

**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 SCC/BH/28/2023

BETWEEN

ALHERI WOMEN IGBO QUATERSCLAIMANT

AND

MRS ESTHER MAMAN EMMA.....DEFENDANT

CLAIMANT –Represented by the chairperson speak English Language

DEFENDANTS – Present in court speaks English Language



JUDGEMENT DELIVERED ON 17/8/23

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 NO 2 of 2022, wherein the claimant fill form SCA 2 AND 3 dated 3RD August, 2023 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 N610,000 only being the outstanding balance of the money collected by the defendants from the claimant as loan.

2.Cost of this action N7,700.00 only.

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court. Dated 2/8/23 both parties were in court and hearing commenced

CW 1 in person of Juliet Sunday Affirmed and testify to the effect that, they do make a contribution every Sunday after every four weeks they use to give the money as loan to one of them, based on that they gave the N900,000 to the defendant on condition that she will repay within the time agreed among themselves, now the agreed date has expired she repay some part of the loan but there is outstanding balance of N610,000 he refuse to pay despite several demand.

She further told this Hon. Court that the defendant has earlier gave them a title document of a landed property to keep as collateral, but later on the owner of the document claim it and sold the land, in the process of prosecuting this case the claimant has spent the sum of N7000 only and urged the court to enter judgment against the defendant.

CW 2 in person of Biba Audu Affirmed and told this Hon. Court that she is the chairperson of the association, that the defendant has collected the loan of some amount of money from the association, but now she refused to upset the loan there is outstanding balance of N610,000 unpaid thereafter the claimant closes it case.

The defendant failed or refused to cross examine the testimony of the claimant witnesses and she finally admit the claim of the claimant and the matter was set down for judgment.

After taken into consideration the evidence adduced by the claimant, the facts and circumstances of this case 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 examine the testimony of claimant's witness, therefore failure to do so 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 amount due to the plaintiff for the remaining balance of N610,000.00 only
2. AN ORDER be and hereby made directing the defendant to pay the sum of N7,000.00 only as cost of this action.

This case is decided today being 17/8/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

