

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
SCCCOMM/E17173/2024

MARA NOMADS LIMITED.....CLAIMANT

VERSUS

DENNIS OHURU.....RESPONDENT

THE CLAIMANT'S WRITTEN SUBMISSIONS

(On the Claimant's Statement of Claim dated 12 October 2024)

*"The doctrine of equitable trust is as old as law itself. Equity abhors unjust enrichment. In the law of contract, unjust enrichment occurs when one person is enriched at the expense of another in circumstances that the law sees as unjust. Where an individual is unjustly enriched, the law imposes an obligation upon the recipient to make restitution. Liability for an unjust (or unjustified) enrichment arises irrespective of wrongdoing on the part of the recipient. The concept of unjust enrichment can be traced to Roman law and the maxim that "no one should be benefited at another's expense": *nemo locupletari potest aliena iactura* or *nemo locupletari debet cum aliena iactura*. I do find that the plaintiff has established that there exists a trust between himself and the defendant." Justice Ombwayo in Patrick Kimutai Kiprono v Erick Kipkurgat Kiprono [2019] eKLR*

May it please your Honour,

1. The Claimant makes these submissions in support of its Statement of Claim dated 12 October 2024, (the "**Claim**"). We submit that the main issues for determination are as follows:
 - i. Did the Claimant and the Respondent enter into an agreement, whether oral or written, regarding the management of AdSense revenue generated from the Claimant's YouTube channel?
 - ii. Was the AdSense revenue generated from the Claimant's YouTube channel meant to be held in trust by the Respondent for the Claimant's use, specifically for the purchase of a company laptop?
 - iii. Has the Respondent provided proof that the retained AdSense revenue constituted part of his payment under his alleged terms of the oral agreement?
 - iv. Did the Respondent's Alleged Oral Agreement on Retaining AdSense Revenue Meet the Standards of Transparency, Fairness and Reasonableness under the Consumer Protection Act?
 - v. Is the Claimant entitled to recover the sum of KES 187,505.37 from the Respondent, together with interest as prayed, or any part thereof?

ANALYSIS

- I. Did the Claimant and the Respondent enter into an agreement, whether oral or written, regarding the management of AdSense revenue generated from the Claimant's YouTube channel?
- II. Was the AdSense revenue generated from the Claimant's YouTube channel meant to be held in trust by the Respondent for the Claimant's use, specifically for the purchase of a company laptop?

1. Your Honour, **IT IS NOT IN DISPUTE THAT:**

- i. from October 2021 to September 2024, the Claimant and the Respondent operated under a clear and consistent **oral agreement**. The Respondent was contracted as an independent service provider to edit videos for the Claimant's YouTube channel, "The Mara Nomads" (<https://www.youtube.com/@TheMaraNomads1920MN>).
- ii. the agreed initial rate for these services was KES 150 per minute of edited content which was subsequently increased to KES. 200 per minute of edited content. The Respondent's compensation was supplemented by KES 500 for thumbnail creation, with the Respondent also reimbursed for his transport costs whenever he came to pick raw video content or deliver final edited videos.
- iii. **the Claimant has consistently and fully paid the Respondent for all completed work, with no outstanding payments for any of the video editing services provided by the Respondent to date.** This demonstrates the Claimant's commitment to honoring its financial obligations under the agreed oral terms.

See copies of Costing Details Submitted by the Respondent for Freelance Video Editing Services to the Claimant at pages 25-30 of the Claimant's Bundle of Documents.

See a copy of the statement of account showing payments made to the Respondent for his video editing services to the Claimant at pages 31-32 of the Claimant's Bundle of Documents.

See a copy of the M-Pesa statement showing payments made to the Respondent for his video editing services to the Claimant at pages 7-9 of the Claimant's Supplementary Bundle of Documents.

2. Recognizing the limitations of the Respondent's existing equipment (laptop), which hindered his ability to produce high-quality 4K content for the Claimant's YouTube account, in March 2024 the Claimant decided to purchase a powerful video editing laptop using AdSense revenue earned from its YouTube channel. This decision was aimed at improving the quality of the Claimant's videos and streamlining the editing workflow.

Disclosure of the March 2024 Oral Agreement

3. Your Honour, the existence of an oral agreement between the parties in March 2024 **is not disputed**, coinciding with the monetization of the Claimant's YouTube channel. **However, the terms of that agreement are squarely in contention.** While the Respondent asserts at paragraph 27 of his reply that the Claimant agreed to monetize its YouTube channel and allow him to retain all AdSense revenue as part of an 'increase in his compensation', this claim is devoid of evidentiary support and is directly contradicted by the Claimant's consistent position and documentary evidence.

4. AdSense is a Google-operated program that enables content creators, including the Claimant, to earn revenue from advertisements displayed on their videos. This program requires an AdSense account linked to the creator's YouTube channel, which processes and pays out the generated revenue.
5. The Claimant has presented credible evidence demonstrating that the AdSense revenue was to be held in trust by the Respondent for the sole purpose of purchasing a video editing laptop for the Claimant, as expressly agreed by the parties. The Respondent's assertion that he was entitled to retain all the AdSense revenue as additional payment is not only commercially implausible but is also contradicted by the payment records, which show that he was separately and fully compensated for his video editing services during the same period.
6. The Respondent's claim of an oral agreement terms permitting him to retain AdSense revenue as additional payment is, therefore, an opportunistic afterthought designed to mislead this Honourable Court.
7. The Claimant submits that in March 2024, an oral agreement was reached between the Claimant and the Respondent concerning the temporary management of AdSense revenue. At the time, the Claimant had not yet established its own AdSense account, which is a prerequisite for receiving revenue generated from advertisements displayed on YouTube videos. The Respondent's role under this agreement was to provide a temporary solution while the Claimant finalized the setup of its own AdSense account. The Respondent voluntarily offered to use his personal AdSense account to facilitate the temporary receipt of revenue generated exclusively from the Claimant's YouTube channel.
8. It was mutually agreed that the funds would be held in trust by the Respondent until sufficient earnings were accumulated to purchase a company laptop for use in enhancing the Claimant's video editing operations. This arrangement was strictly temporary, with the understanding that the funds generated from the Claimant's YouTube channel remained the property of the Claimant.
9. The laptop, once purchased, was to remain the property of the the Claimant and would be used exclusively for editing videos for the Claimant. The Respondent would continue to receive payments for his video editing services under the agreed terms of KES. 250 per minute of edited content. Furthermore, the Claimant's statement of account and M-Pesa statement unequivocally demonstrates that the Respondent was consistently paid for his video editing services throughout the engagement, including the period between March 2024 and September 2024, when the Claimant's AdSense revenue was temporarily routed through the Respondent's AdSense account. This reflects the Claimant's adherence to the agreed terms and shows the baselessness of the Respondent's claims that the Claimant's AdSense revenue were his.
10. Once the Claimant successfully set up its own AdSense account, it transitioned its channel's revenue to the new account in October 2024, marking the end of the temporary arrangement. Despite the Respondent's claims, the agreement regarding AdSense earnings was clear, the funds were always the property of the Claimant and were held in trust by the Respondent for the specific purpose of purchasing the company laptop.
11. Your Honour, it is critical to note that the negotiated and agreed KES 82,454 was paid to the Respondent for the period between March to October 2024, as compensation for his free lance video editing services. The Respondent now astonishingly claims before this Court (without any iota

of evidence) that, in addition to this payment for his services, he is also entitled to retain the entirety of the Claimant's AdSense revenue amounting to **KES 187,505.37**. **This amounts to a total claim of KES 269,959.37** for the same period, a proposition that is not only commercially absurd but also devoid of any logical or legal foundation. The Respondent's argument effectively suggests that the Claimant would operate its start up business to its own detriment by paying the Respondent twice: one for his video editing services and again by forfeiting its rightful earnings. Such a claim defies common sense, basic business principles and any reasonable interpretation of the oral agreement between the parties. It is clear that the Respondent's assertions are an opportunistic afterthought and the Claimant humbly submits that the same be firmly rejected by this Honourable Court.

Respondent's Own Admissions

12. Your Honour, on 11 October 2024, the Respondent published a video on his personal YouTube channel, "Dennis Ohuru" (<https://www.youtube.com/c/DennisOhuru>), titled: "Who Moved My Cheese in Nairobi | I Have Suffered a Major Setback" (<https://www.youtube.com/watch?v=AtB9AoLrhLE&t=1634s>).
13. The Claimant submits that the existence of the said video uploaded by the Respondent on 11th October 2024, is not in dispute. The transcript produced before this court of the said video is also **not disputed**. The Respondent has explicitly confirmed the existence of this video in paragraph 57 of his response, wherein he acknowledges its contents. The Claimant submits that the Respondent's own words, as recorded in the said YouTube video provide critical admissions that support the Claimant's case. These admissions unequivocally establish that the parties had a clear arrangement concerning the management and intended use of AdSense revenue generated from the Claimant's YouTube channel, "The Mara Nomads".
14. In the transcript of the Respondent's video, he acknowledges, in his own words at **Minute 26:06** of the said YouTube video (<https://www.youtube.com/watch?v=AtB9AoLrhLE&t=1634s>):

"These four videos from the Victoria Falls trip were intended to help buy a video editing laptop because we've struggled with that for a very long time. I edit videos using this HP laptop, which is not a video editing laptop, and for a long time, we've struggled with that. I remember at some point, we said that I would work, and the Mara Nomads would keep my earnings until they reached an amount where they could buy a video editing laptop. But very quickly, I changed my mind about that because I thought, "I can't work, and you keep my money. How am I going to survive? How am I going to pay rent, buy food, and things like that?" So, because of how well these videos were doing, we said, "Let's take this money and purchase a video editing laptop." I even sent a message on WhatsApp to the leader of the Mara Nomads about that. I WASN'T GOING TO USE THE MONEY FOR MYSELF - I WAS GOING TO USE IT TO BUY A VIDEO EDITING LAPTOP, which would make my video editing work better. It would mean better videos for the Mara Nomads because, as of now, we upload videos in 1080p. With the video editing laptop, we could start uploading videos in 4K, so overall, it would be a win-win for both of us... and that was the agreement we had." Emphasis mine

See a copy of the verbatim transcript of the said excerpt of YouTube Video at page 11 of the Claimant's Bundle of Documents.

15. Your Honour, this statement constitutes a clear acknowledgment by the Respondent that the AdSense funds were not intended for his personal use but were earmarked for a specific purpose that benefited the Claimant.
16. Your Honour, in addition to the excerpt of the transcript above, the Respondent, on 30 September 2024, wrote the following message to the Claimant's Director, as evidenced in the WhatsApp chat produced before this Court:

"Proceeds from ad revenue which will be paid end next month will go towards the laptop goal. I'm looking at this... (accompanied by a screenshot of a laptop listing priced at approximately KSh 110,000). The Respondent further added, "Priced at around 100 to 120 [thousand], IT WILL FUTURE-PROOF US FOR A LONG TIME." Emphasis mine

See copies of Screenshots of Communication from the Respondent Showing Laptop Selection for video editing Work Purposes at pages 9 and 10 of the of the Claimant's Bundle of Documents.

17. The Respondent has admitted at paragraph 51 of his response that he sent this message, the contents thereof are therefore not in dispute. This clear admission corroborates the Claimant's position that all AdSense earnings during the temporary arrangement were mutually agreed to be used towards the purchase of a video editing laptop, which was to remain the Claimant's company property.

Documentary Evidence of Payments

18. The Claimant has consistently paid the Respondent for video editing services at an agreed rate of KES. 150 per minute which was increased to KES. 250 per minute, as demonstrated in the payment records provided by the Claimant's Accountant, Wambui Njuguna, via her sworn witness statement dated 05 December 2024. These payments show that the AdSense revenue was separate from the Respondent's video editing fees and was never intended as part of his compensation.
19. The Respondent's own admission, as captured in his video transcript, further corroborates this separation of revenue streams. The Respondent stated in his own words at **Minute 26:27** of the said YouTube video (<https://www.youtube.com/watch?v=AtB9AoLrhLE&t=1634s>):

"I remember at some point, we said that I would work, and the Mara Nomads would keep my earnings until they reached an amount where they could buy a video editing laptop. But very quickly, I changed my mind about that because I thought, 'I can't work, and you keep my money. How am I going to survive? How am I going to pay rent, buy food and things like that?'" Emphasis mine

20. This statement shows that the AdSense revenue was never part of the Respondent's fees. It was a separate fund established for the specific purpose of purchasing a laptop for the Claimant's operations. The Respondent's acknowledgment of changing his mind further confirms that he initially understood and agreed to this arrangement.
21. By providing regular payments for video editing services, the Claimant ensured the Respondent's financial needs were met independently of the AdSense revenue. Therefore, the Respondent's later claim that the AdSense funds constituted 'remuneration' is contradicted by both documentary evidence and his own admissions.

22. In response to the Respondent's misguided argument about his role in growing the Claimant's YouTube channel, the Claimant submits that the Respondent's contributions as a freelance video editor were fully compensated under the agreed terms. Evidence demonstrates that the Respondent was consistently paid for his services at the agreed rate, with no outstanding balances. The success of the Claimant's YouTube channel was the result of a collective effort, including the Claimant's investment in trips, equipment and strategic direction. The Claimant's directors, as the true owners of the Claimant, have been the driving force behind its growth and success. The Respondent's suggestion that the channel's growth is attributable solely to his efforts disregards the immense sacrifice, dedication and financial investments made by the Claimant.
23. The Claimant operates far beyond just YouTube, with a presence across other social media platforms and extensive efforts to create compelling content. This includes organizing and funding trips to remote and often challenging locations, enduring days of travel and logistical hurdles to capture raw footage. The Claimant also bears significant operational costs, including paying taxes, managing other staff and marketing its content to attract clients and grow its brand.
24. To deny the Claimant access to its rightful YouTube AdSense earnings is to strip it of the very fruits of its relentless labor, strategic vision and unwavering dedication. These funds represent not just monetary value, but the culmination of countless hours of effort by the Claimant's directors and their team, traveling to remote and challenging locations, enduring hardships and making significant financial and personal sacrifices to build a reputable brand. By unjustly withholding these funds, the Respondent disregards the trust placed in him and seeks to appropriate for himself the rewards of a collective effort that he was merely one part of. Such an act is not only a betrayal of trust but also a grave injustice to the Claimant, its staff and its mission.
25. Equity does not permit a party to unilaterally alter terms of engagement or retain funds meant for specific purposes. Allowing the Respondent to withhold AdSense revenue intended for a laptop purchase would result in unjust enrichment and undermine the trust arrangement between the parties.

The Respondent's Role as Trustee

By agreeing to temporarily route the AdSense revenue through his account, the Respondent undertook to hold these funds in trust for the Claimant. The Respondent's refusal to remit these funds demonstrates a breach of this trust. In **Patrick Kimutai Kiprono v Erick Kipkurgat Kiprono [2019] eKLR**, the Court held as follows in respect of the parties who were brothers:

*"The doctrine of equitable trust is as old as law itself. Equity abhors unjust enrichment. In the law of contract, unjust enrichment occurs when one person is enriched at the expense of another in circumstances that the law sees as unjust. Where an individual is unjustly enriched, the law imposes an obligation upon the recipient to make restitution. Liability for an unjust (or unjustified) enrichment arises irrespective of wrongdoing on the part of the recipient. The concept of unjust enrichment can be traced to Roman law and the maxim that "no one should be benefited at another's expense": *nemo locupletari potest aliena iactura or nemo locupletari debet cum aliena iactura.**

The law of unjust enrichment is closely related to, but not co-extensive with, the law of restitution. The law of restitution is the law of gain-based recovery. It is wider than the law of unjust enrichment. Restitution for unjust enrichment is a subset of the law of restitution in the same way that

compensation for breach of contract is a subset of the law relating to compensation. I do find that the plaintiff has established that there exists a trust between himself and the defendant.”

26. Your Honour, in **Kamlesh Mansukhlal Pattni & another v Central Bank of Kenya [2016] eKLR** it was opined as follows:

“It is clear that any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep... Broadly founded upon the aim of equity to do justice between parties, the doctrine of unjust enrichment and the remedy of restitution to counter unjust benefit proceed upon the realization that to allow a defendant to retain such a benefit would result in his being unjustly enriched at the plaintiff’s expense, and this will not be tolerated by the law, and owing to the importance and aim of this doctrine in every advanced and civilized system of justice.”

27. Your Honour, in the context of this case, the doctrine of equitable trust as articulated in the above case laws is highly relevant. The Claimant provided the Respondent with access to its YouTube revenue, not as payment, but to hold in trust for the specific purpose of purchasing a laptop. The Respondent’s continued retention of these funds, despite the Claimant’s demands and their clear intended purpose, constitutes unjust enrichment. Equity abhors unjust enrichment and the law imposes an obligation upon the Respondent to make restitution. This aligns with the principle that no one should benefit at another’s expense (*nemo locupletari potest aliena iactura*). The facts and evidence before this Honourable Court establish the existence of a trust relationship between the Claimant and the Respondent and it is therefore just and equitable for this Honourable Court to direct restitution of the AdSense revenue to the Claimant.

28. In **Chase International Investment Corporation and another v Laxman Keshra and others, [1978] Kenya LR 143, at p 154**, it was firmly and unequivocally laid down that:

“In Kenya a claim may properly be founded for restitution where it would be unjust to allow a party to retain the benefits of an unjust enrichment. The basic elements of the doctrine of unjust enrichment are (1) that the defendant has been enriched by the receipt of a benefit; (2) that he has been so enriched at the expense of the plaintiff; and (3) that it would be unjust to allow the defendant to retain the benefit in the circumstances of the case. These subordinate principles of the general principle of unjust enrichment are interrelated. They clearly show the nature of restitutionary claims, and how people incur restitutionary obligations.”

The Claimant’s Witness Statements

29. The Claimant’s Directors, Victor Augustus Onyango and Edgar Rutto Tarus, have both provided sworn witness statements confirming that the Respondent offered his AdSense account as an interim measure while the Claimant set up its own AdSense account. This arrangement was entered into for the sole purpose of channeling YouTube revenue to purchase a company laptop that would enhance the Respondent’s video editing workflow for the Claimant’s sole benefit. Your Honour, in **Attorney General v Kabuto Contractors Limited (Civil Appeal 638 of 2019) [2023] KECA 230 (KLR) (3 March 2023) (Judgment)**, the court held as follows:

“Several requirements must be met in order to form an oral contract. The following provides a basic list of oral contract requirements: - (a) The terms of the contract must be valid and legally

enforceable; (b) It must contain the necessary elements found in all contracts (e.g. offer, acceptance, consideration, and mutuality or a “meeting of the minds”); and, (c) the oral agreement must not violate laws or regulations/policies; (d) capacity of the parties.

*Undeniably, verbal contracts can be enforceable, but only if they are provable in court, and the contract meets the requirements of contract formation outlined above. For oral contracts, the courts will first be concerned with whether an oral contract exists and then with ascertaining the terms as these are, by their very nature, not written down. Ascertaining the terms of an oral contract has been held to be a question of fact. (See *Carmichael v National Power Plc* (1999) 1 WLR 2042 (HL)). This means that all evidence to assist that task is admissible, including evidence of the parties’ subjective intentions and subsequent conduct. As Lord Neuberger stated in *Thorner v Major* (2009) UKHL 18, (2009) 1 WLR 776 “the interpretation of an oral contract is a matter of fact (I suggest inference from primary fact), rather than one of law, on which the parties’ subjective understanding of what they were agreeing is admissible.”*

30. Your Honour, this matter presents a scenario that aligns well with the principles outlined in **Attorney General v Kabuto Contractors Limited (Civil Appeal 638 of 2019) [2023] KECA 230 (KLR) (3 March 2023) (Judgment)** regarding the enforceability of oral contracts. Below is an analysis to determine whether the threshold has been met:

The terms must be valid and legally enforceable

31. Your Honour, **both parties acknowledge** the existence of an oral agreement. The dispute lies in its specific terms. The terms of the oral agreement regarding AdSense revenue and the purchase of a laptop were discussed and agreed upon by both parties. However, the terms are now disputed, particularly the Respondent’s assertion that he was entitled to retain the revenue as part of his compensation.
32. The Claimant has provided clear evidence of the agreement’s intended purpose (laptop purchase), while the Respondent’s claim of entitlement to the revenue as compensation lacks corroborative evidence, thus failing the enforceability test on his end.

Necessary elements of contract formation

- i. **Offer** - The Respondent offered his AdSense account to temporarily hold YouTube revenue.
- ii. **Acceptance** - The Claimant accepted this arrangement for the specific purpose of purchasing a laptop.
- iii. **Consideration** - The Claimant entrusted the YouTube revenue to the Respondent to be held in trust for the specific purpose of purchasing a laptop and the Respondent accepted this obligation as part of their mutual agreement.
- iv. **Mutuality (“meeting of the minds”)** - The Claimant has demonstrated through evidence that both parties agreed on the purpose of the AdSense revenue. The Respondent’s subsequent claims of additional terms (e.g., retention of funds as additional payment) are an afterthought.
- v. **Compliance with laws and policies** - the oral agreement did not violate any laws or policies. The arrangement to temporarily route revenue through the Respondent’s account complied with YouTube’s monetization policies and general business practices.

- vi. **Capacity of the parties** - Both parties had the capacity to enter into a binding oral agreement. There are no claims of undue influence, coercion or incapacity.
33. Your Honour, the Claimant humbly submits that it has demonstrated, that an agreement existed between the parties regarding the management of AdSense revenue for purchasing a company laptop. The Respondent's attempts to deny the terms for purchasing a company laptop are unsubstantiated, inconsistent and amount to a breach of trust.
34. The Claimant humbly urges this Honourable Court to find that the agreement existed and to uphold the Claimant's right to recover the funds retained by the Respondent.
- III. Has the Respondent provided sufficient proof that the retained AdSense revenue constituted part of his payment under his alleged terms of the oral agreement?**
35. Your Honour, the Claimant submits that the Respondent has failed to provide any credible evidence to substantiate his claim that the retained AdSense revenue formed part of his fees pursuant to alleged terms of the oral agreement.
36. The Respondent alleges that the terms of the oral agreement reached in March 2024, allowed him to retain the AdSense revenue as an "increase" in his fees. However, there is no documentary evidence to corroborate this claim. The Respondent has provided no written confirmation, contemporaneous communication or documentation evidencing such an agreement on his purported "increase" in his fees.
37. The Respondent's version of events is inconsistent and unreliable. In prior communications and admissions, the Respondent acknowledged that the AdSense funds were intended for purchasing a laptop for the Claimant's operations. Specifically, the Respondent stated in his own words, "...I remember at some point, we said that I would work, and the Mara Nomads would keep my earnings until they reached an amount where they could buy a video editing laptop. But very quickly, I changed my mind about that because I thought, 'I can't work, and you keep my money. How am I going to survive? How am I going to pay rent, buy food, and things like that?' So, because of how well these videos were doing, we said, 'Let's take this money and purchase a video editing laptop.' I even sent a message on WhatsApp to the leader of the Mara Nomads about that. I WASN'T GOING TO USE THE MONEY FOR MYSELF - I WAS GOING TO USE IT TO BUY A VIDEO EDITING LAPTOP..." This admission unequivocally supports the Claimant's position that the AdSense revenue was to be held in trust for a specific purpose and was never intended to form part of the Respondent's payment.
38. The Claimant has demonstrated, through unchallenged payment records and the testimony of its Accountant, Wambui Njuguna, that the Respondent was consistently compensated for his video editing services at agreed rates of KES 150 per minute (later increased to KES 250 per minute). These payments were separate and distinct from the AdSense revenue, underscoring that the latter was never part of the Respondent's payment. The Respondent's claim that the AdSense funds constituted additional payment lacks any evidentiary basis.
39. The Respondent relies on his purported "monetization plan" to support his claim. However, the Claimant unequivocally declined to adopt this plan, as evidenced in paragraph 26 of the Respondent's own reply, where he admits that the Claimant *"declined to accept any of the payment models I had proposed in my video editing proposal."* This admission demonstrates that the

Respondent's monetization plan was neither approved nor implemented by the Claimant, further discrediting the Respondent's assertion that the AdSense revenue formed part of his payment.

40. Your Honour, the Respondent bears the legal and evidentiary burden of proving the existence and terms of the alleged oral agreement allowing him to retain AdSense revenue. It is trite law that in civil cases the balance of proof is on a balance of probabilities and the law of evidence is that he who alleges the existence of certain facts must prove their existence. This position is anchored in the provisions of Sections 107, 108 and 109 of the Evidence Act which state as follows:

“(107) Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exist. (108) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. (109) The burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of fact shall lie on any particular person.”

41. The Respondent has utterly failed to discharge this burden. His reliance on unsubstantiated claims and self-serving narratives cannot meet the requisite standard of proof.

42. Your Honour, the Respondent's claims regarding alleged oral terms allowing him to retain full AdSense earnings lack credibility, consistency and evidentiary support. The unambiguous evidence presented by the Claimant establishes that the AdSense revenue was held in trust for a specific purpose and was not intended as payment to the Respondent. The Respondent's failure to provide cogent proof of his assertions underscores the baselessness of his defence.

43. The Claimant therefore humbly submits that this Honourable Court should find that the Respondent has not provided any proof that the retained AdSense revenue constituted part of his payment. Accordingly, the Claimant prays for judgment in its favour as prayed in the Statement of Claim.

IV. Is the Claimant entitled to recover the sum of KES 187,505.37 from the Respondent, together with interest as prayed, or any part thereof?

44. Your Honour, the evidence before the court clearly establishes that:

- i. The AdSense revenue was generated exclusively from the Claimant's YouTube channel.
- ii. These funds were held in trust by the Respondent for the specific purpose of purchasing a video editing laptop for the Claimant.
- iii. The Respondent was separately and fully paid for his video editing services.
- iv. There is no evidence of any agreement authorizing the Respondent to retain the AdSense revenue as his additional payment.

45. The Claimant submits that the Respondent's assertion that *“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”* is both misleading and devoid of merit.

46. As evidenced by the oral agreement entered into between the Claimant and the Respondent in March 2024, the funds received through AdSense revenue were to be held in trust by the Respondent until sufficient funds were accumulated to purchase a laptop for the Claimant's use. This arrangement inherently negates the need for constant demands for refunds, as the Respondent was fully aware of the purpose and temporary nature of the arrangement. All the Claimant needed to do was inform the Respondent that the accumulated amounts were now sufficient to purchase the laptop, which the Claimant did via the text of 30 September 2024. Following this notification, the Claimant rightfully transferred the AdSense account to its now established AdSense account, thereby concluding the temporary arrangement.

"Proceeds from ad revenue which will be paid end next month will go towards the laptop goal. I'm looking at this... (accompanied by a screenshot of a laptop listing priced at approximately KSh 110,000). The Respondent further added, "Priced at around 100 to 120 [thousand], IT WILL FUTURE-PROOF US FOR A LONG TIME." Emphasis mine

47. The Claimant made consistent demands for accountability and a refund of the AdSense revenue when it became apparent that the Respondent had failed to fulfill his obligations under the agreement. These demands, including communications and the filing of this suit, demonstrate that the Claimant sought to recover the funds as soon as it became evident that the Respondent was unwilling to honor the terms of the agreement.

48. The Respondent's argument does not absolve him of his obligation to account for the funds held in trust. The Claimant asserts that the failure to raise an immediate claim for refund does not diminish its right to recover funds that were held under a fiduciary arrangement, particularly where the Respondent's conduct amounts to a breach of trust. Accordingly, the Claimant submits that the Respondent's statement is an attempt to deflect attention from his failure to account for funds entrusted to him and does not negate the validity of the Claimant's claim for recovery of KES 187,505.37.

49. Your Honour, the sum of USD 1,453 (equivalent to KES 187,505.37) is the figure derived from the monthly AdSense revenue generated by the Claimant's YouTube channel from March 2024 to September 2024, as illustrated in the provided tabulation. The earnings are broken down as follows:

- i. March: \$2.96
- ii. April: \$69.75
- iii. May: \$78.50
- iv. June: \$236.05
- v. July: \$190.34
- vi. August: \$177.42
- vii. September: \$698.52

Total: \$1,453.54 (USD) (equivalent to KES 187,505.37 as at the time of filing this Claim)

50. The earnings for October 2024 were excluded because the Respondent's AdSense account was disconnected in October and the revenue for that month was retained directly by the Claimant.

See the screenshot from the Claimant's YouTube Studio showing the earnings generated from the Claimant's YouTube Channel at page 14 of the Claimant's Bundle of Documents. It shows analytics from the Claimant's YouTube Studio, which provides granular insights into the revenue sources and monthly trends.

See the statement prepared by the Claimant detailing the cumulative AdSense revenue earned between March 2024 and September 2024 at page 13 of the Claimant's Bundle of Documents. This shows the Claimant's official summary report stamped and signed on 31 October 2024, consolidating and verifying the financial data from the YouTube Studio.

See Copy of KCB Bank Statement for the Respondent showing AdSense Payments from the Claimant's Channel at pages 22-24 of the Claimant's Bundle of Documents.

51. This tabulation clearly demonstrates that the AdSense revenue sought was generated exclusively from the Claimant's YouTube account and does not include any extraneous income or unrelated sources.

52. The sum reflects only the revenue collected under the temporary AdSense arrangement where the Respondent held the funds in trust for the Claimant for the agreed purpose of purchasing a laptop.

53. The Claimant submits that the Respondent's claim of funds being "mixed" is unsupported by any evidence. The Respondent has failed to furnish proof of how much his own YouTube channel earned during the relevant period, **IF ANY**. On the other hand, the Claimant has provided clear and credible evidence from its YouTube studio analytics and statements demonstrating the exact amounts earned by its channel. The burden of proof lies with the Respondent to substantiate his claims of a 'mix', which he has not discharged. The Claimant has conclusively discharged its burden by showing the specific earnings from its channel and claiming only those amounts.

54. The Claimant humbly submits that this tabulation is supported by documentary evidence, is accurate and further reinforces the Claimant's right to recover the sum of USD 1,453 (KES 187,505.37).

55. The Claimant humbly submits that it has discharged its burden of proof and is entitled to recover the sum of KES 187,505.37 as prayed.

V. Did the Respondent's Alleged Oral Agreement on Retaining AdSense Revenue Meet the Standards of Transparency, Fairness and Reasonableness under the Consumer Protection Act?

56. Your Honour, the Consumer Protection Act ("CPA") is applicable to this dispute, as the Claimant qualifies as a consumer under Section 2 of the Act, having engaged the Respondent as a supplier of services to provide video editing services in exchange for payment. The CPA requires that agreements between suppliers (Respondent) and consumers (Claimant) comply with principles of fairness, transparency and reasonableness.

57. Your Honour, the Claimant submits that the Respondent was engaged in October 2021 as a freelance video editor under a clear agreement for payment of KES 150 per minute of edited

content, which was later increased to KES 250 per minute. This arrangement was clear, fair and consistently adhered to by the Claimant, as evidenced by the payment records provided in this Court. Specifically, for the period between March 2024 and October 2024, the Respondent was paid KES 82,454 for his video editing services, which constitutes full payment for the work rendered during this period.

58. The Respondent now asserts that, in addition to receiving the agreed payments for his video editing services, he was also entitled to retain AdSense revenue generated from the Claimant's YouTube channel as part of an alleged oral modification to the original agreement. This claim is inconsistent with the documented payments made to the Respondent and defies basic principles of business logic.

Lack of Transparency and Disclosure

59. Section 87 of the CPA provides that the terms of any consumer agreement must be "**clear and comprehensible**." The Respondent's claim that the AdSense revenue was part of his payment fees lacks clarity and was never disclosed in a manner that would have allowed the Claimant to make an informed decision. The Respondent's failure to provide evidence of this alleged modification contravenes the disclosure requirements under the CPA.
60. Section 31(2) of the CPA requires that a supplier deliver a copy of any agreement to the consumer in a form that is accessible and understandable. No such evidence has been provided by the Respondent to support his claim that the AdSense revenue arrangement was disclosed or agreed upon as **additional compensation**.

Unfair Trade Practices

61. Section 12(2)(n) of the CPA prohibits unfair trade practices, including unconscionable terms. The Respondent's assertion that he was entitled to retain both the AdSense revenue and his editing fees is inherently unconscionable, as it creates an inequitable arrangement that unjustly enriches the Respondent at the Claimant's expense.
62. Section 77 of the Consumer Protection Act provides that a consumer agreement is not binding on the consumer unless the agreement is made in accordance with the Consumer Protection Act and the Regulations made thereunder, in this regard, any **alleged amendment to the existing agreement** between the Claimant and the Respondent, including the alleged terms regarding the retention of AdSense revenue, must comply with the requirements of the CPA, particularly the principles of fairness, transparency and informed consent as outlined in Sections 12 and 31-38. The Respondent has provided no evidence of any such compliance, including clear communication, mutual agreement or disclosure of the alleged amendments. Consequently, the Respondent's purported entitlement to retain the AdSense revenue, based on unverified and non-compliant oral terms, is null and void and cannot be binding on the Claimant.
63. From the foregoing, it is evident that the alleged terms regarding the retention of AdSense revenue as claimed by the Respondent:
- i. Are unsubstantiated and amount to a baseless attempt to justify the unauthorized retention of the Claimant's funds.

- ii. Seek to unfairly deprive the Claimant of its rights under Article 46 of the Constitution of Kenya, 2010 and the Consumer Protection Act, which guarantee fairness, transparency and protection of consumers in all agreements involving goods and services.
- iii. Fail to meet the legal threshold of fairness, transparency and informed consent as required under Kenyan law and thus cannot withstand judicial scrutiny.

64. Your Honour, the Respondent's assertion that he was entitled to retain the AdSense revenue as additional compensation inherently suggests a modification to the original agreement. Under the principles of fairness and transparency enshrined in the CPA, any amendment to an existing consumer agreement, especially one affecting the Claimant's financial rights and obligations as a consumer, must be communicated clearly, mutually agreed upon and documented in a manner that ensures both parties fully understand and consent to the new terms. The Respondent has provided no evidence to demonstrate that the Claimant was informed of or consented to this alleged modification. In the absence of such evidence, the Claimant humbly submits that the Respondent's claim is not only unsubstantiated but also inconsistent with the established principles governing fair contractual practices. The alleged entitlement to retain the AdSense revenue is therefore without merit and should be firmly rejected by this Honourable Court.

Conclusion

65. Your Honour, at the heart of this case lies a simple question of fairness and accountability. The Claimant has consistently acted in good faith, providing clear evidence of the terms agreed upon and fulfilling its obligations, including the payment of agreed fees for the Respondent's services. In contrast, the Respondent's claim to retain the entirety of the Claimant's AdSense revenue, despite having been paid for his video editing services, is both commercially unreasonable and unsupported by any credible evidence.

66. This Honourable Court is called upon to consider not only the facts and law but also the principles of equity and justice. The Respondent's alleged terms regarding the retention of AdSense revenue violate the basic tenets of fairness, transparency and mutual benefit that should govern any agreement. The lack of any documented amendment to the original agreement shows the speculative and opportunistic nature of the Respondent's claims. This Court has the opportunity to affirm the importance of good faith in contractual dealings and to safeguard the rights of those who rely on such trust.

67. Your Honour, the Claimant humbly submits that it has fully discharged its burden of proof and demonstrated its entitlement to recover the sum of KES 187,505.37 held by the Respondent. We humbly pray that this Honourable Court uphold the principles of fairness and accountability by granting judgment in favour of the Claimant.

DATED at NAIROBI this 05th day of December 2024



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