

IN THE DISTRICT COURT OF BAUCHI STATE

IN THE SMALL CLAIM COURT (NO TWO)

HOLDEN AT BAUCHI



BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

SUIT NO SCC/BH/03/223

BETWEEN

YOHANNA SIMONCLAIMANT

AND

MOSES MATTEW.....DEFENDANT

Claimant present – Speaks Hausa Language

Defendant – Absent

Aliyu Sale Tafida – affirmed to interpret the court proceedings from English to Hausa

No Appearances

JUDGEMENT

The claimant commenced this suit by filling form SCA2 under the small claim procedure dated 31 day of May 2023, and claims against the defendant as follows;

- 1 The sum of ₦70.000.00 (Seventy Thousand Naira only) being the outstanding rent arrears.
- 2 The cost of this action in the sum of ₦7.000.00 (Seven Thousand Naira Only).

The defendant was served with the originating process and hearing notice by substituted means, evidence of the affidavit of service before this court dated 15 day of June 2023 deposed to by one Aliyu Saleh Tafida a Baliff of this Honourable Court.

However despite being served, the defendant failed or neglect to enter appearance or file any respond in this suit.

On the 20th day of June 2023 he was still absent and unrepresented and the claimant went ahead and continue his case.

The summary of the claimant case as the sole witness in this suit, the defendant is a yearly tenant occupying a single room at Zango in Bauchi Local Government Area of Bauchi State paying the sum of #15.000 (fifteen thousand naira only) annually, the tenancy of the defendant expired since on 30th day of December 2019, but refuse to renew same after several demands from the claimant.

Finally the defendant have refuse and failed to pay the outstanding amount to the claimant which stand at the sum of **₦70.000 (Seventy Thousand Naira Only)** as at 30 day of December 2022.

Upon conclusion of CW1 evidence in chief this matter was adjourned to the 22 day of June 2023 for cross examination and defence.

On the date fixed for cross examination and defence, the defendant as usual was absent and unrepresented.

Consequent upon the claimant made an oral application that the defendant right to cross examine the claimant witness and defend the suit was foreclosed and the matter was set down for judgement.

COURT

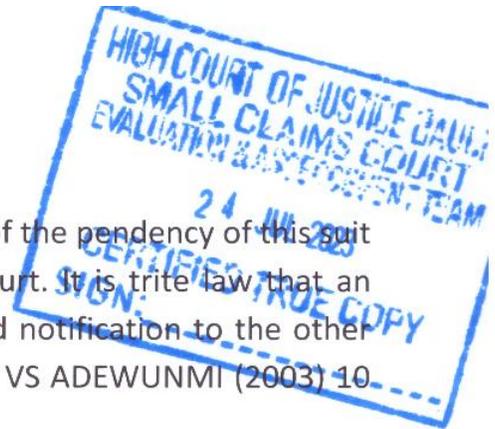
After taking into consideration the totality of the evidence in this suit this honorable court formulate single issue for determination thus;

“Whether the claimant has succeeded in establishing his claim against the defendant”

In all civil suit the onus to prove a particular fact or case is on the party who assert and since all civil suit are determine on balance of probability and preponderance of evidence, a party who prove his case will obtain judgement based on such preponderance of evidence and balance of probability in his favour



It is note worthy that the defendant was put on notice of the pendency of this suit as evidenced on the affidavit of service before the court. It is trite law that an affidavit of service is a prima facie proof of service and notification to the other party. in the case of SOCIETE GENERALE BANK NIG LTD VS ADEWUNMI (2003) 10 NWLR (PT 829) 562.



There is always an end to litigation a court of justice in deed this court will not wait forever for any party who is aware of the pendency of an action against him or her but refuse to appear or fail to file a defence or respond to same as such party can not complain of not being given fair hearing as provided under section 36 of the 1999 constitution as amended.

It is equally trite that once a party has been afforded the opportunity to present his case as he fails to take advantage of it, he cannot be heard to complain that his right of fair hearing has being breached.

Article 8(2) of the Bauchi State District Court Law Practice direction on small claim no 2 of 22, however the trial court has a duty to evaluate the evidence before it and be satisfied that it is credible and sufficient to sustain the claim of the claimant. this court refer itself to the case of **GONZEE NIG LTD VS NIGERIA EDUCATIONAL RESAERCH AND DEVELOPMENT COUNCIL(2005) 13 NWLR PT943 634 AT 650 PARA D.**

The defendant in this suit did not oppose the averment in CW1 evidence.

The law is trite that where facts in an affidavit remain unchallenged and uncontroversial the court is bound to accept those facts as established and as fact deemed to have being admitted.

Also the position of the law is that cost follow event and a successful party should not be deprived of his cost unless for good reason, however the award of cost is at the discretion of the court.

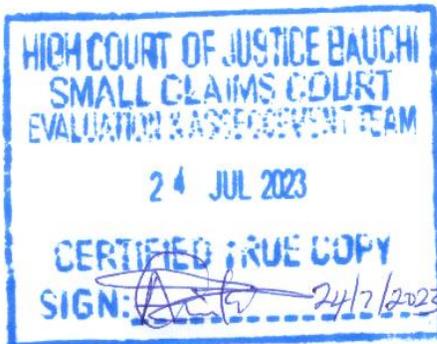
The law is certain that where the evidence before a trial court is unchallenged it is the duty of that court to accept and act on it as it constitute sufficient proof of a parties claim.

Accordingly this honorable hereby ordered as follows;

- a- The defendant is ordered to pay the claimant the sum of **₦70,000.00 (Seventy Thousand Naira Only)** being the refund that was due for collection from the defendant.
- b- The cost of **₦7,000.00 (Seven Thousand Naira Only)** is awarded against the defendant

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

DATED THIS 13TH DAY OF JULY 2023



SIGNED ZAINAB M SHUAIBU(MRS)
MAGISTRATE