

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

**SUIT NO SCC/BH/50/2023**

Before His Worship- GARBA ABDULLAHI

**BETWEEN**

**ABDURRAHMAN ALH. YA'U.....CLAIMANT**

**AND**

**KABIRU YAR'ADU'A.....DEFENDANT**

CLAIMANT – PRESENTS, SPEAKS HAUSA

DEFENDANT – ABSENT

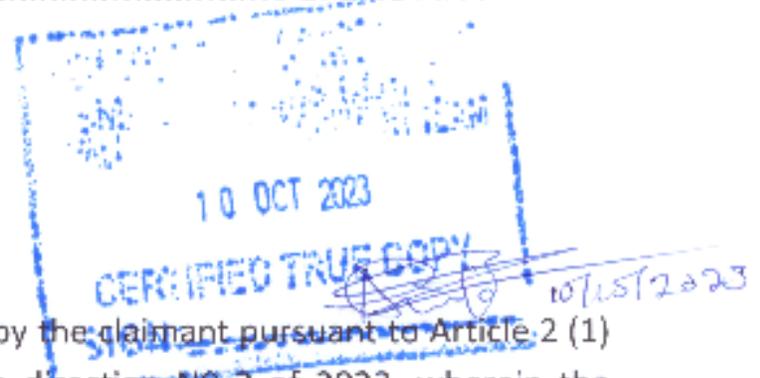
ABDUSSALAM ABDULLAHI affirmed to interpret

**JUDGEMENT DELIVERED ON 28/9/23**

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 31<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 N440,000 only being the remaining balance for the transaction of soybeans and Millet to the claimant.
2. Cost of this action N7,,500,00 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 non-service deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court. Dated 1/7/23 claimant was in court and hearing commenced.



CW 1 in person of Aburrahman Alh. Ya'u (claimant) Affirmed and testify to the effect that, he gave the sum of 200,000.00k to the defendant to buy a soybean for him, the defendant bought the said soybeans worth N1,800,000 only in fact there is remaining balance of N125,000 only, the defendant has written an undertaken to pay, the said undertaken has been admitted in evidence and marked as Exh. A

He further informed this Hon. court that the defendant after undertaking to settled the remaining balance he paid the sum of N55,000 only now remaining the balance of N70,000 only.

In respect of the Millet transaction he gave the defendant 11 bags of Millets and 0 measures worth N500,000 to sell, he sold and bring the sum of N130,000 only to defendant now remaining the balance of N130,000 only remaining balance of N370,000 only, finally he urged the court to enter judgment against the defendant and order him to pay the sum N440,000 only and N7,500 only as cost of this action, thereafter closed his case.

This court adjourned the matter for cross examination/defense and ordered for hearing notice to be served on the defendant which has been done as disclosed by affidavit of service dated 14/ 9/ 23 deposed to by Abdussalam Abubakar a bailiff of this Hon court, but defendant 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 his case by preponderance of evidence to be entitled to judgment”

It is an elementary principles of law for which a citation of 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 and the evidence before this Hon court is apparent that there was a transaction for procurement of soybeans between the claimant and the defendant of N2,000,000 only, the defendant did the supply but there is remaining balance of N70,000 only the defendant refused to upset despite the undertaking made to that effect.

The evidence also disclosed that, for the millet transaction the claimant gave him 11bags of Millet and 60 measures worth N500,000 only but defendant sold the millet and paid N130,000 only remaining balance of N350,000 only unpaid, making the total of N440,000 only

It is in record that the defendant failed to cross examined the testimony of CW 1, 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 AIWEREBO (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 defense 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 fails 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 summons, 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 case 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 and make the following order;

- 1.AN ORDER of this Hon. Court against the defendant to pay the sum of N440,000 only being the remaining balance for the transaction of soybeans and Millet to the claimant
- 2.Cost of this action N7,500,00 only

This case is decided today being 28/9/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

