

TANZANIA / JUDGMENT

attorney general another vs effco solution t limited 2023 tzhc 20614 25 august 2023

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TZHCDECIDED
25 August 2023

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB DISTRICT REGISTRY) AT DAR ES SALAAM CIVIL CASE NO. 04 OF 2023 ATTORNEY GENERAL.....1ST PLAINTIFF THE BOARD OF TRUSTEES OF NSSF.....2ND PLAINTIFF VERSUS EFFCCO SOLUTION (T) LIMITED.....1ST DEFENDANT SUMMARY JUDGMENT Date of last Order: 22th August, 2023. Date of Judgment: 25th August, 2023. E.E. KAKOLAKI, J. The plaintiffs herein filed a summary suit under Order XXXV of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC) read together with section 74A(2) of the National Social Security Fund [Cap. 50 R.E 2018] (the NSSFA) against the defendant, claiming among other things payment of a total amount of Tanzanian shillings 1,234,457,520.92/= being defaulted remittance of principal members' contributions to the 2nd plaintiff amounting to Tshs. 754,469,256.04 and penalties amounting to Tshs. 488,988,254.88 for a total period of nineteen (19) months covering the period from February 2021 to August, 2022. 1 The brief factual background of the matter as can be gathered from the amended plaint goes thus, the defendant is the plaintiff's registered contributing member as employer since 12th April, 2018 when she was issued with a membership certificate No. 1012442 to that effect. It is averred that, under the law establishing the plaintiff the defendant is required to remit to the 2nd plaintiff its own compulsory pension contribution and that of its employees at the rate of 10% and 10 % respectively, all making a total of 20% of the (member) employee's wage each month, the contribution which she failed, neglected, ignored and/or defaulted to remit in all those nineteen

(19) months. According to the plaintiffs, the defendant's undesirable act of ignoring, delaying, refusing, neglecting or defaulting to remit to the 2nd plaintiff the said members contributions i.e its contributions and that of its employees, is not only against the law but also denies the employees of their rightful pension benefits in the event of retirement, death and /or when leaving the scheme in any other manner. The plaintiffs allege that, as a result of the defendants breach to heed to its statutory obligation to remit members contributions to the 2nd plaintiff on numerous occasions, she demanded the performance of the said statutory obligation. She contends further that, despite the reminder and demands 2 for the defendant to settle the outstanding contributions the later has to date failed, refused and/or defaulted to heed to the plaintiffs rightful demands as presented or at all, the result of which the plaintiff preferred the present summary suit. The plaintiff is therefore seeking for the

following reliefs:

- (i) An order for payment of Tshs. 1,234,457,520.92/= (say Tanzanian Shillings One Billion Two Hundred Forty Three Million Four Hundred Fifty Seven Thousand Five Hundred Twenty and Ninety Two cents only), being unremitted members' contributions plus accumulated penalties thereon due and payable to the Plaintiff by the Defendant. (ii) Interest on the decretal sum from July, 2021, when the sum accrued to the date of judgment at the prevailing prescribed court rate per annum. (iii) Interest on Judgment debt at the prescribed court rate from the date of delivery of Judgment until the same shall be fully satisfied. (iv) Cost of and incidental to the filing of the suit and
- (v) Any other and further relief as this Honourable Court shall deem fit and just to grant. 3 Upon filing this suit and having effected service to the defendant, the defendant applied for leave to appear and defend summary suit as per the requirement of Order XXXV Rule 2(2) of the CPC vide Misc. Civil Application No. 113 of 2023 and granted with conditional leave to deposit first in court Tshs. 754,469,256.04, as principal outstanding pension contributions within 30 days of the decision of the Court handed down on 14th July, 2023. Nevertheless, until on 22nd August, 2023 when the matter was scheduled for mention the defendant had not heeded to the Court's order, hence waived her right to enter the defence. Following that development on that date Ms. Caroline Lyimo, learned State Attorney representing the plaintiffs informed the Court that, the plaintiffs have not received notice from the defendant of the compliance of Court's order as ordered on 14th July, 2023 in Misc. Civil Application No. 113 of 2023 to deposit in court the outstanding principal pension contributions. She thus invited the Court to enter summary Judgment and decree in all reliefs claimed against the defendant under section 18(1) of the National Social Security Fund Act (NSSFA) read together with order XXXV of the CPC. The learned counsel supported her prayer by referring the court to its own decision in the case of CRDB Bank Ltd Vs. John Kagimbo Lwambagaza (2002) TLR 117. 4 Having considered the pleadings and the submission by Ms. Lyimo as well as the fact that, in this matter the defendant did not enter her defence despite of being granted leave to so do, the only issue worthy of consideration by this Court is whether the plaintiff is entitled to summary judgment as prayed. It is a trite law that where a summary suit is filed the defendant cannot enter appearance to defend the suit until he obtains leave of the court to so do by way of formal application. In the event of failure to obtain leave or default appearance to enter his defence, the claims contained in the plaint shall be deemed to be admitted by the defendant and the plaintiff shall be entitled to decree as per section 74A(2) of the National Social Security Fund Act (NSSFA) read together with Order XXXV Rule 2(2) CPC, as section 18(1) of NSSFA cited by Ms. Lyimo though a replica of section 74A(2) of NSSFA does not specify the time limitation within which the statutory contribution can be recovered. For clarity the provisions of section 74A(2) of the National Social Security Fund Act (the NSSFA) reads thus:

- (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 anytime within twelve years after the date on which it is due. And Order XXXV Rule (2) provides: 5
- (2) 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 defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to..." It is settled law now that, summary suit is designed to enable the plaintiff to obtain judgment expeditiously where the defendant has in effect no substantial defence to the suit and to prevent such defendant from employing delaying tactics to postpone the days from reckoning. See the case of John Kagimbo Lwambagaza (supra). In this case there is no doubt that, the claimed total outstanding amount of 1,234,457,520.92/= as principal members' contributions and penalties is for period between February 2021 to August, 2022, well within the time limitation for institutions of suit against members of the 2nd plaintiff in terms of the provisions of section 74A(2) of the NSSFA. As the law relating to summary suit is settled that, defendant's failure to enter her defence entitles the plaintiff to summary judgment as provided under the provision of Order XXXV Rule 2 of the CPC, I hold that defendant's failure to enter her defence 6 despite of being granted with leave to defend the suit is tantamount to admission of the claims against her. In view of that, I proceed to enter summary Judgment in favour of the plaintiffs and it is hereby decreed that, defendant shall pay the plaintiffs the following:
1. Total sum of Tshs. 1,234,457,520.92/= (say Tanzanian Shillings One Billion Two Hundred Forty Three Million Four Hundred Fifty Seven Thousand Five Hundred Twenty and Ninety Two cents only, being an outstanding debt of unremitted members contributions plus penalties.
 2. Interest on the decretal sum from July 2021, when the sum accrued to the date of Judgment at an overall lending interest rate of 12% per annum.
 3. Interest on decretal sum at the Court rate of 7% from the date of delivery of Judgment to the date of full payment.
 4. Costs of the suit. It is so ordered. Dated at Dar es Salaam this 25th day of August, 2023. E. E. KAKOLAKI JUDGE 7 25/08/2023. The Judgment has been delivered at Dar es Salaam today 25th August, 2023 in the presence of Ms. Caroline Lyimo, State Attorney for the plaintiffs, and Mr. Oscar Msaki, Court clerk and in the absence of the defendants. Right of Appeal explained. E. E. KAKOLAKI JUDGE 25/08/2023. 8

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