

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 243 OF 2017**

**THE BOARD OF TRUSTEES OF**

**THE PPF PENSION FUND.....PLAINTIFF**

**VERSUS**

**LAND MARK HOTEL LIMITED.....DEFENDANT**

**RULING**

*Date of last order 23/10/2019*

*Date of Judgment 29/10/2019*

**NGWALA, J.**

The counsel for the plaintiff Mr. Mkenda Kileo prayed for leave to amend the plaint in terms of Order VI rule 17 of Civil Procedure Code Cap. 33. R.E. 2002. The prayer was resisted by Mr. Shenyangi learned Advocate for the Defendant who vehemently opposed the application on the ground that, by virtue of Order VIII A Rule 4 of Civil Procedure Code, No departure from or amendment is allowed unless the court is satisfied that such departure is necessary for the interest of justice. For that reason, he prayed the court to struck out the suit.

In rejoinder, Mr. Nkenda Kileo insisted that the sole purpose for amendment is in order to enable the plaintiff to include in the Plaint the period in which the defendant did not remit pension Contribution of his employees which were not included both in the original and amended plaint.

It was stressed that if this evidence is not pleaded the court will not have the opportunity to determine those issues. Eventually, the defendant's employees will not be paid the pension benefits.

After a thorough perusal of this record it should be understood that as a matter of law, parties are bound by their own pleadings. It seems the plaintiffs are not seriously handling this matter. This is clear from the proceedings that, on 18<sup>th</sup> June, 2019 the plaintiff's counsel sought for leave to amend the pleadings because of the change of name by Act No. 2 of 2018 in terms of section 89 (1), 85 (1) of The Public Service Social Security Fund Act, No. 2 of 2018.

The plaintiff is now seeking another leave to amend the Plaint that goes to the root of the subject matter of the claim that is over and above the claimed amount and accumulated penalties. For that reason the prayer cannot be granted. Let the applicant institute a fresh suit in respect of that entire amount which the

plaintiff thinks is necessary to be included in the plaint. In that fresh or new plain the plaintiff shall be at liberty to put all or whatsoever amendments that are deemed fit to be included by the plaintiff to be the necessary amendments in respect of the subject matter, reliefs or the contents of the claim in the new plaint.

For the said reason this suit is struck out with liberty to institute or file a fresh suit as prayed in terms of Order XXIII Rule 2(b) of the Civil Procedure Code [Cap. 33 R.E. 2002].

In the circumstances, I make no order as to costs.

  
**A. F. Ngwala**

**JUDGE**

**29/10/2019**

29/10/2019

Coram: Hon. Dr. A. F. Ngwala, J.

Plaintiff

For the Plaintiff - Miss Anna Shayo (Advocate0

Defendant

Mr. the Defendant - Absent

B/C Masasi

**Court:** Ruling delivered in the presence of Miss Anne Shayo (advocate), and in the absence of the defendants counsel.

**Court:** Right of Appeal to Court of Appeal of Tanzania explained.



**A. F. Ngwala**

**JUDGE**

**29/10/2019**