

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL CASE NO. 80 OF 2019

**THE BOARD OF TRUSTEES OF
THE NATIONAL SOCIAL SECURITY FUND PLAINTIFF**

VERSUS

ITAL FRAME LIMITED DEFENDANT

SUMMARY JUDGEMENT

8th and 8th April, 2022

KISANYA, J.:

The Board of Trustees of the National Social Security Fund (the plaintiff) filed a summary suit against Ital Frame Limited (the defendant). The suit was initiated by a plaint made under Order XXXV of the Civil Procedure Code [Cap. 33, R.E. 2019] (the CPC) read together with section 74A (2) of the National Social Security Fund Act [Cap. 50, R.E. 2018]. In terms of the said plaint, the plaintiff's claims against the defendant are for payment of TZS 929,04,581.04/=, being outstanding members' contributions, dishonoured cheques plus penalties accrued thereon.

Pursuant to Order XXXV, Rule 2 of the CPC, the defendant was required to apply for leave to defend the suit within twenty one (21) days from the date of service of the summary plaint. In the event the leave to file defence is

not sought and/or granted, the plaintiff is entitled to judgment and decree on the claimed sum.

In the instant case, the defendant was duly served. It is on record that her managing director one, Corrado Masimo Tugnetti has been appearing before this Court. He did not pray for leave to defend the suit. Upon his request, the matter was adjourned pending determination of application for liquidation of the defendant, which was pending in the High Court, Commercial Division.

When this matter was called on for hearing today, the plaintiff was represented by Geoffrey Ngwembe, learned State Attorney, while the defendant was represented by her managing director, Mr. Tugnetti.

The Court was informed that the High Court Commercial Division did not grant the application of liquidating the defendant. At first, Mr. Ngwembe prayed for adjournment of the suit on the account that parties were at final stages of settling the matter out of court. However, upon second reflection, he prayed that the summary judgment be entered against the defendant. He was of the view that the ongoing negotiation for settlement will be considered at the time of executing the decree. Mr. Tugnetti had no objection to the prayer made by the counsel for the plaintiff.

I have considered that this case has stayed in this Court for almost three years and thus, it is one of the backlog cases. Considering further that

the defendant has not prayed for leave to defend the suit as required by the law, I find no reason of adjourning the matter to wait for the settlement agreement. Parties are at liberty to proceed with the negotiation with a view to satisfy the decree of the Court.

In the final event, a summary judgment is hereby entered in favour of the plaintiff and against the defendant as follows:-

1. The defendant shall pay the plaintiff a sum of TZS 929,045,851.04/= being unremitted members' contributions and dishonoured cheques, plus accumulated penalties thereon.
2. The Defendant shall pay interest on outstanding contributions and penalties in paragraph (1) above charged at the rate of 7% per annum from July, 2012 to the date of judgment.
3. The defendant shall pay interest on decretal sum at the court's rate of 7% per annum from the date of judgment until the same is fully paid; and
4. The defendant shall pay costs of the suit.

It is so ordered.

DATED at DAR ES SALAAM this 8th day of April, 2022.



S.E. Kisanya
JUDGE

