

TANZANIA / JUDGMENT

CIVIL CASE NO

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TANZLIIDECIDED
1 January 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM CIVIL CASE NO. 124 OF 2023

ATTORNEY GENERAL1ST PLAINTIFF THE BOARD OF TRUSTEES
OF THE NATIONAL SOCIAL SECURITY FUND.....2ND PLAINTIFF
VERSUS D.P. SHAPRIYA AND COMPANY LIMITEDDEFENDANT SUMMARY
JUDGEMENT Date of last order: 9th October 2024 Date of Judgement: 17th October 2024
MTEMBWA, J.: The Plaintiffs herein, by way of summary procedure under Order XXXV of the
Civil Procedure Code, Cap 33, R.E 2019, instituted this suit against the Defendant for the following
orders and I quote in verbatim;

- (i) The Defendant to be ordered to pay the sum of 3,060,995,822.56 (Tanzanian Shillings Three Billion Sixty Million Nine Hundred Ninety-five Thousand Eight Hundred Twenty-Two Shillings Fifty-Six Cents); being un-remitted members' contributions plus accumulated penalties once the 1 outstanding amount is settled and charged 5% in each respective delayed month thereon due and payable to the Plaintiffs by the Defendant. (ii) Interest on decretal sum at the prescribed Court rate of 7% per annum from the date of delivery of Judgment until the same shall be fully satisfied; (iii) Costs of this suit and any other incidental costs pertaining to the filing of the suit; and (iv) Any other and further relief as this Honorable Court shall deem fit and just to grant. When the matter came for orders on 9th October 2024, the Plaintiffs were represented by Mr. Opio Marcellus, the learned principal state attorney, while the Defendant was not present. Mr. Marcellus informed this Court that he had information that Misc. Civil Application No. 15673 of 2024 was dismissed for want of prosecution. Since there was no Application for leave to appear and defend the suit, he implored this Court to pronounce a summary judgment against the Defendant, which I will now give. Before I delve into the crux of the matter, I find it opts to narrate the factual background information leading to this battle as revealed by the Plaint. According to the Plaint, the Defendant is a registered contributing 2 member employer of the 2nd Plaintiff with a Membership Certificate of Registration Number 19690. According to the law establishing the 2nd Plaintiff, the Defendant is required each month to make its compulsory contribution and that of its employees at a 10%/10% rate, respectively, equal to 20% of the

(member) employees' wages. That, despite the fact that Defendant is so obliged in law, she failed, neglected, ignored, and or defaulted to remit the members' statutory contributions to Plaintiff for some of the months and delayed remittance in some of the months, which attracted imposition of the penalty. It was revealed further that, the undesirable act of the Defendant of ignoring, delaying, refusing, neglecting and or defaulting to remit to the Plaintiff the members' contributions not only that it is against the law but also denies her employees (Plaintiff's members) of their rightful pension benefits in the event they retire, die and or when they leave the scheme in any other manner. The facts reveal further that the Defendant is in breach of its statutory obligations and has defaulted remittance of members' statutory contributions amounting to Tanzanian Shillings 1,143,536,904.00 (Tanzanian Shillings One Billion One Hundred Forty-Three Million Five Hundred Thirty-Six Thousand Nine Hundred Four Shillings) being the outstanding principal members' contributions which covers the 3 period between January 2011 to January 2023 with accumulated penalties amounting to Tanzanian Shillings 1,926,458,918.56 (Tanzanian Shillings One Billion Nine Hundred Twenty-Six Million Four Hundred Fifty-Eight Thousand Nine Hundred Eighteen Shillings and Fifty-Six Cents only) which shall continue to accrue as long as the amount stand unpaid. As a result of the Defendant's breach and failure to heed its statutory obligations to remit members' statutory contributions, the Plaintiffs demanded performance on numerous occasions without success. To fortify the claimed sum, the Plaintiffs attached to the Plaintiff the following documents: Copies of the Certificates of Registration and registration details certifying the Defendant's membership with the 2nd Plaintiff; sheets of list of inspection reports, exit meeting reports, schedule of outstanding contributions and penalties and the demand letters by the 2nd Plaintiff addressed to the Defendant. They are deemed to have been received to form part of the records. It is for these facts the Plaintiffs have advanced the prayers as prefaced above. It is a settled position of the law that where a suit is brought under the summary procedure and where no leave to appear and defend has been granted, the allegations in the Plaintiff are deemed to have been admitted (See Order XXXV Rule 2(2) of the Civil Procedure Code). 4 The objectives of the summary suits were enunciated in the case of CRDB Bank Limited vs. John Kagimbo Lwambagaza [2002] TLR 117, where the Court observed that; The purpose of Order XXXV: Summary Procedure "is to enable a Plaintiff to obtain Judgement expeditiously where the Defendant has in effect no substantial defense 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. Conversely, it is settled that reliefs prayed for in a summary suit must be reliefs available under the summary procedure. In the case of Paul Massawe & 2 Others Vs. Access Bank Tanzania Limited, Civil Appeal No. 39 of 2014 (Unreported) the Court of Appeal quoted the script at page 3311 of Mulla, the Code of Civil Procedure, and observed that; The reliefs prayed for in a summary suit must be reliefs available under summary procedure, that is based on a written agreement or a negotiable instrument or as otherwise provided by 0. 37 of the code of civil procedure (equivalent to our order XXXV) Having dispassionately considered the above-settled position of the law, annunciated principles, the facts and attached documents as revealed 5 by the records, I

hereby, summarily, enter Judgement in favour of the Plaintiffs on the following reliefs;

- (i) The Defendant to be ordered to pay the sum of 3,060,995,822.56 (Tanzanian Shillings Three Billion Sixty Million Nine Hundred Ninety-five Thousand Eight Hundred Twenty-Two Shillings Fifty-Six Cents); being un-remitted members' contributions plus accumulated penalties payable to the Plaintiffs by the Defendant. (ii) Interest thereof at the Court's rate of 7% per annum from the date of delivery of the judgment to the date of full recovery and; (iii) The Plaintiffs shall recover the costs arising from the suit. It is so ordered. Right of appeal explained. DATED at DAR ES SALAAM this 17th October 2024. H.S. MTEMBWA JUDGE 6 7

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Prepared on 14 October 2026 · Esheria