

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

AT DAR ES SALAAM

CIVIL CASE NO. 197 OF 2021

THE BOARD OF TRUSTEES OF THE PUBLIC

SERVICE SOCIAL SECURITY FUND.....PLAINTIFF

VERSUS

TANZANIA MINES ENERGY &CONSTRUCTION

WORKERS UNION (TAMICO)DEFENDANT

SUMMARY JUDGMENT

MASABO, J.:-

By a plaint filed in this court under Order XXXV rule 2(1) of the Civil Procedure Code [Cap 33 R.E. 2019], the plaintiff prays for a summary judgment and decree against the defendant for payment of Tanzania Shillings Six Hundred Twenty- Eight Million Two Hundred Nineteen Thousand Seven Hundred Ten and Thirty Seven cents (Tshs 628,219,710.37) being unremitted members' contribution and accumulated penalties due and payable to the plaintiff; a commercial interest on the sum above to the rate of 15% per annum from February 2020 when the sum above accrued to the date of judgment, an interest on the decretal sum to a rate of 7% per annum from the date of judgment to final settlement and costs of the suit.

The facts averred in the plaint are that, the defendant is the plaintiff's registered contributing employer with a Membership Certificate of Registration No. 585424. Hence, she is statutorily obliged to remit to the plaintiff monthly statutory contributions in respect of social insurance for her employees. In abdication of this obligation, for the period between February 2020 to December 2020, the defendant did not remit the contribution constituting of 15% of the monthly salary of each employee (5% deductible from the employees' salary and 10% payable by the employer). In consequences, the default has accumulated to Five Hundred Fifty-Nine Million Four Hundred Ninety Thousand Five Hundred Sixty Six and Ninety Nine cents (Tshs 559,490,566.97) and has attracted a penalty of Sixty Eight Million Seven Hundred Twenty Nine Thousand One Hundred Forty Three and Forty Cents (Tshs 68,729,143.40) hence a total of Tanzania Shillings Six Hundred Twenty- Eight Million Two Hundred Nineteen Thousand Seven Hundred Ten and Thirty Seven cents (Tshs 628,219,710.37) claimed in this suit.

Upon a notice for summary suit been issued and served on the defendant on 24th January 2022, she did not seek for leave which would have enabled

her to appear and defend herself. The plaintiff, represented by Mr. Kennedy Kasongwa, learned State Attorney, has in consequence prayed that a summary judgment and decree be entered in favour of the Plaintiff in terms of Order XXXV Rule 2 (2) (a) of the Civil Procedure Code read in conjunction with section 74A of the National Social Security Fund Act, [Cap 50 RE 2018].

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 as per Order XXXV Rule 2 (1) and (2) of the Civil Procedure Code [Cap 33 RE 2019] which provides that:

2.-(1) Suits to which this Order applies shall be instituted by presenting a plaint in the usual form but endorsed "Order XXXV: Summary Procedure" and the summons shall inform the defendant that unless he obtains leave from the court to defend the suit, a decision may be given against him and shall also inform him of the manner in which application may be made for leave to defend.

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...

Since the defendant in the present case has made no attempt to obtain the leave to appear and defend herself against the claims, the claims have remained unrefuted and are consequently deemed to have been admitted. The plaintiff is therefore entitled to a summary judgment and decree.

Accordingly, a summary judgment is entered in favour of the plaintiff and is decreed that, the defendant has breached her statutory duty to remit her employee's social insurance contributions to the plaintiff. She is consequently ordered to pay the outstanding amount of Tanzania Shillings Six Hundred Twenty- Eight Million Two Hundred Nineteen Thousand Seven Hundred Ten and Thirty-Seven cents (Tshs 628,219,710.37). For purposes of clarity, the amount payable comprises of:

- i. Five Hundred Fifty-Nine Million Four Hundred Ninety Thousand Five Hundred Sixty-Six and Ninety-Nine cents (Tshs 559,490,566.97) unremitted members' contributions due to the

plaintiff as statutory social insurance contribution for the period from February 2020 to December 2020 and

- ii. Accumulated penalty to a tune of Sixty Eight Million Seven Hundred Twenty Nine Thousand One Hundred Forty Three and Forty Cents (Tshs 68,729,143.40) An interest on the decretal amount at the of 12% per annum charged from the date of judgment to the date of full payment;

In addition, the defendant shall pay an interest on the sum above to a rate of 12% per annum from the date of judgment to final settlement. Costs shall follow event.

DATED at **DAR ES SALAAM** this 15th July 2022

X



Signed by: J.L.MASABO

J. L. MASABO

JUDGE

