

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB- REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 13 OF 2023

THE BOARD OF TRUSTEES OF THE

NATIONAL SOCIAL SECURITY FUNDPLAINTIFF

VERSUS

PACIFIC DIAGNOSTICS LTD DEFENDANT

SUMMARY JUDGEMENT

11th March & 25th April, 2024.

MWANGA, J.

On 6th January, 2023 the Plaintiff, **THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND** preferred a summary suit against the defendant **PACIFIC DIAGNOSTICS LTD** claiming, among other things, payment of Tanzanian shillings 649,899,474.36/= being unremitted members' contributions plus accumulated penalties. The amount so claimed includes the principal contributions' amount of Tshs. 479,033,020.18/= and accumulated penalties to the tune of Tshs. 170,866,454.18/=.

It was broadly pleaded that the defendant has been the plaintiff's registered contributing member as an employer since 30th April 2019 with membership registration No. 1019279. As rightly pointed out, under the law establishing the plaintiff, the defendant is required to remit its compulsory contribution and that of its employees at the rate of 10% for the plaintiff and 10 % for the employer, all making a total of 20% of the (member) employee's wage. It is documented that, the defendant had failed, neglected, ignored, and/or defaulted to remit the stated sum.

The defendant's act of ignoring, delaying, and defaulting to remit to the plaintiff's said contributions is not only against the law but also denies the employees rightful pension benefits in the event of their retirement, death, and /or when leaving the scheme in any whatever manner.

The claimed unremitted contributions of Tshs. 649,899,474.36/= **(Say, Tanzanian shillings Six hundred forty-nine million eight hundred ninety-nine thousand four hundred seventy-four and eighty-three cents)** was the outstanding principal amount members' contributions for the period between December, 2020 to August, 2022 plus the accumulated penalties amounting to Tshs. 170,866,454.18/=.

(Tanzanian Shillings, T one hundred seventy million eight hundred sixty-six thousand four hundred fifty four and eighteen cents only).

It is also on record that, despite several reminders and demands sent to the defendant to settle the outstanding contributions, the defendant has remained adamant about heeding the plaintiff's rightful demands as presented. That is also seen in the proceedings of this suit where there was an indication that the matter could be amicably settled it was in vain, the result of which the plaintiff preferred the present summary suit seeking the following reliefs:

- (i) The defendant be ordered to pay Tanzanian shillings 649,899,474.36/= being unremitted members' contributions plus accumulated penalties.
- (ii) The defendant be ordered to pay the decretal sum from December 2020, when the sum accrued to the date of judgment at an overall lending interest rate of 15% per annum as published by BOT monthly economic review, January 2020 publications.
- (iii) Interest on the decretal sum at the prescribed Court rate of 7% from the date of delivery of judgment until the same shall be fully satisfied.

- (iv) Cost of this suit and any other incidental to the filing of the suit;
and
- (v) Any other further relief this Court shall deem fit and just to grant.

Upon filing this suit and having effected service, the defendant entered appearance twice only and abstained on six subsequent dates; therefore, made an implication that he had lost interest in the case. In that regard, she waived her right to defend this suit.

In the circumstances, Mr. Kennedy Kasongwa, the learned State Attorney for the plaintiff prayed the Court to enter Summary Judgment under Order XXXV, Rule 2(2) of the CPC together with Section 74A of the NSSF Act, Cap. 50 [R.E 2022].

Now, with the above submission by the State Attorney, the issue is whether the plaintiff is entitled to summary judgment and the reliefs sought in the plaint. Order XXXV, Rule 2 (a) of the CPC states;

*"In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from the judge or magistrate as hereinafter provided so to appear and defend; and, **in default of his***

obtaining such leave or of his appearance and defense in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled—

(a)where the suit is a suit, referred to in paragraph (a), (b), and (d) of rule 1 or a suit for the recovery of money under a mortgage and no other relief in respect of such mortgage is claimed, to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith”

In light of the provision of the law above, the fact that the defendant was properly served but defaulted to enter appearance and defend the suit in pursuance thereof the plaintiff is entitled to summary judgment as provided for under Order XXXV Rule 2 of the CPC. Accordingly, upon proof thereto regarding such default thereof the plaintiff is entitled to a decree for any sum not exceeding the sum mentioned in the summons,

together with interest at the rate specified and such sum for costs as may be prescribed and such decree may be executed forthwith.

For the foregoing, I proceed to enter Summary Judgment in favor of the plaintiff and it is hereby ordered that the defendant shall pay the plaintiff the following: -

- i. Total sum of Tanzanian shillings 649,899,474.36/= being unremitted members' contributions plus accumulated penalties.
- ii. The decretal sum from December 2020, when the sum accrued to the date of judgment at an overall lending interest rate of 15% per annum as published by BOT monthly economic review, January 2020 publications.
- iii. Interest on the decretal sum at the prescribed Court rate of 7% from the date of delivery of judgment until the same shall be fully satisfied.
- iv. Cost of this suit.

It is so ordered.



H. R. MWANGA

JUDGE

25/04/2024