TO PAY OR NOT TO PAY 20% SOCIAL SECURITY BENEFITS TO ITS MEMBERS BY NSSF, OTHERWISE TERMED AS MID TERM PAYMENT.

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What is social security?

This is the protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of a person's earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age (retirement) and death; the provision of medical care can also be another form of social security.

National Social Security Fund (NSSF) in Uganda (as it is known), is a semi-government organisation (agency) responsible for the collection, safekeeping, responsible investment and distribution of retirement funds (savings) from employees of the private sector in Uganda, who are not covered by the Government Retirement Scheme (Pension) under the Public Service Act and Pensions Act respectively. NSSF is a provident fund which means that employees are paid their benefits as a lump sum or as provided under the NSSF Act, Cap 222. Participation for both employers and employees is compulsory, as well as registration *(See Section 7 & 11) of the Act.*

In 2010, NSSF had to undergo a restructuring process aimed at making it more efficient, competitive, and responsive to the needs of its members. It aimed to provide a wide range of social security products and be the lead institution for domestic capital formation and deepening the financial sector.

Contribution to NSSF Scheme

The NSSF as a defined contribution scheme, is financed largely by contributions from employers and employees. The total contribution is equal to 15 percent of an employee's gross salary, with the employer contributing 10 percent and the employee 5 percent **(Section 11 of the Act).**

Is Social Security a right for a worker?

It is provided under *Article 22 of the Universal Declaration of Human Rights (1948)* (UDHR) that: *"Everyone, as a member of society, has the right to social security"*. It is also included in *Declaration of Philadelphia (1944) and International Covenant on Economic and Social and Cultural Rights (ICESCR)(1966, 1976).* It also exists in the Constitution of Uganda under

Objective XIV (b) of ***The National Objectives & Directive principles of State Policy.*** It should be noted that, Uganda is a party to or has ratified many of these international instruments, especially the UDHR and ICESCR.

Employees of the private sector who contribute to the National Social Security Fund (NSSF) are entitled to five benefits, (Section 19) whichever comes first and they include:

- Age benefit - paid to a member who has reached the retirement age of 55, (Section 20)
- Withdrawal benefit: Paid to a member who has reached the age of 50 and is out of regular employment for one year. (Section 21)
- Invalidity benefit: Paid to a member who has become incapable of gainful employment. (Section 22)
- Survivor's benefit: Paid to the dependent survivor of a member. (Section 23)
- Emigration grant/benefit: Paid to a member who is leaving Uganda permanently. (Section 24)

Circumstances where an employee is entitled to get his or her benefit from NSSF

(a) Age benefit:

An employee is entitled to this benefit if he or she attains the age of fifty years and has retired from regular employment; or if he or she attains the age of fifty-five years, whichever comes first. Section 20

(b) Withdrawal benefit:

An employee is entitled to this benefit if he or she attains the age of fifty years; and if he or she has not been employed under a contract of service for a period of one year immediately preceding his or her claim. (Section 21). This may also apply to instances where, a person had been employed under the category that falls within Section 6 & 7 and then joins Public Service as governed by the Public Service Act, and therefore is entitled to Pension under the Pensions Act.

(c) Invalidity benefit:

An employee is entitled to this benefit if he or she is subject to such physical or mental disability as to be suffering from permanent total incapacity; or if he or she is subject to such physical or mental disability as to be suffering from partial incapacity of a permanent nature and he or she is unable by reason of that disability to earn a reasonable livelihood or to continue working for gain. (Section 22)

(d) Emigration grant:

An employee may access this benefit when he or she emigrates permanently from Uganda to a country with no reciprocal arrangement with Uganda and if contributions have been paid in respect of that member to the fund during four financial years. (Section 23)

(e) Survivor's benefit:

In case of death of an employee, the deceased member's benefit shall be payable to the survivors. This could be a wife, a husband, a son or daughter under eighteen years of age or a son or daughter of or above the age of eighteen years who is wholly or substantially dependent on the deceased, a parent, a brother or a sister, a grandparent, a grandchild or any other relatives. (Section 24)

The question therefore, to ask ourselves is, considering the benefits that are contained under the Act, does the Board have powers or mandate to pay the proposed 20% (midterm payment) of the benefits to its members before the conditions laid out in Sections 20,21,22,23&24 are met or satisfied with?.

To be able to answer this question, we need to first interrogate the purpose for the establishment of the fund, what was the intention of the legislature in enacting the Act (NSSF Act) which establishes the Fund (the purpose of the Act), and the powers/mandate of the Board under the Act.

By reading the Act, it can be clearly deduced that the intention of parliament was to enact a law to provide for the establishment of a National Social Security Fund and to provide for its membership, the payment of contributions to, and the payment of benefits out of the fund and for other purposes connected therewith.

In so doing, the legislators categorically made it clear under Section 19 of the Act, the benefits that are entitled to a member, and set conditions under which he/she has to get it or claim it. This means that the parliament was alive to the purpose and used clear and unambiguous words. In other words, parliament employed the **Purposive and the Literal Rules** of Interpretation while enacting this law.

Nowhere in the Act, did Parliament intend to provide a different interpretation to this Act. It is not provided under the Act that members should access or claim for their benefits other than under circumstances that fall under those mentioned in **Sections 20-24.** If parliament intended to do that, (that members should access their benefits other than those mentioned), it would have provided for it in clear and unambiguous terms. The literal Rule means of interpretation, demands that words of an Act (Law) must be given their ordinary meaning and be interpreted/ construed as they appear in the Act. In other words, words of an Act must be given their ordinary English meaning not to cause an absurdity. I am very much sure some of these parliamentarians, some of who are lawyers know this rule of interpretation.

The parliament did not intend that the contributing members of the fund should access their funds as and when they so wish, that, if a pandemic like the Covid 19 strikes, Ebola, Cholera, influenza etc then the members should begin asking to be paid their benefit or a certain percentage thereof even when they have not attained the conditions laid under the Act. To so, would be to misinterprete the purpose for which the fund was established. The Board would be setting a wrong precedent if it does pay the 20% or midterm because a pandemic has arisen. Assuming another pandemic happens next year and other years to come, should NSSF keep on paying the 20%?. My answer is no as this is bound to deplete the members savings and even distorts the purpose for which the fund was set up.

Therefore, on reading of the entire Act, it can be deduced that the purpose for the establishment of the fund was and is to provide for a form of security of income when the member is no longer able to earn a livelihood, is no longer still in gainful employment; by reason of old age, physical or mental disability causing permanent or partial incapacity, has left the country, a member has died; under which the benefits would be paid to his/her dependants. This is because these acts as set out under Sections 20-24 are a natural consequence and are bound to happen in a person's life time. So, the question again would be, if a member is paid a certain percentage because an epidemic or pandemic; whatever name you may want to call it has happened, say a member is 45 years, what would happen if he/she attains the retirement age, dies, becomes permanent incapacitated and is unable to earn a livelihood and still has children/dependants to take care of ?.

Another argument would be that, since members of NSSF are asking to be paid a certain percentage of their benefit before meeting the conditions set out under the law and because a pandemic has occurred, then the public servants under the Pensions Act should also demand for a certain percentage of their entitlement of Pension before they retire. To do so, under any of the above would be to disregard the purpose for which the same were established.

Another question to be interrogated is, whether the Board has the mandate/powers to pay the members their benefits before meeting the conditions set out under the Act. Under Section 4 of the NSSF Act, its provided the Functions and duties (powers) of the Board. Section 4(2) provides that, In the performance of its functions and duties and in the exercise of its powers, the board may do all lawful things that are necessary or expedient to secure the due execution of the purposes of this Act. By reading the Act, it does not give the Board powers to decide to pay benefits to members before meeting the conditions as set out under Sections 20-24. To do so, would be to exercise the powers that are not vested in it by the Act. The Board derives its powers from the Act. Not even the Minister responsible has powers to order that any member be paid their benefits before meeting conditions as set out under the Act. Unless the current law is amended, the law must be interpreted as it is.

Section 30 of the Act gives powers to the Board to invest the members' monies. It provides thus, "<u>All monies</u> in the fund, including the reserve account, which are not for the time being required to be applied for the purpose of the fund shall be invested in such investments as may be determined by the board in consultation with the Minister. It is therefore clear that even the Board may not have at the moment the monies to pay to its members as the same could have been invested say in Bonds, Treasury Bills, Fixed accounts, Shares in Public Companies and the same has not yet matured.

It is therefore my considered opinion that the Board is right to stick to its decision not to pay any percentage of benefit to its members before the conditions are met under the Act. To do that would mean that the Board is setting a wrong precedent and acting ultra vires, going against the purpose for which the fund was set up as it will not have been realised and the Board would be exercising the excessive powers which are not vested in it under the Act. Unless there is an amendment to the existing law, the law must be read as it is and not what it ought to be.

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