

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

SUIT NO SCC/BH/117/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

SALISU TUKUR BURAI.....CLAIMANT

AND

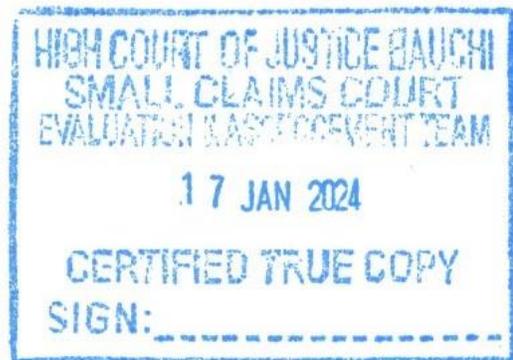
MOHAMMED ADAMU KABIRU.....DEFENDANT

CLAIMANT – Present speaks Hausa Language

DEFENDANT –Absent

A G Salisu Esq for claimant with Lidia Solomon

T M Bakir Esq for the defendant



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 January, 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 N260,000 only being the remaining balance for the transaction of fertilizer supplied to defendant

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court. Dated 3/1 /23

On 15/1/24 claimant was in court and hearing commenced

CW 1 in person of Salisu Tukur Burai (claimant) Affirmed and testify to the effect that, sometimes in May 2023 defendant has collected 10 bags fertilizer from him at the cost of N30,000 only per bag, total worth N300,000 only, he paid the sum of N40,000 only remaining outstanding balance of N260,000 only unpaid despite the several oral demand to that effect that is why he filed this action, thereafter close he case.

The defendant failed to cross examined CW 1, thereafter admitted the claim of the claimant, consequent upon which the right of the defendant was foreclosed and the matter set down 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 court of law act on fact not guess or speculation I refer myself to the case of Ferdinand George vs UBA LTD (1994) 1 NWLR (PT323) 639 at 668, and A. I. C Limited vs NNPC (2005) LPELR 6 SC,

The facts and evidence before this Hon court is apparent that there was a transaction for supply of fertilizer between the parties in this case, in fact the claimant has supply 10 bags fertilizer to defendant at the cost of N30,000 each totaling N300,000 only sometimes in May 2023 he paid the sum of N40,000 only there is now the remaining balance of N260,000 unpaid, defendant refused to upset despite the several oral demand to that effect.

It is in record that the defendant failed to cross examined the testimony of CW 1, 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)

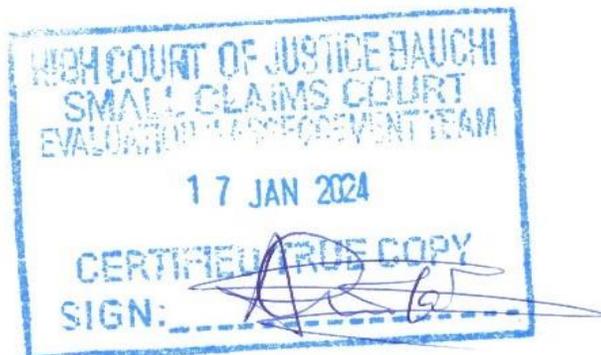
In fact, defendant has admitted the claim of the claimant, as evidence by the content of form SCC 5

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 ADUSEI & ANOR VS MR TOYIN ADEBAYO (2012) LPELR-7844 SC-, It is in record of this court that the defendant admitted the claims of the claimant, therefore I resolve the issue formulated in favor of the Claimant.

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 N260,000 only being the remaining balance for the supply of fertilizer to defendant

This case is decided today being 17/1/24 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.



THE  BAUCHI
GARBA ABDULLAHI
CHIEF MAGISTRATE