

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

AT DAR ES SALAAM

CIVIL CASE NO. 71 OF 2021

THE BOARD OF TRUSTEES OF NSSF..... PLAINTIFF
VERSUS

JUNACO (T) LIMITED.....DEFENDANT

SUMMARY JUDGMENT

Date of last Order: 29th November, 2022.

Date of Judgment: 8th December, 2022.

E.E. KAKOLAKI, J.

On 20th April, 2021 the plaintiff herein filed a summary suit against the defendant claiming among other things for payment of Tanzanian shillings 965,694,887.3/= being unremitted members' contributions plus accumulated penalties. Briefly the defendant is the plaintiff's registered contributing member as employer since 1st May, 2002, when she was issued with a membership certificate No. 673668 to that effect. It is contended that, under the law establishing the plaintiff the defendant is required to remit to the plaintiff its own compulsory pension contribution and that of its employees at the rate of 10% and 10 % respectively all making a total of 20% of the (member) employee's wage, the contribution which she failed, neglected, ignored and/or defaulted to remit as a result

attracted imposition of the penalty. According to the plaintiff the defendant's act of ignoring, delaying and defaulting to remit to the plaintiff's the said members contributions is not only against the law but also denies the employees rightful pension benefits in the event of their retirement, death and /or when leaving the scheme in any other manner. The claimed unremitted contribution is Tsh. 769,507,636.33 (Tanzanian Shillings, Seven Hundreds Sixty-nine Million Five Hundred Seven Thousand Six Hundred Thirty-Six and Thirty-Three Cents only) being the outstanding amount principal members contributions for the total period of 68 months covering the period between January 2015 to September 2020, plus the accumulated penalties amounting to Tsh.196,187,250.97 (Say Tanzanian Shillings One hundred Ninety Six Million One hundred Eight seven thousand two Hundred fifty Million, One hundred Eighty Seven Thousand Two Hundred Fifty and Ninety Seven Cents Only) for the period between January 2012 to January 2018; which sum continues to accrue as long as it remains due.

The plaintiff alleges that, despite of several reminders and demands for the defendant to settle the outstanding contributions the later remained adamant to heed to the plaintiff's rightful demands as presented or at all, the result of which the plaintiff preferred the present summary suit. the plaintiff is therefore seeking for the following reliefs:

- (i) An order for payment of Tshs965,694,887.3/= being unremitted members' contributions plus accumulated penalties.
- (ii) Interest on the decretal sum from September 2020, when the sum accrued to the date of judgment at the rate of 15.42% per annum as published by BOT.
- (iii) Interest on decretal sum at the prescribed Court rate of 7% from the date of delivery of judgment until the same shall be full satisfied.
- (iv) Cost of this suit and any other incidental costs pertaining to the filing of the suit; and
- (v) Any other relief that this Court shall deem fit and just to grant.

Upon filing this suit and having effected service to the defendant, the defendant preferred an application for leave to appear and defend as per the requirement of Order XXXV Rule 2(2) of the Civil Procedure Code, [Cap 33 R.E 2019] vide Misc. Civil Application No. 515 of 2022, which was granted on the condition that, she deposits first uncontested due contributions to the tune of Tshs.672,633,636.33/=. The said amount was supposed to be deposited in court within 30 days from the date of the ruling which was on 16/09/2022, failure of which the applicant would be counted to have waived her right to enter her defence in this case. On

29/11/2022 when the matter was scheduled for mention, Mr. Baraka Mgaya counsel for the plaintiff informed the Court that the defendant was yet to pay the agreed amount thus invited the Court to enter summary Judgment against the defendant for failure to comply with Court's Order meaning that the defendant had waived her right to defend this suit.

On the other side Ms. Zakaria for the defendant admitted that, the defendant had failed to honour the Court's order to pay Tsh. 671,333,636.33 as she had managed to pay only Tsh.41,400,194.60/=. Sus then prayed the Court to allow the defendant to settle the amount due by instalments. In a short rejoinder Mr.Baraka maintained his prayer for summary Judgment insisting that the defendant had failed to honour Court's order. Now with the above submission by the parties, the issue is whether the plaintiff is entitled to summary judgment and the reliefs prayed in the plaint.

I have taken into consideration the submission made by both parties as well as the fact that, in this matter the defendant is not disputing the due contribution to the tune of Tshs.672,633,636.33/= in which this Court ordered him to pay to the plaintiff within 30 days of the ruling dated 16/09/2022, when granted with conditional leave to defend this suit in Misc. Civil Application No. 515 of 2022. It is undisputed fact that, by failure to honour Court's order the defendant waived her right to defend the suit.

Since she has no right to defend the suit her prayer to be considered to pay the outstanding amount by instalment, I hold has no room for consideration. As regard to whether the plaintiff is entitled to summary judgment, it is no doubt that, defendant's failure to enter her defence entitles the plaintiff to summary suit as provided under the provision of Order XXXV Rule 2 of the CPC. Before entering judgment against the defendant I would wish to address her claim that, out of undisputed principal amount of Tsh. 671,333,636.33 which is the outstanding contributions to the plaintiff, interest and penalties exclusive, she managed to pay Tsh.41,400,194.60/= only. With due respect this contention was raised by the defendant's counsel without any supportive evidence, thus this Court is unable to satisfy itself that the alleged payment was in fact made hence refrain from reducing it as part of the settled claimed amount. In view of that, I proceed to enter summary Judgment in favour of the plaintiff and it is hereby decreed that, defendant shall pay the plaintiff the following:

1. Total sum of Tsh.965,694,887.3 (say Tanzanian shillings Nine Hundred Sixty-Five Million Six Hundred Ninety-Four Thousand Eight Hundred Eighty-Seven and three cents Only), being an outstanding debt of unremitted members contributions plus accumulated penalties.

2. Interest on the decretal sum from September 2020, when the sum accrued to the date of Judgment at an overall lending interest rate of 12% per annum.
3. Interest on decretal sum at the Court rate of 7% from the date of delivery of Judgment to the date of full payment.
4. Costs of the suit.

It is so ordered.

Dated at Dar es Salaam this 8th day of December, 2022.



E. E. KAKOLAKI

JUDGE

08/12/2022.

The Ruling has been delivered at Dar es Salaam today 08th day of December, 2022 in the presence of the Mr. Baraka Mgaya, Mr. Ferdinand Masoy, advocate for the Defendant and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

08/12/2022

