

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

SUIT NO SCC/BH/80/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

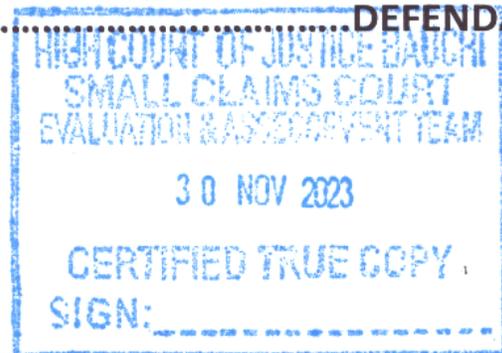
HAFSAT MUSA TANKO.....CLAIMANT

AND

ALHERI ALHAMDU.....DEFENDANT

CLAIMANT – Absent

DEFENDANT – Absent



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 29th October, 2023 and filed on the same date seeking for the following reliefs;

1. AN ORDER of this Honourable Court against the defendant to pay the sum of ₦15,500 only being the remaining balance for the transaction of shoes and Bag supplied to defendant by the claimant
2. Cost of this action ₦10,000 only

The originating processes of this Honourable Court has been served on defendant by substituted means in compliance with the order of this Honourable court as disclosed by affidavit of non-service deposed to by one Abdussalam Abubakar a bailiff of this Honourable Court dated 3RD October, 2023

Claimant was in court and hearing commenced

CW 1 in person of Hafsat Musa Tanko (Claimant) Affirmed and testify to the effect that, sometimes in November 2020 defendant has collected shoes and bag (baby kids) as loan worth ₦38,500 only, she paid the sum of N23,000 only remaining outstanding balance of ₦15,500 only unpaid despite the several oral demand to that effect that is why she filed this action

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 14TH September, 2023 deposed to by Abdussalam Abubakar a bailiff of this Hon court, but defendant failed to appear and cross examined 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 Honourable 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 by the strength of his own case and not on the weakness of the defendant. I refer myself to the case of MRS ROSE MARY ONWUSOR VS YAHY MAINA & ORS (2021) LPELR 11919 C A

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 evidence before this Hon court is apparent that there was a transaction for supply of shoes and bag between the parties in this case, in-fact the claimant has supply the shoe and bag (baby kids) to the defendant worth ₦38,500 Only sometimes in November, 2020 as loan, she failed to upset the loan now there is outstanding balance of ₦15,500 unpaid, defendant refused to upset despite the several oral demand to that effect.

It is in record that the defendant failed to cross examine 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 AIWEREOBO (1988)1 NWLR (PT681)

In-fact defendant neither appear nor place any defense, before this Honourable court, 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 presumed to have 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 cases of JAIYEOLA VS ABIOYE (2003) 4 NWLR (PT.810)397 in the light of the above I hereby enter judgment in claimant favour, against the defendant and make the following order;

1. AN ORDER of this Honourable Court against the defendant to pay the sum of ₦15,500 only being the remaining balance for the supply of shoes and bag to the claimant

2. Cost of this action ₦10,000 only

This case is decided today being 30TH November, 2023 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

