



REPUBLIC OF KENYA



Kihara (Suing as the administrator of the Estate of Alice Nduta Kihara) & another v Patmos Investment Limited & 14 others (Environment and Land Case E159 of 2024) [2026] KEELC 2413 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E159 OF 2024**

**JA MOGENI, J
APRIL 29, 2026**

BETWEEN

**GEORGE MBUGUA KIHARA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ALICE NDUTA KIHARA) 1ST PLAINTIFF
JAMES MUTHIGO MWANGI 2ND PLAINTIFF**

AND

**PATMOS INVESTMENT LIMITED 1ST DEFENDANT
KEZIAH MUMBI MBOCI 2ND DEFENDANT
CECILIAH WANJIRU KINYANJUI 3RD DEFENDANT
BENSON GITHUKA IRUNGU 4TH DEFENDANT
CAROLINE WAITHERA MUIRURI 5TH DEFENDANT
AGNES WAMBUI KIBOO 6TH DEFENDANT
JACOB KAMAU NDUMI 7TH DEFENDANT
EMILY NJERI NJOGU 8TH DEFENDANT
THE CHURCH COMMISSIONERS OF KENYA 9TH DEFENDANT
CAROLINE WANJIRU NGOIRI 10TH DEFENDANT
CAROLINE KAWIRA GITARI 11TH DEFENDANT
SUSAN MURUGI MUCHEMI 12TH DEFENDANT
LYDIA MUTHONI NJOROGE 13TH DEFENDANT
THE LAND REGISTRAR RUIRU 14TH DEFENDANT**



RULING

1. This is a matter touching on the integrity of Court proceedings and the administration of justice. Allow me to analyse the competing positions and the applicable law briefly.
2. During the hearing of this matter on 23/03/2026, the 2nd Plaintiff the Court noted has lied on oath. Upon being cross-examined by Counsel of the 1st Defendant he admitted that he had lied but that he was not willing to purge the perjury. It is at this point that the Court halted the hearing and issued a notice to show cause to the 2nd Plaintiff why the Court should not have him prosecuted for the crime of perjury.
3. The Court directed that the matter for Notice to Show Cause to be canvassed on 23/03/2026.
4. At the hearing of the Notice to Show Cause, Counsel for the 2nd Plaintiff Mr. Mboha submitted orally that the 2nd Plaintiff is contrite, meet and humble of heart and that he erred as a human being. He urged the Court to have mercy and temper justice with mercy.
5. All parties at the hearing submitted orally before the Court.
6. The 1st Defendant's Counsel however was of the view that the 2nd Plaintiff misled the Court deliberately and the Court was urged to take action. It was her submission that both the 1st and 2nd Plaintiffs were facing criminal charges and the perjury shows that the 2nd Plaintiff is not remorseful.
7. The Counsel for the 8th and 11th Defendants were of a similar view to that of the Counsel for the 1st Defendant and urged the Court to take a stern step to address what they termed as a rampant scheme in the jurisdictional area. Where there are cases of malpractice fired on by perjury by those who engage in them and this is reflected in the character of the 2nd Plaintiff.
8. On his part the 13th Defendant's Counsel was also of the view that the litigant ought to be heavily penalized.
9. As for the Counsel of the 9th Defendant he submitted that he had not heard the 2nd Plaintiff state they are ready to move to Gatundu to correct the perjury since if the Gatundu Court could not have issued the grant if they were aware of the lies.
10. The Counsel of the 2nd Plaintiff reiterated that the 2nd Plaintiff was ready to make amends and urged the Court to consider mercy.
11. A brief background to this case is that this Ruling arises from events that unfolded during the hearing of this matter on 23/02/2026. In the course of cross-examination by Counsel for the 1st Defendant, the 2nd Plaintiff made an admission that struck at the very heart of the judicial process; he conceded that he had lied on oath. More troubling still, when invited to purge that perjury, he declined. It was at that juncture that this Court intervened, halted the proceedings, and issued a Notice to Show Cause directing the 2nd Plaintiff to appear and explain why this Court should not set in motion the machinery for his prosecution for the offence of perjury under the laws of Kenya.



Oral Submissions by parties

12. Counsel for the 2nd Plaintiff, Mr. Mboha, appeared before this Court and submitted orally on behalf of his client. He described the 2nd Plaintiff as contrite, humble of heart, and as one who had erred as any human being is capable of erring. He urged the Court to temper justice with mercy, invoking what is one of the oldest entreaties known to Courts of law.
13. The Counsel for the 1st Defendant took a markedly different position. It was her submission that the 2nd Plaintiff had not stumbled into untruth inadvertently but had misled the Court deliberately. She drew the Court's attention to the fact that both the 1st and 2nd Plaintiffs are already facing criminal proceedings, and that the conduct of the 2nd Plaintiff far from demonstrating remorse revealed a pattern of disregard for the obligations of a witness and of a litigant.
14. Counsel for the 8th and 11th Defendants aligned themselves with that position and went further, urging the Court to appreciate that this case does not stand in isolation. They characterised the events before the Court as reflective of a rampant scheme within this jurisdictional area, in which fraudulent litigation is fuelled and sustained by calculated perjury. They appealed to the Court to take a stern step, one that would communicate to all who come before it that oath-taking is a solemn act that needs to be taken seriously by all litigants and that those who fail to take it so must face the wrath of the law.
15. Counsel for the 9th Defendant raised a pointed and significant concern. He noted, for the record, that he had not heard the 2nd Plaintiff express any readiness to travel to Gatundu to correct the perjury at the source. This observation carries weight, because the perjury appears to have infected proceedings in another forum, and any genuine remorse must be measured not merely in words addressed to this Court but in concrete willingness to undo the harm caused. As Counsel correctly observed, the Court at Gatundu could not have issued a grant had it been made aware of the falsehoods presented to it.
16. Counsel for the 13th Defendant similarly urged that the litigant be heavily penalised, leaving no ambiguity about the gravity with which he viewed the conduct in question.
17. The Counsel for the 2nd Plaintiff, in reply, reiterated that his client was prepared to make amends, and renewed his appeal for mercy.

Analysis and Determination

18. The question before this Court may appear simple in its framing but profound in its implications. The 2nd Plaintiff lied on oath, was exposed, admitted the lie, and declined in the first instance to purge it. What should this Court do?
19. The sanctity of the oath is not a procedural technicality. It is the cornerstone upon which the entire edifice of adversarial justice is built. When a witness takes the oath, they make a solemn undertaking to God or to their conscience that what they shall say shall be the truth. Courts cannot function if litigants treat that undertaking as optional. As the Court of Appeal stated in *Mwangi v Republic* (Criminal Revision E061 of 2025), the administration of justice depends on witnesses telling the truth, and any deliberate departure from the truth strikes at the very foundation of the judicial system.
20. Section 108 of the Penal Code, Cap 63 of the Laws of Kenya, defines perjury and makes it an offence punishable by imprisonment for up to seven years. Section 109 makes the making of a false statement on oath, knowingly and wilfully, a cognisable criminal act. These provisions exist not to oppress litigants but to protect the integrity of a system that belongs to everyone including those who come to Court with genuine grievances.



21. In *Republic v Chief Magistrate's Court, Nairobi & 3 Others Ex parte Stephen Oyugi Okero* [2015] eKLR., the High Court observed that perjury is not a victimless offence. When a litigant lies on oath, they do not merely mislead a Judge they potentially deprive an opposing party of justice, waste precious judicial time, and corrupt the record upon which rights are adjudicated. The consequences ripple outward long after the Court rises.
22. See also the case of *Lipnicki v. Meritage Homes Corp.*, No. 10-CV-605 (S.D. Tex. 2014).
23. The 2nd Plaintiff's position invites the Court to weigh two considerations that are sometimes portrayed as opposites but which, in truth, are complementary. Justice and mercy are not enemies. Mercy without accountability is indulgence. Justice without mercy is cruelty. The law, at its best, achieves both.
24. The Court accepts that human beings are fallible. The 2nd Plaintiff is not the first litigant to come before a Court having said what he ought not to have said, and he will not be the last. The law has room for human frailty. But the expression of remorse must be measured against the conduct that preceded it. The 2nd Plaintiff did not merely err in a moment of confusion. He lied, was confronted, admitted the lie, and initially refused to correct it. Contrition that is expressed only after one is caught, and only when the threat of prosecution looms, must be weighed carefully.
25. The concern raised by Counsel for the 8th and 11th Defendants is one this Court cannot ignore. The suggestion that perjury is being deployed as a tactical instrument in this region in land disputes that are already deeply contentious is a serious one. If Courts treat such conduct lightly, they become complicit in its normalisation. The 9th Defendant's Counsel was equally right to observe that genuine remorse demands action at Gatundu, not only words addressed to this Court. A lie told in one Court does not become the truth merely because a different Court accepts an apology. The record must be corrected where it was corrupted.
26. And now, having carefully weighed the submissions of all parties, and having regard to the totality of the circumstances, this Court makes the following orders:
 - i. First, this Court finds that the 2nd Plaintiff wilfully lied on oath during the proceedings of 23/02/2026, and that his initial refusal to purge the perjury constituted a deliberate affront to the administration of justice.
 - ii. Second, in recognition of the 2nd Plaintiff's subsequent expression of contrition through Counsel, and in the exercise of this Court's discretion to temper justice with mercy, this Court declines at this stage to refer the matter for immediate prosecution. This is not a finding of innocence. It is an act of measured judicial grace, extended once and not to be interpreted as a standing invitation.
 - iii. Third, the mercy extended by this Court is conditional and comes with obligations. The 2nd Plaintiff shall, within thirty (30) days of this Ruling, take all necessary steps to correct the false record at the Gatundu Court. He shall file an Affidavit before this Court within fourteen (14) days thereafter, confirming the steps taken and exhibiting proof of the same. Failure to comply with this condition will leave this Court with no alternative but to revisit the question of prosecution without further notice.
 - iv. Fourth, the 2nd Plaintiff is formally and firmly warned that the Court will not extend this grace a second time. Should he be found to have lied or misled this Court in any further proceedings in this matter, the matter will be referred for prosecution without further hearing.



- v. Fifth, the costs of and incidental to the Notice to Show Cause proceedings shall be borne by the 2nd Plaintiff personally being throw away costs of Kesh 50,000 to be paid to the Counsels who attended Court on 23/02/2026 as per the Court record before the next hearing, as a mark of the Court's disapproval of his conduct.

27. The matter shall revert to the normal hearing once all the above actions are taken and accounted for. Mention to confirm and take a hearing date on 20/07/2026.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 29TH DAY OF APRIL 2026.

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MOGENI J

JUDGE

In the virtual presence of:

Mr. Mboha for the 1st and 2nd Plaintiffs/Applicants

1st – 7th Defendants – Absent

Mr. Moturi Njoroge for the 8th Defendant

Mr. Gitonga for the 9th Defendant

Mr. Kiarie for the 11th Defendant

12th Defendant – Absent

Mr. Mboya for the 13th Defendant

Mr. Melita - Court Assistant

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MOGENI J

JUDGE

