

**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. 147 OF 2023

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

VERSUS

**CHAGUO SERVICES AND
CONSULTANTS LTD.....DEFENDANT**

SUMMARY JUDGMENT

Date of last order: 08/03/2024

Date of Judgment: 05/04/2024

A.A. MBAGWA, J.

This is a summary suit brought under the provisions of Order XXXV of the Civil Procedure Code. The plaintiffs pray for judgment and decree against the defendant as follows: -

1. An order for payment of TZS 389, 470,507.38 being un-remitted members' contributions and accumulated penalties from January 2017 up to December 2019.

In brief, the material facts as gathered from the plaint and attending annexures are as follows; The defendant is a limited liability Company registered in Tanzania and it is carrying its business in the name of Chaguo Services and Consultants Limited within Dar es Salaam region.



Upon commencement of its business, the defendant applied for and was registered as a contributing member employer of the 1st plaintiff since 2014 following its registration, the defendant assigned membership registration Number 1000850 on 11th June 2014. In the due course, the defendant defaulted remittance of members' principal contributions for diverse dates from January 2017 up to December, 2019. It was contended that the defendant was reminded to settle the arrears to no avail. As such, at the time of instituting the suit, the total outstanding amount stood at TZS 389,470,507.38 out of which TZS 179,970,858 is the outstanding principal contributions whereas TZS 209,499,649.38 is accumulated penalties. To substantiate the claims, the plaintiffs attached to the plaint the notice of statutory inspection, an inspection report, an exit meeting report, and schedules of outstanding contributions generated from the 1st plaintiff's system which were marked as Annexure NSSF-2. The 1st plaintiff issued a demand notice in a bid to recover the arrears but in vain. A demand notice dated 10th May, 2023 was attached to the plaint and marked to support the allegations. The said demand notice dated 10th May, 2023 was received by Mr. Erick Tesha, on behalf of the defendant and he committed himself to make good of the outstanding TZS 389,470,507 being statutory contribution arrears and penalty. Nonetheless, the defendant not clear the debt.



Following the defendant's failure or neglect to clear the outstanding contributions, the plaintiff 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. 444 of 2023 seeking leave of the Court to appear and defend her suit. However, after hearing the parties, the application was, on the 8th day of March 2024, dismissed for want of triable issues hence this judgment.

On the 8th day of March 2024 when this case was called on for a hearing, Mr. Karim Rashid assisted by Debora Mcharo, learned State Attorneys, appears for the plaintiffs Mr. Karim Rashid moved the Court, in light of the provisions of Order XXXV Rule (2) of the Civil Procedure Code, to enter a summary judgment. Mr. Karim Rashid told this Court that upon the defendant's failure to obtain leave to appear and defend the suit, the plaintiffs are, in law, deemed to have been admitted.

Despite the presumption of admission of claims, I took trouble to carefully scan the plaint and its annexures in particular the schedules of arrears and penalty notice. In the event, I was satisfied that the total outstanding contributions stood at TZS 179,970,858.00 as of December 2019. Thus,



by adding the accumulated penalties of TZS 209,499,649.38, it makes a total of TZS 389,470,507.38 as rightly claimed by the plaintiffs. The same figure is indicated in the demand notice, dated 10/05/2023 which was duly served to the defendant through Mr. Erick Tesha on the 10th day of May, 2023.

It is trite law that, where a summary suit is not defended, the allegations contained in the plaint are deemed to be admitted. See Order XXXV Rule (2)(2) of the Civil Procedure Code. To add up, in the case of **CRDB Bank Limited vs John Kagimbo Lwambagaza** [2002] TLR117, 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 light of the above-settled position and based on the claims in the plaint along with the supporting documents, I am of the unfeigned view that this is the right case to summarily enter judgment. Consequently, I hereby enter judgment and decree against the defendant. Accordingly, I order the defendant to pay the



plaintiffs a sum of TZS 389,470,507.38 being un-remitted members' statutory contributions and accumulated penalties. Since the Plaintiffs did not press for costs, I make no orders as to costs.

It is so ordered.

The right of appeal is explained.

Dated at Dar es Salaam this 5th day of April, 2024.




A.A. Mbagwa

JUDGE

05/04/2024