

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 03 OF 2023

THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL

SECURITY FUND.....PLAINTIFF

VERSUS

E.F.M COMPANY LIMITED.....DEFENDANT

SUMMARY JUDGMENT

16th March & 16th April, 2024.

MWANGA, J.

On 10th January 2003 the Plaintiff preferred a summary suit against the defendant claiming, among other things, payment of Tanzanian shillings 898,611,100.29/= being unremitted members' contributions plus accumulated penalties. The amount so claimed includes the principal contributions' amount of Tshs. 600676336.14/= and accumulated penalties to the tune of Tshs. 297,934764.15/=.

It was broadly pleaded that the defendant is the plaintiff's registered contributing member as an employer from 23 January 2015 with

membership Certificate No. 1004144. Under the law establishing the plaintiff, the defendant is required to remit its compulsory contribution and that of its employees at the rate of 10% for the plaintiff and 10 % for the employer, all making a total of 20% of the (member) employee's wage. It is documented that, the defendant had failed, neglected, ignored, and/or defaulted to remit the stated sum.

The defendant's act of ignoring, delaying, and defaulting to remit to the plaintiff's said 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 whatever manner.

The claimed unremitted contributions of Tshs. 600,676, 336.14/= (Say, Six hundred Million six hundred seventy ty six Thousand three Hundred thirty-six and fourteen Cents only was the outstanding principal amount members' contributions for the period between March 2019 to August 2022 plus the accumulated penalties amounting to Tshs. 297,934764.15/=. (Tanzanian Shillings, Two Hundreds ninety-seven nine hundred sixty-four and fifteen cents only).

It is also on record that, despite several reminders and demands sent to the defendant to settle the outstanding contributions, the defendant has

remained adamant about heeding the plaintiff's rightful demands as presented, the result of which the plaintiff preferred the present summary suit seeking for the following reliefs:

- (i) An order for payment of Tshs. 898,611,100.29/= being unremitted members' contributions plus accumulated penalties.
- (ii) The defendant pays interest on the principal sum from March 2019 when the sum accrued to the date of judgment at an overall lending interest rate of 17.27 % per annum as published by BOT Economic Monthly Review, August 2022 publication.
- (iii) Interest on the decretal sum at the prescribed Court rate of 7% from the date of delivery of judgment until the same shall be fully satisfied.
- (iv) Cost of this suit and any other incidental to the filing of the suit;
and
- (v) Any other further relief this Court shall deem fit and just to grant.

Upon filing this suit and having effected service the defendant had entered appearance and applied to defend the suit. However, it appears

that the defendant lost interest in the case as the application was dismissed for want of prosecution for consistence none appearance.

In that regard, the defendant waived her right to defend this suit. In the circumstances, Mr. Kenndy Kasongwa, the learned State Attorney for the plaintiff prayed the Court to enter Summary Judgment under Order XXXV, Rule 2(2) of the CPC together with Section 74A of The NSSF Act, Cap. 50 [R.E 2019]. The learned State Attorney also referred the case of **Diamond Trust Bank Tanzania Ltd Vs Mtaenda Distributors**, Commercial Case No. 79 of 2016 where it was held that the defendant denied leaving the court should enter the summary judgment.

Now, with the above submissions by the learned State Attorney, the issue is whether the plaintiff is entitled to summary judgment and the reliefs sought in the plaint. Order XXXV, Rule 2 (a) of the CPC reads;

*"In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, **in default of his obtaining such leave or of his appearance and defense in pursuance thereof,***

the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled—

(a) where the suit is a suit, referred to in paragraph (a), (b), or (d) of rule 1 or a suit for the recovery of money under a mortgage and no other relief in respect of such mortgage is claimed, to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained ordinarily, and such decree may be executed forthwith”

In so far as the above provision is concerned, the fact that the defendant was properly served but defaulted to enter appearance and defend the suit in pursuance thereof the plaintiff is entitled to summary judgment as provided for under Order XXXV, rule 2 of the CPC.

Accordingly, upon proof thereto regarding such default thereof the plaintiff is entitled to a decree for any sum not exceeding the sum mentioned in the chamber summons, together with interest at the rate

specified and such sum for costs as may be prescribed and such decree may be executed forthwith.

For the foregoing, I proceed to enter Summary Judgment in favor of the plaintiff and it is hereby ordered that defendant shall pay the plaintiff the following:

- i. The sum of Tshs. 898,611,100.29/= being unremitted members' contributions plus accumulated penalties.
- ii. The interest on the principal sum from March 2019 when the sum accrued to the date of judgment at an overall lending interest rate of 17.27 % per annum as published by BOT Economic Monthly Review, August 2022 publication.
- iii. The interest on the decretal sum at the prescribed Court rate of 7% from the date of delivery of judgment until the same shall be fully satisfied.
- iv. Costs of the suit.

Order accordingly.



H. R. MWANGA

JUDGE

16/04/2024