



**Transglobal Cargo Services Trading as Africa Flight Services v  
Emirates Skycargp & another (Commercial Case E595 of 2024)  
[2025] KEHC 10846 (KLR) (Commercial and Tax) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10846 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E595 OF 2024**

**A MABEYA, J**

**JULY 25, 2025**

**BETWEEN**

**TRANSGLOBAL CARGO SERVICES TRADING AS AFRICA FLIGHT  
SERVICES ..... PLAINTIFF**

**AND**

**EMIRATES SKYCARGP ..... 1<sup>ST</sup> DEFENDANT**

**EMIRATES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the plaintiff’s application dated 3/10/2024. The same was brought under sections 1A, 1B, 3A, 63 of the *Civil Procedure Act*, Order 40 rules 1, 2, 3, 4, 7, 10 &11 of the Civil Procedure Rules. The plaintiff sought orders to restrain the respondents from suspending, terminating assigning or modifying the two existing Standard Ground Handling Agreements (SGHAs) made between it and the defendants.
2. The application was based on the grounds set out on the face of the Motion as well as the supporting affidavit of Ambrose Oketch sworn on 3/10/2024. It was the applicant’s contention that pursuant to a contractual relationship between the parties, the defendants approached it to provide the 2<sup>nd</sup> defendant with cargo warehouse and freighter ramp services for Emirates Airline at JKIA.
3. That this relationship had been in place for 19 years and over the years, the plaintiff had made substantial investments to accommodate the defendants. That subsequently, the parties entered into a second SGHA on 1/4/2019 for ramp and passenger handling services which was to be in force till 31/3/2024. That upon expiry of the contract, the parties were to operate as an open-ended agreement



until a 60 days-notice is given by either party. That none of the parties gave the notice and thus the parties had been operating on the basis of an open-ended agreement.

4. It was further contended that the parties executed another SGHA for the provision of cargo services in 2018 and the same was based on the 2013 agreement. That the 1<sup>st</sup> respondent served the plaintiff an improvement notice dated 10/6/2024 wherein six issues were raised to be addressed within 60 days. The same were addressed and the 1<sup>st</sup> defendant's regional manager acknowledged that 90 percent of the same was completed. That 7 more issues were subsequently raised by the 1<sup>st</sup> defendant's Cargo handling manager which went beyond the scope of the June date.
5. The plaintiff stated that it was made aware of the defendants' intention of issuing tender to the ground handling companies for both cargo and passenger handling. The plaintiff informed the defendants that there was already valid and running SGHSAs for the tendered services. The defendants retorted that the plaintiff would be permitted to tender for both cargo handling and passenger services as their internal policies and procedures made a provision for the same.
6. The plaintiff contended that the defendants were in violation of paragraph 7.2 of the SGHA for cargo handling in floating a tender named NBO- Ground Handling Tender. That that amounted to anticipatory repudiation of the SGHA for cargo services. The plaintiff was apprehensive that by their conduct, the defendants would repudiate the existing SGHA for cargo, Warehouse, freighter ramp and passenger services with the plaintiff.
7. The defendants opposed the application vide grounds of opposition dated 16/10/2024 and a replying affidavit of Cedric Kindersley Newcompe sworn on 31/10/2024. It was averred that the plaintiff was guilty of material non-disclosure and misrepresentation. Further, that the 2<sup>nd</sup> defendant had already confirmed to the plaintiff that the tender titled NBO- Ground Handling Tender contained a typographical error in referencing section 5 which error had been amended.
8. That the two contracts, the IATA Standard Ground Handling Agreement for passenger and ramp handling services by the plaintiff and the 2<sup>nd</sup> defendant was different and distinct from the IATA Standard Ground Handling Agreement for cargo warehouse handling and freighter handling services. Further, that the two agreements allowed for the termination by either party upon issuance of proper notice and the plaintiff was seeking to prevent the defendants from exercising their rights. That the 1<sup>st</sup> defendant was not a legal entity capable of being sued.
9. That the two agreements were separate and distinct and contained unique terms. He admitted that the passenger services agreement expired on 3/3/2024 and the plaintiff had continued to offer passenger and ramp handling services under the terms of an open-ended agreement and neither party had issued the 60days termination notice.
10. That upon the lapse of the initial contract terms, the parties were at liberty to negotiate new terms to govern their relationship and therefor, the open-ended nature was to enable the parties decide on the path they would chart. It was contended that the 2<sup>nd</sup> defendant decided to explore the best commercial terms available thus the reason for the tendering services. That the open-ended engagement did not prohibit the defendants from tendering for the services.
11. With respect to the cargo handling services agreement, the 2<sup>nd</sup> defendant contended that the contract was effective from 1/4/2018 to 31/3/2024. That it was a term of the agreement that upon expiry on the initial term, the agreement would automatically extend by a further 2 years unless it is terminated prior the expiry date. That upon expiry, the term was automatically extended and was operational until 2026. That the 2<sup>nd</sup> defendant identified a typographical error on the tender document which had included a reference to cargo and mail warehouse ltd which was rectified and submitted to all tenderers.



12. It was the 2<sup>nd</sup> defendant's case that the passenger services agreement did not stop the plaintiff from issuing tenders for the passenger and ramp handling services. That it was justified in issuing the tender and the plaintiff was eligible to submit a bid for passenger and ramp handling services. That the 2<sup>nd</sup> defendant had not sought to contravene the terms of the cargo services agreement.
13. With respect to loss of return or investment, it was contended that the plaintiff was aware of the contracts were not perpetual and a renewal was not guaranteed.
14. The application was canvassed by way of written submissions which I have considered.
15. On prima facie case, the plaintiff submitted that the inclusion of cargo services in the tender was done in bad faith and the insistence that it was a typographical error was not genuine. That the defendants had informed the plaintiff that there would be an upcoming tender with respect to ground handling services via correspondence in September 2024.
16. With respect to the passenger services, it was submitted that following the end of the term in 31/3/2024, the implication of the open-ended agreement was that the other terms remained the same until issuance of the 60day notice. That it was wrong for the defendants to float a tender and engage third parties without terminating the agreement.
17. On irreparable, it was submitted that if the orders sought are not granted, the plaintiff's employees will be laid off and some machines and equipment will go to waste. That its success was determined by its ability to secure new clients and maintaining the existing ones.
18. On their part, the defendants submitted that the 1<sup>st</sup> defendant was not a legal entity capable of being sued as it was a division within the 2<sup>nd</sup> defendant. That the issuance of the tender was lawful and not in contravention of the agreements. That the tender in question was the Passenger and ramp handling services and the agreements ought to be considered separately as they are distinct.
19. It was submitted that the plaintiff had not provided any evidence to demonstrate that the 2<sup>nd</sup> defendant's intention was to tender for cargo services. That the plaintiff was not prejudiced by the tendering process and it ought to have requested for more time to present its bid. That the plaintiff had failed to demonstrate that it would suffer irreparable harm which cannot be adequately remedied by an award of damages. Finally, that the agreements excluded its responsibility on the plaintiff's employees. That the balance of convenience lay in declining the orders sought.
20. I have considered the application, the responses filed thereto and the submissions by Learned Counsel. The main issue for determination is whether the applicant has met the threshold for the injunctive reliefs sought.
21. The principles for grant of temporary injunctions were settled in the case of Giella –versus- Cassman Brown and Company Limited (1973) E.A 385. These are that first, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if the court is in doubt, it will decide the application on the balance of convenience.
22. A prima facie case was defined in Mrao Limited –versus- First American Bank of Kenya and 2 Others (2003) KLR 125, to be a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case



23. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal held: -
- “The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion ... The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”
24. In the present case, the dispute between the parties revolves around two agreements, that is, the Standard Ground Handling Agreements for ramp and passenger Handling Services and, the Standard Ground Handling Agreement for provision of cargo warehouse and ramp services. The parties did not dispute that they had executed the two agreements and that they were bound thereto. The differences arose when the 2<sup>nd</sup> defendant invited tender bids with respect to the services already being offered by the plaintiff.
25. The plaintiff’s contention was that the SGHA for passenger and ramp services expired on 31/3/2024 and upon expiry, it was a term of the agreement that the plaintiff would continue to offer those services until either party terminated the same by giving a 60-day notice.
26. It contended that the defendants were not justified to start the tender bidding process when the agreement was in operation without terminating it. That it was wrong and erroneous to have included the cargo services in the tender bid as the SGHA for the same was still operational and that would be in contravention of the agreement between the parties.
27. On its part, the 2<sup>nd</sup> defendant contended that, upon expiry of the passenger and ramp handling services, the parties were at liberty to negotiate new terms of the agreement. That that is why the 2<sup>nd</sup> defendant invited new bids in order to identify the most competitive and best available terms in the market.
28. With respect to the SGHA for cargo services, the defendants contended that they had made a typographical error by including the word cargo in the tender document and that the same was rectified and all the parties and tenderers had been informed.
29. It is on the foregoing that the Court is called upon to ascertain whether the plaintiff is justified in seeking to have the defendants restrained from suspending or terminating, assigning or modifying the two Standard Ground Handling Agreements between the parties.
30. With respect to the SGHA concerning cargo handling services, it is undisputed that the agreement was set to remain in force until 31/3/2024, unless terminated by either party giving 60 days’ notice. The agreement further provided that if no such notice was issued before the expiry date, the contract would automatically extend for an additional two years. It is clear from the record that as of 31/3/2024, neither party had issued the required 60days termination notice. Therefore, the contract remains enforceable and is still in effect.
31. The question arises as to whether the defendants were justified in bidding for the tender services. Upon reviewing the record, it appears that the defendants invited bids for the “NBO Ground Handling Tender 2024.” The plaintiff expressed concerns that the tender might extend to include cargo handling services, which were still governed by the existing agreement. However, the respondents contend that this inclusion was a typographical error.



32. Having established that the said agreement regarding cargo handling services is still in force, the Court finds that the plaintiff is justified in seeking to protect its interests. The principle of good faith dictates that parties to a contract must act honestly, fairly and transparently throughout the duration of the contractual relationship. Given that the cargo handling services contract remains valid, the applicant's concern regarding the bidding process is legitimate, particularly if the defendants' actions could potentially violate the existing contractual obligations.
33. However, the defendants have since clarified that the services covered under that agreement are not covered under the Tender. That the error had been acknowledged and communicated to the tenderers. That means that the aforesaid agreement will not be affected by the impugned tender and will remain intact as per the terms of the agreement.
34. With respect to the Passenger and ramp services agreement, paragraph 10 of the agreement was clear that the expiration of the contract was 31/3/2024 and the agreement would automatically extend as an open-ended agreement in line with IATA regulations until either party gives 60days prior notice to the other party.
35. It is not disputed that the contract period herein lapsed and either party was at liberty to give 60days notice to the other party. None of the parties gave the notice and therefore as at the time the plaintiff came to Court, the agreement was and is still in force. As to whether the plaintiff could stop the tender bidding process, it has to demonstrate that, on prima facie basis, there exists a right to which the defendants have infringed or are more likely to infringe if the Court does not intervene.
36. Having examined the agreement, the right of termination was afforded to either party failure of which they remained bound by the agreement. The tender bidding process was an indication that the defendants were desirous of exploring other options. All that the defendants had to do was to give a 60day notice of termination and proceed to seek other options.
37. The question therefore is whether, by commencing the tender process without having given the 60day notice period, that amounted to a breach that entitles the plaintiff to an injunction. This is so notwithstanding that the plaintiff's contract continued to be operational until the tender was awarded.
38. It is trite that parties are bound by their contracts. It is not part of the Court's business to interfere. The Court will only interfere where one party is in breach of the terms of the contract.
39. In the present case, the contract provided that either party was entitled to give a 60day notice of termination. There is no such notice on record. The inclusion of the Cargo services agreement was said to have been an error. In my view, where a party is entitled to terminate a contract, he can do so as the contract provides. In this case, the defendants are entitled to issue a 60day termination notice and thereupon terminate the SGHA on the passenger handling services.
40. The applicant has demonstrated a prima facie case with respect to the SGHA on the provision of cargo warehouse handling and freighter handling services. However, as for the SGHA on passenger handling services, it succeeds only to the extent that the defendants had not issued the requisite notice.
41. On the second ground of irreparable harm, I am guided by the case of Paul Gitonga Wanjau vs. Gathuthi Tea Factory Company Ltd & 2 Others [2016] eKLR in which the Court considered the Halsbury's laws of England on what irreparable loss is and stated that: -

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff



may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

42. The plaintiff needed to demonstrate that it is likely to suffer harm that cannot be compensated on monetary sums. In *Nguruman Limited V. Jan Bonde Nielsen & 2 Others* [2014] eKLR, it was stated as follows on irreparable injury or damage: -

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

43. Having found that the plaintiff has established a prima facie case with probability of success, the court finds that if an injunction is not granted in connection to the cargo and ramp services, the plaintiff will be highly prejudiced based on the investment it has put in place to ensure it continues to meet the obligations of the contract in force. The balance of convenience lies in protecting the interests of the plaintiff.
44. However, as regards the SGHA on passenger services, the breach was only the failure to give the 60day notice. The plaintiff will be entitled to a 60-day notice which can be compensated by an award of damages.
45. The foregoing notwithstanding, I have considered the admission by the defendants that the inclusion of the SGHA on cargo handling services in the Tender was by error. That the same has been excluded therefrom. That being the case, there will be no need to issue any injunction unless the defendants insist on its inclusion in the tender. Since that is not the case for now, no orders will issue.
46. Accordingly, I find the application dated 3/10/2024 to be without merit and dismiss the same with costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF JULY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

