

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CIVIL APPLICATION NO. 50 OF 2019

(Originating from Civil case No. 2 of 2019)

ARUSHA MODERN SCHOOL..... APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF THE

NATIONAL SOCIAL SECURITY

FUND..... RESPONDENT

RULING

20/9/2021 & 15/10/2021

ROBERT, J:-

The Applicant, ~~Arusha Modern School~~ seeks leave of this Court to appear and defend Civil Case No. 2 of 2019 brought to this court under Summary Procedure, Order XXXV of the Civil procedure Code, Cap 33 R.E 2002. The application is supported by an affidavit sworn by Mr. Khalfan Said Masoud, Applicant's Principal Officer.

By a plaint filed in this court on 14th February, 2019, the Board of Trustees of the National Social Security Fund, the Respondent herein, filed Civil Case No. 2 of 2019 under summary procedure against Arusha Modern

School. The Applicant filed the present application seeking leave to appear and defend the case against her.

When the application came up for hearing on 20/9/2021, **Mr. Asubuhi Yoyo**, Learned Counsel represented the Applicant whereas **Mr. Frank Idd**, State Attorney appeared for the Respondent. The application proceeded orally.

The learned counsel for the Applicant, submitted that the pertinent question to be addressed is whether this application meets the threshold required by the law and whether it is in the interest of justice for the Applicant to defend Civil Case No. 2 of 2019. He maintained that, the threshold required by the law is triable issues and sufficient facts capable of convincing the Court to grant the application.

He submitted further that, this application raises triable issues and there are sufficient facts which puts the verifiability of claims into serious questions. He referred the Court to paragraph 7-14 of the Applicant's affidavit where the Applicant raised a number of issues which calls for verifiability of numbers and figures in the claims.

On the basis of the stated premises he submitted that it is in the interest of justice for the Court to allow this application in order to enable the Applicant to challenge specific issues as raised in the affidavit.

On the other hand, the Respondent opted to support the application. Counsel for the Respondent informed the Court that for the interest of justice the Respondent would not object the application and therefore he supported the prayer support by the Applicant.

Now, having considered the record, the brief submissions by the parties and requirements of the law, I will now determine the merit of the application.

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 CPC.

In the case of **J. Mwanauta & Company Hunting Safaris (T) Limited & 2 Others vs National Bank of Commerce**, Commercial Case No. 3 of 2014 (Unreported) that;

"In application of this nature, the court is not required to involve itself in lengthy arguments but, rather, to look upon the affidavit filed in support of the application to see whether the deposed facts

have demonstrated a triable issue fit to go trial. The applicant is only required to show a fair and reasonable defence."

The Applicants has stated in the affidavit supporting the application that the principal claim by the Respondent of TZS 180,496,042 is highly improbable and leave much to be desired since it appears completely different from the truth known to the Applicant and some of the labourers appearing in the annexures to the plaint are no longer working with the Applicants and they are not aware of their whereabouts. The said averment raised triable issues which can only be proved if the Applicant is granted leave to appear and defend Civil Case No. 2/2019. (See **Tanzania telecommunications Company Limited vs. Timothy Lwoga**, [2002] TLR 150 where it was held that a defendant is entitled to leave to appear and defend a summary suit if it is shown that there are triable issues in the case)

Consideration the reasons discussed herein, the Court is convinced that the Applicant has disclose such facts as the court may deem sufficient to support the application and demonstrated sufficient reasons to be entitled for leave to appear and defend the summary suit filed by the Respondent.

In the upshot, leave is given unconditionally. The Applicant should file her defence within twenty (21) days from the date of this order.

It is so ordered.



K.N. Robert
K.N. ROBERT
JUDGE
15/10/2021

