

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB REGISTRY**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 1016 OF 2023**

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

**VERSUS**

**GENIUS KING NURSERY AND  
PRIMARY SCHOOL.....DEFENDANT**

**SUMMARY JUDGEMENT**

*Date of last order: 30<sup>th</sup> April 2024*

*Date of Judgement: 2<sup>nd</sup> May 2024*

**MTEMBWA, J.:**

The Plaintiff 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 Tshs. 414,734,412.17 (say Tanzanian Shillings Four Hundred*

**Fourteen Million Seven Hundred Thirty- Four Thousand Four Hundred Twelve and Seventeen 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 January, 2018, when the sum accrued to the date of Judgement at an overall lending Interest rate of 10.90% per annum as published by the Bank of Tanzania Monthly Economic Review, January 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.*

When the matter was placed before me on 12<sup>th</sup> February 2024, **Mr. Opio Marcellus**, the learned Principal State Attorney appeared for the Plaintiff whereas the Defendant was not present. As such, the matter was adjourned to 27<sup>th</sup> March 2024 where also the Defendant did not enter an appearance. Mr. Opio Marcellus informed this Court that, the Defendant was yet to be served with summons.

When the matter came for orders on 9<sup>th</sup> April 2024, again Mr. Marcellus appeared for the Plaintiff while Mr. Samson Everist Mzatula,

the school manager, appeared for the Defendant. When prompted, Mr. Mzatula conceded to have been served with the Plaint. I adjourned the matter to 30<sup>th</sup> April 2024 with the view to ascertain as to whether an application for leave to appear and defend the suit was filed. Surprisingly, on the scheduled date, the Defendant entered to appearance without notice. For that reason, Mr. Opio Marcellus beseeched this Court to pronounce summary Judgement under ***Order 35 rule 2 (2) of the Civil Procedure Code (supra)*** which I will now give.

Before I embark into the crux of the matter, I find it opt to narrate the facts, albeit briefly, as revealed by the Plaintiff; that, on **31<sup>st</sup> March 2009**, the Defendant was registered as a contributing member employer of the Plaintiff and was issued with a **Membership Certificate Registration Number 799039**. That, according to the law establishing the 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 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 Plaintiff the members' contributions not only that it is against the law but also denies her employees (the 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 contributions amounting to **Tanzanian Shillings 198,510,396.00/=** being the outstanding principal members' contributions with accumulated penalties amounting to **Tanzanian Shillings 216,224,016.00/=** for the total period of Fifty-Seven (57) months covering various periods between January 2018 to October 2022, which sum continues to accrue as long as it remains due.

That, as such, the Plaintiff's claims against the Defendant are for payment of a total of **Tanzanian Shillings 414,734,412.17 (say Tanzanian Shillings Four Hundred Fourteen Million Seven Hundred Thirty- Four Thousand Four Hundred Twelve and Seventeen 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 Plaintiff on numerous occasions, demanded the performance without success.

To fortify the claimed sum, the Plaintiff attached to the Plaintiff the following documents; Copies of the Certificates of Registration and registration details certifying the Defendant's membership with the Plaintiff; sheets of list of Inspection reports, exit meeting reports, schedule of outstanding contributions and penalties and the demand letters by the 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 Plaintiff has 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 0. 37 of the code 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 Jugdement in favour of the Plaintiff on the following reliefs;

- (1) The Defendant is ordered to pay to the Plaintiff the sum of **Tshs. 414,734,412.17 (say Tanzanian Shillings Four Hundred Fourteen Million Seven Hundred Thirty- Four Thousand Four Hundred Twelve and Seventeen Cents only)** being outstanding principal members' contributions plus accumulated penalties.
- (2) The Defendant is hereby ordered to pay to the Plaintiff, interest on the decretal sum from January

2018 when the sum accrued to the date of Judgement at an overall lending interest rate of 10.90.14% per annum as published by the Bank of Tanzania Monthly Economic Review, January 2018 Publications.

- (3) The Defendant, is further ordered to pay to the Plaintiff 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 Plaintiff shall recover the costs of this suit.

It is so ordered.

Right of appeal explained.

**DATED at DAR ES SALAAM** this 2<sup>nd</sup> May 2024.



**H.S. MTEMBWA  
JUDGE**



