

**IN THE CHIEF MAGISTRATE COURT OF KANO STATE
IN THE KANO SMALL CLAIMS COURT
HOLDEN AT KANO**

SUIT NO: SCC4/02/19

BETWEEN:

HAJ RABI Y MUDI.....PLAINTIFF

AND

ABDULLAHI HABIBDEFENDANT

JUDGMENT

The Plaintiff in this case approached this honourable court on the 18th day of November, 2019 by way of filling a Civil Demand Form SCA1 and a complaint Form SCA2.

The Plaintiff claimed gainst the Defendant the sum of One Hundred Thousand Naira only (N100,000.00) as remaining balance from an agreed iced fish business.

The Defendant on the other hand denied the claim via Form SCA5. Subsequently, the Defendant was summoned and the case was mentioned on the 24th of December, 2019 and further fixed for hearing.

In an attempt to establish the claim against the Defendant, the Plaintiff called in one witness and tendered three (3) exhibits. The Defendant on the other hand presented one witness and tendered two (2) exhibits.

It is a well settled principle of law that evaluation of evidence with a view to ascribing a probative value on it, is one of the primary duties of a trial court.

It is in line with the above principle that I deem it imperative to summarize the evidence so far adduced by both parties with a view to ascribing probative value and see where the scale of justice tilts to arrive at a just conclusion.

PW1 who is one Rabi Mudi, a civil servant, muslim health worker with Murtala Mohammad hospital Kano.

The witness after identifying the Defendant as her fish customer when she buys fish, told this honourable court that one day she made an enquiry into the fish business and the Defendant suggested that she should start with a capital of Two Million Naira only (N2,000,000.00). Later, it was agreed that she can start with a capital of Seven Hundred and Fifty Thousand Naira only (750,000.00).

This witness stated that she gave the Defendant the sum of N400,000.00 first, then gave N35,000.00 after some days and later N250,000.00 all totaling N750,000.00.

The witness also stated that an agreement was drafted and signed that the Defendant will be paying her the sum of N40,000.00 monthly as profit.

PW1 further stated that at the start of the business, the Defendant paid her the agreed sum of N40,000.00 only twice and then stopped. The witness further stated that because of the Defendant's defaulting to pay the agreed, she demanded for a return of her capital and so the Defendant gave her the sum of Two Hundred and Fifty Thousand Naira (250,000.00).

This witness also stated that after a meeting with the defendant and his brother another agreement was reached that the Defendant will be paying her N20,000.00 monthly instead of the N40,000.00 previously agreed. PW1 stated that this new agreement was never fulfilled and so she demanded for her remaining capital.

PW1 further stated that the Defendant then paid her N200,000.00 (Two Hundred Thousand Naira only) out of the remaining Five Hundred Thousand Naira only (N500,000.00).

PW1 further stated after about four months, she was also paid the sum of One Hundred Thousand Naira only (N100,000.00) and another One Hundred Thousand Naira only (N100,000.00) both in her account.

The witness also stated that her balance now with the Defendant is the sum of One Hundred Thousand Naira only (N100,000.00) which she said the Defendant has since refused to pay.

It is through this witness that exhibit 1a and b, 2 and 3 were tendered and admitted in evidence.

DW1 whose name is Abdullahi Habib a 39 years old, muslim, businessman of Daurawa, Maiduguri Road, Kano.

This witness after identifying the Plaintiff, stated that the Plaintiff asked to start an iced fish and chicken business with him.

The witness further stated that an agreement to open a new business of iced fish and chicken was agreed and started. However, DW1 stated that after buying the product, there was a general issue with the electric power supply and all the product spoiled. DW1 stated that he called and informed the Plaintiff and also promised to return back her money.

DW1 also stated that the Plaintiff gave him the sum of N750,000.00 (Seven Hundred and Fifty Thousand Naira only) to start the business. Also stated that an agreement was reached for him to be paying her the sum of Forty Thousand Naira only (N40,000.00) monthly as profit.

The witness further stated that after the electric power fault, they then agreed that the Plaintiff will be paid N20,000.00 (Twenty Thousand Naira only) monthly instead of N40,000.00 previously agreed.

This witness further stated that the sum of N40,000.00 was given to the Plaintiff on the 28th February, 2017, then the sum of N20,000.00 was given twice on the 31st of November, 2017 and on the 31st of December, 2017.

DW1 also stated that they started the business in February, 2017 and the payment of the agreed N40,000.00 was to start at the end of February, 2017 and so it started.

The witness further stated that the whole business stopped on the 22nd of May 2019 and the sum of N60,000.00 was given to the Plaintiff as part of her capital and also the sum of N30,000.00 was given in July also as part of her capital.

In his response to question put to him during cross examination, DW1 said that he collected the sum of N750,000.00 from the Plaintiff as capital and agreed to pay the sum of N40,000.00 as profit at the end of every month.

DW1 also responded that he cannot remember anything regarding the months he defaulted paying the N40,000.00.

DW1 also responded that when the Plaintiff asked to be paid for her 3 months, she was referring to her profit of the 3 months he defaulted.

That is the case of the Plaintiff and the Defendant.

Now having got the ball rolling by summarizing the evidence of both the Plaintiff and the Defendant, let me now place same on the scale of justice with a view to arriving at a just conclusion.

It is a trite law that he who assert must prove. See the case of AMADI vs. THE STATE (1993) SCNJ also S.135 Evidence Act 2011.

The evidence of the Plaintiff as PW1 is to the effect that she gave to the Defendant the sum of (N750,000.00) Seven Hundred and Fifty

Thousand Naira only via a mutual agreement that the Defendant will be paying the sum of N40,000.00 (Forty Thousand Naira only) as profit every month.

The Defendant somehow, somehow, after making the first two installments payment, defaulted in fulfilling his obligations.

This conduct of the Defendant led to the Plaintiff's decision to retrieve her capital, as a result of which the Defendant paid the sum of Two Hundred and Fifty Thousand Naira only (N250,000.00), then another Two Hundred Thousand Naira after about two months. Again, the Defendant paid the sum of Two Hundred Thousand Naira in two installments of N100,000.00 each.

Now computing the above figures, one can understand that a balance of One Hundred Thousand Naira only (N100,000.00) has not been settled as per the claim of the Plaintiff.

It is settled law that parties are bound by their agreement even though in this case, the Plaintiff did not raise the issue of breach of contract.

Now, the Defendant in his defence did not discredit the testimony of the Plaintiff by tendering a document which on the face of it contradicts the testimony of the Plaintiff in any way but rather strengthening the evidence of the Plaintiff by tendering a document which on the face of it contradicts the testimony of the Defendant.

For the purpose of clarity, DW1 said and I quote:

“...on the 22nd of May, 2017, the whole business was stopped, and the sum of Sixty Thousand Naira (N60,000.00) was given to the Plaintiff as part of her capital, then in July, the sum of N30,000.00 was given to the Plaintiff as capital too”

But the document he tendered to wit Exhibit B1 shows that the money paid by the Defendant is an accrued profit for 3 months.

It is clear that the evidence of the Defendant is in disagreement with the content of the exhibit tendered by him.

It is settled that where two pieces of evidence contradict each other, the court should reject all, especially where such contradiction happens to be a material contradiction. See AREGU vs. THE STATE (2013) 12 NWLR pt. 1367 p. 92.

Furthermore, the essence of cross examination is to discredit the evidence given by the witness. Where a party fails or refuse to cross examine a witness, the necessary inference that can be drawn from such conduct is that facts stated in the evidence have been admitted to be the true and correct position.

Now in the instant case, the Defendant failed and or refused to cross examine the witness despite the opportunity given to him.

And the Defendant DW1 contradicts himself going by his evidence in chief, the document he tendered and relied upon, Exhibit B1.

In view of the foregoing, I am satisfied that the Plaintiff has proved her case on the preponderance of the weight of evidence and balance of probability and I hereby enter judgment in favour of the plaintiff against the Defendant in the sum of One Hundred Thousand Naira only N100,000.00.

I further order the Defendant to pay the sum of N5,000,00 (Five Thousand Naira only) as cost of filing this action. And also to pay the sum of Ten Thousand Naira (N10,000.00) as general damages.

The payment should be made with immediate effect.

Signed
Zuhura Madaki

14/10/2020

COUNSEL

Faisal Hassan Esq & Aminu Aliyu Umar Esq for the Plaintiff

Defendant-Self Represented