

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

SUIT NO SCCBH/46/2024

Before His worship- GARBA ABDULLAHI

BETWEEN

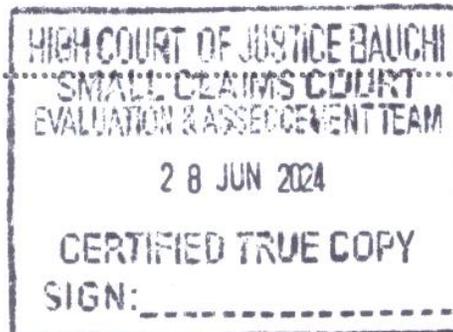
ISAH ILIYASU.....CLAIMANT

AND

KAMALU ILIYASU.....DEFENDANT

CLAIMANT – Absent

DEFENDANT – Absent



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 24TH February, 2024 and filed on the same date seeking for the following reliefs;

1. AN ORDER of this Hon. Court against the defendants to pay the sum of N7500,000 only being the money collected as part payment for the sale of the property to the claimant
2. Cost of this action

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdulsalam Abdullahi a bailiff of this Hon. Court. Dated 29/2/24 thereafter hearing commenced

PW 1 in person of Abdulhamid Samaila affirmed and told the court that he knows both parties before the court, the claimant show an interest to buy land, defendant said he want to sell his land to buy House in Bauchi town, as a friend he asked me

to called the claimant and sell the land for him, he called the claimant he came together with his friend one Abubakar Iliyasu.

He further told the court that defendant told him they have negotiated at the cost of N750,000 only, the defendant gave the sum of N230,000 only as part payment he count and gave it to defendant on condition that he will pay the remaining balance after payment of salary, thereafter the sum of N520,000 only was brought at the end of the month and defendant instructed him to collect on his behalf and he finally collected the money installmentally up to completion of payment.

Defendant refused to give the title document to the claimant and later said that his mother did not allowed him to sell the land he gave him five months to return the money back but he refused up to date that is why the claimant file this action

He further told the court that defendant is his friend.

During cross examination e informed this court that, he is the one that invited the parties , he collected the sum of N100,00 0 only and the defendant collected N130,000 only from the claimant making the total of N130,000 only, in fact he is the one that collected the sum of N529,000 only base on the instruction of defendant and he handed over the money to defendant about 4-5 times, there was a transaction between the parties in this case

No reexamination was conducted

CW 2 in person of Isah Iliyasu Affirmed and told this Hon. court that he is the claimant in this case, CW 1 came and told him that there was a land for sale of his friend (defendant) he show his interest to buy, on 25/7/22 they went to the House of CW1 together with his brother Abubakar Iliyasu and negotiated with the defendant at the cost of N750,000 only and he paid the sum of N230,000 on the spot to defendant on conditions that the remaining balance will be paid at the end of the month and he instructed him to give the remaining balance to CW 1 and he did so.

He further informed this Hon. court that, after he complete the payment defendant refuse to give them the title document, he said he wanted to refund our money,

they went to his brother one Abdullahi Iiyasu and the settlement was commenced but was failed defendant agreed that he is owing him the sum of N750,000 only, the incidence took place in presence of himself, Abdullahi Iiyasu, CW 1, Isah Muhammad and the defendant.

During cross examination he informed the court that, he has entered agreement with defendant orally, he gave the sum of N520,000 only to CW 1 base on the instruction of the defendant given to him on the same date of transaction

No reexamination was conducted

DW 1 in person of Isah Muhammad affirmed and told the court that one Abdulhamid invite them to his house because of the defendant , they went and met him, he told them that the issue of uncompleted building has been postponed, the defendant agreed to return the money to the claimant, CW 1 SAID HE GAVE THE TOTAL SUM OF N250,000 only to defendant, after about 3-4 month the matter was reported to the elder brother to the defendant where the claimant said what he gave to the defendant was N750,000 only, but defendant denied the said amount and said what he know is N250,000 only.

He further told the court that he doesn't know whether there was any transaction between the parties.

During cross examination he told this Hon. court that, he doesn't know the purpose of given the sum of N250,000 admitted by the defendant, and he would not know if there was any transaction between the parties but he believes there was a transaction between the parties

No reexamination was conducted

DW 2 in person of SGT. Kamaluddeen Iiyasu Abubakar affirmed and testify that ONE Abdulhamid Samaila met him and said he will sell one uncompleted building beside his house to him it belong to one of their elder brother on condition that he will give him a plot of land, later on he said the price of the plot will be more than that of uncompleted building, but they finally agreed that he will collect the plot and give him additional money, based on that he gave him N100,000 , HE ADDED

N50,000 and later he added N50,000 for the 2nd time making the total of N200,000 only, later when he was together with DW 1 he called him and add the sum of N50,000 only to him making N250,000 ONLY as the transaction failed he wanted to return the money back

He also informed this Hon. court that later they went to his elder brother, where he said what he owing the claimant is N250,000 only but the claimant claiming the sum of N750,000 only

During cross examination he informed the court that the amount was agreed for the sale of uncompleted building, but he collected the money as a loan, his land is situated at Bakin Kogi in Dass town and he use to assign CW 1 to do a lot of thigs for him.

No reexamination was conducted

DW 3 IN PERSON OF Abdulhamid Iliyasu Affirmed and told the court that sometimes he was sitting at home they came and met him four of them disputing about money among themselves, he wanted to settled them but it was prove abortive because they could not agree about the figures, the claimant claim N750,000 only to CW 1 , while CW 1 was saying he gave the sum of N600,000 PLUS and the defendant was saying it was N250,000 only he collected from CW 1

During cross examination he told the court that the money was for the exchange of uncompleted building with a plot, all what he said is based on what he was told.

Parties have filed and exchange their final written address, the learned counsel to defendant A U Abdullahi Esq in his address dated 18/4/24 has formulated two issues for determination which are hereby reproduce as follows: -

1. Whether or not the claimant herein has established their claim as to entitle them to the reliefs sought in this matter
2. Whether or not the defendant have proof defense as required by the law to entitle them to these sought in their defense.

On the 1st issue for determination the learned counsel answers it in negative, and submitted that the law is settled the burden of proof is of he who assert and that burden has to be discharge he refer this court to the case of 131 of the evidence act 2011 as amended

He further argued that the testimony of CW 1 is contradictory and at variance with the claim before the court, and the law is settled evidence which is at variance with the pleadings goes to no issue he refers this court to the case of OKOKO VS DAKOLO (2006) 27 NSCQR PG 259 AT 266 R 12

He submitted that the testimony of CW 1 AND CW 2 contradict each other he refers the court to the case of AKPAN VS U.B.A PLC (2011) 2 NWLR (PT 1231) 399C

ON THE 2ND ISSUE FOR DETERMINATION the learned counsel submitted that the position of the law regarding the defendant statement of defense is, it is considered as independent action and here is a duty on the defendant to establish his defense by way of reliable evidence.

He argued that from the testimony of DW 1 he said there was no any transaction between him and the plaintiff all what he knows is there was a transaction between the defendant and CW1 TO THE TURN OF N250,000 OLY, that piece of evidence has been corroborated with the testimony of DW2 and DW 3 respectively and urged me to so hold

Finally urged the court to enter judgment in his favor.

The learned counsel to the claimant in his final address formulated two issues for determination as follows;

1. Whether considering the statement of claim of the claimant, the evidence of CW1 and CW 2 in this suit the claimant has proof his case on the balance of probability or preponderance of evidence

2. Whether from the defense, defendant have offered any credible defense to the claim of the defendant.

On the 1st issue for determination the learned counsel submitted that civil suits are prove to the balance of probability and not beyond reasonable doubt he cited the case of ODUNTOLA VS MABOGUNJE (2013) 7 NWLR (pt1354)522 at 536 R 15

The learned counsel has cited the case of ALECHENU VS UNIJOS (2915)1 NWLR (PT 1440) 323 AT 341 R 4 on the meaning of preponderance of evidence, he urged the court to carefully look at the evidence of CW 1 and CW 2

ON the 2nd issue for determination the learned counsel answers it in negative, and argued that defense is general travers cannot be said to have controvert the evidence of the claimant, he also cited the case of DAGGASH VS BULAMA (2004) 14 NWLR (PT 892)144 AT 166 R 29, U.B.A PLC VS DAWUDU (2003) 4 NWLR (PT 810) AS TO THE MEANIG OF BALANCE OF PROBABILITY

He further argued that where the defendant failed to deny the claim and failed to controvert the credible evidence of the claimant he shall be deem to have admitted the claim he calls in aid the case of OGEIRI VS N.A.O.C LTD (2010)

On the treatment of evidence led in support of undenied averments in pleadings, such evidence must be believed by the court he cited the

case of DINGYADI VS WAMAKO (2008) 17 NWLR (pt1116) 395 at407 R
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Finally urged the court to grant all his reliefs and enter judgment in favor of the claimant.

After hearing the submissions and argument of both counsels and having taken into consideration the evidence adduced by the parties before the court this Hon. court formulate one issue before the court thus-

“Whether the claimant proof his case by preponderance of evidence to be entitle to judgment”

By law the claimant duty to proof his claim ,remains inviolate, whether or not the case is defended by the defendant and the claimant is expected to succeed on the strength of his own case not on the weakness of the defendant, therefore claimant must proof his case to the balance of probabilities I refer myself to the case of LONGE VS C B N (2006)3 NWLR (PT967) 228 ITAUMA VS AKPA-IME (2000) 7 SC (PT 11)24, and IMAM VS SHERIFF (2005)4 NWLR (PT 914)80

it is clear from the record of the cord that the crux of this matter is transaction for the sale of land between the parties, it is beyond doubt that defendant had collected money from the plaintiff I refer myself to the testimony of PW 1 and PW2 for the land transaction and I so hold

It is also in record that PW 2 (CLAIMANT) himself testified to the effect that he has entered into the contract for the purchase of defendant's land situated at Bakin Kogi in DASS town of Bauchi State at the cost of N750,000 only and he paid the sum of N230,000 only cash to defendant that piece of evidence has not been discredited or controverted during

cross examination and I so hold, the law is trite that un-discredited evidence the court can safely relied on it for just determination of the matter before it.

He further informed this court that the defendant directed him to pay the remaining balance of N520,000 only to CW 1 and he complied.

CW 1 Informed the court that, the plaintiff bought a land to defendant at the cost of 750,000 only and he paid the sum of N230,000 cash to defendant on condition that by the end of the month he will upset the remaining balance of N520,000 only

He further told the court that, defendant instructed him to collect the remaining balance on his behalf the sum of N520,000 only and he has collected, later on defendant collected the entire said amount gradually, that evidence has not been controverted

DW 1 During cross examination informed this court that defendant has admitted that he collected the sum of N250,000 only from CW 1 but he doesn't know the purpose.

DW 2 the defendant himself admitted that he collected the sum of 250,000 installmentally from CW 1 for the purported transaction of land which was postpone.

Base on the above piece of evidence is obvious that the defendant has enter into the contract with the defendant through CW 1 for the sale of his plot situated at Dass town, the law is trite that admitted facts need not further proof I refer myself to section 123 of evidence Act 2011 as amended

Base on the above piece of evidence it is my humble view that there was a transaction for the sale of land between the parties in this case, the said transaction has failed, the sum of N750,000 was given to defendant and he failed, refuse or neglect to refund it to the claimant, therefore the claimant has discharge the statutory and evidential burden placed on him by the law, the scale of justice tild to his side and he proved his case to the balance of probability and I so hold

Judgement is hereby entered against the defendant in favour of the plaintiff, consequent upon which the following orders are hereby make

1.An order against the defendant to pay the sum of N750,000 only to the plaintiff being the money collected for the sale of plot of land situated at Bakin Kogi in Dass town.

No cost of action awarded, parties shall bear their respective cost

This case is decided today being the 13th June, 2024

There is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

