

**IN THE DISTRICT COURT OF BAUCHI STATE  
IN THE BAUCHI JUDICIAL DIVISION  
HOLDEN AT SMALL CLAIMS COURT NO 2 BAUCHI**  
BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

**SUIT NO SCC/BH/36/2024**

**BETWEEN**

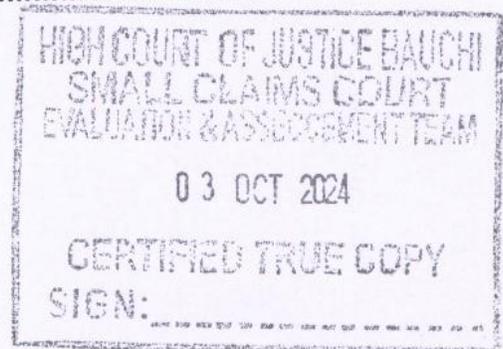
**AHMAD ZAILANI KOBI ..... CLAIMANT**

**AND**

**SHAMSU SUNUSI ASKA & 2ORS ..... DEFENDANT**

Appearances – A A HASSAN Esq for the claimant

No appearance for the defendant



**JUDGEMENT**

The claimant commenced this suit under the Bauchi small claim court procedure by filling FORM SCA 2 and 3, the claimant claims against the defendant the sum of ₦634,000.00, sum of ₦150,000.00 as general damages, ₦100,000.00 as cost of action.

The defendant in the suit was served by substituted means by pasting same at GRA opposite National Industrial Court of Nigeria Bauchi, Bauchi State as seen on the affidavit of service dated 27<sup>th</sup> day of June, 2024.

On the date fixed for hearing the defendant was absent hearing commenced CW1 by name AHMED ZILANI who happens to be the claimant affirm and testified to the effect that sometimes on the 23 day of April 2024 two people came to my shop located at Atiku Abubakar at Gwallaga here in Bauchi am into the business of selling shoes, Jallabiya we negotiated an arrived at an agreement with the first defendant he bought cloths worth ₦74,000.00 he paid the sum of ₦34,000.00 remaining ₦40,000.00, he later collected some cloths worth ₦66,000.00 all effort

to get back my money prove abortive, we decided to sit down with some of his relatives the promise to pay the money installmentally but failed he later send the sum of ₦90,000.00 remaining the outstanding balance of ₦570,000.00 from the 1<sup>st</sup> defendant.

The 2<sup>Nd</sup> defendant collected the items worth ₦69,000.00 cloths and shoes, while the 3<sup>rd</sup> defendant collected cloths worth ₦39,000.00 making the total sum of ₦670,000.00.

The matter was adjourned to the 13<sup>th</sup> day of August 2024 for cross examination and defense on the date fixed for cross examination and defense the defendants were still absent and unrepresented having being duly served with the hearing notice of this Honorable court, the case was set down for judgment and ordered that they should be serve with the hearing notice.

### **COURT FINDINGS**

In civil cases, it is trite that the burden of first proving the existence or nonexistence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings SEE SECTION 133 (1) (2) SECTION 132 OF THE EVIDENCE ACT 2011.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side THIS COURT REFER ITSELF TO THE CASE OF MTN NIGERIA COMMUNICATION LTD VS OLAJIRE A ESUOLA (2018) LPELR 43952 (CA).

In the present case, the burden rest squarely on the claimant to prove what he asserts in the statement of claim and in doing so he is to adduce adequate evidence to prove his assertion against the defendant.

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 but refuse to appear or file to file a defense or respond to the claimants claim.

ARTICLE 8 (2) OF THE BAUCHI STATE PRACTICE DIRECTION OF SMALL CLAIMS COURT NO 2 OF 2022 provide thus;

'Where the claim is called for hearing and the claimant appears but the defendant does not appear provided there is proof of service the district court judge shall proceed with the hearing of the claim and enter judgment as far as the claimant can prove his claim'

In the instant case the defendant was served with the originating process of this court they refuse or neglect to file any defense to the claimant claim in view of the forgoing this court has no option than to enter judgment as per the claimant claim in his originating process.

Judgment is hereby entered in favor of the claimant against the 1<sup>st</sup> 2<sup>rd</sup> and 3<sup>rd</sup> defendants as follows;

- (a) The 1<sup>st</sup> defendant is ordered to pay to the claimant the sum of ₦570,000.00 (Five Hundred and Seventy Thousand naira) being the money for cloths he collected
- (b) The 2<sup>nd</sup> defendant is to pay the sum of ₦69,000.00 (Sixty-Nine Thousand Naira) being the money for the clothes and shoes
- (c) The 3<sup>rd</sup> defendant is ordered to pay to the claimant the sum of ₦39,000.00 (Thirty-Nine Thousand Naira) for the cloths collected
- (d) The 1<sup>st</sup> 2<sup>rd</sup> and 3<sup>rd</sup> defendants are ordered to jointly pay the sum of ₦50,000.00 as general damages and ₦30,000.00 as cost of action

This case is decided today being the 30<sup>th</sup> day of September 2024

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

  
30/09/2024  
**ZAINAB M SHUAIBU**  
(MRS)  
SENIOR MAGISTRATE

