



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

(ON Makau J on 24<sup>th</sup> March, 2026)

**CAUSE NO. 1229 OF 2017**

<b>OLIPHER CLAIMANT</b>	<b>KWAMBOKA.....</b>	<b>1<sup>ST</sup></b>
<b>DAVID CLAIMANT</b>	<b>KIPKOECH      BETT.....</b>	<b>2<sup>ND</sup></b>
<b>JAMES CLAIMANT</b>	<b>MAKORI.....</b>	<b>3<sup>RD</sup></b>
<b>ERASTUS CLAIMANT</b>	<b>MUNIALO.....</b>	<b>4<sup>TH</sup></b>
<b>JACKSON CLAIMANT</b>	<b>MARWANGA.....</b>	<b>5<sup>TH</sup></b>

(On behalf of the 40 Employees of Premier Flour Mills Limited)

**-VERSUS-**

<b>PREMIER LIMITED.....</b>	<b>FLOUR RESPONDENT</b>	<b>MILLS</b>
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**JUDGMENT**

## **Introduction**

1. By an Amended Statement of Claim dated 16<sup>th</sup> July 2018, the Claimants herein (suing on behalf of 40 employees of the Respondent) alleged that the respondent was secretly planning to terminated their employment on account of redundancy without justification. They further averred that the respondent had failed to compute and pay their salary arrears. Therefore, they prayed for the following reliefs: -

***a) A declaration that the termination of the Claimants is unfair, illegal, wrongful and unlawful.***

***b) A declaration that the unjustified redundancy is unlawful and amounts to unfair labour practices.***

***c) Payment to the Claimants of a sum in total of Kshs. 20,940,340.00 as set out in the schedule to the amended statement of claim.***

***d) The Claimants be paid the amount they would have earned under the full term of their***

***employment as well as if they would have not been terminated.***

***e) General damages pursuant to (a) and/or (b) above.***

***f) Certificate of Service under Section 51 of the Employment Act.***

***g) Costs of the claim.***

***h) Interest on (c), (d) and (e) above.***

***i) Any other or further relief that the Court may deem fit to grant.***

2. The Respondent filed a Reply to the Amended Memorandum of Claim dated 8<sup>th</sup> February 2019 denying any wrong doing and averred that any considerations to terminate employment by way of redundancy were within the law, particularly Section 40 of the Employment Act, 2007. It further averred that it had at all times notified the Union and the labour officer of the reasons for, and the extent of, the intended redundancy. Therefore, it contended that the Claimants were not entitled to the reliefs sought and prayed for the suit to be dismissed with costs.

## **Background**

3. The Claimants herein were employees of the Respondent company, Premier Flour Mills Limited, having joined the company on diverse dates and years as enumerated in the schedule claimants annexed to the Claim. They were employed in different occupational capacities within the mill and security departments of the Respondent.
4. In or about April 2016, the Respondent allegedly began frustrating the claimant while they were still at work by forcing them to resign from their Union, the Kenya Union of Commercial Food and Allied Workers (KUCFAW). The Claim particularized the frustration as intimidation of unionized employees, forcing them to resign from their union, frustrating workers' representations, failing to pay or honour contractual duties of payment of staff and unfair termination of some of the workers.
5. Sometime in April 2017, the Claimants learned the Respondent had planned and commenced the process of termination of their employment by declaring redundancies,

forcing many of them into early retirement and resignation. The claimants rejected compensation schedule prepared by the Respondent because it was riddled with false and inaccurate information. The Claimants then prepared their own schedule for compensation including underpaid salaries plus redundancy dues for each of the 40 Claimants totaling Kshs. 20,940,340.00.

6. The Respondent admitted the existence of the employer-employee relationship but denied the allegations of frustration, intimidation, or forcing employees to resign from the Union. It further admitted that it had considered rendering some employees redundant on "Last in First Out" basis, but 21 of the claimants were not in the list. It also averred that pursuant to a meeting held on 18<sup>th</sup> May 2017 with the Claimants' Union it postponed the entire redundancy process and communicated that decision to the Union by letter dated 22<sup>nd</sup> May 2017. However, the Respondent averred that two of the Claimants, Albert Kemongo and Alex Gacici, absconded their duties.

## **Proceedings Before Court**

7. The matter came up for hearing on 5<sup>th</sup> November 2025 when the Claimants called the 5<sup>th</sup> claimant, Jackson Marwanga, as CW1. He adopted his witness statement dated 5th January 2022 as his evidence in chief in support of the suit. He produced a written authority to plead and testify in this case signed by all the 40 Claimants on 9<sup>th</sup> June 2017. He also produced seven (7) documents in the list dated 9<sup>th</sup> June 2017 as exhibits, thirty-four (34) documents in the list dated 4<sup>th</sup> October 2017 as exhibits and further produced payslips and National Social Security Fund statements in the list dated 16<sup>th</sup> July 2018 as exhibits. The three bundles were marked exhibit 1,2 and 3 respectively.
8. CW1 further adopted as evidence, the written statements filed the other Claimants and annexed to the Amended Statement of Claim at pages 11 to 44. He stated that he worked for the Respondent together with the other claimants until 2018 when the company was just closed down without notice. He testified that a memo was issued to staff to go on

leave and when they returned, they found security guards who informed them that the company had been closed. They were not allowed into the company premises and security guards chased them away.

9. They computed an aggregated claim of Kshs. 20,940,340.00, including his personal claim of Kshs. 940,564.00 made up of unpaid salaries, one month salary in lieu of notice and severance pay. He contended that the Respondent had not filed anything to rebut the said computation and therefore prayed for judgment, costs and interest.
10. On cross-examination he admitted that they had filed another case, ELRC Cause No. 271 of 2019, through their trade union, KUCFAW. He confirmed that he was a member of the union together with the 1st to 4th Claimants, and the other 40 claimants herein. He admitted that a judgment was delivered in the said case on 27<sup>th</sup> February 2025 for a sum of over Kshs. 20,000,000.00 including the 6 months' salary claimed in this case. He conceded that if this court awarded the 6 months' salary, it would be deducted from the award in

**ELRC Cause No. 271 of 2019.** He confirmed that they had not yet been paid the decretal sum in the other case.

11. In re-examination, CW1 clarified that no documents filed by the Respondent showed that the claim herein was for the same benefits. He maintained that save for the salary issue which was similar in the two cases, the other prayers were different. He reiterated that they had not been paid the decretal sum in the other case.

12. Mr. Ong'anya learned counsel for the respondent closed the defence case without calling any witness and the court directed each side to file submissions. Both sides complied with the said directions after some delay.

### **Claimants' Submissions**

13. The Claimants framed the issues for determination as whether the Respondent had any valid reason to terminate the Claimants' employment; whether the Claimants were

entitled to the reliefs sought, and who should bear the costs of the suit.

14. On the validity of the reason for termination, the Claimants submitted that the Respondent terminated their employment for reasons that they wanted to join a union of their choice, being KUCFAW. They relied on Section 46(c) of the Employment Act, which provides that an employee's membership or proposed membership of a trade union is not a fair reason for dismissal. They also cited Section 4 of the Labour Relations Act, 2007, which guarantees the right to join or leave a trade union, and Section 5(1) thereof, which prohibits discrimination against an employee for exercising any right contained in the Act.

15. The Claimants submitted that the Respondent tried to legitimize the illegal and unlawful termination by giving the reason as redundancy while providing false timelines on the dates of employment to deny them their much-needed terminal dues. They contended that the Respondent failed to rebut the evidence that the only reason they were

terminated was because of wanting to join a union of their choice.

16. On procedure, the Claimants submitted that the Respondent did not follow a fair procedure and was in complete contravention of Sections 35, 41, 43, 45, and 46 of the Employment Act, 2007, and Article 41(1) of the Constitution. They argued that no notice was issued to them beforehand, and the Respondent failed to meet the obligations and conditions set out in Section 40 of the Employment Act before declaring an employee redundant.

17. They relied on the case of **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR**, where the Court of Appeal stated that redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. They submitted that the Respondent produced no proof showing

that it was facing any difficulties to justify declaring them redundant, and therefore the reason was not justifiable.

18. On the burden of proof, the Claimants cited Section 47(5) of the Employment Act and submitted that while the burden of proving that an unfair termination has occurred rests on the employee, the burden of justifying the grounds for termination rests on the employer. They argued that they had established on a balance of probability that there was no fair and lawful reason for their termination.

19. The Claimants further relied on the case of **Rosilinda Okanda Olouch & 38 Others v Style Industries Limited [2020] eKLR**, where the court emphasized on real consultation, citing **Cammish v. Parliamentary Service [1996] 1 ERNZ 404**, which held that consultation must involve provision of precise information, allowing reasonable response time, and considering suggestions before making final decisions. The Claimants submitted that the Respondent failed to offer proper and meaningful consultation with them prior to the purported redundancy,

and no evidence was produced showing that such consultations occurred.

20. On the reliefs sought, the Claimants prayed for one month's salary in lieu of notice for 40 Claimants amounting to Kshs. 921,141.00 as unpaid leave for Jackson O. Marwanga amounting to Kshs. 26,420.00, and severance pay for 40 claimants amounting to Kshs. 15,871,948.00 as per Section 40 of the Employment Act at the rate of at least 15 days' pay for every completed year of service.

21. Notably, the Claimants conceded and abandoned the claim for unpaid salaries for 40 Claimants, acknowledging that the same was subject to another suit filed by the Union, ELRC Cause No. 271 of 2019, and where judgment had been obtained.

### **Respondent's Submissions**

22. By the written submissions dated 9<sup>th</sup> February 2026 the Respondent framed the issues for determination as: whether KUCFAW and the Claimants herein are one and the same; whether the instant claim is res judicata Nairobi ELRC Cause

No. 271 of 2019; whether the Claimants have proved termination on redundancy; and whether the Claimants are entitled to the reliefs sought.

23. The first issue basically raised a preliminary point that the instant suit is *res judicata* the judgment in **Nairobi ELRC Cause No. 271 of 2019, Kenya Union of Commercial Food and Allied Workers (KUCFAW) v Premier Flour Mills Limited**, delivered by Hon. Lady Justice Maureen Onyango on 18<sup>th</sup> February 2022. The Respondent annexed the said judgment for the court's reference.

24. On the first issue, the Respondent submitted that KUCFAW is a trade union registered under the Labour Relations Act and the Claimants were members of the union as evidenced by Claimants' payslips and the fact that they have abandoned part of their claim on the basis of the judgment in the said case filed on their behalf by KUCFAW.

25. The Respondent relied on Section 7 of the Civil Procedure Act, which provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been

directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit, and has been heard and finally decided by such court.

26. The Respondent cited the Supreme Court decision **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (6th August 2021)** where the court laid down the conditions to be met for *res judicata* to be invoked: (a) there is a former judgment or order which was final; (b) the judgment or order was on merit; (c) the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and (d) there must be between the first and the second action identical parties, subject matter and cause of action.

27. The Respondent submitted that **ELRC Cause No. 271 of 2019** was filed on 25<sup>th</sup> April 2019 by the trade union on

behalf of its members, including the Claimants herein. Although the instant suit was instituted earlier, Explanation 1 to Section 7 of the Civil Procedure Act provides that "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it. The Respondent contended that the issues in ELRC Cause No. 271 of 2019 were substantially similar to the issues herein, as the union's suit was on unfair labour practices and sought payment of withheld wages from February 2018 to date.

28. The Respondent further relied on the Supreme Court's observation in **John Florence Maritime Services Ltd (supra)** that courts must be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle, and cited **ET v Attorney General & another [2012] eKLR** for the proposition that the test is whether the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause of action that which has been resolved by a court of competent jurisdiction.

29. The Respondent also cited **Omondi v National Bank of Kenya Limited and others [2001] EA 177** and the unreported case of **Njanqu v. Wambugu and another Nairobi HCCC No. 2340 of 1991** (Kuloba J) to urge that parties cannot evade the doctrine of *res judicata* by merely adding other parties or causes of action in a subsequent suit, or by giving their case a cosmetic face-lift on every occasion they come to court.

30. The Respondent submitted that the Claimants had brought the same claim, save that they introduced additional prayers. It argued that the doctrine of *res judicata* allows a litigant only one bite at the cherry, and prevents him from returning to court to claim further reliefs not claimed in the earlier action. The Respondent prayed that the claim be dismissed.

31. On the merits, and without prejudice to the *res judicata* argument, the Respondent submitted that the Claimants had failed to prove termination of employment on account of redundancy. The Respondent maintained that the

redundancy process was merely, intended but was eventually postponed as per the letter dated 22<sup>nd</sup> May 2017. The Respondent pointed to paragraph 30 of the Amended Statement of Claim, where the Claimants themselves referred to "the intended termination," confirming that the redundancy never occurred.

32. The Respondent further submitted that 21 of the 40 claimants herein were not part of the list considered for redundancy. It contended that the said list was generated in accordance with the Collective Bargaining Agreement on a "Last in First Out" basis but it became irrelevant after the postponement of the redundancy process.

33. On the reliefs sought, the Respondent submitted that the claim was marred with inconsistencies. Regarding the claim for one month's salary in lieu of notice, the Respondent noted a disparity between the pleaded sum of Kshs. 929,141.00 and the sum of Kshs. 921,141.00 prayed for in submissions, to submitted that the Claimants ought to have been more specific.

34. The Respondent further submitted that since the court in **ELRC Cause No. 271 of 2019** had already awarded the Claimants a total sum of Kshs. 22,666,420.00 for unpaid wages, and the Claimants had abandoned the claim for unpaid salaries the suit herein should be dismissed with costs.

35. Finally, the Respondent submitted that KUCFAW sought to execute the decree in the said judgment and made an application which was subsequently allowed by Hon. Justice Byram Ongaya on 27<sup>th</sup> February 2025.

### **Issues for Determination and analysis**

36. Having carefully considered the pleadings, evidence and the written submissions filed by both parties, the following issues fall for determination: -

a) Whether the doctrine of *res judicata* applies to bar the instant suit.

b) If the answer to (a) above is negative, whether the intended redundancy or termination of the Claimants' employment was unfair and unlawful.

c) Whether the Claimants are entitled to the reliefs sought.

### **Whether the suit is res judicata**

37. The Respondent has raised a preliminary issue that this suit is *res judicata* the judgment in Nairobi ELRC Cause No. 271 of 2019: **Kenya Union of Commercial Food and Allied Workers (KUCFAW) v Premier Flour Mills Limited**. The doctrine of *res judicata* is founded on public policy and is encapsulated in Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya, which provides as follows: -

***"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently***

***raised, and has been heard and finally decided by such court."***

38. The Court of Appeal in the case of **The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, Nairobi CA No. 105 of 2017 [2017] eKLR** had this to say on the doctrine: -

***"The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by endless litigation in the guise of different causes of action, seeking different remedies or otherwise. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for***

***one party, and liability for another party, conclusively."***

39. The Supreme Court of Kenya in **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (6th August 2021)** delineated the elements that must be demonstrated for res judicata to be invoked in a civil matter as follows: -

***"(a) There is a former judgment or order which was final;***

***(b) The judgment or order was on merit;***

***(c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and***

***(d) There must be between the first and the second action identical parties, subject matter and cause of action."***

40. The court has carefully perused the judgment in Nairobi ELRC Cause No. 271 of 2019: **Kenya Union of Commercial Food and Allied Workers (KUCFAW) v Premier Flour Mills Limited**, delivered by Onyango J on 18<sup>th</sup> February 2022. A copy of the said judgment has been provided to the court. In that suit, KUCFAW sued the Respondent herein on behalf of its members, who are the same 40 employees in the instant suit. The union claimed unfair labour practices and sought the following prayers: -

- i. That the Honourable Court find wages for the grievants from February 2018 to date due and owing.
- ii. The Honourable Court to Order and Award for payment of all withheld wages from February 2018 to date and or as per Appendix PN13 attached.
- iii. That the wages be paid within 14 days of the Court's Judgment.
- iv. That costs be provided.

41. In the said judgment, Onyango J found that the Respondent had unlawfully withheld the Claimants' wages from February

2018 and entered judgment in favour of the Claimants (the union members) for the sum of Kshs. 22,666,420.00, being the total of the Claimants' salaries for the months of February 2018, March 2018 and April 2018, plus costs of the suit. The judgment was final and on merit, and it was rendered by a court of competent jurisdiction.

42. The Claimants, through the testimony by CW1, abandoned the claim for unpaid salaries for 40 Claimants. In their written submissions they stated as follows:-

***"Your Lordship, the Claimant while testifying conceded that the issue of unpaid salary was subject to another suit filed by the union and judgement obtained accordingly in ELRC Cause no. 271 of 2019; Kenya Union of Commercial Food & Allied Workers VS Premier Flour Mills Limited. Accordingly, the claim for unpaid salaries is herewith abandoned."***

43. I will not belabor the point because the claimants conceded that their claim for unpaid salary was *res judicata*. However,

the facts and prayers sought in the instant suit slightly differ from the those in **ELRC Cause No. 271 of 2019**. First and foremost, the instant case was filed earlier seeking the reliefs highlighted in paragraph one above but the union filed the second case seeking unpaid salary only after the respondent confirmed during the conciliation meeting held on 13<sup>th</sup> December 2018 that the claimants' employment had not been terminated. I will say more on that point shortly.

44. Suffice it to say that, save for the issue of unpaid salary, the rest of the issues including unfair termination/redundancy, leave for the 5<sup>th</sup> Claimant, salary in lieu of notice and severance pay were never determined by the court in **ELRC Cause No. 271 of 2019**. The Court of Appeal in **Pop-In (Kenya) Ltd & 3 others v Habib Bank AG Zurich [1990] eKLR** held that *res judicata* applies only to the issues that were directly and substantially in issue in the former suit and were determined.

45. The Respondent has argued that the Claimants are simply giving their case a cosmetic face-lift by adding new prayers.

While the court is mindful of the need to guard against litigants evading *res judicata* by introducing new causes of action, the test is whether the plaintiff in the second suit is trying to have a second bite on the cherry on a matter which has been resolved by a court of competent jurisdiction. In my assessment, the answer is no as the Claimants are prosecuting allegations that were left out by their union when it filed a separated suit seeking unpaid salaries only.

46. Accordingly, I find that the whole suit is not *res judicata* but only the claim for unpaid salaries, which has already been withdrawn. Therefore, I proceed to determine the remaining claims on their merits.

### **Intended redundancy or termination**

47. The Claimants' case is that the Respondent intended to terminate their employment through redundancy in April 2017, and that the intended redundancy was unlawful. The Respondent, admitted during the conciliation that it the intention to lay off some employees but that would not affect

21 of the claimants herein. It further clarified that the intended redundancy was shelved following discussions with the Claimants' union, and therefore no termination of employment ever occurred.

48. The evidence on record shows that the Respondent, by letter dated 3<sup>rd</sup> May 2017, communicated to the Union about its intention to declare certain employees redundant due to various mitigating factors. Subsequently, a meeting was held on 18<sup>th</sup> May 2017, and the Respondent by letter dated 22<sup>nd</sup> May 2017, communicated to the Union that it had heeded the Union's request to reconsider and had shelved the redundancy process entirely.

49. The Claimants, in their pleadings, consistently referred to "intended termination" and "intended redundancy." Paragraph 9 of the Amended Statement of Claim states that the Claimants learned that the Respondent had "planned/intended to terminate their employment." Paragraph 15 refers to "the period over which the terminations were intended to be carried out." Paragraph 30

refers to "the intended termination in the manner pleaded."  
This language indicates that the redundancy had not yet occurred, as at the time the pleading was drawn.

50. The above position was confirmed by the Respondent during the conciliation meeting on 13<sup>th</sup> December 2018. The amended claim herein was drawn on 10<sup>th</sup> July 2018 before the said conciliation meeting of 13<sup>th</sup> December 2018 where the issue of intended redundancy was rendered moot. Consequently, I find that the Claimants' claim for intended termination or redundancy to be without merits and having been overtaken by events.

**Whether the Claimants are entitled to the reliefs sought**

51. Having found that the Claimants have failed to prove termination, I decline to award them declaration that they were unfairly terminated or declared redundant. For the same reason the claim for salary in lieu of notice, severance pay and general damages for unfair termination or redundancy must fail.

52. The claim for kshs. 26,420 as unpaid leave by the 5<sup>th</sup> claimant lacks particulars as to when the leave accrued and for how many days. There was also no supporting evidence and therefore the claim is declined. For the same reasons the claim for house allowance by Olipher Kwamboka is declined.

53. **Certificate of Service:** Section 51 of the Employment Act, 2007 provides that an employer shall issue a Certificate of Service to an employee upon termination of employment. The provision states: -

***"(1) An employer shall issue to an employee a certificate of service within seven days of termination of employment."***

54. Even though the Claimants have not proved the circumstances of the termination of their employment, and when it occurred it is not disputed that they were employees of the Respondent and that their employment came to an end at some point. The Respondent did not adduce any evidence to the contrary. CW1 testified that they were never

given any Certificate of Service. The court finds that the Claimants are entitled to Certificates of Service under Section 51 of the Employment Act, regardless of the manner of termination. This prayer is accordingly allowed.

### **Conclusion**

55. I have found that the Claimants have not proved that they were laid off or dismissed from employment as the Respondent had intended to do before they filed this suit. I have further found that the Claimants are not entitled to the reliefs sought save for the certificate of service. Consequently, I enter judgment as follows: -

- a) The Respondent is hereby ordered to issue each of the 40 Claimants with a Certificate of Service in accordance with Section 51 of the Employment Act, 2007 within thirty (30) days of this judgment.
- b) Each party shall bear its own costs since the suit has largely failed.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH, 2026.**

**ONESMUS MAKAU**

**JUDGE**

**Appearance:**

Nyabena for the Claimant

Ong'anya for the Respondent