

IN THE DISTRICT COURT OOF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT (NO 2) BAUCHI
ON THURDAY 8TH DAY OF FEBUARY 2024

BEFORE HER WORSHIP ZAINAB M SHUAIBU (MRS)

SUIT NO SCC/BH/32/2023

BETWEEN

IMRANA ABDULLAHI CLAIMANT

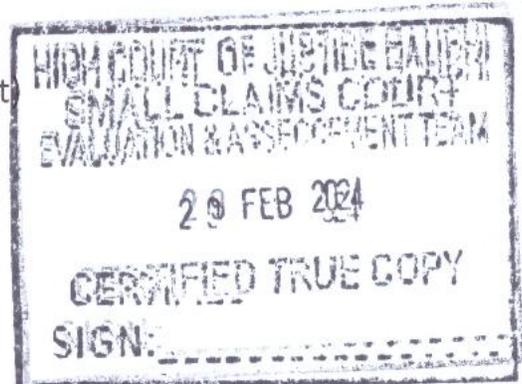
AND

MAIKAFI BAIHAKI & ZOR..... DEFENDANTS

Parties present.

Appearances - USMAN ABUBAKAR (For the Claimant)

I P AYUBA (For the Defendants)



JUDGEMENT

The claimant commenced this suit by filling form SCA 2 under the Bauchi state practice direction on small claims No. 2 of 2022 and the claim against the defendant the sum of ₦290,000.00 (Two hundred and Ninety Thousand Naira Only) in respect of the toilet, the sum of ₦150,000.00 for general damage and ₦20,000.00 as cost of action.

From the record of the court the defendant was duly served with the originating court process dated 5th day of December 2023 by one Aliyu Sale Tafida a bailiff of this court as evidence of proof of service deposed to by him dated 7th day of December 2023.

The defendant responded by filling form SCA 5 wherein it stated that the defendant is not liable in any way to the claimant.

Trial commenced in this suit dated 18th day of December 2023, at the trial of this suit the claimant testified in person as claimants witness CW1 he affirm and inform the court that she stays at IBB square Bauchi that the 2rd defendant by name Danjuma P R O approached me that there is a toilet located at Muda Lawal Market here in Bauchi which is in the possession of the 1st defendant, that since I am into such business at the end there will be a change of name in the document and I will become the bonifide owner, it was a lease and not sale I handed over the sum of ₦200,000.00 on the 11th day of June 2021 it was done in the presence of the 2ND defendant, there was also a writing agreement to that effect he has received the said amount between me and the 1st defendant, the toilet in question belong to Bauchi local government.

At a point in time he continuing requesting for certain amount of money like for the renovation of the toilet, document from the local government, the total sum of ₦13,000.00 and finally mate my dad personally and collected the sum of ₦10,000.00 at long run everything proves abortive, no documents no refund of money and the place is presently with someone using it.

The 2rd defendant mate me and said that I should give him the sum of ₦45,000.00 for the space ₦30,000.00 for the shop while ₦15,000.00 is for the new door making the total sum of ₦15,000.00.

The writing agreement between both parties is hereby admitted into evidence and MARKED AS EXHIBIT J.

During cross examination CW1 told the court that the 2rd defendant was a staff of Bauchi local government.

In the defense of this suit one DANJUMA SALIHU (DW1) inform the court and acknowledged that he sold the toilet to the claimant negotiated and arrival at an agreement he paid the sum of ₦200,000.00 I gave him the keys and document then joined him with the person responsible in taking care of the place, I came about the toilet from one Danlami who the Bauchi Local Government Gave him as a lease, I bought the said toilet from him.

In the cause of cross examination, he informs the court that there was an agreement writing by me there was a document on lease giving to me but bearing the name of DANLAMI.

DW2 DANJUMA ABUBAKAR GARBA a retired civil servant informs the court that the claimant mates him on the issue of the toilet that it is in possession of one Baihaki, we sat with them both being the agents of Bauchi local government, the claimant then gave the sum of ₦200,000.00 to 1st defendant, the keys and document was giving to the claimant by the 1st defendant.

The claimant continuing enjoying the said place, one of the conditions under the lease agreement is that in a situation where there is any repair it is the responsibility of the one occupying same to do the repair. BASEPA often come for inspection on their arrival the notice the toilet is not in good condition it was closed.

Bauchi local government later pleaded on behalf of the claimant it was later open but on the ground that he will repair the said toilet but fail to do so, he was also summoned by Bauchi local government to try his possible best and repair the toilet, the claimant have been enjoying the toilet since before I retired.

During cross examination he told the court that there are shops attached to the toilet.

At the close of the trial, both counsel filed their final written address as follows;

The defendant final written address 22rd day of January 2024 and therein learned counsel for the defendant formulate two (2) issues for determination thus;

I - 'Whether this court has the requisite jurisdiction to hear and determine this matter'

li – 'Whether the claimant has proved his case to entitle him to the relief sought '

The final written address of the claimant is dated 24th day of January 2024 and therein, learned counsel for the claimant in addition to canvassing arguments

rebuttal of the issue raised in the defendant's final written address he also raised 2 issues for determination thus;

i - We adopted the issue one formulated by the defendant, to wit;

"whether this court has the requisite jurisdiction to hear and determine this matter?

ii – "Whether from the facts, evidence surrounding circumstances of this case and relevant laws placed before this Hon court, the claimant establishes his case against the defendant to warrant this court grant all the relives sought"

COURT DEDCISION

I have carefully gone through the entire evidence adduce by both parties as well as the final written address filed by both parties, I realized that the issue formulated by both parties in their final written address are inter changeable and similar. Therefore, I hereby amalgamated and narrowed down (2) issues as follows;

1 - "Whether or not the claimant discharge the evidential and statutory burden placed on him to be entitle to judgement'

2 – 'whether or not this action is competent before this court

The provision of SECTION 134 OF THE EVIDENCE ACT 2011 provides that;

"The burden of proof shall be discharged on the balance of probability in all civil proceedings. The Supreme Court stated same principle in the case of ADELEKE VS IYAND (2001) FWLR (PART 6) PAGE 1580 R L. civil case are not decided upon proof beyond reasonable doubt but on preponderance of evidence and balance of probability.

The law is trite that in civil case the claimant succeeds by the strait of his evidence not on the weakness of the defendant this court relied on the case of BELLO SALMI & ANOR VS ALHAJI ADETORO LAWAL (2008) 6-7 SC (PT 11)242.

It is in evidence that CW1 (the claimant himself) testified to the effect that he has paid the sum of 295,000.00 for the tenancy in respect of the property in question for the year 2021.

And it is also in evidence the claimant has paid some money installmentally to the defendants the sum of ₦95,000.00 that piece of evidence has not being contradicted during cross examination and the ₦95,000.00 is incidental to the main transaction therefore to me the total amount ₦295,000.00 paid in respect of the tenancy agreement between both parties.

The law is trite that un contradicted evidence the court can safely rely on it to just determination of this case AND I SO HOLD.

The defendant in their defense testified that he lease property in question to the claimant for a period of one year 2021 agreement and handed over the keys of the said property to the claimant, evidence also disclose that the claimant took over the possession of the said property for the year 2021, he occupied and utilized it for that year this piece of evidence has not being controverted in evidence that piece of evidence no cross examination was conducted as to afore mentioned piece of evidence and the law is settled that failure to cross examine a witness in respect of a particular piece of evidence is a tacit acceptance of the evidence, In other words it tantamount to admission of the piece of evidence.

The evidence of DW1 have being corroborated with that of DW2 to the effect that he took possession of the property as a tenant and he utilized same for that purpose up till the final determination of the said tenancy agreement.

In civil case the court is duty bound to use a scale of justice i.e. the imaginary scale and see whose evidence among the parties before the court is weightier.

Therefore, by implication the claimant is expected to discharge the statutory and evidential burden placed on him to the balance of probability in other to have judgement of the court in his favour

Going by the above am quite convinced with the evidence of the defendant is weightier than that of the claimant to the effect that an agreement for the rent of

the property has being entered between the parties and the claimant took possession of the said property in the year 2021 occupied and utilized the place until the expiration of legal due date.

Therefore, to me the defendant has performed his part of the agreement as jointly agreed between the parties AND I SO HOLD.

On the whole am bound incline myself with the submission, argument as well as the evidence placed before the court by the defendants the scale of justice i.e. imaginary scale tilt to the side of the defendant.

Therefore, entitle to the judgement of this court AND I SO HOLD.

On the SECOND ISSUE FORMULATED 'whether or not this action is competent before this court'

The law is trite that the courts indeed this court is bound by its rules the practice direction on small claims court no 2 of 2022 Bauchi state particularly ARTICLE 2 (1) (D) disclose that this court can only entertain the case of liquidated money demand which to my own view does not include tenancy agreement going by the definition of liquidated money demand it is beyond controversy that liquidated money demand the amount claim must be certain and can be easily calculated arithmetically as such the amount claim must be certain prior to the matter that lead to the cause of action in other words before the cause of action arise going by the content of the originating process the amount claim or the reliefs sought by the claimant was not certain prior to the cause of action.

Therefore, this case is incompetent before the court which goes to the jurisdiction. The law is settled where court lack jurisdiction to hear and determine a matter it can not do anything in respect of it.

Put differently the soft substratum of courts is no doubt a jurisdiction where the labourers are counsels and the litigants in one side as well as the courts where its decision would be an exercise in vein.

In light of the above this court has no option, in fact my hands are tight to decline jurisdiction, to me this action can well be determine in the district court i.e. conventional court.

Therefore, this case is liable to be struck out and same is hereby struck out.

APPEAL

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

HIGH COURT OF JUSTICE BAUCHI
SMALL CLAIMS COURT
EVALUATION & ASSESSMENT TEAM
29 FEB 2024
CERTIFIED TRUE COPY
SIGN: _____

THE CHIEF MAGISTRATE COURT
OF BAUCHI STATE
Z.M. SHUAIBU ESQ
MAGISTRATE
SIGN: _____ DATE 29/02/2024

ZAINAB M SHUABU (MRS)
SENIOR MAGISTRATE.