

**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/44/2023

**BETWEEN**

**LINDA DAVID.....CLAIMANT**

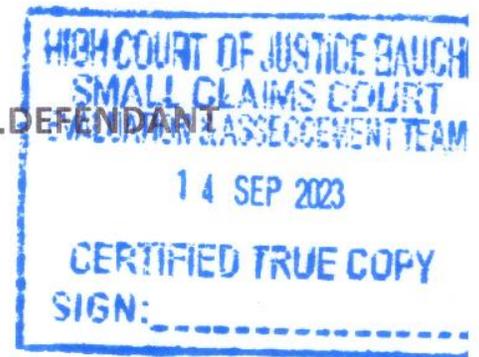
**AND**

**SARAYA BULUS.....DEFENDANT**

CLAIMANT – Represent in speaks English Language

DEFENDANT – Absent

JUDGEMENT DELIVERED ON 4/9/23



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 24<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 defendants to pay the sum of N45,000 only being the money she collected for the sale of sewing machine
2. Cost of this action N15,250,00 only

The originating processes of this Hon. Court has been served on defendant by substituted means in compliance with the order of this Hon. court as disclosed by affidavit of service deposed to by one Adussalam Abubakar a bailiff of this Hon. Court. Dated 24/8/23 claimant was in court and hearing commenced.

CW 1 in person of Linda David (claimant) Affirmed and testify to the effect that, the defendant one Saraya Bulus came to her House and offer her a sewing Machine to buy she refused the offer but she connect her with someone who need it, finally

the said person bought the sewing machine through her at the cost of N 50,000 only, prior to the said transaction she gave the sum of N20,000 only to defendant as debt, later on the person who bought the machine paid the sum of N30,000 only through the claimant bank account on condition that he will upset the remaining balance of N20,000 by the end of the month, and he transferred the sum of N25,000 only to the defendant account out of the said N30,000 only plus the N20,000 only earlier given to her as debt, finally the defendant said she payphone the transaction thereafter she was asked to return the said N45,000 only but she refused

CW 1 further informed this Hon. court that she reported the defendant to civil defense, where the defendant admitted the sum of N30,000 only while the claimant has transfer the sum of N45,000 only to her account and she has evidence, thereafter apply to tender in evidence the statement of her bank account in evidence and it has been admitted and marked as exh. "A" finally closed her case

This court adjourned the matter for cross examination/defense and order a hearing notice to be served on the defendant which has been done as disclosed by affidavit of service dated 29/ 8 23 deposed to by Abdussalam Abubakar a bailiff of this Hon court but she failed to appear and cross examined the testimony of CW 1, consequent upon which the right of the defendant was foreclosed and the matter 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 has proof her case by preponderance of evidence to entitle to judgment"

It is an elementary principles of law for which the citation the authority is not necessary, that the onus is on the plaintiff to prove his case and he must do so the strength of his own case and not on the weakness of the defendant.

The court of law act on fact not guess or speculation I refer myself to the case of Ferdinand George vs UBA LTD (1994) 1 NWLR (PT323) 639 at 668, and A. I. C Limited vs NNPC (2005) LPELR 6 SC,

The facts before this Hon court is apparent that there is a purported transaction for the sale of sewing machine between the claimant, third party and the defendant, as such all the transaction has been done by the 3<sup>rd</sup> party through the claimant, however the contract was breach by the defendant which resulted the claimant to demanded for the sum of N45, 000 only given to defendant to be refund but failed by the defendant

It is in record that the defendant failed to cross examined 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)

Furthermore, the defendant neither appear nor place any defense, before this hon court as such the content of Exh. 'A' before this court has not been challenge.

The law is trite that, court cannot wait for any party who is aware of the pendency of an action before the court against him but refused to appear or failed to filed a dependence or response to same, as such party cannot be complained of not being given fair hearing I refer myself to the case of MFA 7 ORS VS INONGHA (2014) LPELR -22010 (SC)

Article 6 (3) of SCC practice direction provide that; -

"where the defendant failed to file an answer to the claim, such defendant may be held to have admitted the claim.

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.

As to cost, it is settled law that cost follow event, some of the consideration in the award of cost are summonses, fees paid, duration of the case the number of witnesses called by the successful party the nature of the case of the parties and the cost of legal representation I placed reliance of the cases of JAIYEOLA VS ABIOYE (2003) 4 NWLR (PT.810)397 in the light of the above I hereby enter judgment in claimant favor, against the defendant, make the following order;

1. AN ORDER be and hereby made compelling the defendant to pay the amount due to the claimant the sum of N45,000.00 only
2. Cost of this action N15,250, 00 only

This case is decided today being 4/9/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

