

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB - REGISTRY OF MWANZA
AT MWANZA
CIVIL CASE NO. 51 OF 2022**

**THE BOARD OF TRUSTEES OF THE
NATIONAL SOCIAL SECURITY FUND-----1ST PLAINTIFF
ATTORNEY GENERAL-----2ND PLAINTIFF**

VERSUS

MAKOYE HOSPITAL LIMITED----- DEFENDANT

JUDGEMENT

Sept. 26th & 29th 2023

Morris, J

By this suit, the plaintiffs have preferred the summary procedure under Order XXXV of *the Civil Procedure Code*, Cap 33 R.E 2019 (*the Code*). The plaint has been accordingly filed against the defendant. Therein, the plaintiffs claim against the latter for, *inter alia*, payment of the sum of Tshs. 217,169,135.71 being unremitted members' contributions and penalty thereon due to the 1st plaintiff (herein interchangeably, "NSSF" or "the Fund"). The claimed debt-amount runs from March 2019 to January 2022.

It is alleged further that the defendant is a registered contributing-employer to the plaintiff with registration No. 1010156. And that, according

to law, the defendant is duty bound to remit to the 1st plaintiff an aggregate contribution of 20% net salary of each employee. That is, the defendant must contribute 10% for each employee on top of 10% deducted from the respective employee's monthly wage. In this suit, it is averred further that the defendant has failed to remit the amount stated above to the 1st plaintiff irrespective of several demands and reminders by the latter. Such adamancy on the part of the defendant, has finally culminated in this suit.

The mode adopted by the plaintiffs above notwithstanding, the defendant was, on 2/5/2023, granted leave to defend the suit. The permission was pursued vide Miscellaneous Civil Application No. 27 of 2023. The defendant accordingly filed her written statement of defence ("WSD") on 12/5/2023. However, on 27/7/2023, the plaintiff sought and obtained the leave to amend the plaint. The amended pleadings were lodged and served upon the defendant. Nonetheless, the latter did not file the requisite WSD to the amended plaint with 7 days as ordered by the Court.

The defendant also defaulted appearance for two consecutive days fixed for hearing of the case. The plaintiffs sought for and were granted the prayer to accordingly proceed with pursuit of the matter on *ex-parte* proof



basis. Such Court order was prayed for and allowed under Order VIII Rule 14(1) of *the Code*. Thus, on 26.09.2023 the case was heard in the absence of the defendant. One sole witness, Mr. Ntibilaba Aloyce Ntibilaba (**PW1**), testified for the plaintiff. Two issues were framed for determination. **One**, whether the defendant is liable to pay the plaintiff for non-remittance of members' contributions and penalties thereof; and **two**, to what relief are parties entitled.

PW1 testified to being working as the 1st plaintiff's compliance officer. He stated that the defendant is a registered member to the 1st plaintiff since 14/6/2017 under Registration No. 1010156. Following such registration, he added that, the defendant was obliged to register his employees to and remit to the Fund their monthly contributions according to law. He stated that the defendant did not comply with the law. That is, she did not remit the contributions accordingly. He also testified that her debt stood at Tshs. 202, 479,897.71 for the period between March 2019 and January 2022. **PW1** also recorded his testimony that the subject default attracted penalty of Tshs. 14,689,238/=



It was as well stated by him that, on 9/2/2022, the defendant was served with notice of inspection following which she inspected on 10/2/2022. To him, the defendant acknowledged the debt and requested for reconciliation vide her letter dated 7/3/2022. All the same, she did not pay. Hence, the 1st plaintiff yet served her with demand letter dated 29/3/2022 which, once again, went unheeded. Finally, he prayed for reliefs pleaded in the plaint.

The law lays it a firm principle that standard of proof in civil cases is balance/preponderance of probability. See, for example, ***Jasson Samson Rweikiza v Novatus Rwechungura Nkwama***, CoA Civil Appeal No. 305 of 2020 (unreported). It is also a cardinal law in this regard that the alleging party should not shift the burden to the opposite side. [***Barelia Karangirangi v Ateria Nyakwambwa***, CoA Civil Appeal No. 237 Of 2007; CAT- Mwanza; ***AG & Others v Eligi Edward Massawe & Others***, CoA Civil Appeal No. 86 of 2002; and ***Ikizu Secondary School v Sarawe Village Council***, CoA Civil Appeal No. 163 of 2016 (all unreported)]. Therefore, notwithstanding absence of defence, the plaintiffs had a duty to prove this case.

In support of the first issue set above for determination, the evidence on record have been analyzed. Pursuant to the Exit Meeting Report dated 10/2/2022 (exhibit P2) the due debt from the defendant was Tshs. 394,613,224.46. However, on 29/3/2022 another Exit Meeting Report (exhibit P2) was rolled out bearing the due arrears at Tshs. 202,479,897.71. The latter sum is supported by schedules for arrears of statutory contributions from march 2019 to January 2022.

Further, evidence of **PW1** revealed that upon the defendant's request, the 1st plaintiff made conciliation of her debt at the second figure. However, to **PW1**, the total outstanding debt attracted the penalty at Tshs. 14,689,238.00 which figure was also communicated to the defendant through the demand letter (exhibit P3). It is on such proof therefore; I find that the second inspection bear the actual debt due from the defendant to the 1st plaintiff. In consequence, the former is found liable to pay the said debt together with the penalty as stated herein. Hence, the first issue is affirmatively determined.

Regarding the second issue, the Court is to ascertain the remedies for the parties. I reiterate that, though the defence attempted to defend these

proceedings which commenced under summary procedure, she ended abandoning her motive at the preliminary stage. Consequently, the suit has been determined on *ex-parte* proof basis. Under the summary procedure, the plaintiff is entitled only to the reliefs stated under Order XXXV Rule 2 (2) of **the Code**. In the case of **Prosper Paul Massawe and Two Others v Access Bank Tanzania Limited**, Civil Appeal No. 39 of 2014 (unreported) the Court of Appeal quoted **Mulla Code of Civil Procedure**, at page 3311 that: -

"The reliefs prayed for in a summary suit must be reliefs available under summary procedure, that is based on a written agreement or a negotiable instrument or as otherwise provided by O. 37 of the Code of Civil Procedure" (equivalent to our order XXXV of **the Code**).

However, as explained above; these proceedings did not *sensu stricto* were not conducted as a summary suit. That is, the plaintiffs proved their claims as exhibited above. Guided by the above authorities and the analysis I have made herein, I have come to the firm conclusion that, the 1st plaintiff is entitled to payment of:



- i) Tshs. 217,169,135.71 unremitted contributions and penalties;
- ii) Interest at 8.47% on the decretal sum from the date of the cause of action to the date of this judgement;
- iii) Interest at the rate of 7% from the date of the judgment to satisfaction; and
- iv) Costs of this suit.

It is accordingly ordered and right of appeal is fully explained.



C.K.K. Morris

Judge

September 29th, 2023

Judgement is delivered this 29th day of September 2023 in the presence of
Ms. Aisha Salehe, learned State Attorney for the Plaintiffs.



C.K.K. Morris

Judge

September 29th, 2023

