

coming to the Claimant's office to collect raw data for editing. Also that payment for the editing work to be done within 3 business day as the Claimant's used to pay at its own convenience.

8. Unfortunately, the Claimant declined to sign the agreement and neither did it provide a formal written counter agreement for them to execute and formalize their work relationship. However, after the Respondent persisted on increment of his payment, the Claimant agreed to increase his compensation to Kshs.200 for every minute of the video he edited, an additional Kshs.500 for YouTube Thumbnails and Kshs.250 as fare for coming to the Claimant's office to collect raw data for editing.
9. The payments made by the Claimant to the Respondent in terms of the said agreement are therefore acknowledged by the Respondent in his witness statement.
10. Fast forward to February 2024 having grown the Claimant's You Tube channel subscription from the initial 107 to 17,000 subscribers as at February 2024, the Respondent sought to have his compensation reviewed upwards to reflect his value for the work he had done growing the Claimant's channel. The Respondent wrote an email to the Claimant explaining how the You Tube channel had grown and outlined a payment proposal that he thought was fair for him. He proposed to the Claimant on how the You Tube channel can be monetized. **(Refer to the annexures at pages 19-36 of the Respondents bundle).**
11. Unfortunately, the Claimant declined the new payment proposal fronted by the Respondent. However, upon much convincing from the Respondent, the Claimant agreed to monetize the You Tube channel and agreed to let the Respondent keep the money earned from the ad sense revenue as an increase in his compensation. This new arrangement was agreed upon around March of 2024. In addition to keeping the money from the ad revenue. It was further agreed that the Respondent will keep earning his Kshs.200 per minute, Kshs.500 for the thumbnails and Kshs.250 for fare.
12. On 5th March 2024, the Respondent wrote to the Claimant with the proposal to monetize its YouTube channel since it has witness growth in subscription. The Respondent outlined the value proposition. **(Refer to the annexures at pages 28-36 of the Respondents bundle).**
13. In a move aimed at facilitating the arrangement as proposed by the Respondent, on 22nd March 2022, the Respondent received an invite from the Claimant's YouTube channel giving him rights to access the channel as its editor. In this new role he assisted in answering comments, uploading, editing and changing videos when requested to do so by the Claimant. He was also allowed to monetize the Claimant's YouTube channel and direct its earnings to his Ad Sense Account which was also connected to his personal YouTube channel. This was done by the Claimant connecting its YouTube account to the Respondent's Ad Sense Account.
14. The Respondent would collect the earnings from the Claimant's Youtube channel **uninterrupted** from around March/April 2024 up to September 2024 in accordance with the agreement, until the Claimant learnt that the September 2024 payment which was to be paid around 21st October 2024 would be a massive enhanced then decided to unilaterally end the agreement without notification or any form of communication.
15. The Respondent expected to be paid around USD 696.56 before USA Chapter 3 tax up from the USD 78.50 he had received for the month of August 2024, which had been paid

on 22nd September 2024 as per the evidence presented before court. This massive increase in revenue informed the unilateral and arbitrary decision by the Claimant. The increase was no doubt informed by the increased number of viewers.

16. The Respondent whilst receiving the ad revenue **uninterrupted** had come up with an improved laptop goal and informed the Claimant that due to the increase in revenue in the month of September, 2024 from its YouTube channel, he will utilize the earnings to purchase a video editing laptop which he had all along wanted to purchase in order to serve the Claimant better. This communication was done on 30th September 2024 (**Refer to the annexure at page 54 of the Respondent's bundle**)
17. The Respondent continued receiving the earnings from the Claimant's YouTube channel to his Ad Sense account with no interruption from the Claimant or its employees/agents until the period between 5th and 7th October 2024 when his account was disconnected from the Claimant's You Tube channel without any notice to him. This action resulted in a breach of the agreement the Respondent had with the Claimant which was that in addition to his editing fees, he will be compensated through the revenue generated from the Claimant's You Tube channel.
18. Consequently, between 7th and 9th October 2024, the Respondent reached out the Claimant's employee one Mr. Ogombe to follow up on his editing work payment which was pending, and to further seek clarification on why his Ad Sense account had been disconnected from the Claimant's You Tube channel. The Claimant skirted around the issue until later through Augustus Victor, the Claimant reached to the Respondent and requested that the Respondent give a proposal on how they would settle the dispute.
19. The Respondent gave his proposal which was ignored by the Claimant. The Claimant did not comment, counter, edit and/or reject the proposal by the Respondent but kept quiet and chose to approach court and file the instant claim.

C. ISSUE FOR DETERMINATION

Whether the Claimant is entitled to the prayers as sought in its Statement of Claim

20. It is the Respondent's submission that the Claimant is not entitled to any of the prayers sought in the Statement of Claim as will be illustrated herein-under:
21. Your Honor, as clearly admitted by the Claimant in its witness statement, the Respondent was hired as an independent contractor to provide video editing services for the Claimant's YouTube channel. This meant that the Respondent purchased his own equipment that he used in providing the video editing services to the Claimant. The Respondent used equipment such as a laptop and video editing tools. In addition, he incorporated creative aspects to the videos by adding background music to them. There's no any other evidence placed before court to suggest that the Respondent would at some point use equipment supplied by the Claimant or purchase equipment for the Claimant. The fact that the Respondent was an independent contractor and not an employee of the Claimant, settles the question the ownership of video editing equipment.
22. In order to create better videos and employ proper editing services, in September 2024 upon projecting a better income to his account from the Claimants channel, the Respondent informed the Claimant of his individual goal to acquire a better laptop. The goal was not informed by any manner of agreement as the Claimants want to mislead the court but it was

purely an individual goal by the Respondent as can be deduced from the evidence placed before court. There's no any single evidence either by way of an agreement or text messages placed before this court that would suggest that the Claimant directed the Respondent to keep or hold in trust the revenue from its youtube channel and utilize the same towards purchasing a laptop. This court must refuse the invitation by the Claimant to rely on conjecture and guess work, all the evidence needed to dismiss this claim has been presented before this court and that's what must duly guide this court which is the custodian of justice and the law.

23. The witness statements by the Claimant keep referring to an agreement between the Claimant and the Respondent that stipulated that the revenue from the Claimant's Youtube Channel would be held in trust by the Respondent and utilized to purchase a laptop, but that evidence has not been placed before court. No agreement, no messages, no communication to that effect but just mere statements by the Claimants.
24. To the contrary, the Respondent has detailed and supported by evidence in terms of emails, messages, agreements and actual remittances, how he got the Claimant to monetize its youtube channel, then he was connected to the channel where he received and utilized all the revenue generated without any interference, interruption or even a single request for the revenue from March 2024 all the way to September 2024.
25. The current claim can only therefore be termed as an afterthought given the series of events as narrated by the Respondent.
26. It is noteworthy that the received amount was less taxed amount, as AdSense amount is subject to Withholding Tax at the rate of 30% therefore, the Claimant cannot be praying for the alleged amount as computed in its prayer for a refund on the Statement of Claim. Further, the Respondent's personal YouTube account was also linked to his AdSense account and generated revenue, the earnings received therein were also inclusive of earnings derived from his personal YouTube account. The Claimant cannot request that the Respondent pay them the tax withheld together with his own revenue generated from his personal YouTube channel account.
27. The fact that the Claimant failed to excluded taxes and earnings from the Respondent's youtube channel in its claim makes the claim fatally and incurably defective, all the other strong factors notwithstanding.
28. In addition to the above, the Claimant has not presented before this court any evidence of it trying to set up an AdSense account since March 2024. Setting up the account does not take months rather a little time. Therefore, the Claimant cannot allege that it had been setting up the account for over 7 months. This proves that the linking of the Claimant's YouTube channel to the Respondent's AdSense account was deliberate and pursuant to their agreement to enable the Respondent receive the earnings. The move was not a temporary measure as alleged by the Claimant, but rather as agreed for the earnings to be received utilized by the Respondent. The fact that the Claimant never on a single occasion until the parties fell out, demand or make a request to the Respondent to either surrender, account for or use the money to purchase a laptop that will be owned by the Claimant, is a strong indicator in support of the facts as submitted by Respondent.
29. The Claimant waived its rights to the earning and is estopped by its own conduct from demanding that the earnings be given to it. In any sense, it is the Respondent that brought

the idea of monetizing the channel to the Claimant noting that the channel was not monetized prior to the Claimant engaging the Respondent, meaning no earnings were being received from the channel. (Refer to the email trail for monetization of the YouTube channel at pages 28-36 of the Respondent’s List and Bundle of Documents dated 26th November 2024).

30. In support of the submission on estoppel hereinabove showing the Claimant waived its rights to the YouTube earnings by linking its channel to the Respondent’s AdSense account and it never demanding the payments from the Respondent, reliance is placed on the case of John Mburu v Consolidated Bank of Kenya [2018] eKLR where the court held as follows:

“A person who is entitled to rely on a stipulation existing for his benefit in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. In the case of Sita Steel Rolling Mills Ltd vs Jubilee Insurance Company Ltd [2007] eKLR, Maraga, J. (now Chief Justice) stated:

“A waiver may arise where a person has pursued such a course of conduct as to evince an intention to waive his right or where his conduct is inconsistent with any other intention than to waive it. It may be inferred from conduct or acts putting one off one’s guard and leading one to believe that the other has waived his right.”

36. As for estoppel by conduct, both parties in this case relied on D & C Builders vs Sidney Rees (1966) 2 QB 617 where Lord Denning, M.R. stated:-

“It is the first principle upon which all courts of equity proceed, that if parties, who have entered into definite and distinct terms involving certain legal results, afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or be kept in suspense, or held in any event, the person who otherwise might have enforced those rights will not be allowed to enforce them when it would be inequitable having regard to the dealings which have taken place between the parties.”

31. Also the court in 748 Air Services Limited v Theuri Munyi [2017] eKLR held as follows:

“This Court also did explore at some length the issues of waiver, estoppel and acquiescence in the Serah Njeri Mwobi case (supra) and we adopt its analysis in respect of waiver and estoppel by conduct, thus:-

“The doctrine of waiver operates to deny a party his right on the basis that he had accepted to forego the same rights having known of their existence. The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person. See Seascapes Limited vs Development Finance Company of Kenya Limited, [2009] eKLR. The words waiver, estoppel and acquiescence have also been defined by the Halsbury’s Laws of England, 4th Edition, Volume 16. At page 992 waiver has been defined as follows:-

“Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is

thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent with the continuance of the right... The waiver may be terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him".

Applying the above learning to this case, it is contended that Munyi as the Financial Director and the chair of the committee of HODs which looked into the issue of cost cutting measures was aware, not only of the extent and reasons for the salary reduction, but also of his right not to accept the reduction but chose to do so for a period of eight months. He must therefore by his conduct be taken to have waived his rights. ”

32. Your Honour, it's the Respondent's submission that the Claimant's allegation that it requested from him a detailed account or record of the funds received from the AdSense account and/or evidence of spending of the funds is false. The Claimant has not presented any evidence before this court to support this claim thus, the same is untrue and should be disregarded by this court. Further, there is no evidence presented before court for scrutiny to ascertain that indeed the funds were to be utilized for operational needs and intended improvement of content quality of the channel. All these allegations are untrue and are just an afterthought on the part of the Claimant after realizing how much the channel was generating. The Claimant is only alleging on assumption the revenue generated from its channel as it or its agents had no access to the Respondent's AdSense account to ascertain the exact revenue earned.
33. There's not any single evidence tendered by the Claimant to show that the revenue from the youtube channel was ever used for the Claimant's operational needs, the only evidence present before court is utilization by the Respondent and that's the true north that must guide this court.
34. Your Honor, it is noteworthy that the Respondent edited all the Claimant's videos with excellency using his own laptop. This he did as an independent contractor and at no point did the Claimant raise the issue of it purchasing a laptop for the Claimant or for itself. No employee, director, shareholder, agent and or servant of the Claimant ever made the impression that the Claimant would purchase any video editing tool or equipment for the Respondent, leave alone the laptop.
35. At the commencement of the contractual relationship with the Respondent, the Claimant's YouTube channel had 107 subscription. Courtesy of the Respondents good videos, the subscription rose to over 40,000 subscribers as at the date their relationship terminated. This is proof of the impact that the Respondent had on growing the Claimant's presence on the internet. This shows that the Respondent had a goal of growing the Claimant's internet presence which means more customers for the Claimant and better earning for him which is beneficial to both parties. All these efforts were done by the Respondent out of his own volition and not by a goal set by the Claimant.

36. There's no single incidence of the Claimant or its Customers complaining of poor-quality videos by the Respondent, he was professional and exemplary. At no point did the Claimant see any need to improve the Respondents equipment, but individually, the Respondent challenged himself to save and improve his own equipment by purchasing a new laptop. It's only the Respondent who knew what the specifications and price for the new laptop looked like.
37. Finally, we submit that the Respondent was never served with a demand notice. The Claimant only commenced negotiations by asking the Respondent to front his offer which he did but the Claimant never responded to it at all by either accepting or rejecting. Thereafter, the Claimant went ahead and published a damaging statement about the Respondent, terming him as a thief having stolen and misappropriating the Claimant's funds. There is no evidence that a report was ever made to the police for such an allegation or the Respondent having ever been arrested and charged in a criminal court in relation to such allegations. The statement was intended to defame the Respondent and paint a negative picture of him to his followers and/or subscribers of the Respondent's YouTube channel and the public at large.

D. CONCLUSION

38. It is our submission that the court being guided by the above facts, law and case law, find this suit in favour of the Respondent and dismiss this suit with costs to the Respondent as the suit is frivolous and filed in bad faith.

DATED at **NAIROBI** this 11th day of December 2024.



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