

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 452 OF 2019**

**AFRICA RISK MITIGATION**

**SERVICE LIMITED .....APPLICANT/DEFENDANT**

***VERSUS***

**THE BOARD OF TRUSTEES OF THE NATIONAL**

**SOCIAL SECURITY FUND..... RESPONDENT/PLAINTIFF**

*Date of last Order: 10/3/2020*

*Date of the Ruling: 15/5/2020*

**R U L I N G**

**MGONYA, J.**

This is an Application for leave to defend the Summary Suit made under ***Order XXXV Rule 3 (1) (b) of the Civil Procedure Code, Cap. 33 [R. E. 2002]*** for the following orders:

- i. That this Honorable Court be pleased to grant leave to appear and defend in a summary suit filed by the Respondent pending in this Honorable Court;*
- ii. Costs of this Application be provided for; and*
- iii. Any other order/orders that this Honorable Court may deem fit to grant.*

This chamber application has been taken at the instance of the Applicant and is supported by the Affidavit sworn by Mr. **Elibariki Massawe**.

As this is the summary suit made by the Respondent herein, I commanded my eyes in reading the Amended Plaintiff in order to get the gist of the matter before the court which necessitated the rise of the instant Application.

Going through the same, it came to my knowledge that, the present suit is being filed under **Order XXXV of the Civil Procedure Code, Cap. 33 [R. E. 2002]** read together with **section 74A (2) of the National Social Security Fund Act Cap. 50 [R. E. 2018]**.

Further to that, the Plaintiff, the Respondent herein is a statutory body established under **section 53 of the National Social Security Fund Act Cap. 50 [R. E. 2018]** while the Defendant, the Applicant herein is the Company Limited registered under the Laws of Tanzania to wit, the **Companies Act Cap. 212 [R. E. 2002]**.

Material facts of the matter at hand is that, on 14<sup>th</sup> May, 2014; the Applicant was registered as a contributing member employer of the Plaintiff in accordance with the law establishing the Plaintiff/Respondent herein and was issued with a Membership Certificate of Registration Number **1000560** to that effect. Further that, in accordance with the law establishing the Respondent herein, the Applicant is required in

each month to make its own compulsory contribution and that of its employees at the rate of **10%** and **10%** respectively making a total of **20%** of the (member) employee's wage.

However, despite of all the requirements, the Applicant is now said to be in breach of its statutory obligations, and that it has defaulted remittance of members' principal contribution amounting to **Tshs. 397,967,538.78** being the outstanding principal members' contributions which accumulated penalties amounting to **Tshs. 163,520,585.40** for the total period of thirty eight (38) months covers various periods between **November, 2015 to December, 2018**; which sum continues to accrue as long as it remains due.

In the event therefore, the Respondent's claims against the Applicant are for payment of **Tshs. 561,488,124.18 (say Tanzanian Shillings Five Hundred Sixty One Million Four Hundred Eighty Eight Thousand One Twenty Four and Eighteen Cents Only)** being outstanding principal members' contributions plus accumulated penalties thereon which sum continues to accrue as long as it remains due as aforementioned.

Further that, as a result of the Applicant's breach to heed to its statutory obligation to remit members' contributions to the Respondent as required by the law, the Respondent on numerous occasions, demanded the performance of the said statutory obligation by the Applicant on remittance of members'

contributions, it is alleged that, still the Applicant has to date failed, refused and/or defaulted to heed to the Respondent's rightful demands as presented or at all, hence the filing of the Summary Suit.

Going through the Applicant's Affidavit and submission, it came to the knowledge of the court that, the Applicant allege to have been in dialogue with the officials of the Respondent regarding some of the outstanding amount. Further, the officials of the Respondent responsible for Kinondoni Region are aware that the outstanding amount was caused by unfaithful acts of the Applicant and in that regard, there is a pending case in this Honorable Court to recover that sum through, **Civil Case No. 2 of 2018**. In support of the said allegation, the copy of the plaint to the said case is attached to.

Further, it is the Applicant's assertion that the claim of the Respondent in **Civil Case No. 140/2018** is not realistic as a huge sum of money has already been remitted to the Respondent. That owing to the above shown circumstances and delays on the part of the Respondent, it has made it difficult on the part of the Applicant to know the exact remaining sum because the Applicant has paid a huge part of the then outstanding amount, and yet the Applicant is still stranded as to the exact amount which is required to be paid.

From the above information as seen in the Applicant's affidavit and submission, it is the Applicant's view and prayer

that it is just and equitable that the leave be granted in order to enable the Applicant to appear and defend the suit and thereby ensure the ends of justice as far as the situation of the matter is concerned.

Going through the parties' submissions, I have considered the Plaintiff's / Respondent's claim in the main suit and the opposite side argument presented by the Applicant herein in respect of the same. One thing stands out clear, and it is the fact that the Applicant herein has denied the fact that they are required to pay the Respondent for the above stated reasons. It is from the above facts, **there is therefore a dispute between the parties.**

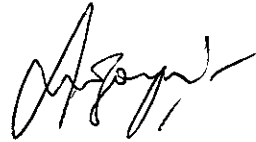
The said dispute of facts presents itself as a triable issue by any definition. In the event therefore, it is fair and just that each party be granted with an opportunity to be heard on the transactions concerning and involving the amount that the Applicant is required to make its statutory payment. The role of the court in deciding whether or not there is a factual dispute to resolve which arose from the affidavit evidence presented before the court, needs one to submit and the other to defend.

Going further to deny the Applicant to defend the summary suit where there is a demonstrated triable issue, it will go against the rules of natural justice, that is the right to be heard.

From the above explanation, this court is indeed satisfied that a triable issue is disclosed in the application for leave to defend. In the event therefore, **the Applicant is hereby granted leave to appear and defend the Summary Suit in respect of the matter before the court.**

I make no order as to costs.

It is so ordered.



**L. E. MGONYA**  
**JUDGE**  
**15/05/2020**

**Court:** Ruling delivered before Hon. R. B. Massam, Deputy Registrar in chambers in the presence of Mr. Ndelwa Lugwiso, Advocate for the Applicant, Mr. Karim Rashid, Advocate for the Respondent and Ms. Janet RMA, this 15<sup>th</sup> day of May, 2020.



**L. E. MGONYA**  
**JUDGE**  
**15/05/2020**