



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT MILIMANI
SCCCOMM NO E17173 OF 2024

MARA NOMADS LTD..... CLAIMANT
VERSUS
DENNIS OHURU.....RESPONDENT

JUDGEMENT

I. Facts of the Case

1. The Claimant has sued the Respondent to recover a sum of USD 1,453.53 which a funds are alleged to have been collected from the Claimant's YouTube AdSense revenue between March,2024 and October 2024 which the Claimant alleges that the Respondent has withheld and failed to account plus interests and costs of the suit.
2. Briefly, the Claimant alleges that they hired the Respondent in October 2021 to provide freelance video editing services for its YouTube channel "The Mara Nomads" at an initial compensation of Kshs. 150 per minute of the edited content with an understanding that the Respondent was strictly an independent service provider. The Claimant alleges that they consistently met their financial up to September 2024 which was cumulatively 4 years. The Claimant alleges that in order to enhance quality of work flow, the Claimant decided to purchase a computer which the Respondent will utilize to produce higher quality videos. It is alleged that the Claimant elected to use revenues generated from its YouTube channel but in order to access the revenue the Claimant used the Respondent's AdSense account. The Claimant further pleads that the Claimant and the Respondent mutually agreed to use the Respondent's AdSense account to harness the income before the Claimant sets up its own account. It is further pleaded that the Respondent held

funds generated there own in trust for the Claimant until it is sufficient to purchase a laptop. It is alleged that the Respondent has retained a sum of Kshs. 1,453.53 USD accumulated from the month of March 2024 and October 2024. The Claimant now prays for judgment in the said sum plus costs and interests of the suit.

3. The Respondent filed a Response to the Statement of Claim dated 12.11.2024. The existence of the oral contract is admitted. The Respondent avers that on several occasions he sought a review and an increase of his terms of engagement with the Claimant but the review was forthcoming and that it is the Respondent who proposed monetization of the Claimant's YouTube account with an understanding that the collection from the account was a payment to the Respondent over and above what the Claimant was paying. He pleads that the Claimant actualized this agreement by connecting the Respondent's Ad Sense account to the Claimant's YouTube channel and the Respondent collected the revenue thereof until sometime in October 2024 when the Claimant without notice disconnected the Respondent's Ad Sense account. He prays that the claim be dismissed with costs.
4. Matter proceeded by documents only under Section 30 of the Small Claims Court Act. Parties filed submissions which the Court has considered.

II. Issues, the Law, Analysis and Determination

5. I set out the following issues for determination:
 - a) Whether the new documents filed by the Claimant upon taking directions on judgment can be admitted and be considered.
6. Directions on judgment dated was issued on 29.11.2024. Parties thereafter were to file submissions only. The Claimant proceeded to file additional documents after a

judgment dated has been taken without leave of the Court. Section 30 of the Act requires that subject to the consent of the parties a claim can be determined by documents only. My understanding of this section is that before parties agree to proceed by documents only, all documents have to be placed before the Court and parties considered them and determine whether the interests of their clients. It is on the basis of the documents availed that parties' contract to proceed under Section 30 of the Act. Consequently, any other documents produced after parties have agreed to proceed by documents only falls outside the contract entered by the parties and ought to be disregarded unless the said consent/contract requires their admission. Consequently, the Claimant's Supplementary List of Witnesses dated 5th December 2024, the Claimants Supplementary Witness Statement by Edgar Rutto dated 5th December 2024 and the Witness Statement by Esther Wambui dated 5th December 2024 are hereby struck out from the record.

b) Whether the Claimant has proved their case against the Respondent on a balance of probability.

7. The existence of the contract is not disputed. However, the point of departure is on the Ad Sense account. Whereas the Claimant insists that the proceeds from the channel to the Respondent's Ad Sense was to be held by the Respondent in trust for the Claimant, the Respondent insists that the proceeds were a payment over and above what he used to be paid for editing the videos as mutually agreed by the parties. The unfortunate effect of paragraph 6 above leaves the Claimant largely exposed. It leaves the Claimant to rely on the Statement of Claim only since they had not filed any other document at the time of consenting to proceed by documents only. I have summarized the claim in paragraph 2 of this judgment.
8. To counter the claim, the Respondent filed a Response to the Statement of Claim which I have summarized in paragraph 3 of this judgment. The Respondent also filed a Witness Statement and a bundle of documents dated 26.11.2024 which he

sought to rely on. He states that he wrote up a YouTube Monetization plan on March 5th 2024 and sent it to the Claimant. To him this YouTube monetization plan was to help the Claimant explore more revenue earning streams and as a result be better and able to pay him the new rates I had proposed to charge them. In the YouTube Monetization plan he states that suggested that the Claimant take advantage of the size of its YouTube channel and incorporate other avenues of YouTube monetization. He further pleads that after convincing its director Edgar that he was leaving a lot of money on the table by not monetizing the Claimant's YouTube Channel, even though it had attained the threshold for YouTube Monetization (1000 subscribers and 4000 hours of watch time) the Claimant agreed to monetizing the YouTube channel and letting him keep whatever the YouTube channel would make in Ad revenue as an increase in his compensation and he states that this was an oral agreement that happened around March of 2024. I did not get a chance to consider the witness statement of Edgah Ruto who seems to have been the person of interest with regards to the transactions herein. I have considered the statement of claim as it which has been badly bruised by the Respondent's account and the documentation herein. I am inclined to find it that the Claimant has failed to demonstrate that the amount accruing to the Respondent's ad sense account was to be held in trust for the Claimant but a payment to the Respondent as per the oral agreement. Having noted the major gaps noted in the Claimant's case it is fair to conclude that the Claimant cannot prove their case against the Respondent on a balance of probability. The Court dismisses the claim.

c) Who bears the costs of the suit?

9. The SCC Act provides that costs can be awarded to a successful party. I have been guided by the case of [Kenya Commercial Bank & another \[Suing as the Executor of the Estate of Simon Hongo Ominde \(Deceased\)\] v Muiruri t/a Leakeys Auctioneers & 6 others \[2023\] KEELC 21873 \[KLR\]](#) that costs follow events. In this matter the Respondent is awarded costs. I have considered Rule 37 of the Small Claims Court

Rules 2016 and schedule 2 which provide that fees recoverable shall not exceed 10% of the aggregate value of the subject matter together with disbursements on account of the fees specified in the Schedule and the time the matter has been in Court. I award Kshs. 20,000 as an all-inclusive cost of the suit.

III. Orders and Disposition

10. In the final analysis I find that the Claimant has not proved its case against the Respondent on a balance of probability and the suit is dismissed. The Respondents are awarded costs of the suit assessed at Kshs. 20,000. The right of appeal is 30 days and I have ordered for 30 days stay of execution.
11. Pursuant to Rule 23 (4) (b) and (5) of the Small Claims Court Rules this judgment is delivered to the parties by uploading it to the Judiciary CTS.

Judgment Dated, Signed and Delivered this 6th Day of January 2025



HON. J ASIAGO

RESIDENT MAGISTRATE / ADJUDICATOR

REPUBLIC OF KENYA