

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

SUIT NO SCC/BH/29/2023

BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

BETWEEN

SHAKIRA A ABUBAKAR..... CLAIMANT

AND

HAJARA HALADU

AHMAD SUAIBU

SAEED UMAR

} **DEFENDANTS**

PARTIES - present – Speaks English language.

APPEARANCES - HASSAN UMAR with A. B. CHIROMA (for the claimant)

D M BELLO (For the Defendants)

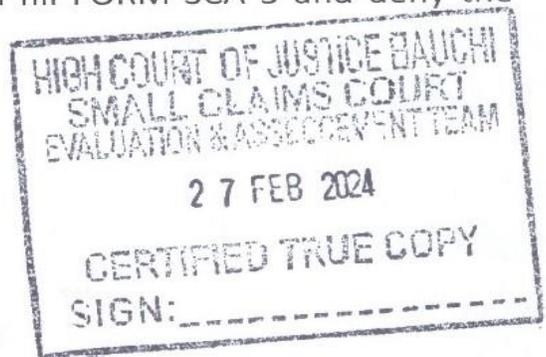
JUDGEMENT

The claimant commences this suit under the Bauchi state practice direction no 2 of 2022 by filling FORM SCA 2 and 3 dated 2 November 2023, the claimant claims against the defendant the sum of N195,000.00 (One Hundred and Ninety-five Thousand Naira Only), and cost of action.

The defendant was duly served with the originating process of this court dated 23rd day of November 2023 as deposed to by one of the bailiff of this honorable court ALIYU SALE TAFIDA.

The defendant in respond to the claimants claim fill FORM SCA 5 and deny the claimants claim dated 4th day of December 2023.

Brief summary of the witness testimonies,



CW1 – SHAKIRAT A ABUBAKAR affirm and testified to the effect that (the claimant in this case) the 1st defendant came to my house with the 2rd 3rd and one other person which I don't really know him, she collected some food items including rice and meat, she pleaded that they will pay the money twice I accepted. the total sum of what they collected is sum of N350,000.00 after several demand, they were able to pay the sum of N155,000.00 since then all effort to refund back the remaining balance prove abortive.

In the cause of cross examination, she informs the court that defendant came to her house during the distribution of the meat with some four other people including herself the meat was divided into five portion at the rate of N60,000.00 for each portion making the total sum of N300,000.00.

They went away with four portions and I took one.

After the close of the claimant case the defendant opens their defense and called three witnesses dated 7th day of December 2023.

DW1 – A S P USMAN ADAMU affirm and testified to the effect that he is a public servant working with the civil defense Bauchi state on the 13th day of September 2023 Hajiya Shakirat (i.e. claimant) came to our office and reported four people who collected some items from her, the defendant in this case, the claimant said she knows only Maman Baby as their leader, we used our office and invited them, we tried our possible best to collect the claimant money from the defendant, the defendant admitted in our office that she collected some food stuff and meat from the claimant.

At long run we were able to collect the sum N43,000,00 from the defendant, and N19,000.00 from one of the four people that was accompanied to the house of the claimant, from there we always collect the money on monthly bases, later I was summon before the court.

In the cause of cross examination, he told the court that the claimant told them that she knows only the defendant.

DW2- AHMAD SHUAIBU affirm and testified to the effect that the defendant by name Hajara have being doing business with the defendant for a long period of time, one day the defendant took me to the claimants house I collected food items including rice and meat at the rate of N111,000.00, I was later summoned at the civil defense office here in Bauchi, I paid the sum of N39,000.00 remaining outstanding balance of N72,000.00 on the agreement that at the end of every month am to pay the sum of N10,000.00 till the final liquidation of the principal sum.

During cross examination he told the court that he knows the claimant physically but have never contracted any transaction with her not until this one, the claimant doesn't know me I went to her house on the instruction of the 1st defendant.

DW3- SA'EED UMAR affirm and testified to the effect that we collected some food items including meat and rice from the claimant at the rate of N86,000.00 on the agreement that we will be paying gradually (i.e. installmental payment) I was able to pay the sum of N40,000.00 remaining the outstanding balance of N46,000.00 naira only, we went to the house the three of us, the defendant in this case is my wife, the claimant reported the 1st defendant at civil defense office here in Bauchi, the defendant was invited I was unable to attend due to the fact that I was not in town.

In the cause of cross examination, he told the court that the claimant divided the portion of the cow meat into five portions each portion at the rate of N60,000.00 naira each.

No further evidence was elicited under re-examination.

Learned counsel to both the defendant and claimant waive their right of filling final written address.

COURT FINDINGS

I have read and understand all the process filled by the parties in this case, I have listened to oral testimony of the claimant as well as watched her demeanor, having done this I set down a lone sole issue for determination in this case as follows;

“whether the claimant have proved her case to the balance of probability to be entitled to judgement”

The burden of proof in all civil cases is always on the one making the assertions, such a claimant as in the instant case must adduce sufficiently, cogent, credible and admissible evidence for her to be entitled to a grant of any relief the proof may be either by oral or documentary evidence or even both. I refer myself to the case of FEDERAL MORTGAGE FINANCE LTD VS HOPE OFFIONG EKPO (2003) LPELR 5627 (CA) AT 23-24.

It is in record of this court CW1 who happened to be the claimant in this case in her testimony in chief told the court that she gave a loan of the following food items which include meat and rice to the defendants at the cost of N350,000.00 on the condition that they will pay installmentally.

It is also in record she testified to the effect that the defendants have paid part of the said money the sum of N155,000.00 but refuse or neglect to upset the entire debts now there is an outstanding balance of N195,000.00 unpaid.

The above piece of evidence has not been discredited, shaking or controverted during cross examination and I SO HOLD.

The position of our law is settled that contradicted or controverted testimony of the witness the court can safely rely on it for safe determination of the case I refer myself to the case TEMPLE NWANKWOALA VS FEDERAL REPUBLIC OF NIGERIA (2018) LPELR 43891 (SC).

The defendant particularly DW1 inform the court that the claimant has reported the defendant at their office in respect of the claim before the court and that they

were able to recover some part of the debts from the defendants the sum N62,000.00.

DW2 inform the court in his evidence that he collected items worth N111,000.00 he paid the sum of N39,000.00 remaining the balance of N72,000.00.

DW3 in his testimony inform the court that he collected the items worth N86,000.00 and paid the sum of N40,000.00 remaining the outstanding balance of N46,000.00.

From evidence particularly the 2rd and 3rd defendant have admitted the claim of the claimant

The position of the law is settled that the weakness of the defendant will definitely help the case of the claimant, in the instant case, the record is clear to the effect that the 2rd and 3rd defendant admitted to the claim of the claimant to the effect that they are in debited to the claimant the sum of N111,000.00 and N86,000.00 respectively.

The law is trite that admitted fact need no further proof, proof cannot exist in vacuum I refer myself to SECTION 123 OF THE EVIDENCE ACT 2011 and the case of SHITTU SANUSI & ANOR VS BURAIMO OBAFUNWA & ANOR (2006) LPELR 11863 (CA) AT PAGE 26

The 1st defendant neither filled a statement of defense nor testified in this case to me she decides to rest her case on that of the claimant and the position of our law is settled that when the defendant rest his case on the claimant the court is duty bound to evaluate and access the testimony of the claimant purposely to see whether he has legally convinced the court to enable her obtain judgement of the court.

It is apparent based on the above the 2rd and 3rd defendant has admitted to the claim against them while the 1st defendant since she decides to rest her case on that of the claimant am quite convinced with the testimony of the claimant to the effect that she has discharged the legal burden placed on her by proving her case to the balance of probability to put it differently the claimant has proven her case

by preponderance of evidence based on the strait of her evidence placed before the court.

Therefore, I resolve the sole issue distilled for determination in favour of the claimant.

Therefore, in light of the foregoing I hereby enter judgement in favour of the claimant against the defendants and I HEREBY MAKE THE FOLLOWING ORDER;

- 1- AN ORDER against the 1st defendant to pay the sum of N77,000.00 (Seventy-Seven Thousand Naira) to the claimant being the outstanding balance of the property collected.
- 2- AN ORDER against the 2rd defendant to pay the sum of N72,000.00 (Seventy-Two Thousand Naira) to the claimant being the outstanding balance of the property collected.
- 3- AN ORDER against the 3rd defendant to pay the sum of N46,000.00 (forty-six thousand naira) to the claimant being the outstanding balance of the property collected.
- 4- AN ORDER against the defendants to jointly or severally pay the sum of N20,000.00 (Twenty Thousand naira) as general damages
- 5- AN ORDER against the defendants to jointly or severally pay the sum of N10,000.00 (Ten Thousand Naira) as cost of action.

APPEAL

There is a right of appeal to the high court of justice Bauchi by any aggrieved party within 14 days from today.

THIS CASE IS DECIDED TODAY THE 8TH DAY OF FEBRUARY 2024



ZAINAB M SHUAIBU (MRS)

SENIOR MAGISTRATE