

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**

**CIVIL SUIT NO. 742 OF 2020**

**FLORENCE KATA** ..... **PLAINTIFF**

**VERSUS**

**UGANDA EXPORT PROMOTION BOARD** ..... **DEFENDANT**

**(Before: Hon. Justice Patricia Mutesi)**

**JUDGMENT**

**10    Introduction**

The plaintiff instituted a suit against the defendant seeking a declaration that the defendant breached its statutory obligation of remitting the Plaintiff's monthly NSSF payments; a declaration that the plaintiff is entitled to UGX 50,946,465/= (Uganda Shillings Fifty million, Nine hundred forty six thousand, Four hundred sixty five) being the unpaid principal and accrued interest arising from the breach of statutory duty by the defendant, interest thereon, damages and costs of the suit.

The background to this suit is that the plaintiff was formerly employed by the defendant where she worked from 2001 until her retirement in 2014. Upon her retirement and attaining the statutory age to process her National Social Security Fund (NSSF) benefits, she initiated the process to withdraw the said benefits in 2015. In 2016 she was paid her savings amounting to UGX 39,150,153/=. However she noticed that she hadn't received her full entitlements and complained to NSSF. Subsequently she was informed by NSSF that the above principal amount had only been remitted to NSSF in 2016 and that the accrued interest thereon amounting to UGX 32,319,990 /= had not been paid by the defendant. The plaintiff was also informed that the defendant had not remitted any payments to her NSSF account for the period of July 2013 to March 2014 and that the unpaid principal amounted to UGX 11,475,000/= while the accrued interest thereon amounted to UGX 7,151,476/= , bringing the total outstanding amount for this period to UGX 18,626,475/=. Despite the plaintiff's

requests, the defendant has failed to remit to NSSF or pay the plaintiff the total outstanding amount of UGX 50,946,465 to date, hence this suit.

The defendant did not file a Written Statement of Defence within the prescribed time, despite having been served with the plaint and summons, as evidenced by the affidavit of service deposed by Wasswa Benard which was filed on the 9<sup>th</sup> November 2020. Subsequently the defendant without seeking or obtaining leave of court, filed a defence five months after the service of summons. On 4<sup>th</sup> April 2023, court struck out the said defence for having been filed outside time.

10 I also take note that the plaintiff applied for an interlocutory judgement to be entered against the defendant and the same was entered by the Deputy Registrar who then set down the suit for formal proof. I will address the validity of this interlocutory judgment later in this judgment.

### **Representation and hearing**

The Plaintiff was represented by Agaba Justus of M/s Justus Agaba & Co. Advocates. The plaintiff adduced her evidence through two witnesses namely herself (PW1) and Mr. Kenneth Akimanzi a Compliance Officer from NSSF (PW2). The witnesses made statements which they confirmed on oath and the plaintiff  
20 was also required by court to orally adduce further evidence in proof of her claims. Counsel for the plaintiff filed written submissions which I have considered in determining this suit.

### **Issues**

The following issues were framed for determination by court;

1. Whether the defendant breached its statutory obligation to remit the plaintiff's monthly savings / contributions to NSSF?
2. Whether the plaintiff is entitled to the remedies sought.

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Before I proceed to determine the issues, I wish to address the propriety of the interlocutory judgment which was entered by the Registrar in this matter, and the filing of this dispute before the commercial court.

### **Validity of the interlocutory judgment entered in this matter**

Order 9 rule 8 of the Civil Procedure Rules which provides for interlocutory judgments states as follows;

#### **8. Assessment of damages**

10 *Where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court of the value of the goods and damages or the damages only, as the case may be, in respect of the amount found to be due in the course of the assessment.*  
(Emphasis added)

From the above, it is clear that rule 8 is restricted in application to suits where the plaint has '*a claim for pecuniary damages only or for the detention of goods with or without a claim for pecuniary damages*'. If the plaint in question has any  
20 other claims outside these, it cannot fall within the operation of rule 8. (See Hon Justice Egonda Ntedde in **Dembe Trading Enterprises Limited v Uganda Confidential Ltd & Another HCCS No. 0612 of 2006.**) However in the case before me the plaintiff is seeking for among others, a declaration that the defendant breached a statutory obligation to remit the plaintiff's monthly NSSF payments, a declaration that the plaintiff is entitled to UGX 50,946,465/= being the unremitted principle and accrued interest. This puts the case outside the ambit of Order 9 rule 8.

Furthermore once an interlocutory judgment has been entered, the issue of  
30 liability is settled and cannot be reopened at the stage of formal proof. (See **Hajji Asumani Mutekanga v Equator Growers (U) Limited SCCA No.7 of 1995**) However considering that the suit seeks declarations as to breach of statutory duty and entitlement to NSSF benefits, which would require evidence to be led before being granted, it cannot be said that the liability of the defendant would be properly determined when an interlocutory judgement is entered. Even the

claimed sum can only be awarded after court determines that the plaintiff was entitled to the claimed benefits and the defendant breached a statutory duty in not remitting the same to NSSF. It is therefore my finding that the interlocutory judgement in this matter was entered in error.

The proper procedure that ought to have been adopted in such a case which requires evidence to be led before the prayers sought can properly be granted, would be to set down the suit for hearing *ex parte* under Order 9 Rules 10 and 11 of the Civil Procedure Rules which provide as follows;

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**10. General rule where no defence filed.**

*In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if that party had filed a defence.*

**11. Setting down suit for hearing.**

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*(1) At any time after the defence or, in a suit in which there is more than one defendant, the last of the defences has been filed, the plaintiff may, upon giving notice to the defendant or defendants, as the case may be, set down the suit for hearing.*

*(2) **Where** the time allowed for filing a defence or, in a suit in which there is more than one defendant, the time allowed for filing the last of the defences has expired and **the defendant or defendants, as the case may be, has or have failed to file his or her their defences, the plaintiff may set down the suit for hearing ex parte***

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Since the defendant failed to file a defence within the prescribed time in accordance with the law and considering the nature of prayers sought in the suit, the above rules would be the most appropriate course of proceeding in this matter.

Accordingly court ordered that the suit be heard *ex parte* and the plaintiff, who had previously filed witness statements intended for a formal proof hearing, was required to orally adduce additional evidence to prove her suit claims.

### **Non commercial nature of dispute**

The Commercial Court was established as a division of the High Court of Uganda by Legal Notice No. 4 of 1996 and Instruction Circular No. 1 of 1996, specifically to determine commercial disputes. The business of Commercial Court comprises of actions arising out of or connected with any relationship of a commercial or business nature, whether contractual or not and these include; supply or exchange of goods and services, Insurance, Reinsurance, Banking, Negotiable instruments, International credit, Operation of stock and foreign exchange markets, Carriage of goods, Intellectual property among others.

- 10 The instant matter essentially concerns a claim that the defendant failed to remit the plaintiff's NSSF savings while she was their former employee. In my view, this is not a commercial dispute but rather it is an employment dispute which ought to have been filed in the Industrial Court or Civil Division of the High Court. However I have considered that the suit has been pending in this division since 2020 and sending it to another division or court would likely cause further undue delay to its hearing, contrary to Article 126 (2) (b) of the Constitution. It is therefore in the interest of justice that the suit is determined by this court, taking into account that Article 139 (1) of the Constitution gives the High Court unlimited original jurisdiction in all matters.

- 20 **Issue No. 1: Whether the defendant breached its statutory obligation to remit the plaintiffs monthly savings and contributions to NSSF?**

**Section 101 of the Evidence Act Cap 6** provides that whoever desires any court to give judgment as to any legal right to liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (See **A. Nsubuga V P. N. Kavuma (1978) HCB 307**). Therefore in a case such as this where a matter is undefended and proceeds for hearing *ex parte* the plaintiff still has a duty to prove his case on a balance of probabilities.

- 30 It is the plaintiffs case that the defendant is her former employer and during her employment, the Board failed to remit all her monthly savings / contribution to NSSF, in breach of its statutory duty under the NSSF Act Cap 222 which was the governing law at the time of her employment and filing of this suit.

**Section 6 (1) of the NSSF Act Cap 222** provides that;

*“An employee of or above the age of sixteen and below the age of fifty-five years except –*

- a) An employee employed in excepted employment,*
- b) A non-resident employee*
- c) An employee not employed in Uganda*

*Who is declared by the Minister to be such employee and any farmer or artisan who is a member of a Cooperative Society shall, for the purpose of this Act be deemed to be an eligible employee.”*

Under **Sections 11 and 12** of the Act employers are required to contribute 15% of eligible employee's total monthly wages to the Fund. Furthermore 5% of the said wages may be deducted from the employees and paid to the Fund.

**Section 11** provides that;

*“Subject to this section, on and after the appointed day, **every contributing employer shall, for every month** during which he or she pays wages to an eligible employee, **pay to the fund** within fifteen days next following the last day of the month for which the relevant wages are paid **a standard contribution of 15% calculated on the total wages paid** during that month to that employee.”*

Furthermore **Section 12(1)** provides that;

*“**A contributing employer may deduct from the monthly wage** payment of his or her employee the employee's share of **a standard contribution of 5% calculated on the total wages paid** during that month to that employee, but if more than one wage payment is made during any month, the employer may provisionally deduct from all but the last wage payment part of the employee's share of a standard contribution.”*

From the record and the correspondences between the plaintiff and NSSF (**PEX 1 and PEX2**) it is clear that the plaintiff was employed by the defendant Board and was an 'eligible employee' as defined under section 6 (1) of the NSSF Act.

The plaintiff (**PW1**) testified that she is a former employee of Uganda Export Promotion Board, a department of Uganda Government supervised by Ministry of Trade, Industry and Cooperatives. That she worked at the defendant Board from 2001 to 2014 and during her employment the defendant made deductions



from her monthly salary for the purpose of paying them to her account in the National Social Security Fund (NSSF). That upon her retirement she initiated the process of withdrawing her NSSF savings in 2015 and in 2016 she was paid the sum of UGX 39,150,153/= (Thirty Nine Million, One Hundred Fifty Thousand, One Hundred Fifty Three Shillings) by NSSF. After realizing that she had not received her full benefits, the plaintiff reported a complaint to NSSF. In response the NSSF Compliance Office wrote informing her that the principal sum of UGX 39,150,153/= had not been remitted to NSSF until 2016 and due to this delay there was an accrued interest of UGX 32,319,990 /= (Thirty two million, Three hundred nineteen thousand, Nine hundred ninety shillings) which had not been paid by the defendant. She adduced a copy of the letter from NSSF dated 11<sup>th</sup> February 2023 (**PEX 1**) and testified that to date this accrued interest has never been remitted to NSSF by the defendant for her payment.

PW1 further testified that she received another letter from the NSSF compliance office notifying her that they had carried out another inspection audit engagement with the defendant and established that the defendant had also not remitted the amount due to her from July 2013 to March 2014 comprising of a principal amount of UGX. 11,475,000/= and accrued interest of UGX7,151,475/= which totalled UGX. 18,626,475/=. She adduced a copy of the letter from NSSF dated 15<sup>th</sup> February 2023 (**PEX 2**) and testified that this amount has never been remitted or paid to date.

**PW2 Kenneth Akimanzi** a Senior Compliance Auditor of the NSSF who is familiar with the management processes of NSSF members' contributions testified that the plaintiff was a mandatory contributor under the registered employer Uganda Export Promotion Board. That NSSF established that a principal amount of UGX. 39,150,153/= (Thirty nine million, One hundred fifty thousand, One hundred and fifty three shillings only) had not been remitted to the Fund in her favour until 2016 but the accrued interest of UGX. 32,319,990/= (Thirty two million, Three hundred nineteen thousand, Nine hundred ninety shillings) has never been remitted to NSSF by the defendant.

Further that NSSF also established that the defendant had failed to remit her savings from July 2013 to March 2014 amounting to UGX. 11,475,000/= (Eleven million, Four hundred seventy five thousand shillings) as the principal amount and UGX 7,151,476/= (Seven million, One hundred fifty one thousand, Four

hundred seventy six shillings) as the accrued interest thereon. The total unpaid amount was UGX 18,626,475/= (Eighteen million, Six hundred twenty six thousand, Four hundred seventy five shillings) as at 12<sup>th</sup> November, 2019. That the total outstanding sum of UGX 50, 946, 465 has never been remitted to NSSF for payment to the plaintiff.

From the above evidence it is clear that the plaintiff was a mandatory contributor to NSSF and the defendant as her employer made deductions from her monthly wages for payment to the National Social Security Fund. It was also proved that the defendant board did not remit the plaintiffs savings and contributions amounting to UGX 39,150,153 until 2016 after she had retired. This delayed payment accrued a statutory interest amounting to UGX 32,319,900 which has never been paid to the plaintiff to date. Further that the defendant also failed to remit the plaintiffs savings and contributions in the period from June 2013 to March 2014, including the principal amount of UGX 11,475,000 and accrued interest thereon of UGX 7,151,476.

Accordingly in consideration of the above stated law and the evidence on record, I find that the defendant breached its statutory duty to remit the plaintiff's savings and contributions to the National Social Security Fund as required by law. Issue 1 is answered in the affirmative.

### **Issue No. 2: Whether the plaintiff is entitled to the remedies sought?**

From the foregoing, I find that the plaintiff is entitled to be paid the sum of UGX 50,946,465/= (Fifty million, Nine hundred forty six thousand, Four hundred sixty five shillings only) by the defendant, being the outstanding principal and accrued interest which was not remitted by the defendant to NSSF for payment to the plaintiff.

### **Interest**

The plaintiff prayed for compound interest at 25% p.a. on the total amount claimed from the date of filing suit until payment in full. **Section 26 (2)** of the **Civil Procedure Act Cap 71**, gives Court discretionary powers in so far as the decree is for the payment of money, to award interest at such rate as the Court deems reasonable to be paid on the principal sum. This may be from the date of



the suit to the date of the decree, or from any prior date to the institution of the suit as well as further interest from the date of the decree to the date of payment or such earlier date as the Court deems fit. The basis of an award of interest is that the plaintiff has been deprived the use of his money. (See **Ecobank Uganda Limited V LB Construction & Others; HCCS No. 574 of 2012**).

Since the plaintiff has been deprived of her statutory NSSF benefits to date, she is entitled to interest thereon. However the claim for compound interest of 25% is exorbitant and unjustified, considering that this is not a commercial dispute. I would thus award the plaintiff interest at 10% on the amount due of UGX 50,946,465 from the date of filing suit until payment in full.

### **Damages**

The plaintiff's counsel prayed for general damages of UGX. 100,000,000/= and punitive damages of UGX. 30,000,000/=.

In order to be eligible for an award of general damages, the party should have suffered loss or inconvenience. (**Musisi Edward V Babihuga Hilda (2007) HCB 84**). PW1 testified that she undertook tedious efforts of trying to get her savings paid in vain before she resorted to the courts of law, and she has been inconvenienced and suffered mental anguish due to the defendant's refusal to pay her full benefits. The plaintiff is therefore entitled to general damages. In respect to quantum of damages, the Supreme Court in **Haji Asuman Mutekanga vs Equator Growers (U) Ltd SCAA No.07/1995** noted that; '*damages are determined according to the assessment of a reasonable man and do not represent a person's financial or material asset*'. In the circumstances, I award UGX 15,000,000/= as general damages to the Plaintiff which I deem to be reasonable. I also award interest thereon of 6% per annum from the date of judgement until payment in full.

However the plaintiff did not present any compelling circumstances warranting the award of punitive damages against the defendant.

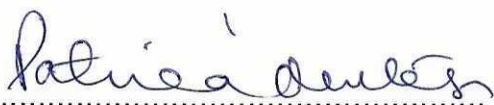
### **Costs**

Under **Section 27 of the Civil Procedure Act Cap 71**, costs follow the event unless court for good cause orders otherwise. Accordingly the plaintiff being the successful party, is awarded costs of the suit.

In the final result, judgment is entered for the plaintiff as follows;

- a) The defendant acted in breach of its statutory duty under the NSSF Act Cap 222 when it failed to remit the plaintiffs savings and contributions to NSSF.
- b) The plaintiff is entitled to the sum of UGX 50, 946,465 (Fifty million, Nine hundred forty six thousand, Four hundred sixty five shillings only) being the outstanding principal and accrued interest. The defendant is hereby ordered to remit the same to NSSF in favour of the plaintiff.
- c) The plaintiff is awarded interest on the sum in (b) above at the rate of 10% per annum from the date of filing this suit until payment in full.
- d) The plaintiff is awarded general damages of UGX 15,000,000/=.
- e) The plaintiff is awarded interest of 6% on the general damages from the date of judgment until payment in full.
- f) The costs of the suit are awarded to the plaintiff.

It is so ordered.



**Patricia Mutesi**  
**JUDGE**

**(31/05/23)**