

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM.

MISCELLANEOUS CIVIL APPLICATION NO. 501 OF 2023

(Originating from Civil Case No. 157/2023)

REGENCY MEDICAL CENTRE LIMITED.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

THE BOARD OF TRUSTEES OF THE

NATIONAL SOCIAL SECURITY FUND2ND RESPONDENT

RULING

Date of last order: 26/02/2024

Date of Ruling: 08/03/2024

A.A. MBAGWA, J.

This ruling is in respect of an application for leave to appear and defend a suit to wit, Civil case No. 157 of 2023.

The Court has been moved by way of chamber summons made under Order XXXV Rule 3 (1) (b) of the Civil Procedure Code [Cap 33 R.E 2019] and it is supported by the affidavit affirmed by Lalit Kanabar, the applicant's principal officer. The applicant prays for the following orders;

1. That this Honourable Court be pleased to grant leave to the applicant to appear and defend Civil Case No. 157 of 2023 filed by



the respondents against the applicant by way of summary suit, and which is still pending before this Honourable Court.

2. Any other relief which this Honourable Court may deem fit and appropriate to grant.

On the adversary side, the application is strongly contested by the respondents via a counter-affidavit sworn by Goodluck Athanasi Kilasi, the Principal Officer of the 2nd respondent.

The material facts leading to the filing of this application are as follows; On the 15th day of August, 2023, the respondents instituted, by way of summary procedure, a case i.e., Civil Case No. 157 of 2023 against the applicant, claiming for among others; payment of Tanzania Shillings Seven Billion, Seven Hundred Forty-Seven Million, Four Hundred Forty-Seven Thousand, Nine Hundred Forty-Nine and Sixty-Four Cents (Tshs. 7,747,447,949.64) being unremitted members' contributions from July, 2020 to 31st May, 2023.

In the plaint, it is alleged that the applicant was registered as a contributing member employer of the 2nd respondent under the law establishing the 2nd respondent and was issued with membership Certificate Registration No. 1020206. Further, it is alleged that the applicant has neglected, ignored, and or defaulted to heed her statutory

obligation of remitting members' contributions to the 2nd Respondent for some of the months and or remitted less contributions in some of the months, hence the suit to wit, Civil Case No. 157 of 2023.

It is worth noting that, under section 74A of the National Social Security Fund Act, [Cap 50 R.E 2018], the 2nd respondent is statutorily empowered to recover the said contributions by way of summary suit. The section reads; -

"74A.- (2) Every contribution and additional contributions due to the Fund may be recovered by a summary suit under order XXXV of the Civil Procedure Code at any time within twelve years after the date on which it is due." **(Emphasis is mine).**

Since the case was brought under the summary procedure, it follows that the applicant does not have an automatic right to appear and defend the case. It is against this backdrop, that the applicant instituted the instant application.

It is deposed in the applicant's affidavit that the applicant had been a member of the Parastatal Pension Fund (PPF) whose protocols required



the applicant to deduct 10% of the employee's basic salary and top up another 10% to make it 20%.

On 24th December, 2018 the applicant received a letter with reference No. PSSSF/DO/AG.128/01/1552 from the Public Service Social Security Fund (PSSSF), **Annexure RMC-1** informing her that, PSSSF was established by Act No. 2 of 2018 and commenced its operations on 1st August, 2018. The letter also clarified that PSSSF had taken over the operations of, among other things, PPF of which the applicant was a member. Thus, the applicant was advised to migrate to PSSSF and remit members' contributions thereto.

However, the applicant contended that said letter from PSSSF was silent as to the continuation of deductions of 10% based on basic salary. This dilemma triggered the applicant to seek clarification from the Association of Tanzania Employers (ATE).

According to paragraphs 9 and 10 of the applicant's affidavit, it is alleged that, in March, 2019, the applicant received a Circular from ATE dated 20th March, 2019, **Annexure RMC-2** confirming that the contributions would continue to be deducted from the basic salary.

Nonetheless, to the applicant's dismay, on the 1st day of April, 2020, the applicant received a demand letter from the 2nd respondent for payment of Tshs. 1, 788, 175, 784.88 of which Tshs. 1,787, 130, 305.73 was an

underpayment of the statutory contributions for the period of February, 2019 to January, 2020 and Tshs. 1,045,479.15 was penalties. The outstanding amount was brought up by the applicant's mistake of deducting the contributions based on basic salaries instead of gross salaries. The demand letter was followed by several correspondences from the applicant to the 2nd respondent, and from the applicant to ATE to mediate the situation, but in vain. As such, on 23rd September, 2022, the applicant received another demand letter from the 2nd respondent for payment of Tshs. 3,507, 980, 416.32 being the recovery of underpaid members' statutory contributions and penalty for the period of July, 2020 to July, 2022. Thereafter, the applicant started to remit contributions based on gross salaries in November, 2022 after a long discussion with the 2nd respondent's officials.

In rebuttal, the respondents strongly contested the application through the counter affidavit of Goodluck Athanasi Kilasi, the Principal Officer of the 2nd respondent. The respondents state that ATE was not the relevant authority vested with the powers to regulate social security matters. They also averred that the alleged underpaid contributions were established during the statutory inspection conducted by the 2nd respondent following several complaints from the applicant's employees. The respondents



attached a few contracts of employment between the applicant and her former employees to show the alleged underpayment.

In the reply to the counter affidavit, the applicant reiterated the averments in the affidavit and added that the amount claimed in the suit is colossal to the extent that the applicant would be declared bankrupt if the Court entered judgment against the applicant. As such, she added that a number of people would miss the applicant's medical facility.

When the matter was called on for a hearing, the applicant was represented by Ms. Hamisa Nkya, the learned advocate whereas the respondents had the services of Ms. Debora Mcharo, the learned Senior State Attorney.

Having adopted the affidavit of Lalit Kanabar, Ms. Nkya prayed to the Court to grant the application. She argued that the applicant has demonstrated triable issues calling upon the Court to grant leave to appear and defend the case. In support of her position, Ms Nkya referred the Court to the case of **Chissels Limited vs Arusha International Conference Centre and Attorney General**, Misc. Civil Application No. 107 of 2022, High Court Arusha.

In reply, Ms. Debora Mcharo, the learned Senior State Attorney opposed the application. She vigorously submitted that there are no triable issues worth consideration in the trial. She referred to paragraph 18 of the



applicant's affidavit and submitted that the applicant has admitted the outstanding debt. In fine, she prayed the Court to dismiss the application. In rejoinder, Ms. Hamisa Nkya reiterated her submissions in chief and maintained that there are triable issues.

I have keenly canvassed the parties' depositions. I have also carefully scanned the rival submissions on the matter. In terms of Order XXXV Rule 3 (1) of the Civil Procedure Code, the pertinent issue for determination is whether the applicant has raised triable issues fit to go for trial. See the cases of **Tanzania Telecommunications Company Limited vs Timothy Lwoga**, [2002] T.L.R 150 and **Mohamed Enterprises (T) Ltd vs Biashara Consumer Services Ltd**, [2002] T.L.R 159.

Upon appraisal of the record, it is common cause that the applicant does not dispute that she has been remitting the members' contributions based on basic salary instead of gross salary. Further, there is no gainsaying that under the new law, i.e., Act No. 2 of 2018, the applicant is required to remit contributions based on gross salaries. This is also admitted by the applicant under paragraph 17 where she states that the applicant has started to remit the contributions based on gross salaries since November 2022.

Thus, in circumstances where the law is very clear that contributions should be deducted based on gross salaries and where the applicant



admits that she was remitting the contributions based on basic salaries, I do not see substantial defence on the applicant's part for this case to go to trial. It should be noted that the gist of a summary suit is to enable the plaintiff to obtain judgment expeditiously where the defendant has no substantial defence and prevent the defendant from employing delaying tactics. See the case of **CRDB Bank Limited vs John Kagimbo Lwambagaza [2002] TLR 117.**

In view thereof, it is my considered findings that the applicant has failed to exhibit triable issues. As such, I dismiss the application. However, given the nature of the application, I order no costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 8th day of March, 2024



A.A. Mbagwa
A.A. Mbagwa

JUDGE

08/03/2024