

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

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 61 OF 2019**

*(Arising from Civil Case No. 88 of 2017 Kisutu Resident Magistrate's Court)*

**THE BOARD OF TRUSTEES OF THE  
NATIONAL SOCIAL SECURITY FUND.....APPELLANT**

**VERSUS**

**TSN LOGISTICS LIMITED.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 12/08/2021*

*Date of Judgment: 29/11/2022*

**S.M. KULITA, J.**

This is an appeal from the Resident Magistrate Court of Dar es Salaam at Kisutu. The appellant herein, **THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND (NSSF)** lodged this appeal against the Respondent, **TSN LOGISTICS LIMITED** relying on the following five grounds;

1. That, the trial Magistrate erred in law and fact for failing to analyse and weigh the evidence of the Appellant and

erroneously derived at a conclusion that the Appellant failed to establish that 95 claimnants were the employees of the Defendant's entity while there was evidence indicating that the Defendant never denied the claimnants to be his employees.

2. That, the trial Magistrate erred in law and fact for neglecting to consider that the Appellant produced the evidence of exhibits indicating the amount claimed by the 95 claimnants and erroneously reached a conclusion that the Respondent cannot pay the uncertain figures while there was no evidence to deny that 95 claimnants were not the employees of the Respondent.
3. That, the trial Magistrate erred in law and fact for erroneously failing to determine the 2<sup>nd</sup> disputable issue in the Civil Case No. 88 of 2017 while there was evidence to the effect that the amount claimed was substantiated and thereby reaching a conclusion that the Plaintiff failed to produce evidence to back his claims.
4. That, the judgment is bad for being made without complying with the law.
5. That, the judgment is bad for not analysing the issues in dispute.

The appeal was argued by way of written submissions. While the Appellant is represented by Ms. Zainab Juma (Advocate) from the National Social Security Fund (NSSF) office, the Respondent is represented by Mr. Innocent Paulos Mwelelwa, Advocate from Infinity Law Attorneys.

Advocate for the Appellant, Ms. Zainab Juma submitted in respect of the 1<sup>st</sup> ground of appeal that at the trial court that it was evidenced that the number of the Respondent's employees whose contributions were not submitted to the Appellant is 95, and the Respondent himself never denied the said claimnants to be his employees.

The counsel added that the original case is a summary suit involving non-remission of monthly contributions by the Respondent, hence it was wrong for the trial court to decide against the Appellant, NSSF which is a statutory board dealing with that task.

Submitting on the 2<sup>nd</sup> ground of appeal the Appellant's counsel stated that at the lower court there was no evidence to deny the fact that the said 95 claimnants were the Respondent's employees.

As for the 3<sup>rd</sup> ground, Ms. Zainab Juma, Advocate submitted that the amount claimed by the Appellant is substantiated contrary to

what the trial Magistrate had determined. She said that the fact that the Respondent was a registered contributor and therefore the monthly contributions is statutory requirement of the law, bearing in mind that the said Respondent never made a testimonial denial that the listed employees were not his employees.

That was the end of the Appellant's submissions in respect of the appeal she has raised. There were no submissions in respect of grounds No. 4 and 5. The implication is that she has decided to abandon them.

In his reply submission in respect of the 1<sup>st</sup> ground of appeal the Respondent's Counsel, Mr. Innocent Paulos Mwelelwa, Advocate stated that, the trial Magistrate correctly analysed and weigh the evidence. Hence correctly judged that the appellant failed to establish that 95 claimnants were the employees of the Appellant Respondent and were the members of the appellant. The counsel averred that the trial court was therefore right to declare that the appellant is not entitled for the claim.

Further, the Respondent's Counsel submitted that filing a summary suit does not mean that the Appellant had an automatic right to win the case. He said that the Appellant ought to have proved its case during trial by bringing evidence to support her claim.

He added that the Respondent had a proper defence that the claimnants were not its employees, hence not responsible to collect and remit any contribution to the Appellant. The counsel alleged that in their inspection the Appellant did not involve the respondent, hence led to the inconsistent and contradictory report.

Replying the 2<sup>nd</sup> ground of appeal, the Respondent's Counsel stated that the Magistrate was right to decide against the Appellant as its case at the trial court contradicts on the number of claimnants whether it was 95 or 42. It was also not evident that the said persons were the Respondent's employees.

As for the 3<sup>rd</sup> ground of appeal the Mr. Mwelelwa, Advocate stated that, due to the contradictions on the number of claimnants that the Appellant herein has mentioned in the trial court, the Magistrate could have not granted the reliefs sought as the said issue depended on the proof of that fact, of which the trial court found weak and inconsistent.

Lastly, the Respondent's Counsel prayed for the appeal to be dismissed with costs.

Upon going through the pleadings, submissions and contents of the original record including the impugned judgment, I have noticed that the issue is whether the 95 claimnants mentioned by

the Appellant were Respondent's employees and that their contributions were not remitted to the Appellant (NSSF) by the Respondent.

In my analysis I prefer to resolve the appeal by consolidating the argued grounds of appeal No. 1, 2 and 3 collectively as they all base on the same issue, whether the Respondent failed to establish that the alleged 95 claimants were the members/employees of the Respondent and that the Respondent had not submitted their contributions to the NSSF, the Appellant.

In his decision for this matter, the trial Magistrate relied on the fact that the Appellant herein failed to establish that the Respondent had 95 members/employees whom she had not submitted their contributions to the NSSF.

The Appellant's counsel submitted that the matter was a summary suit involving non-remission of monthly contributions by the Respondent, hence it was wrong for the trial court to decide against the Appellant, NSSF which is a statutory board responsible for providing social security services including collection of contributions from its members. My comment on that argument is that the Appellant's act of filing a summary suit against the Respondent does not mean that the said appellant had an

automatic rights to be awarded the reliefs claimed. The reliefs could only be awarded if it is proved to the satisfaction of the court upon bringing evidence in support of the claim.

The submissions and the records in this matter transpire that the appellant herein had failed to prove that the Respondent had 95 claimnants whose monthly contributions to the Appellants were not remitted. The trial Magistrate was right to say so as the plaint, which is a legal document supposed to contain the claim(s) of the case, does not state the exactly number of the employees who are the subject matter of the claim. Not only that but also the internal inspection report, the document prepared by the appellant herself which was tendered at the trial court as exhibit indicates the number of employees being 42, contrary to what was narrated by the Appellant's witness in her testimony during trial at the subordinate court. It is therefore uncertain as to whether the said claim of Tsh. 31,992,803. 67 was for the 95 persons stated by the witness or 42 persons read in the report.

The Appellant's failure to prove the exactly number of employees whose contributions, if any, were not remitted implies that the Appellant failed to discharge its burden of proof. It is the cardinal principle of law that the one who alleges must prove. Section 112 of the Tanzania Evidence Act [Cap 6 RE 2019] provides;

*"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person"*

As the Appellant failed to prove her case on the exact number of employees, if any, that the Respondent herein has failed to remit their contributions, I find the trial court was right to dismiss the suit.

In upshot I find this appeal with no merit, hence dismissed with costs.

HL

**S.M. KULITA**  
**JUDGE**  
**29/11/2022**

