

TANZANIA / JUDGMENT

RADDY FIBER SOLUTION 0001

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TANZLIIDECIDED
10 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM MISC. CIVIL APPLICATION NO. 15027 OF 2024 (Originating from
Civil Case No. 12983 of 2024 before this Court) RADDY FIBER SOLUTION
LIMITED APPLICANT VERSUS THE HON. ATTORNEY
GENERAL 1st RESPONDENT THE BOARD OF TRUSTEES OF THE
NATIONAL SOCIAL SECURITY FUND 2ND RESPONDENT

RULING

Date of Last Order: 24.10.2024 Date of Ruling : 11.12.2024 NGUNYALE, J. The applicant RADDY FIBER SOLUTION LTD has preferred the present application under Order XXXV Rule 2 (2) of the Civil Procedure Code Cap 33 R.E 2019 seeking leave for the applicant to appear and defend the suit (Civil Case No. 12983 of 2024) instituted by the respondents Attorney General and The Board of Trustees of The National Social Security Fund under summary procedure. The application has been supported by an affidavit of Issa Seif the Principal Officer of the applicant and resisted by the counter affidavit of the respondents. In the affidavit in support of the application the applicant has deposed that on 10th June, 2024 the applicant was served with the summons of the Civil Suit No. 12983 of 2024 instituted under summary procedure which demanded the applicant to apply for leave of this court to appear and defend the same. The suit was instituted by the respondents claiming for payment of US 887,748,454.50 being the alleged unremitted 2nd respondent members contributions together with the alleged accumulated penalties payable to the said 2nd respondent. In his further averments, he stated that the claim is based on untrue and incorrect records of the applicants' payment of the 2nd respondent members contribution from April, 2018 to April, 2023. Some of the employees listed in the annexure to the plaint were not employees of the applicant, the amount of their respective salaries quoted is incorrect thus the amount has been exaggerated. From 2018 up to now the applicant has paid a total of 119,110,000.00/= but the amount has not been counted by the respondent. Under paragraph 6 of the affidavit, he deposed that unless the courts' leave to appear and defend the suit is granted to the applicant, the applicant will have no chance to give evidence for the court to have necessary facts. The respondents filed their joint counter affidavit sworn by Luciana Kagimbo the Principal Officer of the 2nd respondent who deposed that the contents of the applicant affidavit are strongly disputed. The amount claimed include accumulated penalties. Thorough inspection was done in presence of the applicant and established that the applicant was in default in remittance

of statutory contributions amounting to US 739,467,420.00 covering various periods between April 2018 to April 2023 and accumulated penalties amounting to TZS 148,281,034.50. The matter was called for hearing, the parties accepted the hearing to take the form of written submission. The applicant appeared represented by Jurna Nassoro whilst the respondents were enjoying the service of Ms. Ttreresia Mponzi. The applicant Counsel submitted that in cases of this nature, the court does not go in detail to the matter other than considering the content of the affidavit. The court is called upon to decide whether the applicant has shown in the affidavit any triable issue fit to go for trial. He referred the court to the cases of Mohamed Enterprises (T) Limited versus Biashara Consumers Services Ltd [2002] TLR 149 and Makungu Investment Company Limited versus Petrosol (T) Limited, Civil Appeal No. 23 of 2013. The claims as stated in the affidavit are not true. In the case of Registered Board of Trustees of Chama cha Mapinduzi T/ A Mbalizi Secondary School versus The Board of Trustees of the National Social Security Fund, Misc. Civil Application No. 28 of 2021 the court found that there was a triable issue in a circumstance where the claimed amount stated in the plaint and actual amount stated by the applicant. The court granted leave for evidence to be adduced and the case to be decided based on evidence. The submission of applicant was contested by the respondent through her attorney. In her submission Ms. Mponzi started by stating that the defendant is entitled leave to appear and defend the summary suit upon establishing that there is a triable issue. The same was stated in the case of TTCL versus Timothy Lwoga (2002) TLR. In the case at hand the amount claimed is correct and it was obtained after a clear and transparent inspection which was done in presence of the applicant representative. The averments of the applicant are contradictory and misleading. She went on submitting that, without prejudice to the above, if leave to .M defend is granted may indeed be granted subject to conditions such as partial payment of the outstanding sum. He cited order XXXV Rule 3 (2) of CPC which gives such discretion. She also cited the case of Classic Professionals Caterer versus PSSSF, Misc. Civil Application No. 250 of 2019 (unreported) where it was observed that: " Where the defendant has demonstrated the existence of the triable issue, leave may be granted with or without conditions" In the above case, the court ordered the applicant who was given leave to appear and defend the summary suit to deposit part payment. She prayed this court to order leave to defend subject to conditions of part payment. Already I have in mind the detailed argument of the parties, I therefore proceed to deal with the issue whether the applicant has established a triable issue necessary for her to be granted leave to appear and defend Civil Case No. 12983 of 2024. The parties to this application were in agreement to the settled law that the applicant for leave to defend a summary suit must establish that there is a triable issue for the defendant to be availed leave to appear and defend the matter. That settled law originates from the provisions of Order XXXV Rule 3(1) (b) of the CPC which the applicant used to move the court to grant the reliefs sought. The provisions provide: 5 3.(1) The court shall, upon application by the defendant, give leave to appear and to defend the suit on affidavits which-

- (b) disclose such facts as the court may deem sufficient to support the application; or In view of the above provision, I return to the applicant affidavit to see as to whether he has established facts which are sufficient in support of the application. Due consideration has

been made to the applicant affidavit and the respondents counter affidavit. After such consideration, there is no dispute that the applicant defaulted to pay membership contributions of her employees to the 2-d respondent. The only contentions issue is about the amount which the applicant defaulted to pay. The respondent in the counter affidavit deponed that the applicant failed to remit membership principal contribution amounting to VS 739,467,420.00 plus accumulated penalties amounting to TZS 148,281,034.50. The applicant in the affidavit in support of the application contended that the amount raised by the respondent is untrue and incorrect record. Also, other employees listed in the annexure annexed to the plaint were not employees of the applicant and the amount of salaries quoted for each employee are incorrect thus the amount claimed by the respondent has been highly exaggerated. The argument of the applicant has been controverted by the/respondent through a counter affidavit. In the respondent counter affidavit, the respondent Principal officer has deponed that the figures are correct and they were confirmed after an inspection was dully conducted in presence of the applicants' representatives. It is my finding that the contentious issues between the parties are sufficient to be considered in support of the application. The affidavit of the applicant has established arguable case. The applicant is granted leave to appear and defend Civil Case No. 12983 of 2024 without any condition. Costs in the cause. Order accordingly. Dated at Dar es Salaam this 11th day of December, 2024. }\\ RT P. Ngunyale JUDGE Ruling delivered this 11th day of December, 2024 in presence of Mr. Mhina Madafu State Attorney for the respondent. JUDGE 7

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