

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MBEYA

MISC. LABOUR APPLICATION NO. 11 OF 2022

(From Labour Execution No. 12 of 2021 in the High Court of Tanzania at Mbeya.)

**THE BOARD OF TRUSTEES OF
THE NATIONAL SOCIAL SECURITY FUND.....APPLICANT**

VERSUS

RASHID NDITI.....1ST RESPONDENT

MLIMA MBEYA VIEW ACADEMY t/a HIGH SCHOOL.....2ND RESPONDENT

MR. EUGEN TEMIGUNDA t/a FAGIO COURT BROKER.....3RD RESPONDENT

RULING

Date of Hearing: 01/06/2022
Date of Ruling : 01/07/2022

MONGELLA, J.

The application at hand has been filed for purposes of moving this Court to grant orders for payment of outstanding statutory contributions to the tune of TZS, 102,111,545/- before the distribution of the proceeds of the sale of Plot No. 1350 Block "M" located at Forest area within Mbeya City Council.



The application is brought under section 94 (1)(d)(e)(f) of the Employment and Labour Relations Act, Cap 366 R.E. 2019; Rule 24(1), (2)(a)(b)(c)(d)(e)(f); and (3)(a)(b)(c) and (d) of the Labour Court Rules, 2007 G.N. No. 106 of 2007; Section 75 of the National Social Security Fund Act, Cap 50 R.E. 2018; and Section 68(b)(e), and 95 of the Civil Procedure Code, Cap 33 R.E. 2019. It is supported by the affidavit of one, **Deus N. Jandwa**, principal officer of the applicant.

The brief facts of the case are as follows: Being a registered contributing member of the applicant, the 2nd respondent defaulted in remitting statutory contributions for her employees, which culminated into a debt of TZS. 102,111,545/- which is divided into two parts being: TZS. 85,868,000/-, as outstanding contributions for a number of months from October 2015 to December 2020, and TZS. 16,243,545/-, as penalties accrued from the outstanding amount. The applicant filed a summary suit against the 2nd respondent in an endeavour to recover the monies, in the Resident Magistrates' Court for Mbeya in Civil Case No. 15 of 2021. The case was decided in her favour in an *ex parte* judgment which was entered upon non-appearance of the 2nd respondent despite being dully served. The copy of judgment was attached as "annexture NSSF-5" on the supporting affidavit.

Before moving to execute the decree, the applicant learnt from a warrant of attachment fixed at plot No. 1350 Block "M" at Forest area in Mbeya City Council (annexture NSSF-6), the property of the 2nd respondent against whom the applicant had issued notice of claim, that the 3rd respondent had attached the said property for execution of a

court decree that was issued by this Court, Labour Division in Execution Case No. 12 of 2021, in favour of the 1st respondent. This led into filing the application at hand.

All respondents were duly served. As per the affidavit of the process server, the 2nd respondent's principal officers refused to accept summons. The Court thus fixed the date for hearing, that is, on 01st June 2022 with an order that the matter shall proceed *ex parte* against the 2nd respondent if she shall fail to enter appearance. On the particular date, the 2nd respondent never entered appearance and the matter proceeded *ex parte* as ordered by the Court. It was argued orally.

The 1st and 3rd respondent in their counter affidavits conceded to the applicant's application and prayers. Even on attendance in court, they notified the Court that they support the applicant's application, thus never replied in contention. It was Ms. Marietha Matupa, counsel for the applicant, who argued her case before the Court.

Ms. Matupa submitted that the applicant filed a civil matter against the 2nd respondent under summary suit in the RMs court for Mbeya. She said that the root of the claim against the 2nd respondent stems from him being a registered contributing member of the applicant having being registered on 14th January 2007. She referred to the Certificate of Registration attached as "annexture NSSF-1" on the supporting affidavit. She said that, the 2nd respondent defaulted to remit the statutory contribution for her employees from October 2015 to December 2020 which led into a debt of TZS. 85,868,000/-, as statutory principal

contribution and a penalty of TZS. 16,243,545/-. The debt remained unpaid despite several follow ups and reminder letters to the 2nd respondent.

She continued to submit that the applicant then filed Civil Case No. 15 of 2021 in the RMs court claiming, among other reliefs, the total sum of TZS. 102,111,545/-. The case was decided in favour of the applicant. Referring to **section 75 of the National Social Security Fund Act**, she argued that the Director General of the applicant Fund is empowered to institute a notice of claim/plaint where he sees that there is a defaulting employer whose property has been attached for execution. The aim of that is to make NSSF part of the execution for it to recover its monies. She said that where a notice of claim has been lodged, the provision directs that before the money/property is distributed to other creditors, the NSSF contributions should be paid first.

Ms. Matupa further argued that the 1st respondent, Rashid Nditi, lodged an application before this Court for execution in Execution No. 12 of 2021 against the 2nd respondent seeking to enforce a decree of this Court issued on 15th April 2015. She said that the application was granted on 27th October 2021 whereby the 1st respondent through the 3rd respondent, who is a court broker, were permitted to attach and sell the 2nd respondent's property on plot No. 1350 Block "M" at Forest area in Mbeya City. That the applicant learnt of the situation on 21st March 2022 from a warrant of attachment fixed at plot No. 1350 Block "M" at Forest area Mbeya City. She said that the applicant had also already issued a notice of claim against the same property, hence the application at hand to



recover the statutory contributions out of proceeds of sale or realisation of Plot No. 1350 Block "M" located at Forest area in Mbeya City.

She added that under **section 6, 14, 18, 21, 23, and 75 of the NSSF Act, Cap 50 R.E. 2018** as well as under trite labour laws, the judgment debtor, and former employees are entitled to payment of the statutory social security contributions out of proceeds of sale or realisation of plot No. 1350 Block "M" Forest area, Mbeya City.

In the premises, she prayed for this Court to make orders that the applicant be paid statutory contributions and penalties amounting to TZS. 102,111,545/- before distribution of proceeds that shall be realised after sale in execution of plot No. 1350 Block "M" Forest area, Mbeya City. She also prayed for costs of the suit on both cases, that is, the application at hand, and the one in the RMs court.

After considering the arguments by Ms. Matupa, I find it is clear that the applicant had obtained a decree against the 2nd respondent whereby she had already issued a notice of claim against. The 1st respondent had also obtained a decree against the 2nd respondent in a labour cause, which he was in process of executing through the 3rd respondent. There are therefore a number of persons with interest on property of the 2nd respondent situated at plot No. 1350 Block "M" Forest area, Mbeya City.

As argued by Ms. Matupa, **section 75 of the National Social Security Fund Act, Cap 50 R.E. 2018** gives priority for payment of contribution. For ease of reference, the provision states:

75. Where the Director-General has given the court written notice of a claim under this Act and-

- (a) **any attachment is issued against the property of an employer in execution of a decree against him and any such property is seized or sold or otherwise realised in pursuance of such execution; or**
- (b) **on the application of a creditor the property of an employer is sold, the proceeds of the sale or other realisation of such property shall not be distributed to any person entitled thereto until the court ordering the sale or realisation has made provision for the payment, after the payment of costs of sale or realisation, of any amounts due in respect of contribution payable by the employer under this Act before the date of such order.**

In accordance with the NSSF Act, the monthly statutory contributions are for the benefits of the employees including retirement benefits, thus the need for the employees' rights to be protected at any cost by ensuring payment of the contributions even in circumstances of the employer losing his business. In consideration of the provisions of section 75 of the NSSF Act as quoted above, I find the applicant's application having merit and grant it. I therefore order that the applicant be paid TZS. 102,111,545/- as statutory monthly contributions and accruing penalties before distribution of proceeds to be realised after sale in execution over Plot No. 1350 Block "M" Forest area within Mbeya City Council.

Ms. Matupa prayed to be awarded costs, however considering that the application has been brought in connection to execution of a decree in

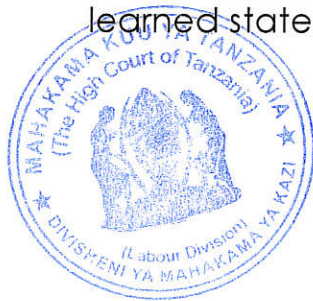


a labour matter under the Employment and Labour Relations Act and the Labour Court Rules, I make no orders to costs.

Dated at Mbeya on this 01st day of July 2022.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 01st day of July 2022 in the presence of the 3rd respondent and Mr. Amedeus Mallya, learned counsel, holding brief for Ms. Marietha Matupa, learned state attorney, for the applicant.




L. M. MONGELLA
JUDGE