

TANZANIA / JUDGMENT

the hon attorney general another v alno technologies limited 2024 tzhc 320 16 february 2024

COURT
TZHCDECIDED
16 February 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM DISTRICT
REGISTRY AT DAR ES SALAAM CIVIL CASE NO. 25915 OF 2023 THE HON. ATTORNEY
GENERAL..... 1st PLAINTIFF THE BOARD OF TRUSTEES OF NATIONAL SOCIAL
SECURITY FUND..... 2nd PLAINTIFF VERSUS ALNO TECHNOLOGIES
LIMITED..... DEFENDANT SUMMARY JUDGEMENT Date of last order: 12th
February 2024 Date of Judgement: 16th February 2024 MTEMBWA, J.: The Plaintiffs herein, by
way of summary procedure under Order XXXV Rule 1 (e) of the Civil Procedure Code, Cap 33 RE
2019, read together with section 74A (2) of the National Social Security Fund Act, Cap 50 RE 2018,
instituted this suit against the Defendant praying for Judgment and Decree as follows;

- (i) The Defendant to be ordered to pay the sum of TZS 137,917,822 (Tanzanian Shillings One Hundred Thirty- Seven Million Nine Hundreds Seventeen Thousand Eight 1 Hundred Twenty-Two Shillings and Seventeen Cents); being un-remitted members' contributions plus accumulated penalties once the outstanding amount is settled and charged 5% in each respective delayed month thereon due and payable to the Plaintiffs by the Defendant as per paragraph 9.0 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 is fully satisfied; (Hi) 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 this matter came for necessary orders on 19th December 2023, Mr. Opio Marcellus, the learned principal state attorney, reported to this Court that, the Defendant was yet to be served with summons. As such, the matter was adjourned to 15th January 2024 pending service of the summons to the Defendant. On 15th January 2024, Mr. Marcellus entered appearance for the Plaintiffs while, having been served, Mr. Noel S. Gundula, appeared for the Defendant. Mr. Gundula, being the director and owner of the Defendant company, conceded to the claim but prayed for time to negotiate with the Plaintiffs on how the claimed sum will be settled. On serious note, I allowed the negotiations to proceed. 2 On 12th February 2024 when the matter was called up for necessary orders and see if the parties have reached to an amicable resolution, no one appeared for the Defendant. When prompted, Mr. Marcellus reported to

have not reached anywhere. He submitted further that, the Defendant, without cause, failed to appear at the meeting which they arranged with the view to discuss the issue. As such, since the Defendant has not filed Application for leave to appear and defend the suit, summary judgement should be entered, Mr. Marcellus prayed for. Of course, having considered the circumstances, I granted the prayer and proceeded to prepare this Summary Judgment. At this point, I find it opt, albeit briefly, to narrate the facts leading to this suit; That, the Defendant is registered as a contributing member employer of the 2nd Plaintiff in accordance with the laws of Tanzania and she is registered and issued with a Membership Registration Certificate Number 994304. That, in accordance with the law, 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) employee's wage to the 2nd Plaintiff 3 That despite of the fact that the Defendant is so obliged in law, she has failed, neglected, ignored and or defaulted to remit the members' statutory contributions to the 2nd Plaintiff for some of the months and delayed remittance in some of the months which attract 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 2nd Plaintiff the members' contributions not only that it is against the law but also denies her employees (the 2nd Plaintiffs members) to be paid their rightful pension benefits in the event of their retirement, death 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 contribution amounting to TZS 53,455,208.28 (Tanzanian Shillings Fifty Three Million Four Hundred Fifty Five Thousand Two Hundred Eight Shillings and Twenty Eight Cents) being the outstanding members' statutory contributions which covers the period between October 2015 to May 2018 and accumulated penalties amounting to TZS 84,462,613.89 (Tanzanian Shillings Eighty-Four Million Four Hundred Sixty- 4 Two Thousand Six Hundred Thirteen Shillings and Eighty- Nine Cents); which sum continues to accrue as long as it remains due. That, as such, the Plaintiffs' claims against the Defendant are for payment of a total of TZS 137,917,822.17 (Tanzanian Shillings One Hundred Thirty-Seven Million Nine Hundred Seventeen Thousand Eight Hundred Twenty-Two Shillings and Seventeen Cents) being outstanding members' statutory contributions plus accumulated penalties thereon which sum continues to accrue as long as it remains due as aforesaid. That as a result of the Defendant's breach and failure to heed to its statutory obligation to remit members' statutory contributions to the Second Plaintiff as required by the law, the 2nd Plaintiff on numerous occasions, demanded the performance of the said statutory obligation without success. To fortify the claimed sum, the Plaintiffs attached to the Plaint the following documents; Copies of the Certificates of Registration and registration details certifying the Defendant's membership with the Second Plaintiff; sheets of list of Inspection report, exit meeting report, schedule of outstanding contributions and penalties and the 5 demand letters by the Second Plaintiff addressed to the Defendant. Ordinarily, 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 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). The objectives of the summary suits were enunciated in the case of CRDB Bank Limited vs John Kagimbo Lwambagaza

[2002] TLR117, where the Court observed 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. Conversely, it is settled that reliefs prayed for in a summary suit must be reliefs available under summary procedure. In the case of Pau! Massawe and two Others Vs. Access 6 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 3 a negotiable instrument or as otherwise provided by 0. 37 of the court of civil procedure (equivalent to our order XXXV) Having pounded the above settled positions of the law, annunciated principles, the facts and attached documents as revealed by the records, I hereby, summarily, enter Jugdement in favour of the Plaintiffs on the following reliefs;

- (1) The Defendant is ordered to pay to the Plaintiffs the sum of TZS 137,917,822.17 (Tanzanian Shillings One Hundred Thirty-Seven Million Nine Hundreds Seventeen Thousand Eight Hundred Twenty-Two Shillings and Seventeen Cents); being un-remitted members' contributions plus accumulated penalties. 7
 - (2) The Defendant, is further ordered to pay to the Plaintiffs Interest on decretal sum at the prescribed Court rate of 7% per annum from the date of delivery of this Judgment to the date of full recovery.
 - (3) The Plaintiffs shall recover the costs of this suit. It is so ordered. Right of appeal explained.
- DATED at DAR ES SALAAM this 16th February 2024. H.S. MTEMBWA JUDGE 8

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