

**IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT NO. 1 BAUCHI
SUIT NO SCC/BH/139/2024**

Before His worship- GARBA ABDULLAHI

BETWEEN

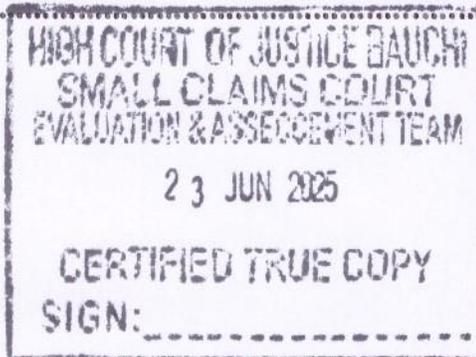
IMABAT CONSTRUCTION AND PROPERTIES LTD.....CLAIMANT

AND

SULFA ENG. CONSTRUCTION LTD DEFENDANT

CLAIMANT –Absent

DEFENDANT – Absent



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 22ND November, 2024 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 N800,000.00k only being the money for connection of electricity supply to the Wunti feeder.

2. Cost of this action

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 11/3/2025 thereafter hearing commenced

Reviews of testimony of witnesses are as follows

CW 1 affirmed and testified to the fact that his name is AHMAD Abdullahi he is working with the claimant as general operation manager, he knew the defendant in this case, sometimes in 2023 they had electricity problem in their site (Ilela shopping complex) around CBN round about Bauchi, they engage the service of the defendant to change their feeder from bank road feeder to Wunti feeder and there was a Letter to that effect, after they supervised the place they demanded the sum of N1,750,000 only on condition that it will switch the line on the spot, claimant deposited the sum of N800.000 only on 26/2 /24 on condition that they will upset the remaining balance if the work is completed that amount was paid two weeks to Ramadan of 2024, the defendant did not perform the Job up to last ten days of Ramadan when he called an agent to defendant one Auwal and informed him that they postpone the contract because they already loss of their customers, he now asked what was he need ? he relied him the deposit to be refund, they also wrote a letter to defendant to that effect it was served on them on 9/8/2024 and they reply the said letter toward the end of August 2024, the letter of demand dated 23/20/24 has been admitted in evidence and marked as Exh C and it reply marked as Exh. D

During cross examination he told this court that claimant entered into the contract with defendant through it agent one Eng. Auwal, he met the M D of the defendant after award of the contract he get the account Number of the defendant through it agent Auwal and the money was deposited in the account, defendant was not mobilize to the site, N200,000.00 was send to his account

DW 1 IN PERSON OF Muh'd Auwal Sulaiman affirmed and testified that, one day someone known as Shehu met him to assist one Plaza Elela Shopping Complex to connect them with electricity he asked for the cost he said is N1,800,000k only after bargain he reduce it to N1.75,000.00k

He kept communicating with PW 1 Ahmad Abdullahi, he gave him the account number of defendant and he deposited the sum of N800,000k into, and it was confirmed by the M D of the company.

Later one Bashir Bauchi said a percentage shall be paid out of the said deposit, he asked him to be patience till the completion of the work but he refuse so the sum of N200,000.00 was send to Bauchin Bauchi, remaining the balance of N800,000 only with the defendant, the nature of the work is to change the electricity feeder from Bank Road to Wunti feeder, they send a letter to JED and it was approved, they paid N100,000.00 only for the systematic drawing and N100,000.00 for visibility studies prior to the approval by the JED, he installed pole at the site on the process the said Bauchin Bauchi said they postpone the contract, he requested for additional money to complete the work, now he spent about N604,000.00 only remaining the balance of N196,000.00 only in the process of settlement he said if claimant will add N213,000.00 he will complete the work.

There was no written agreement with the claimant as to the contract, there was no duration of time for the work and they were never served with revocation letter.

During cross examination he informed this court that, claimant demanded the company's account Number not that of the defendant and the money was transferred to the company, the contract was with the defendant.

DW 2 in person of Salim Moh'd affirmed and told this Hon. court that an M D of the defendant there was a time that Auwal Moh'd a staff of defendant called him and requested for the company's account number he gave him, and he received the sum of N800,000.00 only and he confirmed to him that he received the said amount, he now requested the sum of N200,000.00 only as commission fee one Ahmad Abdullahi (Bauchin Bauchi) he collect his account Number and sent the money to him, the place of the word was shown to him and the nature of the work was stated to him.

They erected a pole in the place waiting for approval prior to that he sought for approval and dug the place, the work cost them about N600,000.00 only it was contained in Exh. D before this court, he has a printout pay slip as evidence that he paid N200,000.00 to Bauchin Bauchi it has been admitted in evidence and marked as Exh E, and the approval given by the JEDCO as EXH. F, as he started the work, he received letter from the claimant he has no any connection with him, he

did not sign any contractual agreement with him and it did not receive any letter of revocation from it.

During cross examination he told this court that Auwal is working with defendant though not a director and he used to bring work to the company and the claimant send money into the account of the company, that is why they followed the instruction of Auwal and send N200,000k to Ahmad Abdullahi they exchange letters with the claimant.

After taken into consideration the evidence adduced by the parties, the facts and circumstances of this case this Hon. Court,

Formulate two issues for determination thus: -

“Whether there is valid and subsisting contract between the parties in this case”

“Whether the claimant has proof its case to the balance of probability to be entitled to Judgment”

On the first issue for determination let me start by the meaning of contract, is define by black law dictionary 10th edition as

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law”

It is settled law that we have two types of contracts at common law simple and formal contract, from the record of this court the contract entered into by the parties in his case is simple contract because it is oral contract.

It is in record of this court that CW 1 told this Hon court that **claimant entered into the contract with defendant through its agent one Eng. Auwal, he gave them the account number of the defendant after the bargain and jointly agreed the price of the service to be done by the defendant is N1,750,000.00k only, claimant has paid the sum of N800,000.00 only as part payment to defendant, DW 2 also testified to that, this piece of evidence was not contradicted or controverted during cross examination and the law is settled uncontradicted evidence the court can safely rely on it for just determination of a matter, put differently is a**

strong factor in a court decision making though not sole determinant I refer myself to the case of CHIEF SUNDAY OGUNYADE VS SOLOMON OLUYEMI OSHUNKEYE & ANOR S C 369/2002

In view of the forgoing, it is beyond argument that the parties in this case have enter into the valid contract enforceable in law on the ground that all the essential element of valid contract are present offer, acceptance and consideration and intention to create legal relation I refer myself to the case of B.F.I GROUP VS PUBLIC ENTERPRISES (2008) ALL FWLR (PT 416) 1915 AT P 1937-1938, PARA. H-B where the court held thus; -

“There are five ingredients that must be present in a valid contract, they are offer, acceptance, consideration, intention to create legal relationship and capacity to contract. All the five ingredients are autonomous unit in the sense that a contract cannot be formed if any of them is absent, in other words for the contract to exist in law, all the five ingredients must be present”

In view of the above it is my humble view that in the instant case there was an offer by the claimant and the defendant accepted the offer for change of electricity feeder from Wunti to CBN feeder, the parties agreed to the sum of N1,750,000.00 only as consideration for the work, and they both intended to enter into contract and to be bound by it beside both parties are artificial person capable to enter into a valid contract.

In view of the above it is my humble view that there is a valid contract between the parties, the essential element of the contract have been complied to by the parties, therefore I resolve this issue in favor claimant that there is valid contract between the parties in this case and I so hold.

On the 2nd issue for determination, whether the claimant has proof its case to the balance of probability to be entitle to Judgment

In law the claimant’s duty to prove his case remained inviolent, whether or not the defendant defend his case and he must do so by the strength of his own case and not on the weakness of the defendant. See 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

It is in evidence before this court that, claimant have engaged the service of defendant to switch electricity supply from Wunti to Bank feeder sometimes in the beginning of month of Ramadan 2024 through its agent one Ahmad Abdullahi (pw 1) and the sum of N800,000.00k was paid to its account as part payment out of the total sum of N1,750,000.00 only, that piece of evidence remains unshaken I refer myself to the testimony of PW 1.

DW 1 Admitted the fact that an agent of the claimant has send the sum of N800,000.00 only to defendant account for the purpose of contract enter into to change the electricity feeder from Bank Road to Wunti feeder.

DW 2 confirmed to this court that he received the sum of N800,000.00 only from the claimant and he acknowledge same for the contractual agreement between the parties in this case

It is part of the evidence before this court that DW 2 is the MD of the defendant and DW 1 told this court that

Auwal is working with defendant though not a director and he used to brig work to the company, he gave the company's account number to the claimant and the payment was made.

DW 1 told thus court that they commenced the work, he sought the approval of the JED, and pole was erected in the site, thus Hon court went to visit the locus in quo and seen an erected pole there claim to be done by the defendant but a date was not stated as to when it was installed there.

It is part of the claimant testimony that he paid part payment of N800,000 only to defendant which has been admitted by the DW1 and DW 2 respectively, therefore it is clear that the claimant has perform his own part of the transaction and the defendant failed to perform his own part within reasonable time which resulted the contract to be discharged by breach from the side of the defendant and I so hold.

The law is trite that admitted facts need not further proof I refer myself to section 123 of evidence act 2011 as Amended

It is the contention of the defendant that he paid the sum of N200,000.00 only to one Bauchin Bauchi (Auwal Moh'd) as commission fee out of the amount of N800,000.00 only collected from the claimant for the contract, the law is settled the agreement between the parties in this case is contract for the change of electricity feeder from Bank Road to Wunti feeder, there was no any amount to be paid as commission fee.

D W 1 informed this Hon. court that defendant has spent N100,000 Only as feasibility survey and also paid for approval from JED as well as money spent for the erection of pole in the site to my view does not form part of the agreement entered into by the parties, all what the parties agreed is the change of feeder and the sum of N8,000,000 only was paid it, but how to perform the work or how to spent the money does not part of the parties agreement, the law is settled that court cannot make agreement for the parties neither alter, amend' change or add on the agreement entered into by the parties, and the parties are bound by the terms of their agreement, meaning they are legally obligated to fulfill the promises and obligations outlined within the agreement, to me this principles is the corner stone of contract law, I refer myself to the case of ONYEMENAM VS IMPERIAL HOMES MORTGAGE BANK LTD (2023) LPELR 60149 (C A) AND OKORONKWO VS ORJI (2019) LPELR- 4651 (CA)

The above doctrine of law of contract is what has been referred to as the sanctity of contract, usually expressed in the latin maxim "pacta sunt servanda" which means "agreement must be kept" see the case of UWAH VS AKPABIO (2014) 7 NWLR (PT 1407) 472 AAT 489

In view of the above it is obvious that there was an agreement between the parties since the beginning of Ramadan 2024 has paid the sum of N800,000.00 only as part payment to defendant up the middle of the said month defendant did not discharge his own part of the obligation which resulted the aims of the contract to be defeated and claimant now claim for the said N800,000.00 paid to be refund.

It is trite law that in determining preponderance of evidence or balance of probabilities, the apex court per Fatayi Williams JSC (as he then was) in *Mogaji vs Odofin* (1987) 4-5 SC 65 cited with approval by the court of appeal in the case of *AKPAN VS ISA* (2011) ALL FWLR (PT 597) 1201 AT 1221 PARA E-F THAT

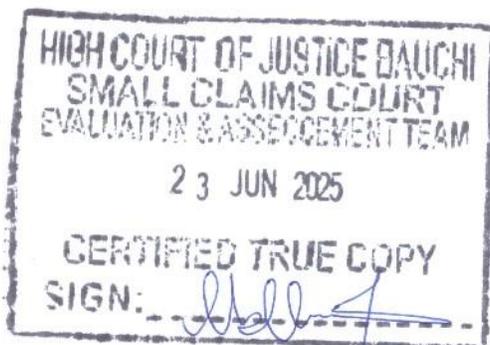
“The evidence adduced by the plaintiff should be put on side of imaginary scale and the evidence adduced by the defendant should be put on the other side of the scale and weighted together which side preponderates”

Therefore, in the light of the above cited authorities couple with the facts and evidence before the court I hold the view that the scale of Justice tilt to the side of the claimant against the defendant, therefore I resolved this issue for determination in favor of the claimant.

On the whole having proof its case as required by the law, it is clear that claimant discharged his evidential burden deserved to have the judgment of this court in his favor, therefore and I hereby enter judgment against the defendant and make the following orders

1. An order of this Hon. court against the defendant to refund the sum of N800,000.00 only given by the claimant as part payment for the contract.
2. The sum of N30,000 only as cost of this action

Thus, case is decided today being 19th June, 2025 there is right of appeal to High Court within 14 days by the aggrieved party.



[Handwritten Signature]
THE JUDGE
GARBA ABDULLAHI
CHIEF MAGISTRATE
SIGN