

TANZANIA / JUDGMENT

SUMMARY JUDGMENT ATTORNEY GENERAL AND NSSF VS RSTGA SACCOS CIV CASE NO 26044 OF 2023

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB- REGISTRY AT MBEYA CIVIL CASE NO. 26044 OF 2023 ATTORNEY
GENERAL.....1ST PLAINTIFF THE BOARD OF TRUSTEES OF THE
NATIONAL SOCIAL SECURITY FUND.....2ND
PLAINTIFF VERSUS R.S.T.G.A SACCOSDEFENDANT
SUMMARY JUDGMENT Date of last Order: 13th June, 2024 Date of Judgment: 3rd July, 2024
KAWISHE, J.: The Plaintiffs in this suit have moved this court by way of summary procedure filed
under the auspices of Order XXXV of the Civil Procedure Code [Cap 33 RE 2019], read together
with section 74A (2) of the National Social Security Fund Act [Cap 50 R.E 2018]. The suit is
instituted against the defendant praying for Judgment, decree and orders as follows: 1

- (i) That, the defendant to be ordered to pay the sum of TZS. 23,082,358/= (say Tanzanian Shillings Twenty-Three Million Eighty-Two Thousand Three Hundred Fifty-Eight Only.) being unremitted members' contributions plus accumulated penalties thereon due and payable to the plaintiff by the defendant as per paragraph 8.0 of the plaint. (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) Cost of and incidental to the filing of the suit, and (iv) Any other and further relief as this Honourable Court shall deem fit and just to grant. On 12th April, 2024 Ms. Edina Mwamlima, learned State Attorney informed the court that, the defendant moved from where was located in Tukuyu Mbeya hence, could not be served with the summons. She prayed for a substitute service. The court granted the prayer and the summons was published at page 5 of the Habari Leo Newspaper of 3rd May, 2024. A copy of the same was submitted. Following the publication of the summons, the defendant's principal officers appeared before the court. Since, it is a summary suit, they did not have an automatic right to defend until they obtained a leave of the court through an application. In order to allow the defendant to file the application and be heard accordingly, the court adjourned the matter from 15th May, 2024 up to 13th June, 2024. 2 When the matter came for mention on 13th June, 2024 in order to see if the defendant filed an application for leave to defend the suit, Mr. Joseph Tibaijuka, learned State Attorney informed the court on 13th

June, 2024 that, the defendant did not file the application neither enter appearance before the court on that date despite of their presence in court when matter was last adjourned. As a result, the learned State Attorney prayed for judgment. Given the nature of this suit, before concentrating on the prayers, I find it imperative to narrate the facts, although fleetingly, as described by the plaint, that the defendant was registered as a contributing member employer of the 2nd plaintiff in accordance with the law establishing the 2nd plaintiff and was issued with a membership Certificate Registration, Registration Number 710849 to that effect. The certificate was attached as annexure NSSF-1. That, according to the law establishing the 2nd plaintiff, the defendant is required in each month to make its own compulsory contribution and that of its employees at the rate of 10% and 10% respectively making a total of 20% of the (member) employees' wages. That, despite of the fact that the defendant is obliged in law, it has failed, neglected, ignored and/or defaulted to remit the members' 3 statutory contributions to the 2nd plaintiff for some months and delayed remittance in some months which attract imposition of the penalty. The plaintiff attached annexure NSSF-2 to substantiate remittance of members' contribution. The plaint further elaborated that, the undesirable act of the defendant of ignoring, delaying, refusing, neglecting and/or defaulting to remit to the 2nd plaintiff its employees' contribution and 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 further unfold that, the defendant is in breach of its statutory obligations and has defaulted remittance of members' statutory contribution amounting to TZS. 22,182,000/= (say Tanzanian Shillings Twenty-Two Million One Hundred Eighty-Two Thousand Only) covers various periods between January, 2019 to September, 2022 being the outstanding principal members' contributions with accumulated penalties amounting to Tanzanian Shillings 900,358/= (say Tanzanian Shillings Nine Hundred Thousand Three Hundred Fifty-Eight Only) which sum continues to accrue as long as it remains due. 4 That, per se, the plaintiff's claims against the defendant are for payment of a total of TZS. 23,082,358/= (say Tanzanian Shillings Twenty-Three Million Eighty-Two Thousand Three Hundred Fifty-Eight Only) being outstanding principal members' contributions plus accumulated penalties thereon which sum continues to accrue as long as it remains due as aforementioned. That as a result of the defendant's breach and failure to heed to its statutory obligations to remit members' statutory contributions to the 2nd plaintiff as require by the law, the 2nd plaintiff on numerous occasions, demanded the performance of the said statutory obligation by the defendant on remittance of members' contributions but up to the date of this suit the defendant has failed, refused and/or defaulted to heed to the 2nd plaintiff's rightful demands. The plaintiff attached annexure NSSF-3, the demand letters to fortify her claim. The annexures attached to the plaint as stated earlier, ordinarily deem to have been received to form part of the records. From these facts the plaintiffs advanced the prayers preceded earlier. It is settled law that, where a suit is brought under summary procedure and where no leave to appear and defend has been craved for and granted, the claims in the plaint are supposed to have been 5 admitted. Refer Order XXXV Rule 2(2) of the Civil Procedure Code [Cap 33 R.E 2019] (the CPC). The

celebrated case of CRDB Bank Limited vs. John Kagimbo Lwambagaza [2002] TLR 117, pronounced the objectives of a summary suit. It was stated that: “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 6 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.” Correspondingly, it is a settled principle that, reliefs prayed for, in a summary suit must be reliefs available under summary procedure. It was so observed in the case of Prosper Paulo Massawe & Others vs. Access Bank Tanzania Ltd (Civil Appeal No. 39 of 2014) [2021] TZCA 321 (22 July 2021). The Court of Appeal at page 13 appreciated the scholarly legal work done at page 3311 of Mulla, the Code of Civil Procedure, and held 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 court of civil procedure (equivalent to our order XXXV)” 6 Having carefully followed and be seized by the above settled positions of the law, developed principles, the facts and attached documents as exposed by the records, consequently, I hereby summarily, enter Judgment in favour of the plaintiffs on the following reliefs:

- (i) The defendant is ordered to pay to the 2nd plaintiff the sum of Tanzanian Shillings 23,082,358/= (say Tanzanian Shillings Twenty-Three Million Eighty-Two Thousand Three Hundred Fifty-Eight Only) being an outstanding principal members’ contribution plus accumulated penalties. (ii) The defendant is hereby ordered to pay the plaintiff interest on decretal sum at the prescribed court rate of 7% per annum from the date of delivery of judgment until when the same shall be fully satisfied. (iii) The defendant is further ordered to cover the costs of and incidental to the filing of the suit. It is so ordered. Right of appeal explained. Dated and Delivered at MBEYA this 3rd July, 2024. E.L. KAWISHE JUDGE 7

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