

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

**AT DAR ES SALAAM.**

**CIVIL CASE NO. 157 OF 2023**

**ATTORNEY GENERAL.....1<sup>ST</sup> PLAINTIFF  
THE BOARD OF TRUSTEES OF THE  
NATIONAL SOCIAL SECURITY FUND.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**REGENCY MEDICAL CENTRE LIMITED.....DEFENDANT**

**SUMMARY JUDGMENT**

*Date of last order: 08/03/2024*

*Date of Judgment: 05/04/2024*

**A.A. MBAGWA, J.**

The plaintiffs, by way of a plaint, instituted this suit under a summary procedure pursuant to the provisions of Order XXXV of the Civil Procedure Code. The plaintiff prays for judgment and decree against the defendant as follows: -

- (i) An order for 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 31<sup>st</sup> May, 2023.

(ii) Costs and incidental to the filing of the suit.

In brief, the material facts as gathered from the pleadings and the annexures thereto go as follows; The defendant is a limited liability company registered in Tanzania and carries on the business of providing medical services. The defendant is also a registered contributing member employer of the 2<sup>nd</sup> plaintiff since 2019 with a certificate of registration No. 1020206 issued on on the 3<sup>rd</sup> day of July 2019. It was contended that, under the National Social Security Fund Act, the defendant is duty-bound to remit monthly statutory contributions and its employees that is 10% of the employee's gross salary and a top-up of 10% by the employer respectively thereby making 20% of the employee gross salary. However, the defendant defaulted on remittance of members' principal contributions for diverse dates and/or remitted less amount in some of the months from July 2020 up to July 2022. It was further claimed that the defendant was reminded to settle the arrears amicably to no avail. As such, at the time of instituting the suit, the total outstanding amount stood at TZS 7,747,447,949.64 out of which TZS 3,964,141,868.15 is the principal contribution whereas TZS 3,783,306,081.49 is the accumulated penalties for a period between July 2020 to 31<sup>st</sup> May 2023. To back up the claims,



the plaintiffs attached to the plaint an inspection report, an exit meeting report, and schedules of arrears generated from the 2<sup>nd</sup> plaintiff's system which were marked as annexure NSSF-2 collectively. Following the defendant's continued default, the 2<sup>nd</sup> plaintiff issued a demand notice in a bid to recover the arrears but in vain. The demand letter dated 30<sup>th</sup> May 2023 was attached to the plaint and marked as annexure NSSF-3 to support the allegations.

Despite all the above initiatives, the defendant failed or neglected to clear the outstanding contributions. As such, the plaintiffs decided to institute this suit claiming for the reliefs as indicated herein above.

Based on the allegations in the plaint along with the supporting documents, the plaintiffs prayed for judgment and decree against the defendant through the summary procedure as herein above indicated.

Upon service, the defendant filed in this Court Misc. Civil Application No. 501 of 2023 seeking leave of the court to appear and defend her suit. However, after hearing the parties, the application was, on the 8<sup>th</sup> day of March 2024, dismissed for want of triable issues hence this judgment.

On the 8<sup>th</sup> day of March 2024 when this case was called on for a hearing, Mr. Karim Rashid assisted by Debora Mcharo, learned State Attorneys appeared for the plaintiffs. Mr. Karim Rashid moved the Court, in terms of the provisions of Order XXXV Rule (2) of the Civil Procedure Code, to



enter a summary judgment. The learned Senior State Attorney told this Court that upon the defendant's failure to obtain leave to appear and defend the suit, the plaintiffs' claims are, in law, deemed to have been admitted.

Although the claims are deemed to be admitted, I carefully appraised the pleading and its annexures specifically the schedules of arrears and a summary of arrears. Indeed, I was satisfied that the total outstanding contributions stood at TZS 3,964,141,868.15 being arrears for July 2020 up to October 2022 further, it is clear in the summary of arrears that the accumulated penalties of TZS 3,783,306,081.49 accrued from July 2020 up to 31<sup>st</sup> May 2023 thereby making a total of TZS 7,747,447,949.64 as rightly claimed by the plaintiffs.

It is the settled law that, where a summary suit is not defended, the allegations contained in the plaint are deemed to be admitted. See also Order XXXV Rule (2)(2) of the Civil Procedure Code. Further, in the case of **CRDB Bank Limited vs John Kagimbo Lwambagaza** [2002] T.L.R 117, this Court held;

*"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 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."*

In the light of the above authorities and based on the claims in the plaint supported by the annexures, I am of the unfeigned view that the plaintiffs deserve a summary judgment against the defendant. Consequently, I hereby enter judgment and decree against the defendant as follows; -

- a) The defendant is hereby ordered to pay the plaintiffs the sum of TZS 7,747,447,949.64 being principal and accrued penalty.
- b) Costs of this suit.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 5<sup>th</sup> day of April, 2024



  
**A.A. Mbagwa**

**JUDGE**

**05/04/2024**