

**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/42/2023

BETWEEN

SAMINU IBRAHIM.....CLAIMANT

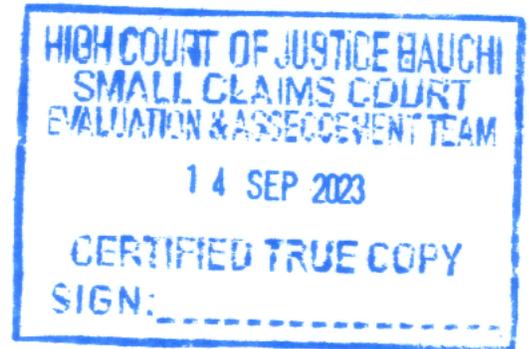
AND

ALH. SUNUSI UMAR.....DEFENDANT

CLAIMANT –Represent in speaks English Language

DEFEENDANT – is absent

M I Abubakar Esq holding the brief of B Y Sambo for the claimant



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 14th 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 N565,000 only being the money for the supply of blocks to defendant
- 2.sum of N1,000. 00 as general damages and 10% post judgment interest until the final liquidation of the judgment sum
- 2.Cost of this action N8,.000 only

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdussalam Abdullahi a bailiff

of this Hon. Court. Dated 15th August 2023 claimant was in court while defendant absent and hearing commenced

CW 1 in person of Saminu Ibrahim (claimant) Affirmed and testify to the effect that, he supplied blocks to the defendant, about 1000 pieces for the first time and later on he supplied additional blocks both 9 and 6 inch worth the same of N565,000 only but he refused to pay him the said amount up to date despite several oral demand, he further told this Hon. court that the said traction took place about six years ago, finally urged the court to enter judgment against the defendant.

During cross examination CW 1 told this Hon. Court that defendant has not given him a land and the case between him and the defendant before Sharia court is for intimidation while in this court he is looking for his right therefore the two cases are not the same

He further told this Hon. Court that his claim against the defendant is that he supplied blocks to defendant worth N565,000 and he has not paid him, the transaction was started around 2018 and it was kept increasing day by day, the defendant subordinate that stood for him are his Engineer and one Yazidu, he cannot recall the total number of blocks supplied to the defendant but he only calculates the amount.

On 22/8/23 defendant was represented by Aliyu Gimba ESQ, open his defense wherein DW 1 in person of Yazidu Abdullahi Affirmed and testified to the effect that defendant send him to the claimant and collected blocks, later on defendant connect him with the claimant to go and show him a plot of land in GRA 40 by 80 and in exchange of the price of blocks supplied and he did so

He further told this Hon court that defendant has wrote a title document of the said plot and gave him and he took it to the claimant, but later an issue arose over the said plot of land thereafter the defendant said to the claimant they will contribute money to filed an action before the court but the claimant dis agree, therefore the defendant offer an alternative land to the Claimant but the claimant rejected the said offer and insisted that he need a Hijack car for business and the car was not given to him which resulted the claimant to lodge a complaint against

the defendant in civil defense office and finally defendant sued the claimant before sharia court for intimidation and such event took place about 2 years ago.

During cross examination DW 1 told this Hon. Court that, he doesn't know when the said transaction took place and the parties told him, he also told this Hon. court that the amount of money defendant owing the claimant is about N500,000 TO N600,000 only and the 1st plot of land given in exchange of blocks supplied to the defendant was defective and the defendant wanted to change another plot for him but he refused to accept.

No reexamination was conducted thereafter the defendant closed his case and the matter was adjourned for address.

In his final oral address, the learned counsel to defendant Aliyu Gimba Esq submitted that considering the testimony of the witnesses before the court this case is not within the jurisdiction of this Hon. court to hear and determined it he cited the provision of Article 2 of the practice direction of this court.

He further argued that the claim of the Claimant is not of liquidated money demand which means that the claim of the claimant shall be a claim in which the defendant does not have any defense and the issue raised in this court shall be triable in a full blown case.

The learned counsel also argued that DW 1 testified to the effect that up to this moment the claimant has not supply the total number of 800 blocks to the defendant and the transaction between the parties in this case was of exchange of a piece of land and blocks that piece of evidence was not controverted and urged the court to so hold, finally argued that this matter is not of liquidated money demand urged the court to Sn30,000 only.

The learned counsel to the Claimant B Y Sambo Esq in his address submitted that to discountenance the submission of the learned counsel to defendant and urged the court to look at the various meaning of liquidated money demand, is debt and money payable with mathematical setting

He further argued that in determining the cause of action the courts are enjoy to look at the content of originating process not the defense of the defendant the particulars of claim before the court is of liquidated money demand and urged the court to so hold.

The learned counsel finally submitted that the question to ask is whether the sum of N565,000 in cash or in kind was given to the Claimant, the answer is no, he urged the court to enter judgment against the defendant an order the defendant to pay the sum of N565,000 to the claimant and 10 % post judgment interest up to the final liquidation of the judgment sum.

After hearing the submission and argument of both counsel to the claimant and that of the defendant and having taken into consideration the evidence adduced by both parties, the fact and circumstances of this case this Hon. Court formulate two issues for determination as follows

1. "Whether the claimant has proof his case by preponderance of evidence to entitle to judgment"
2. Whether or not this court has jurisdiction to hear and determined this case

On the 1st issue for determination, it is an elementary principles of law for which the citation of authority is not necessary, that the onus is on the plaintiff to prove his case and he must do so by the strength of his own case and not on the weakness of the defendant, I refer myself to the case of GWARI AKAIKUS VS SARAKUNA SAMU (2021) LEGALPEDIA (CA) 11891, ELF PETROLEUM NIG. LTD VS UMAH (2018) 1 SC (Pt 1) 173

It is in record of this court that the claimant has supplied pieces of blocks to the defendant worth N565.000 only and the defendant did not pay the price of the said blocks up to date as clearly stated by CW 1 in his testimony and that piece of evidence was not contradicted or controverted during cross examination and I so hold.

The above piece of evidence has been corroborated by the testimony of DW 1 where he told this Hon. court that, he doesn't know when the said transaction took

place but the parties told him, he also told this Hon. court that the amount of money defendant owing the claimant is about N500,000 TO N600,000 only.

In the light of the above it is apparent that there was a transaction for the supply of blocks between the claimant and the defendant which started in 2018, the claimant performed his own part while the defendant did not pay the price of the said blocks the sum of N565,000 up to now and I so hold.

In the light of the above it is my humble view that the Claimant has discharged the evidential and statutory burden placed on him, the scale of justice tilted to his own side and I so hold.

Finally, therefore and I hereby resolve this issue for determination in favor of the Claimant against the defendant.

On the second issue for determination “whether or not this court has jurisdiction to hear and determined this case”

The law is trite that jurisdiction is an oater of court, the decision of the court without jurisdiction no matter how well decided cannot stand without jurisdiction I refer myself to the case of ALH. BASIRU KASSIM VSA.P.C & ORS (2018) LPELR-11115 CA, MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587

The learned counsel to the defendant in his address argued that the case before this court is incompetent and need to be stroke out, because matter is not an issue of liquidated money demand he refers this court to Article 2 of SCA Practice direction of 2022.

ARTICLE 2 (d) of SCC practice direction provide as follows: -

“The claim is for liquidated monetary demand in a sum not exceeding N3,000,000 (three million Naira) excluding interest and cost’

Let me start by the meaning of liquidated money demand, the Apex court in the case of DR. OLADIPO MAJA VS COSTA SA MOURIS (2002) 3 SC 37 at pg. 12 line 15-30 IGUH JSC stated that.

“A liquidated money demand is a debt or other specific sum of money usually due and payable and its amount must be already ascertainable or capable of being ascertained as a mere matter of arithmetic without any other or further investigation”

Whenever therefore the amount to which plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data, it is said to be liquidated money demand, to put it clear where a parties to a contract, as part of their agreement between them, fix the amount payable on the default of one of them or in the event of breach by way of damages, such sum is classified as liquidated money demand

Going by the above meaning the following are said to be factors to be considered in determining liquidated sum,

1. The sum must be arithmetically ascertainable without further investigation
2. If it is in reference to contract, the parties to the same must have mutually and unequivocally agreed on a fixed amount payable on breach
3. The agreed and fixed amount must be known prior to breach

I refer myself to the case of A.T.S & SONS & 3 ORS VS BEN ELECTRONICS CO, LTD (2018) 6 S C (Pt. 1)37 at 91

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,

It is in record of this court that the claim of the claimant is for the sum of N565,000 for the supply of blocks to the defendant, which is ascertainable, and the cause of action arose as a result of contractual agreement between the parties to this case furthermore the said amount is known to the parties prior to the breach of contract by the defendant, therefore in the light of the foregoing I am quite convinced that the claim of the claimant is of liquidated money demand and I so hold.

It is well settled in our judicial system that, in determining the issue of jurisdiction the courts are enjoy to look at the particulars of claim not the defense of the defendant

The particulars of claim of the claimant both the initial and the amended one disclosed that this matter is of liquidated money demand, therefore I resolved this 2nd issue for determination in favor of the claimant, this court has jurisdiction to hear and determined this case.

On the whole I hereby enter judgment in favor of the claimant against the defendant and make the following order

1. AN ORDER be and hereby made against the defendant to pay the sum of N565,000 only to the claimant
2. AN ORDER be and hereby made against the defendant to pay the sum of N1,000 general damages and N 8,000 cost of this action

This case is decided today being 7 /9/23 there is right of appeal to High Court of Justice Bauchi within 14 days by the aggrieved party.

