

**IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO 2. BAUCHI**

SUIT NO SCC/BH/22/2023

BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

BETWEEN

MR FELIX AKAEME CLAIMANT

AND

HON MUHAMMAD MUSTAPHA SALLAH DEFENDANT

CLAIMANT..... Present speak English

DEFENDANTPresent speak Hausa

ALIYU TAFIDA SALE Affirm to interpret the court proceedings from English to Hausa.

APPEARANCES Y G YELMIS (claimant)

MUHAMMAD ABDULLAHI (defendant)

JUDGEMENT

The claimant commences this suit through the Bauchi state small claims court practice direction no of 2022, the claimant fill and filled form SCA 2 and 3 dated 19th day of October 2023, The sum of one million three hundred thousand naira only (N1.300.000.000.00) being the business transaction between the claimant and defendant for the supply of 1200 bags of iron at the rate of N1500.00 per bag of 50kg.

However, in the process the claimant amends his particulars of claim to the effect that he is praying for the sum of N524,000.00 (five hundred and twenty-four thousand naira only) the outstanding balance for the transaction between him and the defendant for the supply of the iron.

Now therefore the claimant prays for the following reliefs;

- (a) An order against the defendant to pay claimant the sum N524,000.000 being the outstanding balance for the iron.
- (b) General damages
- (c) Cost of action

The defendant was served with the originating process of this court as seen in the affidavit of service dated 19th day of October 2023 deposed to by the bailiff of this honorable court Aliyu Tafida Sale.

The defendant denied liability fill form SCA 5 for defense dated 24th day of October 2023.

On the date fixed for hearing, parties were in court and hearing commenced.

TESTIMONIES OF WITNESS

CW1- in person of Felix Akaeme (the claimant in this suit) affirmed and testified to the effect that on the 26th day of September one Mustapha sale Muhammad approach him that he has an iron at Indindima in Bauchi state he has a site for the production of the said iron ore, after showing me the samples I was convinced to go to the site myself, on reaching there I discovered he has minerals we negotiated and I agreed to buy a bag of 50kg at the rate of N1,500.00 per bag.

Based on the above agreement he requested for advanced payment to enable him continue with the work on 24th day of August 2022 I gave him the sum of three hundred thousand naira only, on the 29th day of August, 2022 I also gave him five hundred thousand naira only, on the 5th day of September I also gave him the sum of three hundred naira after giving him I insisted that I want to go to the site and see the materials on ground, I came down from Jos to Bauchi I pick him up at

multipurpose here in Bauchi on our arrival I saw one thousand two hundred bags of the said materials.

He then requested for the sum of two hundred thousand naira to enable him get the truck to pack up the materials, the total sum giving to him is one million three hundred thousand naira.

On the 26th day of September 2022 I arranged for a truck to come and pick the said materials on getting to the site I was told he came two days ago to pick some bags of the iron and sold it to another person, only 517 bags left all effort to reach him prove abortive, he has not been picking my calls till date.

The statement of account of Felix Akeame dated 24th day of August 2022 to 14th day of September 2022 is hereby admitted into evidence and marked as EXHIBIT A.

The defendant informed the court that the truck he took all the way from Jos to Bauchi to lift the materials cost him the sum of two million four hundred thousand naira on reaching there I was left with just 517 bags the defendant held my money for a period of one year in which I would have gotten an interest, I also took some workers to Indindima.

In the course of cross examination CW1 inform the court that the transaction was perfected in August 2022 there was a verbal transaction stating the condition of the transaction and the narration are not on the statement of account and the defendant was not there when I packed the 517 bags I went to Indidima on the 26th day of September 2022.

CW2 by name Gambo Ahmed (staff of the claimant) affirm and testified to the effect that the defendant mates my boss and advertise some iron to him he sent me to come down to Bauchi to enable me see the properties, when the samples were showed to my boss the claimant, the defendant then requested for an advance payment and he gave him.

On our arrival at Indidima with our truck to pack all the property I.e iron on reaching there we tried his line it wasn't going through, we were told that he came and

packed some of the iron we only saw 517 bags instead of 1200, we inform the guy we mate the amount of iron we took he verified same.

In the cause of cross examination, he informs the court that he was together with the claimant at indidima when he went to pack the iron, I was with him when the transaction was entered between the claimant and the defendant, on the day we went to indidima the defendant was aware, we mate Adamu Abdullahi.

CW3 – by name Adamu Abdullahi affirm and testified that Alhaji Mustapha the defendant in this case mate me at home that I should please assist him to keep the iron in front of my house agreed two days later he brought the iron and came with the claimant in this case, the claimant remove his kilo from his car and instructed me to get some people who will assist me in measuring the iron, he gave me some money to pay the workers when they are done, I was able to do some part of the measuring and inform him he promise to come along with some laborers from Jos along with him, few days later Alhaji Mustapha the defendant in this matter came and packed the few we have measured on the condition that he will replace them, Mr Felix came to pack his iron and noticed some are missing I explained to him all what happened.

the called the defendant and told him that the claimant came and noticed his iron is incomplete, he started using abusive words on me that I should go and meet Mr Felix and join him with him on phone, I then told Mr Felix to call him but he answered that Alhaji Mustapha will not pick his call, the total iron Mr Felix went with is 517 bags that is all that transpired.

In the cause of cross examination, he informs the court that he doesn't know when the claimant gave the money to the defendant Alhaji Mustapha took the iron to my house Mr Felix left with only 517 bags of iron, I also know the claim of the claimant against the defendant.

The defendant in an effort to prove his case called one witness who testified as DW1

DW1- by name Muhammad Mustapha affirm and testified to the effect that we heard a business transaction between me and the claimant we entered into the agreement for the sale of iron at the rate of #3.000.00 for each bag he paid the sum of one million three hundred thousand naira only and I supplied the following items 517 bags of iron he paid one million three hundred thousand naira, I undertook to pay for the transport fair loading reloading bargaining and purchase of bags the total sum of #749.000.00 he is owing me the balance of #251.000.00 the materials was supplied last year.

During cross examination DW1 told the court that there was no any writing agreement it was a mutual agreement Bala MUHAMMAD was present when we negotiated I am owing the claimant the sum of one million and he instituted this action that I am owing him the sum of N670.000.00.

Learned counsel to the defendant applied to fill the defendant final written address dated 27th day of November 2023.

Learned counsel formulate lone issue for determination thus;

- (a) Whether the claimant has proved his case base on the preponderance of evidence to entitled him judgement
- (b) Whether an agreement voluntarily entered into by a party is bound by it

Learned counsel submit on the first issue for determination that the claimant has failed to prove his case on the preponderance of evidence it is clear from the claim that there is no reasonable cause of action.

Learned counsel submit that the plaintiff did not deny that he entered and executed an agreement between him and the defendant and he did not deny that

the defendant has the right to stipulate his prize according to his, the defendant testified that they agreed that per bag is #3.000.00 and same was not discredited.

Learned counsel drew the court attention to the following authorities

- (a) ALHAJI KABIRU ABUBAKAR & ANOR VS JOHN JOSEPH & ANOR (2008) LPELR – 48
- (b) EASTERN DISTRIBUTORS VS GOLDING (1957) 2 Q. B 600
- (c) CHEVRON NIG LTD VS LONESTAR DRILLING NIGERIA LIMITED (2007)16 NWLR (PT 1059).

Learned counsel final submit on the first issue for determination and urge the court to resolve it in favour of the defendant.

Learned counsel submit on the second issue for determination that a party who voluntarily entered into a contract is bound by it, no matter how unfavourable it may turn out to be as long as he entered into the contract fully conscious of what he was doing and had willingly signed same and collected the consideration which he enjoyed and the subject matter of the contract was lawful.

Learned counsel refer the court to the case of OKORONKWO VS ORJI (2019) LPELR – 465151 (CA)

- UWAH VS AKPABIO (2014) 7 NWLR (PT 1407) 472 AT 489
- BEST NIG LTD VS B-H NIG LTD (2011)5 NWLR (PT 1239)95

Learned counsel finally submit that on the strength on the above authorities and evidence to resolve all the issues in favour of the defendant and refuse the reliefs sought by the claimant.

In respond to the defendant final written address counsel to the claimant have filled his final written address dated the 4th day of December 2023.

Learned counsel to the claimant formulate lone issue for determination thus;

“whether the claimant has proved his case to entitle him to judgement based on his claim before the court”

Learned counsel submit that the claimant has proven his case to entitle him to judgement based on his claims before the court, it is trite that in civil suit matters are determine on the preponderance of evidence and balance of probability, he who assert must prove in order to succeed in his claim.

Learned counsel submit that a valid or binding contract mean an agreement between two or more parties creating legal obligation that are enforceable or otherwise recognizable at law, it is elementary to state that there are three basic essentials to creation of a contract theses are

- (a) Agreement
- (b) Contractual intention and
- (c) Consideration

Learned counsel submit that parties have reached an agreement to ask whether offer has being made by one party and accepted by the other party counsel drew the court attention to this authorities,

- OGUNLEYE VS JAIYEOBA (2011)9 NWLR (PT 1253) AT PG 339 AT PG 345
- AKINYEMI VS ODUVA INV. CO. LTD (2012) 17 NWLR PG 209.

Learned counsel submit that it is clear from the evidence led that the defendant heard admitted the existence of a contractual relationship between him and the claimant and also admitted receiving the sum of #1,300,000.00 (one million three hundred naira only) from the claimant as money meant for the transaction there is no contention as to whether there is a contract or not.

Learned counsel refer the court to the following authorities,

- INTERNATIONAL BANK LTD VS BRIFANA LTD (2013)3 NWLR PRT 1316 PG1
- IMHANRIA VS NIGERIA ARMY (2007)14 BWLR PRT 1053 PG 76 @PG 84 R 5
- ZUBAIRU VS STATE (2015)16 NWLR PRT 1486 @504 PG 510 R 7
- ATTAH VS STATE (2010)10 NWLR PT 1201 @190 @195 R5
- HARUNA VS K.S.H.A (2010)7 NWLR PT 1194 @604 @ 615 R 8 & 10.

Learned counsel further submit that evidence procured from cross examination is admissible. It is valid and authentic as evidence procured from examination in chief both have the potency of relevancy and relevancy is the heart of admission in the law of evidence. Where evidence is relevant it is admissible and admitted when it is procured from examination in chief or cross examination, evidence that is elicited in cross examination and which is clearly relevant to the matter in dispute cannot be defeated just for simple reason that the other party did not plead such evidence and the court would close its eyes to it.

Learned counsel final submit that based on the above argument we urge the court to resolve the issue in favour of the claimant having established the cause of action and led credible evidence in support of his case to entitle him to judgement.

After the close of the entire case, on the date fix for adoption learned counsel to the claimant submit that he has an oral application to amend their reliefs as stated on their complain before the court, the amendment is in line with the evidence so far made by the claimant, the mistake the claimant Made is that the amount of money is more than what was lead in evidence instead of #524.000.000 the claimant wrote #670.000.00, we intend to amend the original reliefs sort from #670.000.00 to #524.000.00.

Learned counsel rely on the case of UBN PLC VS LAWAL (2012)6 NWLR PT 1295 PG 186- 188 R 34 and finally urge the court ton grant his application in the interest of justice.

In respond to the application made by learned counsel to the claimant, learned counsel to the defendant submit that the application made by counsel is wrong after he has seen the final written address of the defendant he decided to amend his claim.

Learned counsel submit that secondly the amended sort to be made by learned counsel is in respect of the claim and the claim is what give the court the jurisdiction in respect of a matter before it there is a controversy as to the nature of his claim.

Learned counsel further submit that counsel ought to have come by an affidavit to adduce reason why this application ought to be granted but nothing is placed before the court.

Counsel refer the court to this authority ALSTHON S. A VS CHIEF DR SARAHI (2000) VOL 14 NWLR PRT 687 PG 415 R5.

Learned counsel final submit that bases on the above cited authority urge the court to refuse the said application because such will cause hardship to the defendant.

In respond of the defendant application learned counsel to the claimant reply on POINT OF LAW and submit that the rely on the authority cited during their application before the court, amendment can be made at any stage before judgement, we rely on the principle of law which state that and I quote;

‘where a court is face with two applications one to give life to the suit and the other to determinate, the one to give life is giving more priority than the other’.

Learned counsel finally submit that the position of the law is that evidence laid without pleadings goes to no issue and also pleadings without evidence goes to no issue as well, this amendment is in line with the evidence before the court we urge the court must respectfully to grant our application in the best interest of justice.

COURT

Having gone through the claim and the entire evidence adduce by both parties as well as the exhibit and final written address filed by the parties, this honorable court formulates two sole issue for determination to wit;

1 – whether or not this honorable court can grant the application for amendment at the close of the defendant case

2- whether the claimant has proved his case to be entitled to the reliefs sought against the defendant

In respect of the first issue for determination, the position of the law is settled that the claimant can amend its originating at any stage before judgement in line with

the principle of fair hearing as provided under SECTION 36 OF THE 1999 CONSTITUTION AS AMENDED, may I refer myself to the case of

- EKE VS OGBONDA (2006) LPERL -1075 (SC)
- ONYEKWULUJE VS ANIMASHAUN (1996) 3 NWLR (PT 439) 637 @644.

Therefore, failure to grant such application may cause hardship or miscarriage of justice to the applicant.

In light of the above I hereby grant the application for the amendment.

The law settled that the initial burden of proof in a civil case lies on the claimant and after the initial burden, it shifts on the defendant to present evidence to controvert same.

The law is settled which authorities need not to be cited that the claimant is duty bound to prove his case to the balance of probability or preponderance of evidence to discharge the statutory and evidential burden placed on him.

It is also a fundamental requirement of the law that the claimant succeed by the strait of his own case not the weakness of the defendant may I refer myself to the case of

- A. I .C LIMITED VS NIGERIA PETROLEUM COROPORATION (2005) LPELR – 6 (SC)
- YUSUF ADEGOKE (2008) 40 WRN 1 AT 51.

On the second issue for determination, it is in evidence before the court that CW1 testified to the effect that he has entered into the transaction with the defendant on condition that the defendant will supply an iron worth one million three hundred thousand naira only at the rate of #1500.000 per bag and the claimant gave the said amount to him (i.e. defendant).

It is also in record that CW1 told the court that the defendant supplied him 517 bags of iron only instead of 1200 bags, now there is outstanding balance of N524.000.00 un paid despite several demand by the claimant.

The evidence also disclose that the claimant has suffered a lot of difficulties as a result of the said breach of contract by the defendant, in fact he suffered the damage worth one million four hundred thousand naira only.

This piece of evidence has not been discredited or controverted during cross examination and the law is trite that contradicted evidence the court can safely rely on it for just determination of a matter. May I refer the court to the case of

- NWABUOKU VS OTTEH (1961) 1 ANLR 487 @490
- ODULAIA VS HADDAD (1973) 11 S C 357

CW2 – testified to the effect that the defendant brought the complete iron to his house as agreed by the parties but later he came and took away some bags of the iron and left jus 517 bags on ground.

Based on the above it is obvious that there was a transaction for the supply of 1200 bags of iron between the parties in this case as all the essential element of a valid contract enforceable in the eyes of the law has being satisfied AND I SO HOLD.

Furthermore, the evidence also shows clearly that there was a breach of condition between the parties on the ground that the supplied 517 bags of iron instead of 1200, therefore it is beyond argument that the defendant has breach the terms of their agreement with the claimant AND I SO HOLD.

DW1 – (i.e. defendant) told the court that he has entered into the transaction with the claimant for the supply of iron at the cost of N3,000.000 only per bag the claimant gave him the sum of one million three hundred thousand naira.

He further told the court that in their agreement he will be responsible for loading, reloading, purchase of bags and transport fair making the total sum of N749, 000.000 and he is owing the claimant the sum of N251, 000.00 making the total sum of one million.

However, it is in record that the claimant is the one who transport the said goods not the defendant apart from his testimony there is no corroborative evidence to that effect.

Based on the testimony of DW1 and having taking into consideration the demeanor of DW1 am convinced that the evidence of the claimant is more convincing therefore the scale of justice tilt to the said claimant therefore I resolved the second issue formulated in favour of the claimant because he has proved his case to the balance of probability AND I SO HOLD.

As to the cost the law is settled that for the court to award cost being an equitable remedy the court shall take into consideration the number of witnesses called by the successful party the length of time of the case, the solicitors fee and filling fees among others purposely to exercise its discretion judicially and judiciously.

On the whole i hereby enter judgement against the defendant in favour of the claimant and hereby make the following order;

- (a) AN ORDER against the defendant to pay the claimant the sum of N524,000.00 (five hundred and twenty-four thousand naira only) being outstanding balance for the supply of iron.
- (b) The sum of N40, 000.00 (forty thousand naira only) as general damage
- (c) The sum N20, 000.00 (twenty thousand naira only) for cost of action.

APPEAL

There is a right of appeal to the High Court of Justice Bauchi within 14 days from today.

This case is decided on the 2ND January, 2024



ZAINAB M SHUAIBU (MRS)
(SENIOR MAGISTRATE)

