



**Kirima v Mwika as Treasurer & 2 others (Sued as Representative Capacity
as the Officials of the Kenya Institute of Bankers) (Civil Case E312 of 2021)
[2024] KEHC 14224 (KLR) (Civ) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E312 OF 2021

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

DISHON KIRIMA PLAINTIFF

AND

JOHN MWIKA AS TREASURER 1ST DEFENDANT

JOHN RIOBA MOHONI AS CHAIRMAN 2ND DEFENDANT

JULIA ALEGO AS SECRETARY 3RD DEFENDANT

**SUED AS REPRESENTATIVE CAPACITY AS THE OFFICIALS OF THE KENYA
INSTITUTE OF BANKERS**

JUDGMENT

1. The plaintiff in this case, Dishon Kirima (hereafter referred to as the plaintiff only) filed this suit vide plaint dated 17/12/2021 seeking the following remedies against John Rioba Mohoni, John Murika and Julius Alego (sued in their capacity as chairman, treasurer and secretary of the Kenya Institute of Bankers (KIB) (hereafter referred to as the defendant).
2. The plaintiff is seeking the following remedies against the defendant (KIB)
 - i. The Plaintiff prays payment of Kshs. 23,689,740 being works done and not paid for in all the contracts as shown below:
 - a. Payment for work actually done and completed under the KIB Consultancy Agreement 2018 to 2021 contract at the Plaintiff Consultant's open market rate of Kshs. 12,500per hour totaling Kshs.18,250,000,



- b. Payment for works under The Kenyan Banker Magazine Agreement, 2018 contract period of 1-year guaranteed trial under the contract at a revenue-share of minimum Kshs.2,475,000,
 - c. Outstanding payment on the March 2021 Contract (Growth Consultant) at the contract hourly rate of Kshs.2,500 totaling Kshs.1,427,500;
 - d. Outstanding payment on unpaid works delivered during the pre-contract period and lost income of Kshs.1,537,240,
- ii. The Plaintiff prays for payment of income lost due to breach of Contract by the Defendant of a total of Kshs.81,948,162 being;
- a. Income loss of Kshs.75,948,162 as a consequence of breach of contract by the Defendant under the KIB Consultancy Agreement 2018 to 2021 had the contract been executed to completion of a revenue-share.
 - b. Income loss of Kshs.6,000,000 as a consequence of breach of contract by the Defendant under The Kenyan Banker Magazine Agreement, 2018 had the contract been completed as planned.
- iii. General damages for breach of contract under (i) & (ii)above.
- iv. Costs of this suit together with interest thereon at Court rates.
- v. Any such other or further relief as this Honourable Court may deem fit to award.
3. The plaintiff averred in his plaint dated 17/12/2021 that at all material times the plaintiff was and is still a fellow of the Kenya Institute of Bankers and a Consultant of the institute heading projects and growth of the institute.
4. That between 20th April 2018 and 16th May 2018, the plaintiff acting on invitation from the defendants Acting CEO Mr. Gilbert Allela and Chief Accountant Mr. Immanuel Masinde attended a series of meetings to discuss how the institution could partner with the plaintiff in implementing an ambitious turnaround strategy for the organization which had been increasingly performing poorly over the years.
5. This was reflected by its reducing corporate and individual membership, student numbers reduction, rapidly reducing corporate training and, fast declining revenue. The plaintiff was invited to write a letter proposing a partnership with the Defendant to commence the official process of engagement.
6. Subsequent to the proposal for partnership, the Defendant engaged the Plaintiff in a series of collaborative assignments and projects aimed at evaluating the capability of the plaintiff to provide value-adding and revenue growing services. The Defendant cited a lack of financial resources to pay for the ambitious consultancy services they sought but also a need to ascertain the Plaintiff's capability to deliver.
7. Over the months of May 2018 to November 2018 the parties engaged in discussions about an engagement model that would work for both parties and advance the Defendant's interests in institutional and revenue growth. Through this period the parties also engaged in various assignments that were to lay ground for the turnaround and it was agreed that these services were to be paid for by the Defendant to the Plaintiff at a highly subsidized rate or a profit-sharing model for revenue generating activities.



8. To validate the advanced progression of the partnership and the goal to roll out projects in the banking industry, solid commitments were made to senior executives in the commercial banking industry at a consultative breakfast meeting held at Hilton Hotel on 19th July 2018 with the express purpose of informing them of the Institute's progress and upcoming projects while resuscitating the dying relationship between the Institute and the corporate members who are the commercial banks.
9. Some of the commitments made at the meeting attended by 17 Commercial banks included: The re-introduction of the New Kenyan Banker Magazine, KIB Banking Skills' Survey (Phase II), the launch of new individual membership categories, Training Needs Assessment for member banks, new industry-relevant training, consistent research, new membership activities and rewards, new courses and events, partnerships and joint programs. All these would form the Defendant's engagement of the Plaintiff.
10. One of the projects undertaken by the parties to ascertain the Plaintiffs capability to bring revenue to the institute was Annual National Banking and Finance Conference, 2018 (ANBC) organized by the Plaintiff, held between the 25th and 26th October 2018 at the Great Rift Valley Lodge in Naivasha.
11. While the Plaintiff performed fully on his part, the Defendant failed to perform on their part as detailed in the ANBC Agreement dated 6th July 2018. This greatly affected the success of the conference in meeting the set attendance targets and revenue goals. On the advice of the Plaintiff, the Acting CEO of the Defendant and the Plaintiff had met the commercial bank CEOs in a series of scheduled meetings between 3rd September 2018 and 2nd October 2018 with the express intention of marketing the conference and the Institute while introducing them to the new Acting CEO.
12. The Defendant did not follow up after these meetings to secure commitments by the bank CEOs to sponsor participants to the conference. Moreover, the Defendant frustrated suppliers including the team hired to undertake social media marketing of the conference and the Institute by delaying the payment of direct fees for social media platform marketing and not paying their agreed service fees on time. This led to acrimony with the suppliers who were compelled to write various demands for payment.
13. The conference grossed an estimated revenue of Kshs.2,969,600 and the Plaintiff was not paid for the services involved in conceptualizing, preparing, coordinating, marketing, and delivering the successful event due to the Defendant failing to do their part and misappropriating project revenue. The Plaintiff was only paid Kshs.150,000 for his services as Master of Ceremony for the event after a protracted dispute.
14. That the Defendant did not exercise financial prudence by demanding the participation of four fully to host and coordinate the event. This decision cost the event about 6 times more what it cost to retain the hospitality team. The Defendant also demanded the double-payment of staff allowances (per diem) for the conference (in cash disbursements and direct hotel payments) and further payment of allowances to all staff in the office including the ones that were not involved in any way in planning for or participating in the conference.
15. This they stated was part of company policy without sharing the policy document with the Plaintiff and the Plaintiff was compelled to conform for the successful continuation of the project. Both actions were contrary to the Institution's own out of station per diem policy contained in KIB Out of Station Travel Policy (Per Diem). These decisions further impacted the revenue goals of the project and cost the event an extra estimated Kshs.324,000 (being Kshs.237,000 in excess per diem payments and Kshs.87,000 in unnecessary expenses).



16. The Defendant did not share the detailed breakdown of revenue and expenses for the event with the Plaintiff to ascertain and approve the true and final financial position of the project and has never done that to this day. As a result of the Defendant's negligence and non-performance of its responsibilities, financial impropriety, and cagey nature on the financial affairs on the project, the Plaintiff suffered loss of prospective minimum income to the tune of Kshs.1,197,240 going by the agreement on revenue share and approved budget and targets that the parties had undertaken to attain.
17. During the period between April 2018 and November 2018 the Plaintiff was also assigned various works in preparation of a prospective partnership. This included the implementation of the Blueprint for Membership Growth (BMG Strategy) among others.
18. Following the successful implementation of the collaborative projects between the parties between April 2018 and November 2018 and the Defendant satisfying themselves on the capabilities of the Plaintiff to deliver on their expectations, the Plaintiff was engaged by the Defendant on the 6th November, 2018 for a long-term, 3-year exclusive and irrevocable contract as an in-house consultant and bearing the designation Director of Projects. The Defendant also engaged the Plaintiff in Two other Contracts being;
 - a. KIB Consultancy Agreement 2018 to 2021 (entered into on 6th November 2018)-the Plaintiff to be the Director of Projects contract,
 - b. The Kenyan Banker Magazine Agreement 2018 (entered into on 6th November 2018),
 - c. March 2021-Growth Consultant contract (entered into in March 2021)
19. Section 3 of the preambles in the KIB Consultancy Agreement 2018 to 2021 recognized the fact that the Plaintiff had already delivered similar services to the Defendant in the period preceding the signing of the contract and demonstrated an elaborate turnaround strategy and competence which were to be applied under the contracts. Section 2 of the main body of the contract acknowledged that the Plaintiff "demonstrated and cultivated an elaborate and visibly promising pre-contract strategy to turn around the Institute's revenue and strategic goals".
20. On the same date 6th November, 2018, the Plaintiff was also engaged by the Defendant in a second exclusive and irrevocable contract for the monthly publication of The Kenyan Banker magazine for a trial period of one year extendable by three years upon successful implementation of the trial phase. The Kenyan Banker Magazine Agreement 2018.

Projects Under The First Agreement.

21. The defendant breached and failed to abide by the first contract despite the Plaintiff performing his obligation.

Particulars of breach and negligence by the defendant under the first kib consultancy agreement 2018 to 2021 are as follows;

- a. Failure by the Defendant to implement the contract for a period of three years;
- b. Breach of Section 4 by the Defendant of the KIB Consultancy Agreement 2018 to 2021 on irrevocability and termination of the contract sought to secure the Plaintiffs ultimate remuneration;
- c. Failure by the Defendant to provide the Plaintiff with resources and technical support for the success of outlined in the agreement initiatives and projects including office space and administrative support;



- d. The denial of access of the Plaintiff by the Defendant to the Defendant's work premises;
- e. The Defendant's blatant refusal by Management to implement the terms of contract and to undertake any dispute resolution despite the Plaintiffs documented appeal for dispute resolution;
- f. The Defendant's blatant refusal by the Governing Council to resolve the contractual impasse with the Plaintiff over a period of one year and with over Eight (8) different documented appeals by the Plaintiff;
- g. Failure by the Defendant to perform its duties in all projects initiated under the KIB Consultancy Agreement 2018 to 2021 and failure to act upon or implement Memorandum of Understanding entered into with other third parties for the successful execution of projects under this contract; and
- h. Failure by the Defendant to execute and implement Memorandum of Understanding under the KIB Consultancy Agreement 2018 to 2021 with third parties whom the Plaintiff had cultivated positive relationship towards a partnership with the Defendant and from whom the Defendant had received financial and technical support in implementing its goals.
 1. The Plaintiff demonstrated the ability and commitment in delivering on his part of the KIB Consultancy Agreement 2018 to 2021 contract as a result of revenue growth, delivery on projects like the execution and timely magazine publication and the signing of new strategic partnerships aimed at launching and realizing greater revenue growth and banking industry by the Defendant.
 2. The Defendant's gross annual training revenue for 2017 was Kshs.2,095,548 while the gross annual training revenue for 2013 was Kshs.1,677,000 with the Plaintiff contributing Kshs.275,000 of this revenue pre-contracts through the Ant -Corruption Compliance, ACC Course (2-3 Aug 2013). Just within the first quarter of 2019, the Plaintiff had developed three new Banking Certification Programs and one open training program and secured a gross training revenue of Kshs.5,170,240. This was within four months of signing the KIB Consultancy Agreement 2018 to 2021 contract. The income amounted to a 308% growth in total training revenue from the previous full year 2018 in 25% of the time representing an actual growth of 1,233% in training revenue.
 3. The Defendant chose to breach the contract and abandon its continuity and, in some cases, even frustrated the presentation of proposals to interested banks. Some banks which had expressed interest and even requested proposals which the Plaintiff presented were mishandled by the Defendant leading to their withdrawal of interest and therefore lost revenue for the Defendant and income to the Plaintiff who had worked very hard in preparing for the client meetings and presenting the detailed proposals and the actual development of training content.
 4. One such client was I & M Bank which the Defendant's then Acting CEO and the Plaintiff had met on 4th December 2018 on the client's request, the Plaintiff had presented a proposal to the client on 15th February 2019 and the client had withdrawn interest in pursuing implementation of the proposal citing the Defendant's poor and unprofessional services in an email dated 20th March 2019.



5. The Plaintiff avers that had the Defendant performed their roles as outlined in the contract and supported the Plaintiff's work to generate training revenue for the Defendant's institution, and even maintaining the same preliminary level of performance demonstrated in the first quarter of the contract, the Plaintiff would have generated a minimum of Kshs.62,042,880 in training income during the course of the three-year contract just from these certification programs that were already in demand. This would have amounted to Kshs.18,612,864 in training income for the Plaintiff from these programs alone applying the revenue share formula outline in Section 9(a) of the KIB Consultancy Agreement 2018 to 2021.
6. Sections 7 (a-e), 8,9 (a-c iv) of the KIB Consultancy Agreement 2018 to 2021 outline specific responsibilities of the Plaintiff and the remuneration plan. The profit-share model only assured the Plaintiff's remuneration at the end and upon successful implementation of projects by the parties with primary responsibility being that of the Defendant for whom the Plaintiff was working for.
7. Sections 5 of the KIB Consultancy Agreement 2018 to 2021 outlined the Defendant's responsibilities to provide the resources and technical support including office space and administrative support required for the success of outlined initiatives and projects during the term of contract.
8. The Defendant initially provided the technical and administrative resources being: office space and working desk, telephone airtime, business cards, printing facilities, and staff support but over the course of the contract period would arbitrarily withdraw these resources without cause or explanation. During the short period in which the Defendant fully supported the Plaintiff as per the terms of agreement, productivity and results in revenue generation were immediately evident as demonstrated in just the 2019 first quarter results where the Plaintiff tripled the Defendant's annual training income.
9. In further breach and to further frustrate the Plaintiff in June 2019 the Defendant hired two new staff who were assigned part of the Plaintiff's roles against the exclusivity clause in the contractual agreements and went ahead to allocate the Plaintiff's sitting space to the new Training and Learning Manager.
10. The Defendant did not allocate a new working station to the Plaintiff until March 2021 which was 1 year 9 months after the material breach of contract. Membership recruitment and partnership roles were allocated the newly created position of Head of Membership and Strategic Partnership. Head of Membership & Strategic Partnerships as per KIB Website which position did not exist before the recruitment and neither was the already ongoing work aimed at implementing the Blueprint for Membership Growth (BMG Strategy) written by the Plaintiff put in the context of the new role's responsibilities. Blueprint for Membership Growth (BMG Strategy) June-Aug 2018.
11. The Defendant's Acting CEO further denied the Plaintiff physical access to the offices/ premises after issuing orders to the guards in the building where the Defendant is located at National Bank Building not to allow the Plaintiff into the building under any circumstance. The Plaintiff made a formal written report on this to the entire Governing Council (Board) in an email dated 5th September, 2020. This situation was sustained into early 2021 until the arrival of the new CEO in February 2021. Access to official email was also disconnected during the same period and only reinstated on



8th March 2021 impeding the Plaintiff's official email communication. The Plaintiff maintained the use of his personal email for communication with the Governing Council.

12. The Plaintiff sought to maintain focus on the work ahead despite consistent and blatant efforts to frustrate his work and renege on contractual commitments by the Defendant. The breach was further upheld in 2021 under the new CEO Mr. Julius Alego when the Plaintiff was excluded from the new transitional organizational structure shared by the new CEO with the Governing Council (Board) in their meeting of 31st March 2021. This is despite the Plaintiff's existing and valid contract and substantial contribution to the Defendant's evident success since the Plaintiff's engagement.
13. The Plaintiff worked extensively to fulfill the terms of agreement contained in Sections 9(c)i-iv of the KIB Consultancy Agreement 2018 to 2021 by initiating and steering institutional partnerships, initiating projects under these partnerships, seeking donor funded projects, and raising corporate sponsorships.
14. The Defendant on the other hand handled these relationships callously and never bothered to perform their duty even on partnerships that had already been formalized through signed agreements. One such partnership is with the government agency under the Ministry of Interior, the National Crime Research Centre (NCRC). The Plaintiff had reached out to the institution as part of their ongoing work to broaden the scope of the Defendant's capabilities to aggregate crime data relating to the banking industry but also to strengthen the Defendant's research capabilities by partnering with credible, well-resourced institutions such as the NCRC.
15. The Plaintiff through a series of discussions and meetings convinced NCRC on the value of partnering with the Kenya Institute of Bankers (the Defendant) whom they perceived to be an equally credible institution as one of the two professional associations in the banking industry, NCRC agreed to send a fully sponsored executive to the Annual National Banking Conference, 2018 (ANBC) that was being organized by the Plaintiff held between 25th and 26th October 2018 at the Great Rift Valley Lodge in Naivasha.
16. The NCRC was a major partner that presented a paper Disguised Perpetrators (A Case of Unexplained Wealth Accumulation Dilemma in Kenya and led a plenary session discussion at the conference making it a great success. In a joint communiqué issued by 20 banking and top government institutions represented at the conference themed "A Collaboration between the Public Sector and the Banking & Financial Sector in the Fight against Corruption" one of the recorded resolutions was that "That Kenya Institute of Bankers (KIB) collaborates with the National Research Crime Centre (NCRC), National Police Service (NPS), and other partners in aggregating crime data relating to corruption."
17. Following the successful initial engagement between the two institutions (NCRC and KIB), the Plaintiff worked to foster an advanced collaboration between the two organizations and partnership would be designed to achieve and following a resolution of the CEOs of NCRC and KIB, the Plaintiff and Defendant's Chief Accountant and a technical team from NCRC held a meeting on 16th January 2019 at the NCRC offices



to discuss specific initial projects and gain a better understanding of each organization's core mandates.

18. The meeting led to the signing of a 2-year Memorandum of Understanding between the two organizations in a ceremony attended by the CEOs and senior management of both organizations held on Tuesday 26th February 2019 at the NCRC Boardroom. The organizations agreed to collaborate on a wide range of activities and projects relating to their mandates of studying crime, aggregating and publishing crime data, contributing towards the fight against crime, and representing the banking and financial industry in matters related to these topics.
19. The Flagship project agreed upon by the parties and conceptualized by the Plaintiff was the joint development of an Integrated National Crime Data Collation and Reporting System (INCDCRS). The resolution was captured as item 3 on the Joint NCRC & KIB Meeting Agenda on 16th Jan 2019. This was an ambitious project that would change the way the nation understood crime, the way crime data is collected, aggregated, analyzed and used at a national level right from the grassroots.
20. The project would completely change the approach to understanding crime at granular level by government and the banking industry and deploying appropriate responses to a wide scope of crime in the future. The system would have been particularly important for the banking industry which has seen a dramatic rise in cybercrime and frauds in the recent years but has not developed predictive capabilities to counter the losses amounting to billions of shillings annually.
21. The Plaintiff worked tirelessly over a period of one year after the signing of the Memorandum of Understanding to interest potential technology partners who had the capacity of developing such a sophisticated system as an Integrated National Crime Data Collation and Reporting System (INCDCRS). The preliminary phase of the project was estimated to cost US\$3,000,000-US\$ 5,000,000 and after securing the commitment of a technology partner the next phase was raising the finances.
22. The Plaintiff was able to get preliminary commitment from two technology firms: one local firm XRX Technologies and one of the leading global payments' systems firms FSS Technologies. The Defendant failed in their responsibility to formalize the partnership with an agreement or MOU with the key technology partner to enable the Plaintiff proceed to the next phases of project finance and project execution.
23. The Defendant totally neglected the partnership with NCRC shortly after signing the MoU in an elaborate ceremony between the two organizations. The Defendant did not even try to execute on a single project under this partnership. More precisely, they never responded to the Plaintiff's requests to execute on the terms of the MoU or advance any aspect of the already ongoing projects. The defendant failed to support or implement the Plaintiff's diligent work to create value out of the relationship with NCRC despite the Plaintiff bringing all valuable partners on the table.
24. The NCRC's CEO had gone ahead to make a proposal to conduct three joint research programs which their organization would sponsor on condition they received a concept note, a budget and a work plan from the Defendant. The Defendant's Acting CEO indicated they would respond to the email after consultations with the Chief Accountant which never happened despite them having both been copied in the email by the NCRC CEO.



25. Under this project the three proposed research projects were: "Science and Security: Money Laundering in the Information Age", "Tackling the dangerous drift: Fake currency crime in Kenya", and "Fake Currency Crime: The applications of scientific method to the most pressing crime and security problems of Kenya today". These were research projects that would have greatly advanced the Defendant's mandate of conducting research on behalf of the banking industry, provide the banking industry with valuable insights into financial crime in the country, and also provide many post-research revenue-generating opportunities in further funded research, sale of reports and publications, training and consulting opportunities for the banking industry. The Plaintiff had already highlighted to the Defendant the attendant value of these research projects in several meetings.
26. The second major partnership that the Plaintiff initiated and facilitated under the third Contract KIB Consultancy Agreement 2018 to 2021 partnerships responsibility in Section 9c(iii) was with the South African banking and professional training firm Cornerstone Performance Solutions Pty (CPS), a reputable continental firm with operations across Africa and who control the largest market share in banking training in South Africa.
27. From first contact with CPS on 9th April 2019, the Plaintiff expended a substantive amount of time and effort in steering what was a complicated negotiation process until the parties agreed on the terms of partnership and entered a Memorandum of Understanding (MoU).
28. CPS had made substantive financial investments into the prospective training partnership for the East African region with the Defendant over a period of about one year demonstrating their total commitment to making the prospective partnership work. On the other hand, the Defendant had not invested any financial or technical resources into the process and had fully relied on the efforts of the Plaintiff to conceptualize, initiate, and negotiate the partnership.
29. CPS Senior Executives travelled physically from South Africa into Kenya specifically for negotiation meetings on the prospective partnership with the Defendant on three different occasions: in April 2019, in July 2019 and on 22nd November 2019 when the CEOs of the two organizations met for the final deliberations ahead of the signing of the MoU.
30. CPS was invited to sponsor the Defendant's Annual Banking Dinner which was held on 22nd November 2019 and because of the perceived value of the partnership they were grateful for being accorded the honour agreeing to be the events Gold Sponsor and offering a cash donation of Kshs.500,000. The Defendant after having received this sponsorship decided to vacate the MoU shortly after on 14th January 2020 and instructed the Plaintiff who had been steering the partnership process to communicate to CPS accordingly.
31. This was after 9 months of negotiations and only 6 weeks after signing the MoU and receiving a cash donation from CPS demonstrating the Defendant's inclination to dishonest business practices. The grounds cited were not substantive or deal-breaking as the spirit of the MoU provided for negotiations on each proposed program and further deliberations before being agreed upon for final implementation.



32. The Plaintiff also initiated another major strategic partnership with the Kenya Deposit Insurance Corporation (KDIC) that serves the banking industry making their interests mutually aligned. After being approached by the Plaintiff KDIC sponsored 2 of its top executives to the Annual National Banking Conference, (ANBC 2018) in October 2018 and also sponsored one of pre-plenary breakfast sessions. This amounted to a total of Kshs.585,600. From the discussions and engagements between the Defendant and KDIC between July 2018 to December 2019 facilitated by the Plaintiff, all intentions were the two organizations were working towards a major partnership given their mutual alignment of service to banking industry.
33. The KDIC CEO was invited to be a key speaker at the 2018 Annual Banking Dinner organized by the Defendant and 6 weeks later they sponsored the publication of the Re-launched Kenyan Banker Magazine to the tune of Kshs. 500,000. After receiving the cash donations in sponsorships totaling Kshs.1,085,600, the Defendant in their now predictable trend abandoned pursuing the long-term partnership that would have been valuable for both partners despite the constant appeals for a draft MOU from the Defendant by KDIC.
34. The Plaintiff avers that Part of the opportunity lost as a result of the Defendant's breach of their obligations was training of the 32,000 bankers by KDIC on deposit insurance for which they had the resources to apply in the project and partnership coupled with the enthusiasm to see it through. This led to wasted efforts by the Plaintiff who had worked tirelessly to steer this prospective partnership leading to lost income and unremunerated efforts towards working on the project.
35. The Plaintiff worked tirelessly to fulfill the terms of agreement on developing and implementing training programs contained in Sections 9(a) of the KIB Consultancy Agreement 2018 to 2021. The Plaintiff developed and marketed three new Certification Programs for the Defendant: Certified Basic Banking Professional (CBBP), Certified Intermediate Banking Professional (CIBP), and Certified Advanced Banking Professional (CABP). Within two months of signing the contract and working day and night to develop and market the advanced programs,
36. The Plaintiff got the Defendant the first client (Spire Bank) who signed the contract on 31st January 2019 valued at a total Kshs.4,401,000. The Plaintiff delivered successfully on the contract and was paid by the Defendant as per the profit share agreement in the contract. However, having not been paid for the development of the Certification Programs the agreement was to continue marketing the programs for the duration of the 3-year contract with the same payment arrangement of profit sharing applied to any successful and implemented contract. The Defendant did not perform their responsibilities of jointly marketing the programs for instance project with I & M Bank Ltd, was frustrated by the defendant even after the successful marketing of the programs by the Plaintiff.
37. Under the training revenue segment, the Plaintiff also developed and delivered other successful training programs which were open to nominees from different banks like the Managing Cybercrime Risks Course-14th & 15th Feb 2019 held at the Safari Park Hotel. The program generated a total revenue of Kshs.747,040 which the Plaintiff was paid his dues for the program.



38. This performance was indicative of the success the Plaintiff would have had with similar programs that were scheduled to run every two months under the agreement but which the Defendant failed to cooperate in marketing partly due to strained relationships with their target clients but mainly because of professional negligence on their contractual duties. Maintaining the same level of performance over the period of the three-year contract, the Plaintiff would have generated a further minimum revenue of Kshs.12,699,680 for the Defendant and generated a minimum income of Kshs.2,261,408 for the Plaintiff.
39. The Plaintiff also fulfilled his responsibility as contained in Sections 9(c)-iv of the KIB Consultancy Agreement 2018 to 2021. After successfully conducting the Banking Skills Survey, Phase I during the pre-contract period in May June 2018. The Defendant paid the Plaintiff only Kshs.100,000 citing scarcity of resources and both parties agreed to break down the research into two phases and conduct a more comprehensive industry-wide skills' survey under the KIB Consultancy Agreement 2018 to 2021 contract signed 5 months later.
40. The arrangement was communicated to the banking industry senior executives during the consultative breakfast meeting hosted by the Defendant in July 2018 while the Plaintiff had done his part in preparing for the Banking Skills Survey, Phase II by delivering excellently on Banking Skills Survey, Phase I, the Defendant failed to initiate or facilitate for the execution of Phase two of the project where the estimated loss of total project revenue was Kshs.30,000,000 and Kshs.11,250,000 for the Plaintiff applying the revenue-share formula contained in the KIB Consultancy Agreement 2018 to 2021 and following the projected revenue contained in Banking Skills Survey, Phase II-Revenue Plan.

PROJECTS UNDER THE SECOND AGREEMENT

62. The particulars of breach and official negligence by the Defendant under the second contract The Kenyan Banker Magazine Agreement 2018 are as follows:
 - a. Breach of Section 3 by the Defendant of The Kenyan Banker Magazine Agreement 2018 that stipulated a minimum trial period of one year (12 issues) and an extended three years (36 issues) upon successful implementation of the trial phase;
 - b. Breach of Section 4 by the Defendant of The Kenyan Banker Magazine Agreement on irrevocability and termination of the contract sought to secure the Plaintiff's ultimate remuneration;
 - c. Breach of Section 5 by the Defendant of The Kenyan Banker Magazine Agreement on provision to the Plaintiff by the Defendant of technical support requisite for the unencumbered industry and market access necessary for the success The Kenyan Banker Magazine;
 - d. Breach of Section 9 by the Defendant of The Kenyan Banker Magazine Agreement on remuneration of the Plaintiff;
 - c. Breach of Section 10 by the Defendant of The Kenyan Banker Magazine Agreement on remittance of fixed costs to the Plaintiff for the next month's magazine publication; and



- f. Breach of Section 11 by the Defendant of The Kenyan Banker Magazine Agreement on remittance of fixed publication costs by the 10th day of each month for the next month's issue.
63. The Plaintiff signed a second and different contract on the 6th of November, 2018 where the Plaintiff was outsourced to publish The Kenyan Banker Magazine for a trial period of one year and an extension of a further three years upon successful proof of commercial success. The contract was executed on 21st November, 2018 to run until 31st December, 2019 for the trial period and 31st December, 2022 upon success in the trial period.
64. The Plaintiff produced and delivered the high-quality Premier/Re-launched issue of The Kenyan Banker Magazine ahead of its scheduled launch date of 2nd January 2019 and exactly 4 weeks after signing the publication agreement. The magazine which was scheduled to start distribution on 2nd January 2019 was delivered to the Defendant on 21st December, 2018.
65. The Plaintiff raised Kshs.500,000 in advertising revenue for the magazine that did not have a circulation presence which is a remarkable achievement in advertising in commercial publishing. This represented 75% of fixed production costs of Kshs.675,000 for the Premier/Re-launched issue as per the contract. The Defendant however did not take up its responsibility of distributing the magazine to the banking industry leading to a direct loss of Kshs.250,000 in additional revenue for the published copies.
66. The Plaintiff avers that the Defendant failed to abide by the terms of agreement as per Section 11 of the contract and pay for the total fixed costs for the Premier/Re-launched issue of January 2019 and the Plaintiff had to bear these costs for the timely delivery of the publication, the Defendant only settled the balance of Kshs.165,000 on 25th February 2021 exactly 2 years and 3 months after it was first due. This was after the Defendant received a demand note from the Plaintiff.
67. Despite the Defendant's departure from the agreement and cooperation in what is essentially a very strict time-bound project being a monthly publication, the Plaintiff continued with its obligations to prepare for the publication of the next issue scheduled for 1st February, 2019 and seek corporate subscriptions beyond the banking industry.
68. The Defendant did also not remit to the Plaintiff the fixed costs for the publication of the next issue for February 2019 edition by 10th January 2019 as per Section 11 of The Kenyan Banker Magazine Agreement, 2018 to facilitate the production and timely delivery of the February 2019 edition. No communication was ever availed to the Plaintiff explaining the decision to review or exit the contract or what the fate of the project was.
69. This was contrary to the contract termination clause in Section 4 of The Kenyan Banker Magazine Agreement, without consideration as to the negative effects and huge losses to the Plaintiff in expected income and lost income from the uncompensated hard work and extensive time and already dedicated to the Defendant's work.
70. Due to the breach of terms of the Contract of The Kenyan Banker Magazine Agreement, 2018 the Plaintiff suffered losses in expected income from 11 publications accruing to Kshs.6,192,000 for the trial phase outlined in Section 3 of the contract from 6th November 2018 to 31st December 2019 as estimated from the pre-agreed revenue projections contained in TKB Magazine Revenue Plan, Projections-(20th July 2018).
71. The Plaintiff states that applying the same projections and assuming the same performance indicators and the conditional extension of the contract for a further 3 years as stated in Section 3 of the contract,



the Plaintiff would have generated an additional Kshs.18,576,000 in income from 36 publications applying the revenue-share formula outlined in Section 9 of the agreement.

PROJECTS UNDER THE THIRD AGREEMENT.

72. The particulars of breach and official negligence by the Defendant under the third contract March 2021 Contract (Growth Consultant) are as follows:
- a. Breach of Section 2 by the Defendant of the March 2021 Contract (Growth Consultant) on honoring the Defendant's commitments entered into under the KIB Consultancy Agreement 2018 to 2021;
 - b. Breach of Section 5 by the Defendant of the March 2021 Contract (Growth Consultant) on termination of contract by giving a 7-day written notice and demonstrating cause;
 - c. Breach of Section 6 by the Defendant of the March 2021 Contract (Growth Consultant) on providing the Plaintiff with resources and technical support for the success of outlined initiatives and projects including office space and administrative support;
 - d. Breach of Section 8 by the Defendant of the March 2021 Contract (Growth Consultant) on ensuring completion of pre-agreed tasks under this contract;
 - e. Breach of Section 10 by the Defendant of the March 2021 Contract (Growth Consultant) on remuneration of the Plaintiff for work executed and completed as per the terms of contract;
 - f. Breach of Section 11 by the Defendant of the March 2021 Contract (Growth Consultant) on timely payment of the Plaintiff by 2nd date of every month and for total hours billed;
 - g. Breach of Section 12 by the Defendant of the March 2021 Contract (Growth Consultant) on intellectual property where the Defendant has used the Plaintiff's intellectual property without due remuneration;
 - h. The Defendant's blatant refusal by Management to implement the terms of contract and to undertake any dispute resolution despite the Plaintiff's documented appeal for dispute resolution; and
 - i. The Defendant's blatant refusal by the Governing Council to resolve the contractual impasse with the Plaintiff over the term of the March 2021 Contract (Growth Consultant) despite 6 different documented appeals by the Plaintiff.
73. On 1st February 2021 the Defendant's Governing Council appointed a new substantive CEO Mr. Julius Alego who was assigned the responsibility to run the organization and was placed on a 6-month probationary period. Among his responsibilities were: "to review the profiles of current staff, identify strengths, weaknesses, and propose alignment or exit plan" and also "develop consultant engagement framework and obtain an approval from the council". The new CEO and the Plaintiff engaged in a series of telephone and email communication between 8th February 2021 and 24th February 2021 where the Plaintiff intensively briefed him on the state of the Plaintiff's work with the institution and where each project stood in terms of progress.
74. The Plaintiff states that on 9th February 2021, the new CEO made a commitment to look at all existing contracts within the organization and provide feedback to the Plaintiff within the week. The new CEO and the Plaintiff had their first briefing meeting on 18th February 2021 where the new CEO was very impressed with the Plaintiff's work and deep understanding the institution and opportunities for its advancement.



75. The Plaintiff avers that the new CEO invited the Plaintiff to assist him in developing a presentation which he would use to prepare his plan to the Governing Council and the Plaintiff delivered expeditiously. The new CEO would hence use the Plaintiff's initiative to prepare his future presentations to the Governing Council.
76. The Plaintiff also sent the new CEO a comprehensive brief on outstanding projects and work to ensure he was properly and accurately briefed on the Plaintiff's prior work as he made his determination on the direction to take on the contracts in force. During this period, the Plaintiff also identified an opportunity that would have greatly benefitted the Defendant and brought it to the attention of the new CEO that is a grant application advertised by the United Nations Capital Development Fund (UNCDF) titled "Request for Applications for Digital Financial Services (DFS) Training for Policy makers and Regulators".
77. The total project application was US\$ 332,337 (Kshs.36,557,070 at the then exchange rate of 110). Despite the deadline being less than 72 hours from the time the new CEO gave the go-ahead to make the application, the Plaintiff worked day and night, literally, and submitted the very detailed and complex application in time to beat the deadline.
78. On 1st March 2021, the Defendant entered into a new contract with the Plaintiff which the new CEO explained was for a different set of tasks mainly around setting up institutional structures like policies and departmental systems. The contract was a 3-month contract renewable through extension.
79. The new contract upheld all covenants of the existing KIB Consultancy Agreements 2018 to 2021 contract as contained in Section 1 of the Preambles and Section 2 of the main body of the March 2021 Contract (Growth Consultant) contract. However, the new CEO and the Defendant did not take any action to uphold the terms of the KIB Consultancy Agreement 2018 to 2021 and continue implementing the projects initiated under the agreement despite having an extensive and detailed briefing by the Plaintiff.
80. The Plaintiff dutifully undertook all tasks assigned to him under the new 3-month contract and the same was renewed for a further 3 months from 1st June 2021 to 31st August 2021 following a positive evaluation of the Plaintiff's performance.
81. During the first period of the March 2021 Contract (Growth Consultant) contract, the Plaintiff proposed to the new CEO, over and above already existing projects, a series of revenue-generating ideas following his tasking by the Governing Council to generate new income streams for the organization. The Defendant commissioned the Plaintiff to look into the turnaround of the Defendant's Annual Quiz Contest from a low-key event and cost centre to a revenue-generating and flagship annual project for the Defendant. This was to fall under the KIB Consultancy Agreement 2018 to 2021 agreement of revenue sharing.
82. The Plaintiff enthusiastically took up the task and remodeled the project to the new "Banking Prodigy Project", Kenya's Banking Prodigy Project Presentation. Between the months of May 2021 and August 2021 the Plaintiff worked tirelessly on the project and made presentations to the whole Defendant's organization during the weekly staff meetings.
83. On 30th July 2021 in a meeting between the new CEO and the Plaintiff, the new CEO took an about-turn on the project and said that he did not understand it at all and was hesitant to pursue the project. This was despite an organizational meeting specifically called for the Plaintiff to make their final presentation on the project and get staff input before rollout just four days earlier on 26th July 2021 between 11.00am-1.00pm.



84. The Plaintiff made a detailed final presentation and the staff engaged widely with questions and suggestions which were satisfactorily addressed by the Plaintiff. The new CEO's turnaround may have been informed by the Plaintiffs refusal to partner in a private assignment given to him by the new CEO that created a conflict of interest that ran counter to the ethical principles of his job.
85. On the 12th July 2021, the new CEO approached the Plaintiff with an idea to put in a joint proposal for the training application in both their names but the Plaintiff declined. This was because this was in direct conflict with the Defendant's core business of training and therefore not generally an ethical thing to do. He however agreed to prepare the proposal for the new CEO to ensure he retained the goodwill to continue with his work.
86. The Plaintiff avers that the refusal to participate in an unethical act would mark the beginning of a round of frustrations including the turnaround on The Banking Prodigy Project just two weeks later. On the same day when he made a turnaround on The Banking Prodigy Project, 30th July 2021, the new CEO also refused to approve the full pay for services rendered by the Plaintiff for the month of July 2021 as had been the norm over the preceding 4 months and as outlined under Section 11 of the March 2021 Contract (Growth Consultant) agreement.
87. The Defendant paid only Kshs.300,000 of the total billed amounts of Kshs.327,500. Billing Schedule 1st-31st July 2021 This was in complete contravention of the terms of agreement and an offence to the spirit of partnership. The balance of Kshs. 27,500 was only settled on 31st August 2021 after the Plaintiff attended a meeting with the new CEO and the Head of Finance and Administration/Chief Accountant.
88. The meeting ended up in a hostile manner after the new CEO ejected the Plaintiff from his office. A follow-up meeting a week later on the 7th September 2021 ended up in the same manner with the new CEO almost violently ejecting the Plaintiff from his office and even wishing him 'a good life' stating verbatim "the staff will miss you!". These developments were captured by the Plaintiff in a request for dispute resolution letter sent to the Defendant on 13th September 2021. The letter was ignored in totality demonstrating the Defendant was using the fabricated acrimony as a way of renegeing on their contractual agreements.
89. Following these developments, the Plaintiff raised these matters directly with the institution's Governing Council two weeks after the dispute resolution letter. The Governing Council did not respond officially or communicate formally to the Plaintiff and has never looked into these matters to date. The Plaintiff has also on several occasions over the period of one year (November 2020 to October 2021) raised the issue of outstanding contractual matters and breach of contract directly with the then Governing Council Chairman Mr. Rodgers Mungumi seeking a resolution after receiving no management consideration.
90. The Chairman had completely ignored the Plaintiff's pleas and only responded on email but not through action or resolution of the matters when the Plaintiff engaged an advocate to raise a legal demand on behalf of the Plaintiff. The Governing Council has not directly engaged with the Plaintiff to resolve the contractual matters despite all dispute resolution attempts demonstrated by the Plaintiff above over a period of one year.
91. The Defendant has not paid the Plaintiff for some works executed under the new CEO and under the March 2021 Contract (Growth Consultant) contract following the hourly rates set out in Section 10 of the main body of the contract to the tune of Kshs.1,427,500.



92. The Plaintiffs Claim is guided by the confirmed hourly rates previously charged in the same industry of between Kshs.12,500 to Kshs.25,785 per hour for similar or comparable services.
93. The Plaintiff holds the Defendant liable for uncompensated Work done and delivered and for the loss and damage suffered to him as a result of the breach of the Various Contracts and lost revenue/income from the various projects the Plaintiff had initiated.
94. The defendant filed a statement of defence dated 31/1/2022 denying the plaintiff's claim.
95. The defendant averred in the said statement of defence that it is not liable for any of the claims as alleged by the plaintiff and further that the plaintiff is not entitled to any of the prayers sought.
96. The hearing of this case proceeded by viva voce evidence. The plaintiff adopted his written witness dated 17/12/2021 as his evidence.
97. The plaintiff who testified as PW 1 also produced a bundle of documents dated 7/12/2021 and a further bundle dated 17/2/2022 as his exhibits.
98. The plaintiff's evidence was that he entered into 3 separate contracts with the defendant (KIB) and he did his part of the bargains but KIB failed to honour their part.
99. The plaintiff said he was not paid despite a commendation letter issued to him at page 468 of the bundle that his performance exceeded the agreed targets.
100. The defendants called one witness, DW 1, MR. JULIAS ODHIAMBO ALEGO who is the secretary of KIB.
101. DW 1 adopted his witness statement dated 31/1/2022 as his evidence in chief.
102. DW 1 said the defendant (KIB) does not owe the plaintiff any money.
103. He said the three contracts entered into with the plaintiff were all paid.
104. DW 1 stated in his statement dated 31/1/2022 that payment was done for work actually done and completed under the KIB Consultancy Agreement 2018 to 2021 contract at the Plaintiff Consultant's open market rate of KShs.12, 500 per hour totaling KShs.18,250,000.
105. That in respect of the plaintiff's prayer No. 1 he referred to the Consultancy Agreement 2018 to 2021 dated 6th November, 2018, contained in the plaintiff's list of documents at page 1007 which state as follows: -
 - i. The document attached is not a signed contract capable of being effected.
 - ii. Even if the contract was signed, the contract as per paragraph 9 (a), 9 (b) and 9 (c) thereof stipulates how the plaintiff should be paid as clearly indicated at pages 197-203 in the plaintiff's list of documents.
 - iii. These provisions in the contract do not support or subject the contract to an open market rate of Kshs.12,500 per hour any of the terms of agreement.
 - iv. Payment in which Compliance Solutions was to be paid after successful implementation of a project as follows: -
 - a. S.9 (a) Training-50% Profit sharing with the Institute,
 - b. S.9 (b) Membership Dept. ~ 50% profit sharing with the Institute on Membership events & other revenue generating projects.



- c. S.9(c) Partnerships/Outreach projects
 - d. S.9(c) (i) Sponsorship - 30% of Gross Sponsorship Value,
S.9 (c) (ii) Donor/Funded Projects - Automatic & Non-revocable project, director/
Project lead role with applicable funding/remuneration rates
S.9(c) (iii) Long term Institutional Partnership-Automatic & Non-revocable project
director/Project lead role with rates as per the specific Partnership agreement.
S.9(c)(iv) Short term Partnership-50% Profit sharing with the Institute.
- V. It is absolutely clear that the works to be done by Compliance Solutions was not to be paid on an open market rate of Kshs.12,500 per hour or any other hourly basis or any other highly subsidized rate.
- vi. The plaintiff bundles out some hours to justify the sum of Kshs.18,250,000/-without bothering to give any specific dates for the said hours spent on the said project or the specific work done as it should be noted that there are no particulars of the works done on those hours.
 - vi. In spite of him being thorough in the compilation of the figures it is curious that he has not provided any schedule showing the breakdown of the assignments done in respect of the hours allegedly spent.
 - vii. Further during that period of the contract, the plaintiff did not raise any invoice or send any demand letter in respect of the now alleged hours of work done.
 - ix. On matters of the breach of the Agreement it should be noted that the plaintiff does not give any specific particulars in respect of:-
 - a. When the defendant breached the 3-year period
 - b. Proof of any particulars of breach
 - c. The particulars of what was not provided by the defendant
 - d. Denial of access
 - e. What was not implemented by the defendant
 - f. What contractual impasse or dispute was there as there is no specified particulars in respect of this
 - g. What duties that the management failed to perform
106. Lastly in respect of this claim, the defendant via its email dated 24th February, 2021 being document No 1 at page 1 of the defendant's list of documents inquired from the plaintiff if there was any pending invoice or claim unpaid as at that date and the plaintiff in his email documents confirmed that there was no pending invoices or claims that were unpaid by the defendant.
107. This confirms that this claim being brought now in this suit is an afterthought by the plaintiff which seeks to give him an unjust enrichment.
- Prayer 1 (b) –Payment for works under The Kenyan Banker Magazine Agreement, 2018 contract period of 1 year guaranteed trial under the contract at a revenue-share of minimum Kshs.2,475,000.



108. The plaintiff proceeds to attach a narration of a claim for the sum of Kshs.375,000/- at page 1009 of his documents that he purports to be for loss suffered for Quarter 1 2019 (January-March) for the publication of the magazine which is not tenable for the following reasons:-
- a. The 1st Edition of the Magazine did not realize any profit while the contract agreement stipulates that the plaintiff was to be paid 40% of the profit as per clause 9 of the agreement at page 206 of the plaintiff's list documents which states that client undertakes to pay a consolidated 40% exclusive VAT of the total net profit of the magazine revenue under this contract.
 - b. The plaintiff was refunded all the publication cost.
 - c. The 1st edition proved to be commercially unsustainable and there was mutual concurrence to terminate the publication as per the contract.
 - d. There was no publication of any other magazine thereafter until the lapse of contract.
 - e. There was communication from the plaintiff relevant to the subsequent publication.
 - f. The plaintiff has not given any tangible or any justification at all to sustain his claim on loss of income due to non-publication of magazines
 - g. The plaintiff did not raise any issue with the institution since year 2019 yet he was in contact with the institution as confirmed with minutes of the meetings that he attended which minutes are contained at pages 837- 963 of the plaintiff's lists of documents
 - h. No invoice has ever been raised and or demand letter sent by the plaintiff during that period of the contract.
 - i. At the end of the contract period there was no pending invoice unpaid claimed by the plaintiff.
 - j. The institute used to print the Kenyan Banker Magazine for many years even prior to 2019 and as such the plaintiff cannot claim that it is his own original idea. A sample prior copy for the year 2010 is attached herewith being document No. 3 at page 3 of the defendant's lists of documents.
 - k. The sole revenue of the magazine was coming from the sponsorship but not from the sale of the magazine to the industry and other stakeholders and the payment for the plaintiff or Olan Publishers was in accordance with Clause 9 of the agreement as confirmed at page 206 of the plaintiff's lists of documents.
 - l. As the Managing Editor of the Magazine and being the holder of the contract, the plaintiff or Olan Publishers did not give any opinion or advisory in respect of the publication and may be profit to be made in other subsequent editions after the loss made by the first edition which opinion or advisory was either rejected or ignored by the defendant which could perhaps form the basis of a claim for any loss on the part of the plaintiff.
 - m. That in any event it was the contractual duty and obligation of the plaintiff or Olan Publishers to print, distribute and market the magazine (as contained at clause 16 of the Managing Editor's Role at schedule I of the agreement as confirmed at page 210 of the plaintiff's lists of documents), and if he failed in that duty, then he cannot blame the defendant.
109. As for the other claims in this limb for Quarter 2 2019 (Apr-June) being a prayer for KShs.600,000/-; Quarter 3 2019 (July-Sept) being a prayer for KShs.750, 000/-and Quarter 4 2019 (Oct-Dec) – being



a prayer of Kshs.750,000/= the reasons given above at paragraph 12(a) to (m) will suffice for this claim save to add that: -

- a. The plaintiff cannot want to claim some amount from the defendant for which responsibility lay on him or his business entity to fulfill or undertake.
- b. If the 1st edition proved to be commercially unsustainable there are no efforts or projections that the plaintiff has shown that the other editions were going to make profits to justify the claims.
- c. No claim can arise on projections for work not done by the claimant.
- d. In any event, if there was a possibility for profit, the onus lay on him or his business entity to publish the other editions from which he would have earned from any profits realized.

110. As a consequence, therefore the entire prayer for Kshs.2,475,000 is not sustainable

Prayer 1 (c) - Outstanding payment on the March 2021 Contract (Growth Consultant) at the contract hourly rate of KShs.2,500 totaling KShs.1,427,500.

111. Turning to prayer 1 (c) in the plaint, the claim for the said amount at Kshs.1,427,500/-does not arise for the following reasons:-

- a. There was no communication from the plaintiff or the defendant to terminate the contract.
- b. The contract was running until 31st August, 2021.
- c. The plaintiff was provided with all the resources and technical support that he required and did not raise any complaint that he was not being supported.
- d. The plaintiff was paid for the work done as per the billing schedule and invoices he raised which were all settled.
- e. There is no pending invoice lodged with the defendant which is unpaid.
- f. There was no demand letter raised by the defendant for the payments now being claimed.
- g. In the month of August 2021, the plaintiff did not provide any billing, therefore, he was not paid since there was no work done.
- h. The payments were done as per the remuneration clause in the contract dated the 1st March 2021 under clause 10 of the contract dated the 1st March 2021 under clause 10 of the contract at page 213 of the plaintiff's list of documents.

Prayer 1 (d) Outstanding payment on unpaid works delivered during the pre-contract period and lost income of KShs.1,537,240.

112. That as stated at paragraph 1 of the plaintiff's statement it is true that the said meetings took place and this culminated to a proposal by Compliance Solutions vide its letter dated the 18th day of May 2022 signed by the plaintiff as the Principal Consultant.

113. That this proposal is attached as plaintiff's document No 1 at pages 4 and at page 217 of the plaintiff's list of documents. This proposal does not have any monetary consideration to it.

114. Interestingly the plaintiff proceeds to attach a narration of claim at page 218 of his documents that he purports to add up to Kshs.1,537,240/- in his prayer 1 (d) what he calls unpaid works delivered during the pre-contract period and lost income.



115. That this narration culminating in the claimed sum of Kshs.1,537,240/-does not arise for the reason that there was no contract covering all the items claimed and in particular: -
- i. Items 2,3,5,7,8,9,10,11 of the narration at page 218 of his documents were not to be paid as there was contract of engagement for the same. The plaintiff has not annexed any contract or document signed between the parties or invoices prepared by the plaintiff or Compliance Solutions in support of the claim.
 - ii. Item No. 12 of the narration at page 218 of his documents is claimed for scheduling and/or attending meetings without any documentation to show that he was to be paid for such services. It should be noted that this scheduling or attendance was for purposes of shoeing up marketing for the conference and uptake of the magazine.
 - iii. In any event the scheduling was not done by the plaintiff but by the defendant's CEO and as confirmed by the defendant's copies of emails sent to various stakeholders which copies are attached hereof as document No. 4 at page 5 of the defendant's list of documents.
 - iv. Item No. 13 of the narration at page 218 of his documents does not in any way contain any evidence of the defendant's failure to follow up on the commitments from Banks CEO's and in any event there are no particulars as to what constitutes the claim for 1,197,240/-
 - v. Further it was the duty for Compliance Solutions the contracted agent for the conference which was to follow up as per the contract of engagement for the conference which was clear that it was Compliance Solutions solely in charge of the marketing and not the defendant. This is stipulated at clause 9 of the Conference Agreement at page 242 of the plaintiff's list of documents. In any event the attached contract has not been signed by both parties.
 - viii. Further in the knowledge that this was not supposed to be paid, the plaintiff or Compliance Solutions have never raised any invoice, claim or demand for the alleged amount.
 - ix. As acknowledged by the Plaintiff's letter dated the 18th day of May 2018 document No. 2 at page 4 of his documents signed by the plaintiff as the Principal Consultant, all works done pre-contract was supposed to demonstrate the plaintiff's or the Compliance Solutions' capability to perform and were not to attract any payment and no payment contract was ever signed between the parties for these works.
 - x. There was no indication that the plaintiff would be paid for the presentation and proposals.
 - xi. There was no communication indicating that the plaintiff will be paid for any assignment during pre-contract engagements and for the proposals.
 - xii. There was no invoice raised or demand letter.
 - xiii. In respect of the visit to the Banks CEOs, the same had begun way back before the planning of the conference and it was being organized by personal assistant to the Acting CEO and not the plaintiff as clearly indicated at document No. 4 at page 5 of the defendant's list of documents.
 - xiv. The plaintiff does not however give any breakdown on the work relating to the amount he is demanding.
116. As for the claim related to the Annual National Banking Conference 2018 organization, the same is not tenable for the following:-



- a. The plaintiff and the service providers were paid in full under bills prepared, scrutinized and signed for by the plaintiff. This is as contained at document No. 5 from page 11 of the defendant's list of documents.
- b. The entire budget was prepared by the plaintiff and he knew all the participants who attended the event and the payments made by each of the Banks representatives which was shared with him by the defendant to help in the attendants list as per document No. 6 at page 76 of the defendant's list of documents.
- c. All the service providers and contractors for the conference were hired by the plaintiff who negotiated the rates on behalf of the defendant. This is as contained at pages 314-315 of the plaintiff's list of documents.
- d. The institutional staffs were paid per diem as per the company out-of-station travel policies. This is as contained at pages 385-386 of the plaintiff list of documents.
- e. The plaintiff did not raise any invoice or demand letter.
- f. The plaintiff does not give any breakdown and or calculation on the work relating to the amount of KShs.1,197,240 he is demanding at item No. 13 of the narration at page 218 of his documents, other than generalized claims against the defendant without stating what role the plaintiff was to play in the organization of the conference.

Prayer 2 (a) – Income loss of Kshs.75,948,162 as a consequence of breach of contract by the Defendant under the KIB Consultancy Agreement 2018 to 2021 had the contract been executed to completion of a revenue-share.

117. Turning to prayer 2 (a) in the plaint, the claim for the said amount at Kshs.75,948,162 does not arise for the following reasons:-

- a. These are projections which could not guarantee any future income.
- b. The plaintiff's Compliance Solutions or the Plaintiff as the lead consultant was supposed to pursue the projects to actualize income for the institution.
- c. There was no communication that he was not being supported for the implementation of this project.
- d. For the entire period of engagement there is no evidence of any project that was undertaken or procured by the plaintiff or his firm of the equivalent value as what he is claiming.
- e. That the contract was not terminated at any time by the defendant.
- f. There were no proposals and projects which were presented by the plaintiff to the defendant and that the defendant refused to implement.
- g. In respect of trainings, the plaintiff was paid in full as per the training schedule and the contract agreement. The was no unpaid invoice presented the defendant or indeed no claim and or demand has ever been raised by the plaintiff in respect of this.

118. Specifically, therefore, the tabulations given for this claim in respect of each of the items at page 1007 of the plaintiffs documents do not add up and are not payable on account of the reasons given above at paragraph 17 hereof.



Prayer 2 (b) in respect of Income loss of KShs.6,000,000 as a consequence of breach of contract by the Defendant under The Kenyan Banker Magazine Agreement, 2018 had the contract been completed as planned.

119. The defendant reiterates the contents of paragraphs 8, 9 and 10 here-above as they relate to the same claim on the publication of the Defendant's Magazine.
120. It would appear that the plaintiff wants to have a double measure of claim in respect of the same item. However, at the risk of being repetitive, the plaintiff's Compliance Solutions or the Plaintiff is not entitled to any amount under this claim as a result of the following: -
 - a. The 1st edition proved to be commercially unsustainable and there was mutual consent to terminate the publication as per the contract.
 - b. There was communication from the plaintiff relevant to the subsequent publication.
 - c. There was no publication of any magazine until the lapse of contract. The plaintiff should not claim loss of income to non-publication of magazines.
 - d. The plaintiff did not raise any issue with the institution since year 2019 yet he was in contact with the institution.
 - e. No demand letter raised by the plaintiff during that period of the contract.
 - f. There was no pending invoice unpaid claimed by the plaintiff.
 - g. The institute use to print the Kenyan Magazine for many years even prior to 2019 and as such the plaintiff should not claim that it is his own original idea.
 - h. The sole revenue of the magazine was coming from the sponsorship but not from the sale of the magazine to the industry and other stakeholders.
 - i. There was no publication in 2019, 2020 and 2021.

Prayer 3-General damages for breach of contract under (1) & (2) above.

121. This Prayer has been responded to in the preceding paragraphs and therefore cannot be sustained on account of the fact that the plaintiff has not demonstrated what constitutes breach of the contracts or the particulars of breach.
122. Specifically,
 - a. In respect of the KIB Consultancy Agreement, the same has been responded to at paragraph 17 here-above
 - b. In respect of the Kenya Bankers Magazine Agreement, the same has been responded to at paragraphs 8, 9, 10, 19 and 20 here-above.
 - c. In respect of the Growth Consultancy, the same has been responded to at paragraph 11 here-above.

Prayer 4-Costs of this suit together with interest thereon at Court rates.

123. The parties filed written submissions as follows;
124. The plaintiff submitted that the plaintiff's adduced evidence containing 3 mutually executed contracts subject to this suit which the defendant confirmed. The Plaintiff's sole obligation was to come up with



innovative ideas and look for partners to back the project and introduce the partners to the defendant. Upon concurrence with the Defendant on such projects and the Defendant's engagement with these parties, the Plaintiff was also to facilitate their execution. Once that was done his obligations were done and the only next item remaining was for the defendant to implement the projects and make sure there was a realization of profit.

125. The plaintiff submitted that consultancy on revenue-share is a very special aspect of engagement especially where the consultant has to rely on his work and pray that the other party at least performs their work in order for his/her to be paid his/her commission or share. The consultant in accepting these revenue-share terms is very confident in their capacity to realize the goals as is clearly demonstrated by the performance of the Plaintiff to the amazement and admiration of the Defendant in their own letters.
126. The plaintiff argued that the plaintiff has relied on documentary evidence which is uncontroverted and the defendant has not denied the projects and it is only fair that he should be paid for his innovations and work actually done.
127. That it is now trite law that special damages must first be pleaded and then strictly proved. Suffice it to quote from the decision of the Court of Appeal in Hahn V. Singh, Civil Appeal No. 42 Of 1983 [1985] KLR 716, at P. 717, and 721 where the Learned Judges of Appeal - Kneller, Nyarangi JJA, and Chesoni Ag. J.A. - held:

“Special damages must not only be specifically claimed (pleaded) but also strictly proved.... for they are not the direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”
128. The plaintiff argued further one loss of income that industry is controlled by the defendant's institute and all the banks are members of the defendant. The Plaintiff being a fellow of the institute and operating in the banking sector, has not been able to attain any consultancy or employment from the time a dispute arose from the three contracts, a fact which is well known in the industry circles.
129. The defendants on the other hand submitted that the plaintiff should have demonstrated the revenues generated by each contract and what his entitlement was as per the profit-sharing ratio.
130. On matters pertaining to liquidated damages, the Court in Court in Civil Suit No. 3 of 2020 quoting the holding by Ringera, J. in Charles Mwalia vs. The Kenya Bureau of Standards [2001] 1 EA 151, (as he then was) held that:

“A liquidated demand is in the nature of a debt, a specific sum of money due and payable under or by virtue of a contract. Its amount must either be ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specific or named as a definite figure requires investigation beyond mere calculations, then the sum is not a “debt or liquidated demand”, but constitutes “damages” ... The words “debt or liquidated demand” do not extend to unliquidated damages, whether in tort or contract, even though the amount of such damages be named as a definite figure.”
131. On the plaintiffs claim of Kshs. 18,250,000 the defendant argued that the contract was explicit on profit sharing ratio and not on the hours that the plaintiff was to work. On the plaintiff's claim for the sum of KShs. 2,475,000/- in respect of the Kenya Banker Magazine Agreement, the plaintiff on cross examination fumbled with his evidence but eventually stated that the magazine made a profit and his



- entitlement was in the region of KShs. 37,000/- which again unfortunately he was not able to give a clear computation.
132. On the pre-contract period, the plaintiff claims KShs. 1,537,240 without tabulating the services rendered and the basis upon which is payment is based as there was not contract for the same.
 133. On the claim for KShs. 81,948,162 for breach of contract by the defendant - as clearly elaborated in the supplementary witness statement of the defendant by Julias Alego, the same is based on projections which are not provided and have no foundation.
 134. It is the duty of the plaintiff to prove his case to the required standard in civil cases which is on a balance of probabilities.
 135. The issues for determination in this case are as follows;
 - i. Whether the plaintiff entered into valid contracts with the defendant (KIB).
 - ii. Whether the defendant was in breach of the said contracts.
 - iii. Whether the plaintiff is entitled to the remedies he is seeking against the defendant.
 - iv. Who pays the costs of the suit?
 136. On the issue as to whether the plaintiff and the defendant entered into valid contracts, I find that it is not in dispute that the parties had a contractual relationship as follows;
 - i. KIB consultancy agreement entered into on 6/11/2018.
 - ii. The KIB magazine agreement entered into on 6/11/2018.
 - iii. The Growth Consultant contract entered into in March 2021.
 137. The plaintiff's evidence was that the defendant failed to perform its part of the bargain in the three contracts hence this suit.
 138. The Plaintiff is duty bound to prove the following;
 - (a) That the contracts exist or existed;
 - (b) That the contracts were breached by the defendant; and
 - (c) That the Plaintiff suffered damage (loss) as a result of the defendant's breach.
 139. The Plaintiff evidence that his sole obligation was to come up with innovative ideas and look for partners to back the projects and introduce the partners to the defendant.
 140. That upon concurrence with the Defendant on such projects and the Defendant's engagement with these parties, the Plaintiff was also to facilitate their execution. Once that was done his obligations were done and the only next item remaining was for the defendant to implement the projects and make sure there was a realization of profit.
 141. The plaintiff alleged that the defendant failed to implement the contracts for a period of three years.
 142. Further, that the defendant breached Section 4 by the of the KIB Consultancy Agreement 2018 to 2021 on irrevocability and terminated the contracts.
 143. The plaintiff also sighted failure by the Defendant to provide the Plaintiff with resources and technical support for the success outlined in the agreement initiatives and projects including office space and administrative support.



144. The plaintiff also sighted denial of access by the Defendant to the Defendant's work premises.
145. Further, the plaintiff said that the Defendant blatantly refused to implement the terms of contracts and to undertake any dispute resolution despite the Plaintiffs documented appeal for dispute resolution.
146. He said that the Defendant blatantly refused to resolve the contractual impasse with him for over a period of one year by the Governing Council and with over Eight (8) different documented appeals by the Plaintiff.
147. The plaintiff also sighted failure by the Defendant to perform its duties in all projects initiated under the KIB Consultancy Agreement 2018 to 2021 and failure to act upon or implement Memorandum of Understanding entered into with other third parties for the successful execution of projects under this contract and finally;
148. The plaintiff sighted failure by the Defendant to execute and implement the Memorandum of Understanding under the KIB Consultancy Agreement 2018 to 2021 with third parties with whom the Plaintiff had cultivated positive relationships towards a partnership with the Defendant and from whom the Defendant had received financial and technical support in implementing its goals.
149. The defendant denied the plaintiff's claim in their defence and called one witness during the hearing.
150. The defence witness who testified as DW 1 said the plaintiff was paid for the work he did and further that the contract was explicit on profit sharing ratio and not on the hours that the plaintiff was to work.
151. DW 1 further said that the plaintiff bundled out some hours to justify the sum of Kshs.18,250,000/- without bothering to give any specific dates for the said hours spent on the said project or the specific work done and it should be noted that there are no particulars of the works done on those hours.
152. I find that the defendant was in breach of the contracts entered into with the plaintiff.
153. The Black's Law Dictionary² defines a breach of Contract (29th Edition,) Page 213 as;
- “a violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance. A breach may be one by non-performance or by repudiation or by both. Every breach gives rise to a claim for damages and may give rise to other remedies. Even if the injured party sustains no pecuniary loss, or is unable to show such loss, with sufficient certainty, he has at least a claim for nominal damages.”
154. I find that there is evidence that the defendant did not perform their part of the bargains as agreed in the contracts entered into between the plaintiff and the defendant.
155. It is the duty of the plaintiff to prove that as a result of the breach of the contracts he suffered loss or damages.
156. The said damages are not damages at large or general damages but are in the nature of special damages and they must be pleaded and proved.
157. In the case of HADLEY & ANOTHER V BAXENDALE (1854) 9 EX. CH 341; 156 ER 145, the Court observed as follows;
- “... Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual



course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.”

158. I find that the projected incomes in the current case were not generated.
159. The income sharing contracts contemplated by the parties presupposed that the income was already earned and available for sharing and it does not include speculative income.
160. There is no evidence that the incomes were generated as projected by the plaintiff.
161. The amounts the plaintiff is seeking are therefore speculative as the same were not earned by the defendant.
162. I find that the plaintiff is only entitled to “nominal damages” in the circumstances of this case.
163. The term “nominal damages” was defined in the case of KANJI NARAN PATEL V. NOOR ESSA AND ANOTHER, (1965) E.A. 484 while referring to the case of THE MEDIANA (1900) AC 116, as follows;
- “Nominal damages’ is a technical phrase which means that you have negated anything like real damage, but that you are affirming by your nominal damage that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term nominal damages does not mean small damages. The extent to which a person has right to recover what is called by the compendious phrase damages, but may be also represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances, and it certainly does not in the smallest degree suggest that because they are small they are necessarily nominal damages.”
164. I assess nominal damages at Kshs. 2,000,000.
165. The defendant who was in breach of the contracts also to pay costs of this case.
166. Judgment be and is hereby entered in favor of the plaintiff against the defendant in the sum of Kshs. 2,000,000 plus costs of this suit and interest at court rates from the date of filing this suit until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

