

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 79 OF 2019**

**THE BOARD OF TRUSTEES OF THE PUBLIC**

**SERVICE SOCIAL SECURITY FUND.....PLAINTIFF**

**VERSUS**

**TANZANIA MINES ENERGY &CONSTRUCTION**

**WORKERS UNION (TAMICO) .....DEFENDANT**

**SUMMARY JUDGMENT**

27 & 31/5/2022

**MASABO, J.:-**

Before me is a summary suit filed under Order XXXV rule 2(1) of the Civil Procedure Code [Cap 33 R.E. 2019]. By this suit, the Board of Trustees of the National Social Security Fund (NSSF) prays for a summary judgment and decree against the defendant for payment of a sum of Tshs 565,393,498/= being unremitted members' contribution plus accumulated penalties for the period between April 2014 to December 2018. She has alleged that, the defendant being an employer and her registered member Registration No.

562033 is duty bound to remit to NSSF statutory monthly social insurance contributions for her employees.

In total abdication of this duty, the defendant has not remitted the mandatory statutory contribution in respect of her employees for the period above stated. Consequently, the principal sum, comprising of 20% of each employee's monthly salary, has accumulated to Tshs 280,635,408/- and the accrued penalties has scaled to Tshs 284,758.090/= making the total outstanding sum of Tshs 565,393,498/= which is now claimed in the instant suit.

Upon a notice for summary suit been issued and served on the defendant she did not immediately seek for the leave which would have enabled her to appear and defend herself. After the effluxion of time, she turned up with an application for extension of time. The application ended futile after it was dismissed for want of merit.

After conclusion of the barren application, the plaintiff, represented by Ms. Zainab Juma, learned State Attorney invited this court to enter a summary

judgment and decree in favour of the Plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Code.

It is a trite law in our jurisdiction that where a summary suit is filed the defendant can neither enter appearance or defend himself unless he obtains a leave of court. Failure/omission to obtain leave is tantamount to an admission of the claims and entitles the plaintiff to a decree as per Order XXXV Rule 2 (2) (a) to (c) of the Civil Procedure Code.

In the present case, as expounded above, the defendant's attempt to obtain leave to appear and defend herself against the allegation ended barren after her application for enlargement of time within which to apply for leave was dismissed for want of a good cause. Under the circumstances and guided by the principle behind summary procedure, I am of the settled view that this is a fit case for summary judgment to issue.

Accordingly, a summary judgment is entered in favour of the plaintiff that, the defendant has offended the mandatory statutory duty to remit her

employee's social insurance contributions to the plaintiff. She is consequently ordered to pay:

1. The outstanding amount of **Tshs.** 565,393,498/= comprising of unremitted members' contributions due to the plaintiff as statutory social insurance contribution for the period from April 2014 to December 2018 plus accumulated penalties;
2. An interest on the decretal amount at the of 12% per annum charged from the date of judgment to the date of full payment;
3. Costs to follow event.

**DATED** at **DAR ES SALAAM** this 31<sup>th</sup> day of May 2021

X



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Signed by: J.L.MASABO

J. L. MASABO

**JUDGE**

