



**Kenya Shipping Clearing Freight Logistics and Warehouses Workers
Union v Morgan Air and Sea Freight Logistics (K) Limited (Cause
E923 of 2024) [2025] KEELRC 1857 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1857 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E923 OF 2024
CN BAARI, J
JUNE 26, 2025**

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND WAREHOUSES
WORKERS UNION CLAIMANT**

AND

MORGAN AIR AND SEA FREIGHT LOGISTICS (K) LIMITED . RESPONDENT

RULING

1. Before Court is a Notice of Motion application dated 29th October, 2024, brought pursuant to Articles 20 (2), 22 (1), 50 (1), 159 (3) (a) of *the Constitution* of Kenya, Section 40 (1)(C) & 43(1) & (2) of the *Employment Act* and Section 12 of the *Employment and Labour Relations Court Act*. The Claimant/ Applicant seeks orders THAT: -
 - a. Spent
 - b. Spent
 - c. Pending the determination of the suit herein, an injunction be issued restraining the Respondent from victimizing, harassing, and or intimidating the affected employees.
 - d. Costs be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of Mr. James O. Tongi, the General Secretary of the Applicant.
3. The Applicant avers that the parties herein are bound by the Collective Bargaining Agreement (C.B.A.) currently in force, which delineates the criteria to be employed in the event of redundancy.



4. The Applicant states that concerns have arisen regarding the current operational status of the Respondent, particularly as it has come to light that the Respondent is operating under the auspices of another company, Kuehne + Nagel.
5. The Applicant states that it has repeatedly engaged with the Respondent, and which has confirmed that the entire global operation has been rebranded to trade as Morgan cargo while in Kenya, and that the trademark will remain as Morgan Air & Sea Freight Logistics Kenya Ltd as a separate entity, and that the rollout of the new company name and branding color change is still in progress.
6. It is the Applicant's position that during the joint meeting, it was revealed that the Respondent had acquired the facility, while in their letter dated 1st October, 2024, it indicated that the new agreement with Mitchell Cotts was to provide handling staff.
7. The Applicant further avers that the alleged agreement was not provided prior to the joint meeting, which cast doubt on the legality of the intended redundancy notice, and for which the Respondent has failed to substantiate to date.
8. The Applicant states that it inquired into the Respondent's operational status under Kuehne + Nagel from the Competition Authority of Kenya, which acknowledged that the Respondent would be solely controlled by Kuehne + Nagel (K) Ltd, and that the Respondent would retain 129 employees. The Applicant/Claimant avers that this position contradicts the Authority's findings if the Respondent proceeds with declaring 28 employees redundant.
9. It avers that during the deliberations in the joint meeting, it was revealed that the Respondent is covertly engaging Limma (K) Ltd as an outsourced company to assume the duties of the 28 employees, which allegation remains unsubstantiated by the Respondent.
10. The Applicant avers that the Respondent will not suffer any prejudice as the reasons provided do not stem from economic constraints but rather appear to be a pretext for outsourcing its core business activities.
11. The Respondent opposed the motion through a Replying affidavit sworn by Judie Lusuli on 5th November, 2024, wherein, she argues that the application has been overtaken by events and is an abuse of the Court process.
12. It avers that Morgan Air and Sea freight Logistics Kenya Ltd (MASF) is an airfreight freight forwarding company in Kenya and that since 2018, the MASF handling was done in the Kenya Airfreight Handling (KAHL) facility at Jomo Kenyatta International Airport, freight terminal, and the six-year handling agreement between MASF & KAHL was up for renewal on or before 31st October 2024. It states further that Morgan Air and Sea freight Logistics Kenya Ltd initiated the continuation or renewal of the agreement process in January 2024 formally requesting a proposal from KAHL, but that on 19th March 2024 KAHL issued Morgan Air and Sea freight Logistics Kenya Ltd with a Notice of Termination of Agreement with the option and/or right to re-negotiate afresh.
13. The Respondent avers that since receiving the KAHL Notice of termination in March 2024, the MASF management team considered it prudent to evaluate possible alternative handling facilities, and that MASF found reasonable alternative handling facilities with Mitchell Cotts Freight at JKIA necessitated by the KAHL's non-business viable initial proposal, and the non-commitment to conclude on a new agreement.
14. It avers further that Morgan Air and Sea freight Logistics Kenya Ltd directors concluded a new six year agreement with the Mitchell Cotts Freight (MCF) on 19th September 2024. The Respondent further



- states that this new agreement stipulates that MCF shall provide handling staff to provide perishable airfreight handling services for truck offloading, all cold room handling activities and airside escorted transport, and that Morgan is obligated to utilize MCF staff only for the activities set out in this clause.
15. It avers that this requirement in the MCF agreement unfortunately rendered redundant all activities related to Morgan Air and Sea freight Logistics Kenya Ltd staff, and which affected all the MASF handling staff members (loaders and scale operators).
 16. It avers further, that on 1st October, 2024, it issued a thirty (30) days written notice to the Union as well as the Labour Office of the intended redundancy and both notices were received by the respective recipients. It states that on 2nd October 2024, it invited the Union for a consultation meeting and to have them present as it informed its staff of the redundancy, but unfortunately the Union objected and suggested a later date in October 2024.
 17. It avers further, that on 7th October 2024, it held the consultation meeting with the Union, shared the minutes of the meeting, but again, the Union disagreed on the contents of the minutes of the meeting which resulted in there being two different minutes, each party having its own, and that the union rejected further consultations.
 18. The Respondent states that the affected employees were terminated on account of redundancy through the letters of termination dated 31st October 2024, and that the affected employees were requested to come for clearance on the same date, whereby they returned all valuable company property including their gate passes.
 19. That subsequent to their clearance, the employees were issued with Certificates of service as is required by law.
 20. It states that Section 40 of the [Employment Act](#) provides for termination of employment on account of redundancy, and that it adhered to all the requirements before terminating the employees' employment on account of redundancy.
 21. It is the Respondent's position that contrary to the Claimant's assertion, the acquisition of the Respondent by Kuenhe + Nagel (Kenya) Limited took place on 17th August 2023, and all the staff of the Respondent were retained. That the redundancy was therefore not as a result of the acquisition.
 22. The contends that the redundancy has been occasioned by intervening events more specifically the termination of the handling agreement by KAHL. This termination of the handling agreement by KAHL necessitating the conclusion of another handling agreement with Mitchell Cotts, which obligated the Respondent to utilize the services of the new landlord, thereby rendering the affected employees' positions redundant.
 23. Parties filed submissions, and which have been duly considered.

Determination

24. The issue for determination is whether the Claimant/Applicant merits the orders sought.
25. The Court notes that the Respondent's assertion that the union members/grievants issued with redundancy notices subject of the motion herein, were thereafter issued with termination notices on 31st October, 2024 and that they proceeded to clear with the Respondent culminating in issuance of certificates of service.
26. This assertion has not been controverted, and which confirms that the prayer herein, has since been overtaken by events. The Applicant has also not told Court whether it still has members serving the



Respondent and whether the members (if any) are under any kind of threat as to require the issuance of the order sought herein.

27. It is evident that the only pending issue in the matter is for the Respondent to establish that redundancy was the actual reason for the termination, and that Section 40 of the [employment Act](#), 2007 was adhered with.
28. The pending issues are therefore, the subject of the main claim and not the instant motion, and I will thus not go into the merits of the claim.
29. In the end, I find the motion devoid of merit and is dismissed with no orders on costs.
30. Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

C. N. BAARI

JUDGE

Appearance:

Mr. Mutongoi present for the Claimant/Applicant

N/A for the Respondent

Ms. Esther S - Court Assistant

