy was requested about a week prior. He declined to submit the emails as a matter of ethics. However, he assured the Inquiry that what he had given was the truth as he was under the oath. He undertook to submit the actual dates for the electronic copy for the request and receipt of the hard copy of the MBA.
- 2.11.17 Professor Chinthenga also undertook to submit to the Office his CV, especially highlighting the qualifications furnished during the Inquiry.
- 2.11.18 According to him, Azteca is a big university of more than 20, 000 students such that graduation congregations take place each and every quarter to ensure there are no overloading challenges. The off campus students are given the option of physically attending the graduation in Mexico or to

graduate in absentia. Sometimes they have merged students from a number of countries and held graduations in a selected country.

- 2.11.19 Professor Chinthenga did not furnish the Inquiry with any document to demonstrate the accreditation status of Azteca University. He indicated he would source the document from the Director in Mexico and seek authority to furnish it to the OoO for purposes of the present Inquiry. He requested to have 5 days to revert he never came back to my office with any of the documents he had undertaken to submit as at the time of releasing this report.

3.0 THE APPLICABLE LAW

3.1 Regarding Recruitment of Staff of the Malawi Energy Regulatory Authority

- 3.1.1 In terms of section 15(1) of the Constitution (the Constitution), the human rights and freedoms enshrined in the Constitution Chapter 4 shall be respected and upheld by the executive, legislature and judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Malawi, and shall be enforceable in the manner prescribed in the said Chapter.
- 3.1.2 Section 31(1) of the Constitution guarantees the right to fair labour practices among other things.
- 3.1.3 Section 43 (1) of the Constitution guarantees the right to administrative justice i.e. lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where a person's rights, freedoms, legitimate expectations or interests are affected or threatened;
- 3.1.4 According to section 4 of the Public Service Act (Chapter. 1:03 of the Laws of Malawi), entry into and advancement within the public service shall be determined solely on the basis of merit, namely, relative ability, knowledge, skill and aptitude after fair and open competition which assures that all citizens receive equal opportunity.
- 3.1.5 The Energy Regulation Act, (Chapter 73:02 of the Laws of Malawi), provides for the appointment of the Chief Executive Officer for the Malawi Energy Regulatory Authority. Section 18 of the Act states that the Authority, shall appoint a Chief Executive Officer of the Authority who shall be responsible for the administrative control of, and supervision over the work and staff of the Authority.
- 3.1.6 The 'Authority' according to the Act comprises of- (a) A Chairperson, a Vice-Chairperson and three other members; (b) The Principal Secretary responsible for Energy Affairs as ex-officio; (c) The Director of Energy Affairs; and (d) The Chief Executive Officer of the Authority as ex-officio member so long as he or she remains in the post of Chief Executive.

3.1.7 The MERA Recruitment policy replicates the principles enunciated in the Public Service Act in relation to recruitment of staff for the organisation.

4.0 ANALYSIS OF THE EVIDENCE GATHERED AND THE LAW

4.1 Whether or not Mr. Henry Kachaje was procedurally, regularly and lawfully recruited as the CEO of MERA

I must state that there are three versions that emerge from the evidence provided to the inquiry on which I have subjected the comprehensive analysis detailed in the ensuing sections.

4.1.1 Section 31 of the Constitution guarantees the right to fair labour practices. Among other things this entails treating prospective as well as actual employees fairly, including ensuring fairness in recruitment processes.

4.1.2 Fair recruitment processes entail compliance with set laws i.e. legality, treating all applicants equally (providing a level playing field), and ensuring openness and competitiveness, i.e. fairness. Accordingly these ethos are encapsulated in section 4 of the Public Service Act.

Section 2 of the Public Service Act stipulates that the provisions of the Act are applicable to the administration of the Public Service, except where such application is exempted under any written law with respect to any part of the Public Service. The fundamental principles for the administration of the Public Service are: *that the public service shall be the instrument for generating and maintaining public confidence in the government; the public service shall be impartial, independent...; the public service shall be guided only by the concerns of the public interest and of the welfare of the public in the delivery of services ...; and aim to achieve and maintain the highest integrity and proper conduct among the personnel at all grades, among others.*

4.1.3. The principles against maladministration are intended to control the exercise of public power by public entities. This is why under section 5 of the Ombudsman the OoO is mandated to investigate cases where it is alleged that there has been injustice, including in the forms of abuse of power, unfair treatment, occasioned by a public body or public officers.

Thus, the principles against maladministration ensures that the exercise of public power remains in accordance with principles of procedural fairness, lawfulness and reasonableness.

In the case of recruitment processes for the public sector the lawfulness tenet entails that such processes must comply with relevant constitutional provisions as well as provisions in other applicable laws.

Further the procedural fairness tenet entails the need to assess people on a uniform and objective criteria that uses the same yard stick for all candidates, and that no candidate is treated less favourably or more favourably than others.

The reasonableness requirement entails the avoidance of arbitrariness in the recruitment processes, carrying out proper checks and due diligence processes throughout the recruitment processes including before the offer of employment is made. This also entails consistency in the application of the criteria for assessment as set out in applicable guiding documents, e.g. the job advertisement, applicable organisational recruitment policies, and laws.

- 4.1.4 The evidence gathered under oath from the parties in the course of the Public Inquiry show that at the point of the shortlisting exercise, Mr. Kachaje had not furnished information relating to the fact that he was a holder of a Master's Degree. This is supported by the documentary evidence obtained in the course of the Inquiry, i.e. first, his own application letter, in which contrary to what I would cite as conventional practice, the letter is silent on his academic qualifications. While in the same application letter he went to length to detail what according to him was the requisite experience that rendered him a match for the role of CEO at MERA, the application letter is silent on the issue of qualifications. This is the first version.
- 4.1.5 The MERA Board stated on oath and through written submissions, that they charged the DSC with the role of acting as a depository for applications for the role of CEO as well as being secretariat, which included the task of compiling a summary of all the applications that were received.
- 4.1.6 Accordingly, the DSC official Mr. James Nkhokwe, who stated under oath that he was in charge of this process, indicated that Mr. Kachaje's CV as submitted along with his application did not indicate that he was a holder of a Master's Degree.
Thus, in compiling the summary of all the applicants, folio number 52 on which Mr. Kachaje's name was listed did not capture that he holds a Master's Degree. The official further averred that this was raised with and was noted by the Board of MERA when they were conducting the shortlisting exercise, based on the summary as compiled by DSC which was submitted to the MERA Board, but the Board proceeded to shortlist Mr. Kachaje regardless.
- 4.1.7 Furthermore, while there are other versions as to the exact CV that Mr. Kachaje submitted in the application process and what he stated in the CV as to the issue of his qualifications, I find the version in the evidence proffered by the official of the DSC to be the most compelling one.
- 4.1.8 The evidence is to the effect that according to the summary of CVs that DSC compiled Mr. Kachaje did not possessing a Master's Degree. This was corroborated by the official from DHRMD Mr. BF Tembo who participated

in the shortlisting exercise following an invitation of MERA to DHRMD as per prevailing practice.

Thus, this far, the evidence is to the effect that as at the point of application Mr. Kachaje only submitted one application letter and one CV, and according to this particular CV, on qualifications he indicated that he held a Bachelor's Degree in Economics and was in the process of pursuing a Master's Degree in Entrepreneurship at MUST. According to the DSC official it is for the reason that in indicating the Master's Degree in Entrepreneurship on his CV, he showed that he was a student that they proceeded to record him as a holder of a Bachelor's Degree on folio 52 of the summary.

- 4.1.9. This entails that in line with this first version, at the material times of submission of application and shortlisting, and on the day he presented for interviews, Mr. Kachaje was not a holder of a Master's Degree in any of the stipulated disciplines, especially when the fact that on the pre-interview form he did not indicate as such. This form shows that on the qualifications section his entry indicates that he listed down Post Graduate Diploma in Business Counselling and a Bachelor's Degree in Social Science (Economics).

This first version is not taking into account the claim that Mr. Kachaje subsequently submitted a second application whereby he replaced the initial CV with a second one with updated details as to his Master's Degree qualifications, indicating his possession of an MBA from Azteca University.

- 4.1.10 **Thus, the MERA Board proceeded to shortlist and interview and subsequently offer employment to Mr. Kachaje even though in light of the evidence discussed above he was not a holder of a Master's Degree at that material time. This should speak to why in the interviews he took time to explain to the panel of all the publications and a study programme that could be equated to the value of a Master's Degree or even a value surpassing a Master's Degree. Mr. Kachaje was thus, treated differently from all of the other candidates that did not make it to the shortlist on account of the fact that they had not met one or more of the requisite criteria, such as "lack of a Master's Degree".**

- 4.1.11. From the shortlisting forms on which the Panelists recorded their reasons for either shortlisting or not shortlisting some of the applicants, made available to the Inquiry by the DSC Official, it is clear that some of the reasons why some candidates were not shortlisted was for not having the requisite minimum qualifications.

4.1.12. **Thus, the act of proceeding to shortlist Mr. Kachaje was a serious flaw in the process considering in his case he had at that point not met a very crucial criteria as stipulated in the advertisement, namely a Master's Degree. He was therefore accorded an undue advantage, thereby the Board did not provide a level playing field to the other applicants who were in the same situation as Mr. Kachaje. This was not only manifest unfairness, it was actual unfairness, and it should be impermissible. This is tantamount to a maladministration.**

4.1.13 Furthermore, this contravened the express legal requirement under section 4 of the Public Service Act that entry into the Public Service **MUST** solely be determined on the basis of merit, namely, relative ability, knowledge, skill and aptitude. It is for purposes of making a determination as to MERIT that the Board of MERA in formulating the advertisement for the role of CEO set a Master's Degree in the stipulated fields as a prerequisite minimum qualification. Education qualifications are the first benchmark for minimum requirement for shortlisting.

4.1.14 According to the advertisement for the position, the Key Requirements for Persons to be Recruited as CEO with respect to qualifications were: *"A Bachelor's Degree and Master's Degree in Engineering or Economics/Finance or Law or Management plus a minimum of 10 years' experience at senior management position in a reputable organization and...Experience in the Energy Sector is an added advantage."*

The use of the word and in between the Bachelor's Degree and Master's Degree connoted that both qualifications were essential, desirable and needed, unlike if the advertisement had use the word "or" or qualified the latter part, i.e. the Master's Degree, as to only be an added advantage. Indeed it goes without saying that for a crucial role such as CEO for a strategic institution such as MERA a Master's Degree should be a minimum requirement for the position.

4.1.15 Thus, the fact that the Board proceeded to shortlist a person who did not meet the stipulated minimum qualification entail that the legal requirement on merit as provided for in section 4 of the Public Service Act and section 31 of the Constitution were contravened. In this instance, the Board of MERA acted unlawfully. This constituted an act of maladministration.

4.1.16 While the above discourse settles the analysis of the facts and the law in so far as this pertains to the issue of whether or not the Board properly shortlisted and proceeded to interview Mr. Kachaje, i.e. in accordance with the law and in compliance with the principle of fairness, it is worth extending the analysis to the second and third versions of the submissions. These versions at times appeared to be conflated and I must state that having looked

at the evidence the second and third versions also appear confused at best, and at worst are not corroborated by DSC.

4.1.17 A consideration of these versions is however necessary to allow for a balanced consideration of all the evidence in this matter. According to the evidence furnished by MERA a second and third version emerges that, Mr. Kachaje submitted two applications. In the initial application he stated in his CV that he is a student of a Master's Degree in Entrepreneurship at MUST, while in the second application he stated that he holds a Masters Degree. In terms of these two versions at the point of shortlisting the Masters Degree recorded on the forms by the panelists is a Masters Degree in Strategic Management from an unnamed University. While after the interview process, when requested to submit his Master's Degree Certificate, a reference letter from Azteca University was furnished by Mr. Kachaje to the Board, in which the University confirmed completion by Mr. Kachaje of MBA studies with the University.

4.1.18 On the basis of the second and third versions the evidence is bringing to light a number of inconsistencies as follows:

- (i) On the one hand, the Board of MERA stated that Mr. Kachaje may have submitted two application letters as a way of ensuring that his applications would really reach the receiving institution, and according to them this is normal with job application processes. While on the other hand, Mr. Kachaje averred that he made a clerical error with his initial submitted application and therefore proceeded to withdraw it and resubmitted a second application. According to him the error is that he had forgotten to edit the part relating to the qualification from MUST University.

Thus, according to the MERA Board Mr. Kachaje's name appeared on two entries in the summary of applicants compiled by DSC, one of which did not indicate he held a Master's Degree and the other which indicated he possesses a Master's Degree. Contrary to this claim, on thorough scrutiny of all the documents on the summary of applicants there is no double entry for any candidate let alone Mr. Kachaje.

However, if one is to go by the Board's submission, they claimed that on the one folio Mr. Kachaje is indicated as not having a Master's Degree, while on the second folio he is listed as having a Masters in Entrepreneurship from MUST. Mr. Nkhokwe of DSC refuted this version and stated that in any case if indeed the case would be that a candidate submits two CVs with different qualifications, both of those qualifications would appear under one folio and not two folios.

According to the DSC official, the reason why DSC made an entry that Mr. Kachaje is a holder of a Bachelor's Degree is the fact that in terms of the CV that he furnished with his application he indicated that he was a student of the programme for Masters in Entrepreneurship at MUST. Therefore as at that time he had completed the Master's Degree and his highest qualification was the Bachelor's Degree.

It must also be noted that there is the issue whereby Mr. Kachaje indicated to the Inquiry that he withdrew from the said programme at MUST, since in his view the content thereof was shallow. When I inquired from MUST as to status of Mr. Kachaje as the University's student, I was informed that he commenced his studies in August 2016, he was expected to finalise in a period of 2 years, with a possibility of an extension upon furnishing valid reasons, and that as at 30th September, 2021 he was no longer recognised as a student at MUST as he did not finalise the studies within the maximum allowable time. The evidence shows consistency in the position by DSC that they disregarded the indication on Mr. Kachaje's CV regarding the qualification of Masters in Entrepreneurship as per the summary of the 101 applicants and the summary for the final 8 candidates. As stated earlier, this is also supported by Mr. Kachaje's entry on the pre-interview form where he did not indicate a Master's Degree.

- (ii) The further series of inconsistencies that arise from the second and third versions are that the exact qualification that Mr. Kachaje is said to have possessed or to possess kept changing. If one is to go by the version that Mr. Kachaje submitted a CV in which he indicated he possessed a Master's Degree, the same is the Master's Degree in Entrepreneurship from MUST, which as indicated in the preceding section was pending completion of studies. However, as alluded to above, as at the point of shortlisting, the forms filled by some of the shortlisting panelists show that some of the panelists made entries that the Master's Degree Mr. Kachaje held is a Master's Degree in Strategic Management. The issuing University of this particular Degree was not indicated. Further down the line, in the recruitment process at the point of the interviews, the submissions show that Mr. Kachaje actually presented himself as a holder of a Master's Degree in Business Administration (whose course work he completed in March 2021, and the transcript thereof issued in June 2021 as is discussed under relevant sections below), obtained from Azteca University in Mexico.

Indeed an explanation on this discrepancy between the qualification from MUST and the qualification from Azteca University, which provides logical sense was provided to the Inquiry in that as stated by both the MERA Board and Mr. Kachaje, he had enrolled with both of these two universities, but later on withdrew from MUST and continued with AZTECA University from

where he qualified with the Master's Degree in question. However, the submissions and evidence do not offer explanations as to how the issue of the Master's Degree in Strategic Management from an unnamed university came in or came up, and yet from the records on the shortlisting forms filled by the shortlisting panel, the majority of the shortlisting panelists indicated this as the qualification which Mr. Kachaje is said to have possessed on which basis he was shortlisted. **To say the least, this inconsistency is a serious flaw in the recruitment process at the point of shortlisting, which as both Mr. Kachaje and the Board pointed out is one of the crucial stages in the recruitment process. In this instance, the Board took into account extraneous factors on which basis they proceeded to shortlist Mr. Kachaje. The due diligence on the part of the Board in this instance is found wanting. The Board acted on misinformation and misleading factors. This is tantamount to maladministration.**

- (iii) This entails that at all material times from the point in January 2021 when Mr. Kachaje applied for the position of CEO of MERA, through the shortlisting process, to the interview process and results determination thereof, Mr. Kachaje was never a holder of a Master's Degree in Entrepreneurship from MUST. Indeed in his own CV made available to the Inquiry, if one goes by this second version, he indicated that he was a student of this programme in the following words "Master's Degree in Entrepreneurship, (student). Further, he also confirmed under oath that he withdrew from his studies from MUST as he did not find the programme's content befitting for his needs given his level of career advancement and progression in entrepreneurship.
- (iv) Another discrepancy yet arises from an examination of the forms on which the shortlisting panel were making entries as to their remarks on reasons for either shortlisting or not shortlisting a candidate, 4 of the members of the shortlisting panel listed Mr. Kachaje as possessing a Master's Degree in Strategic Management. It is not clear where these members got the information pertaining to the fact that Mr. Kachaje was a holder of a Master's Degree in Strategic Management. At best this points to the fact that the process was riddled with elements of misinformation, at worst this entails that the process opened itself up to conjecture.

4.1.19 In the final analysis, we find that proceeding on the basis of the second and third versions that Mr. Kachaje in fact possessed the requisite minimum qualification of a Master's Degree, there are serious inconsistencies that bring into question the level of due diligence that those that were charged with the exercise of the shortlisting applied to the process. At best it demonstrates a process that opened itself up to arbitrariness and at worst it raises a significant possibility of manipulation. Due diligence in recruitment processes is essential to ensure that such processes are above board, fair and in accordance with applicable legal requirements.

4.1.20 **To the extent that in proceeding to shortlist Mr. Kachaje the Board of MERA did not exercise the high standards of due diligence, proceeded to act on inconsistent information and took into consideration non-existent qualifications (extraneous/superfluous Factors) (i.e. a Master's Degree in Strategic Management), the Board acted in a manner that was arbitrary as demonstrated by this evidence, the Board of MERA therefore occasioned a maladministration in this instance.**

4.1.21 Proceeding with the third version that Mr. Kachaje actually held an MBA from Azteca University, the following considerations come up. When Mr Kachaje presented for the interviews, both Mr Nkhokwe and Mr Mwasola aver that they noted he had not brought with him a copy of a Master's Degree qualification. However, some of the MERA Board members pointed out that they did not pick out this omission on the part of Mr Kachaje, attributing this to the limited amount of time they had to scrutinise the batch of certificates Mr Kachaje had brought with him. Two of the MERA Board members, Mr. Likongwe and Mrs. Chirombo stated that they noted that Mr. Kachaje did not present his Master's Degree Certificate and raised this issue with the Chairperson at the stage of tabulation of scores.

4.1.22 Mr Kachaje presented a reference letter from Azteca University which indicated that he had completed studies for an MBA when the Board requested him to submit his Master's Certificate after the interviews. This was rejected by the Board, following which he presented a transcript dated 30th June, 2021, showing the completion date for his MBA as 30th March 2021. The Board still resolved that he should present the certificate and once this was done the offer of employment should be made. The Board made the offer of employment on 19th August 2021, Mr. Kachaje accepted the offer on 24th August, 2021, however, the MBA Degree that he presented is dated 26th August, 2021, which according to the regional representative of the Programme as stated under oath, was sent to Mr. Kachaje between 10th and 17th September, 2021.

4.1.23 While some flexibility can reasonably be expected to be allowed for a candidate claiming to hold a certificate not produced during an interview to furnish the same after the interview process, the Board overly accommodated the excuses that Mr. Kachaje is said to have provided for failure to produce the Master's Degree Certificate when it was requested. Thus, while the interviews were carried out in April 2021, the Board ended up offering the job to Mr. Kachaje in August 2021. This was unreasonable particularly when the fact that the very same Board in its resolution of its 70th ordinary meeting had resolved to PROMPTLY fill the position of CEO.

4.1.24 Another significant flaw with the interview process was their omission or failure by the Board to verify with NCHE as to the status of the recognition of the Master's in Business Administration Degree qualification from AZTECA University. In their submissions the Board indicated that they did not proceed to verify with NCHE as they received and relied on the advice of one of the Board Members Dr Chimkono who is an academic. In essence his advice was to the effect that the MBA that Mr. Kachaje presented was accredited as he had googled Azteca University and found that it was a national university, as such accredited in its country of origin.

4.1.25 On the contrary, NCHE on the basis of its consultations with its sister institutions in America, Mexico and South Africa is of the position that Azteca University is not accredited for purposes of running an institution of higher learning in Malawi. This position was adopted in 2019 and has not changed. Further, that the MBA Degree offered by Azteca University from its campus in Mexico is also not accredited nor recognised by the Malawi Government.

4.1.26 In view of the above, even if one goes by the third version that Mr. Kachaje possesses a Master's Degree from Azteca University, it turns out the same is not accredited and therefore not recognised by the Malawi Government nor by the Mexican accrediting authority.

4.1.27 Thus, the premise on which Mr Kachaje was shortlisted, participated in interviews and hired as CEO for MERA is erroneous and wrongful. The Board's level of due diligence is found wanting. The Board's conduct in this regard is tantamount to maladministration.

4.1.28 Furthermore, even if one proceeds on the point that Mr. Kachaje possesses an MBA Degree, contrary to their own express resolution to proceed to only hire him upon production of a certificate, which certificate bears the date of 26th August, the Board acted unreasonably and unprocedurally by offering him the job on 19th August. Further this omission renders the conduct of the Board unlawful as effectively, they proceeded to hire a candidate who technically had not met the minimum requirement for the job as stipulated in the job specifications. It must be pointed out that the Certificate in question was acquired after the fact, i.e. on 26th August 2021, **after Mr Kachaje had been erroneously, unprocedurally and irregularly offered the job which he had accepted.**

4.2 Whether the First Complainant was Treated Unfairly by the Board

4.2.2 The evidence is clear that the 1st Complainant met the job specifications for the interview and he was accordingly invited for the interviews which took place on 29th April, 2021.

- 4.2.2 It is also clear that the 1st Complainant and Director Lilongwe are friends and they worked together in the presidential elections case in their capacities as witness and legal counsel respectively. In that capacity, they did talk after the interviews and that became the basis of a number of irregularities in this whole recruitment process.
- 4.2.3 The 1st Complainant in trying to substantiate his claim mentioned that he had been told by Director Likongwe of what had transpired in the interview room, how the Board had discussed him as an 'anointed' candidate for the MERA CEO position and that the Chairperson, Mr. Chikadya had said that the Board should not recruit him as doing that would mean bowing down to political pressure. With respect to this assertion, all concerned parties who were mentioned as being aware of this assertion, namely, the Board members themselves, together with the Independent observers from DSC and DHRMD refuted this.
- 4.2.4 Again, all the Board members denied ever delaying to start the interview for the reason that they were discussing the 1st Complainant. Instead, the Chairperson testified that they had delayed to start the interview process as the Hotel had to change their rooms. He had to apologise to every candidate for starting late.
- 4.2.5 Even the independent observers from DSC and DHRMD, denied ever witnessing the Board discussing the Complainant before the interview started.
- 4.2.6 The assertion that the Ministry of Energy held a technical meeting with the Board members a day before the interviews was also denied by all parties including the representative /ex-officio from the Ministry.
- 4.2.7 It also became obvious during the Inquiry that Mr. Chapweteka had communicated to other people about the interview at MERA including the Minister of Finance, Honourable Felix Mlusu requesting him to talk to the Board Chair of MERA. He also admitted calling the ex-officio from the Ministry of Energy to inquire on the outcome of the interview, to which the ex-officio is claimed to have stated that he had done well.
- 4.2.8 All of the above conduct on the part of the Complainant demonstrates conduct that border on canvassing. This was inappropriate and unethical to say the least on the part of the 1st Complainant, as it appears from the evidence that he preoccupied himself with trying to meddle with the process of the interviews. While he denied that he was trying to influence the outcome of the interviews in his favour, it can safely be deduced from his conduct that he had actually intended to exert some influence over the process.
- 4.2.9 However, the indisputable evidence is that the Board met at Capital Hotel a day before the interviews to formulate and discuss the interview questions for the following day. This evidence was corroborated by the two independent observers from the DSC and DHRMD as they had also been invited to this

meeting to discuss the questions. This is a bad practice, as generally good practice in the civil/public service is that interview questions are discussed and shared on the day of the interviews to avoid leakage.

- 4.2.10 Director Likongwe to whom Mr. Chapweteka attributed the assertion that the Board had discussed him prior to the interviews vehemently denied ever informing Mr. Chapweteka about this.
- 4.2.11 While Mr. Chapweteka also informed the inquiry the assertion that the Board had agreed to score him lowly, the evidence indicate that he did not receive uniform low scores from the Board Members. He was accorded a highest score of 92 by one Board Member and a low score of 59 by another Board Member, in between the other Board Members accorded him scores of 65, 66, 78.5 and 80, respectively.
- 4.2.12 However, in confirmation of his assertions that Mr. Likongwe had assured him that he had given him a high score in the interview, the records show that a highest score of 92 was indeed given to him by Mr. Likongwe. I did not establish if this was indeed intentional on the part of Mr. Likongwe, however, this is the only assertion by the first Complainant that is matching with the documentary evidence. This fact alone does not nonetheless substantiate the claim by the first Complainant that the Board had prior agreement to fail him.
- 4.2.13 In light of the above, it is my conclusion that I found no evidence to substantiate the claim by the First Complainant that he was treated unfairly by the Board of MERA.
- 4.2.14 Be that as it may, I must hasten to observe that the manner in which Director Likongwe acted in disclosing information relating to the interviews to third parties is unacceptable. On his own admission he acted unethically in divulging confidential information to parties that were not supposed to be privy to the same. In the same vein, the manner in which Director Chiwambo acted in confirming to Mr. Chapweteka as to his good performance in the interview is also not acceptable and is unethical. These acts amount to maladministration.

5.0 FINDINGS

In light of the issues I set out to address in this Determination, on the basis of the evidence and analysis thereof, I find as follows:

- 5.1 Mr. Kachaje submitted an application for a role of MERA CEO whose minimum requirement on academic qualifications was possession of a Master's Degree, when it was a fact that as at the date of applications, 5th January 2020, he was not a holder of any academic master's Degree.
- 5.2 The Board of MERA shortlisted Mr. Kachaje in spite of him not satisfying the criteria of possession of a Master's Degree as at that material time his CV

- indicated that he was a student for a Master's Degree in Entrepreneurship at MUST.
- 5.3. In any case, shortlisting Mr. Kachaje on the basis of a purported Degree of Master of Strategic Management was wrongful and erroneous as none of the documents submitted by Mr. Kachaje in his applications listed this Degree
 - 5.4 With respect to the said MBA Degree from Azteca University, the Inquiry has established that this is not offered by an accredited institution and therefore not legally recognised by the Government of Malawi. Therefore, this could not be a lawful basis for offering Mr. Kachaje the job of CEO of MERA.
 - 5.5 Under the circumstances as established by the Inquiry, I must conclude that the Board of MERA flouted all required due diligence processes in proceeding to interview Mr Kachaje regardless.
 - 5.6 The Board placed Mr. Kachaje in an advantaged position over the rest of the candidates in proceeding to shortlist him when he had not met the requisite criteria. This was not only manifest unfairness, it was actual unfairness and is tantamount to a maladministration.
 - 5.7 Through their omission or failure to verify with NCHE as to the status of the recognition of the Master's in Business Administration Degree qualification from AZTECA University, the Board acted unreasonably and unprocedurally. Further this omission renders the conduct of the Board unlawful as effectively, they proceeded to hire a candidate who technically had not met the minimum requirement for the job as stipulated in the job specifications.
 - 5.8 A person becomes certified for an academic qualification upon conferment of the academic qualification, which is usually indicated on a duly and authoritatively signed certificate. In the case of Mr. Kachaje this date is the 26th August, 2021. Mr Kachaje was therefore erroneously, unprocedurally and irregularly recruited, considering that even if he can be said to have been a holder of a Master's Degree in Business Administration the same was acquired after the fact, i.e. on 26th August 2021, after the offer was made on 19th and he accepted it on 24th of August.
 - 5.9 The Board introduced arbitrariness and unreasonableness in overly accommodating Mr Kachaje to bring forth the requisite certificate from 29th April when the results were determined to 19th August when an offer of employment was finally made to Mr Kachaje.
 - 5.10 The recruitment of Mr Kachaje was unprocedural, irregular and illegal in that it breached the principles of fairness and legality in the exercise of powers and duties vested upon public bodies.
 - 5.11 In proceeding at all material times from the point of shortlisting to the point of the offer and acceptance of the employment contract on the premise that

Mr Kachaje held Master's Degree, which was a requisite minimum requirement, when in fact this was not the case, the whole recruitment process was founded on voidable premises, and therefore void ab initio, on which premises the purported recruitment of Mr Kachaje is a nullity.

- 5.12 There is no evidence to substantiate the claim by the First Complainant that he was treated unfairly by the Board of MERA.
- 5.13. Some Board Members of MERA i.e. Mr. Likongwe and Mr. Chiwambo acted unethically in disclosing information relating to the interviews to third parties. This amounts to maladministration.

6.0 DIRECTIVES

- 6.1 Section 126 of the Constitution provides that; “ Where the investigations of the Ombudsman reveal sufficient evidence to satisfy him or her that an injustice has been done, the Ombudsman shall
 - a. direct that appropriate administrative action be taken to redress the grievance;
 - b. cause the appropriate authority to ensure that there are, in future, reasonably practicable remedies to redress a grievance; and
 - c. refer a case to the Director of Public Prosecutions with a recommendation for prosecution, and, in the event of a refusal by the Director of Public Prosecutions to proceed with the case, the Ombudsman shall have the power to require reasons for the refusal.
- 6.2 Section 8 (b) of the Ombudsman Act provides that the Ombudsman shall after holding an inquiry or investigation in accordance with the Act take appropriate action or steps to call for or require the remedying or reversal of matters or instances specified in section 5 through such means as are fair, proper and effective.

Section 5 of the Ombudsman Act, I have the mandate to inquire into and investigate any complaint laid before him/her concerning: any alleged instance or matter of abuse of power or unfair treatment of any person by an official in the employ of an organ of Government; or manifest injustice, or instances where any decision or recommendation taken by or made by or under the authority of any organ of Government or any act or omission of such organ is unreasonable, unjust or unfair or is biased; or any practice which may be deemed as such. Further to inquire into or investigate allegations that the powers, duties and functions which vest in any organ of Government are exercised or performed in a manner which is unreasonable, unjust or unfair.
- 6.3 On the basis of the above provisions, in view of the findings outlined herein, I hereby direct that:

The Board of MERA should proceed to effect the attendant administrative action as if the recruitment of Mr Kachaje in fact never happened and did not take place, including formally withdrawing the purported employment contract from him, including associated emoluments and attendant benefits forthwith.

7.0 RIGHT OF REVIEW

Any party dissatisfied with the determination as contained in this report is entitled to apply for review of this determination by the High Court pursuant to section 123 (2) of the Constitution of the Republic of Malawi within 3 months from the date hereunder.

Dated this 10th Day of November 2021

A handwritten signature in blue ink, appearing to read 'Grace Tikambenji Malera', with a stylized circular flourish at the beginning.

Grace Tikambenji Malera

Ombudsman