

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

MARA NOMADS LIMITED.....CLAIMANT

-VERSUS-

DENNIS OHURU.....RESPONDENT

RESPONDENT'S LIST OF WITNESSES

1. Dennis Ohuru
2. Any other with leave of Court.

DATED at **NAIROBI** this 26th day of November 2024.


JGS LAW LLP
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY

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WITNESS STATEMENT – DENNIS OHURU

I, **DENNIS OHURU**, a Kenyan resident and of P.O Box 10041 - 00100, Nairobi, within the Republic of Kenya do hereby state **THAT**: -

1. That I'm the Respondent herein.

2. On 6th October 2021, Edgar Ruto, a director at the Claimant herein, messaged me on Twitter, the social media platform, now referred to as X, to find out my video editing rates.

I make reference to a copy of the screenshot of the message at page 1 of the Respondent's bundle.

3. I subsequently sent him my then video editing rate card for his perusal.

I make reference to a copy of the screenshot of the message and the rate card at pages 2 - 5 of the Respondent's bundle

4. He reverted on 22nd October 2022, to request for my phone number so we could discuss further which number I provided promptly.

I make reference to a copy of the screenshot in support of the foregoing averment at page 3 - 6 of the Respondent's bundle.

5. After negotiations, the Edgar Ruto hired me to provide video editing services for the Claimant's Youtube Channel <https://www.youtube.com/@TheMaraNomads1920MN>. The Claimant hired me **as per the standard editing rate on my rate card of Ksh 150 per minute of final video draft**. As per this rate, a 10-minute video would attract Ksh 1,500 compensation and a 20-minute video would attract Ksh 2,000.

6. As part of the oral agreement that was made between us, it was agreed that the compensation of Ksh 150 per minute of final video draft would not be final. As ours was a continuing relationship, it would be subject to future reviews and increase as would be agreed upon by both parties. The dates and/or timeline of which further negotiations was **NOT** agreed upon.

7. Further, there was no any particular or specific agreement or discussion on the

proprietary and ownership rights of works developed by myself. I was hired to edit videos and deliver them to the Plaintiffs. The videos contained many associated aspects that included creative assets like music, effects, transitions and other video editing tools which remained my assets to be used as part of my video editing portfolio.

8. The first video I edited for the Claimant's YouTube channel was published on the Claimant's Youtube channel on October 29th, 2021. The title of the video is [Hiking Mt. Longonot With Kids \(13.4kms\): Is It Possible?](#) At that point in time, the Claimant's Youtube channel had 107 subscribers on 29th October 2021.

I make reference to a copy the screenshot with the said information at page 7 of the Respondent's bundle

9. At the time, I was living with an Aunt in Kilimani, Nairobi. Having moved to Nairobi in May of 2019 from Eldoret where I lost my job with Tusker Mattresses Limited, commonly referred to as Tuskys in May of 2018. I had worked as a customer service representative with Tuskys supermarket from late 2016 to May of 2018. After leaving Tuskys, I joined ICEA Lion Life Assurance Company towards the end of 2018 as a life sales agent, commonly referred to as an insurance agent.
10. In 2021 when the Claimant was hiring me, I had decided to concentrate on video editing as a career and I had moved out of my Aunt's place in Kilimani and ventured on my own.
11. That gave me the opportunity to focus and the determination to provide professional services to the Claimant and grow its YouTube channel exponentially.
12. Indeed, I focused on the Claimant's YouTube Channel, kept editing videos for the Claimant's YouTube channel until 5th October 2022 when, feeling that the rate of Ksh 150 per minute of final video draft was too low for the amount of work I was doing, and struggling to pay rent and provide food for myself, I attempted to renegotiate with the Claimant with the view to increase my remuneration.
13. On 5th October 2022, I sent the Claimant, through Edgar Ruto, a message on Twitter, the social media platform, now referred to as X, in the message I outlined that we had been working together for a year and that Ksh 150 shillings was not what it used to be. I also outlined that due to the harsh economic times, I was requesting for a raise in my video editing rates.

I make reference to a copy of the screenshot of the said message at page 8 of the Respondent's bundle

14. The Claimant thorough Edgar Ruto did not acknowledge and/or reply to my message. As a result, the rate of Ksh 150 per minute remained in effect.
15. In July 2023, I sought to formalize our arrangement by writing and printing a formal agreement which I took to the Claimant physically for review. I took the said agreement physically since we had now been engaging for the longest and I was used to going to their offices to pick raw data and later on deliver edited data.

I make reference to a copy of the video editing agreement at pages 9 – 11 of the Respondent's bundle

16. In the agreement, I sought an increase of my compensation from Ksh 150 per minute to 250 per minute. I also asked that the Claimant to pay me Ksh 500 shillings for the edit of YouTube Thumbnails. A service I had provided for free up to that point even though it was not part of the video editing role I had been engaged by the Claimant to do.
17. I also asked that the Claimant reimburse me transport money I used to come to the office to collect or deliver video files.
18. I also asked that the Claimant pay me for my video editing services in a net 3 business days from the day of final approval and delivery of final draft. Before that there was no agreement as to when payment was due, the Claimant paid me for my video editing services for its YouTube channel whenever it was convenient for them to do so, many times, after reminders and requests from me, most of which went ignored.

I make reference to copies of the screenshots of the said messages at pages 12 – 18 of the Respondent's bundle

19. The Claimant looked through the agreement and declined to sign it. It also failed to provide a counter formal agreement for me to review and sign so that our work relationship would be formal.
20. However, the Claimant agreed to review my compensation upwards from Ksh 150 per minute to Ksh 200 per minute, as well as Ksh 500 shillings for YouTube Thumbnails and Ksh 250 for transport for a round trip from Ongata Rongai to the Claimant's office at KMA centre, Upper Hill, Nairobi.
21. In February of 2024, having witnessed the Claimant's channel grow from 107 subscribers in October of 2021 to about 17,000 subscribers in February of 2024. I once again sought an increase in compensation. I felt it was imperative that I charge my client what I felt was the true value of my work.
22. On 2nd February 2024, I wrote a video editing proposal email to the Claimant through its director's email address [REDACTED] outlining the growth of the Claimant's YouTube channel and contrasting that growth to my own.

I make reference to a copy of the said email and video editing proposal at pages 19 – 27 of the Respondent's bundle

23. In summary, after outlining the growth of the Claimant's YouTube channel, I also outlined my value proposition and suggested 3 new payment models to reflect the value I was bringing to the Claimant's YouTube channel.
24. In addition to the video editing proposal email, I also wrote up a YouTube Monetization plan on March 5th 2024 and sent it to the Claimant's director email address, [REDACTED]

I make reference to a copy of the said email and YouTube Monetization Plan at pages 28 – 36 of the Respondent’s bundle

25. This YouTube monetization plan was to help the Claimant explore more revenue earning streams and as a result be better and able to pay the new rates I had proposed to charge them. In the YouTube Monetization plan, I suggested that the Claimant take advantage of the size of its YouTube channel and incorporate other avenues of YouTube monetization including;
 - a. Monetizing the YouTube channel to earn YouTube Ad Revenue
 - b. YouTube Memberships
 - c. YouTube Shopping
 - d. Affiliate marketing
 - e. Website ad revenue for the official Mara Nomads website
26. After reviewing both the Video editing proposal and the YouTube monetization plan, the Claimant declined to accept any of the payment models I had proposed in my video editing proposal.
27. However, 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. (That threshold is 1000 subscribers and 4000 hours of watch time), the Claimant agreed to monetizing the YouTube channel and letting me keep whatever the YouTube channel would make in Ad revenue as an increase in my compensation. This oral agreement happened sometime in March of 2024.
28. Together with the YouTube Ad Revenue earnings, the Claimant would also keep paying me Ksh 200 per minute, Ksh 500 for Youtube thumbnails and Ksh 250 for transport.
29. On March 22nd 2024, I received an invitation from the Claimant’s YouTube channel to access the YouTube channel as an editor.

I make reference to a copy of the said invitation at pages 37 of the Respondent’s bundle.

30. For the sake of making the court understand, there are different levels of channel permissions that an administrator of a YouTube channel can give to whoever he chooses for purposes of helping to manage their YouTube channel. These different levels are outlined below.

Channel permissions role types set by YouTube.

ROLE	SUPPORTED	NOT SUPPORTED
Owner	Can do everything on all platforms, including: <ul style="list-style-type: none">• Delete the channel	<ul style="list-style-type: none">• Can't transfer ownership to other users

	<ul style="list-style-type: none"> • Manage live streams and live chat • Manage permissions • Can link Google Ads accounts 	
Manager	<ul style="list-style-type: none"> • Can view all channel data • Can manage permissions (in YouTube Studio) • Can edit channel details • Can manage live streams • Can create, upload, publish, and delete content (includes drafts) • Can chat or moderate chat within Live Control Room • Can create posts • Can comment • Can link Google Ads accounts 	<ul style="list-style-type: none"> • Can't delete channel
Editor	<ul style="list-style-type: none"> • Can view all channel data • Can edit everything • Can upload and publish content • Can manage live streams • Can delete drafts • Can chat or moderate chat within Live Control Room • Can create posts • Can comment • Can link Google Ads accounts 	<ul style="list-style-type: none"> • Can't delete channel or published content • Can't manage permissions • Can't enter into contracts • Can't delete scheduled/live/completed streams • Can't delete or reset stream keys

There are other levels below the Editor		
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31. As part of my editor role on the Claimant's YouTube channel, I helped answer comments on the YouTube channel and made changes to uploaded videos when requested to do so. This was done at the behest of the Claimant's clientele who at times, after going to a trip did not want their faces to be seen on the YouTube channel. All this was not part of our aforementioned video editing agreement nor were these tasks paid for. I performed these tasks in good faith.

I make reference to copy of the screenshots of the messages requesting me to undertake such tasks on the channel appearing at pages 38 – 41 of the Respondent's bundle.

32. Sometime in March - April of 2024, the Claimant's Director, Edgar Ruto, allowed me to monetize the YouTube channel and direct earnings to my Ad Sense Account. He did this by connecting the YouTube Channel to my Ad Sense Account.
33. I wish to explain to the court how YouTube pays creators on the platform their share of revenue on the platform. A creator on YouTube should have a Google AdSense account. YouTube sends money to the Google AdSense account that is connected to the creator's YouTube channel, and Google AdSense pays that money to the bank account of the owner of the AdSense account using one of multiple payment options, including electronic bank transfer and/or wire transfer. Further to this, the owner of a Google AdSense account can choose which currency he wants earnings from YouTube to be paid in.
34. Accrued YouTube earnings from a given month are paid in a net 20 to 25 days. For example, money earned from 1st to 31st May of 2024 would be sent to Google AdSense around 7th to 12th of June. Google AdSense would then pay that money to the owner of the AdSense account around 21st to 25th of June. The earnings are subject to the US chapter 3 withholding TAX. (Chapter 3 withholding under sections 1441-1443 generally applies a 30% statutory rate of withholding to payments of FDAP income or gains from U.S. sources but only if the payments are not effectively connected with a U.S. trade or business and are paid to a payee that is a foreign person).
35. The integration of my ad sense account by the Claimant to its YouTube channel to receive ad revenue payments from the YouTube channel confirmed the agreement and I received the said payments from that period until my ad sense account was disconnected in October 2024.
36. At no point did the Claimant ever claim for a refund of that money ever since I started receiving the said payments in May 2024.
37. In the month of May 2024, the [Claimant's YouTube channel](#) earned USD 177 in ad revenue from YouTube. This money was directed to my AdSense account, together with ad revenue earnings from [my own Youtube channel Dennis Ohuru](#) and paid out to me by AdSense on 21st June of 2024. The total amount paid to me by Google AdSense on 21st June of 2024 was € 148.71 after US. Ch. 3 withholding tax of € 20.

38. In the Month of June 2024, the Claimant's YouTube channel earned USD 236 in ad revenue from YouTube. This money was directed to my AdSense account, together with ad revenue earnings from my own YouTube channel Dennis Ohuru and paid out to me by AdSense on 21st July of 2024. The total amount paid to me by Google AdSense on 21st July 2024 was € 199.50 after US. Ch. 3 withholding tax of € 24.05.
39. In the Month of July 2024, the Claimant's YouTube channel earned USD 190 in ad revenue from YouTube. This money was directed to my AdSense account, together with ad revenue earnings from my own YouTube channel Dennis Ohuru and paid out to me by AdSense on 21st August of 2024. The total amount paid to me by Google AdSense on 21st August 2024 was € 158.64 after US. Ch. 3 withholding tax of € 21.11
40. In the Month of August 2024, the Claimant's YouTube channel earned USD 78.50 in ad revenue from YouTube. This money was directed to my AdSense account, together with ad revenue earnings from my own YouTube channel Dennis Ohuru and paid out to me by AdSense on 22nd September of 2024. The total amount paid to me by Google AdSense on 22nd September 2024 was € 72.75 after US. Ch. 3 withholding tax of € 8.50

I make reference to the evidence in support of the foregoing at pages 42 – 52 of the Defendant's bundle, the evidence is comprised of bank statement to show receipt of the said payments, google receipts sent to my ad sense account, screenshots of the said payment on the Claimant's channel.

41. Because of the increase in compensation the Ad Revenue from the Claimant's YouTube channel accorded me, I moved from Ongata Rongai to Umoja, Nairobi sometime between 24th and 26th of June 2024. I also made a video documenting this move on my YouTube channel. The video titled [Moving to a bigger house in Nairobi](#) was published on my YouTube channel 'Dennis Ohuru' on 27th June 2024.
42. I rented, in Umoja, a 1 (ONE) bedroom house. I was very proud of this move as this signified I was making progress as the Claimant's channel also made progress. I also undertook to buy a video editing laptop to replace the one I had so that I could serve my clients better. I made this goal aware to the Claimant.
43. On August 1st 2024, the Claimant took a group of people to an 18-day drive from Nairobi, Kenya to Victoria Falls in Zimbabwe and back.
44. The drive was successful, the Claimant recorded video files to be edited by me and uploaded to the YouTube channel documenting the trip.
45. The Claimant's director, Edgar Ruto and I determined that during the edit I would break the trip into four videos.
46. The part 1 video of the trip titled [18 Days, 5 Nations, 2 Lakes, 7,000km, 50 Kenyans & 20 cars: A Nomad Adventure](#) was published on 14th September 2024 on the Claimant's Youtube channel. This video had in excess of 200,000 views as at 26th October 2024.
47. The Part 2 video of the trip titled [BORDER CHAOS and Beach Bliss! A TALE of Two Malawis](#) was published on 21st September 2024 on the Claimant's Youtube

channel. This video had in excess of 70,000 views as at 26th October 2024.

48. The Part 3 video of the trip titled [VICTORIA FALLS: Nomads Have Landed! Part 3](#) was published on October 5th 2024 on the Claimant's Youtube channel. This video had in excess of 100,000 views as at 26th October 2024.

I make reference to the evidence in support of the foregoing at page 53 of the Respondent's bundle.

49. Because of this good performance in video views by the first 2 two videos (Part 1 and 2 of the Victoria falls trip). The Claimant's YouTube channel made USD 696.56 in AD Revenue in the month of September 2024 which then in my view informed the Claimant's decision to disconnect my Ad Sense account without notice or any form of communication since this was the first time ever this channel was making this kind of enhanced revenue.
50. The said money was to be remitted to my AdSense Account as my compensation as per our oral agreement. It is evident that it would not be first Ad revenue earning that I would pocket from the Claimant's YouTube channel.
51. I informed the Claimant, through Edgar Ruto, that the revenue expected this time round would be utilized to purchase the video editing laptop I had all along wanted to purchase in order to serve them better.

I make reference to a copy of the screenshot in support at page 54 of the Respondent's Bundle.

52. However, sometime around 5th to 7th of October 2024, my AdSense integration to the Claimant's YouTube Channel was disconnected by the Claimant from the YouTube channel which essentially was in breach of our agreement and in bad faith.
53. It was my legitimate expectation that any changes in compensation had to be negotiated and accepted by both parties which wasn't done before the disconnection.
54. Sometime during the late hours of 7th October 2024, when I signed into the Claimant's YouTube channel using my editor privileges to check the performance of the latest video on the channel. (Part 3 of the Victoria falls trip) I discovered that my AdSense integration had been disconnected from the channel.
55. On 8th October 2024, I reached out to Broline Kenneth Ogombe, whom I've learnt is also the advocate on record in this case, he works with the Claimant's and share an office. He's a regular part of the Claimant's YouTube videos, inquiring if he had spoken with the Claimant about disconnecting my AdSense integration from the YouTube channel. He said he had not and was not aware whose AdSense Integration was connected to the Claimant's YouTube channel.

I make reference to copies of screenshots of the said conversation at pages 55 of the Respondent's bundle.

56. All this time, no explanation or indeed message of any kind had come to me from the

Claimant explaining why they had disconnected my AdSense Integration from the YouTube channel.

57. Out of frustration and in view of expressing myself on the injustice, I on October 11th 2024, made and uploaded a video to my YouTube Channel titled [Who moved my cheese in Nairobi | I have suffered a Major Setback](#) In the video I outlined my working relationship with the Claimant, editing videos for the Claimant's YouTube channel from October 29th 2021. I spoke about how we met and how we had worked together through the years. In short, I explained why I felt the Claimant had been unfair to disconnect my AdSense Account from the YouTube Channel before I could be paid yet that formed part of my remuneration.
58. I spoke about the payment structure we had negotiated and the reviews in compensation we had made over the years. I spoke about our latest agreement which was the Ad revenue and how the Claimant had without notification or consultation with me, taken it away. I spoke about how I felt about that.
59. All this notwithstanding, I wish to say that I have helped the Claimant's grow its YouTube channel from 107 subscribers to 40,000 plus as at 26th October 2024.
60. The videos I have edited for the Claimant's YouTube channel have created a big impact and are loved and celebrated by the viewers of Claimant's YouTube channel.

I make reference to copies of the screenshots of the comments on the videos at pages 56 – 65 of the Respondent's bundle

61. I therefore pray that the Claimant's claim be dismissed with costs for the following reasons;
- a. The money sought to be recovered was legitimately paid to my Ad Sense Account as part of my remuneration pursuant to the oral agreement entered between the Claimant and Myself.
 - b. The Claimant's Claim does not recognize that the said money was subject to taxation and transaction fees therefore the figure sought to be recovered is wrong.
 - c. The Claimant's Claim fails to recognize that my Ad Sense Account also attracted revenue from my own YouTube channel.
 - d. The goal to purchase a laptop was my individual goal, the message was sent to the Claimant on 30th September 2024, the video editing laptop was all long my asset, alongside creative assets like the video editing tools, transitions, effects e.t.c. I had set a goal to replace the said laptop with a better laptop with my income in order to serve the Claimant better.
62. That's all I wish to state for now.

DENNIS OHURU

DATED at NAIROBI this 26TH day of November 2024.

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RESPONDENT'S LIST AND BUNDLE OF DOCUMENTS

<u>NO.</u>	<u>NAME OF DOCUMENT</u>	<u>PAGE NO</u>
1.	A copy of the screenshot of the message from the 2 nd Plaintiff on 6 th October, 2021	1
2.	A copy of the screenshot of the message from the Defendant and the rate card	2 - 5
3.	Screenshot of the message from the 2 nd Plaintiff on 22 nd October, 2022	6
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5.	Screenshot of the Defendant's message to the 2 nd Plaintiff on Twitter on 5 th October, 2022	8
6.	A copy of the video editing agreement	9 - 11
7.	Screenshot of a message from the Defendant to the 2 nd Plaintiff demanding for payment	12 - 18
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11.	Screenshots of messages between the 2 nd Plaintiff and the Defendant	38 – 41
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13.	Screenshot of the 1 st Plaintiff's YouTube channel as at 26 th October, 2024	53
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DATED at NAIROBI this 26TH day of November 2024.


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