

**IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO. 1 BAUCHI
SUIT NO SCCBH/150/2024**

Before His worship- GARBA ABDULLAHI

BETWEEN

MATO DANTURAWAN DASS.....CLAIMANT

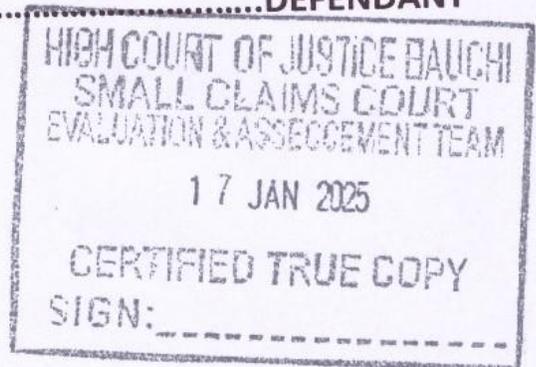
AND

DR. AHMAD ISA AHMAD.....DEFENDANT

CLAIMANT –Represented by Ahmad Bashir

Parties – Absent

M. M Ahmad Esq for the claimant



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 25TH January, 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 N3,000,000 only being the money owing the claimant
2. Cost of this action N5000
3. Filing fees N2,500k only

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 11/12/24 thereafter hearing commenced, in his effort to proof his case the claimant has called three witness and TENDER ONE Exh. which has been admitted in evidence and marked as Exh. A, thereafter close his case.

Defendant called no witness and rest his case on that of the claimant, the learned counsel to the claimant has address the court orally while the learned counsel to defendant filed a written address upon served on the claimant, he filed a written reply on point of law both parties adopted same.

Review of the witnesses are as follows

CW 1 in person of Alh. Abdullahi Mato Danturawan Dass (claimant) affirmed and told this court that about two years ago around 8;00pm defendant went to his House together with 2 persons, Dr Gamawa, and Babba Zubairu sought for his assistance, that he has a problem that need the intervention of the Governor about the accreditation of some courses in his school, he asked him to talk to the Governor so that they will get approval because of his relationship with him. If is approve he will pay his claim the sum of N3,000,000 only, **it was approved but he refuses to pay and kept deceiving him, a letter of demand was written to defendant, it has been admitted in evidence and marked as Exh. A**

During cross examination he informed this Hon. court that, he has no registered firm, but he has a publicity group of which he is a chairman responsible for publicizing the activities of H.E, but he worked for the defendant in his private capacity and he does not have evidence that defendant has been paid.

He further told the court that the money was paid for the School of Agric, but it was the defendant that gave him the work, about one year ago about N20,000,000 was released to defendant, he was served with the letter and he replied

No reexamination was conducted

CW 2 in person of DR Ahmad Abdullahi Gamawa affirmed and told the court that , defendant is his boss, sometimes in 2022 they went to

claimant's house together with defendant between 8-9 pm, he escorted the defendant on the issue of college accreditation, defendant narrated the reason for our visit to the fact that we were seeking for fund from the Governor for accreditation but prove abortive, we they were advise to meet those that were close to him, and his name was suggested to them among others, the claimant promise to intimate the governor on the issue, he could not remember any demand by the claimant

No cross examination was conducted by the defendant

PW 3 in person of Zubairu Musa affirmed and told this Hon. court that, he told the defendant to meet the claimant to speak to H E that they were looking for accreditation money so that they can get approval, they had discussed for 5-10 minutes.

After 2-3 years no fund was released, upon reelection of the Governor for the second time, Ministry of Higher Education was established and Mrs. Lydia Tsammani was appointed as commissioner for higher education they request her and promise to meet the H E about the issue, the n approval was granted around August 2024

He further told this court that claimant could not demand anything from the defendant thereafter the case of the claimant was close

No cross examination was conducted

The learned counsel to defendant Patriach Owoicho Esq in his oral address cited the case of OGBE VS OJO (2022) LPELR-62587 (SC) and submitted that defendant is an agent of disclose principal who bears no liability, he sought help to get the accreditation of college of

Agriculture, he is an agent of the college, it came from the month of the claimant to file this case against the claimant is not fear.

Secondly the case of the claimant there is contradiction between his testimony and that of his witnesses on the crucial issue of that consideration payment of the job

Thirdly claimant did not show to the court any effort he made to fulfill his obligation by either letter to H E about the fund or personally meeting the Governor instead he said two years ago there was no release of fund until the ministry of Higher Education was created and finally, he urged the court to dismiss the claim.

Learned counsel to claimant M M Ahmad Esq filed his final written address dated 27/12/24 he adopts it as his oral submission and legal arguments and urged the court to enter judgment against the defendant in favor of the claimant

1. Whether the claimant has established his case against the defendant to entitle him to judgment of this court as per his claim?
2. Whether the defendant has on the other side of the scale of justice established any evidence to be weighed on preponderance of evidence against the evidence adduced by the claimant in his suit?

On the first issue the learned counsel answers it in affirmative and submitted that defendant failed to produce a single witness or contradict or challenge the claimant evidence before the court he call in aid the case of BEN EMODI 7 OTHERS VS PATRI C. EMODI 7 OR (2013)

AELR 2137 and AJIBADE VSMAYOWA (1978) Pg 1-9, Oke vs Aiyedun (1986) PG 1 and MOSHOD VS BAYERO (2001) V 52 WRN Pg 42

He further submitted that the only defense put forward by the defendant is the address of the counsel and the law is trite that address of counsel cannot take the place of evidence he cited the case of F.B.N VS MAIWADA (2013) 5 NWLR PT (1888) 27 C A

Defendant failed to establish how he acted in official capacity, cannot be heard that assertion, on burden of proof of assertion he call in aid the case of SHEHU VS INEC (2023) 15 NWLR PT 1888)27 C A, and TUMBIDO VS INEC (2023) 15 NWLR pt (1907) SC as well as section 131 and 123 of E A 2011 as amended

On the 2nd issue for determination the learned counsel answer it in negative and argued that claimant has called three witnesses and some evidence adduced by the claimant were not shaken, those facts has not been challenge are deem establish he call in aid the case of GANA VS F.R.N (2018) 12 NWLR (PT 1633) 294 AT 297, and urged me to accord credibility to the evidence he call in aid the case of OGBIRI VS N.A.O,C LTD (2010) 4 NWLR (PT 1213) and N.I.S..T.F.M.B VS KLIFCO NIG. LTD (2010) 13 NWLR (PT 1211) 307 R 10

He further submitted that Exh. admitted before the court a letter of demand defendant has never reply to it, therefore all the assertion contains there in are deem admitted by the defendant and need not further proof he cited the case of MEYWUNYE VS IMOUKHEDE (2019) 13 NWLR PT (1960) 439 at 461-462 r 29

He argued that where the defendant failed to give any evidence on the side of the scale, the burden of proof on the defendant is minimal, that

is as little as possible, meaning very little he cited the case of KUTI VS ALASHE (2005) 17 NWLR (PT955) 504 C A. Finally urge me to enter judgment for the claimant call in support the case of U.B.N PLC VSAWWAR PROPERTIES LTD (2018) 10 NWLR 91626) 64 at 68-69 r 1

Patrich Owoicho Esq in his reply on point of law dated 30/12/24 he submitted that on the claim of the claimant that the defendant failed to reply to demand letter and that such failure amount to admission the authority cited are inapplicable he refer this court to the case of MATJON (NIG) LTD VS NASARAWA STATE GOVERNMENT (2021) LPELR -54919 C A

He further submitted that the defendant asked the claimant as CW 1 under cross examination and he admitted that indeed the defendant reply the letter and defendant has answer to the claim as required by article 6, therefore it revealed that defendant has intent to deny and contest the case and urged me to so hold.

Finally submitted that as to privity of contract the claimant sued the wrong person on the whole urge me to dismiss this suit,

After hearing the submission and argument of both counsels, and having taken into consideration the facts and circumstances of this case this hon court formulate lone issue for determination thus;

“Whether or not the claimant has proved his case to the balance of probability to be entitle to judgment”

By law the claimant’s 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

The crux of this matter is purported agreement entered into by the parties for the claimant to intimate his excellency the Executive governor of Bauchi state to approve undisclosed amount of money for the accreditation of courses in Bauchi state college of agriculture, CW 1 the claimant himself told this court in his evidence that, defendant and two other person (pw 1 & pw 2) met him at home about 1-2 years ago and sought for his assistant to intimate his excellency to approve the monies for the accreditation of some courses in the college of Agriculture Bauchi.

He further told the court that, defendant said he will give him the sum of N3,000,000 only

How ever CW 2 informed this Hon court that was no agreement or condition to the effect that money will be given to the claimant, further until after 2 years then the approval was granted

CW 3 also testify to the effect that they went to the claimant to gather with defendant about the issue of the accreditation monies to be approved by his excellency but there was no any condition of agreement to the fact that N3,000,000 or any amount will be given to claimant

Therefore, going by the above evidence, it is clear that there is material contradiction in the testimony of CW 1 and CW 2 and CW 3 and I so hold.

The law remained settled that a piece of evidence is contradictory only where it is the direct opposite of what was earlier asserted. Two pieces of evidence contradict one another when they are themselves inconsistent, a discrepancy may occur when a piece of evidence stops short of, or contains a little more than what the other evidence says or contains some minor difference I refer myself to the case of **NWANKWOALA VS F.R.N (2018) LPELR-43891 SC, OGALA VS STATE 1991 2 NWLR 175 509**

It is apparent that from the above discrepancies of the in the testimonies of the claimants witness before this Hon. court the testimonies of CW 1 and that of CW 2 and CW 3 are unreliable or untruthful which goes to the issue of their credibility and I so hold.

On the issue of letter of demand raise by the learned counsel to the claimant I e EXHBIT A before the court, I am quite agree with the submission of the learned counsel to the effect that, failure to answer a business letter of demand may be considered as admission, however every case has to be considered base on it circumstance in this court is a pre-condition for initiating action by served on the defendant a letter of demand **ARTICLE 2 (1)**

“Action may be commenced in the small claims court where;

(E) Provide that

“The claimant has served on the defendant a LETTER OF DEMAND as in form SCA 1’

This Article require a letter of demand is served to the debtor before initiating a formal legal action. This is to ensure that all avenues for settlement have been exhausted before involving the court.

Courts generally look favourably upon creditors who have made a genuine effort to recover the debt before filling a law suit, I refer myself to the case of **DIAMONG BANK VS PARTNERSHIP INVESTMENT COMPANY LTD (2009) 18 NWLR (PT 1172) 67**

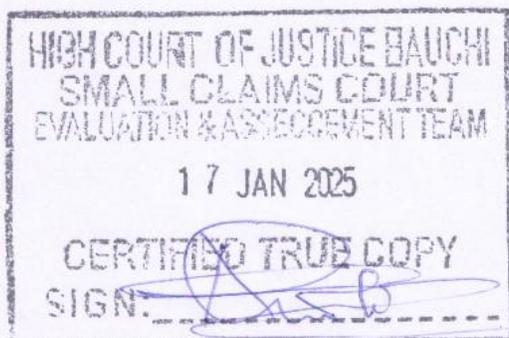
Having taken into consideration the nature and circumstance of this case I opine that demand letter is just as essential part of debt recovery process and it help to establish a strong legal foundation for subsequent litigation and I so hold, I refer myself to the case of **NEWBREED ORGANISATION PROCESS LTD VS ERHOMOSELE (2005) 5 NWLR (PT 974)499**

In the light of the above it is my humble view that demand letter does not create a paper trail that strengthens the claimant's case if litigation becomes necessary.

In this court the practice is that when the defendant failed to fill and filed forms SCA 5 he may be held to have admitted the claim I refer myself to article 6 (3)

In the light of the forgoing, I am convinced that the evidence of the claimant are unbelievable that no reasonable court can rely and enter judgment in his favor, therefore and I hereby enter judgment in favor of the defendant, as the claimant failed to discharge the burden place on him by the law, this suit deserved to be dismissed and same is hereby dismiss, no cost awarded

This case is decide today being 16/1/25 there is right of appeal to High Court of justice Bauchi within 14 days by the aggrieved party



THE CHIEF JUSTICE BAUCHI
G.A. GARBA ABDULLAHI
CHIEF MAGISTRATE
SIGN: _____