IN THE DISTRICT COURT OF BAUCHI STATE
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT SMALL CLAIMS COURT N0 1. BAUCHI

SUIT NO SCC/BH/59/2023

Before His Worship- GARBA ABDULLAHI

BETWEEN

JAIZ BANK PLC..... CLAIMANT

AND

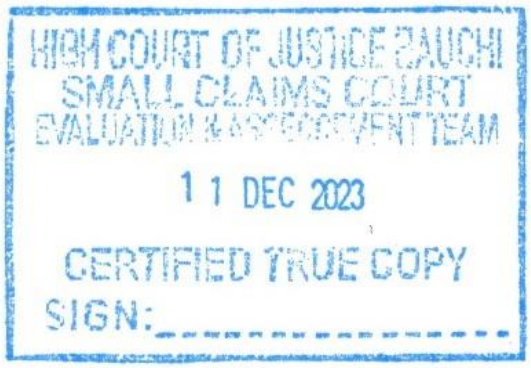
ABDULKADIR ALHAJI ABBA.....DEFENDANT

CLAIMANT –Presented by Abdullahi Moh'd Ningi.

DEFEENDANT – Present speaks Hausa language.

Y U Kabir Esq for the claimant

Z A Libata Esq for the defendant



JUDGEMENT

This case was filed by the claimant in line with small claims court practice direction N0 2 of 2022, the claimants has fill and filed small claims Court forms SCA 2 & SCA 3 dated 8th day of September 2023, and the defendant has been duly served with the process of this court as evidenced by affidavit of serviced dated 19th September, 2023 deposed to by one Abdussalam Abdullahi a bailiff of this Court

The claimant praying for the following reliefs; -

1. AN ORDER against the defendant to pay the sun of ₦999,950.84 only balance of the loan facility of ₦I.5 Million collected from the claimant
2. Cost of this action and filling fees ₦9,000,00K

On the day fixed for hearing the claimant bring one witness who testify as CW1 and tendered 6 Exh Mark as "A", "A1", "B", "C"," D" & "É" respectively thereafter close his case, while the defendant in his effort to defend himself testify as DW 1,

thereafter close his case consequent upon which the parties filed, exchange and adopt their final written address

The learned counsel to defendant Z A Libata Esq in his final address has distilled a single issue for determination which is hereby reproduce to avoid doubt as follows; -

"Whether the plaintiff/Claimant is able to prove his case on the balance of probability as set out by law"

The learned counsel answers the lone issue in negative and submitted that, the burden of proof is on he who assert and that burden has to be discharge he refer the court to section 131 of E A 2011 as amended.

He further argued that CW1 during cross examination told the court what he informed the court is the information he got from the bank, he was not directly involve with the defendant, he was not the one who was approached by the defendant, and he don't know when the loan was approved.

He further argued that the evidence of the plaintiff is at variance with the pleadings therefore goes to no issue urged the court to so hold he cited the case of OKOKO VS DAKOLO (2006) 27 NSCOR PG 259 AT 266 R 12.

The learned counsel further argued that under cross examination all the evidence he gave before the court was what he found in the bank which invariable speaking means he was told by someone in the bank, therefore is hearsay evidence he urged the court to so hold, he refer this court to the case of NWOFOR VS OBIEFUNA (2011) 1 NWLR 9PT 1227 PG 205 AT 436 R 1-5

He further submitted that PW1 during cross examination stated that claimant is the buyer and the same time is the seller, therefore it cast doubt as to evidence of the transaction, urged the court to so hold and discard all the evidence as they create doubt he cited the case of AKANMU VS ADIGUN (1993)7 NWLR (PT 304 PG 218 AT 235 r 1 -2) and AREMU VS ADETORO (2007) 31 NSCQR pg. 62 at 65 R 4

He further submitted that, the defendant did not admit the claim of the claimant he cited the case of MUNIYAS (NIG) LTD VS ASHAFA (2011)6 NWLR (1242) PG 85 AT 92 R 11

Finally, he urged the court to upheld his submission and dismiss the claimant case

The learned counsel to the claimant Y U Kabir Esq filed his final written address dated 3/11/23 where he formulated two issues for determination which are hereby reproduce to avoid doubt as follows; -

1. Whether from the facts and circumstances of this natter, the claimant has proven his case as required by the law
2. Whether the testimony of the defendant has established a good defense to the claimant's claim

On issue No 1, the learned counsel answers it in affirmative, and argued that PW1 has made it clear the defendant approach the claimant (Jaiz Bank PLC) sometimes in the year 2019 to obtained a lone facility via service name MURABAHA where he picks and filed a form for that purpose he refer this court to Exh. A, he equally informed the court that, upon received of Exh A (application form) from the defendant, the claimant disbursed the sum of ₦1,500,000;00K via an offer letter (Exh. A1 on which it was clearly stated the claimant make up profit and the total sale price, defendant accepted the offer via a memorandum of acceptance, he refers the court to last page of Exh. A1

He further submitted that, defendant is expected to upset the entire facility within 12 months of the disbursement which has elapse since, he only made some payment but held back the sum of N 999,950.84 as at the time of filling this case he refers the court to Exh. D & E (especially transaction with serial N0 111 of 4th September, 2023) base on the above Para. The claimant served the defendant with a letter of demand in line with the practice direction of this court

The learned counsel submitted that all the document admitted in this case are relevant and the court can safely act on them in determination of this action he cited the case of HAMZA VS STSTE (2019)16 NWLR PT 1699, at 423 para. F-G where the court held that

"admissibility, one of the cornerstone in the law of evidence, is based on relevancy, a fact in issue is admissible if it is relevant to the matter before the court. Relevancy is therefore a precursor to the admissibility in the law of evidence"

The learned counsel argued that the evidence of PW1 was not successfully challenge therefore urge the court to deem it admitted, he cited the case of GOV. ZAMFARA STATE VS GYALENGE (2013) 8 NWLR (PT1357)462 AT 469 R 13, where the court held that

"evidence that is neither attacked nor successfully challenged is deem to have been admitted and the court can safely rely on it in the just determination of the case"

The learned counsel argued that the defendant did not response to the demand letter served on him and the law is trite that failure to respond to the business letter which by a nature of its content require response amount to admission he cited the case of REMATON SERVICE LTD VS NEM INSURANCE PLC (2019) LPELR-49330 (CA)

He finally submitted that the claimant has successfully prove his case as required by the law and urged the court to so hold

On the 2nd issue formulated, the learned counsel answers it in negative as the defendant did not deny but rather admitted the following during cross examination

1. That he approaches the claimant for the loan facility.
2. That the claimant did gave him loan as applied for.
3. That he did not upset the loan facility granted to him.

All these admissions come from the defendant therefore make the work of the claimant easier as the claimant need not to further search for evidence he refers the court to the case of LAWAN VS FRN (2022) PT 1829 AT 301.

The learned counsel argued that the defendant has no reasonable defense, all what he could do was to make general travers in denying the claim of the claimant without adducing any evidence in rebuttal of the claim he refers the court to FORM SCA 5.

He contended that it is an established principles of law as held in the case of E S C S C VS GEOFREY (2006) 18 NWLR PT 1011 at 299 where the court held thus

"averment in pleadings in respect of which evidence is not adduced are deem abandoned"

He further contended that the defendant has no defense, it is the counsel to the defendant that want to show through his address that the defendant has a defense, the court in the case of B S J S C VS DANJUMA (2017) NWLR PT 1565 at 436 held thus,

"no matter how beautiful a counsel written address is, it cannot take the place of evidence, a court is bound by the evidence before it and not the address of counsel which is not supported by material evidence"

He finally urged this court to resolve this issue for determination in favor of the claimant, and accordingly enter judgment in favor of the claimant.

After hearing the submission and argument of both counsels to the claimant and that of the defendant and having taken into consideration the facts and circumstances of this case as well as the evidence placed before the court this Hon. court formulate lone issue for determination thus:

"whether or not the claimant has proved his case to the balance of probability to entitle him 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 the strength of his own case and not on the weakness of the defendant. Put it differently, 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 YAHI MAINA & ORS (2021) LPELR-11919 C A, LONGE VS CBN (2006) 3 NWLR (PT 11)24.

The going by the above it is crystal clear that the crux of this matter is loan agreement therefore the answer the following question is became absolutory necessary.

1. Weather there's an agreement for the facility between the parties in this case

2. Weather there's a conditions or stipulations in respect of the said agreement

3. Weather the parties have fulfilled their part of obligation in respect of the said transaction

On the 1st question, it is in record of this court that, PW1 testified to the effect that, the defendant approaches the claimant for a facility of ₦1,5 million naira only, sometimes around 21/7/2019 and it was approved and offer later was

issued to him on 1/8/2019, Exh. "A" i e MSME Facility Application Form revealed the name of the parties, the telephone number of the defendant, the name and address of the vendor, the amount of facility requested as well as the signature of the defendant, I refer myself to Exh A before the court, it is also in evidence that claimant granted the said application on 2/8/2019

It is also part of the testimony of PW 1 before this court that, defendant has signed a memorandum on acceptance on 1/8/2019 thereafter the facility was disbursed to him on 2/8/2019 as requested, Exh. "A1" is an offer letter for sale of goods/asset under Murabaha finance which disclose the name, nature, quality and quantity as follows

a) Description of the goods, Boutique and baby care
b) Place of delivery of the goods, Wunti market Bauchi
c) Sale price of the goods: price ₦1.5 million, Bank's markup profit (using 20% per annum) ₦248,610.00 and total sale price is ₦1.748,610.00 only approximately and the period for payment of sale price is 18 months, based on the above it is obvious that there was a transaction for the facility between the parties in this case and I so hold

On the 2nd question as to whether there was a conditions or stipulation in respect of the said facility between the parties PW 1 INFORMED THIS Hon. court that a facility was disbursed to defendant on 2/8/2019 the tenure of the loan is 18 months, it also contain in Exh "A1" and the period has lapse since on 2/2/21, as at 22/9/23 there was an understanding balance of N999,150.84. from the above testimony it is beyond doubt that, the parties had at the time of the transaction agreed that the defendant will upset the entire loan within 18 months and now the period has lapse, based on the above contradicted evidence I hold the view that there was a condition for the defendant to upset the entire loan facility within 18 months and I so hold

On the 3rd (last) question whether parties in the said transaction has fulfilled the their part of the obligation, it is obvious that the claimant has disbursed the sum of N1.5 million to the defendant as loan since on 2/8/2019 to be paid within 18 month the principal amount and the profit the total sum of N1.742,737.84k only as at 11/9/23 the defendant accepted the offer but he failed to upset the loan which has been in lost position since 2/2/2021 the facility tenure is 18 months which commenced on 5/8/2019 and is due on 2/2/21. The record also shows clearly that defendant has been served with a letter of demand by the claimant to

upset the facility but defendant refuse to respond to the said letter I refer myself to Exh. "C" before this court

Base on the above piece of evidence it is beyond controversy that, the defendant has collected the facility from the claimant and failed to upset it as at when due and I so hold.

The above testimony of PW1 was not contradicted, shaken or controverted during cross examination, and the law is settled that such type of evidence the court is duty bound to safely relied on for the just determination of a matter before it, the document admitted before the court all are relevant to the case at hand therefore it will best served the interest of justice to safely act on them in the determination of this suit, and I so hold, I placed reliance on the case of Hamza vs State (supra)

in his defense DW 1 di not denied the he collected the facility of 1.5 Million from the claimant, as well the tenure of the facility rather he stated that he had paid some part of the facility but did not prove that assertion before the court, in our law certain principles are fundamental one is that he who assert must prove, therefore assertion without evidence in support goes to no issue and I so hold

to my own view defendant in his defense placed nothing before the court to exonerate him from liability

the learned counsel to defendant in his eloquent and brilliant final address argued that the testimony of PW 1 should be discountenance by the court being a hearsay because he is not the person who enter into transaction with the defendant, it has been a long time practice indeed well settled, that the bank and any other artificial person recognize by law can operate it activities through its agents, directors, staff e.t c, it is in record that PW1 is a staff of the claimant Jaiz Bank plc, therefore what he told the court to me can never be regarded as hearsay and I so hold, on the whole the court indeed this court act on the evidence place before it not the address of the counsel, the law is settled that the address of the counsel no matter how brilliant cannot take the place of evidence I refer myself to the case of ACCESS BANK PLC VS K C INTERNATIONAL LIMITED (2018)

On the whole it is my humble view that the sale of justice tilt to the side of the claimant discharged the burden place on it, prove the case to the balance of probability, therefore and I hereby resolved the lone issue formulated in favor of

the claimant, Judgment is hereby entered against the defendant, consequent upon which the following orders are hereby made

1. AN ORDER against the defendant to pay the sun of ₦999,950,84k only as outstanding balance of facility collected

2, An order for cost of ₦9,000 only to the claimant.

This case is decided today being 7/12/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party.

HIGH COURT OF JUSTICE BAUCHI
SMALL CLAIMS COURT
EVALUATION MANAGEMENT TEAM
11 DEC 2023
CERTIFIED TRUE COPY
SIGN:
11/12/23

GARBA ABDULLAHI
CHIEF MAGISTRATE