

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAIROBI

CAUSE NO. E624 OF 2025

COMMUNICATION WORKERS

UNION

OF

KENYA.....CLAIMANT/APPLICANT

VERSUS

SPEEDAF

LOGISTICS

LIMITED

KENYA

.....RESPONDENT

RULING No. 2

1. What is before this Court for determination is the Claimant/Applicant's Notice of Motion dated 22nd September 2025, seeking the following orders:

1. *Spent.*

2. *Spent.*

3. *Spent.*

4. *THAT pending hearing and determination of this matter, this Honorable Court do Order the Respondent to continue with the obtaining employment terms with employee's applicant's members prior to the notification and in strict compliance with existing Court Orders dated 10th July,2025 in NRB ELRCC E624/2025 and*

30th July, 2025 in NRB ELRCC E698/2025 between the parties herein.

- 5. THAT pending hearing and determination of this Application and claim, the honorable court be pleased to restrain the Respondent and or Gain Ventures Ltd and or any agents, assigns from victimizing and or harassing and or intimidating and or discriminating by transferring and or changing and or terminating employment contracts of union members and unionisable employees.*
- 6. THAT incase the Honorable Court is inclined to allow the transition, then an Order to issue directing Gain Ventures Ltd and or any other entity to take over the employees/applicant members together with all their liabilities including their redundancy entitlements and contractual rights including a Recognition Agreement with the Applicant.*
- 7. THAT the Human Resource Manager, Yvonne Murigi be cited for Contempt of Court Order dated 10th July, 2025 and 30th July 2025 in ELRCC E624/2025 and also in ELRCC E698/2025 respectively.*
- 8. Spent.*
- 9. THAT this Honourable Court be pleased to grant costs of this application in favour of the Applicant.*

2. The Application is premised on the grounds set out on its face and supported by the Affidavit of **Isaac Sasuri**, the Claimant's/Applicant's Industrial Relations Officer. The Claimant contends that the Respondent initially adopted a scheme of franchising its services and has now begun transferring employees to a third party under the guise of a corporate staffing model.
3. Mr. Sasuri deposes that on 15th September 2025, the Respondent deceitfully invited employees to what was purported to be a lunch meeting but instead took them to the offices of Gain Ventures Ltd, where they were induced to sign an agreement transferring their employment to Gain Ventures Ltd and simultaneously withdraw from the Union.
4. He further avers that on 19th September 2025, one Mr. Alfred Mutuku, allegedly a manager from Gain Ventures Ltd, visited the Union's offices seeking to deliver withdrawal letters from twelve members who had reportedly signed the transition documents during the said luncheon, in the presence of the Respondent.
5. Mr. Sasuri states that the Union managed to obtain only one page of the impugned transfer agreement, which was shared by one of the employees who had attended the lunch meeting.

6. He asserts that the Respondent is acting in bad faith, with the apparent intention of evading the obligation to enter into a Recognition Agreement with the Union by transferring its operations to proxy entities and later resuming normal business.
7. He adds that on 19th September 2025, the Claimant issued a protest letter, copied to the Respondent's advocate on record, but no action was taken in response.
8. Mr. Sasuri further avers that the Claimant has not been furnished with any formal details of the alleged transition and is therefore unaware of the specific terms and conditions governing the purported transfer, particularly regarding the rights of the Union's members.
9. The Respondent opposed the Application through a Replying Affidavit sworn on 25th September 2025 by **Yvonne Murigi**. Ms. Murigi avers that the Respondent has at all times fully complied with the Court's directions, orders, and all relevant statutory requirements, and contends that the Claimant's allegations are misleading and intended to unjustly appeal to the Court's sympathies.

10. Ms. Murigi avers that the Respondent is currently transitioning its staff to Gain Ventures Limited as part of a phased implementation of a corporate staffing model. The purpose, she avers, is to enable the Respondent to focus on its core logistics operations while outsourcing non-core functions and safeguarding employees' welfare, among other objectives.

11. She further states that the transition is being undertaken strictly through Mutual Separation Agreements and Deeds of Discharge, which have been voluntarily executed by both the Respondent and the affected employees.

12. Ms. Murigi adds that the process is based on mutual consent, duly signed agreements, and valid consideration for the separation.

13. She clarifies that the transition does not amount to redundancy, maintaining that redundancy is a distinct process. According to her, the transition does not interfere with the fixed-term contracts of the Respondent's former employees as alleged. She maintains that if any contracts lapse in the course of the transition, such expiry cannot be deemed to constitute redundancy.

14. Ms. Murigi further avers that all affected employees have been paid their salaries in full up to their respective separation dates.

15. She adds that these employees have been offered immediate re-employment by Gain Ventures Limited under new contracts commencing upon separation from the Respondent.

16. Ms. Murigi also states that each employee has executed a Deed of Discharge acknowledging receipt of all dues and releasing the Respondent from any further claims. She insists that the process has been entirely voluntary, with no element of coercion.

17. She maintains that the transition process is being carried out transparently, fairly, and in full compliance with the Employment Act, 2007, the Labour Relations Act, 2007, and all other applicable labour laws.

18. Ms. Murigi avers that members of the Claimant Union who have chosen or are choosing to withdraw from the Union are doing so voluntarily, without any form of coercion.

19. She denies the Claimant's assertion that Gain Ventures Limited is a "proxy" entity, explaining that it is neither a partnership nor an agency. Relying on advice from the Respondent's Advocates on record, which she believes to be true, she states that the transition represents a prudent commercial, economic, and organizational decision aimed at ensuring the company's

sustainability and the welfare of its former employees in a changing business environment.

20. Ms. Murigi emphasizes that Gain Ventures Limited is a distinct and separate legal entity from the Respondent, and that the former employees have entered into new contracts under different terms and conditions from those that applied with the Respondent.

21. She also contends that there is no legal principle guaranteeing permanent or “life” employment, noting that all employment relationships remain subject to termination in accordance with the terms of the contract and the law.

22. In response to the Respondent’s Replying Affidavit, Mr. Sasuri filed a Further Affidavit in which he avers that the Mutual Separation Agreements and Deeds of Discharge, both dated and executed on 18th September 2025, denied union members the opportunity to consult or make informed decisions. He asserts that there existed a clear imbalance in bargaining power between the parties and further contends that not all affected employees signed the said documents, rendering them unauthorized.

23. Mr. Sasuri further avers that although the Respondent claims to have communicated with the Labour Office regarding the transition, it deliberately

failed to copy the Claimant Union on its correspondence, thereby excluding the Union from meaningful consultation prior to the alleged separation.

24. He adds that the Respondent's act of privately and individually contacting union members, despite being aware of their union affiliation, amounts to intimidation and harassment.

25. The Respondent, through a Further Affidavit sworn by Ms. Murigi on 29th October 2025, reiterates that Gain Ventures Limited is an independent legal entity, possessing its own rights and liabilities distinct from those of the Respondent.

Submissions

26. Both parties filed written submissions which the Court has considered.

Analysis and Determination

27. The Court has carefully considered the Application, the parties' respective Affidavits and the rival submissions and finds that the sole issue for determination is whether the Claimant has met the threshold for the grant of an injunction at this interim stage. Put differently, the question is whether the Court should direct the Respondent to continue engaging its employees who are the Claimant's members under their existing terms of employment and

restrain it from transitioning the said employees to Gain Ventures Limited pending the hearing and determination of the main suit.

28. In determining whether to grant the orders sought, the Court is guided by the well-established principles in **Giella v Cassman Brown [1973] EA 358**. Accordingly, the Claimant must demonstrate the existence of a *prima facie* case and show that, if the orders are not granted, its members will suffer irreparable harm. Where doubt exists, the matter should be resolved on a balance of convenience.

29. Applying these principles to the present case, the central issue for determination at the outset is whether the Claimant has established a *prima facie* case with a likelihood of success.

30. The Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** defined a *prima facie* case as follows: –

“So, what is a “prima facie case” I would say that in civil cases it is a case in 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. It is not sufficient to raise

issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

31. Fundamentally, the Claimant must demonstrate that the rights of its members have been violated or are under threat of violation by the Respondent. Once the Claimant demonstrates as much, the burden then shifts to the Respondent to rebut or justify its actions.

32. The record bears that the Respondent initiated a process of transitioning its employees to an entity known as Gain Ventures Limited. This process appears to have been undertaken pursuant to a contract for the **"Provision of Corporate Staffing and Payroll Management"** between the Respondent and Gain Ventures Limited.

33. Attached to Ms. Murigi's Replying Affidavit are copies of Mutual Separation Agreements and Discharge Vouchers executed with various employees. Through these agreements, the employment relationship between the Respondent and the affected employees was effectively terminated.

34. The Respondent also annexed a copy of an employment contract between Gain Ventures Limited and one employee, **Mwangah Moses Wanyama**. The Claimant contends that the terms contained in the said employment contract

are inferior to the minimum rates prescribed under the Regulation of Wages (General) Order, 2024.

35. The Claimant further alleges that the employees were misled into signing the transition agreements transferring them to Gain Ventures Limited.

36. The Claimant further relies on **Section 10(5) of the Employment Act** to argue that any variation of a contract of service must be undertaken in consultation with the employee prior to formal communication in writing.

37. At this interlocutory stage, and given the nature of the Application before the Court, the issues raised by the Claimant cannot be conclusively determined and can only be resolved upon full hearing and evaluation of evidence from both parties.

38. It is equally evident that, during the hearing of the main suit, the Court will be required to determine whether the Respondent's transition of employees to Gain Ventures Limited was undertaken in contravention of the applicable labour laws.

39. Accordingly, applying the principles set out in **Mrao Ltd v First American Bank of Kenya Ltd (supra)**, the Court finds that the Claimant has established an arguable *prima facie* case.

40. However, establishing a *prima facie* case is not, by itself, sufficient to warrant the grant of an interlocutory injunction. The Court must also be satisfied that, if the injunction is not granted, the Claimant's members would suffer irreparable harm.

41. The Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** had the following to say regarding the concept of irreparable injury:-

“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.”

42. On this limb, the Court observes that the Respondent's employees who have transitioned to Gain Ventures Limited have entered into new contracts of employment. Consequently, they remain in gainful employment, albeit under a different arrangement with another entity.

43. Guided by the principles set out in **Nguruman Limited v Jan Bonde Nielsen & 2 Others (supra)**, the Court finds that the Claimant's members who have transitioned to Gain Ventures Limited do not face irreparable harm

incapable of compensation through an award of damages should the orders sought at this interlocutory stage be declined.

44. This Court concurs with the position taken in the **Nguruman case (supra)** that *“if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory injunction should normally be granted, however strong the applicant’s claim may appear at that stage.”*

Orders

45. In light of the foregoing reasons, the Court declines to grant the orders sought in the Application dated 22nd September 2025. Accordingly, the Application is hereby dismissed, with an order that costs shall abide the outcome of the main suit.

DATED, SIGNED and DELIVERED at NAIROBI this 31st day of October 2025.

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STELLA RUTTO

JUDGE

In the presence of

Mr. Olala for the Claimant/Applicant

Mr. Onganya for the Respondent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE