

**IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO 2**

BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

SUIT NO SCC/BH/142/2024

BETWEEN

ISHAQ IBRAHIM CLAIMANT

AND

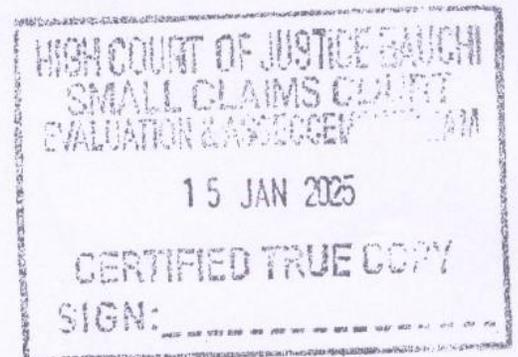
MRS MARY EMMANUEL & 1 OR DEFENDANT

Claimant present

Defendant absent

Appearances PATRICK OWOCHIO for the claimant

No appearance for the defendant



JUDGEMENT

The claimant commences this suit by filling form SCA 2 dated 18th day of November 2024, the claimant claims against the defendant the sum of ₦220,000.00 (Two Hundred and Twenty Thousand naira) being principal sum (loan) giving to the defendant, sum of ₦180,000.00 as the administrative charges from the month of march 2024 to November 2024, cost of ₦100,000.00 as cost of action.

The defendant in this suit was served via substituted means as deposed on the affidavit of service by the bailiff of this Honorable court ALIYU SALE TAFIDA.

On the date slated for hearing the defendant was after being serve with the originating process of this court, hearing commence CW1 by name ISHAK IBRAHIM affirm and testified to the effect that the 1st defendant approach me to borrow her some money, told her how will I borrow money to her without

knowing who she is she pleaded and explained all her predicament as to why she urgently need the said money, out of sympathy I told her if I must borrow her the money she should get a guarantor in the event of default he will have to pay back, she then said she has a brother by name Sani Adamu i.e. the 2rd defendant that he will stand in her behalf.

Sani Adamu stood as a guarantor on her behalf I sent them to my barrister he draft the agreement, they brought the agreement I transferred the sum of ₦220,000.00 directly to the account of the 1st defendant in the presence of the 2Nd defendant who is the guarantor to the 1st defendant, she acknowledged the receipt it was in January 17th 2024, on the agreement that she will pay back the sum of ₦220,000.00 on or before two month that is from the 17th day of January 2024 to 17th day of March 2024, once she fail to pay the said amount on the agreed and slated date then she will pay the sum of ₦20,000.00 as administrative charges all this are contained in the agreement up till this moment she has not paid a kobo.

The said agreement was admitted into evidence and marked as exhibit K.

What am presently claiming from the defendant is the sum of ₦220,000.00 net sum i.e. principal sum, plus the nine months of administrative charges starting from march 2024 to November 2024 making the total sum of ₦180,000.00 and cost of action of ₦100,000.00 making the total sum of ₦400,000.00.

Patrick – That is the case of the claimant we humble apply to close our case.

CW1 was stood down for cross examination and defense, I ordered that hearing notice should be served on the defendants.

When the case came up for cross examination and defense the defendant was still absent and un represented, learned counsel to the claimant PATRICK OWOCHIO Esq apply that the right of the defendant to cross examine CW1 was foreclosed and since no answer was filed, the defendant was presumed to have no defense to this suit and so defense was also closed, the matter was set down for judgment.

Having regard to the provision of ARTICLE 8 (2) OF THE BAUCHI STATE PRACTICE DIRECTION ON SMALL CLAIM CXOURT NO 2 OF 2022, the issue that calls for determination in the circumstances of this case is 'Whether the claimant has proved his case sufficiently to be entitled to a grant of the claim sought'

In Nigeria law, the principle of law is that civil suits are determined upon preponderance of evidence and balance of probability, he who assert must prove is well established and a prominent case illustrating this is the case of NSEFIK & ORS VS MUNA & ORS (2007) LPELR – 3934 (CA) where the court held that the burden of proof lies with the party asserting the positive claim not the party denying it.

And the case of DEMATIC (NIGERIA) LTD VS UTUK & ANOR (2022) LPELR – 56878 (SC)

In this instant suit the evidence proffered by CW1 and he also tendered document to corroborate his assertion regarding the facts that the claimant transferred the sum of ₦220,000.00 (Two Hundred and Twenty Thousand Naira) on the 17th day of January 2024 and exhibit K corroborate his assertion.

Where a claimant as in the instant case has produced evidence in support of his case which will prima facie entitle him to judgment, the defendant will need to lead some evidence to enable the court to consider on whose side the case preponderate.

In this suit at hand, the defendant has failed to appear to defend this suit thereby leaving the court with no other evidence with which to preponderate the evidence proffered by the claimant. The balance of probabilities therefore tilts in favor of the claimant who has adduced evidence in support of his claim.

The law is trite that evidence that is neither challenged nor debunked remains good and credible evidence which should be relied upon by the trial court which would in turn ascribe probative value to it, see the following decisions;

- MONKOM VS ODILI (2010) 2 NWLR (PT 1179) 419 AT 442

➤ KOPEK CONSTRUCTION LTD VS EKISOLA (2010) 3 NWLR (PT 1182) 618 AT 663.

Furthermore, where the claimant has adduced admissible evidence which is satisfactory in the context of the case, and none is available from the defendant, the burden on the claimant is lighter as the case will be decided upon minimum proof see the case of ADELEKE VS IYANDA (2001) 13 NWLR (PT 729) AT 23-24.

Having duly considered the evidence presented in support of the claimant's claim and being satisfied with the facts and documents presented; this honorable court therefore finds that the claimant has adduced sufficient evidence to entitle him to a grant of his claims.

On the claim for interest; it has been held that a claimant is entitled to interest on a monetary claim where the defendant has held his money without justification the defendant ought to pay same as agreed between both parties, this court refers itself to the case of UNION BANK OF NIGERIA LTD VS MR JAMES OLUSOLA AYOOLA (1998) 11 NWLR PT 573 338 AT 344 and the case of PAUL AFORKA VS AFRICAN CONTINENTAL BANK NIG LTD (1994) 3 NWLR PT 331 217 AT 225.

This court has unfettered discretion to award costs which discretion must be exercised judicially and judiciously I refer the court to the case NIGERIA BANK FOR COMMERCE AND INDUSTRY & ANOR VS ALFIJIR MINING NIGERIA LTD (1999) 12 SC PT 11 109 AT 123 -124.

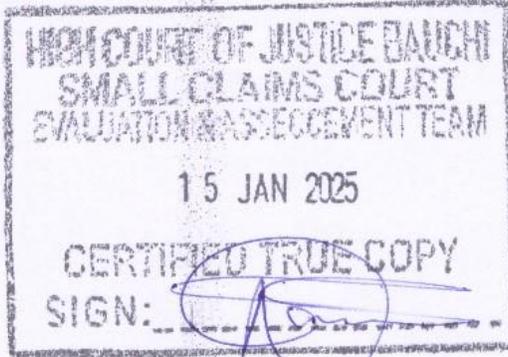
From the court records the claimant paid about ₦ 2,500.00 as filing fees, learned counsel to the claimant appeared before me 8 times based on the above or in the circumstances the cost of ₦30,000.00 (thirty thousand naira) is awarded in favor of the claimant against the defendant.

On the whole this case succeeds judgment is hereby entered in favor of the claimant against the defendants the sum of ₦400,000.00 (four hundred thousand naira) being the debt owed by the defendants to the claimant arising from the debt and administrative charges of ₦20,000.00 (Twenty Thousand Naira) from the month of march 2024 to November 2024 making the total sum of ₦180,000.00 agreed by both parties which he refused, neglect to repay till date and the cost of

₦30,000.00 (Thirty thousand naira) is awarded in favor of the claimant against the defendants.

APPEAL: There is a right of appeal to the High Court of Justice Bauchi within 14 days from today by the aggrieved party.

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



13/01/2025

**ZAINAB M SHUAIBU
(MRS)
SENIOR MAGISTRATE**