

TANZANIA / JUDGMENT

attorney general another vs aysha shamte mzee ta premier girls secondary school 2024 tzhc 576 1 march 2024

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TZHCDECIDED
1 March 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB-REGISTRY OF DAR ES SALAAM) AT PAR ES SALAAM. CIVIL CASE NO. 116 OF 2023 ATTORNEY GENERAL..... 1ST PLAINTIFF THE BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND..... 2ND PLAINTIFF VERSUS AYSHA SHAMTE MZEE t/a PREMIER GIRLS SECONDARY SCHOOL..... DEFENDANT
SUMMARY JUDGMENT Date of last order: 21/02/2024 Date of Ruling: 01/03/2024 A.A. MBAGWA, J.
The plaintiffs, by way of a plaint, instituted this suit through a summary procedure under the provisions of Order XXXV of the Civil Procedure Code claiming against the defendant as follows;

- i. An order for payment of TZS 226,855,800.00 being un-remitted members' contributions and accumulated penalties from various dates between March, 2019 to September, 2022. ii. An order for payment of interest at the court rate of 7% on the decretal sum from the date of judgment to the date of full payment. iii. Costs of this suit be borne by the defendant. i iv. Any other order(s) which this Honourable Court may deem fit and just to grant. Upon filing the plaint, the Court issued an order directing the plaintiffs to serve the defendant by 25th July, 2023. After several adjournments, the plaintiffs successfully served the defendant as such, on 13th December 2023, both parties appeared in court. However, when the matter was called on for necessary orders on 21st February, 2024, the defendant did not enter appearance without notice. Until 21st February, 2024 twenty- one (21) days had lapsed and no application for leave to defend the suit had been filed. As such, this Court, upon application by Opiyo Marcelus, learned Principal State Attorney decided to proceed with the determination of the case in terms of Order XXXV Rule 2(2) of the Civil Procedure Code as well as section 74A of the National Social Security Fund Act, [Cap. 50 R.E 2019] hence this summary judgment. In brief, the material facts as gathered from the plaint and attending annexures are to the effect that; the defendant is a natural person and owner of Premier Girls Secondary School with Reg. No. 4462 which is located within Bagamoyo in Coast region. Upon commencement of its business, the defendant applied and was registered as a contributing member employer of the 2nd plaintiff since 2012 and assigned membership registration Number 995797 on 3rd February, 2012. However, the 2 defendant defaulted

remittance of members' principal contributions for diverse dates from March, 2019 up to September 2022. It was contended that the defendant was reminded to settle the arrears to no avail. As such, at the time of instituting this suit, the total outstanding amount stood at TZS 226,855,800.00 out of which TZS 191,047,000.00 is a principal contribution whereas TZS 35,808,800 is accumulated penalties. To back up the claims, the plaintiffs attached to the plaint the schedules of outstanding contributions generated from the 2nd plaintiff's system which were described as Annexure NSSF-6, NSSF-7, and NSSF-8, though were not marked as such. 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. It is the 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. 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 the light of the above authorities and based on the claims in the plaint supported by the annexures and considering that no application for leave to appear and defend the case was filed by the defendant despite that she was properly served and entered appearance on 13th December, 2023, I am of the unfeigned view that this is the right case to summarily enter judgment. I have carefully scanned the schedules of outstanding contributions attached to the plaint and satisfied myself that the total outstanding contributions stood at TZS 191,047,000.00 as of September, 2019. Thus, by adding the accumulated penalties of TZS 35,808,800, it makes a total of TZS 226,855,800 as rightly claimed by the plaintiffs. In view thereof, I enter judgment and decree against the defendant and make the following orders that;

- (i) The defendant is ordered to pay the sum of TZS 226,855,800.00 say Tanzania Shillings Two Hundred Twenty-Six Million Eight Hundred Fifty- Five Thousand Eight Hundred being principal and accrued penalties of contributions arrears for diverse dates between March, 2019 up to September 2022. (ii) The defendant is ordered to pay interest at the court rate of 7% on the decretal sum from the date of judgment to the date of full payment. (iii) Costs of this suit be borne by the defendant. 4 It is so ordered. The right of appeal is explained. Dated at Dar es Salaam on this 1st day of March, 2024. A.A. Mbagwa JUDGE 01/03/2024 5

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Prepared on 13 October 2026 · Esheria