IN THE HIH OURT OF TANZANIA
AT DAR ES SLAAM

CIVIL APPEAL NO 42 OF 2006

THE BOARD OF TRUSTEES OF PPF.......APPELLANT

VERSUS

HONEST PHILIP MARO....................RESPONDENT

JUDGMENT:

The respondent sued the appellant for unremitted membership contribution. It was established in the trial court that the respondent was a member of the Parastatal Pensions Fund up to 31/7/2002 when his services were terminated by the National Bank of Commerce. After the termination, the respondent wrote to the appellant demanding payment of his pension. The appellant did not respond to the written demand for the payment of the respondent's pension. It is agreed by both the appellant and the respondent that the respondent's former employer, the National Bank of Commerce, wrote a letter to the respondent (exhibit P2) and together with the letter, enclosed a cheque (Exhibit P3) for shs. 2,200,000/= shillings which the National Bank of Commerce Claimed was the respondent's pension payment. During the trial it was established that the appellant paid Shs. 12,444,600/[illegible] the National Bank of Commerce by cheque. The National Bank of Commerce in turn paid the respondent sh. 2,200,000/=. The balance was retained by the National Bank of Commerce to offset an uncleared loan which the respondent had taken from his former employer. The unilateral recovery of the loan led to the suit in the trial court. The trial court found it as a fact that the appellant had not paid the pension to the respondent and allowed the claim. This finding led to the present appeal.

The only pertinent ground of appeal is whether the National Bank of commerce, as a former employer, was entitled to deduct the unpaid loan from the respondent's pension entitlement and the second question is whether the pension was paid at all. Mr. Msuya, Advocate for the appellant, holds the view that the appellant is entitled to recover, while Mr. Ngudungi, advocate for the respondent, holds the extreme view that the appellant did not pay the pension at all.

In canvassing support for the view that the recovery of the unpaid loan was a valid act in law, Mr. Msuya relied on section 33 of the Parastatal Organizations Pensions Scheme Act Chapter 372 R.E 2002 of the laws. The section reads thus:-

"33. A pension or gratuity awarded under this Act shall not be assignable or transferable except for the purpose of satisfying -

(a) Debt due to the Government or any parastatal organization; or

(b) an order of any competent court for the periodical payment of sums of money towards the maintenance of the dependants of the member to whom the pension or gratuity has been awarded, and shall not be liable to be attached sequestered or levied upon for or in respect of any other debt or claim".

The Encyclopedia Brittanica, at page 559, defines assignment as

"total alienation by deed or writing of a chattel interest in real property or of chattels personal, or of an equitable interest in real estate, which is not destructive of such interest".

Money, in the form of currency notes or cheque, is chattel personal, and can therefore be assigned. If we take the meaning of assignment as defined in the Encyclopedia Brittanica above as correct, the assignment must be in writing, and must originate from the person holding the interest in the property. Since the respondent had a proprietary interest in his pension, he was the one to assign the interest to the National Bank of Commerce in writing for the National Bank of Commerce in turn to benefit as an assignee. Before writing the cheque in favour of the National Bank of Commerce, the Parastatal Pensions Fund should have had in its possession written authority from the respondent Honest Maro. It is this authority in writing which would have conferred on the National Bank of Commerce the status of an assignee. In the circumstances obtaining in this appeal, there was no assignment at all so there was no legal basis for the appellant to pay the National Bank of Commerce as an assignee. The fact that the respondent had an unpaid loan with the National Bank of Commerce was a transaction separate and different from the respondent's entitlement for his pension entitlements. Under Section 44 (2) of the Parastatal Organisations Pensions Scheme Act payment is made to a member as defined in Section 2, that is, an employee who is a member of the Parastatal Pensions Scheme. The National Bank of Commerce is not a member of the Parastatal Pensions Scheme, so the payment made to the National Bank of Commerce was illegal. The payment should have been made to the respondent who would then have cleared his unpaid loan. The trial court was therefore correct to find that the appellant did not pay the respondent his pensions entitlement. The trial court also rightly dismissed the claim the interest to the National Bank of Commerce in writing for the National Bank of Commerce in turn to benefit as an assignee. Before writing the cheque in favour of the National Bank of Commerce, the Parastatal Pensions Fund should have had in its possession written authority from the respondent Honest Maro. It is this authority in writing which would have conferred on the National Bank of Commerce the status of an assignee. In the circumstances obtaining in this appeal, there was no assignment at all so there was no legal basis for the appellant to pay the National Bank of Commerce as an assignee. The fact that the respondent had an unpaid loan with the National Bank of Commerce was a transaction separate and different from the respondent's entitlement for his pension entitlements. Under Section 44 (2) of the Parastatal Organisations Pensions Scheme Act payment is made to a member as defined in Section 2, that is, an employee who is a member of the Parastatal Pensions Scheme. The National Bank of Commerce is not a member of the Parastatal Pensions Scheme, so the payment made to the National Bank of Commerce was illegal. The payment should have been made to the respondent who would then have cleared his unpaid loan. The trial court was therefore correct to find that the appellant did not pay the respondent his pensions entitlement. The trial court also rightly dismissed the claim for damages shown in Para (b) as unproven and awarded the claim on paragraphs (a) (c) (d) and (e) of the plaint. The appeal has no merit and is dismissed with costs.

Dated this 19th December, 2006

W.S Mandia
JUDGE
20/12/2006

20/12/2006

Coram: W.S. Mandia J,

For the Appellant – Tarimo

For Respondent – In person

CC: Shomary

Court: Judgment pronounced.

W.S Mandia
JUDGE
20/12/2006