



Assets Recovery Agency v Virtual Financials International Limited (Civil Suit E001 of 2024) [2024] KEHC 9225 (KLR) (Anti-Corruption and Economic Crimes) (26 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E001 OF 2024**

F GIKONYO, J

JULY 26, 2024

**IN THE MATTER OF: AN APPLICATION BY THE ASSETS RECOVERY AGENCY
UNDER SECTIONS 81,90 AND 92 OF THE PROCEEDS OF CRIME AND
ANTI-MONEY LAUNDERING ACT AS READ TOGETHER WITH ORDER
51 OF THE CIVIL PROCEDURE RULES FOR ORDERS OF FORFEITURE.**

**IN THE MATTER OF: USD 16,661.75 HELD IN ACCOUNT NUMBER 1330262230352
IN THE NAME OF VIRTUAL FINANCIALS INTERNATIONAL LIMITED
KES 60,789,500.05 HELD IN ACCOUNT NUMBER 1330262232559 IN
THE NAME OF VIRTUAL FINANCIALS INTERNATIONAL LIMITED**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

VIRTUAL FINANCIALS INTERNATIONAL LIMITED RESPONDENT

JUDGMENT

Forfeiture of proceeds of crime

1. The Applicant herein is the Assets Recovery Agency established under section 53(1) of the Proceeds of Crime and Anti-Money Laundering (hereinafter referred to as POCAMLA). The principal mandate of the Agency is to recover assets acquired and/or is benefit/profits of proceeds of crime.

Preservation proceedings

2. Part VIII of POCAMLA provides for civil forfeiture. Sections 81, 82, 86, and 87 authorize the Agency to institute preservation proceedings against assets where there are reasonable grounds to believe that



the property sought to be preserved has been used or is intended to be used in the commission of an offence or is a proceed of crime.

3. On the 3rd October 2023, the Applicant was granted an order of preservation against the funds in issue and specified in the application dated 3rd January 2024. The preservation order was gazetted on the 6th October 2023 vide Gazette Notice Number 13565 pursuant to section 83 (1) of the *Proceeds of Crime and Anti-Money Laundering Act*.
4. The applicant on 18/05/2023 vide order emanating from Nairobi CM (anti-corruption) misc. criminal application no. E054 of 2023, Assets Recovery Agency Vs Equity Bank Limited froze the two subject accounts belonging to the respondent held at Equity Bank Limited pending its investigations.
5. The applicant thereafter vide an order emanating from Nairobi high court anti-corruption and economic crimes division, miscellaneous civil application no. E035 of 2023 Assets Recovery Agency vs Virtual Financials International Limited was granted preservation orders against the two subject accounts for a period of 90 days. The preservation orders were to last for a period of 90 days and they were to lapse on 4/01/2024.
6. This order and the application were served upon the Respondent on 4th December 2024, exactly two months after the order was granted. On 3rd January 2024, exactly a day before lapse of the timeline of 90 days, the Applicant filed the present application seeking forfeiture orders.

The application

7. What is before this court for consideration is the Applicant's originating motion dated 3rd January 2024 supported by the affidavit sworn on the same date. The Applicant seeks orders to declare the funds, being USD 16,661.75 held in account number 1330262230352 and Kshs. 60,789,500.05 held in account number 1330262232559 belonging to the Respondent as proceeds of crime and as such be forfeited to the state and subsequently transferred to the Applicant.
8. Vide supporting affidavit of Isaac Nakitare sworn on 3/01/2024.
9. The deponent averred that on 10th May 2023 the Agency received information that the above accounts are holding funds suspected to be proceeds of criminal activities and money laundering.
10. Subsequently, the Agency opened an Inquiry File No. 45/2023 to investigate and inquire into the legitimacy, source and destination of the above funds for the purpose of ascertaining whether the same is acquired from or is a profits or benefits of proceeds of crime or used/intended for the commission of crime.
11. On 17th May 2023 the Agency obtained court orders under sections 118 and 121 of the Criminal Procedure Code, section 180 of the *Evidence Act* and sections 53A (5) & 54 (2) of the *Proceeds of Crime and Anti-Money Laundering Act* for purposes of investigations vide Chief Magistrates Miscellaneous Application Number E054 of 2023, Anti-Corruption Chief Magistrates Court, Milimani which subsequently extended several times until 26th September 2023.
12. He averred that his analysis of the accounts statements of accounts established that the following accounts are holding funds which are obtained from illegitimate sources and are reasonably believed to be proceeds of crime;
 - i. USD 16,661.75 held in Account Number 1330262230352 in the name of Virtual Financials International Limited held at Equity Bank Limited.



- ii. KES60,789,500.05 held in Account Number 1330262232559 in the name of Virtual Financials International Limited held at Equity Bank Limited.
13. He averred that investigations established that the major deposits were made from suspicious sources and subsequently spent in various suspicious activities by the agents of the Respondents.
14. Investigations conducted by the Agency revealed money laundering schemes conducted by the Respondent, its directors and associates rendering the above funds proceeds of crime liable for preservation and forfeiture under POCAMLA.
15. The said bank accounts received suspicious huge cash deposits from various suspicious sources and investigations established that there are reasonable grounds to believe that the funds in issue are obtained through illegitimate means.
16. The investigations have revealed that the cash deposits were unlawfully acquired hence proceeds of crime pursuant to the Provisions of *Proceeds of Crime and Anti-Money Laundering Act*.
17. Investigations have established that the Respondent executed money laundering schemes designed to conceal, disguise the nature, source, disposition and movement of the illicit funds, suspected to constitute proceeds of crime and which are the subject matter of this application.
18. Subsequently on 3rd October 2023, the Applicant obtained preservation orders Vide Miscellaneous Application number E035 of 2023 preserving the funds subject of this application.
19. The preservation orders were gazetted on 6th October 2023 vide Gazette Notice No. 13565 pursuant to section 83 (1) of Proceeds of Crime and Anti-Money Act (POCAMLA).
20. There are reasonable grounds to believe that the funds in issue are believed to be proceeds of crime and the account were used to execute laundering schemes in an effort designed to conceal, disguise and hide the nature, source, movement and disposition of the funds.
21. The applicant concluded that, as stated above the investigations in this matter has established that the funds are established to be proceeds of crime contrary to the provisions of *Proceeds of Crime and Anti-Money Laundering Act* 2009 which requires them to be forfeited to the Applicant.

The responses

22. The Respondent filed a replying Affidavit dated 19th March 2024 basically opposing the Applicant's application.

Directions of the court

23. The application was canvassed by way of written submissions.

The applicant's submissions

24. The applicant submitted that the Respondent has not tendered any evidence to prove legitimate ownership or acquisition of the funds in issue. The applicant relied on the case of Assets Recovery Agency v Pamela Aboo; Ethics & Anti-Corruption Commission (Interested Party) [2018] eKLR
25. The applicant submitted that the Agency has also proved that the funds in issue are acquired by the Respondent through money laundering contrary to sections 3,4 and 7 of POCAMLA. The Respondent did not rebut or disprove the evidence tendered by the Agency. the applicant relied on



Nguku v Republic [1985] KLR 412, section 112 of the Evidence Act, Section 2 of POCAMLA, Schabir Shaik & Others -Vs-State Case CCT 86/06(2008) ZACC 7.

26. The applicant submitted that the Applicant has proved to the satisfaction of this Honourable Court that the funds in issue are proceeds of crime and the same should be forfeited to the Government of Kenya. In money laundering schemes, ownership of the proceeds of crime may be direct or indirect. The applicant relied on section 90 and 92(1) of POCAMLA, General -Vs- New Africa Dimensions & Others, High Court of Namibia Case No.POCA 10/2012, Assets Recovery Agency-Vs-Rohan Anthony Fisher, and & Others, Supreme Court of Jamaica, Claim No 2007HCV003259, NDPV-Vs-Rebuzzi quoted in the case of Schabir Shaik &Others -Vs-State Case CCT 86/06(2008) ZACC 7, Assets Recovery Agency Vs Lilian Wanja Muthoni T/A Sahara Consultants & 5 Others ACEC Miscellaneous Application Number 58 OF 2018.

The respondent's submissions

27. The respondent submitted that the Applicant has not discharged its burden of proof that the funds in the two subject accounts are proceeds of crime. It is not enough to just state; that the applicant must prove the allegations. It follows that the allegation that the funds in the two subject accounts are proceeds of crime has not been proved and should fail. The respondent contends that the Applicant has stated that their own investigations have revealed that the source of funds are illegitimate and as such the funds in the two subject accounts are proceeds of crime. However, the Applicant has not adduced any iota of evidence to prove the grave allegations. It follows then that the burden of proof has not in any way shifted to the Respondent to prove that the funds are not proceeds of crime. The respondent relied on Section 2 of Proceeds of Crime and Anti-Money Laundering Act, Section 107 of the Evidence Act, Assets Recovery Agency v KKS (AntiCorruption and Economic Crimes Civil Suit 2 of 2020) [2022] KEHC 10024 (KLR) (Anti-Corruption and Economic Crimes)
28. The respondent submitted from the foregoing it is evident that the funds are not proceeds of crime as alleged and no evidence has been adduced to prove otherwise by the Applicant. What the applicant has stated are mere allegations without any evidence. It follows then that the Applicant has fallen short of proving that the funds in the subject accounts are proceeds of crime. Conversely and without prejudice to the foregoing, the Respondent has explained the source of funds as highlighted in its replying affidavit. Honourable judge it is evident that the said funds are not proceeds of crime and as such are not liable for forfeiture to the state.

Analysis And Determination

Issues

29. The issues for determination arising from the applicant's affidavit in support of the application, replying affidavits, and the respective parties' submissions are: -
- i. Whether the funds, USD 16,661.75 held in account number 1330262230352 and Kshs. 60,789,500.05 held in account number 1330262232559 at Equity Bank Limited, in the name of the Respondent are proceeds of crime?
 - ii. Whether the said funds are liable to forfeiture to the state and subsequent transfer to the Applicant?
 - iii. Who should pay the costs of the suit?



Proceeds of crime

30. Section 2 of the POCAMLA defines proceeds of crime as:

“proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender, and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed.”

31. The definition of proceeds of crime is cast wide in order to capture illicit assets in whatever form or place they may be situated. Criminals normally engage complicated and copious designs and mechanisms to conceal the illicit or illicit source of the property. See the case of *Schabir Shaik & others v State* case CCT 86/06 (2008) ZACC 7 where the court stated: -

“One of the reasons for the wide ambit of the definition of “proceeds of crime” is, as the Supreme Court of Appeal noted, that sophisticated criminals will seek to avoid proceeds being confiscated by creating complex systems of camouflage”

The Supreme Court of Appeal held that a person who has benefited through the enrichment of a company as a result of a crime in which that person has an interest will have indirectly benefited from that crime.”

32. In the case of *Assets Recovery Agency vs Pamela Aboo: EACC Interested party* [2018] eKLR the court stated: -

“

“63. Forfeiture proceedings are Civil in nature and that is why the standard of proof is on a balance of probabilities. See section 92(1) of the *Proceeds of Crime and Anti-Money Laundering Act*. In the case of *Director of Assets Recovery and Others, Republic vs Green & Others* [2005] EWHC 3168 the court stated as follows:

“In civil proceedings for recovery under part 5 of the Act, the Director need not allege the commission of any specific criminal offence but must set out the matter that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained.”

The proceedings before this court are to determine the criminal origins of the property in issue and are not a criminal prosecution against the Respondent where presumption of innocence is applicable. In the case of *ARA & Others vs Audrene Samantha Rowe & Others Civil Division claim No 2012 HCV 02120* the Court of Appeal stated:

“...that in deciding whether the matters alleged constituted unlawful conduct when a civil recovery order is being made is to be decided on a balance of probability. Civil recovery proceedings are directed at the seizure of property and not the convicting of any individual and thus there was no reason to apply the criminal standard of proof...” (Emphasis mine)

In the case of *Assets Recovery Agency v Fisher Rohan and Miller Delores*, Supreme Court of Jamaica, Claim No. 2007 HCV 003259 it was held:-



“.....Even though these proceedings are quasi-criminal in nature there is an evidential burden of proof on the Defendant. It is incumbent on them to demonstrate evidentially how they lawfully came into possession of the assets seized.”

33. In the case of *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* [2019] eKLR the Court of Appeal explained it as follows in regard to the Anti-Corruption & Economic Crimes Act which has more or less similar provisions: -

“79. Under Section 55(2) of ACECA, the theme in evidentiary burden in relation to unexplained assets is prove it or lose it. in other words, an individual has the evidentiary burden to offer satisfactory explanation for legitimate acquisition of the asset or forfeit such asset. the cornerstone for forfeiture proceedings of unexplained assets is having assets disproportionate to a known legitimate course of income. tied to this is the inability of an individual to satisfactorily explain the disproportionate assets. A forfeiture order under ACECA is brought against unexplained assets which is tainted property; if legitimate acquisition of such property is not satisfactorily explained, such tainted property risk categorization as property that has been unlawfully acquired. The requirement to explain assets is not a requirement for one to explain his innocence. The presumption of innocence is a fundamental right that cannot be displaced through a Notice to explain how assets have been acquired”

34. The burden of proof lies upon the Applicant to prove that the funds in the Respondent’s accounts are proceeds of crime. But, the evidential burden will shift to the party who would fail without further evidence. This is the basis for what is commonly known as rebuttal evidence or explanations of the source of the funds by the respondent. The burden in respect of sources of funds or property is also said to stem from a rule of evidence on matters within special knowledge of the respondent. (See Sections 109 and 112 of the *Evidence Act*.)

35. What constitutes proof on a balance of probabilities was discussed in the case of *Kanyungu Njogu vs Daniel Kimani Maingi* [200] eKLR. In the case of *Miller vs Minister of Pensions* [1947] 2 ALL ER 372 Denning MR stated: -

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; “We think it more probable than not’, the burden is discharged, but, if the probabilities are equal, it is not. thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof will lost because the requisite standard will not have been attained.”

It is also trite that in order for the court to make orders of forfeiture under Sections 90 & 91 of the *Proceeds of Crime and Anti-Money Laundering Act*, the applicant need not establish commission of any specific crime in relation to the property in issue ‘but must set out the matter that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained.” (R vs. Green supra)



36. Contrary to the respondent's assertion, the Agency does not have to prove the actual crime committed. All it is required to prove is that there was unlawful conduct. Once the Applicant establishes, on a balance of probabilities as provided in Section 92(1)(b) of the *Proceeds of Crime and Anti-Money Laundering Act* that the assets in question are proceeds of crime, a duty is cast on the respondent to prove that he obtained the funds lawfully. The respondent is required to give a satisfactory explanation of the source of the assets in question failing which he runs the risk that he may lose the case.
37. In the case of Kenya Anti-Corruption Commission v Stanley Mombo Amuti [2017] eKLR the court held: -

“This is a claim for civil recovery. A claim for civil recovery can be determined on the basis of conduct in relation to property without the identification of any particular unlawful conduct. The Plaintiff herein is therefore not required to prove that the Defendant actually committed an act of corruption in order to invoke the provisions of the ACECA. In the case of Director of Assets Recovery Agency & Ors, Republic versus Green & Ors [2005] EWHC 3168, the court stated that: “In civil proceedings for recovery under Part 5 of the Act the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained.” I opine that forfeiture is a fair remedy in this instance as it serves to take away that which was not legitimately acquired without the stigma of criminal conviction. Criminal forfeiture requires a criminal trial and conviction while civil forfeiture is employed where the subject of inquiry has not been convicted of the underlying criminal offence, whether as a result of lack of admissible evidence, or a failure to discharge the burden of proof in a criminal trial.”

Applying the test...

38. The application for forfeiture is based on information received by the Agency on 10th May 2023 that the above accounts were holding funds reasonably believed to be proceeds of criminal activities and money laundering. Subsequently the Agency opened an Inquiry File No. 45/2023 to investigate and inquire into the legitimacy, source and destination of the said funds for the purpose of ascertaining whether they were acquired from or are profits or benefits of proceeds of crime or used/intended for the commission of crime.
39. On 17th May 2023 the Agency obtained court orders under sections 118 and 121 of the Criminal Procedure Code, section 180 of the *Evidence Act* and sections 53A (5) & 54(2) of the *Proceeds of Crime and Anti-Money Laundering Act* for purposes of investigations vide Chief Magistrates Miscellaneous Application Number E054 of 2023, Anti-Corruption Chief Magistrates Court, Milimani.
40. Investigations conducted by the Agency revealed money laundering schemes conducted by the Respondent, its directors and associates rendering the above funds proceeds of crime liable for forfeiture under POCAMLA. The said bank accounts received suspicious huge cash deposits from various suspicious sources and investigations established that there are reasonable grounds to believe that the funds in issue are obtained through illegitimate means.
41. Investigations concluded that the Respondent executed money laundering schemes designed to conceal, disguise the nature, source, disposition and movement of the illicit funds, suspected to constitute proceeds of crime and which are the subject matter of this application.
42. The explanations by the respondent on the source of funds under major deposits were inter alia as follows;



- i. That these were dividends paid out to account number 1330262230352(USD); and
 - ii. The other payments in the account, are monthly salary and allowances paid to account number 1330262230352(KSHS) emanating from Virtual Pay International Limited, a company which one of the directors of the Respondent, David Morema Obangi is a director.
43. The respondent contends that the said company, Virtual Pay International Limited is licensed by the Central Bank of Kenya to conduct financial services by offering timely payment solutions to its clients. A copy of the license for the subject year is attached to the replying affidavit as annexure DMO-5. In addition, he stated that, the said company has presence in over twenty countries and some of the licenses and incorporation documents are attached to the replying affidavit as annexures DMO4a, b, c, d, e, f and g.
44. According to the respondent, it is evident that the source of funds with respect to the narration “Virtual Pay International Limited” in the subject loan statements have been explained and it is not true that the same are proceeds of crime as alleged.
45. The respondent contends that with regard to paragraph 8, the source of funds are from Valsen Fiduciaries (SEY)Limited. The company is incorporated in Seychelles to provide financial consultancy and licensing services. Copies of the certificate of incorporation and the license are annexed to the replying affidavit as annexures DMO-7a and b. The dividends payments from the said company where David Morema Obangi, a director of the Respondent is paid to the subject USD account of the Respondent. A copy of the CR-12 of the said company is attached to the replying affidavit as annexure DMO3b.
46. The respondent contends that the other source of funds range from coupons from subscribed government bonds as per annexure DMO-9 to the replying affidavit. Others are mere internal transfers from the subject USD account to the subject KSHS Account as highlighted in paragraph 12(i).
47. On 2nd May 2023, there was also a transfer of Kshs. 1,000,000/= from the Respondent’s account at Credit Bank Limited, being account number 0101007000076 to the subject Kshs. account. Further there were direct cash deposits made by David Morema Obangi, the director of the Respondent and the company’s accountant on 6th April 2023, 2nd May 2023 and 20th May 2023 respectively. On 17th April 2023, there was a transfer of Kshs. 500,000/= from Mjenzi Hypermarket Limited to the subject Kshs. Account. David Morema is a director of the said company as evidenced by annexures DMO-12 a and b to the Replying affidavit. The said company deals with selling ceramic sanitary ware like tiles, bathroom and kitchen finishes. The transfer of Kshs. 2,782,836.10 made on 6th April 2023 to the subject Kshs. Account has been explained in paragraph 12 (iii) of the replying affidavit. The evidence for the said transaction is attached to the replying affidavit as annexures DMO 13a, b, c, d and e. The payment for Kshs. 948,000/= made on 9th June 2023 by Filco Limited to the subject Kshs. Account was a refund less bank charges of an erroneous payment of Kshs. 950,000/= made on 31st May 2023 to the said company as evidenced by the subject Kshs. loan statement. The subject Kshs. Loan statement marked as annexure “IN2b” to the originating motion captures the two transactions. The Respondent’s director, David Morema has also explained that most of the debits are with regard to personal projects including consultancy services for those personal projects, family upkeep and personal expenses.
48. The applicant contends that that investigations established that the major deposits were made from suspicious sources and subsequently spent in various suspicious activities by the agents of the Respondents.



49. Investigations conducted by the Agency revealed money laundering schemes conducted by the Respondent, its directors and associates rendering the above funds proceeds of crime liable for preservation and forfeiture under POCAMLA.
50. The said bank accounts received suspicious huge cash deposits from various suspicious sources and investigations established that there are reasonable grounds to believe that the funds in issue are obtained through illegitimate means.
51. The investigations have revealed that the cash deposits were unlawfully acquired hence proceeds of crime pursuant to the Provisions of *Proceeds of Crime and Anti-Money Laundering Act*.
52. Investigations have established that the Respondent executed money laundering schemes designed to conceal, disguise the nature, source, disposition and movement of the illicit funds, suspected to constitute proceeds of crime and which are the subject matter of this application.
53. A person may be a director and a shareholder in more than one company. But, in this case, the many related companies share directors and shareholders. One particular shareholder who appears to be the majority shareholder in these companies, is one Mr. David Morema Obangi. From the records provided as well as the manner transactions in question are conducted, it appears he is alter ego of the companies. For instances, he sits in the board and resolution-making bodies of the companies where, for instance, a dividend is declared and a resolution of payments of dividend to shareholders is made. David Obangi is a majority shareholder in the company declaring the dividend. But, the alleged dividend is paid into the account of another company, the respondent herein, which is not a shareholder of the company paying the dividend; except only, that David is a director and shareholder of the respondent company. Such control makes him the alter ego of these companies and militates against legitimate transactions between legal persons. This applies to the salaries allegedly paid to the respondent.
54. It is also apparent from the documents provided that the registered offices for the respondent and Virtual Pay International Limited are: Locality: Westlands Street, Westlands Road, Building: Prosperity House.
55. It is not strange in money laundering, that the perpetrators register too many companies in different jurisdiction with the sole aim of using the corporate vehicle to launder money; conceal the illicit source of the money by staking the deposits as payments from registered companies.
56. The mere fact that a payment is received from a registered company does not make the source of the money legitimate. These companies being licensed, did not, ipso facto, explain the sources of the monies paid by the related companies to be legitimate. The evidence by the applicant show that these related companies were channels for, designed to create a complex web to throw the investigator and the court off the tangent for money laundering into a belief that it was legitimate payment from a registered and licensed company. These explanations by the respondent, do not show the source of the funds in question were legitimate. The payments constitute huge suspicious funds coming to the respondent which in law, bears the obligation to explain the source of the funds. Evidence, show they are money laundering design and scheme by the respondent.
57. The loan agreements as well as consultancy agreements between the related companies in this case are simply in furtherance of money laundering schemes.
58. The company's law was amended to provide for registration of beneficial ownership of the company precisely to tackle the use of corporate vehicle by individuals to commit crimes such as money laundering, corruption, economic crime etc.



59. In this case, David Obangi is the majority shareholder in most of the companies. Perpetrators especially of money laundering schemes, feign strict adherence to regulations to avoid detection and also make a case of legitimacy of their business or source of funds through formal licensing. They are religious keepers of regulatory procedures and processes. But, the lie is in the pretense; dig, dig and dig deeper, and you will reveal the real purport of the corporation as is the case here.
60. In the circumstances of this case, suspicious huge deposits were established and suspicious use of the money by the agents of the respondent were established. Merely stating that these were dividends or salaries from a company in which David Obangi is a director, is insufficient.
61. In the upshot, having considered all the evidence and submissions by the parties as well as the law, this court is satisfied that the applicant has proved on a balance of probabilities that the money in the Respondent's accounts Nos. 1330262230352, and 1330262232559 Equity Bank Limited are proceeds of crime as defined in Section 2 of the *Proceeds of Crime and Anti-Money Laundering Act*.
62. A finding that the assets or property of the Respondents are proceeds of crime (subject to Section 94 of the *Proceeds of Crime and Anti-Money Laundering Act*), is a finding within article 40(6) of *the Constitution*; and such property does not enjoy property rights under article 40 of *the Constitution*. A forfeiture order made pursuant thereto is also within the same framework of article 40(6) of *the Constitution*. Therefore, the respondent cannot claim infringement of property rights guaranteed in Article 40 of *the Constitution*.
63. Before closing, limiting recovery of proceeds of crime to only funds available in an account will not serve the purpose of disgorgement. Forfeiture of proceeds of crime extends to all assets; actual assets stolen to related assets. It bears restating that, related assets refer to assets into which or for which the illicit asset has been converted or exchanged or invested (profits, income, gain). Similarly, forfeiture may be directed at any other property of the defendant.
64. Accordingly, the application dated 22/12/2023 succeeds, and this court enters judgment for the applicant against the Respondent as follows: -
- i. That the sum of Kshs. USD 16,661.75 held in account No. 1330262230352 at Equity bank limited, in the name of Virtual Financials International Limited is proceeds of crime and is hereby forfeited to the State.
 - ii. That the sum of Kshs. 60,789,500.05 held in account No. 13302622322559 at Equity bank limited, in the name of Virtual Financials International Limited is proceeds of crime and is hereby forfeited to the State.
 - iii. That it is hereby ordered that the funds in the said accounts shall be transferred to the applicant.
 - iv. That the Respondent shall bear the costs of this Originating Motion.
65. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 26TH DAY OF JULY, 2024.**

**F. GIKONYO M
JUDGE**

In the presence of: -



Ndirangu for respondent

Adow Mohammed for Applicant

Adan C/A

