

**DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO 1. BAUCHI**

SUIT NO SCC/BH/100/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

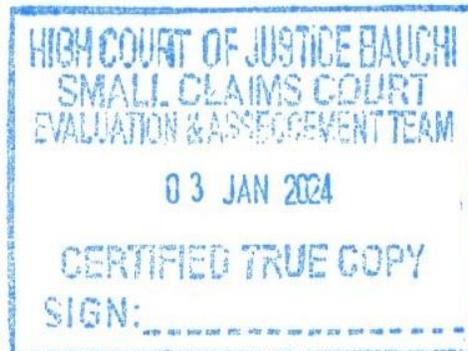
JIBRIN DALHATU.....CLAIMANT

AND

ABDULLAHI USMAN.....DEFENDANT

CLAIMANT – Absent

DEFENDANT – Absent



JUDGEMENT

This small claim matter brought and filed by the claimant pursuant to Article 2 (1) (2) and (3) of small claims court practice direction NO 2 of 2022, wherein the claimant fill form SCA 2 and 3 dated 2nd November, 2023 and filed on the same date seeking for the following reliefs;

1. AN ORDER of this Hon. Court against the defendant to pay the sum of N1,400,000 only being the amount of money collected from the claimant for the purported land transaction
2. Cost of this action

The originating processes of this Hon. Court has been served on defendant by substituted means as disclosed by affidavit of service

deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court.
Dated 7/11 /23

On the date fixed for hearing, claimant was in court hearing commenced.

CW 1 in person of Mustapha Ibrahim Affirmed and testify to the effect that, in June 2023 himself, the claimant and defendant, claimant gave the sum of N900,000 to defendant for the land transaction and promise to bring the remaining N500,000 only in the next two weeks, before the expiration of said two weeks' claimant called the defendant and gave him the remaining balance of N500,000, there was a sale agreement for the said purported land transaction.

It is also in evidence that the claimant told this court that the said land is situated at Gidan Gona here in Bauchi, later on one lawyer came and claim the said land, when he informed the defendant he promises to change another land for him or return his money back but he refuse

It is in evidence before the court that CW 2 said (claimant) the defendant sold the land for him at the cost of N1,400,000 only he gave him the sum of N900,000 only they wrote an agreement on condition that after two weeks he will complete the remaining balance of n500,000 only, the said agreement letter both Hausa and Translated copy are hereby admitted in evidence and marked as Exh "A" and "B"

He also told this court that before the expiration of the said two weeks he gave him the remaining balance of N500,000 as agreed and they also wrote an agreement to that effect both Hausa and English version has been admitted in evidence and marked as Exh "C" & "D" thereafter he went to develop the land one lawyer came and claim it, he informed the defendant, but he admitted that the land is not belong to him, he

promised to change another land for him or he returned the money within one week they wrote an agreement to that effect, the said agreement has been admitted in evidence and marked as Exh. "E", but up to now he refused to do so

He further informed the court that he paid the sum of N140,000 only as solicitor's fees and receipt was issued to him, the said receipt has been admitted in evidence and marked as Exh, "F"

This court adjourned the matter for cross examination/defense and ordered for hearing notice to be served on the defendant, which has been done as disclosed by affidavit of service dated 6/ 12/ 23 deposed to by Abdussalam Abubakar a bailiff of this Hon court, but defendant failed to appear and cross examined the claimant witnesses, consequent upon which the right of the defendant was foreclosed and the matter adjourned for judgment

After taken into consideration the evidence adduced by the claimant, the facts and circumstances of this case, this Hon. Court formulate single issue for determination thus

"Whether the claimant has proof his case by preponderance of evidence to be entitled to judgment"

It is an elementary principles of law for which a citation of authority is not necessary, that the onus is on the plaintiff to prove his case and he must do so by the strength of his own case and not on the weakness of the defendant. I refer myself to the case of MRS ROSE MARY ONWUSOR VS YAH I MAINA & ORS (2021) LPELR 11919 C A

The facts and evidence before this Hon court is apparent that there was a transaction for the sale of land between the parties in this case at the

cost of N1,400,000 only and the claimant has paid to defendant, as disclosed by the evidence of CW 1, CW 2 and the content of Exh "A": B' "C" and "D' respectively,

Exh. "B" is a translation version of the sale agreement of Exh. "A" which disclosed that the defendant has collected the sum of N900,000 only from the claimant, it has been executed by both parties in presence of their witness, Exh is the translation version of Exh. C which is an evidence of complete payment of the sum of N1,400,000 only to the defendant duly expected by both parties in presence of their witnesses, while Exh. C disclosed the undertaking of the defendant to change another land to the claimant or returned the money collected the sum of N1,400,000 only

All the above evidence has not been challenge by the defendant, in fact the defendant did not even put his defense therefore are deem admitted is in record that the defendant failed to cross examined the testimony of CW 1 and CW 2, therefore failure to do so is tantamount to admission, It is settled law that the effect of failure to cross examine the witness upon a particular matter is a tacit acceptance of a truth of the evidence of the witness I refer myself to the case of OFORLETE VS STTE (2000) 12 NWLR(PT681) 415 AT 436 and AGBONIFO VS AIWEREOBO (1988)1 NWLR (PT681)

In fact defendant neither appear nor place any defense, before this Hon. court, the law is trite that, court cannot wait for any party who is aware of the pendency of an action before the court against him but refused to appear or failed to filed a defense or response to same, such party cannot be complained of not being given fair hearing I refer myself to the case of MFA 7 ORS VS INONGHA (2014) LPELR -22010 (SC)

Article 6 (3) of SCC practice direction provide that; -

“where the defendant fails to file an answer to the claim, such defendant may be held to have admitted the claim.

The law is trite that admitted facts need not further proof because an onus of proof does not exist in vacuo, I refer myself to section 123 of Evidence act 2011 as amended, and the case of MR KWASI KARI KARI ADUSEI & ANOR VS MR TOYIN ADEBAYO (2012) LPELR-7844 SC-, It is in record of this court that the defendant did not fill and filed form SCA 5 to answer the claimant claim, therefore to my view he admitted the claims of the claimant, and I so hold. Finally, I resolve the issue formulated in favor of the Claimant.

As to cost, it is settled law that cost follow event, some of the consideration in the award of cost are summons, fees paid, duration of the case the number of witnesses called by the successful party the nature of the case of the parties and the cost of legal representation I placed reliance of the case of JAIYEOLA VS ABIOYE (2003) 4 NWLR (PT.810)397 is in evidence that the claimant called 2 witness and paid the sum of N140,000 as solicitors fee to his counsel as evidence in the content of Exh, “F”,

in the light of the above I hereby enter judgment in claimant favor, against the defendant and make the following order;

1.AN ORDER of this Hon. Court against the defendant to pay the sum of N1,400,000 only being the money collected by the defendant from the claimant for the purported land transaction

2. Cost of this action N140,000 only

This case is decided today being 28/12/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

