

**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/002/2024

BETWEEN

FRIDAY MICHEAL CLAIMANT

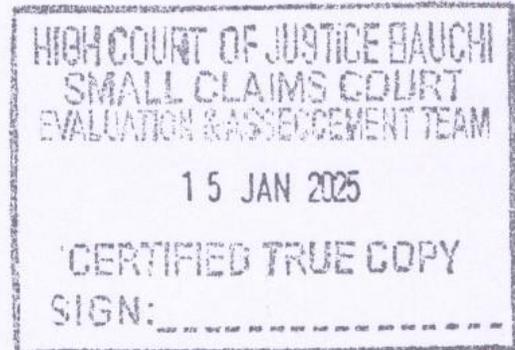
AND

JOSIAH MICHEAL DEFENDANT

Parties present

PATRICK OWOICHO Esq for the claimant

A A SAMUEL Esq for the defendant



JUDGEMENT

The claimant commenced this suit under the Bauchi state practice direction on small claims court no 2 of 2022, he fill and filled the small claims court forms SCA 2 and 3 dated 1st July 2024 he defendant was serve via substituted means dated 15th day of July 2024 as deposed to by the bailiff of this Honorable court ALIYU SALE TAFIDA.

The claimant claim against the defendant is the sum of ₦1.300.000.000 (One Million Three Hundred Thousand Naira only) being the money for the farm produce, sum of ₦50,000.00 as cost of action.

On the 30th day of July 2024 hearing commence CW1 by name FRIDAY MICHEAL who happens to be the claimant in this matter affirm and testified to the effect that the defendant mate him to give him some amount of money ₦150,000.00 he is into a business of storing rice beans and guinea corn, that he will take the responsibility of keeping it for me I gave him the sum of ₦500,000.00 then

₦550,000,00 making the total sum of ₦1,200,000.000 (One Million Two Hundred Thousand Naira) this incident happened in 2018 he promise to pay back in 2019, but up till date he is yet to pay the said money.

Later on, he said he didn't store the grains but rather gave the money to one Pastor Zakka Magaji I then told him we never agreed that the money will be giving to anyone why telling me this now, he then told me he applied for a loan at DAK the assured me that if the loan is granted to him, he will pay me back my money, later on I saw him with a new car he bought.

The money I gave him was giving to him in the presences of his wife and a lady that stays with them.

In other to resolve the matter I contact our pastor, we attend the same church with him he pleaded on his behalf that he will refund the money back to me, the money that was giving to the defendant is used for buying seeds for planting, get a profit worth one million yearly.

CROSS EXAMINATION he informs the court that the money was giving to the defendant instantly in the presence of his wife and Juliana, the defendant has never helped me, am not aware that the money was paid direct to the pastors account, he only told me he gave the pastor the money, am not aware that the joined farm land between I and the defendant was destroyed by cows.

PATRICK OWOICHO Esq - No reexamination, that is the case of the claimant

COURT - CW1 was discharged.

A A SAMUEL Esq applies to open his defense.

DEFENSE WITNESS

DW1 – by name Josiah Micheal who is the sole defense witness affirm and testified to the effect that the claimant claim before the court is the sum of one million three hundred thousand naira for the purpose of food storage business

the best I know is that the claimant have never giving me money of that amount, I have never stayed for once to discuss any storage business with him.

The claimant came to me as a brother that he has nothing doing he is just a waiter that I should help him on the first go he gave me the sum of ₦50,000.00, ₦25,000.00, ₦35,000.00, ₦15,000.00 making the sum total of ₦125,000.00 the said money was giving to me for the purpose to assist him in starting something and the money giving to me by the claimant was not for me to refund, just to help him start doing something.

Later thing didn't go as expected, I did not harvest anything that year as a result reason being that cattle entered into the farm land and destroyed all the farm produce, he insisted that I should refund back his money that is all that happened between me and the claimant.

CROSS EXAMINATION - He told the court that at civil defense office I wrote an undertaking and promise to pay the one million three hundred thousand naira and there was a business between me and the defendant, you instituted an action at the high court, the money I admitted that was giving to me by the claimant is ₦125,000.00 and I don't intend to refund same.

A A SAUMEL Esq: No reexamination that is the case of the defendant.

COURT DW1 is hereby discharged.

Learned counsel to the defendant made an oral application for further cross examination of CW1 same was granted as prayed.

FURTHER CROSS EXAMINATIONS CW1 inform the court that in his examination in chief he told the court that he gave the sum of one million three hundred thousand naira to the defendant, sum of ₦150,000.00 was giving to him at in his house then I gave him the sum of ₦600,000.00 a month later and ₦550,000.00, I am fully aware that the defendant is into farming business, the said amount was giving to the defendant in the year 2018- 2019.

Learned counsel of both the defendant and the claimant waive their right of final written address same was set down for judgment.

OBJECTION RAISED BY LEARNED COUNSEL TO THE DEFENDANT

Learned counsel to the claimant applied to tender the originating process filed by the defendant at the high court of justice but was objected by learned counsel to the defendant reason being that the witness is not the custodian of the document such document cannot be tendered it does not satisfied the requirement of the evidence Act 2011.

IN RESPOND LEARNED COUNSEL TO THE CLAIMANT

Learned counsel submit that the document was properly certified as required by law and the issue of payment raised is directory not mandatory the whole process of certification is authentication, the whole essence of payment of fee is an administrative process of the office in charge he who assert must prove either if fee is compulsory, how was it issued and stamp was it a pro bono service, the innocent party should not be blamed for the lapses of the court registry is not a jurisdictional issue, the condition linked in the evidence Act is not mandatory. Counsel refer the court to the case of NWEKE VS PETERSIDE.

Learned counsel submit that the witness who happens to be the claimant apart from being his own case he is the deponent of the document he is the best person to answer the question and final urge the court to discountenance the argument and admit the document in evidence.

RESPOND ON POINT OF LAW BY LEARNED COUNSEL TO THE DEFENDANT

Learned counsel refer the court to SECTION 104 OF THE EVIDENCE ACT 2011 submit that if there is evidence of payment it must be on process this document can not admitted because it falls short of the requirement of the law.

COURT FINDINGS AND DECISION

The law is that the person that alleges has the responsibility to prove his allegation. See SECTION 132 AND 133 OF THE EVIDENCE ACT 2011, however in

civil cases the court bears in mind that the claimant only has to prove his case on the balance of probabilities see the case of AKOGUN ABAYOMI OLUMIDE & ANOR VS MR AMOS OLA AREMU & ANOR (2019) LPELR – 48761 (CA) the court held that in civil cases the court decides the case on the balance of probabilities or preponderance of evidence. This is done when a trial court puts on an imaginary scale the totality of evidence adduced by the parties before the court/ the court must put the evidence adduced by the claimant on one side of the scale and that by the defendant on the other side of the scale and weigh them together. The court will then see which is heavier not by each party but by the quality or probative value of the testimony of those witnesses SEE THE CASE OF ADEBAYO VS ADUSEI (2004) 4 NWLR PT 862 PG 44.

The position of the law has received judicial blessings in plethora of decided authorities include

- EZE VS APGA (2020) 3 NWLR (PART 1712) PAGE 413 AT 445 PARAS D-E
- TRIOVERSAL DESIGN ASSOVIATES VS COMM H &H.S YOBE STATE (2020) 4 NWLR (PART 1714) PAGE 234 AT 269 PARA C-E where the court of appeal held as follows;

the legal burden of proof in a civil case is always on a claimant to prove to the satisfaction of the court the assertions made in the pleadings of the contentions upon which he meets his case and he has the onus of proving his case by preponderance of evidence'

As to the document sort to be admitted in evidence i.e. the copy of the process of the high court of justice Bauchi by the claimant which has being objected by learned counsel to the defendant and both parties canvassed argument the ruling thereof reserved to the stage of judgment.

I have gone through the content of the said document with suit no BA/192M/2024 I realized that the document sort to be tendered is relevant to the fact in issue before the court.

As to the person whom the document sort to be tendered from the position of our law remain settled that document should be tendered through it maker not any other person I refer myself to the provision of SECTION 39-41 OF EVIDENCE ACT 2011 as amended.

However that position of the law is flexible in nature is not mandatory requirement of the law, whole essence of the said provision is to know whether the witness can sustain question put to him during cross examination and no more but different the witness ought to be well acquitted with the content of the document to enable him answer the question during cross examination to my own view the witness I e cw1 was a party as per the face of the document to the said case.

Therefore, am convinced that he can answer put to him during cross examination therefore the said document can be tendered through CW1.

As to the 2nd leg of objection which is related to admissibility of the document learned counsel argued that the document fall short as to the requirement of the law as to certification on the ground that the receipt evidence of payment for certification is not on the face of the document.

The law is trite that even if the document is relevant for it to be admissible in evidence it most satisfied the requirement of the law even if the document is relevant for it to be admitted in evidence it most satisfied the requirement of the law AND I SO HOLD.

On the face of the document, I question I have seen the name of the person who certified it, his destination, his rank, place of work his official stamp i.e. seal signature and date the person who certified the said document is the custodian of it, therefore in law has the power to do so.

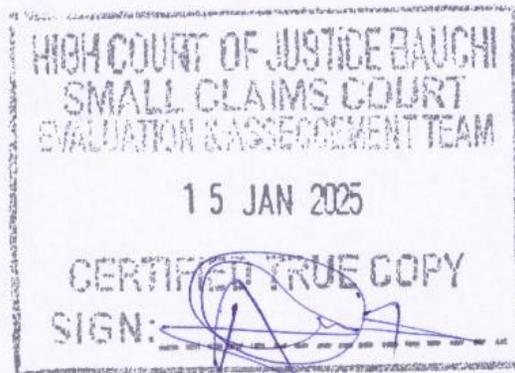
The issue of receipt raised due is part of the requirement of the law, but is the duty of the registrar i.e. the person who certified the document to issue receipt, that is if the organization in which he is working with made that provision, he ought to provide the receipt to indicate that a revenue of being paid to the said organization.

On the whole judgment is hereby entered in favor of the claimant against the defendant and the following orders are hereby made;

- (a) The defendant is ordered to pay the sum of ₦1,300,000.00 (One Million Three Hundred Thousand Naira only) being the money giving to the defendant by the claimant for storage of farm produce
- (b) The sum of ₦20,000.00 as cost of action

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

THIS CASE IS DECIDED TODAY BEING THE 13TH DAY OF JANUARY 2025



13/01/2025

**ZAINAB M SHUAIBU
(MRS)**

SENIOR MAGISTRATE