

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

MISC. CIVIL APPLICATION NO. 476 OF 2021
(Arising from Civil case No. 54 of 2021)

STRATEGIC BUSINESS SOLUTIONS LIMITED.....PLAINTIFF
VERSUS
THE BOARD OF TRUSTEES OF THE
NATIONAL SOCIAL SECURITY FUND.....DEFENDANT

RULING

Last Order:14/7/2022
Ruling: 29/7/2022

MASABO, J.

The applicant has moved this court for under Order XXXV rule 3(1)(b) and (2) of the Civil Procedure Code, Cap 33 RE 2019. Her main prayer is for leave to defend herself in a summary suit filed against her by the defendant. Her application is supported by an affidavit deposed by her general manager one Elisaria Aminiel. From the affidavit, it is deciphered that leave is sought to enable the applicant to appear and defend herself in Civil Case No. 54 of 2021 in which the respondent is praying for summary judgment and decree against the applicant herein for payment of Tshs 288,676,144/= being unremitted members social insurance contribution for the period between May 2019 and August 2020 and accrued penalties to a tune of Tshs

45,175,386.95. Her main reason in support of the application for leave as inferred from paragraph 5 and 6 of the affidavit is that, the figure claimed by the respondent is inaccurate as during the claimed period, she remitted a sum of Tshs 110,650,290/=. Thus, the claim due to her is far below the claimed amount.

The application was uncontested. Represented by Mr. Geoffrey Ngwembe, learned State Attorney, the respondent notified the court that they have no intention to contest the application.

Summary suits are regulated by Order XXXV of the Civil Procedure Code which under Rule 2 (1) and (2) provides that summary suits;

[s]hall 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 to 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.... [emphasis added].

As per this provision, unlike in ordinary suits where the defendant has an inherent right to be heard, a defendant in a summary suit do not have such an inherent right. His right to appear and defend himself is subject to a court leave granted upon satisfaction there is a triable issue of fact or law or both (See **Tanzania Portland Cement Co. Ltd vs Continental Builders Ltd.** Civil Case No. 262/92 – HC at Dares es Salaam and **Tanzania Telecommunications Company Limited v. Timothy Lwoga** [2002] TLR 150. Therefore, even in uncontested application as the present one, leave would not be granted unless the court is satisfied that there exist a triable legal or factual issue.

The question to be determined, therefore, is whether the applicant has demonstrated a triable issue. Looking at paragraph 5a nd 6 of the affidavit, I am fortified that a triable factual issue exists between the parties. As

alluded to earlier on, through these two paragraphs, the applicant has disputed the quantum claimed by the respondent in the summary suit. She has averred that, the amount of Tshs 288,676,144/= claimed by the respondent is on the higher side as she shas already remitted a sum of Tshs 110,650,290/=.

In the foregoing, leave is granted to the applicant to enter appearance and file her written statement of defence within 21 days failure of which she shall be deemed to have forfeited her right to enter appearance and defend herself. The parties shall bear their respective costs.

DATED at **DAR ES SALAAM** this 29th day of July 2022.

X



Signed by: J.L.M ASABO

J.L. MASABO
JUDGE

