

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

CIVIL CASE No. 17 OF 2022

BOARD OF TRUSTEES OF THE NATIONAL

SOCIAL SECURITY FUND.....PLAINTIFF

VERSUS

MOUNT MERU FLOWERS LTD.....DEFENDANT

JUDGMENT

7th September & 5th October, 2022

TIGANGA, J:

In this case, the plaintiff is Government Corporation and a Social Security Fund/Scheme established under the National Social Security Fund Act [Cap 50 R.E 2018], while the defendant is a limited liability Company incorporated in Tanzania dealing with the business of Security Management. The defendant is the employer of a number of workers and is registered as a scheme contributing employer in the plaintiff's Fund with membership certificate Registration No. 619507. Under that arrangement, the defendant is required to deduct 10% of the salary of its employees and remit the said deduction to the plaintiff, the Fund, while at the same time it was required to make its own compulsory contributions at the rate

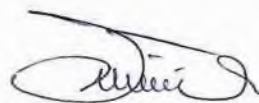
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of 10% respectively making a total of 20% of the member employee wages.

Despite that obligation, in defaulting to comply, the defendant either failed, or neglected to remit the members' contribution to the plaintiff for some months amounting **Tshs 663,221,312.16, (say Tanzania Shillings Six Hundred Sixty-Three Million Two Hundred Twenty-One Thousand Three Hundred and Twelve shillings and Sixteen Cents Only)** plus penalties of **Tshs. 174,949,604.37 (say Tanzania Shillings One Hundred Seventy-Four Million Nine Hundred and Forty-Nine Thousands Six Hundred and four Shillings and thirty-Seven Cents only)** computed from July, 2001 to June, 2019 thus totaling the claimed amount to be **Tshs 838,170,916.53 (say Tanzania Shillings Eight Hundred and Thirty-Nine Million One Hundred and Seventy Thousand, Nine Hundred and Sixteen Shillings and Fifty-Three Cents only)**

According to the plaint, despite a number of reminder from the plaintiff, the defendant has never heeded to the reminder.

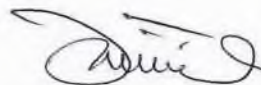
The plaintiff's claim's from the defendant' are as follow: -

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- i. An order for the defendant to pay a total sum of Tshs 838,170,916.53 (say Tanzania shillings Eight Hundred Thirty-Eight Million, one hundred seventy thousand, nine hundred sixteen shillings and fifty-three cents only) being un-remitted members' contributions and penalties being due and payable to the plaintiff by the defendant.
- ii. An order that the defendant pay interest on the decretal sum from October, 2019 when the claimed sum accrued to the date of judgment at an overall lending rate of 15% per annum as published by the Bank of Tanzania's monthly Economic Review the January, 2010 publication.
- iii. Interest on judgment debt at the prescribed court rate of 7% from the date of delivery of judgment until the same shall be fully satisfied.
- iv. Costs incidental to the filing of the suit and any other relief as the Court shall deem fit and just to grant.

The plaint was filed under summary procedure made under Order XXXV of the Civil Procedure Code [Cap 33 R.E 2019].

According to the affidavit of the process server sworn by one Zakaria Meleiya, the defendant refused to receive and sign the plaint and

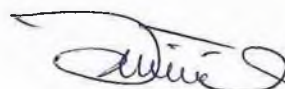


summons. That said affidavit was made on 1st August, 2022 at 01.25 Pm. On 07/09/2022 when the case was called for hearing, Ms. L. A. Mwasongwe learned State Attorney, submitted to the Court requesting to be awarded summary judgment basing on the plaint which was filed under Order XXXV Rule 2 of the Civil Procedure Code [Cap 33 R.E 2019] and section 74A (2) of the NSSF Act [Cap 50 R.E 2018].

Now starting with Order XXXV Rule 2 (2) of the CPC (supra) provides that; for a plaint presented under Order XXXV Rule 2(1), (that is under summary procedure), the defendant does not have automatic right to appear and defend unless the defendant obtains leave to defend the suit from the Judge or Magistrate as the case may be. A default of which the allegation in the plaint shall be deemed to be admitted. This provision should be read together with section 74A (2) of the NSSF Act [Cap 50 R.E 2018] which provides that;

"Every contribution and additional contribution due to the Fund may be recovered by a summary suit under Order XXXV of the Civil Procedure Code at any time within twelve years after the date in which it is due."

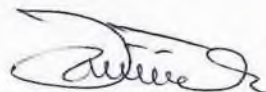
From the above provisions read together, it is the law that recovery of contributions or additional contributions to the Fund, may be by way of summary suit under summary procedure provided for under Order XXXV



of the Civil Procedure Code (supra). Being under summary procedure, the defendant was required to file an application for leave to defend which has not been filed to date.

It is the law that if it is proved that the defendant was served with the plaint and summons requiring him to file application for leave to defend and he fails to appear and file application for leave to defend, then the claim in the plaint is deemed to have been admitted. In that respect, the court remains with only one option, that is to enter a summary judgment on admission. In this case, there is proof that the defendant was served with the summons and the plaint. That fact is proved by the affidavit sworn on 1st August 2022 at 01.25 pm by one Zakaria Meleiya who introduced himself as a process server, who served the plaint and summons in this case.

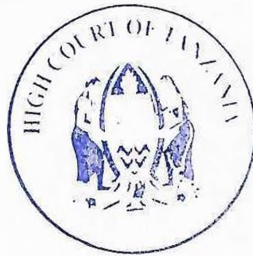
However, the defendant in this case, neither showed up in response to the summons nor filed application for leave to defend. In the circumstances, I hereby find the defendant to have not complied with the mandatory provision of Order XXXV Rule 2 of the Civil Procedure Code [Cap 33 R.E 2019] and section 74A (2) of the NSSF Act [Cap 50 R.E 2018]. I consequently find the defendant to have admitted the claim and grant

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all the reliefs as presented in the plaint. Since the suit has not been resisted by the defendant, no order as to costs.

It is ordered accordingly.

DATED at **ARUSHA**, this 05th day of October, 2022.



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J. C. TIGANGA

JUDGE