

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

SUIT NO. SCCBH/117/2023

BEFORE HIS WORSHIP - GARBA ABDULLAHI

BETWEEN

ABDULMIMINI MOHAMMAD CLAIMANT

AND

NIGERIAN CIVIL SERVICE UNION DEFENDANT

CLAIMANT – Present speaks Hausa Language

DEFENDANT – Absent

Y D Mele 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 27th October, 2023 and filed on the same date seeking for the following reliefs;

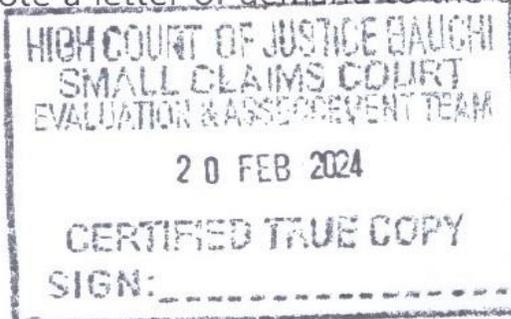
1. AN ORDER of this Hon. Court against the defendant to pay the sum of N150,000.00 only being the cost of action

The originating processes of this Honourable 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 30/10 /23

after the claimant closed his case, learned counsel to defendant raised a preliminary objection challenging the jurisdiction of the court, thereafter the court reserved it ruling till judgment.

In his effort to prove his case the complainant called one witness and tendered 3 exhibit marked as exhibit A, B, & C respectively and thereafter closed his case, the defendant rest his case on that of the claimant

CW 1 the claimant himself testify to the effect that he has a problem with the defendant he got judgment against them, finally they settled the matter as they continue paying him pension later they stop the payment from June 2022- June 2023, later he talks to his counsel he wrote a letter of demand to the defendant



prove abortive on the process he applies for the enforcement of the judgment in the High Court consequent upon his entitlement was paid through the account of his counsel.

He further informed this Hon court that he demands for the payment of his cost N120,000.00 only, he wrote a letter to that effect to defendant, it fails to comply that is why he filed this action, the copy of the terms of settlement dated 24/9/2003 has been A, letter to the High Court for enforcement as Exh. B, and the letter demand for cost as Exh. C, respectively.

During cross examination he told the court that, he was in the service to defendant before he retired and the court order the defendant to re instate him or pay him his entitlement, he is now claiming the sum of N120,000 only as damages and after his retirement he has been receiving pension, thereafter the claimant closed his case.

Before the final written address, the learned counsel to defendant move his luminary objection dated 3/12/23 challenging the jurisdiction of this court to hear and determined this case, on the ground that this matter is within the power of the National Industrial court.

The learned counsel argued that it is in the evidence of the claimant that he was an employee of defendant before his retirement and now enjoying his pension, this court has only monetary jurisdiction he refers the court to section 7 (1) of the NIC ACT 2016 and the case of INOKOJU & ORS VS ADELEKE 7 ORS (2007) LPELR-1510 SC

He further argued that the claim flow from the relationship between the parties in this suit, it is an employer/employee relationship which is govern by the labour law he refers the court to Exh. A before the court

The learned counsel to the respondent Charse Ukande Esq in his reply on point of law submitted formulated lone issue for determination which is hereby reproduce to avoid doubt thus

Whether in view of the claimant claim, the demand letter Exh. B dated 7/10/23 and the evidence on record, failure by the defendant to response to the said demand letter, whether this court has jurisdiction to entertain this matter on merit”

The learned counsel answers it in positive, that this court has jurisdiction to hear and determine this case considering the claim, unchallenged and defendant evidence before the court,

He refers this court to Article 2 (e) of the practice direction of this court, the defendant has been given adequate opportunity to as per the contain of letter of demand dated 7/8/23, but he failed to comply and did not even reply to it, therefore the suit is proper before the court, he cited the case of U.B.A PLC VS MOH'D (2012) ALL FWLR (PT 649) at pg 1097 r 8

The learned counsel further submitted that, the argument of the learned counsel to defendant to the effect that this case can only be entertained by the NIC in accordance to section 7 of the NIC Act is not correct he misconceived it, the claim of the claimant is as a result of an earlier suit filed at High court Bauchi which proceed to the court of appeal.

He contended that the law is trite that where a demand letter is given to the party he should reply and failure to do so is amounted to admission and urged the court to so hold, finally urged the court to dismiss the P/O with a cost of N50,000.00 only against the applicant

Y D MELE Esq while responding to some issues raised by the learned counsel to claimant/respondent submitted that the issue of latter of demand emanated from this court is a condition precedent or initiating a matter before this court need not to be replied to it content, as to the issue of jurisdiction he also replies on section 7 of NIC ACT 2016 furthermore the case constitutes an abuse of court process and urged the court to so hold

On the address in respect of the substantive case the learned counsel to the claimant Charse Ukande Esq formulate a single issue for determination thus

“whether by nature of the claimant claim and evidence in record the claimant has proven his case on the preponderance of evidence in the absence or failure of the defendant to deny the case and defend it”

The learned counsel answers it in positive and submitted that the claimant has successfully discharge the burden placed on him base on the strength of his evidence before the court and he is entitle to the relief sought.

The learned counsel argued that the standard of proof is minimal where the defendant failed to open his defense he cited the case of EYO VS ONOOHA (2011) ALL FWLR (PT574) S C pg 1

He submitted that the claimant has suffered a lot as a result of the breach of terms of settlement i.e. EXH. A consequently the cost of his lawyer to write a demand letter looking for his cost of N150,000 only the evidence of the claimant remains unchallenged and urged the court to so hold

On facts not deny he cited the case of A GFERERO CO. LTD VS NNAMANI (2006) ALL FWLR PT 339 AT PG 990, SNAB INT. LTD VS BULANGO (2013) ALL FWLR PT 693 AT PG 2019 & GENEVA VS AFRI BANK PLC (2013) ALL FWLR PT 702 PG 1652 R 9

On the failure of the defendant to respond to the demand letter, which is amount to admission he refers the court to the case of GAANI VS EGULE, on the whole he urged the court to resolved the issue formulated in favor of the claimant and enter judgment against the defendant

After taken into consideration the evidence adduced by the claimant, the facts and circumstances of this case, this Hon. Court narrowed down and amalgamated the issues formulated the by both counsels as follows: -

1. "Whether the claimant has proof his case by preponderance of evidence to be entitled to judgment"
2. " whether this Hon. court has jurisdiction to hear and determined this case"

On the 1st issue for determination, 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 YAHI MAINA & ORS (2021) LPELR 11919 C A

The facts and evidence before this Hon court is apparent that the claimant in this case was a staff of the defendant, he was enjoying his salary until his retirement, after his retirement the was receiving his pension from the claimant until later the stop from June 2022 to June 2023

It is also in record that the defendant has made several effort for his pension to be continue prove abortive, he got a judgment against defendant, he instructed his counsel to write a letter of demand to the dependence but failed to comply with the later, that piece of evidence has not been contradicted or controverted during cross examination and I so hold, our law is settled to the effect that uncontracted evidence the court can safely rely on it for just determination of a matter before it.

C W 1 in his testimony make reference with the content of Exh. A, B, & C before they court and their content has not been discredited.

Our law is settled that documentary evidence is the best form of evidence because they not only assessable but are more authentic than oral evidence, they are like words uttered and do speak for themselves, they are neither transient or subject to distortion but remains permanent through the ages I refer myself to the case of

EBEM & ANOR VS NSEYEN (2016) LPELR -40122 C A OGBEIDE VS OSIFO (2009) 3 NWLR (pt1022) 423 at 441

In view of the above pieces of evidence, as well as the exhs Before the court, I am legally convinced that the claimant has established his case to the balance of probability therefore I resolve this issue in his favor

On the 2nd issue for determination, whether this Hon. court has jurisdiction to hear and determined this case,

On the 2nd issue for determination, the law is trite that, jurisdiction is the life wear of the court, the substratum of a court is no doubt a jurisdiction, without it the laborer therein, that is both the litigant and the counsel on the one hand and the judge on the other hand labor in vein I refer myself to the case of A G LAGOS STATE VS DOSUMU (1989) 6 SCNJ, ISMAIL ADEREMI ADEWUNMI VS ACCESS BANK PLC (2013) NLLR (PT742) at 810

CW 1 During cross examination told this court that, he was in the service of the defendant before he retired, he cannot remember when the defendant engages him, he was receiving his salary before his retirement and he now receiving his pension after retirement, from the above evidence there is no doubt that the relationship between the parties in this case which is the genesis of this action is employer and employee relationship and I so hold,

position of our law is clear to the effect that NIC shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters, relating or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker and other matter connected thereto I refer myself to the case of DR EMMANUEL SEBASTIAN AKPAN VS UNIVERSITY OF CALABAR (2016) LPELR-41242 CA

Father the claim of the claimant before the court is cost of 120,000 only because he suffered a lot by written a letter of demand and pursuing his case which was settled amicably and enforcement of the agreement, going by the rule of this court only cases of liquidated debt recovery (liquidated money demand) can be filed in this court I refer myself to article 1 and 2 of the practice direction of this court,

Let me re emphasis that jurisdiction is an oater of court, the decision of the court without jurisdiction no matter how well decided cannot stand without jurisdiction I refer myself to the case of ALH. BASIRU KASSIM VSA.P.C & ORS (2018) LPELR-11115 CA, MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587

ARTICLE 2 (d) of SCC practice direction provide as follows: -

“the claim is for liquidated monetary demand in a sum not exceeding N3,000.000 (three million Naira) excluding interest and cost’

Let me start by the meaning of liquidated money demand, the Apex court in the case of DR. OLADIPO MAJA VS COSTA SA MOURIS (2002) 3 SC 37 at pg 12 line 15-30 IGUH JSC stated that.

“A liquidated money demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertainable or capable of being ascertained as a mere matter of arithmetic without any other or further investigation”

Whenever therefore the amount to which plaintiff is entitle can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be liquidated money demand, to put it clear where a parties to a contract, as part of their agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated money demand

Going by the above meaning the following are the factors to be considered in determining liquidated sum,

1. The sum must be arithmetically ascertainable without further investigation
2. If it is in reference to contract, the parties to the same must have mutually and unequivocally agreed on a fixed amount payable on breach
3. The agreed and fixed amount must be known prior to breach

I refer myself to the case of A.T.S & SONS & 3 ORS VS BEN ELECTRONICS CO, LTD (2018) 6 S C (Pt. 1)37 at 9

It is beyond controversy that the claim of the claimant is a cost of N120,000.00 only and does not satisfy the above requirement, therefore this court have no option than to decline jurisdiction, I resolve the 2nd issue for determination in favor of the defendant this court lacks jurisdiction to hear and determined this case.

On the whole this case is hereby struck out, parties shall bear their respective cost

This case is decided today being 5th February, 2024 there is right of appeal to High Court within 14 days by the aggrieved party

