

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

AT DAR ES SALAAM

CIVIL CASE NO. 29 OF 2021

**THE BOARD OF TRUSTEES OF THE
NATIONAL SECURITY FUND.....PLAINTIFF**

VERSUS

SIMON LOGISTICS GROUP LTD.....DEFENDANT

SUMMARY JUDGMENT

Date of Last Order: **02/11/2021**

Date of Judgment: **10/11/2021**

ITEMBA, J:

On the 19th February 2021, the plaintiff herein filed a Summary Suit against the defendant claiming amongst other things for payment of Tanzanian Shillings Two Hundred Ninety-Five Million Seventy-Eight Thousand Two Hundred Sixty-Five Hundred and Eighty Cents (**Tshs 295,078,265.80/=**) 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 October 2014 to December 2017.

It was pleaded that the defendant being an employer and registered member of the plaintiff with **Registration No. 1002753**, defaulted remittance of members' principal contribution amounting to **Tshs. 292,102,265.80/=**[comprising of 20% of the employee's salary

(10% direct deductible from the employee's salary and 10% payable by the employers] for a period between January 2016 and January 2020. It also includes the outstanding penalties amounting to Tshs. 2,976,000/= for the period of October 2014 to December 2014 which continues to accumulate as long as it remains due.

It was further alleged that the defendant has defaulted payment despite several demand notices issued to them by the plaintiff. A report showing the outstanding sum and accrued penalties and correspondences between the parties in which the claimed non remittance of 292,102,265.80/= is fully acknowledged by the defendant as attached to the plaint.

Upon filing a summary suit and having effected service to the defendant, the defendant did not apply for leave to defend the suit. Mr. Godfrey Ngwembe, learned state attorney representing the plaintiff prayed for 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 Code, Cap 33 R.E 2019 (herein after referred to as a CPC), as the defendant is failed to lodge her leave to defend the suit within a statutory time of 21 days from the date of service.

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 a decree as per Order XXXV Rule 2 (2) (a) to (c) of the CPC.

The provision reads;

2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled;-

(a) where the suit is a suit, referred to in paragraph (a), (b) or (d) of rule 1 or a suit for the recovery of money under a mortgage and no other relief in respect of such mortgage is claimed, to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith;

(b) Where the suit arises out of a mortgage and is for delivery of possession, redemption, discharge or transfer to a decree in accordance with the provisions of Order XXXII and other provisions of this Code and such decree may, subject to exercise by the court of such powers as it may have, unless it is a preliminary decree, be executed forthwith;

(c) where the suit is for the recovery of possession of any immovable property, building or premises or for payment of rent, mesne profits or damages for unlawful occupation of such immovable property, building or premises, to a decree for possession and for payment of

rent, mesne profits or damages as claimed. [Emphasis is added]

In the instant case, the defendant has not absolutely applied for the leave to defend and the plaintiff has proved to the satisfaction of the Court that she had duly served the defendant. The issue now is *whether the plaintiff is entitled to a summary judgment*. I believe the answer is very straight that she is entitled to a summary judgment as the matter of law. As expounded above the defendant had failed to apply for leave to defend the suit. The procedure invoked by the plaintiff of instituting a summary suit, is always meant to enable the plaintiff to obtain judgment expeditiously where the defendant has no substantial defence to the suit (See **CRDB Bank Ltd vs. John Kagimbo Lwambagaza** [2002] TLR 117 and **The Board Of Trustees Of The Public Service Social Security Fund vs. Classic Professional Caterer**, Civil Case no. 61/2019, HCT at Dar es Salaam (Unreported)). Henceforth, the plaintiff herein is 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 defendant shall pay the plaintiff an outstanding amount of Tanzanian Shillings Two Hundred Ninety-Five Million Seventy-Eight Thousand Two Hundred Sixty-Five Hundred and Eighty Cents (**Tshs 295,078,265.80/=**) being unremitted members' contribution payable to the plaintiff by the defendant as statutory social insurance contribution in respect of her

employees from October 2014 to December 2017 plus accumulated penalties.

3. The defendant shall pay the plaintiff an interest on the decretal sum at an overall lending interest rate of 16.28% per annum charged from January 2016 when the sum accrued to the date of delivery of Judgment.
4. The defendant shall pay the plaintiff an interest on the decretal sum at the prescribed Court rate of 7% per annum charged from the date of delivery of judgment to the date of full payment.
5. Costs to follow the event.

It is so ordered.



Handwritten signature of L. J. Itemba in blue ink.

L. J. Itemba

JUDGE

10/11/2021

COURT-Judgement is delivered under my hand and seal of the court in the presence of Mr. Ismail Ismail State Attorney for the Plaintiff, Ms. Emma RMA in the absence of the defendant.



Handwritten signature of L. J. Itemba in blue ink.

L. J. Itemba

JUDGE

10/11/2021