

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 212 OF 2023

THE HON. ATTORNEY GENERAL1ST PLAINTIFF

**THE BOARD OF TRUSTEES OF NATIONAL SOCIAL
SECURITY FUND.....2ND PLAINTIFF**

VERSUS

GLOBAL PACKAGING (T) LIMITED.....DEFENDANT

SUMMARY JUDGEMENT

Date of last order: 9th April 2024

Date of Judgement: 18th April 2024

MTEMBWA, J.:

The Plaintiffs herein, by way of summary procedure under ***Order XXXV of the Civil Procedure Code, Cap 33 RE 2019***, read together with ***section 74A (2) of the National Social Security Fund Act, Cap 50 RE 2018***, instituted this suit against the Defendant praying for Judgement and decree as follows, that;

*(i) The Defendant be ordered to pay the sum of **TZS***

432,484,580.34 (say Tanzanian Shillings Four Hundred Thirty-Two Million Four Hundred Eighty-Four Thousand Five Hundred Eighty and Thirty-Four cents only); being un-remitted members' contributions plus accumulated penalties thereon due and payable to the Plaintiff by the Defendant;

- (ii) The Defendant be ordered to pay interest on the decretal sum from October, 2018, when the sum accrued to the date of Judgement at an overall lending Interest rate of 17.14% per annum as published by the Bank of Tanzania Monthly Economic Review, October, 2018 Publications;
- (iii) Interest on decretal sum at the prescribed Court rate of 7% per annum from the date of delivery of Judgement to the date of full satisfaction;
- (iv) Cost of and incidental to the filing of the suit; and
- (v) Any other and further reliefs as this Honourable Court shall deem fit and just to grant.

Initially, this matter was presided over by Hon. Kakolaki, J who has been reportedly to have been transferred to another duty station. As such, it was re-assigned to me for final determination.

On 9th November 2023, **Ms. Halima Omary**, the learned State Attorney informed this Court that, the Defendant was served with summons on 31st October 2023. Consequently, the matter was adjourned to 14th December 2023 for mention. On 14th February 2024, when the matter was placed before me for orders, the

Defendant was represented by **Mr. Joseph Kiumbi Sungwa**, the learned counsel. Mr. Sungwa informed this Court that, the Defendant has already filed the Application for leave to appear and defend the suit. I therefore adjourned the matter to 27th March 2024.

On 27th March 2024, neither the Defendant nor his Advocate appeared. The Plaintiffs were represented by **Ms. Stephene Kimaro** assisted by **Ms. Theresiah Mponzi**, both learned state attorneys. Ms. Kimaro complained of the failure by the Defendant to ascertain as to whether the Application for leave to appear and defend the suit has been actually filed as claimed. For justice to prevail, although reluctantly, I adjourned the matter to 9th April 2024 pending ascertainment of the filing of the said Application by the Defendant.

On 9th April 2024, the Plaintiffs were represented by **Ms. Lucy Kimario** assisted by **Ms. Theresiah Mponzi**, both learned state attorneys. The Defendant again did not appear without notice. The records were silent as to whether the Application for leave to appear and defend the suit was filed or not. As such, Ms. Kimario implored this Court to continue to issue the summary Judgement under ***Order 35 rule 2 (2) of the Civil Procedure Code (supra)***. Considering

the circumstances, I proceeded to grant her prayer hence this Judgement.

Before I delve into the nitty gritty of the suit, I find it opt to narrate the facts, albeit briefly, as revealed by the Plaintiff; that, on 16th January 2017, the Defendant was registered as a contributing member employer of the 2nd Plaintiff and was issued with a **Membership Certificate Registration Number 1009092**. That, according to the law establishing the 2nd Plaintiff, the Defendant is required in each month to make its own compulsory contribution and that of its employees at the rate of 10% and 10% respectively making a total of 20% of the (member) employees' wages.

That, despite of the fact that the Defendant is so obliged in law, she failed, neglected, ignored and or defaulted to remit the members' statutory contributions to the 2nd Plaintiff for some of the months and delayed remittance in some of the months which attract imposition of the penalty. It was revealed further that, the undesirable act of the Defendant of ignoring, delaying, refusing, neglecting and or defaulting to remit to the 2nd Plaintiff the members' contributions not only that it is against the law but also denies her employees (the 2nd Plaintiff's

members) of their rightful pension benefits in the event they retire, die and or when they leave the scheme in any other manner.

The facts reveal further that, the Defendant is in breach of its statutory obligations and has defaulted remittance of members' statutory contribution amounting to **Tanzanian Shillings 351,955,980.61/=** being the outstanding principal members' contributions with accumulated penalties amounting to **Tanzanian Shillings 80,488,599.73/=** for the total period of Fifty-Four (54) months covering various periods between October 2018 to March 2023, which sum continues to accrue as long as it remains due.

That, as such, the Plaintiffs' claims against the Defendant are for payment of a total of **Tanzanian Shillings 432,484,580.34 (say Tanzanian Shillings Four Hundred Thirty-Two Million Four Hundred Eighty-Four Thousand Five Hundred Eighty and Thirty-Four cents only)** being outstanding principal members' contributions plus accumulated penalties thereon which sum continues to accrue as long as it remains due as aforesaid.

That as a result of the Defendant's breach and failure to heed to its statutory obligations to remit members' statutory contributions, the

2nd Plaintiff on numerous occasions, demanded the performance of the said obligations without success.

To fortify the claimed sum, the Plaintiffs attached to the Plaint the following documents; Copies of the Certificates of Registration and registration details certifying the Defendant's membership with the 2nd Plaintiff; sheets of list of Inspection reports, exit meeting reports, schedule of outstanding contributions and penalties and the demand letters by the 2nd Plaintiff addressed to the Defendant. Ordinarily, they are deemed to have been received to form part of the records. It is for these facts the Plaintiffs have advanced the prayers as prefaced above.

Indeed, it is a settled position of the law that where a suit is brought under summary procedure and where no leave to appear and defend has been granted, the allegations in the Plaint are deemed to have been admitted (See ***Order XXXV Rule 2(2) of the Civil Procedure Code***).

The objectives of the summary suits were enunciated in the case of ***CRDB Bank Limited Vs. John Kagimbo Lwambagaza [2002] TLR 117***, where the Court observed that;

The purpose of Order XXXV: Summary Procedure "is to enable a Plaintiff to obtain Judgment expeditiously where the Defendant has in effect no substantial defence to the suit and prevent the Defendant from employing delaying tactics and, in the process, postpone the day 6 of reckoning. I am of the settled view that order XXXV is self-contained in so far as it relates to suits stipulated there-under.

Conversely, it is settled that reliefs prayed for in a summary suit must be reliefs available under summary procedure. In the case of ***Paul Massawe & 2 Others Vs. Access Bank Tanzania Limited, Civil Appeal No. 39 of 2014 (Unreported)*** the Court of Appeal quoted the script at page ***3311 of Mulla, the Code of Civil Procedure***, and observed 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 court of civil procedure (equivalent to our order XXXV)

Having dispassionately considered the above settled positions of the law, annunciated principles, the facts and attached documents as

revealed by the records, I hereby, summarily, enter Judgment in favour of the Plaintiffs on the following reliefs;

- (1) The Defendant is ordered to pay to the Plaintiffs the sum of **Tanzanian Shillings 432,484,580.34 (say Tanzanian Shillings Four Hundred Thirty-Two Million Four Hundred Eighty-Four Thousand Five Hundred Eighty and Thirty-Four cents only)** being outstanding principal members' contributions plus accumulated penalties.
- (2) The Defendant is hereby ordered to pay to the Plaintiffs, interest on the decretal sum from October 2018 when the sum accrued to the date of Judgment at an overall lending interest rate of 17.14% per annum as published by the Bank of Tanzania Monthly Economic Review, October, 2018 Publications.
- (3) The Defendant, is further ordered to pay to the Plaintiffs Interest on decretal sum at the prescribed

Court rate of 7% per annum from the date of delivery
of this Judgement to the date of full recovery.

(4) The Plaintiffs shall recover the costs of this suit.

It is so ordered.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 18th April 2024.



H.S. MTEMBWA
JUDGE