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……..RESPONDENT

RULING No. 1

1. What comes up for determination is the Notice of Motion dated 23rd August 2023, by the Claimant/Applicant seeking the following orders:-

    1. *Spent.*
    2. *Spent*
    3. *THAT pending hearing of this claim, this Honourable Court be pleased to issue an order restraining the Respondent from declaring union members and unionisable employees redundant.*
    4. *THAT pending hearing and determination of this matter, this Honourable Court to Order the Respondent to continue paying the*

thirty-five (35) already affected union members their salaries and wages.

5. *Spent.*
6. *THAT pending hearing and determination of this claim, the Honourable court be pleased to restrain the Respondent from continuing with any processes in furtherance of the impugned unsigned and undated notice of intended redundancy.*
7. *Spent.*
8. *THAT this Honourable court be pleased to grant costs of this Application in favour of the Applicant.*

2. The Application is anchored on the grounds set out on its face and supported by the Affidavit sworn on 1st July 2025 by **Isaac Sasuri**, the Claimant's Industrial Relations Officer. The Claimant avers that it does not have a Recognition Agreement with the Respondent and to this end, it reported a dispute on the issue, following which a conciliator was appointed.

3. The Claimant avers that during a consultative meeting held on 26th February 2025, the Respondent admitted that the Claimant had attained a simple majority

of unionisable employees. Nonetheless, the Respondent declined to grant the Claimant Union recognition.

4. The Claimant further states that although the Respondent acknowledged receipt of 174 membership forms (Form S), it only deducted and remitted union dues for 97 members in March 2025, which the Claimant terms a serious labour malpractice.

5. It is also contended that the Respondent expressed its intention to close its business and transfer operations to several other entities described as “enfranchises.”

6. According to the Claimant, the Respondent’s actions are not in good faith and are intended to avoid entering into a Recognition Agreement with the Union by transferring operations to proxy entities and later resuming business as usual.

7. The Claimant asserts that individual employees have not been issued with the requisite redundancy notices, nor has the County Labour Officer been notified as required. It further claims that the notice served on the Claimant was unsigned and undated.

8. The Claimant avers that on 20th June 2025, it held a meeting with the Respondent to discuss the matter in an attempt to understand the situation and mitigate the arising issues. However, instead of addressing the concerns, the Respondent aggravated the situation by indicating that it intended to terminate additional employees in July 2025.

9. The Claimant maintains that the Respondent, being a courier company, has declared redundant employees who perform core functions, such as courier officers, riders, and drivers, which cannot legitimately be outsourced as alleged.

10. The Claimant further contends that while purporting to implement redundancy, the Respondent has simultaneously been recruiting new employees, having confirmed the engagement of nearly twenty new staff within the same month it declared redundancies.

11. The Claimant argues that unless the orders sought are granted, the affected employees will suffer substantial prejudice and irreparable loss.

12. In the Claimant's view, the purported redundancies are retaliatory, targeting union members for their trade union activities and are intended to undermine the ongoing recognition dispute.

13. In a Further Affidavit sworn on 21st July 2025, Mr. Sasuri deposes that on 4th and 8th July 2025, the Claimant forwarded 10 additional names of employees who had voluntarily joined the Union. However, on 9th July 2025, immediately upon receipt of this list, the Respondent allegedly intensified acts of harassment and victimization by listing four of the newly joined members for redundancy.

14. He further states that on 10th July 2025, just a day after the Claimant served the updated membership list, it received letters from three members purporting to withdraw from the Union, all sent at the same hour and on the same day, suggesting intimidation by the Respondent.

15. Mr. Sasuri observes that the three withdrawal letters are identical in language, format, and structure, and were sent using the Respondent's email domain. He contends that it is highly improbable that three different individuals, acting independently, would produce such uniform letters, thereby casting doubt on their authenticity.

16. He concludes that it is evident the Claimant achieved a simple majority of unionisable employees and is therefore entitled to formal recognition by the Respondent.

17. The Application is opposed through a Replying Affidavit sworn on 22nd July 2025 by **Yvone Murigi**, the Respondent's Human Resource Officer. Ms. Murigi deposes that as of 8th July 2025, the Respondent's total workforce comprised 114 employees, of whom 80 were non-unionisable, while the Claimant had recruited 34 unionisable employees, representing 29.82% of the workforce. She contends that this figure falls short of the statutory threshold of 50% plus one required for recognition.

18. She further states that prior to the issuance of redundancy notices, the Claimant was duly informed that the Respondent was undertaking a redundancy exercise necessitated by operational changes, including the transition to a franchise model and a restructuring process aimed at improving efficiency, reducing parcel losses and resource theft, and ensuring business sustainability.

19. According to Ms. Murigi, the restructuring exercise was a commercial decision based on sound business judgment. The Respondent determined which

positions to abolish, how to implement the changes, and whether to offer alternative placements to affected employees.

20. Ms. Murigi further avers that meaningful consultations were conducted with the Claimant throughout the redundancy process, which is still ongoing. These discussions culminated in the drafting of an agreement setting out the redundancy terms for unionisable employees, in compliance with statutory requirements. The agreement, which outlines redundancy dues, remains in effect for six months from its commencement date, expiring on 3rd August 2025.

21. She contends that the present Application is intended to frustrate and obstruct the Respondent's legitimate business restructuring and operational plans.

22. Ms. Murigi further alleges that a recruiter from the Claimant Union, one George, has been coercing employees, including those in management positions, to join the union. She adds that several employees, including Beatrice Mbutha Kitheka, Peterson Muriithi, and Loise Mulwa, have reported feeling pressured to join the union and have unsuccessfully attempted to contact George to retract their purported membership.

23. It is further alleged that George instructed employees to remit union subscription fees of Kshs 200 via a personal till number, instead of following the lawful check-off system through the employer's payroll.

24. Ms. Murigi also deposes that George has requested employees to provide copies of their previous employment contracts and redundancy letters, documents she terms confidential and the direct solicitation of which constitutes a breach of employee privacy and company policy.

25. She adds that several employees who sought clarification or assistance from George after joining the union have been unable to reach him, raising concerns about the union's handling of its membership and communication processes.

26. Ms. Murigi further asserts that the Respondent's employees enjoy full freedom to join or withdraw from the Claimant union at their discretion.

27. Mr. Sasuri filed a Further Affidavit sworn on 28th July 2025, in which he avers that the Respondent has failed to justify the redundancy and has not refuted the Claimant's assertion that nearly 20 new employees were engaged during the same period that redundancy notices were issued.

28. He further contends that the Respondent has not produced any Board or top management resolution demonstrating that there was an urgent need to alter its business model in a manner that would necessitate redundancies.

29. Mr. Sasuri additionally deposes that the three employees, **Loise Mumbi**, **Beatrice Kitheka**, and **Peterson Muriithi**, who withdrew from the Union, did not experience any adverse changes to their employment terms. Conversely, those who resisted pressure to withdraw from the Union, namely **Evans Bett**, **Fredrick Kyalo**, **Chris Mumo**, and **Kevin Ouma**, were listed for redundancy and had their employment terms converted to "fixed-term" contracts. In his view, this constitutes clear evidence of intimidation, victimisation, and harassment.

30. In response to the Claimant's Further Affidavit, the Respondent filed a Further Affidavit sworn by Ms. Murigi on 29th August 2025, in which she contends that the Claimant Union has failed to appreciate that, as of 30th July 2025, the affected contracts had expired by effluxion of time. She explains that the previous contracts were fixed-term agreements commencing on 1st June 2024 and automatically expiring on 31st May 2025, while the new contracts began on 31st May 2025 and are set to lapse on 31st December 2025.

31. Ms. Murigi maintains that fixed-term contracts are a lawful form of employment, characterised by a defined commencement and expiry date.

32. She further avers, on the advice of the Respondent's advocates on record, that the Claimant's Application is a deliberate attempt to exert pressure on the Respondent to execute a Recognition Agreement through improper means.

Analysis and Determination

33. Having considered the prayers sought in the Application alongside the parties' respective Affidavits, it is evident that the sole issue for determination at this interlocutory stage is whether the Claimant has established a sufficient basis for the grant of the orders sought. In other words, should the Court restrain the Respondent from declaring the Claimant's members and other unionisable employees redundant?

34. It is settled that an injunction is an equitable and discretionary remedy, granted on the basis of credible evidence and sound legal principles. The guiding principles in applications of this nature were articulated in the landmark case of **Giella v Cassman Brown & Co. Ltd [1973] E.A**, thus:

> ***"Firstly, 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. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

35. Applying the foregoing principles to the present case, the key question for determination is whether the Claimant has demonstrated a *prima facie* case with a likelihood of success and shown that its members would suffer irreparable harm if the orders sought are not granted. Additionally, where doubt exists, the Court must consider whether the balance of convenience tilts in the Claimant's favour.

36. Regarding the first limb, the Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, defined a *prima facie* case in the following terms: –

"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."

37. And further, the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** held that:

"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. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation...."

38. From the foregoing precedents, it is evident that the Claimant must demonstrate that the rights of its members have been violated or are under threat of violation

by the Respondent. Upon demonstrating as much, the burden shifts to the Respondent to rebut or justify its actions. It must also be borne in mind that, at this interlocutory stage, the Court is not conducting a mini-trial and therefore will not scrutinize the evidence in detail.

39. In support of the Application, the Claimant asserts that the Respondent has expressed an intention to close its business and transfer operations to several entities described as “franchises.” The Claimant contends that the notice of intended redundancy issued to it is a guise to victimize union members, noting that only unionised employees have been targeted for termination, while those who withdrew from union membership have not suffered arbitrary changes to their employment contracts.

40. The Court notes that these allegations by the Claimant raise substantive issues that warrant further interrogation and rebuttal by the Respondent. Indeed, the Claimant’s claims cannot be dismissed as frivolous.

41. The Respondent, on its part, maintains that the Claimant was duly informed of the intended redundancy before the notices were issued.

42. The Respondent further argues that the restructuring was a product of commercial judgment, involving decisions on which positions to eliminate and whether affected employees could be offered alternative placements.

43. In light of the Respondent's assertions, it is apparent that during the hearing of the main suit, the Court will be required to consider and determine whether the impugned redundancy process infringes upon the Claimant's members' constitutional and statutory rights, particularly those guaranteed under **Article 41(2)(c) of the Constitution** and **Section 4(1) of the Labour Relations Act**, which safeguard every worker's right to join and participate in trade union activities. This will be assessed alongside the Respondent's justification that the redundancy is commercially necessary and not anti-union.

44. Guided by the principles in **Mrao Ltd v First American Bank of Kenya Ltd (supra),** the Court is satisfied that the Claimant has established a *prima facie* case.

45. However, establishing a *prima facie* case alone does not automatically warrant the grant of an interlocutory injunction. The Court must be satisfied that the Claimant's members stand to suffer irreparable harm if the orders sought are not granted.

46. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others (supra),** the Court of Appeal observed that *an injury is irreparable where there is no standard by which its amount can be measured with reasonable accuracy, or the injury or harm is of such a nature that monetary compensation, however large, will never be an adequate remedy.*

47. In the present case, the Claimant argues that the Respondent may proceed to declare redundancies and dismiss the affected employees without affording them a fair hearing.

48. The record bears that, by a notice dated 9th July 2025, the Respondent notified the Claimant of an intended redundancy affecting 17 employees.

49. Having weighed the parties' arguments, the Court finds that allowing the redundancy to proceed at this stage would likely subject the Claimant's members to irreparable harm, as they would suffer total loss of employment, an injury that cannot be adequately redressed through monetary compensation.

50. On the contrary, if the Application is allowed and the main suit ultimately fails, the Respondent's loss would be limited to the continued payment of the employees' salaries for the short period during which the suit is pending.

51. The Court therefore finds that the Claimant has demonstrated that its members would suffer irreparable harm if the interlocutory injunction is denied. Meanwhile, the Respondent would still benefit from their services and, should the Court eventually uphold the redundancy as lawful, the Respondent will remain free to conclude the process in accordance with the law.

52. In light of the foregoing, the Court is persuaded that the balance of convenience tilts in favour of the Claimant.

Orders

53. The total sum of my consideration is that the Claimant's Application dated 1st July 2025 is found to be with merit and the Court makes the following orders:

    a) **Pending the hearing and determination of this Claim, the Respondent is hereby restrained from declaring the Claimant's members and unionisable employees redundant pursuant to the notice dated 9th July 2025.**

b) The costs of this Application shall abide the outcome of the main suit.

54. Further, in view of the interim orders issued, time shall be of essence and the suit shall be disposed of expeditiously hence the Court directs that: -

a) The Respondent shall file and serve its Response, witness statements and list and bundle of documents within 21 days hereof.

b) The Claimant shall within 14 days upon service, file and serve any Reply to the Response to the Claim.

c) Thereafter, pleadings shall close and parties shall take a suitable hearing date.

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

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Applicant Mr. Olala

For the Respondent Mr. Onganya

Court Assistant Millicent

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