

IN THE DISTRICT COURT OF PLATEAU STATE[SMALL CLAIMS]

IN THE DISTRICT COURT OF THE JOS DIVISION

HOLDEN AT NO:5 LUGARD

TODAY 16<sup>th</sup> MAY,2024

BEFORE HER WORSHIP HONORABLE D.A NYAM

CLAIM NO: SDC/J/5/SC/003/2024

BETWEEN:

OKO GLOBAL MULTI BUSINESS LTD ----- CLAIMANT

AND

[1] ISREAL PHILEMON DAUDA  
[2] MUSA EMMANUEL ASHOM  
[3] JAPHETH SALEH } ----- DEFENDANTS

CLAIM:

#1,423,500.00{ONE MILLION FOUR TWENTY TWO THREE THOUSAND FIVE  
HUNDRED NAIRA ONLY}

100% POST JUDGMENT INTEREST.

#142,350.00{ONE HUNDRED AND FORTY TWO THOUSAND THREE  
THREE HUNDRED AND FIFTY NAIRA ONLY}

### JUDGMENT

By Complaint FORM SCA2 & Summons FORM SCA3, the Claimant claims against the Defendant jointly and severally the following;

Debt-#1,423.500,00 {one million four hundred and twenty-three thousand five hundred naira only}

10% post judgment interest.

*James J. Ifeoluwa*  
*Registrar*  
*SDCS LUGARD ROAD JOS*

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10% post judgment interest.

Professional fees-#142,350.00{one hundred and forty-two thousand three hundred and fifty naira only}

Court fees- #2.800.00{two thousand eight hundred naira only}

Making a total of #1,568,650.00[one million five hundred and sixty-eight thousand six hundred and fifty naira]

The Defendants being served with the originating processes,he completed and filed FORM SCA 5 Counter-Claiming the sum of #1,150,000.00 [one million one hundred and fifty thousand naira only] against the Claimant, the Claimant also filed a reply. Hearing commenced on the 19<sup>th</sup> March, 2024.

PW1 was MR Alison. A Oko who testified as follows;

That he is the Administrative Manager of the Claimant while the 1<sup>st</sup> Defendant was a Manager in one of the Claimant's branch, in Kafanchan and that the 2<sup>nd</sup>& 3<sup>rd</sup> Defendants are the 1<sup>st</sup> Defendant guarantors.

That on the 16<sup>th</sup> Sept,2023, the store under the management of the 1<sup>st</sup> Defendant was audited and it was discovered that 64 different products of fertilizer were missing and the Defendant could not give account of the missing goods. That the sum of the said missing bags of fertilizer is #1,423,350.00{one million four hundred and twenty-two thousand three hundred and fifty naira only}. Wherein the 1<sup>st</sup> Defendant wrote an undertaking to pay for the missing fertilizer but all to no avail.

That the Claimant engaged the services of a Legal Practitioner and paid the sum of #142,350,00[one hundred and forty-two thousand three hundred and fifty naira only] and paid #2,800.00[two thousand eight hundred naira as court fees]

PW1 also testified that all the Defendants were served letters of demand before the commencement of this suit. PW1 urge the court to take judicial notice of the following documents;

Letter of undertaking dated 16<sup>th</sup> Sept,2023,

Letter of demand served on all the Defendants,



Receipts of payment of legal fees paid to the law firm of Luke .I. Muonanu & co.

PW1 urge the court to assist him recover the debt from the Defendants.

During cross-examination PW1 testified that he cannot remember when the 1<sup>st</sup> Defendant was employed because his file is with the management and the 1<sup>st</sup> Defendant has been disengaged by the Claimant but does not know if the letter of disengagement was issued to the 1<sup>st</sup> Defendant.

That the 1<sup>st</sup> Defendant line of duty involves the overseeing of the affairs of the Kafanchan office and keeping the store and that there were other staff working under him.

That the 1<sup>st</sup> Defendant was arrested by the Kafanchan Police on a criminal complainant by him.

That the undertaking was written by him while the matter was already at the police station but was not written at the police station.

That he has an inventory of the fertilizer in the store signed by both parties but it is not before the court. That the matter is not at the Police Station for debt recovery but he does not know if the Police were able to recover anything. That the matter has been withdrawn from the Police Station but he does not have prove of that in court.

That he does not know if the Motor Bike of the 1<sup>st</sup> Defendant was confiscated by the Police.

The Claimant closed his prosecution and the Defendants enter their defense.

DW1 was the 1<sup>st</sup> Defendant who testified as follows;

That he was employed by the Claimant as a Sale Representative sometimes in 2021 and posted to the Pankshin Branch of the company. And was transferred to the Kafanchan Branch in 2023 as its acting Manager.

That him and the Administrative Manager of the Claimant audited the account of the company together but that the Administrative Manager said he was not satisfied with the auditing done and left.



That few days later he was arrested and handcuffed and got infected. And while in custody at the Kafanchan Divisional Police Headquarters, the Administrative Manager brought a different audit report and he was forced to sign.

That his guarantors, the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants were invited by the police and were able to raised #600,000.00[six hundred thousand naira] and that the Administrative Manager of the Claimant seize his Motor Bike.

The following documents were admitted in evidence and marked accordingly;  
statement of the 1<sup>st</sup> Defendant recorded that the Police Station as EXHD1/SDC/J/5/SC/003/2024,

photographs of the 1<sup>st</sup> Defendant with the hand infection as EXHD2{a}-  
{h}/SDC/J/5/SC/003/2024,

During cross-examination DW1 testified as follows;

-That he was forced to sign EXH1/SDC/J/5/SC/003/2024 by the Administrative -  
Manager of the Claimant and the Police.

-That he was not served a letter of demand and EXHF.

-That he was forced to paid about #1.2 million out of the money the Claimant is  
claiming from him but he has no prove of that.

-That he is counter-claiming for #1.150,000.00[one million one hundred and fifty  
thousand naira only] from the Claimant.

That he did not apply that his Motor Bike seized by the Police be returned to him  
and neither did the guarantors apply that the #600,000.00 collected from them by  
the Police be returned to them.

DW2 was Musa Emmanuel Ashom, the 2<sup>nd</sup> Defendant and he testified as follows;

That he was the 1<sup>st</sup> Defendant guarantor when he was employed by the Claimant  
in 2021. That sometime last year, he was called by the police in Kafanchan that  
the 1<sup>st</sup> Defendant is indebted to the Claimant to the tune of about #1.4 million.  
That him and the other guarantor should pay the money or they will be detained.  
That the 2 guarantors were able to raised #600.000.00



During cross-examination PW2 testified that he guaranteed the 1<sup>st</sup> Defendant to the tune of #2 million naira. That in EXHE the Claimant is claiming the sum of #123,500.00.

That the said #600,000.00 was paid to the representative of the Claimant at the Police Station but he has no prove of that. That the money was paid to the Police directly and he did not apply that the money be returned to him.

DW3 was Libisan Japheth Saleh, the 3<sup>rd</sup> Defendant who testified as follows;

That he guaranteed the Defendant in 2021 and in 2023 he was called by the Police in Kafanchan and was told that there was a shortage at the Company where the 1<sup>st</sup> Defendant work. That he requested for the said audit report but he was threatened. That the guarantors were able to raised the sum of #600,000.00. That he was served a letter of demand.

During cross-examination PW3 testified as follows;

-that he did not reply the letter of demand, and he has not paid any money after the letter of demand was served on him and the Claimant is claiming the sum of #1,423,500.00[one million four hundred and twenty three thousand five hundred naira only]

-that he paid #6000,000.00 to the Police but he did not apply that the money be returned to him.

At the closed of the defence, both parties filed their respective Final Written Addresses which was also adopted by both of them.

The Defendant/Counter-Claimant formulated I issue for determination wit;

“whether the Claimant has proved that he is entitled to his monetary claim”

The Defendant submitted that the Claimant is placing heavy reliance on the undertaken dated 16<sup>th</sup> Sept,2023 as the major proof that the Defendants are indebted to him whereas same was denied by the 1<sup>st</sup> Defendant as it was signed under duress at the Police Station and cited ISA V GAMANDI & ORS[2014]LPELR-23239 [CA] to submit that where a person signed a document in the presence of a Police Man relating to a civil matter, it should be viewed with suspicion.



The 1<sup>st</sup> Defendant also argued that he was detained between 25<sup>th</sup> August, 2023- 9<sup>th</sup> Oct, 2023 and EXHD1/SDC/J/5/SC/003/2024 & EXHD2/SDC/J/5/SC/003.2024 are evidence that he was tortured and made to signed the undertaken.

The Defendants also cited KEKONG V STATE [2017] 18 NWLR [pt.1596] 108, 141-142 to submit that the undertaken dated 16<sup>th</sup> Sept, 2023, letters of demands and receipt of payment of legal fees were not tendered as exhibits but only that judicial notice of them be taken, that only documents tendered as exhibits are evidence before the court and the court can not act or utilize documents or facts that is not before the court in the determination of any disputed fact or matter before the court, and urge the court to hold that the documents are not before it.

The defendants also submitted that there is no written inventory signed by the company and the 1<sup>st</sup> Defendant to indicate the company handed over some certain number of fertilizer and out of which 64 were missing. The Defendant urge the court to dismiss the claim of the Claimant and to grant his Counter-Claim of #1,200,000.00[one million two hundred thousand naira only]

The Claimant Final Written Address is dated and filed on the 30<sup>th</sup> April, 2024. the Claimant issue for determination goes thus;

“whether the Claimant has proved his case to warrant recovery of its debt from the Defendants jointly and severally”

The Claimant submitted that the Defendants are jointly and severally liable to pay the worth of the missing fertilizer. That the Claimant has proved his claim, that the 1<sup>st</sup> Defendant by defaulting in the payment of the missing fertilizer the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants automatically become liable to pay same.

The Claimant also submitted that the undertaken dated 16<sup>th</sup> Sept, 2023, the letters of demand, receipt of payment of legal fee are credible evidence before the court and cited SECTION 222[1] EVIDENCE ACT 2011 to argue that the said documents are relevant facts before the court.

Claimant argued that the 1<sup>st</sup> Defendant testified that he remitted the sum of #1,150.000.00[one million one hundred and fifty thousand naira only] out of the money he is indebted to the Claimant, which shows that he admitted the claims of the Claimant that he is indebted.



On the 1<sup>st</sup> Defendant's Counter-Claim, the Claimant argued that the 1<sup>st</sup> Defendant testified that his guarantors paid #600,000.00[six hundred thousand naira only] to the Police at the Kafanchan Police Station and also that his Hijor Motor Cycle worth #500,000.00 {five hundred thousand naira only} was seized by the same police and not the Claimant and that he has not applied to the Police to have the said money and Motor Cycle returned. Claimant urge the court to dismiss the 1<sup>st</sup> Defendant Counter-Claim.

After a calm consideration of the case of the Claimant and a perusal of the materials placed before me . The next time to do is to critically analyzed the facts before me vis a vis the law. To do that I have distilled one lone issue for determination and consideration and it goes;

“whether from the totality of evidence before the Hon.Court, the Claimant is entitled to the judgment of the court”

It is a well established principle of law that he who asserts must prove. I commend **SECTION 131 EVIDENCE ACT 2011 & the case of MRS BETTY DAREGO V A.G LEVENTIS [NIG] LTD & 3 ORS LER [2015] CA/L/481/2011.**

In **AUGUSTINE & ANOR V EKIMOGUN MICRO FINANCE BANK [NIG] LTD [2020] LPELR-50538 [CA]** It was held that;

“ the mute but legendary principle on proof is that the burden of proof is on the party who alleges. The phrase that “he who asserts must prove” has become a sing song”: **DAUDU V NNPC [1998] 2 NWLR [pt. 538] 355; LONGE V FBN PLC [2006] 3 NWLR [pt.228] & ILIYA & amp; ANOR V AMU & amp; ANOR [2019] LPELR-47048 [CA]**

The onus of proving an allegation is on the Claimant and the onus does not shift until he has proved his case on the preponderance of evidence/balance of probabilities. I commend **SECTION 134 EVIDENCE ACT 2011 & the case of MRS BETTY BETTY DAREGO V A.G LEVENTIS [NIG] LTD & 3 ORS[*supra*]**

It is after the burden of proving the case has been discharged in accordance with the above principles of law that the burden shifts and continues to shift, but where a party fails to discharge this burden then the opponent needs not prove any fact and the party alleging cannot rely on the opponent's case. I commend



the case of **IMAM V SHERIFF [2005] 4 NWLR [pt. 919] 80; AGBI V OGBEH [2006] 11 NWLR [pt.990] 65.**

The Defendant has argued that the undertaken dated 16<sup>th</sup> Sept, 2023, letters of Demand and receipt of payment of legal fee where not tendered and admitted in evidence but that the Claimant only applied that the court should take judicial notice of same. Hence the court is not allowed to utilized the said documents in determining the issues before it. The cases cited by the Defendant in support of his argument is taken out of context and it is distinguishable from the instant case. In the case of **OJONYE V ONU & ORS [2018] LPELR-44212 [CA].** The court of Appeal held per Gadumje JSC [pp14-15] para E-A thus;

“the lower court was entitled to look into any document in the court’s record and make use of it in order to arrive at a just decision. When a document is in the record of the court , it cannot be a new issues on which a judge is precluded from looking at. This court has in a number of decided cases held that a court of law is entitled to look into it’s record and make use of any document it considers relevant in determining issues before it. see **FUMUDOH V ABORO [1991 ]9 NWLR [pt.214] 2020 at 229, AGBAREH & ANOR V MUMRA & 2 ORS [2008] 2 NWLR [pt.1011] 378 at 411-412 & BADEJO V MINISTER OF EDUCATION [1996] 9-10 SCNJ 51”**

The Supreme Court went further to say that;

“it is the law that a court is entitled to look at the documents in the court’s file which are not tendered as exhibits and such documents can only be utilized to support already established facts”

In the instant case, it is already in evidence and the PW1 has already established the fact that the 1<sup>st</sup> Defendant has signed an undertaking on the 16<sup>th</sup> Sept, 2023 to pay for the missing bags of fertilizer, all the Defendants were served with the letters of Demand which they had acknowledged receiving and also that the Claimant paid the sum of #142,350.00 [one hundred and forty two thousand naira only] as legal fees. All these documents were also served on the Defendants. Hence these are not new facts that precludes the court from utilizing them in arriving at a just decision.



In view of the above, the court has taken judicial notice of the under listed documents;

-EXH A- Guarantee Agreement form of the 2<sup>nd</sup> Defendant,

-EXH B- Guarantee Agreement of the 3<sup>rd</sup> Defendant,

-EXH C-Undertaking dated 16<sup>th</sup> Sept, 2023,

-EXH D- Letter of Demand addressed to the 3<sup>rd</sup> Defendant,

-EXH E- Letter of Demand addressed to the 2<sup>nd</sup> Defendant,

EXH F- Letter of Demand addressed to the 1<sup>st</sup> Defendant,

EXH G- Receipt of payment of legal fee.

PW1 testified that the store under the management of the 1<sup>st</sup> Defendant was audited and it was discovered that 64 bags of various brand of fertilizer were missing which amounted to the sum of #1,423,500.00 [one million four hundred twenty three thousand five hundred naira only] and that the Defendant signed an undertaking to pay for the missing fertilizer. I refer to the letter of undertaking dated 16<sup>th</sup> Sept,2023 and marked as EXHC.

PW1 admitted while being cross-examined that he does not have an inventory of the number of bags of fertilizer supplied to the 1<sup>st</sup> Defendant and how many are missing. The 1<sup>st</sup> admitted signed an undertaking admitting that certain bags of fertilizer are missing under his watch and he undertook to pay for them. It is trite and settled law that facts admitted needs no further prove.

The 1<sup>st</sup> Defendant's argument that the said undertaking was signed by him under duress is an afterthought reason being that the 1<sup>st</sup> Defendant as DW1 testified that he remitted the sum of #1,150,000.00 out of his indebtedness to the Claimant and remaining the sum of #273,500.00 as the balance which he is Counter-Claiming against the Claimant. This simply shows that the 1<sup>st</sup> Defendant has admitted his indebtedness to the Claimant. It has become a sing song that facts admitted needs no further prove. I commend the case of **AKINYEDE OLAIYA V THE STATE LER [2017] SC 562/2614**. Where the Supreme Court held thus;

“ facts admitted, or facts not disputed need no further proof. They are, in law taken as proved and/or established” And I so hold.



What is not in doubt in this suit is that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the 1<sup>st</sup> Defendant guarantors, they acted as his guarantors when he was employed by the Claimant to the tune of #2,000,000,00 [two million naira only] each. The Defendants as DW1, DW2 & DW3 and the Claimant as PW1 attested to that fact. This is also evidenced by EXH A & EXH B annexed to the processes filed by the Claimant. It is trite that facts admitted needs no further prove. See **AKINYEDE OLAIYA V THE STATE [supra]**.

Now the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants are sued as the guarantors of the 1<sup>st</sup> Defendant. A guarantor has been defined to mean party who helps a contracting party to get credit [loan or mortgage] or undertakes to fulfil certain terms of a contract on behalf of a contracting party in the event of default. A guarantor undertakes someone else's liability by promising to perform certain duties which ordinarily ought to be done by the contracting party. Thus a guarantor is a party to the contract and the term of the contract can be enforced against him depending on the extend of liability he undertakes to bear in the event of default by the party he guarantees. I commend the case of **UMEGU V OKO [2001] 17 NWLR [pt. 741] pg 155 paras F-H**.

The 2<sup>nd</sup> & 3<sup>rd</sup> Defendants by agreeing to act as guarantors to the 1<sup>st</sup> Defendant becomes parties to the contract between the Claimant and the 1<sup>st</sup> Defendant, hence parties to the suit between the Claimant and the 1<sup>st</sup> Defendant.

It is note worthy that when a debtor defaults, the creditor has the discretion to pursue either the guarantor, the debtor or both for recovery of the debt owed. In the instant suit, the creditor, that is the Claimant has elected to pursue both the debtor that is the 1<sup>st</sup> Defendant and the guarantors that is the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants. Hence the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants are equally liable to the Claimant and I so hold.

As stated earlier in this judgment, the law is trite that he who asserts must prove and also that the standard of proof in civil cases is on the balance of probabilities or preponderance of evidence. The Supreme Court in the case of **ABISI V EKWEALOR [1993] NWLR [pt. 302] 643** had this to say;

“before a judge whom evidence is adduced by the parties before him in a civil case comes to a decision to which evidence he believes or accepts and which he rejects, he should first of all put the totality of the testimony



adduced by both parties on that imaginary scale; he will put the Plaintiff on one side of the scale and that of the Defendant on the other side and weigh them together, he will then see which is heavier not by the number of witnesses called by each party, but by the quality of probative value of the testimony of those witnesses. This is what is meant when it is said that a civil case is decided on the balance of probabilities, therefore, in determining which is heavier, the judge will naturally have regard to the following:

- [a] whether the evidence is admissible;
- [b] Whether it is relevant;
- [c] Whether it is credible;
- [d] Whether it is conclusive; and
- [e] Whether it is more probable than other given by the other party.

Finally after invoking the law, if any, that is applicable to the case, the trial judge will then come to his final conclusion based on the evidence which he has accepted"

The Hon. Court has put the evidence adduced by both parties in this suit on an imaginary scale and the evidence adduced weigh heavier on the side of the Claimant, that is, it tilts in favor of the Claimant. The Claimant has thus discharged the onus of proof placed on him by the Evidence Act and has convinced the Hon. Court that he is entitled to the judgment of the court.

In view of the above, judgment is accordingly entered in favor of the Claimant and against all the Defendants jointly and severally as follows;

-the Defendants are to pay to the Claimant the sum of #1,423,500.00 [one million four hundred and twenty three thousand five hundred naira only] being debt for missing bags of fertilizer,

-the Defendants are to pay to the Claimant the sum of #142,350.00 [one hundred and forty two thousand three hundred and fifty naira only] being legal fee,

-the Defendants are to pay to the Claimant the sum of #2,800.00 [two thousand eight hundred naira only] as court fee.



That is the judgment of the court

## **RIGHT OF APPEAL.**

### **COUNTER-CLAIM**

Upon being served with the Claimant's originating processes FORM SCA2 & FORM SCA 3, the 1<sup>st</sup> Defendant in line with **ARTICLE 9[1] PLATEAU STATE SMALL CLAIMS COURTS PRACTISE DIRECTION, 2022** completed and filed a Counter-Claim [FORM SCA 5] dated and filed on the 26<sup>th</sup> Feb, 2024. wherein the 1<sup>st</sup> Defendant/Counter-Claimant claims against the Claimant now Defendant as follows;

-The sum of #600,000,00 cash collected from the Counter-Claimant by the Police on behalf of the Defendant,

-Hijo machine [motor cycle] worth #550,000,00 [five hundred and fifty thousand naira only] seized by the Police and which is still under the custody of the Police.

Making a total of #1,150,000.00 [one million one hundred and fifty thousand naira only]

In response the Claimant now Defendant filed a defence to the Counter-Claim dated 27<sup>th</sup> Feb, 2024 and filed on the 29<sup>th</sup> Feb, 2024. wherein the Defendant denied the Counter-Claim that the said #600,000.00 and the Hijo motor cycle were collected by the Police in the course of their investigation and are not under the custody of the Defendant therefore, the Defendant is not liable for the said sum of #1,150,000.00 being the sum of the #600,000.00 and the Hijo Motor Cycle.

The Supreme Court in the case of **ACCESS BANK V OGBOJA [2022] 1 NWLR [pt.1812] 547 pp 559 at 581 paras C-D [SC]** has this to say;

"a Counter-Claim being an independent claim made by the Defendant in a suit which can be taken together with the main claim, the quantum of proof necessary therefore must be the same standard required of the Plaintiff in the main claim. Such proof is on the preponderance of evidence"

While being cross-examined the Counter-Claimant as DW1 testified that his Hijo Motor Cycle was seized by the police while his guarantors the 2<sup>nd</sup> & 3<sup>rd</sup>



Defendants paid the sum of #600,000.00 but he did not apply that the money be returned to him.

DW2 testified during cross-examination that they paid #600,000.00 to the representative of the Claimant but the money was given directly to the Police but he did not apply that the money be returned to him. DW3 also testified that they paid #600,000.00 to the Police but he did not apply that the money be returned to him.

The Counter-Claimant stated in his Counter-Claim dated and filed on the 26<sup>th</sup> Feb, 2024 that then sum of #600,000.00 was collected from him by the Police while his Hijo Motor Cycle was seized by the Police.

Now, the Counter-Claimant did not testified that the said money and Hijo Motor Cycle were collected and seized by the Defendant but by the Police. It is trite law and there is no need to cite authority that facts admitted need no further prove.

The question begging for answer is this, the Counter-Claimant having admitted that the money and Motor Cycle were collected and seized by the Police and are in the possession of the Police does he have a Counter-Claim against the Defendant? The answer is a resounding no. The proper parties in the Counter-Claim is the Police and they are not before the court.

EXH D1, EXH D2 [a]-[h] tendered and admitted through the Counter-Claimant as DW1 have no probative value in the determination of this suit.

The Counter-Claimant has woefully failed to discharged the onus placed on him by the Evidence Act, the Hon.court is not convinced that he is entitled to the Counter-Claim. In view of the above, the Counter-Claim lacks merit and it is accordingly discountenance and struck out.

That is the judgment of the court.

**RIGHT OF APPEAL.**

Signed.



Her Worship D.A Nyam.

Senior District Judge.

16<sup>th</sup> May, 2024.

**APPEARANCES:** E.N.Dasoen with N.I Dalong for the Claimant who is not in court.

**1<sup>st</sup> & 3<sup>rd</sup> Defendants** are in court, **2<sup>nd</sup> Defendant** is not in court.



**CERTIFIED TRUE COPY**

**REGISTRAR**

