



**Kenya Union of Commercial Food and Allied Workers v Premier Flour Mills Limited  
(Cause 271 of 2019) [2025] KEELRC 568 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 568 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 271 OF 2019  
B ONGAYA, J  
FEBRUARY 27, 2025**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**PREMIER FLOUR MILLS LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed an application by way of the Notice of Motion dated 22.02.2024 signed by Boniface M. Kavuvi, General Secretary. The application was under section 20(8) of the *Employment and Labour Relations Act*, 2011, section 38 of the *Civil Procedure Act*, order 22 rules 31 and 35 of the *Civil Procedure Rules*, rule 32(2) of the *Employment and Labour Relations Court (Procedure) Rules 2016* and any other enabling provisions of the law. The applicant prayed for orders as follows:
  - a. ....(spent).
  - b. An order be and is hereby issued requiring the Judgment Debtor and its Directors namely Ahmed Hashan Lalji, Diamond Hasham Lalji, Shahid Diamond Lalji and Prakas Sanas to appear in Court to be examined on what other property they may have or on what other means they may have to satisfy the Judgment and Decree of the Court.
  - c. An order be and is hereby issued directing the said Judgment Debtor and its Directors to avail a copy of Title Deed for Land Ref. No. 209/8377 registered in the name of the respondent herein and situated at Nairobi’s Industrial Area and to declare its present value.
  - d. An order be and is hereby issued lifting the veil of incorporation protecting the said Directors from personal liability to satisfy the Judgment and Decree of the Court.



- e. The Honourable Court be pleased to issue any other order found fit and just to meet the ends of justice.
2. The application was based upon the supporting affidavit of Jackson Kyunuve, Assistant General Secretary of the union sworn on 22.02.2024 and upon the following grounds:
    - a. The Court delivered a judgment on 18.02.2022 in favour of 57 grievants for payment of salaries in the sum of Kshs.22, 666,420 together with interest from the date of the judgment. The decree issued accordingly on 08.03.2022.
    - b. The applicant severally but unsuccessfully tried to execute to satisfy the decree. The Judgment Debtor's motor vehicles were attached and it turned out that they were unavailable because they were charged in favour of third parties. The respondent and its Directors have therefore acted with malice to deny the grievants enjoyment of the judgment. Since the respondent and its Directors have failed to provide alternative means to satisfy the decree, the directors should be held personally liable to settle the judgment debt.
  3. The respondent opposed the application by filing the replying the replying affidavit of Diamond Hasham Lalji, the respondent's Director, sworn on 18.03.2024 and filed through Ong'anya Ombo Advocates. It was urged as follows:
    - a. The respondent and the Director were aware of the Judgment and Decree herein and subject of the application.
    - b. It was not deliberate that the respondent had failed to satisfy the decree but the respondent had not been in operation for the last five to seven years and the offices were presently closed.
    - c. The motor vehicles previously attached in satisfaction of the decree had been charged to banks to secure loans long before the dispute leading to the judgment.
    - d. The banks, third parties, are in the process of selling the respondent's charged properties and upon realization of a surplus, the respondent shall seek to promptly pay the decretal sum. The respondent has not conducted itself to suggest it will not or intends not to settle the decretal sum.
    - e. The respondent is a separate entity from the Directors.
    - f. Malice as alleged is not established at all and is calculated to sensationalize the issues.
  4. Conditions for grant of the order for lifting of the corporate veil (such as fraud or improper conduct on the part of the Directors or the respondent) are not established at all. The corporate veil can be lifted only if the relevant conditions are met and do not include inability of the company to pay its debts with the applicant or insolvency of the Company and, the remedies in law have not been exhausted.
  5. The application lacks merits and it be dismissed with costs.
  6. Prayer (b) was granted and the Director Diamond Hasham Lalji was examined and cross-examined. He gave a testimony in terms of his replying affidavit. Prayer (c) was as well granted.
  7. The parties filed their respective submissions. There is no dispute that the Land Ref. No. 209/8377 registered in the name of the respondent herein is charged in favour of Eco Bank. The respondent has stated that the banks be given an opportunity to sell the charged land and other properties and once the loan is settled the unsecured creditors will be paid including judgment debt be prioritized. The loan amounts have not been disclosed.



8. The Court has considered the parties' respective cases and the submissions. The Court finds that the respondent should be able to settle the decretal sum once the properties subject of the charges are sold. The loan amount not being established, the respondent should render an account as may be necessary, once the properties are sold. As submitted and urged for the respondent and the Directors, the Company is a separate legal entity and conditions for lifting of the corporate veil have not been established.

In conclusion, the application dated 22.02.2024 is hereby determined with orders as follows:

- a. The respondent to settle the decretal sum once the properties subject of the charges are sold and a surplus realized.
- b. The respondent to render an account to the applicant in view of order (a) above and as may become necessary or appropriate in the circumstances.
- c. The applicant at liberty to pursue any other lawful means towards satisfaction of the decree.
- d. Each party to bear own costs of the application.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 27<sup>TH</sup> FEBRUARY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

