Jattani v Jattani (Environment and Land Appeal E009 of 2023)
[2025] KEELC 3283 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3283 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ENVIRONMENT AND LAND APPEAL E009 OF 2023

JO MBOYA, J

MARCH 20, 2025

BETWEEN

ABDI GUYO JATTANI ..... APPELLANT

AND

GUYO JATTANI ..... RESPONDENT

RULING

1. The Appellant/Applicant approached the court vide the Notice of Motion Application dated the 10th September 2024 and which application was subsequently amended vide Notice of Motion Application dated the 11th November 2024 and wherein the Applicant has sough for the following reliefs;

    i. That this Application be heard Ex-parte at first instance.

    ii. That this Honourable Court be pleased to allow the Appellant herein to produce additional evidence being the letter dated 23th May, 2023; and typed proceedings.

    iii. That upon prayer 2 above being granted, the Honourable Court be pleased to order that the annexed supplementary Record of Appeal be deemed as duly filed.

    iv. That this Honourable Court be pleased to issue such further orders as it may deem fit under the circumstances of this case.

    v. That the costs of this Application be costs in the cause.

2. The instant application is anchored on the various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit of Abdi Guyo Jatani [Applicant] sworn on even date and two [2] sets of supplementary affidavit[s] one sworn on the 6th February 2025 but which has not been executed by the deponent whilst the other is sworn on the 6th February 2025; and has been executed by the deponent.

3. Upon being served with the subject application, the Respondent filed a Replying affidavit sworn on the 21st January 2025 and to which the Respondent has annexed various documents including correspondence from the directorate of land administration, ministry of lands, planning, housing, public works and urban development.

4. The instant application came up for hearing on the 27th January 2025 whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of written submissions. To this end, the court circumscribed the timeline[s] for the filing and exchange of the written submissions.

5. Suffice it to state that, the Applicant filed written submissions dated the 6th February 2025 whereas the Respondent filed written submissions dated the 14th February 2025. The two [2] sets of written submissions are on record.

6. The Applicant herein has raised and canvassed two salient issues, namely; that the Applicant has demonstrated and established a basis to warrant leave being granted to tender additional evidence vide letter dated the 23rd May 2023 procured from the state department for lands and physical planning; and that it is appropriate to grant liberty to the Applicant to file the supplementary record of appeal.

7. Regarding the first issue, learned counsel for the Applicant has submitted that the dispute beforehand touches on and concerns ownership of the suit property which is situated in Moyale Town. Furthermore, it has been submitted that the dispute pits the Applicant on one hand and the Respondent on the other hand.

8. Additionally, it has been submitted that the subordinate court relied on a letter of allotment reference number 19870/VII dated 6th March 1999, in arriving at and finding that the suit property belongs to the Respondent.

9. Nevertheless, it has been submitted that the letter of allotment which was relied upon and which founds the basis of the judgment of the trial court, has been disowned by the director, land administration. To this end, learned counsel for the Applicant has referenced [sic] the letter dated the 23rd May 2023.

10. According to learned counsel for the Applicant, the letter dated the 23rd May 2023 is crucial and would help this court in arriving at a just determination of the dispute pertaining to ownership of the land. In this regard, it has been submitted that it is therefore just for this court to grant leave to the Applicant to adduce additional evidence, namely, the letter dated the 23rd May 2023.

11. In support of the submissions for the grant of leave to adduce additional evidence, learned counsel for the Applicant has cited and referenced the decision in the case of Tarmohammed & Another v Lakhani & Company 1958 EA 557; Ladd v Marshall 1954 1WLR 1489 and Muhammed Abdi Muhammed v Ahmed Abdulahi Muhammed & 3 Others [2018]eKLR, respectively.

12. Secondly, learned counsel for the Applicant has submitted that at the time when the Appellant/ Applicant filed the record of appeal, same had neither procured nor obtained the typed proceedings from the subordinate court. In this regard, it has been posited that the record of appeal as filed does not contain the typed proceedings of the trial court.

13. Nevertheless, it has been submitted that the Applicant has since procured and obtained the typed proceedings and thus it is apposite for leave to be granted to the Applicant to file and serve a supplementary record of appeal.

14. Furthermore, it has been submitted that unless the supplementary record of appeal is filed, the record of appeal would remain incomplete and thus this court would not be in a position to determine the appeal beforehand in accordance with the law.

15. Moreover, it has been submitted that the filing of the supplementary record of appeal to include the typed proceedings shall not prejudice the Respondent in any manner whatsoever.

16. Arising from the foregoing, learned counsel for the Applicant has therefore implored the court to find and hold that the application beforehand is meritorious and thus same ought to be allowed.

17. The Respondent filed written submissions and wherein same has highlighted three [3] salient issues, namely, that the letter dated the 23rd May 2023, which the Applicant seeks to produce as additional evidence is a forgery and hence ought not to be allowed; that the production of the additional evidence is intended to enable the Appellant to fill gaps in the evidence that was tendered before the subordinate court; and thirdly that the application beforehand is intended to delay and/or defeat the expeditious hearing and determination of the appeal beforehand.

18. Regarding the first issue, namely; that the letter dated the 23rd May 2023 is a forgery, learned counsel for the Respondent has submitted that upon the letter under reference being annexed to the previous application dated the 10th September 2024, the Respondent wrote to the directorate of land administration seeking to authenticate whether the impugned letter emanated from the ministry of lands.

19. It has been submitted that the directorate of land administration Responded to the letter by the Respondent vide their letter dated the 18th November 2024 and wherein the directorate of land administration confirmed that the impugned letter dated the 23rd May 2023 does not form part of the records obtaining at the ministry of lands, housing, public works and urban developments.

20. Arising from the foregoing, it has been submitted that the letter dated the 23rd May 2023, which is sought to be produced as additional evidence is therefore a forgery and cannot be tendered and/or produced before a court of law. In any event, it has been posited that the production of such a letter at this stage of the case would constitute a violation and/or infringement of the Respondent's rights to fair hearing.

21. Secondly, it has been submitted that the letter of allotment which was tendered and produced before the trial court on behalf of the Respondent was produced with the knowledge of the Applicant. Furthermore, it has been posited that prior to the production of the said letter of allotment same [letter of allotment] had been discovered and filed by the Respondent as part of the list and bundle of documents in accordance with the law.

22. In addition, it has been submitted that the Applicant herein had the occasion to impeach and/or challenge the letter of allotment during the trial before the subordinate court but same failed to do so. In this regard, it has been contended that the current application and the endeavour to produce additional evidence is an attempt to fill the gaps in the evidence of the Applicant.

23. In particular, it has been submitted that even though the court is seized of the discretion to decree production of additional evidence on appeal, the discretion is circumscribed and ought not to be deployed to allow a party to fill in the gaps in the evidence.

24. Thirdly, it has been submitted that the Respondent herein is an old person and thus desirous to have the appeal beforehand heard and disposed of expeditiously. Nevertheless, the Respondent contend that the current application is calculated to delay and/or defeat the expeditious hearing of the appeal.

25. Additionally, it has been submitted that the delay in the hearing and determination of the appeal shall occasion undue prejudice and grave injustice on the Respondent. To this end, the Respondent has implored the court to decline the application beforehand and to dismiss same with costs.

26. Other than the foregoing, learned counsel for the Respondent has also submitted that given that the impugned letter dated the 23rd May 2023 has been disowned by the directorate of land administration, it is appropriate that the letter under reference be subjected to investigation by the directorate of criminal investigation [DCI] and thereafter appropriate action be taken against the Applicant.

27. Having reviewed the application, the supporting affidavit and the two [2] sets of supplementary affidavits filed by the Applicant; the replying affidavit by the Respondent and upon consideration of the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the instant application turns on two [2] critical issue[s];

28. The critical issues upon which the determination of the application rests are, namely;

    i. Whether the Applicant has met the statutory threshold to warrant the grant of leave to adduce additional evidence and;

    ii. Whether the grant of such leave will prejudice the Respondent or otherwise.

29. Regarding the first issue, it is imperative to underscore that the appellate court is conferred and/or bestowed with the statutory jurisdiction to grant leave for production of additional evidence albeit where appropriate.

30. To this end, it is apposite to cite and reference the provisions of Section 78 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.

31. Same are reproduced as hereunder;

> 78. Powers of appellate court
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> (1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—
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> (a) to determine a case finally;
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> (b) to remand a case;
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> (c) to frame issues and refer them for trial;
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> (d) to take additional evidence or to require the evidence to be taken;
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> (e) to order a new trial.
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> (2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.

32. The jurisdiction of the appellate court to grant leave of additional evidence has also been considered in various decisions. Instructively, the extent and scope of the jurisdiction of the appellate court to grant leave for additional evidence was elaborated upon by the Supreme Court of Kenya [the apex Court] in the case of Muhammed Abdi Muhammed v Ahmed Abdulahi Muhhamed & 3 Others [2018]eKLR, where the court stated thus;

79. Taking into account the practice of various jurisdictions outlined above, which are of persuasive value, the elaborate submissions by counsel, our own experience in electoral litigation disputes and the law, we conclude that we can, in exceptional circumstances and on a case by case basis, exercise our discretion and call for and allow additional evidence to be adduced before us. We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:

(a) the additional evidence must be directly relevant to the matter before the court and be in the interest of justice;

(b) it must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;

(c) it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;

(d) Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;

(e) the evidence must be credible in the sense that it is capable of belief;(f)the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;

(g) whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;

(h) where the additional evidence discloses a strong prima facie case of willful deception of the Court;

(i) The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful.

(j) A party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case.

(k) The court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.

33. The Supreme Court re-visited the factors and ingredients to be taken into account by the appellate court before granting leave to adduce additional evidence in the case of *Attorney General v Zinj Limited (Petition 1 of 2020)* [2021] KESC 63 (KLR) (Civ) (5 March 2021) (Ruling); where the Court observed thus:

12. The divergence of the findings by both Courts is now the subject of the appeal before us and the question that we must ask is whether the alleged additional evidence would run afoul of the principles we established in Hon. Mohamed Abdi Mohamad. Those principles, flowing from

an interpretation of Rule 18 of the Supreme Court Rules 2012 (now Rule 26 of the Supreme Court Rules 2020 are as follows:

(a) the additional evidence must be directly relevant to the matter before the court and be in the interest of justice;

(b) it must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;

(c) it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;

(d) where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;

(e) the evidence must be credible in the sense that it is capable of belief;

(f) the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;

(g) whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process;

(h) where the additional evidence discloses a strong prima facie case of willful deception of the Court;

(i) The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful;

(j) a party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case;

(k) the Court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.

34. Bearing in mind the guidelines and factors enunciated by the Supreme Court in the decisions [supra], it is now apposite to revert to the instant matter and to discern whether the Applicant has met the prescribed threshold to warrant the grant of leave to adduce additional evidence, either in the manner sought or at all.

35. To start with, it is worthy to recall and reiterate that the letter of allotment reference 19870/VII dated 6th March 1999 was part of the documents that were filed by the Respondent before the trial court. To this end, the letter of allotment under reference was therefore within the knowledge of the Applicant at all material times prior to and during the trial in the subordinate court.

36. Furthermore, it is not lost on this court that the Applicant herein participated in the proceedings before the subordinate court and same had the opportunity to object to the production of the letter of allotment, if at all. However, the record of the trial court does not reflect any objection having been taken to the production of the letter of allotment.

37. Moreover, it is also worth pointing out that the Applicant herein also had the opportunity to summon a witness from the National Land Commission [which is the commission chargeable with the management and administration of public land] or a witness from the directorate of land administration, whichever was deemed relevant.

38. Yet again, the record of the trial court does not reflect any endeavour by the Applicant to call and or summon a witness from the said state organs or at all.

39. On the other hand, the Applicant herein also had the occasion to subject the letter of allotment to forensic document examination but yet again same was not subjected to such cross examination.

40. Suffice to state that the learned trial magistrate thereafter proceeded to and admitted the letter of allotment as part of the evidence that was tendered before the court and thereafter utilized same in the course of crafting the judgment under reference. For good measure, it is worthy to underscore that the Applicant herein seems aggrieved by the determination of the trial court based on the letter of allotment under reference.

41. It is the deployment of the said letter of allotment as part of the documentation that were relied upon to find and hold that the suit property belongs to the respondent that is now sought to be challenged on the basis of the additional evidence.

42. To my mind, the Applicant herein is keen to use and/or deploy the judgment and the reasoning of the trial court as a basis for undertaking further investigations in an endeavour to procure further documentation to help defeat the judgment of the trial court.

43. Put differently, the Applicant herein is using the judgment and the reasoning of the learned magistrate and thereafter deploying same to procure documentation to plug the gaps and holes that were exposed in his [Applicant's evidence] during the trial.

44. Surely, no litigant, the Applicant not excepted can be allowed to use a court of law as an investigating forum to undertake further investigations and procure [sic] additional documents to defeat decisions arrived at on the basis of evidence tendered.

45. In my humble view, the current application, if allowed, would be tantamount to granting the Applicant undue latitude to go on a fishing excursion/ expedition. Such an endeavour, has serious ramifications on the right to fair hearing; fair trail; due process of the law and the rules of natural justice. [See Article 10, 27[1] and 50 of *the Constitution* 2010].

46. Other than the foregoing, it is also important to underscore that before an Applicant can partake of the leave to tender additional evidence, the Applicant must demonstrate that what is sought to be adduced as additional evidence could not have been procured/obtained with reasonable diligence for use at the trial. In this case, I have pointed out that the Applicant herein had the opportunity to object to the production of the letter of allotment during the trial or better still to take out summonses in accordance with the provisions of Order 16 rule 1 of the Civil Procedure Rules 2010.

47. However, there is no gainsaying that the Applicant did not exercise due diligence or at all. Can such an Applicant now approach the court with the benefit of hind-sight to remedy a default, failure or neglect on his part?

48. I am afraid that the Applicant herein cannot be allowed to use the judgment of the subordinate court as a launch-pad to propel his [Applicant's case].

49. Moreover, it is important to state and underscore that any litigant, the Applicant not excepted, who seeks to procure and partake of the equitable direction of the law must approach the court in good faith and with clean hands. Suffice it to posit that it behoves an Applicant seeking equity to approach the seat of justice with honesty and candour.

50. Has the Applicant herein approached the court in good faith, with clean hands and candour? Sadly, the Applicant herein has indulged in questionable actions and or activities which are intended to bring the administration of justice to disrepute.

51. Firstly, it is worthy to recall that on the 27th January 2025, the Applicant sought for and obtained leave to file a supplementary affidavit. Having procured and obtained leave, the Applicant filed two [2] sets of supplementary affidavits and same are obtainable in the e-platform of the judiciary [CTS].

52. The first supplementary affidavit is indicated to be sworn at Meru on the 6th February 2025. However, the said supplementary affidavit has not been signed by the deponent [Applicant].

53. The interesting bit however touches on and concern[s] the annexures attached thereto. For coherence, the annexures attached thereto is the letter dated 23rd May 2023 and which is purported to have ben generated by the directorate of land administration and which is the subject of the application herein.

54. Be that as it may, it is evident that the impugned annexure is not signed by [sic] the author thereof. Simply put, the place designated for a signature is blank.

55. The question that does arise is how this letter which is purported to have been issued on the 23rd May 2023 would remain unsigned as at 6th February 2025 when same [letter dated 23rd May 2023] was being annexed to the supplementary affidavit.

56. Quite clearly, the Applicant is no doubt engaged in some gymnastics and [sic] fraudulent activities.

57. Curiously, the Applicant filed another supplementary affidavit sworn on the 6th February 2025 and to which supplementary affidavit, the Applicant annexes the similar letter dated the 23rd May 2023 and now the impugned annexure is not only [sic] signed on behalf of the author but also purports to be a certified copy of the original.

58. Furthermore, it is also evident from the face of the annexure at the foot of the second supplementary affidavit that same is indicated to have been [sic]certified on the 18th October 2024.

59. Something seems not to be adding up. Nevertheless, it is not lost on this court that the directorate of land administration has since generated another letter dated the 18th November 2024 and wherein same have disowned the annexure purported to be deployed by the Applicant.

60. To my mind, the Applicant needed to demonstrate bona fides and candour. However, evidence abound to suggest that the Applicant herein appears to be playing lottery with the due process of the court.

61. Can a court of law lend it discretion to a person or party, the Applicant not excepted who seems keen to defile the cause of justice. The answer in my humble view is in the negative.

62. Flowing from the analysis highlighted in the preceding paragraph, my answer to issue number one is threefold. Firstly, the Applicant herein has neither demonstrated nor established that same exercised due diligence in an endeavour to procure the additional evidence during the trial.

63. Secondly, the endeavour to procure leave and adduce additional evidence is informed by a desire to plug the gaps that were exposed in the Appellants case vide the judgment sought to be appealed against.

Simply put, the application beforehand is geared towards affording the Applicant a second bite on the cherry which is not permissible under the Law.

64. Thirdly, the Application beforehand is not made in good faith. In any event, the Applicant seems to have engaged in certain questionable activities, taking into account the contents of the two [2] conflicting supplementary affidavits filed and forming part of the record of the court.

65. In respect of the second issue, it is apposite to state and underscore that all litigants are called upon to assist courts of law to undertake proceedings in a just, expedient and proportionate manner. [See Section 1B of the *Civil Procedure Act*, Chapter 21 Laws of Kenya].

66. On the other hand, courts of law are also commanded to ensure that justice is meted out to the parties in a just expedient, reasonable and proportionate manner. For good measure, courts are called upon to actualize the legal maxim that justice delayed is justice denied. [See Section 1A of the *Civil Procedure Act*]. [See also Article 159 [2][b] of *the Constitution* 2010].

67. Other than the statutory provisions highlighted in the proceedings paragraph, it is also worthy to take cognizance of the dicta of the Court of Appeal in the case of Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others [2015] eKLR, where the court stated thus;

> The delay attributed to court regarding a misplaced file in respect of the earlier application of 17th August, 2010 ignores the fact that between 2004 and 2010 there was already an unexplained delay of six (6) years. In terms of Article 159 of *the Constitution* and sections 1A, 1B and 3A of the *Civil Procedure Act* on which the court below was invited to consider the application, the court's duty is to avoid any form of prejudice or hardship caused by delay to the parties.
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> "Justice shall not be delayed" is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure. We agree, with respect, with the learned Judge's conclusion that the suit in the High Court was not properly handled by the appellant's advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise it cannot be fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed cannot be visited upon them. The warning of Madan JA in Belinda Murai & others v Amos Wainaina (1978) LLR 2784, reigns true today. He said:
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> "A mistake is a mistake. It is no less a mistake because it is unfortunate slip. It is no less pardonable because it is committed by senior counsel.....The door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate..." (our emphasis)
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> We also reiterate Lord Griffith's words is in Ketterman v Hansel Properties Ltd (1988) 4 All ER 769, that;

> "Legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age. There will be cases in which justice will be better served by allowing the consequences of the negligence of lawyers to fall on their heads..."

68. Duly guided by the dicta cited in the decision [supra], I beg to state that the granting of the application beforehand and more particularly the limb touching on production of additional evidence will have a serious ripple effect.

69. Suffice it to state that the granting of leave to produce additional evidence in the manner sought will undo the entirety of the proceedings that were taken before the trial court and will then open the pandora box, more particularly for the Applicant herein to better his case using additional documents including the questionable letter under reference.

70. No doubt, the Respondent who says that same is an old person, shall be subjected to further anxiety, prejudice and injustice. Such prejudice and injustice cannot be countenanced by a court of law taking into account the provisions of Sections 1A and 1B of the *Civil Procedure Act* and Article 1259[2] [b] of *the Constitution* 2010.

71. In a nutshell, my answer to issue number two [2] is to the effect that the Respondent herein shall be disposed to suffer undue prejudice; and grave injustice, including delay in the determination of the appeal, if the Application for adduction of additional evidence is granted.

Final Disposition:

72. Flowing from the analysis which has been highlighted in the body of the ruling, it is apparent that the application beforehand is not only misconceived, but same is tainted with mala fides.

73. Before proclaiming the final orders, it is imperative to point out that it is not justiciable for a party to file conflicting annexures [which bespeak of forgeries] like the ones attached to the supplementary affidavits sworn by the Applicant.

74. Furthermore, it is important for parties and their advocates to appreciate that perjury is a serious offence and thus parties ought to approach the seat of justice in good faith. [See Odinga & 16 others v Ruto & 10 others; Law Society of Kenya & 4 others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)) [2022] KESC 54 (KLR) (Election Petitions) (5 September 2022) (Judgment) at paragraph *25*[d] of the abridged judgment].

75. Having stated the foregoing, the final orders of the court are as hereunder;

    i. The amended notice of Motion Application dated the 11th November 2024 be and is hereby dismissed.

    ii. Costs of the Application be and are hereby awarded to the Respondent.

    iii. For the avoidance of doubt and taking into account the provisions of Section 113 and 114 of the *Penal Code*, Chapter 63 Laws of Kenya, the letter dated 23rd of May 2023 be and is hereby referred to the directorate of criminal investigations to undertake due investigations in respect thereof.

    iv. Subject to the investigations and the powers bestowed upon the directorate of criminal investigations in line with Article[s] 244 and 245 of *the Constitution*, appropriate action be taken if and where deemed apposite.

v. Without prejudice to the orders in clause [i] above, liberty be and is hereby granted to the Appellant to file a supplementary record of appeal and to include the typed and certified proceedings of the trial court.

vi. The supplementary record of appeal in terms of clause [v] to filed and served within 14 days from the date hereof.

vii. The matter herein shall be mentioned on the 7th April 2025 for directions on the appeal.

76. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of .

Mr. Mutuma – Court Assistant

Mr. Brian Mwirigi for the Applicant.

Mr. Ndubi Ondubi for the Respondent.