

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

SUIT NO SCC/ BH/22/2024

BEFORE HIS WORSHIP ZAINAB M SHAIBU (MRS)

**BETWEEN**

**ALARAMA ABDULKARIM & 1OR ..... CLAIMANT**

**AND**

**AHMAD DALHATU ..... DEFENDANT**

Claimant present

Defendant absent

Appearances H B GAIDE (Claimant)

Y A HARUNA (Defendant)

**JUDGEMENT**

This suit was brought under the Bauchi state practice direction on small claims court no 2 of 2022 the claimant fill and filled small claims court forms SCA 2 and 3 dated 18th day of May, 2024 the defendant was served with the originating process of this court as seen of the affidavit of service dated 22rd day of April 2024 deposed to by the bailiff of this Hon court ALIYU SALE TAFIDA.

The claimants claim against the defendant the sum of Two million Nine Hundred Thousand Naira (₦2,900,000.00) for the purchase of scraps transformer, the sum of ₦300,000.00as general damages and the sum of ₦100,000.00 AS cost of action.

On the 25th day of April when the matter comes up for hearing both the claimant and defendant where fully represented, trial commenced.

CW1 by name MUKTAR IBRAHIM (who happens to be the 2rd claimant in this suit

affirm and testified to the effect that on the 13th day of November 2023 Ahmad Dalhatu who is the defendant I sent the sum 3 million naira to his account to buy some scraps of transformer, my elder brother who is the 1st claimant transferred the sum of one million six hundred and fifty thousand naira to his account on the ground that he will supply the materials the next day we gave him the sum total of four million six hundred and fifty thousand naira only.

On the next day he informed my elder brother that the good have being seized by the police he need the sum of fifty thousand naira to enable him collect same, we then make him to understand that the total money presently with him is the sum of four million seven hundred thousand naira, he responds was yes.

All effort to get the goods or recover our principal sum prove abortive, we later reported at the civil defense of here in Bauchi he wrote an undertaking that he is going to pay the money at the end of January 2024 he was able to pay the sum of one million eight hundred thousand naira since then he refuses to pay the remaining balance of two million nine hundred thousand naira till date.

The 2rd claimant tendered the receipt of the professional fee paid by them to their lawyer, the receipt of A DAUDA & CO DATED 17TH DAY OF APRIL 2024 is hereby admitted into evidence and marked as EXHIBIT A.

IN THE CAUSE OF CROSS EXAMINATION, he informs the court that it was my elder brother i.e. the 1st claimant that paid the sum of one hundred thousand naira as professional fee to our lawyer and the receipt was issued to us on Monday, we sent the sum of three million naira to him he was detained at civil defense office.

The claimant applied to close their case.

Learned counsel to the defendant Y A HARUNA applied to fill a motion for joinder of party his application was upheld, on the date fixed for adoption learned counsel

to the defendant was absent no reason whatsoever for his absent, learned counsel to the claimant made an oral application to strict out the motion on notice same was granted.

The case was adjourned for defense, on the date slated for defense counsel to the defendant was still not in court an oral application was made to foreclosed his right for defense same was upheld and the matter was set down for judgment.

### **JUDGEMENT**

I have gone through the entire evidence made by both parties in this case.

The law is trite that in civil case the claimant succeeds by the strait of his evidence not on the weakness of the defendant this court rely on the case of BELLO SALMI & ANOR VS ALHAJI ADETORO LAWAL (2008) 6-7 SC (PT) 11 242.

The law is settled which authorities need not to be cited that the claimant is duty bound to prove his case to the balance of probability or preponderance of evidence to discharge the statutory and evidential burden placed on him.

It is in record of CW1 that the claimant transferred the sum of four million six hundred naira to the defendants account for the purchase of scraps transformer the defendant was able to pay back the sum of one million eight hundred naira, it is also in evidence that the defendant has failed strictly to fulfilled the agreement he made to the claimants, in fact there is remaining balance of two million nine hundred thousand naira unpaid by the defendant, and the agreed date has expired, that piece of evidence has not being discredited or uncontroverted during cross examination and I SO HOLD.

The law is settled that parties are bound by their agreements I refer the court to the case of W. D. N. LTD VS OYIBO (1992) NWLR (PT 239) 77 AT 100-101 CA.

On the date fixed for defense the defendant was still absent learned counsel made an oral application to close the right of the defendant for defense same was upheld. From the forgoing the evidence of CW1 which is unchallenged and uncontroverted establishes the fact that there was an agreement between the claimants and the defendant, that the claimants deposited the sum of four million naira six hundred thousand naira (₦4,600,000.00) into the defendant account and that the defendant is still indebted to them to the tune of two million nine hundred thousand naira (₦2,900,000.00).

There is plethora of cases in law that unchallenged or uncontroverted evidence will be deemed admitted and the court can rely on same MAY I REFER THE COURT TO THE CASE OF OKIKE VS LPDC (2005) 15 NWLR (PART 949) 7 471 S.C, it is also been held by the Apex court in the case of CHIEF SUNDAY OGUNTADE VS SOLOMON OLUYEMI OSHUNKEYE & ANOR S. C 364 thus;

‘when evidence called by a witness is unchallenged, the court is at liberty to accept such evidence in proof of the issue in contest..... unchallenged and uncontroverted evidence by the courts as establishing the facts therein contained’

It is also trite that what is required to constitute a fair trial is that a fair and equal opportunity is given to the parties to correct or contradict any information upon which a decision might be reached SEE THE CASE OF BABA VS NCATC (1991) 5 NWLR (PART 192) 388.

The defendant absence or nonappearance to defend his case goes to show that he has admitted to the case of the claimant and the court is duty bound to deliver judgment in favor of the claimant having proved his case.

Consequently, on the strength of the above cited authorities I hereby deliver judgment in favor of the claimant as per their claim as follows;

1. That the defendant shall refund/pay back to the claimants the sum of ₦2,900,000.00 being the money for the purchase of scrap transformer.
2. That The defendant shall pay the sum of ₦50,000.00 (Fifty Thousand Naira) as general damages and the sum of ₦20,000.00 (Twenty Thousand Naira) 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 24TH DAY OF JUNE 2024.

**ZAINAB M SHUAIBU**

**(MRS)**

**SENIOR MAGISTRATE**

