

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

**SUIT NO SCC/BH/52/2023**

Before His Worship- GARBA ABDULLAHI

**BETWEEN**

**AUWAL MUSA MAINARI ..... CLAIMANT**

**AND**

**ABDULHAFEEZ BILYAMINU.....DEFENDANT**

CLAIMANTS –present and speaks English language

DEFENDANT – Absent

M A LIMAN EQS FOR THE CLAIMANT



**JUDGEMENT**

**INTRODUCTION**

This case brought pursuant to small claims court practice direction NO 2 of 2022, the claimant has fill and filed Small Claims Court forms SCA 2 & SCA 3 dated 11<sup>TH</sup> day of September, 2023 defendant has been duly served with the process of this court as evidenced by affidavit of service dated 12<sup>th</sup> September, 2023 deposed to by one Abdussalam Abdullahi a sheriff of this Court.

The claimant in his originating process claims against the defendant as follows

1. AN ORDER of this Hon. Court against the defendant to pay the sum of ₦730,000.00 only being the outstanding balance of his Car Peugeot 307 sold to the defendant
2. Cost of this action

In his effort to prove his case he called two witness i. e CW 1, and CW 2, tendered one document mark as Exh. C. The defendant in his defense called two witness i.e. DW1 & DW2 tendered two documents marked as Exh. A & B respectively

On the date fixed for hearing, parties were in court and hearing commenced.

PW 1 In person of Umar Abdullahi Affirmed and told this Hon. court that, he know the parties in this case, that there was an agreement for the sale of Car Peugeot 307 between the parties at the cost of N1.4 Million naira only, he defendant agreed to buy and pay the money in three installment, an agreement was written to that effect, after the expiration of the time agreed by the parties the defendant refuse to pay, he pleaded and paid N6000,000 only up to now he refused to upset the remaining balance, that is why the claimant filed this action

During cross examination he told the court that, the defendant saw the car and indicate his interest to buy it

No reexamination was conducted

CW 2 In person of Auwal Musa Mainari (claimant) Affirmed and testify to the effect that, he sold a Car Peugeot 307 to defendant at the Cost of N1.4 million naira only, they reduced the agreement in written and both himself and the defendant signed it in presence of their witnesses, in the agreement the he have to pay ₦400,000 only in 1<sup>st</sup> installment, then ₦ 500,000 only on 20/8/23 and the last installment to be paid on 31/8/23 the sum of ₦ 500,000 only, it is written on the agreement that there is be breach of the said payment as agreed.

He further told this Hon. Court that he has paid the sum of ₦ 600,000 only, ₦400,000 by way of transfer and ₦ 200,000 only cash), they jointly agreed that the defendant to remove the money he spent for repairing of the Car N70,000 only remaining the balance of N730,000 only unpaid

During cross examination he told this Hon court that, he sold the Car to the defendant and they jointly agreed that the price for the repairing of the Car be removed from the price of the Car and the defendant informed him that he has sold the Car to someone, he said that he reported the incidence to the police

before he filed this action and there is pending case between him and the defendant at USC Bauchi

No reexamination conducted

DW 1 in (defendant) affirmed and told this Hon court that, the claimant brought a car for him to sell Peugeot 307 they negotiated with him at the cost of ₦1.4 million naira on condition that he will pay some amount on the spot while the remaining balance will be paid by installment, he gave him the sum of ₦400,000 cash and additional ₦100,000 only and ₦ 130,000 only

He further informed this Hon. court that, they calculate with the claimant the remaining balance is N730,000 only, later he sends the sum of N50,000 only to his account now his balance is N680,000 only, they agreed that he will upset the balance by installment at the end of every Month

During cross examination DW 1 told the court that, he transferred the said ₦50,000 only during the pendency of this action, and the Car is with the 3<sup>rd</sup> party that bought it

He further informed the court that he filed an action before Sharia Court against the claimant and the case is still pending

DW 2 A subpoena witness in person of Abdullahi Yakubu Saraki Affirmed and told the court that he is a registrar of USC 4 Bauchi, the record of proceeding both Hausa and translated copy are hereby admitted in evidence and Marked as Exh. A & B respectively

During cross examination DW 2 informed this Hon court that in the matter before USC the name of the parties are Hafis Bilyaminu VS Mallam Auwal

No reexamination conducted

After the defendant close his case the learned counsel to the claimant recalled PW 2 and tendered Sale agreement dated 25/7/23 both Hausa and translated copy in evidence, it has been admitted and marked as Exh. C & D respectively

Parties filed, exchanged & adopted their final addresses in line with the practice direction of this Hon. court. The learned counsel to the defendant F W Galadima Esq. in his address dated 26/10/23 formulated lone issue for determination as follows; -

Whether this Hon. Court has jurisdiction to entertain this matter there being another matter pending between the parties before another court?

The learned counsel urges the court to answer it in positive that this court lacks jurisdiction to hear and determine this case as same is an abuse of court process, he submitted that jurisdiction remain the nerves center of adjudication and blood that give life to the survival of the action in a court of law, a decision of the court without jurisdiction is amount to nothing he cited the case of RODA VS F.R.N (2015)10 NWLR (PT 1468) at 427

The learned counsel argued that the claimant himself under cross examination admitted that, there is another matter between himself and the defendant before USC 4 Bauchi likewise the witness on subpoena i.e. DW2 testify to that effect he also refer this court to Exh. A & B before the court

The learned counsel defines the term abuse of court process and cited the case of C.A.C VS I.T.P.C.N (2016)2 NWLR PT 1496. DONALD VS SALEH (2015)2 NWLR PT 1444 at 529

Finally urged the court to dismiss this suit for being an abuse of court process

The learned counsel to the Claimant in his final written address dated 1/11/23 has formulated two issues for determination which are hereby reproduce as follows

1. whether this Honorable Court has jurisdiction to entertain the claimant suit against the defendant?

2. whether the claimant is entitle to the relief sought before this Honorable Court against the defendant?

On the first issue the learned counsel answers it in positive that the court has jurisdiction to entertain this matter, because the claim of the claimant is a

liquidated money demand of N730,000;00K he refers this court to he para.1 (d) of the practice direction of this court.

On the issue of abused of court process raised by the learned counsel to defendant, he argued that it is trite law that the issues of abuse of court process arises when two suit or matters co-exist and the parties and subject matters are the same in both suit he refer the court to the case of APC VS JEGA & ORS (2023) LPELR-59866 (SC) and DANA AIRLINES LTD VS AMAKA & ORS (2017) LPELR-43050 (CA) at pp.28-31 paras. D

He further argued that the purported record of USC 4 tendered and marked as Exh. A & B do not meet the standard required of the court process he refer the court to Order 2 Rule 1 of Sharia court civil procedure Rules 2013

He contended that the Exh. A & B does not contain the heading of the court, date of commencement and whether the case is still on or not, and whether the case is civil or criminal as well as the current status of the case

He also argued that the law is trite that document speaks for its self very unfortunate Exh, A & B did not disclose where they emanated from and the name of the parties is at variance with the name of the parties before the court, the claim of the claimant before this court is N730,000 only which the defendant is not denying he even admitted that he paid the sum of N50,000 only during the pendency of this action out of it, he cited the case of UBT (Nig) LTD vs Ajagbule (2006)2 NWLR (PT 965)

He further argued that once a case is withdrawn or struck out either party can institute another action in respect of the same matter and urged the court to so hold

On issue no 2 the learned counsel answers it in positive as the claimant has proven his case to be entitle to the relief sought, and argued that in civil matter the prove is to the balance of probability he cited section 134 of E A 2011 and the case of EKWEOZO AND ORS VS REG. TRUSTEE OF THE SURVIVOR'S APOSTLIC CHURCH OF NIG (2020) LPELR-49568 SC

The learned counsel further argued that base on the testimony of PW1 & PW2 it is obvious that the claimant has proven his case to the balance of probability he refers his court the case of AHMAD & ORS VS C.B.N (2012) LPELR (SC)

He finally urged this Hon Court to enter judgment in favor of the claimant with a cost of N50,000 only against the defendant

After hearing the submission and argument of both counsels and having taken into consideration the facts and circumstance of this case the evidence placed by both parties as well as the final address filed, it seems that the issues formulated by both parties are interrelated, interwoven and not dissimilar therefore are hereby amalgamated and compressed thus

1. Whether or not his case constitutes an abuse of court process
2. Whether the claimant has proven his case to the balance of probability to be entitled to judgment?

On the 1<sup>st</sup> issue for determination authorities are replete to the effect that, filling of multiplicity of cases before same court of different court against the same opponent, in the same subject matter and issues constitute an abused of court process likewise filling an action with a view to harass, annoy or irritate the opponent or in any way interfere with the administration or cause of justice also constitute an abuse of court process I refer myself to the case of AMAFELU VS STATE(1991)6 NWLR (PT75)156, SARAHI VS KATOYE (1992)9 NWLR (PT 2264)156

It is in record of his court that PW 2 during cross examination told this Hon court there is a case between himself and the defendant before upper sharia court but did state the nature of the said case whether is civil or criminal, the content of Exh. A & B admitted in evidence disclosed that the name of the parties are HAFIZ BILYAMINU VS Auwal which is the same with the name of the parties before this Hon, court with an addition of the claimant sure name therefore to me the name of the parties in both cases are the same and I so hold, however there is nothing before the court to show the nature of the claim in the content of Exh. A& B, NO suit or case no for the court o know whether the case is civil or criminal in nature,

the document does not disclose the name of the person who translate it as well as the status of the case whether it has been strike out or is still pending, this is duty of the defendant to prove it as the evidential burden of shift in civil matters.

Therefore, it is apparent that this documents Exh. A & B have no probative value and deserved not to attach weight by this Hon. court and I so hold.

On the whole I resolved the lone issue in favor of the claimant, this court have jurisdiction to hear and determine this case

On the 2<sup>nd</sup> issue for determination, it is an elementary principles of law for which a citation the 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. by our 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

It is in evidence before the court that, the claimant has sold a car Peugeot 307 to the defendant at the coast of N1.4 Million naira only and there is remaining balance of N730,000 only during the pendency of this action the defendant paid the sum of N50,000 only to the claimant now remaining the balance of N680,000 only owing to the claimant I refer myself to testimony of PW 1 & PW 2 respectively.

The above piece of evidence has been corroborated by the testimony of DW 1 in his defense, in fact he admitted the claim of the claimant to the effect that, there is remaining balance of N680,000 only unpaid for the transaction of the car Peugeot 307 entered with the claimant, 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,

Furthermore Exh D a sales agreement dated 25/07/2023 disclosed that there was an agreement between the claimant and the defendant for the sale of car Peugeot 307 at the cost of 1.4 Million on condition that the defendant will pay the sum of four hundred thousand naira on Saturday 29/07/2023 five hundred thousand naira on 20/8/23 and to complete the sum of N500,000 only on 31/08/23 making N1.4 million naira only, the said agreement has been duly executed by the parties, the content of the said document has not been challenge, therefore speaks for itself

It is beyond argument that the defendant failed to upset the price of the said car, now remaining outstanding balance of N680,000 unpaid in the light of the above I hereby resolve this 2<sup>nd</sup> issue also in favor of the claimant therefore enter judgment against the defendant and make the following order's

1. AN ORDER of this Hon. Court against the defendant to pay the sum of ₦ 680,000 only being the outstanding balance of his Car Peugeot 307 sold to the defendant
2. ₦20,000 as cost of this action

This matter is decide today being 16<sup>th</sup> November, 2023 there is right of appeal to High court of justice Bauchi within 14 days by the aggrieve party

