

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

SUIT NO SCC/BH/44/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

ENG. BABAYO MUSA.....CLAIMANT

AND

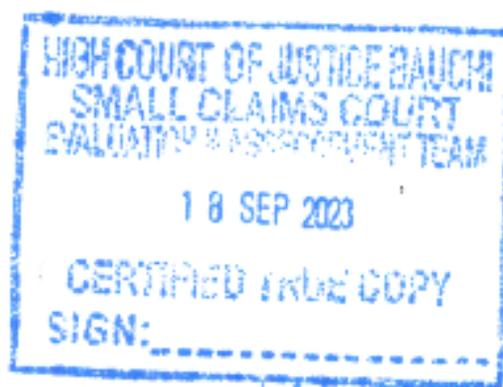
ALH MUSTAPHA SHEHU ZIRAMI & 1 OTHER.....DEFENDANTS

CLAIMANT –Represent in speaks English Language

DEFEENDANTS – Present speaks English

Patrick Owoicho Esq for the claimant.

Kingsley Gabriel Esq for the first defendant



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 10th 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 N350,000 only being the money had and received over a failed land transaction
2. Cost of this action N100,000 only

The originating processes of this Hon. Court has been served on defendant dated 10th August 2023 as disclosed by affidavit of service deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court. Dated 2/8/23.

In his effort to prove his case, claimant has called a single witness a tender 4 document before the court which has been admitted and marked as Exh. 'A' 'A1' 'B' "C" and "D" respectively thereafter closed his case

Defendant applied for the name of ALH. Yakubu Shehu to be join as a 2nd defendant and the application was granted, as such he filed a counter claim against the 2nd defendant.

In his effort to defend himself, 1st defendant has called 5 witnesses and tender 5 document which were admitted in evidence and marked as Exh. "E", "F" and "G" "H", "I" respectively thereafter closed his case both parties were in court and hearing commenced

CW 1 in person of Eng. Musa Babayo (claimant) affirmed and testify to the effect that, he bought a land at the cost of N350,000 only from the defendant and there is an agreement of that transaction duly signed by both parties, the size of the said land is 40 by 80 thereafter someone came in person of Alh. Yusuf Gado and claim the ownership of the said land.

He further told this Hon. court that they went to the village head palace of Tirwun, himself, the 1st defendant, 2nd defendant and the person that claim the ownership of the said land to verify the real owner it was discover that the land is belong to Alh. Yusuf Gado.

Thereafter they went and bought the said land again from the real owner Alh. Yusuf Gado at the cost of N670,000 only

Then the defendant offers to give him an alternative land, he took him to the land but did not give him a certificate of that land after about 5-6 months, just of sudden dualization of road commence, he took him to another land, but he refuses to accept, after these incidences he went to collect his money from the defendant.

He also told this Hon. court that, he refused the last land shown to him because it has no good title documents and it will not cost more than N100,000 only, the defendant said he will not refund the money he should go and do whatever he wants.

The witness identifies the following documents, sale of land agreement both Hausa English version dated 23/4/22, respondent brief of argument dated 6/10/22, plaintiff brief of argument dated 2/12/23, and document for sale dated 10/1/23 has been admitted in evidence and marked as exhibit A, A1, B, C, & D respectively

He also stated that he gave the sum of N350, 000 only to his father in-law cash and he gave it to the defendant.

During cross examination PW 1 informed this Hon. court that he refused the alternative land because it has no good title documents, and the initial transaction was negotiated for him by his father in law, as such he earlier filed a criminal case against the defendant but was struck out.

He further told this court that he knew, the defendant gave the sum of N15,000 to his father in law.

No reexamination was conducted, the plaintiff applies to close his case

DW 1 in person of Abubakar Yusuf testify to the effect that, the father in law to the claimant came and bought a plot from the defendant for claimant at the cost of N300,000 only and he paid, then the claimant was not there later on the land found to be defective, another land was given to him, in the process two land was shown to him but he asked for the title documents, 1st defendant called him through phone to come and collect it but he said he is not interested in the plot but the plot is still his own.

During cross examination he told this court that, he is aware the parties has signed an agreement and he also signed as a witness and on the agreement the price is N350,000 only.

He further informed this court that, the claimants father in law bought the plot from them at the cost of N300,000 and sold it, to his son in-law (claimant) at the cost of N350,000 only, the seller signed Exh. A, in his presence, the land in dispute does not have a C of O.

No reexamination was conducted

DW 2 in person of Mansur Muhammed Ahmed, affirmed and told this Hon. court that, as an agent of the land, he show a land for sale to the 2nd defendant to buy for his Son In law (claimant) he accepted and he told him the price is N300,000 only he bring the person and told him that the price is N350,000 only, after two days the 1st defendant called him and said that the brought the money, 2nd defendant count the money N350,000 and gave it to 1st defendant, after they left the 2nd defendant asked him to collect the sum of N50,000 from the 1st defendant and he did so, then he brought the sum of N20,000 from his pocket and gave him, said is from the claimant.

He further told this Hon court that he doesn't know the claimant, but the agreement was executed by the 1st defendant, 2nd defendant and the claimant and he signed as a witness and he don't know when the claimant sign the document.

He also testifies to the effect that when development commenced someone came and claim the land, they all gathered on the land including the 3rd party who claim the land then 1st defendant said he will give another land to the 2nd defendant it was given to him but he rejects it, another document was brought, he finally said the land does not have C of O

During cross examination he told this court that, he is a witness to the seller, N10,000 was given to him as commission and the seller gave N50,000 as commission, the total sum of N350,000 was given to the seller, but he bought the land from the 1st defendant at the cost of N300,000 only.

He also informed this court that, the issue of N50,000 only does not part of the agreement by the parties.

No reexamination conducted

DW 3 In person of ALH. Muhammadu Sarkin Tirwun, affirmed and testify to the effect that issues were raised over the land, they came to his palace, they collectively went to the land and it was agreed that another plot will be given to the claimant by the 1st defendant, they went to the alternative plot but the claimant reject it, he advise them to settled the matter, so another plot was given to the

claimant along university road he accept it, he thought the matter was settled but now he was invited to court.

He further told this court that, the 1st land that has problem has no C of O it is customary likewise the alternative one he accepted.

During cross examination he told this Hon court that been not working with the Min. of lands he may not know which plot has certificate

No reexamination conducted

DW 4 In person of Umar Shehu affirmed and told this court that, sometimes in Dec. 2021 misunderstanding arose between the 1st defendant and the claimant, they agreed before the chief, because that land was already sold to another person, the land was belong to him originally and was sold to the 2nd defendant but later on somebody came ad build it, claimant lodged a Complaint before him as the Sarkin Tirwun and he suggest that another plot will be given to the claimant, it was shown to him he reject it thereafter another two plot of land was shown to him he chose one on 2/2/22 on condition that document will be given to him, so sale agreement, receipt and side plan was given to Abubakar (pw1) to take it to claimant

The documents i.e. the sale agreement, the receipt and the side plan has been admitted in evidence and marked as exhibit E, F, & G respectively

He further informed the court that now the land is in custody of claimant since about one year and six months ago.

During cross examination he informed this court that, the claimant did not buy land from the 1st defendant and the land is not belong to the 1st defendant, the land sold to the claimant something was wrong with it, the alternative land was shown to the claimant located along Maiduguri road and is still there for him.

He further told the court that it was written by the secretary of their company (A & I) Properties one Sani by name and the claimant did not sign the said Exhs. E, F, & G, the said exh. Did not show any transaction between the claimant and the 1st defendant, the value of the said alternative land is about Exh. E, F & G is N300,000

No reexamination was conducted

PW 5 (1st defendant) affirmed and testify to the effect that, he don't know the claimant, he only came to know him after he sold his land to the 2nd defendant the transaction was taken place through his agent I e DW1 & DW 2, he gave them the land to sell at the cost of N300,000 only, they brought one ALH Yakubu and said he is interested in that land later they came and told him he requested them to add N50,000 to him he initially objected but they plead with him, that is a business so he agreed base on that he sold his land to the 2nd defendant and he brought the money to his parlor the sum of N350,000 only, he called his agent to witness the agreement later on, he gave the sum of N50,000 to DW 2 to take it to 2nd defendant and he did so, but he requested that they should write an agreement of N350,000, he signed and the witnesses signed and he took it to the buyer

He further told this court that, effort was made to settled the issue amicably but failed, they finally resolved that an alternative land will be given to the claimant, they went to the alternative land he choose the one by the road side he accept it, he gave the receipt and the side plan to the one ABUBAKAR YUSUF to take it to the claimant base on his instruction, later on the 2nd defend and the claimant came to his house and said they don't want this plot they need their money, thereafter he received a court summons dated 12/5/22 which has been admitted and marked as exhibit "H" his counsel filed a preliminary objection and the court struck it out, the said P/O has been admitted in evidence and marked as exhibit "I" the said alternative land is now under the custody of the 2nd defendant and claimant, it has customary title.

During cross examination he told this court that he signed the agreement to the transaction of the land at the cost of N350,000 but N50,000 is agency fee, as a seller he sign the sum 350,000 only

He further said his name was not written on EXH. E, F, & G, the claimant did not sign the documents and the size of the alternatives land was not stated on he said Exhs.

During cross examination by the 2nd defendant PW 5 told his court that he never draws attention of the 2nd defendant as to the issue of alternative plot, thereafter 1st defendant close his case.

The 2nd defendant testify in his case as DW 6 where he told this Hon. court that, 1st defendant is his neighbor and the claimant is his Son in-law, he negotiate a plot of land for him, he bought it from the 1st defendant at the cost of N350,000 only, the size of the land is 40 by 80 and the money was given to the 1st defendant, on the spot the agreement letter was signed by the 1st defendant, the buyer and the witnesses, later on Abubakar came and met him with a N50,000 said is from the 1st defendant as agency fee, on the spot Abubakar (Dw1) TOOK N20,000 only, gave N15,000 to him and N15,000 to Mansur (DW 2) when the claimant stated developing the plot someone came and claim it he bring title documents, then the issue of alternative plot came in before Sarkin Tirwum, it was shown to him but he reject it, they finally went to the house of the 1st defendant together with the claimant and told him that they need their money, but the 1st defendant said he only know him, he has no business with the claimant he should go and do his worst, later own they bought the same plot from the real owner at the cost of N670,000 only.

During cross examination he told this court that, the land in question it has no certificate is customary, they only signed an agreement and the sum of N50,000 was given to them as commission, and he is an agent to the claimant.

He further said the proper person to say why he rejected the plot is the claimant and that EXH. E, F, & G was issued by the company not the 1st defendant, thereafter the 2nd defendant apply to close his case.

Parties have filed and exchange their final written addresses, leaned counsel to the 1st defendant M O MWOYE Esq has filed his final written address dated 16/8/23 and filed on the same date where he formulates lone issue for determination which is hereby reproduce as follows: -

“whether in consideration of the evidence of witnesses before this Hon. court, the claimant has proved his case on the preponderance of evidence entitle him to the judgment of this Hon. court?

He answer the above issue in negative, and argued that the claimant contradict himself under cross examination, when he admitted that he accepted one of the land shown to him as alternative but the only issue was that he was not given a C of O while in examination in chief he said he ejected the plot because is a bush, the law is trite that where there is contradiction in the evidence of the witness the safest thing for the court to do is to resolved it in favor of the defendant, he refer this court to the case of ABUBAKAR VS YAR’ADUA (2008) vol. 36 pt 1 NSCQR PG 231 at 247 R 26

The learned counsel further argued that base on the evidence of DW 1 – DW 5 it is not in doubt that the claimant purchase land from the 1st defendant through his father in law (2ND defendant) and when the title of the said land became an issue alternative lands was shown to the claimant and he accepted one situated at Maiduguri bye pass as replacement of the initial defective land. DW 6 also confirmed this which make the 1st defendant and DW 4 believed that the matter was resolved, therefore the party is stopped in this instances to claim otherwise he refer this Hon court to section 151 of E A 2011 and the case of Ajayi vs Total Nig. Ltd (2013) LPELR 20898 (SC) and Nisrim vs Nisrim (2002) 2 s c (pt 1) 47

He further argued that the possession of the land was handed over to the claimant and Exh. E, F, & G was issued in the name of the claimant later turn round to say he rejected the land, and he did not reject the alternative land, he accepts it unconditionally, the law is that it is a duty of the buyer of the property to conduct search he cited ALEX’S case LPELR- 22571 (CA)

The learned counsel further argued that the law is settled condition for the sale of customary land is agreement of parties, payment of the purchase price in presence of witness and taking possession he refer this court to the case of MBANEFO VS AGBU (2014) VOL. 28 WRL PG 1 AT 4-5 R 1, ADENIJI VS ONAGORUWA (2000) 1 NWLR (pt 639) 1 and KOLE VS FOLAMI (1956) 1 FSC 66

He further submitted that Exh. E, F, & G was given to the claimant but refused to collect it, after the criminal summonses was dismissed, instead of him to collect his document he waited for many months and now filed this action

Finally, he submitted that civil cases are decided on preponderance of evidence he cited the case of WACHUKWU VS OWUNWANA (2011) VOL.25 WRN PG 1 AT9 R 6 urged this court to dismiss this case with substantial cost against the claimant.

Upon received of the claimant final address, the learned counsel to the 1st defendant M O MWOYE Esq has filed a reply on point of law dated 23/8/23 and filed on 24/8/23 where he submitted that the claimant was offered an alternative land and never asked to pay for that land, he accepted it in presence of DW1 – DW 5 such arrangement was made orally and the position of the law is settled that agreement could be made orally or in written or partly written and same is binding on parties he cited the case of CONCEPT ASSOCIATES NIG LTD VS TROPICS FINANCE AND INVESTMENT COMPANY LTD (2014) LPELR-22544 and the case of TAURA VS CHUKWU (2018) LPELR 455501 (CA)

The learned counsel M O MWOYE Esq further argued that the claimant admitted the acceptance of the alternative plot and the law is trite that an admitted fact need not further proof he refers this court to section 123 of E A 2011 based on the above cited authorities he urged the court to dismiss this case in the interest of justice.

In his final written address dated 18/8/23 the learned counsel to the claimant PATRICK WOICHO Esq formulated 3 issues for determination as follows; -

1. whether the claimant proved that he bought the land from the 1st defendant at the rate of N350,000.00k?

2, Whether the 1st defendant proved that he gave the claimant a valid alternative land which the claimant accepted, as to make the claimant bound by such agreement?

3. whether the 1st defendant has a valid counter claim?

On the 1st issue for determination the learned counsel answers it in affirmative and submitted that the claimant has proved that he bought a land from the defendant and he paid the sum of N350,000 to him for it, the argument of the defendant counsel that the sum of N50,000 was given back to the 1st defendant is outlandish since he admitted that N350,000 was paid to him the fact that he returned the sum of N50,000 to the 2nd defendant is of no moment

He further submitted that in addition to the express admission that the buyer has paid the sum of N350,000 there is also a documentary evidence in the form of Exh. "A" which support this position.

The learned counsel contended that documents speaks for themselves and no oral evidence admissible to contradict it, he refers this Hon court to section 128 of E A 2011 and the case of OLUWU VS BUILDING STOCK LTD (2018) 1 NWLR Pt 601 pg. 343 R 24, her further submitted that in the instant case the 1st defendants also admitted that what was handed over to him is N350,000

On the 2nd issue the learned counsel argued that the burden of proved that an alternative land was given to the claimant is on the 1st defendant, in civil matter the burden is not static rotates between the parties depending on who will lose if no further evidence is produce he refer the court to section 133 of E A 2011 and the case of WEST AFRICA OFF SHORE LTD VS ARIRI (2015) 18 NWLR PT 1490, PG 177 at 198 thus the defendant who assert alternative land has the burden of proof.

The learned counsel contended that 1st defendant did not tender any document evidencing sale or transfer of any land between him and the claimant like Exh. A, the original agreement between them, the 1st defendant build his imaginary defense on Exh. E, F, & G but he has no nexus with these documents, his name is not on them either as seller or even witness, in law the moment the name of the party is not in the contract document he cannot claim any right therein or take advantage of it or hide under it to escape liability he cited the case of MBATA VS AMANZE (2018) 15 NWLR PT 1545 pg 570 at 583 and urged the court to hold that Exhs. E, F, & G do not relieve the 1st defendant of obligation from the agreement contained in Exh. A, & A1 as he is a stranger to Exh. E, F, & G and cannot rely on them.

The further argued that DW4 could not mention where the company bought the land from, he said there is a written agreement evidencing this sale yet same was not tendered, the law presumes that such evidence which could be produced was withheld because if produced it would have been unfavorable to the 1st defendant or his vendor he refer this court to section 167 of E A 2011 urged me to so hold.

On issue no 3 the learned counsel submitted that there is no valid counter claim before this court, the counsel to the 1st defendant orally filed a counter claim against the 2nd defendant, no filling fees was paid to initiate this separate claim, it is a jurisdictional issues which any party can raised, failure to pay filling fees renders the purported counter claim incompetent and robs this court of it jurisdiction as such he made no request before the court when he testify as DW4 and this court cannot grant what he did not pray for, and urged me to so hold.

The learned counsel finally urged the court to discountenance all the submission and argument of the learned counsel to the 1st defendant, grant the claimant claim and dismiss the counter claim.

After hearing the submission and argument of both counsels canvassed in their respective final written address, and having taken into consideration the evidence before the court as well as the facts and circumstances of this case this Hon. court formulate two issues for determination as follows; -

1. Whether the claimant has proof his case to the balance of probability entitle him to Judgment?
2. Whether or not the 1st defendant counter claim is incompetent, and robs this court its jurisdiction to hear and determined it?

On the 1st issue for determination By law the claimant duty to proof his claim ,remains inviolate, whether or not the case is defended by the defendant and the claimant is expected to succeed on the strength of his own case not on the weakness of the defendant, therefore claimant must proof his case to the balance of probabilities I refer myself to 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 and MRS ROSE MARY ONWUSOR VS YAHY MAINA & ORS (2021) LPELR-11919 C A, LONGE VS CBN (2006) 3 NWLR (PT 11)24

The crux of this case is that the claimant prays to recover his money given to defendant for the purported sale of plot of land situated at Gida dubu here in Bauchi town.

Pw 1 stated in his evidence before this Hon. court that, he bought a plot of land from the 1st defendant through the 2nd defendant and he has paid the sum of N350,000 cash as consideration to the 1st defendant, that piece of evidence has not been contradicted or controverted during cross examination

It also in evidence before this court that the parties to the said transaction I e the claimant and the 1st defendant has signed an agreement letter evidencing the said transaction and their witnesses also signed as disclosed in the content of Exh. "A", the content of the said Exh. A, has not been contradicted, therefore deserved to be given a probative value.

The law is settled that documentary evidence is the best form of evidence, they are not only assailable but are more authentic than oral evidence, they are like words uttered and do speaks for themselves, they are neither transient or subject to distortion and misrepresentation but remain permanent through the ages, see the case of EBEM 7 ANOR VS NSEYEN (2016) LPELR-40122 (CA), OGBEIDE VS OSIFO (2009) 3 NWLR (Pt 1022) 423 at 441

It is also in record that, the 1st defendant has stated that he received the said sum of N350,000 as consideration for the sale of his pot from the defendant, therefore it is my humble view that, that admitted facts need not further proof, I refer myself to section 123 of E, A, 2011 as amended

The 1st defendant in his defense stated that, when the 1st plot was found to be defective, they have settled the matter in the village head palace of Tirwun to the effect that alternative land will be given to the claimant, consequent upon which 2 plot was shown to him he rejected but later another one was shown to him along Maiduguri road he accepts it, he relied on EXH. E, F, & G

However, the said document emanates from the company as such did not contained the signature of the claimant and the purported transaction is in respect the real property therefore failure by the claimant to sign Exh, F indicate that he is not interested in the agreement and I so hold

The law is trite that parties are bound by their agreement, court cannot make agreement for the parties or enforce an agreement which is not legally executed by the parties.

In the light of the above I hereby resolved the 1st issue formulated in favor of the claimant, the scale of justice tilt to his side therefore judgment in respect of the main claim is hereby enter against the 1st defendant

On the 2nd issue Whether or not the 1st defendant counter claim is incompetent, and robs this court its jurisdiction to hear and determined it?

The law is trite that the rules of court are made to be follow, and where the rules provide a procedure of doing a particular thing and the party refused, failed or neglect to follow it, will be fatal to his own case.

In the instance case the 1st defendant counter claimant did not comply with the rule of this court while initiating his counter claim, Article 6 (1) of practice direction of this court provide that;

'Upon received of summonses the defendant shall file his defense, admission or counter claim within seven days by completing SCA 5 as appropriate.

(2) the provision of Article 5 on service of summons shall apply to service of a counter claim

Going by the record of this court the 1st defendant/ counter claimant failed to comply with the above mandatory Article, therefore the said counter claim violate the procedure laid down for initiating a counter claim, is incompetent liable to be dismiss and same hereby dismiss

On the whole order is hereby made against the 1st defendant to pay the sum of N350,000 due to the claimant been the money collected by the 1st defendant for the purported land transaction

Parties shall bear their respective cost, no cost awarded

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

