

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 25785 OF 2023

THE HON. ATTORNEY GENERAL1ST PLAINTIFF

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

VERSUS

CAPSTONE FOUNDATION LIMITED.....DEFENDANT

SUMMARY JUDGEMENT

Date of last order: 12th February 2024

Date of Judgement: 16th February 2024

MTEMBWA, J.:

The Plaintiffs herein, by way of summary procedure under ***Order XXXV Rule 1 (e) 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;

- (i) *The Defendant to be ordered to pay the sum of **TZS 103,798,000.00 (Tanzanian Shillings One Hundred Three Million Seven Hundred Ninety-Eight Thousand)**;*

*being un-remitted members' contributions plus accumulated penalties once the outstanding amount is settled and charge at 5% in each respective delayed month thereon due and payable to the Plaintiffs by the Defendant as per paragraph 9.0 of the *Plaint.**

- (ii) Interest on decretal sum at the prescribed Court rate of 7% per annum from the date of delivery of Judgment until the same is fully satisfied;*
- (iii) Costs of this suit and any other incidental costs pertaining to the filing of the suit; and*
- (iv) Any other and further relief as this Honorable Court shall deem fit and just to grant.*

When this matter came for necessary orders on **10th January 2024**, Mr. Opio Marcellus, the learned principal state attorney, appeared for the Plaintiffs while Mr. Seth Simon Mwakitalu appeared for the Defendant. Mr. Mwakitalu, when prompted conceded to the claimed sum. Having considered the seriousness and implication of the suit as filed, I advised the parties to negotiate and see if the matter can be settled out of the Court amicably. The matter then was adjourned to 12th February 2024 for necessary orders.

On 12th February 2024, no one appeared for the Defendant. Mr. Marcellus informed this Court that the Plaintiffs were served with a letter from the Defendant detailing on how the claimed sum will be paid. However, that, she did not appear to defend it or agree with the

Plaintiffs on the proposed schedule of payment. As such, Mr. Marcellus implored this Court to proceed to grant the reliefs claimed summarily. Considering the fact that there has been no leave granted to the Defendant to appear and defend the suit, I proceeded to prepare this Judgment.

The facts, albeit briefly, as revealed by the records, can be summarized as follows; That, the Defendant is registered as a contributing member employer of the 2nd Plaintiff in accordance with the laws of Tanzania and she is registered and issued with a **Membership Registration Certificate Number 1028828**. That in accordance with the law, 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) employee's wage to the 2nd Plaintiff

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) to be paid their rightful pension benefits in the event of their retirement, death 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 **TZS 95,600,000.00 (Tanzanian Shillings Ninety Five Million Six Hundred Thousands)** being the outstanding members' statutory contributions which covers the period between April 2019 to February 2023 plus accumulated penalties amounting to **TZS 8,198,000.00 (Tanzanian Shillings Eight Million One Hundred Ninety Eight Thousand);** 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 **TZS 103,798,000.00 (Tanzanian Shillings One Hundred Three Million Seven Hundred Ninety-Eight Thousand)** being outstanding members' statutory 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 to the Second Plaintiff, 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 report, exit meeting report, schedule of outstanding contributions and penalties and the demand letters by the Second 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 and two 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 3 a negotiable instrument or as otherwise provided by 0. 37 of the court of civil procedure (equivalent to our order XXXV)

Having pounded 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 **TZS 103,798,000.00 (Tanzanian Shillings One Hundred Three Million Seven Hundred Ninety-Eight Thousand)**; being un-remitted members' contributions plus accumulated penalties.
- (2) 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 Judgment to the date of full recovery.
- (3) The Plaintiffs shall recover the costs of this suit.

It is so ordered.

Right of appeal explained.

DATED at **DAR ES SALAAM** this 16th February 2024.



A handwritten signature in blue ink, consisting of stylized initials and a surname.

H.S. MTEMBWA
JUDGE