

**IN THE DISTRICT COURT OF BAUCHI STATE  
IN THE BAUCHI JUDICIAL DIVISION  
HOLDEN AT SMALL CLAIMS COURT NO 2 BAUCHI**

**SUIT NO SCC/BH/07/2023**

BEFORE HIS WORSHIP ZAINAB M SHUAIBU (MRS)

**BETWEEN**

**KINGSLEY NWOKE..... CLAIMANT**

**AND**

**MUSA ILIYA ZAGI.....DEFENDANT**

Claimant – present – speaks English language

Defendant- absent

Appearances – Mohammed Abdullahi Esq (for the claimant)

- Y G Yelmis Esq (for the defendant)



**JUDGEMENT**

This matter was brought pursuant to the Bauchi State small claims court practice direction NO 2 of 2022, the claimant fill and filled small claims court forms SCA 2 & SCA 3 dated 28<sup>th</sup> day of July 2023, the defendant was duly served as disclose on the affidavit of service deposed to by the bailiff of this honorable court ALIYU SALE TAFIDA

The claimant claims against the defendant thus;

1 - That defendant promise and under took to pay the defendant the sum of ₦620,000.00 (Six hundred and twenty thousand Naira Only) but the defendant only pays the sum of ₦50,000.00 remaining the outstanding balance of ₦570,000.000 (five hundred and seventy thousand naira only).

In respond to the claimants claim the defendant fill and filled form SCA 5 by denying the claimants claim that no money was giving to the claimant by the defendant, and that both the claimant and defendant where defrauded by one DAVID SIMON the claimant can only recover the said money from DAVID SIMON.

Trial commenced on the 7<sup>th</sup> day of august 2023 the claimant who testified as CW1 (Kingsley Nwoke) inform the court that on the 6<sup>th</sup> day of September 2018 one ILLIYA ZAKI ( I e the defendant ) of Rafin Zurfi here in Bauchi state my money was with him I reported the matter at the state police CID in Bauchi he wrote an undertaking on how he is going to pay back the money, he was able to pay the sum of # 50,000.00 through my account he is yet to pay the remaining balance of #570,000.00 the claimant tendered the written under taking through his counsel, it was admitted and marked as EXHIBIT C Dated 6<sup>th</sup> day of September 2018.

Under cross examination by Y G YELMIS ESQ counsel to the defendant that the land giving to Iliya Zagi will be accepted based on verification and authenticity the resolution reached was between MR KINGSLEY NWOKE AND DAVID SIMON in respect of the complaint of Mr. Kingsley at state CID is on the issue of the money David Simon is owning mr Kingsley Nwoke.

At the close of the claimant case the SAMUEL SAMBO testifies as DW1 dated 10<sup>th</sup> day of august 2023 in his evidence in chief inform the court some time in august to September 2018 while at home Illiya Zagi the defendant in this case mate me at home that he bought a plot of land close to my house at Rafin Zurfi in Bauchi local government area of Bauchi state, we went to the said land with him and later realized that the beacon is not the initial one we know, but on the said beacon a phone number was written on it, I called the number not knowing it was Mr. Kingsley the claimant in this case, we mate him and heard a discussion of the said land it was David Simon who sold the land to Mr. Kingsley, Illiya Zagi the defendant in this suit.

After the discussion the said apartment was giving in exchange to illiya zagi the defendant in this suit for the money David Simon is indebted to him, as agreed between them is that Illiya Zagi will pay Mr. Kingsley the sum of ₦620,000.00 whenever the house document is giving to the defendant, on reaching the said

house it was locked with a padlock a phone number was written on the door, we called the number on it, it was one Yakubu Jika he narrated all the story to him and finally mate him in person based on the discussion as everyone was present Yakubu Jika brought out the document of the said house giving to Illiya Zagi by Davide Simon, we agreed to meet David Simon in other to resolve the said issues on the next day he was issued a summon to appear before this honorable court.

In the cause of cross examination by counsel to the claimant MOHAMMED ABDULLAHI ESQ DW1 told the court that there was a written agreement between Mr. Kingsley and Illiya Zagi in respect of the subject matter before this court and am not a signatory to the said written agreement.

DW2 by name MANASE JOGA AYUBA in his evidence in chief told the court that on the 9<sup>th</sup> day of September 2018 Illiya Zagi the defendant in this suit called that I should meet him at the state CID here in Bauchi, that is on the issue of the land that was giving to him in exchange by David Simon there is a problem with regard to the land, it was confirm that the land was sold to both the claimant and defendant in this suit, on that day when the agreement was made Illiya Zagi, Ibrahim Garba, younger brother to David Simon barrister Muhammed Abdullahi a lawyer to David Simon the counsel representing the claimant in this suit we were all present.

It was resolved that David Simon have a property at Baraya the money that David Simon is indebted to Illiya Zagi is more than that of Mr. Kingsley, it was finally agreed that Davide Simon will give the document to Illiya Zagi and Illiya Zagi will pay the sum of ₦620,000.000 to Mr. Kingsley Nwoke the claimant in this suit.

The said document is with the mother to David Simon but she travelled out, whenever she is back it will be giving to Illiya Zagi, at long run no house, no document, the said house was sold to YAKUBU JIKA.

During cross examination by counsel to the claimant Mohammed Abdullahi Esq CW2 inform the court that he is a party to the said agreement not a signatory, there was two written agreements between Illiya Zagi and Mr. Kingsley.

DW3 who happen to be the defendant in this suit inform the court that he bought a land from David Simon on my arrival at the land for inspection I saw a new beacon not the earlier one know to me on it is a

phone number was written on it, I called the number not knowing it was Mr. Kingsley, he told me that the said land was sold to him by David Simon, I also told him David Simon was the one who sold the land to me too, my two cars was also sold by David Simon I later reported him at the police station the complaint was in writing. The complaint dated 27<sup>th</sup> august is admitted into evidence and marked as EXHIBIT M.

later we where to settle the issues with barrister Mohammed Abdullahi who is presently the counsel to the claimant in this suit, that David Simon has a house the said house will be giving to me and Mr. Kinsley, we decided and agreed as to who will be giving the house or who owning David Simon the largest amount, it was agreed that I Illiya Zagi To take the house and give Mr. Kingsley his money, two agreement was writing one was between ma and David Simon while the other is between me and Mr. Kingsley barrister Mohammad Abdullahi wrote the said agreement.

The undertaking writing by David Simon and Illiya Zagi dated 6<sup>th</sup> day of September 2018 is hereby admitted into evidence and marked as EXHIBIT, the said house was shown to me but the document was not giving to me later on I was informed that there is a new padlock was fixed and a number was writing on it for sale, I called Mr. Kingsley and inform him all that is going on, I called the number written on it and realized that the said document was with Yakubu Jika he is the rightful owner of the house.

After a while Kingsley called me and requested for some money that when the issues are finally settled he will return back the said money, I told him that our agreement is still unconditional but gave him the sum of ₦50,000,000 I was summon before this honorable court on my arrival I noticed that Mr. Kingsley is the claimant while barrister Mohammed Abdullahi is the counsel to Mr. Kingsley.

In the cause of cross examination, he told the court that he is to pay Mr. Kingsley the sum of #620,000.00 on condition that the title document of the house is giving

to him, no any written agreement between me and Mr. Kingsley that I gave him the sum of fifty thousand naira only.

After the close of the defendant case the defendant filed his final written address dated 6<sup>th</sup> day of October 2023 learned counsel formulate lone issue for determination thus;

1 whether the claimant has proved his case to entitled him to judgment bases on his claims before the court

2 whether the claimant counsel did not breach the rules of professional conduct for representing David Simon before the police and turn around to represent the claimant.

The learned counsel submits in his legal argument and urge the court to resolve same in favour of the defendant, the claimant has failed to proof his case to entitled him to judgement before this honorable court.

Learned counsel submit that the claimants claim against the defendant did not disclosed the claimant's money or any goods or service that was given by the claimant to the defendant to warrant any claim by the claimant against counsel drew the court attention to the FOLLOWING AUTHORIES

- SIFAX NIG LTD VS MIGFO NIG LTD (2016)7 NWLR PRT1510@10 PG 20 R1.
- FRN VS SANI (2014) 16 NWLR (1433) P 299 @ 309-310 R.5
- OGUNDELE VS AGIRI (2009) 18 NWLR PRT 1173 PG 219 @ PG 224 RATIO 5
- EGHAREVBA VS OSAGIE (2010) ALL FWLR PRT 513 1255 SCS

Learned counsel to the defendant submit in his second argument the counsel representing the claimant is the same counsel who represented David Simon and all the defendant's witnesses testify to that effect, the claimant counsel did not challenge that evidence or even contradict same. Counsel refer the court to the case

of OGUNLEYE VS JAIYEOBA (2011) 9 NWLR (PT 1252) AT 339 AT PG 345  
RATIO 10.

BENBOK LTD VS F .A .B PLC (2007)51 WRN 181 AT PG 185 RATIO 5.

Learned counsel submit that the counsel to the claimant in this suit was the one representing David Simon who was a suspect of criminal breach of trust and other offences. this present suit emanated from the same transaction that happened before the police in 2018 which is a clear case of conflict of interest. N B A VS GIWA (2016) 12 NWLR PRT 1527 @ 514 PG 516 R1.

Learned counsel final submit and urge the court to resolve this matter in favour of the defendant and dismiss this case with cost.

Learned counsel to the claimant filled his final written address dated 9<sup>th</sup> day of October 2023 and formulate the following issues for determination thus;

- 1 – Whether the claimant has proved his case base on the preponderance of evidence to entitled him judgement?
- 2 – Whether an agreement voluntarily entered into by a party is bound by it?
- 3 – Whether from the exhibit tendered counsel to the claimant append his signature, name or shows as a representative of any party?

Learned counsel submit that the claimant has proved his case base on the preponderance of evidence, the claimant has discharge the burden of proof laid upon him by law.

Learned counsel drew the court attention to the following authorities

1 –ALHAJI KABIRU ABUBAKAR & ANOR VS JOIN & ANOR (2008)

LPELR – 48 (SC)

2 – EASTERN DISTRIBUTORS VS GOLDRING (1957) 2 Q. B 6000

3 – CHEVRON (NIGERIA) LTD VS LONESTAR DRILLING NIGERIA LIMITED (2007) 16 NWLR (PT. 1059) 168

4 – OKOROONKWO VS ORJI (2019) LPELR – 465151 (CA)

5 – UWAIH VS AKPABIO (2014) 7 NWLR (PT 1407) 472 AT 489

6 – BEST NIG LTD VS B- H NIG LTD (2011)5 NWLR (PT 1239)95.

Learned counsel submit that the claimant has discharge his burden by calling unimpeachable witness and tendered an original agreement which the defendant signed, the testimony as to the main sum and balance was not discredited by the defendant during cross examination.

Learned counsel submit that a party who voluntarily entered into a contract is bound by it, no matter how unfavourable it may turn out to be, as long as he entered into the contract fully conscious of what he was doing, and had willingly

signed same, and collected the consideration which he enjoyed and the subject matter of the contract was lawful.

Learned counsel further submit that the doctrine of law of contract is what has been referred to as the sanctity of contract usually expressed in the Latin maxim “pacta sunt servanda” which means “agreement must be kept”

Learned counsel finally submit that the counsel to the claimant did not in any way represent any of the party in the suit before the court of law or agency, and urge the court to resolve all the issues in favour of the claimant and grant the reliefs sought by the claimant.

REPLY – to the claimant final written address dated 13<sup>th</sup> day of October 2023 in respond learned counsel to the defendant respondent submit that the claimant is trying to argue that what was written before the police was a contract between the parties in this suit and urge the court to so hold in the negative, the undertaking made before the police has failed to meet the requirement of a valid contract so it cannot be held as a contract, counsel refer the court to the case of **FAWEHINMI VS G M H NIG LTD (2018)12 NWLR PRT 1633**.

Learned counsel submit that there was no any offer or acceptance between the claimant and the defendant in the agreement before the court also the validity of

the agreement made before the police which our laws frown at, the police station is not an atmosphere of entering a contract.

### COURT

I have gone through the entire evidence adduced by both parties as well as the exhibit and final written address filled by the parties; this honorable court formulates lone issue for determination thus;

“whether having regard to the entire evidence adduced by both parties the claimant has prove his case to the balance of probability”

The provision of SECTION 134 OF THE EVIDENCE ACT 2011 provides that the burden of proof shall be discharged on the balance of probabilities in all civil proceedings. The supreme court stated same principle in the case of ADELEKE VS IYAND (2001) FWLR (PART 6) PAGE 1580 @1581 RL.

Civil cases are not decided upon beyond reasonable doubt but on preponderance of evidence and balance of probability.

On of the fundamental principle of law is that only a party to the contract can sue for it and for the contract to be valid and enforceable in law there must be an offer, acceptance ,consideration and intention to create a legal relationship.

From the fact as well as evidence before the court it is apparent that the bases of initiating this action is the undertaking written by the defendant at the police station based on the agreement entered between both parties before the court and the third party, therefore it is beyond argument that there is no valid offer and acceptance and an intention to create legal relationship between the claimant and the defendant in this case.

Furthermore, any contract that has being entered by fraud is invalid null and void and can not be enforceable in the eyes of law and indeed this court.

It is in evidence that the third party defraud both parties in the case which lead to the undertaking made by the defendant.

Therefore, it is obvious that the foundation of the said undertaking is painted with fraud and illegality, therefore is invalid.

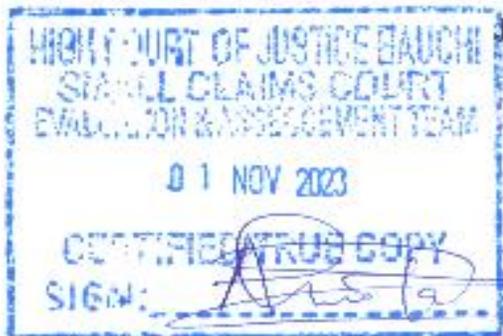
The claimant ought to have filed a case against the third party who he initially entered into a contract with him.

Therefore, this case lack in merit is liable to be dismiss and same is hereby dismiss.

**APPEAL**

There is a right of appeal by any aggrieved party to the high court of justice Bauchi within 14 days from today.

This case is decided today 30<sup>th</sup> day of October 2023.



**JUDGE ZAINAB M. SHUAIBU (MRS)  
SENIOR MAGISTRATE**





