



**Assets Recovery Agency v Muriithi & 4 others; Ncba Bank Kenya Plc & 3 others  
(Interested Parties) (Anti-Corruption and Economic Crimes Civil Suit E027 of 2020)  
[2023] KEHC 17945 (KLR) (Anti-Corruption and Economic Crimes) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17945 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E027 OF 2020**

**EN MAINA, J**

**MAY 25, 2023**

**BETWEEN**

**ASSETS RECOVERY AGENCY ..... PETITIONER**

**AND**

**PETER WANGAI MURIITHI ..... 1<sup>ST</sup> RESPONDENT**

**GOLDENSCAPE TREES AFRICA LTD ..... 2<sup>ND</sup> RESPONDENT**

**GOLDENSCAPE GREENHOUSE LTD ..... 3<sup>RD</sup> RESPONDENT**

**SILVERSTONE PROPERTIES LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**GOLDENSCAPE GROUP LTD ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**NCBA BANK KENYA PLC ..... INTERESTED PARTY**

**ELIZABETH WAMBUI KARANJA ..... INTERESTED PARTY**

**ELIZABETH WAMBUI KARANJA ..... INTERESTED PARTY**

**JOHN KINYAGIA KAMAU ..... INTERESTED PARTY**

**RULING**

1. This Ruling is in respect of two applications filed under Certificate of Urgency: a Notice of Motion Application dated 21<sup>st</sup> February 2023 filed by Elizabeth Wambui Karanja and Kelvin Peter Ndung'u the 1<sup>st</sup> and 2<sup>nd</sup> Proposed Interested Parties herein (the "1<sup>st</sup> Application") and a Notice of Motion Application dated 24<sup>th</sup> February 2023 filed by John Kinyagia Kamau, the 3<sup>rd</sup> Proposed Interested Party



herein (the “2<sup>nd</sup> Application”), supported by the affidavits of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> proposed interested parties sworn on 21<sup>st</sup> February 2023 and 24<sup>th</sup> February 2023 respectively.

2. The 1<sup>st</sup> Application is made under Section 3A of the [Civil Procedure Act](#), Section 75(3), (4) and 93 of [Proceeds of Crime and Anti-Money Laundering Act](#) and Sections 24,25 and 26 of the [Land Act](#) and seeks the following orders:

- “ 1) That the application filed herein be certified as urgent and be heard *ex parte* in the first instance.
2. That the 1st and 2nd proposed interested parties be enjoin Elizabeth Wambui Karanja and Kelvin Ndung’u as interested parties in these proceedings.
3. That this honourable Court do stay the Forfeiture Proceedings pending the hearing and determination of this application.
4. That the preservation order against the property known as Ngong/Ngong/57240 belonging to Elizabeth Wambui Karanja be lifted/vacated.
5. That the preservation order against the property known as Ngong/Ngong/57241 belonging to Kelvin Ndung’u be lifted/vacated.
6. That the preservation order against the motor vehicle registration no. KCB 733K belonging to Peter Wangai Mureithi be lifted/vacated.
7. That the costs of this application be provided for.”

3. Similarly, the 2<sup>nd</sup> Application is made under Sections 75(3) and 93(1) of [Proceeds of Crime and Anti-Money Laundering Act](#) (POCAMLA) and Order 40 of the [Civil Procedure Rules](#) and seeks the following reliefs:

- “ 1) That the application be certified as urgent and be heard *ex parte* in the first instance.
2. That service of the instant Application be dispensed with in the first instance
3. That the Applicant/Proposed Interested Party John Kinyagia Kamau be enjoined to these proceedings as an Interested Party
4. That pending and determination of the Application herein, this Honorable Court be pleased to release motor vehicle registration number KCV 855M Isuzu to the custody of the applicant herein John Kinyagia Kamau.
5. That the *ex parte* Orders obtained by the Assets Recovery Agency for preservation on the 15<sup>th</sup> June 2021 in respect of Motor vehicle KCV 855M be set aside, varied and/or be discharged.
6. That this Honorable Court do issue an Order removing motor vehicle KCV 855M from the list of properties subject or the present application for forfeiture.
7. That a mandatory injunction do issue directing Assets Recovery Agency to unconditionally release motor vehicle KCV 855M forthwith to the Applicant/Proposed Interested Party John Kinyagia Kamau.



8. That costs of this Application be provided for.”
4. The Applications are based on the grounds stated thereon and in the supporting affidavits which have been considered and condensed below.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Proposed interested Parties contend that they acquired the properties from the 5<sup>th</sup> Respondent before the preservation orders issued on the 15<sup>th</sup> day of June 2021; that Elizabeth Wambui Karanja obtained a consent to from the Ngong Land Board on the 29<sup>th</sup> April 2021 parties executed a transfer dated 27<sup>th</sup> of April 2021 and a Title deed issued on the 16<sup>th</sup> of June 2021 for Ngong/Ngong/57240; that Kelvin Ndung’u obtained a consent to from the Ngong Land Board on the 27<sup>th</sup> of May 2021 both parties executed a transfer dated 4<sup>th</sup> of June 2021 and a Title deed was issued on the 16<sup>th</sup> of June 2021 for Ngong/Ngong/57241; that Peter Wangai Mureithi bought the motor vehicle registration no. KCB 733K with the financing of Cooperative Bank which was approved on the 6<sup>th</sup> of January 2016 before the incorporation of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent companies.
  6. On his part, the 3<sup>rd</sup> Applicant/Proposed Interested Party, John Kinyagia Kamau contends that he has an interest in Motor Vehicle KCV 855M-Isuzu EVZ Lorry which is listed as part of the properties earmarked for forfeiture having paid Kshs. 1.5 million as part of the 20% of the value of the vehicle whilst NCBA Bank paid the rest being Kshs. 6,000,000/= by way of advance of credit facility to him; that despite his interest being clearly noted on the Log Book of the said vehicle, the Agency blatantly ignored to include him as a party to the forfeiture proceedings so as to afford him an opportunity to explain/expound on his interest in the vehicle; that the vehicle is currently held at Directorate of Criminal Investigates (DCI) Headquarters on Kiambu Road where it is wasting away; that the Proposed Interested Party did not purchase the motor vehicle with the knowledge that it was a proceed of crime; that the 1<sup>st</sup> and 2<sup>nd</sup> Proposed interested parties acquired the properties from the Respondent before the preservation orders issued on the 15<sup>th</sup> day of June 2021; that Elizabeth Wambui Karanja obtained a consent to from the Ngong Land Board on the 29 April 2021 parties executed a transfer dated 27<sup>th</sup> of April 2021 and a Title deed issued on the 16<sup>th</sup> of June 2021 for Ngong/Ngong/57240 while Kelvin Ndung’u obtained a consent to from the Ngong Land Board on the 27<sup>th</sup> of May 2021 both parties executed a transfer dated 4<sup>th</sup> of June 2021 and a Title deed was issued on the 16<sup>th</sup> of June 2021 for Ngong/Ngong/57241.
  7. Finally, that Peter Wangai Mureithi bought the motor vehicle registration no. KCB 733K with the financing of Cooperative Bank which was approved on the 6<sup>th</sup> of January 2016 before the incorporation of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent companies; it is in the best interest of justice and in the spirit of Section 75 and 93 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) that the Assets included in the Preservation order and the Forfeiture application be excluded in their application.
  8. The proposed interested parties relied further on their written submissions dated 26 April 2023 in which they reiterated the above grounds.

### **Response by the Applicant/Respondent**

9. The Applicant/Respondent opposed the two Applications *vide* the Replying affidavit of CPL Jeremiah Sautet sworn on 3<sup>rd</sup> April 2023 and submissions dated 25<sup>th</sup> April 2023. The Applicant did not object to the joinder of the 3<sup>rd</sup> Proposed Interested Party but opposed all the other prayers sought in the Applications.



10. They contend that the issues raised in the Application dated 24<sup>th</sup> February 2023 are *res judicata* by virtue of this court's Rulings delivered on 28<sup>th</sup> October 2021 and 14<sup>th</sup> December 2021 dismissing two Applications that sought the release of the motor vehicle KCV 855M.
11. They submit further that notwithstanding the issue being *res judicata*, the vehicle was sold and transferred while there was an existing caveat against its transfer; that during investigations and upon conducting a search, the agency established that the vehicle was as at 4<sup>th</sup> July 2019 registered in the name of the 1<sup>st</sup> Respondent (Peter Wangai Murithi) and the Agency wrote to the Director of National Transport and Safety Authority (NTSA) to place a caveat against its title; that the Agency subsequently obtained the preservation orders herein pending filing of a forfeiture application; that however, when the respondents got wind of the investigations the 1<sup>st</sup> respondent (Peter Wangai Muriithi) sold the suit vehicle to one Mr. Michael Njage Kamau t/a Willow Motors for Kshs. 6,100,000; that this development prompted the agency to seek explanation from the National Transport and Safety Authority Director as to how the vehicle was sold despite the caveat and National Transport and Safety Authority responded that the caveat was in fact placed on 8<sup>th</sup> April 2020 but was irregularly lifted through infiltration of National Transport and Safety Authority systems suspected to have been orchestrated by the 1<sup>st</sup> Respondent (Peter Wangai Murithi). Further that National Transport and Safety Authority also confirmed that the vehicle was registered in the name of the IS Respondent (Peter Wangai Muriithi) prior to the infiltration.
12. The Agency therefore submits that the vehicle was not available for sale or transfer and that the irregular lifting of the caveat in order to facilitate the sale and transfer of the vehicle to third parties which vehicle was the subject of active investigations was a clear demonstration of a money laundering scheme with the intention to conceal the proceed of crime.
13. Further that, under Section 3 of *Proceeds of Crime and Anti-Money Laundering Act* one is guilty of money laundering upon engaging in a transaction in property which they know or ought to have reasonably known as proceeds of crime with the intention of disguising its source and ownership.
14. The Agency states that questions of ownership and lawful acquisition of the suit vehicle can only be canvassed during the hearing of the forfeiture application which has been filed well within the prescribed 90 days and that the application herein is pre-mature and unmerited. That there is a real risk that the vehicle will be disposed or hidden if the preservation orders are varied rendering any forfeiture order practically unenforceable; that excluding the vehicle from the forfeiture proceedings would be akin to allowing a party to enjoy the proceeds of crime. That even though the applicant may have an interest, that interest should be determined at the hearing of the forfeiture application.

### **Issues for determination**

15. The following issues arise for determination:
  1. Whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> proposed interested parties should be joined to this suit
  2. Whether the preservation orders made on 15<sup>th</sup> June 2021 should be varied, set aside or discharged.
16. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Proposed Interested Parties seek to be joined to this suit and Interested Parties on the basis of having alleged legal and beneficial interest in some of the properties preserved by an order of this court made on 15<sup>th</sup> June 2021, namely, Motor vehicle registration number KCV 855M, vehicle registration number KCB 733K and the property known as Ngong/Ngong/57241.



17. Section 93 of the *Proceeds of Crime and Anti-Money Laundering Act* enjoins this court to protect third-party interests by excluding property that is found belong to an innocent third party and that has been erroneously included in the forfeiture suit. The law provides:

93. Protection of third parties

- (1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the High Court, before the forfeiture order is made and the court, if satisfied on a balance of probabilities—
  - (a) that the person was not in any way involved in the commission of the offence; and
  - (b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—
    - (i) for sufficient consideration; and without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, tainted property, the court shall make an order declaring the nature, extent and value (at the time the order was made) of the person's interest.

18. Though the Applicant/ Respondent did not object to the application for joinder of the parties, this court shall nevertheless consider the proposed interested parties' alleged interests in the suit properties and whether they are necessary parties to these proceedings.

19. The proposed interested parties have produced as annexure to the affidavit copies of Title deed for the property Ngong/Ngong/57241 in the name of Elizabeth Wambui Karanja and Kelvin Peter Ndungu, the 1<sup>st</sup> and 2<sup>nd</sup> proposed interested parties. They have also produced a copy of Transfer dated 16<sup>th</sup> June 2021 and a letter of offer for a loan for Kshs. 320,000 which the 1<sup>st</sup> Respondent averred was towards the purchase of the vehicle KCB 733K. In respect of the motor vehicle KCV 855M, the 3<sup>rd</sup> Proposed Interested party has annexed to his affidavit a copy of a log book for the motor vehicle KCV 855M in the name of Willow Motors Limited, sale agreement for the vehicle and loan account statement.

20. Without delving into the manner of acquisition of the property and whether the properties are proceeds of crime or tainted properties, it is my view that the proposed interested parties have demonstrated identifiable stake in the preserved properties to warrant their being joined to these proceedings. I would thereafter allow the application for joinder and join the proposed interested parties to the suit.

21. The issue of whether or not the properties should be released requires a determination by this court on whether the same were legitimacy acquired and therefore reserved for the forfeiture proceedings already filed by the Applicant.

22. On the second issue of whether the preservation orders made on 15th June 2021 should be varied, set aside or discharged, Section 89 of the *Proceeds of Crime and Anti-Money Laundering Act* provides:

89. Variation and rescission of orders



- (1) A court which makes a preservation order—
  - (a) may, on application by a person affected by that order, vary or rescind the preservation order or an order authorizing the seizure of the property concerned or other ancillary order if it is satisfied—
    - (i) that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant; and
    - (ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and
  - (b) shall rescind the preservation order when the proceedings against the defendant concerned are concluded.

....

- (5) A person affected by an order in respect of immovable property may, at any time, apply for the rescission of the order.
- (6) The court that made an order in respect of immovable property —
  - (i) may, if it deems it necessary in the interests of justice, at any time rescind the order; or
  - (ii) shall rescind the order if the relevant preservation order is rescinded.

23. First, it is contended that the properties are tainted, having been acquired when the Applicant/ Respondent had already placed a caveat at the motor vehicle registry NTSA on the motor vehicle KCV 855M. The Applicant has produced its correspondence with the Director NTSA on alleged irregular removal of the Applicant’s caveat on the vehicle. The Title Deeds in respect of the landed property were issued 16<sup>th</sup> June 2021, a day after the preservation order had already been issued by this court on 15<sup>th</sup> June 2021. The procedure and manner of issuance of the Titles is also hotly contested by the Applicant/Respondent.

24. From these unresolved issues, it would be imprudent for this court to at this stage, vary or rescind the preservation order issued on 15<sup>th</sup> June 2021. The essence of preservation of assets and forfeiture proceedings is not to benefit the state but to protect public funds, and discourage reliance on illicit enrichment. Therefore, the risk of rescinding the order is higher than the hardship likely to be suffered by the respondent/applicant which in any event is short lived as the money cannot be forfeited unless it is proved on a balance of probability that it is from a tainted source. The proposed interested



parties have not proven undue hardship such as is envisaged under Section 89 *Proceeds of Crime and Anti-Money Laundering Act* nor have they demonstrated other circumstances that would warrant the exercise of the court's discretion in their favour. Accordingly, I decline the proposed interested parties' application for variation or rescission of the preservation order.

25. In the premises, the application dated 21<sup>st</sup> February 2023 is declined in its entirety, save for prayer No. 2 on joinder to these proceedings and the application dated 24<sup>th</sup> February 2023 is declined in its entirety, save for prayer No. 3 on the joinder of the proposed interested parties, which I allow.
26. Costs be in the cause.

**SIGNED, DATED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF MAY 2023**

**E N MAINA**

**JUDGE**

