

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

CIVIL CASE NO. 61 OF 2019

**THE BOARD OF TRUSTEES OF THE PUBLIC
SERVICE SOCIAL SECURITY FUND..... PLAINTIFF
VERSUS
CLASSIC PROFESSIONAL CATERER.....DEFENDANT**

SUMMARY JUDGMENT

22th day of February, 2021

MASABO, J.

On 5th May 2019, the plaintiff herein filed a Summary Suit against the defendant claiming amongst other things for payment of Tanzanian Shillings Forty Hundred Eighty-Eight Million Four Hundred Twenty-Five Thousand Seven Hundred Eighty-Two and Twenty-Five Cents (say Tshs 488, 425,782.25) being unremitted members' contribution plus accumulated penalties payable to the plaintiff by the defendant as statutory social insurance contribution in respect of her employees from 2013 to October 2017.

It was pleaded that, the Defendant being an employer and registered member of the plaintiff with Registration No. 2150322, defaulted remittance of Tshs 73,530,000/= being her employee's social insurance contribution [comprising of 20% of the employee's salary (10% direct deductible direct from the employee's salary and 10% payable by the employers)] for the

period of January 2013 to October 2017. The said amount, had at the date of filing the suit accumulated penalties worth Tshs 414,725,782. 25. It is further alleged that the defendant has defaulted payment in spite of several demand notices issued to them. A document showing the outstanding sum and accrued penalties and correspondences between the parties in which the claimed non-remittance of Tshs 73,700, 000/= is fully acknowledged by the defendant are attached to the plaint.

Having filed the summary suit and upon service being effected on the defendant she applied for leave to defend the suit. On 20th day of July 2020, I granted leave to the defendant to appear and defend the suit subject to payment of the uncontested contribution of Tshs 73, 350,000/ as per section 62 (2) of the Public Services Social Security Fund Act, 2018. The sum was payable within 30 days from the date of the leave. The defendant did not deposit the amount. On 2nd November 2020 he prayed for extension of two months which was granted in consideration of broad interest of justice. But, as of today she has not complied. Her counsel, Ms. Richard, has casually submitted without rendering any proof that the defendant has managed to deposit 12 million only and prayed for the wisdom of this court.

Ms. Sukaina Farouk, counsel for the plaintiff, has submitted that, following the defendant's failure to comply with the court's order, the defendant's leave to appear and defend the suit has become obsolete. In view of this, she has invited this Court to enter a summary judgment in favour of the

Plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Act, Cap. 33, RE 2019 as the defendant has forfeited her right.

It is a trite law that where a summary suit is filed the defendant cannot enter appearance and defend the suit until he obtains leave of the court. In the event of failure to obtain leave the allegation contained in the plaint shall be deemed to be admitted by the defendant and the plaintiff shall be entitled to decree as per Order XXXV Rule 2 (2) (a) to (c) of the Civil Procedure Act, Cap. 33 RE 2019.

In the instant case, the plaintiff successful obtained the leave to defend the suit. However, he has failed to comply with the order contingent to the leave. The question that follows is whether, by failure to furnish the amount the defendant has forfeited his right to defend the suit and has rendered the leave obsolete.

In my humble view, this question attracts an affirmative answer. I say so guided by the rationale behind "Summary Procedure". The Procedure is meant to enable the plaintiff to obtain judgment expeditiously where the defendant has in effect no substantial defence to the suit and to prevent such a defendant from employing delaying tactics to postpone the day of reckoning (see **CRDB Bank Limited v. John Kagimbo Lwambagaza** [2002] TLR 117). Through this procedure the plaintiff with a liquidated claim to which no good defence exists, is facilitated to obtain a quick and summary judgment without being unnecessary kept from what is due to him by the

delaying tactics of the defendant (**Zola and Another vs Ralli Brothers Ltd and Another** [1969] EA 691, 694).

Having defaulted the order to deposit the amount ordered by this court which was a conditional precedent for exercising the right to appear and defend the suit, the defendant is deemed to have forfeited her right as the leave has become obsolete. The Plaintiff herein is, consequently, entitled to a summary judgment.

Accordingly, a summary judgment in favour of the plaintiff is entered and is hereby decreed that: -

1. The defendant is in breach of her legal duty to remit the employee's social insurance contributions;
2. The defendants shall pay the Plaintiff an outstanding amount of **Tshs. 488,425,782.25** (Forty Hundred Eighty-Eight Million Four Hundred Twenty-Five Thousand Seven Hundred Eighty-Two and Twenty-Five Cents) being unremitted members' contributions payable to the plaintiff by the defendant as statutory social insurance contribution for the period from January 2013 to October 2017 plus accumulated penalties;
3. The defendants shall pay the plaintiff an interest on the default amount in (1) above to be charged at the rate of 7% per annum charged from October 2017 to the date of judgment;

4. The defendants shall pay the plaintiff an interest at a rate of 7% per annum on the decretal amount from the date of judgment to the date of full payment;
5. Costs to follow event.

DATED at **DAR ES SALAAM** this 22th day of February, 2021



J. L. MASABO

JUDGE

