

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

SUIT NO SCCBH/67 /2023

BEFORE HIS WORSHIP- GARBA ABDULLAHI

BETWEEN

EMEKA ALOZIE & 1 OTHER.....CLAIMANT

AND

ALH. SUNUSI UMAR.....DEFENDANT

CLAIMANT – Absent

DEFENDANT – Absent

Kingsley Gebriel Esq for the claimant



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 23rd October, 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 N380,000 only being the amount of money collected from the claimants for the purported land transaction
2. Cost of this action

The originating processes of this Hon. Court has been served on defendant as disclosed by affidavit of service deposed to by one Abdussalam Abubakar a bailiff of this Hon. Court. Dated 12/10/23

In an effort to prove their case, claimants called 2 witnesses and tendered four documents marked as Exh. A, A1, B, and B1 respectively and thereafter closed their case, defendant did not enter defense, rather rest his case on that of the claimants

Learned counsel to the defendant formulated two issues for determination in his final written address, which are hereby reproduced as follows: -

1. Whether there was a valid sale of land transaction between the claimants and the defendant

2. Whether there was any breach which culminated into failure of transaction between the claimants and the defendant

The learned counsel answers the 1st issue in negative and urged the court to so hold, he submitted that CW 1 told the court that he paid the transaction sum through one P A whose identity, the witness could not establish, the document he tendered for the sale of land was given to him by the P A and he does not even know the writer of the document.

CW 1 during cross examination told the court that he did not know who wrote the document tendered as evidence of transaction all of which he sufficiently proved that there was no valid sale of land transaction between the claimants and the defendant

He submitted that CW 1 never furnished money consideration to defendant means that, the whole transaction was against section 3 of the Bauchi State sale of goods law 1989 which provides that there must be money consideration in all sales transactions

On issue NO 2 he also answers the question in negative and urged the court to so hold, and submitted that assuming without conceding that there was a valid transaction between the parties there is nothing before the court show the defendant was in breach of the contract to warrant him being liable to refund the claimant money, he cited the Maxim "Ubi Jus Ibi Remedium

He further submitted that none of the witnesses establish the fact that the defendant was having a defective title to the land he sold to warrant deeming the transaction failed, the defendant only suggested an alternative lands to the claimants in order to appease them but he never admitted having sold land with defective title and the complainant could not prove same, infect CW2 told the court that when he complained about erection of beacons by some people, the defendant maintained that the land belongs to him, PW 2 under cross examination testified that he would not know whether the land have been build up or not

He contended that claimants in this case cannot claim to rely on the principles of NEMO DAT QUD NON HABET because they have failed to establish a true evidence that defendant was having a defective title, he cited the case of ORONTI VS ONIGBANJO (2012) 12 NWLR (PT 1313) Pg 28 R 9

He finally submitted that since there is no evidence of furnishing of money consideration by the claimants, their action has failed and urged the court to so hold.

The learned counsel to the claimant in his final written address dated 4/12/23 and filed on 5/12/23 formulate lone issue for determination which is hereby reproduce thus: -

‘WHETHER IN CONSIDRATION OF Exh. A, A1, B, and B1 and the testimonies of CW1 & CW2, the claimants have proved their claim to be entitle to judgment of this Hon Court”

The learned counsel answer it in affirmative, and submitted that CW 1 in is testimony told this court how he supplied the defendant building material worth N150,000;00 only, requested for his money but the defendant said he doesn't have money except if CW 1 will take a land in place of the money, thus the defendant took him to a land at being immaculate conception secondary school Bauchi **and gave him 4 plot at the sum of forty thousand** naira each, making the total of N160,000 only to which CW1 was to balance the sum of N10,000 only which the defendant owing him. Later the P A to the defendant add another land thus CW1 agreed to buy more consequent upon which he bought 4 plots each at the cost of N40,000 only milking the total sum of N160,000 only, thus CW 1 paid the sum of N170,000 only include the balance of N10,000 only base on the initial transaction and Exh A and A1, was issued to him dated 21/2/ 2017 evidencing a purchase of the land at the cost of N320,000 only

He further submitted that CW1 called and informed the defendant that someone has planted a beacons on the land and the defendant undertake to give alternative land to CW 1 on the process the defendant took him to another land near Shafa Filling station Yelwa Road Bauchi but the CW1 reject for same being a water way, the defendant again took him to another land in G R A which are two plot at the cost of N1.500,000 only but CW1 rejected because the price was high, he then took him to another land cost N400,000 per plot but CW 1 also reject it because is on top of the stone thereafter CW1 requested for refund of his money but defendant has not done so till date.

The learned counsel further argued that CW 2 (claimant) told the court that he has his balance of N100,000 with the defendant, he meets him at Gidan Mai Round about Opposite Nitel Bauchi and reminded him of his money instead defendant requested for Zinc in addition and in return the defendant will give CW 2 a land to which CW 2 agreed

He further submitted that defendant sent his P A One Y Badara who took him to a land measuring 40 by 40 at the cost of N80,000 only which he accepted, later the defendant advertised another land for him at behind immaculate school Bauchi and they agreed at the cost of N60,000 only Exh. B, was issued to him which is duly signed by both the defendant and his P A , after CW2 fixed a beacon and wrote his phone Number someone came and claim the land and destroyed the beacon, when he told the defendant he said the land is genuine he should go and remount the beacon, he comply and did so but same was destroyed again thus he asked the defendant to refund his money which the defendant failed till date.

The learned counsel argued that CW1 & CW2 were cross examined by the defendant counsel but their testimony could not be discredited, the law is settled that where evidence adduce before the court is not challenge, debunk or discredited, it become credible evidence which the court ought to relay upon he cited the case of STATE VS OLADOTUN (2011)10 NWLR PT 1256 Pg 542 r 6

Finally urged the court to enter judgment for the claimants ,, by reply to the defendant's final written address he submitted that the argument of the defendant counsel in para 3.2 and 3.3 is of no moment, though CW1 told the court that he could not recall the name of the P A to defendant, CW 2 told the court that the name is Y Badara more so no denial was

made as to signatory and the law is trite that document speaks for itself he cited the case of GBILEVE & ANOR VS ADDINGGI 7 ANOR (2012)LCN/5333)CA

CW 2 told the court that Exh. B, was signed by the defendant in his presence and comparison of Exh. A & B revealed that all document emanated from the same source

The leaned counsel further submitted that defendant assert that there is no valid sale transaction between himself and the claimants and no consideration paid whereas in his issue no 2 he told the court that the defendant only suggested an alternative land to the claimants in order to appease them, it is not in evidence whether the defendant ruins a charitable organization.

Finally, he urged the court to uphold his submission and enter judgment in favor of the complainants.

After hearing the submission and argument of both counsel to the claimants and that of the defendant and having taken into consideration the evidence before the court, facts and circumstances of this case, I realized that the issue formulated for determination by both counsels are inter related, inter woven and not dissimilar there for are hereby amalgamated and compressed thus: -

‘Weather the claimants prove their case to the balance of probability to entitle them to judgment”

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 prove 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

It is in record that, CW 1 testify to the effect that, the defendant came to his shop at Muda Lawan market Bauchi and collected materials worth N150,000 only, he did not pay, he promises to give him a land instead of the money, based on that he shows him a land cost N40,000 only per plot its size is 40 by 40, he gave him four plots on condition that he will add the sum of N10,000 only to defendant

It is also in testimony of CW1 that later the defendant sends his P.A to him, that he has another land there, he bought it from the defendant through his P A another four plot at the cost of N40,000 only per plot therefore he added the sum of N170,000 including the remaining balance of N10,000 for the initial agreement paid to the said P A to defendant, making N320,000 only

That piece of evidence has not been controverted or contradicted during cross examination, based on the above is beyond controversy that there was a contract between the claimant and the defendant and I so hold

It is also in evidence of CW 1 before the court to the effect that, last year he went to the said plots of land he saw a beacons, the defendant send his P A to come and check it, he went there and confirmed it, finally they promise to give him an alternative land, one day defendant he took him to another plot behind Shafa filling station, but reject it because there was a water way beside it, based on that he took him to G R A and show him another alternative land cost N1,5 Million naira only he rejected it

finally he took him to another land, and told him the price is N400,000 per plot he reject it, thereafter requested the defendant to returned his money back to him, that piece of evidence disclosed clearly that the claimant has fulfilled his own part of agreement by given the sum of N320,000 only to defendant but the defendant failed to performed his own part, therefore it is apparent that there was a breach of that agreement by the defendant, as he neither to plots of land to the claimants nor refund the money (consideration) of the N320,000 only collected from the claimants and I so hold.

The content of EXH. A and A1 been an agreement for sale of land disclosed that the defendant has sold his plots of land to the 1st claimant at the cost of N320,000 only, it has been executed by the parties in presence of his witnesses, the content of the sais Exh. Was not successfully challenge therefore deserved to be given a probative value.

The position of our law is well settled that, documentary evidence is the best form of evidence, it is the best proof of the content of such document and no oral evidence will be allowed to discredits or contradict the content thereof except where fraud is pleaded.

I refer myself to the case of EGHAREVBA VS OSAGIE (2009) LPELR-1044 SC, RANO VS RANO (2019) LPELR-51279 C A

CW 2 the second claimant told this Hon. court that, he work for the defendant his balance remained N100,000 only and he collected material Zinck from him on conditions that in return he will give him a plot of land in exchange, he send one of his P A, Y B Badara by name he went and show him the land.

When he put a beacon and placed his phone number on it someone came and destroyed it, he informed the defendant, but he claims that the land is belong to him, on the process be discover that one of his brother was involved, now he decided to collect his money, he don't need the land again, defendant refused to give him the money, both parties has signed the agreement for the said transaction it has been admitted in evidence and marked as exh. B & B1 respectively.

The content of the said document I e Exh, B disclosed that defendant has entered into the agreement for the sale of land with the 2nd claimant at the cost of N60,000 only both the parties signed in presence of their witnesses and the size of the plot is 80 by 40 situate at behind Ima college Gida dubu Bauchi, but the said land found to be defective consequent upon which the claimant demand for his money from the defendant that piece of evidence is not controverted or contradicted and I so hold

The law is trite that no oral evidence can be admitted to contradict, add to or vary the content of documentary evidence before the court see section 128 of E A 2011, and the case of AG BENDAL STATE VS UBA LTD (1986) 4 nwlr (pt337)547 at 563

The defendant did not call witness in this case rather chose to rest his case on that of the claimant raised the following germane issues in his address

1.there was not valid sale of land between the parties in this case because CW 1 said he paid the transaction money through one P A

On this issue the record of the court disclosed that defendant went to the shop of 1st claimant and collected the sum of N150,000 and show him 4 plots of land at the cost of N40,000 only each and later on send his

P A to sell additional 4 plot to him, based on that he gave the sum of N170,000 only including the remaining balance of the initial transaction the sum of N10,000 only, the agreement was signed by 1st claimant and the defendant personally to that effect.

Furthermore, when claimant discover that the land sold to him was defective the defendant made several efforts to give him alternative land, that alone show that the defendant has recognize the act of his P A as his lawful agent and I so hold

Base on the above it is clear that, the defendant acted in his capacity as an agent to the defendant, the law is trite that the act of the agent is binding on his principal if the agent was authorizing by the principal to make the contract as in the instance case see the case of UKAH &ORS VS ONYIA & ORS (CA/E/295?2008)

The learned counsel to defendant in his address also refer this court to section 3 of the sale f good law of Bauchi state 1989 which provide that there must be a money consideration in all sale of goods transaction and argued that PW1 never furnish consideration to defendant.

As the meaning of consideration

Lust J in Curie vs Misa state that a valuable consideration in the eyes of law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, debridement, loss or responsibility, given or suffered or undertaking by the other party.

In the instance case Exh. A.& A1 speaks for itself as per the consideration of N320,000 given to the defendant, therefore to my view PW 1 has furnished consideration to defendant and I so hold

With regard to section 3 of sale of good law of Bauchi state, the position of our law is certain that sales of good law or sales of good act does not apply to the contract of real property, I refer myself to section 1 (1) 62 (1) of SOGA which define goods to include chattel personal (no real property like land is involve)

The record of this court disclosed that the subject matter of this case is landed property, therefore sale of good law/act cannot apply to this case and I so hold

On the whole I resolve the lone issue formulated in favor of the claimants as their evidence are legally convincing, they prove their case by preponderance of evidence, therefore judgment is hereby entered against the defendant and I hereby make the following orders: -

- 1. AN ORDER of this Hon. Court against the defendant to pay the sum of N380,000 only being the amount of money collected from the claimants for the purported land transaction
- 2. N10,000 only as. Cost of this action

This Case is decided today being 29/12/23 there is right of appeal to H C within 14 days by the aggrieved party



31/1/24

