

**IN THE HIGH COURT OF JUSTICE OF KANO STATE
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO**

Appeal No:

Suit No: SCR/69/22

BETWEEN:

ALHAJI MUHAMMED BELLO DALHA ----- PLAINTIFF/APPELLANT

AND:

MUBARAK MURTALA ZAINAWA ----- JUDGEMENT CREDITOR/
DEFENDANT/RESPONDENT

AND:

MR. UGO CHUKU ONYEDIKA ----- JUDGEMENT DEBTOR

NOTICE OF APPEAL.

TAKE NOTICE THAT the appellant, being dissatisfied with the ruling of the Chief Magistrate Court 70 (Small Claim Court 5) sitting at Nomans Land, Kano delivered by the presiding Magistare Amir on the 29th day of September 2022 doth hereby appeal to the High Court of Kano State upon the grounds set out in paragraph 3 hereof and will, at the hearing of this appeal, seek the reliefs set out in paragraph 4.

AND TAKE FURTHER NOTICE that the names and addresses of the persons directed affected by this appeal are set out in paragraph 5 hereof.

2. PART OF THE RULING COMPLAINED OF:

The whole ruling delivered on the 29th day of September 2022.

3. GROUNDS OF APPEAL:

GROUND 1:

The ruling is unreasonable and cannot be supported having regards to the facts of this case as presented to the Court.

GROUND 2:

The learned Chief Magistrate erred in law when he subjected the Appellant to strict proof as against the preponderance of evidence in proving his title to the vehicle GAC 35 2019 model car subject matter of this suit..

PARTICULARS:

1. In proof of his ownership of the vehicle GAC 35 2019 model which was attached in order to satisfy the Respondent's judgment sum against one Mr Ugo Chuku Oyedika the Appellant has presented at the trial a sale offer sent to him by Vistegio Technology Solutions ("the Company") dated 20th May 2021, the payment receipt issued to him by the Company dated 21st May 2021 and the bank account statement showing how the Appellant paid the purchase price to the Company as Exhibits "Mundubawa 1A", "Mundubawa 1C" and "MB2" respectively
2. Attached to exhibit "Mundubawa 1A" is "Munudbawa 1B" – a form of acceptance of the offer sent to the Appellant by the Company.
3. The learned trial Magistrate faulted the Appellant for not accepting the offer strictly by signing the Exhibit "Mundubawa 1B" and disregarded the conduct of the parties.
4. An offer can be accepted by conduct of the parties not necessarily by a written document.

GROUND 3:

The learned trial Chief Magistrate erred in law when he allowed the respondent to attach the vehicle GAC 35 2019 model which does not belong to the Judgment Debtor in order to satisfy his judgment.

PARTICULARS:

1. At the trial, the Appellant has deposed to that the vehicle GAC 35 2019 model has never been a property of the judgment debtor and presented documentary evidence in proof thereof.
2. The Appellant has further deposed to that the premises at where the vehicle was attached is not an exclusive residence or place of work of the judgment debtor and that the respondent did not counter the depositions.
3. The respondent can only be permitted to attach property of the judgment debtor in order to satisfy his judgment sum.

GROUND 4:

The Chief Magistrate erred in law when he placed the burden of proof of ownership of the vehicle GAC 35 2019 model on the Appellant.

PARTICULARS:

1. The general rule is that the interpleader's proof of ownership of a property being attached is on the interpleader.
2. However, where the property being attached is not in the possession of the judgment debtor the burden shifts to the judgment creditor to prove that the property belongs to the judgment debtor.
3. The vehicle GAC 35 2019 model was not attached in the possession of the judgment debtor, thus it is the judgment creditor's duty to prove that it belongs to the judgment debtor.
4. The Respondent did not prove the vehicle has ever been belonged or belongs to the Judgment Debtor.

4. RELIEFS SOUGHT:

- i. An order setting aside the decision of the lower court delivered on the 29th day of September 2022.
- ii. An order allowing the Appellant's interpleader application.
- iii. An order directing the Respondent to pay the sum of N5,000,000.00 punitive damages to the Appellant.
- iv. Any other order(s) of the Court may deem fit to make in the circumstance of this appeal.

5. PERSONS DIRECTLY AFFECTED BY THIS APPEAL:

1. The Appellant,
C/O: His Counsel
S.G. Muhammad, Esq.
Red Sky Attorneys,
Kuka Medicals Building,
No. 45, Tafawa Balewa Road,
Nassarawa Local Government,
Kano State.
sgumel@nigerianbar.ng; 08033794149
2. **The Judgment Creditor/Defendant/Respondent,**
Mubarak Murtala Zainawa
Hadejia Road,

Yankaba. Nassarawa LGA,
Kano State (09033330352).

DATED THIS 30TH DAY OF SEPTEMBER 2022.



S.G. Muhammad, Esq.

Red Sky Attorneys,

Kuka Medicals Building,

No. 45, Tafawa Balewa Road,

Nassarawa Local Government,

Kano State.

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FOR SERVICE ON:

The Judgment Creditor/Defendant/Respondent,

Mubarak Murtala Zainawa

Hadejia Road,

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