

**IN THE DISTRICT COURT OF PLATEAU STATE (SMALL
CLAIMS)**

**HOLDEN AT NO: 5 LUGARD ROAD, JOS
TODAY TUESDAY 26th MARCH, 2024**

SUIT NO: SDC/SC/J/5/004/2024

BEFORE HER WORSHIP:

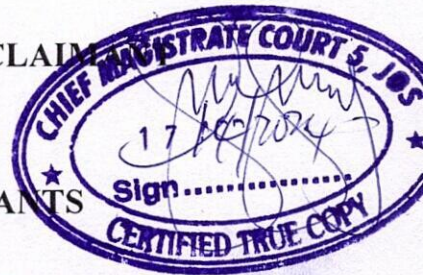
HON D.A NYAM SENIOR DISTRICT JUDGE

BETWEEN:

OKO GLOBAL MULTI BUSINESS LTD ----- CLAIMANT

AND

**1. BON BENJAMIN DANIEL
2. MRS ELIZABETH DANIEL } DEFENDANTS**



**CLAIM: ₦3,167.150.00 (THREE MILLION ONE HUNDRED AND
SIXTY SEVEN THOUSAND ONE HUNDRED AND FIFTY Naira ONLY)**

JUDGMENT

By a complaint FORM SCA2 accompanied by a summons FORM SCA3 dated and filed on the 18th January, 2024. The Claimant claims against the Defendants Jointly and severally are as follows:

- Indebtedness of ₦2,873.500.00(two million eight hundred and seventy three thousand five hundred Naira only)
- Legal fees of ₦287,350.00(two hundred and eighty seven thousand, three hundred and fifty Naira only)
- 10% post judgment interest

After series of adjournments to enable the Claimant effect service on the Defendants, the Defendants were subsequently served by substituted means and hearing in this suit commenced on the 21st March, 2024. PW1 was MR Alison.A.Oko, the Administrative Manager of the Claimant, Oko Global Multi Business LTD who testified as follows:

That the 1st Defendant was a staff of the Claimant, working at the Pankshin Branch of the Claimant Company while the 2nd Defendant is the guarantor of the 1st Defendant. That on the 13th September, 2023, the said shop was audited and it was discovered that 102 and a half bags of different products of fertilizers were missing which amounted to the total sum of ₦2,873,500.00(two million eight hundred and seventy three thousand five hundred Naira only)

That the 1st Defendant could not give account of the missing 102 and a half bags of fertilizers and subsequently wrote an undertaking to pay for the said missing fertilizers. That when the 1st Defendant could not pay the said amount for the missing bags and a half of fertilizer he undertook to pay, he was served a letter of demand by the Claimant but all to no avail.

PW1 also testified that he paid his lawyer the sum of ₦287,350,00 as legal fee (Two Hundred and Eighty Seven Thousand Three Hundred and Fifty Naira only) PW1 further testified that the guarantee Agreement, letter of demand to the 1st Defendant, letter of consent (undertaking) and the receipt for the payment of professional fees are annexed to the processes filed in this suit and marked as EXHs A,B,D & E respectively, wherein the court was urged to take judicial notice of same.

Claimant closed his case and the matter was adjourned for judgment.

I have carefully studied the case of the Claimant and meticulously perused the materials placed before me and my issue for determination goes thus:

“Whether from the evidence before this court, the Claimant is entitled to the reliefs sought”

It is trite law that he who asserts must prove. See **SECTION 131(1) EVIDENCE ACT 2011** which provides thus;

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existent of facts which he asserts shall prove that those facts exist”

See also the case of **MRS BETTY DAREGO V A.G LEVENTIS NIG LTD & 3 ORS LER (2015) CA/L/481/2011**. Where it was held by the court who asserts must prove.

SECTION 134 EVIDENCE ACT 2011 provides thus;

“The burden of proof shall be discharged on the balance of probability in all civil proceedings”

The Defendant in an attempt to prove his case called a lone witness and the court in line with **SECTION 122(2)(m) EVIDENCE ACT 2011** took judicial notice of the following exhibits annexed to the processes filed by the Claimant:

EXH A, a Guarantee Agreement between MRS Elizabeth Daniel (2st Defendant) and Oko Global Multi Business Ltd (Claimant) dated 6th August, 2023.

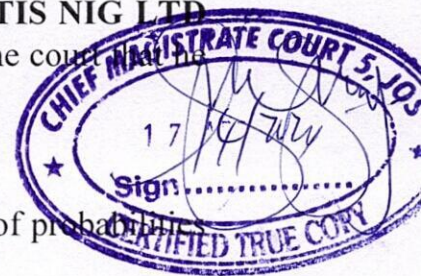
EXH B a letter of demand between Oko Global Multi Business Ltd and Bon Benjamin Daniel (2nd Defendant).

EXH D letter of consent dated 13th September, 2023 between the Management of Oko Global Multi Business Ltd and Benjamin Daniel the 1st Defendant.

EXH E a receipt for the payment of ₦287,350.00 as legal fees issued to Oko Global Business Ltd by Luke I. Muonanu & Co dated 8th November 2023.

The lone witness testified and was not cross-examined by the Defendants, it is trite law that unchallenged and uncontroverted evidence are deemed admitted and the court can positively act on same. I commend the case of **BUHARI V OBASANJO (2004) 144 LRCN 0723**.

The Defendants were served FORMS SCA 2, FORM SCA 3 & FORM SCA 5 by substituted means, reasons being that personal service on all the Defendants proved abortive. The defendants despite being aware of the pendency of this



suit, never put in an appearance to defend the claims against them neither did they send a representative nor advanced any reasons for their absence in court.

The Defendants did they fill an answer to FORM SCA 5.

ARTICLE 9 (3) DISTRICT COURTS LAW PRACTICE DIRECTIONS ON SMALL CLAIMS, 2022 provides thus;

(3) where a Defendant fails to fill an answer to the claim, such Defendant may be deemed to have admitted the claim.

The Defendants having failed to fill an answer to FORM SCA 5, they are deemed to have admitted the claims against them. And I so hold.

It is also trite and settled law that facts admitted needs no further prove. I commend OMAGURUWA V JAMB (2000) LPELR- 10317(CA).

In line with the above, judgment is accordingly entered in favor of the Claimant against the Defendants jointly and severally as follows:

-The Defendants are jointly and severally ordered to pay to the Claimant the sum of ₦3,167,150.00(three million one hundred and sixty seven thousand Naira only) as cost of the missing bags of fertilizer,

-the Defendants are jointly and severally ordered to pay to the Claimant the sum of ₦287,350.00(two hundred and eighty seven thousand three hundred and fifty Naira only) being of legal fee.

That is the judgment of the court.

RIGHT OF APPEAL

Signed:

Hon D A NYAM ESQ.

SDJ

26/3/2024.

APPEARANCES: E. N Dasoen for the Claimant who is not in court
DEFENDANT-NIL

