

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**CIVIL CASE NO. 26 OF 2019**

**HAWA HASSAN (As Administratrix of the  
Estate of the Late Daudi Gabriel Songo) .....PLAINTIFF**

**VERSUS**

**THE BOARD OF TRUSTEES OF THE PUBLIC  
SERVICE SOCIAL SECURITY FUND (PSSSF).....1<sup>ST</sup> DEFENDANT**

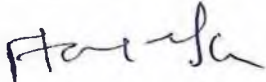
**THE BOARD OF TRUSTEES OF THE  
PUBLIC PARASTATAL FUND (PPF).....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

06.04.2022 & 28.4.2022

**N.R. MWASEBA, J.**

The plaintiff, Hawa Hassan (As administratrix of the Estate of the Late Daudi Gabriel Songo), filed an action against the defendants jointly and severally seeking the following orders: 

- i. The payment of Tsh. 75,000,000/= (Tanzania Shillings Seventy-Five Million) as per paragraph 5.
- ii. The general damages to be assessed by this court.
- iii. Costs of the suit.
- iv. Any other relief (s) this court may deem just to grant.

The plaintiff alleges that her claim arose from the failure of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to pay her late husband (Daudi Gabriel Songo) his pension benefits (lump sum) a total of TZS 75,000,000/= as required by the law following his retirement from office in 2001. She added that, at first the deceased was a member of the 2<sup>nd</sup> defendant (The Public parastatal Fund (PPF)) and that due to the establishment of Public Service Social Security Fund (PSSSF) in the year 2018, PPF and other pension funds have joined the PSSSF in accordance with the law and all the beneficiaries of PPF were also transferred to PSSSF. Despite several follow -ups to PPF and later on to PSSSF she was informed that the deceased had already received his lump sum payment before his death way back in 2004 and 2005, thus, there is nothing for him to be paid.

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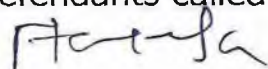
On the 15<sup>th</sup> day of July, 2019, the plaintiff lodged this suit claiming for TZS 75,000,000/= being the lump sum pension payment of the late Daudi Gabriel Songo, his late husband.

On the other hand, the defendants, through their written statement of defence, disputed the allegation of the fact contained in the plaintiff's plaint on the ground that the late Daudi Gabriel Songo, had already received his pension before his demise and prayed for the dismissal of the suit.

The following issues were framed and recorded for determination on this matter:

1. Whether the first and second defendants paid fully the pension benefits to the late Daudi Gabriel Songo's bank account No. 40802505757 at the National Microfinance Bank (NMB).
2. What reliefs are the parties entitled to.

When the suit was called for hearing Mr Baraka Sulus, learned counsel represented the plaintiff whereas Mr Peter Msetti, senior state attorney represented the defendants. To prove her case, the plaintiff stood as a sole witness on her side, while the defendants called two witnesses.



The plaintiff testified as PW1 and informed the court that she was the legal wife of the Late Daudi Gabriel Songo and she submitted their marriage certificate which was received and admitted in court as exhibit P1. She told the court that her husband died on the 7<sup>th</sup> day of June, 2014 at Mount Meru Hospital at the age of 62.

She went further submitting that, her late husband (Daudi Gabriel Songo) was employed by Tanzania Tea Blenders in 1978 as a sales Manager and retired in 2001. She added that, her husband did not receive his final retirement benefits despite having made several follow-ups to PPF until the time of his death. However, she admitted that her husband was receiving his monthly payment of TZS 50,000/= after his retirement up to his demise. She submitted further that after the demise of her husband she received monthly payment for few months then one day she received a letter from PPF which terminated the monthly payment and she was informed to wait for the final payment which would be deposited through the said account. Following the said act, she alleged that the NMB bank advised her to take legal action against PPF concerning the payment of her late husband's pension.

She testified further that, in 2015, she decided to make follow-up to PPF headquarters in Dar es Salaam and on the 11<sup>th</sup> day of August, 2015 she

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was informed that her husband had already received his final payment via PPF branch at Arusha. Later, she met with the PPF officers through a meeting convened at the office of Arusha District Commissioner where the PPF officers informed her that she had no claim against PPF because her husband had already received his pension benefits.

In 2017, she went back to PPF headquarters in Dar es Salaam where they informed her that the headquarters' office had moved to Dodoma. In 2018 she went to Dodoma at Prime Minister's office which communicated with the PPF office and the District Commissioner. Then they advised her to make follow-up of the matter at Arusha. Then she came back to Arusha where the District Commissioner helped her with her claim but the PPF office was not cooperative. Thereafter, she decided to file this matter before the court after having consulted the Legal and Human Rights Centre.

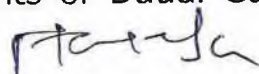
When she was cross-examined by the defendants' counsel, PW1 told the court that she was not aware of the salary of her late husband. However, she was told by her late husband that he was claiming for Tshs. 75,000,000/= before his death as he worked for 35 years with that company.

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During re-examination, she told the court that she had never received any document or cheque to prove that her husband was paid his pension benefits.

On their part, the defendants brought two witnesses. DW1, Musa James Lumala who is a team leader branch operation testified that, he is working with NMB since 2020 and his duties are to supervise his staff and make sure they provide timely quality services to customers. He was called before the court to bring documents listed in his summons which is bank statement of the late Daudi Gabriel Songo who was their customer with Account Numbers 4080205757 and 4082505757. He added that those account numbers belong to one person they only became two accounts after NMB started using a new system whereby they added a "0" to his account.

He testified further that, he was ordered by the court to print bank statement of the late Daudi Gabriel Songo from 32.07.2001 up to 30.05.2015. He stated that their system is genuine that is why he sworn an affidavit to prove the same. The said bank statement had his name and his signature and he prayed to tender a letter from NMB to the Deputy Registrar and two bank statements of Daudi Gabriel Songo as



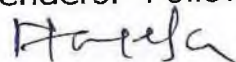
exhibits, and since there was no objection, they were admitted as exhibit D1 collectively.

It was his further submission that, the said statements admitted as exhibits D1 collectively contained three names of their late customer, his address, name of the person who printed the statements, the date they were printed, his signature, bank stamp and all transactions he made when he was alive and the payment he received including bank charges and the balance after transaction.

During cross examination he stated that, he cannot tell if there is a certain amount which was paid in a lump sum. He just followed the order to bring the bank statement and if the person is paid, then they ought to have deposited the amount to his account.

On her part, DW2 Lilian Julius Shija, Principal Benefits Officer testified that she is working with PSSSF since 2018 and previously she was working with PFF from 2004. Her main duties are supervising pension payment, to answer any queries from their customers and advise PSSSF about pension issues.

She testified further that, the late Daudi Gabriel Songo was their customer since 1984 up to August 2001 when he was terminated from service by his employer Tanzania Tea Blenders. Following the said



termination, his employer filled in the required form which contains the information of his termination and submitted to their office. The late Daudi Gabriel Songo was terminated together with other employees whereby after inspecting the forms they were well filled and the office started to prepare his benefit.

It was her further submission that, having looked at his contribution schedules and his record which was prepared in a special form, it was established that they prepared his benefits which were Tshs. 241,797.95 which was combined with the benefits of other 29 members and the total of Tshs. 9,048,964.45 was taken to his employer for payments. The said payment voucher from PPF dated 8/1/2002, pension claim worksheet memorandum dated 7/12/2001 and summary of employee's contribution dated 7/12/2001 were admitted in court as exhibit D2 collectively.

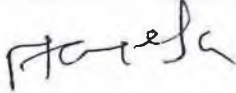
She proceeded to testify that, in the payment voucher the late David Gabriel Songo is listed as Number 9. Due to the fact that the late Daudi Gabriel Songo contributed for more than 10 years, he qualified to be paid a monthly pension. So, they wrote him a letter dated 6/2/2002 which was admitted in court as exhibit D3. She says they proceeded to pay him the monthly pension up to October, 2002 after retiring.

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Apart from that, the Tanzania Tea Blenders had a problem in submitting the contributions of its members which led PPF to prepare under payment of Tsh. 266,532.30. The said payment was affected by cheque Number 12450 and they were paid to respective member's account, NMB Account, in 2004 a per exhibit D1 the transaction dated 6/10/2004.

Another underpayment was paid to him on the 12<sup>th</sup> day of August, 2005 to the tune of Tshs. 273,000/= which was underpayment of 11 months (from May 2004 to May 2005). These were underpayments of monthly payment (See transaction No. 18 of exhibit D1). Thereafter, the late Daudi Gariel Songo wrote several letters in 2006, 2010 and 2011 claiming for his lump sum payment and they replied that all his contributions were already paid to him.

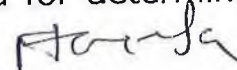
More so, she told the court that in 2011 they revised his file and noted that there were two months for which his contributions were not submitted by his employer and they prepared underpayment of Tshs. 5,465.91 which was paid to his account on 4.11.2011 (See transaction No. 32 at the last page of exhibit D1). The claim letters from the late Daudi Gabriel Songo to the Director of PPF and vice versa were admitted in court collectively as exhibit D4. 

Further to that summary of employee's contribution pension claim sheet and payment voucher prove that they effected the payments. The same were admitted in court as exhibit D5 collectively.

She added that as per the record the late Daudi Gabriel Songo had already been paid the monthly pension for more than ten years and she further asserted that his beneficiary did not qualify to be paid monthly payment after his death. Further to that, the claim of Tshs. 75,000,000/= as alleged by the plaintiff is illegal since the deceased contributed for 17 years only and his salary was Tshs. 885 in 1984 July up to Tshs. 52,894/= when he was terminated. More so, as they had already paid him everything, they prayed for the suit to be dismissed with costs.

During cross examination, she told the court that the late Daudi started to receive monthly payment in May 2004 after he attained the age of 55 on 15.04.2004 as he was born on 15.04.1949. In total, the late Daudi received Tshs. 513,796.16/= which was paid three times because his contribution was being brought by instalments.

Having abridged the evidence adduced by parties in this matter, I will pose here and deliberate on the issues raised for determination of this matter.



The first issue seeks to determine whether the late Daudi Gabriel Songo received his pension benefit via bank account No. 40802505757 at the National Microfinance Bank (NMB). According to DW2 who is the Principal Benefits Officer, the late Daudi Gabriel Songo was supposed to be paid Tshs. 513,796.16 which was paid in three instalments. The first one was paid on 6<sup>th</sup> day of October 2004 Tshs. 266,532.3, the second one was paid on 12<sup>th</sup> day of August 2005 Tshs. 273,000 and the last one was paid on 31.10.2011 Tshs. 5,465.91/=. (See exhibits D1 collectively). The late Daudi Gabriel Songo was paid the said amount following the calculation which was made taking into consideration the number of months a member has contributed, reasons for terminating his job and a type of benefits.

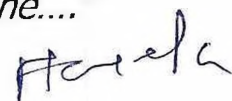
DW2 added that when the late Daudi Gabriel Songo was terminated in 2001, he had not yet attained the age of 55 which is a legal requirement for a person to receive pension benefits. that was the reason why he started receiving monthly pension benefits from May 2004 (see Exhibit D1- collectively and Exhibit D5- collectively). Further to that the said payment was affected following the survey made by PPF regarding the employee's contribution to determine the pension he deserved. As per the exhibit D4- collectively, the deceased wrote some letters to the

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Director of PPF claiming for “Mapunjo ya mafao ya Mkupuo” and after a thorough investigation they found that there was one month contribution which was not remitted by the employer to the PPF. They prepared the underpayment of Tshs. 5,465.91 and the same was paid on 04.11.2011 (See exhibit D5-collectivey).

I wish to start with the first issue as to whether the first and second defendants paid fully the pension benefits to the late Daudi Gabriel Songo’s bank account No. 40802505757 at the National Microfinance Bank (NMB). The is claiming for the payment of Tsh. 75,000,000/=. However, the said claim was unmaintainable as there were no criteria demonstrated to justify such a claim. As it is a trite law that specific damages must be specifically pleaded and proved. Several cases have reiterated the position as in the case of **Masolele General Agencies vs African Inland Church Tanzania**, 1994 TLR 192 where it was held:

*"Once a claim for a specific item is made that claim must be strictly proved, else there would be no difference between a specific claim and a general one...."*



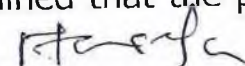
In our present suit the appellant submitted the alleged claim of Tshs. 75,000,000/= for the reason that his late husband told her that he was claiming the said amount based on the time he worked with Tanzania Tea Blenders which is 35 years. The only document submitted before the court and admitted as exhibit was the Marriage Certificate (Exhibit P1) and the certificate of administration of the estate of the late Daudi Gabriel Songo (Exhibit P2). The said exhibits neither relate nor prove the claim of Tshs. 75,000,000/=.

It is a general rule of evidence that the burden of proving existence of a fact is on the person who asserts it. This is in accordance with **Section 110 (1) of the Evidence Act**, Cap 6 R.E 2019 which provides as follows:

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

Therefore, for the slight evidence adduced by the plaintiff which is below the required standard of proof, I find that she failed to prove her claim against the defendants herein.

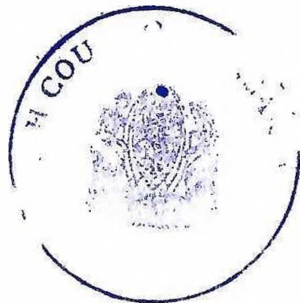
The determination of the last issue is simple as it is grounded on the response to the previous issue. Having determined that the plaintiff had

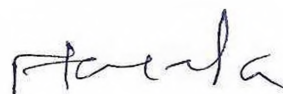


no claim against the defendants since the evidence revealed that the late Daudi Gabriel Songo had already received his pension payment in full prior to his demise, I do in consequence find and hold that, the plaintiff's case is lacking merit and the same is hereby dismissed with costs.

Ordered accordingly.

**DATED** at **ARUSHA** this 28<sup>th</sup> day of April, 2022



  
**N.R. MWASEBA**

**JUDGE**

**28.04.2022**