

**IN THE DISTRICT COURT OF BAUCHI STATE  
IN THE BAUCHI JUDICIAL DIVISION  
HOLDEN AT SMALL CLAIMS COURT NO. 1 BAUCHI**

Before His worship- GARBA ABDULLAHI

**SUIT NO SCCBH/24/2023**

**BETWEEN**

**1. DR JOY PIUS OKENE**

**2. MITEHAL MAURICE OKENE .....CLAIMANTS**

**AND**

**USMAN UBA.....DEFENDANT**

CLAIMANTS –Absent

DEFENDANTS – Absent

Patriarch Owoicho Esq for the claimants

JUDGMENT DELIVERED ON 18/8/23

**INTRODUCTION**

This small claim matter brought and filed by the claimant pursuant to Article 2 (1) (2) and (3) of small claims court practice direction N0 2 2022 wherein the claimant fill form SCA 2 AND 3<sup>RD</sup> dated 13<sup>TH</sup> August, 2023 and filed on the same date seeking for the following reliefs;

1. AN ORDER of this Hon. Court against the defendant to pay the sum of N1,000,000 only being the outstanding balance of the money collected by the defendants for the purported land transaction.
2. Cost of this action N200,000.00k only

The originating processes of this Hon. Court has been served on defendant by substituted means as disclosed by affidavit of service deposed to by one Abdussalam Abdullahi a bailiff of this Hon. Court. dated 28/7/23.



On 11/8/23 the 1<sup>st</sup> claimant was present in court while the defendant was absent and no reason given to that effect, therefore hearing commenced.

CW 1 in person of Joy Pious Okene Affirmed and testify to the effect that, she knows the defendant when she bought a plot of land from him at the cost of N2,000,000 only she paid the money to him, the 2<sup>nd</sup> claimant involved because she bought the land in the name of her son (2<sup>nd</sup> claimant) and agreement was signed by both parties to the transaction.

The said agreement letter BOTH Hausa & English translated copy dated 27/11/2018 has been admitted in evidence and marked as EHB "A" and "A1" respectively.

She further told this court that about some months after she bought the plot somebody came and pence the whole place including her own which resulted to termination of the contract consequent upon which she demanded her money from the defendant, he failed to repay the money despite several demand said the matter is pending in court since 5 years ago.

When she engages the service of a counsel he wrote him a letter of demand upon received he refund the sum of N100,000.00K to her, remaining the sum of N100,00.00k only, finally she told the court that she need her remaining balance of N1,000,000 from the defendant and the sum of N200,000 only as damage therefore the case was adjourned to 14/8/23 for cross examination/defense.

On 14/8/23 defendant failed to cross examined the witness (CW1) and he admitted the claim of the claimant as to compensation he concedes to the sum of N100,000 only as jointly agreed by the parties and the matter was set down for judgment.

In the light of the above, this Hon. Court formulate single issue for determination thus;

"Whether the claimant is entitle to judgment based on the totality of evidence placed before this Hon. Court"

It is trite law that claimant succeed by the strength of his case not the weakness of the defendant I refer myself to the case of MRS ROSE MARY ONWUSOR VS YAHI MAINA & ORS (2021) LPELR-11919 C A, LONGE VS CBN (2006) 3 NWLR (PT 11)24

It is also well known principles of law that, courts indeed this court is duty bound to assess unchallenged and uncontroverted evidence along with the claim made in

respect of which it was given and be satisfied of its credibility and sufficiency to sustain the claim I refer myself to the case of ARCHIBONG VS UTIN (2012) LPELR - 7907 (CA) and ADELAKUN VS ORUKU (2006) ALL FWLR (308)1360 AT 1373

It is in record that the defendant failed to cross examined the testimony of sole witness CW 1 therefore is tantamount to admission, It is settled law that the effect of failure to cross examine the witness upon a particular matter is a tacit acceptance of a truth of the evidence of the witness I refer myself to the case of OFORLETE VS STTE (2000) 12 NWLR(PT681) 415 AT 436 and AGBONIFO VS AIWEREOBO (1988)1 NWLR (PT681)

However where the defendant admitted the claim of the plaintiff as in the instant case, court will be left with no option than to enter judgment against him base on his admission, the law is trite that admitted facts need not further proof because an onus of proof does not exist in vacuo, I refer myself to section 123 of Evidence act 2011 as amended , and the case of MR KWASI KARI KARI ADUSEI & ANOR VS MR TOYIN ADEBAYO (2012) LPELR-7844 SC-, It is in record of this court that the defendant admitted the claims of the claimant, therefore I resolve the issue formulated in favor of the Claimant and enter judgment in his favor, against the defendant , make the following orders

1. AN ORDER be and hereby made compelling the defendant to pay the remaining balance of N 1,000,000.00 only to the claimant
2. AN ORDER be and hereby made directing the defendant to pay the sum of N100, 000.00k only as damage.

This case is decided today being 18/8/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

