



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SCC COM NO. E082 OF 2025.

**GIBRAN NURAH
MWAKAI.....CLAIMANT**

-VERSUS-

**LABAN MAINA T/A LABAN TOURS AND SAFARIS.....
.....RESPONDENT**

JUDGEMENT.

INTRODUCTION.

- 1)** By way of a statement of claim dated 11th December 2025 the claimant sued the respondent seeking the following reliefs;
 - a) Judgment in the sum of USD 997.80.**
 - b) Costs and interests of the suit**
 - c) Other appropriate reliefs.**

- 2)** The claimant avers that the amount claimed was a remittance arising from initiation of the booking request for the safari package provided to three guests, who undertook the itinerary from 23rd to 28th day of October 2025 and which guest were clients of the respondent and the claimant at the request of the respondent assisted the claimant in preparing and issuing booking vouchers for purposes of securing accommodation for the guests as outlined in the itinerary and this was according to the claimant at a cost of USD 997.80 being 20% of the total package cost required to initiate the booking.

- 3) The claim is opposed. The respondent asserts that there is no formal or informal agreement between the respondent and the claimant for him to claim the 20% commission.
- 4) He further asserts that between the period of 25/7/2025 and 19/10/2025 while he was held up inside the park attending to his clients, he could not access cyber services and requested the assistance of the claimant with limited instructions that included accessing his email account for purposes of responding to incoming email and also editing the already existing itinerary to align with the guests he was expecting on 23/10/2025 and for that work done he paid the claimant in cash and mpesa. He has produced an Mpesa statement to support this assertion. He asks the court to dismiss the claim and enter judgment in his favour for Kshs.100,000/=.
- 5) The matter proceeded by way oral evidence and at the close of the respective cases, the claimant opted to rely on the evidence on record whereas the respondent filed written submissions in addition to the testimony of the respondent. I have considered rival testimonies as well as the submissions by the respondent.

ISSUE FOR DETERMINATION.

- a) **Whether the claim for USD 997.80 has been proved.**
- b) **Who bears costs of the claim.**

ANALYSIS AND DETERMINATION.

- a) **Whether the claim for USD 997.80 has been proved.**
- 6) A perusal of the documents filed by both parties it is clear that there is no document and/or email that sets out the terms of engagement as between the claimant and the respondent and as such I agree that there is no formal agreement between the 2.
- 7) In the absence of such evidence either expressly or impliedly, it becomes a herculean task for the court to ascertain what were the terms of engagement and what redress each of the parties had in case of breach.
- 8) The claimant does not deny that the respondent did what he instructed him to do due to his inability since he was inside the park but quickly adds that the claimant has been paid for all the work he did and as such he has no claim against the respondent. He produced an Mpesa statement to prove this. At the hearing the claimant agrees to have received Kshs. 8,450/= from the respondent but according to him that

was not for the work done but an appreciation. This is the same amount the respondent asserts and strongly so that the same was for the work he retained the respondent to do.

9) As stated earlier without any form of communication and/or agreement as to what were the terms of agreement between the 2 it becomes difficult to ascertain whether the Kshs.8,450/= was payment for work done or appreciation. It is a case of one's word against the other.

10) Given the set of circumstances obtaining, I agree with the respondent that it is trite law that a contract can only arise where there is an offer, acceptance, consideration, and a clear intention to create legal relations between the parties to the agreement. The Claimant failed to plead or lead evidence to prove when such an agreement was made, its terms, or the parties' mutual intention to be legally bound by it to justify the sum claimed. There is no communication between them agreeing to a commission, profit sharing, or payment by percentage. Mere assistance with administrative tasks did not give rise to an implied entitlement to a share of profits.

11) Section 107 of the Evidence Act Cap 80, Laws of Kenya is clear that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. In other words, he who alleges must prove. It is the finding of the court that based on the totality of the evidence on record and testimonies by the claimant, he has failed to discharge this burden and therefore his claim must fail.

12) It is thus the finding of the court that the claim for USD 997.80 has not been proved to a balance of probabilities and is ripe for dismissal.

13) The respondent in his response appears to counterclaim for Kshs.100,000/= but he never said a thing about it both in submissions and in his defence and as such the same is equally dismissed for want of proof.

b) Who bears costs of the claim.

14) As to the issue of costs, the respondent having been successful in the matter, he is awarded costs of the claim.

CONCLUSION AND DISPOSITION.

15) The upshot of the foregoing I make the following final orders;

a) The claimant's claim contained in the statement of claim dated 11/12/2025 is dismissed.

b) The respondent's claim of Kshs.100,000/= is also dismissed for want of proof.

c) Costs are awarded to the respondent.

16) Orders accordingly.

**DATED, SIGNED AND DELIVERED AT VOI SMALL CLAIMS COURT
THIS....4thDAY OF ...February...2026.**

**F.M. MULAMA
ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Daniel Damise

Ms. Gathua for Respondent.

Gibran Nurah Mwakai.