



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**

**ACEC SUIT NO. E004 OF 2021**

**ASSETS RECOVERY AGENCY.....APPLICANT**

**AND**

**KIMACO CONNECTIONS LIMITED.....1<sup>ST</sup> RESPONDENT**

**PETER KIILU MAKAU T/A PESCOM KENYA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Assets Recovery Agency, the Applicant herein, brought this suit by way of an Originating Motion dated 12<sup>th</sup> March 2021, which is supported by an affidavit sworn on its behalf by Senior Sergeant Fredrick Musyoki sworn on the even date.

2. The Application is brought under the provisions of **Sections 81, 90 and 92 of the Proceeds of Crime and Anti Money Laundering Act** and **Order 51 of the Civil Procedure Rules 2010** and it seeks orders as follows:

**1) That this Honourable Court be pleased to declare funds held in the following bank accounts as proceeds of crime and therefore liable for forfeiture:**

**a. Kshs. 251,154,214.00 held in account number xxxxxxxxxx at Diamond Trust Bank, Nation Centre Branch in the name of Kimaco Connections Limited**

**b. Kshs. 50,269,766.33 held in account number xxxxxxxxxx at Cooperative Bank in the name of Kimaco Connections Limited.**

**c. Kshs. 2,496,670.75 held in the account number xxxxxxxxxx at NCBA Bank in the name of Pescom Kenya**

**2) That this Honourable Court be pleased to issue an order of forfeiture of the following funds to the Government of Kenya:**

**a. Kshs. 251,154,214.00 held in account number xxxxxxxxxx at Diamond Trust Bank, Nation Centre Branch in the name of Kimaco Connections Limited**

**b. Kshs. 50,269,766.33 held in account number xxxxxxxxxx at Cooperative Bank in the name of Kimaco Connections Limited.**

**c. Kshs. 2,496,670.75 held in the account number xxxxxxxxxx at NCBA Bank in the name of Pescom Kenya**

**3) That the funds forfeited in prayer 2 above be deposited in A/C No xxxxxxxxxx held at the Kenya Commercial Bank KICC branch in the name of Assets Recovery Agency**

**4) That the Honourable court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders**

**5) That there be no orders as to costs**

3. Prior to filing this Application, the Applicant had obtained preservation orders in **HCACEC Misc. No. E034 OF 202 Assets Recovery Agency v Kimaco Connections Ltd and Peter Kiilu Makau t/a Pescom Kenya.**

4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed this Application through a replying affidavit sworn on their behalf by the 2<sup>nd</sup> Respondent on 19<sup>th</sup> August 2021, written submissions dated 3<sup>rd</sup> December 2021 and supplementary written submissions dated 2<sup>nd</sup> February 2022.

5. The interested party filed a Notice of Motion Application dated 26<sup>th</sup> May 2021 seeking *inter alia* leave to be enjoined to these proceedings, suit and it also urged this court to exclude the sum of Kshs. 256,051,910 held in the bank accounts of the 1<sup>st</sup> Respondent from an order of forfeiture.

6. When the matter came up for hearing before Hon. Wakiaga (J) on 30<sup>th</sup> June, 2021, the Interested Party's Application to be enjoined to these proceedings was granted and directions were given on the filing of responses to the Application.

7. Pursuant to the court's directions, the Applicant filed a further affidavit dated 7<sup>th</sup> December 2021 and thereafter written submissions dated 13<sup>th</sup> January 2022 while the Interested Party filed written submissions dated 2<sup>nd</sup> December 2021.

### **The Applicant's case**

8. The Application is premised on grounds that:

1. **THAT** the Applicant is the Assets Recovery Agency established under section 53 of the Proceeds of Crime and Anti- Money Laundering Act [ POCAMLA] as a body corporate with the mandate of identifying, tracing freezing and recovery proceeds of crime.

2. **THAT** Section 81, 82, 90 and 92 of the Proceeds and Crime and Anti-Money Laundering Act authorizes the Agency to institute Civil Forfeiture proceedings for the recovery of proceeds of crimes.

3. **THAT** the Applicant's Staff have the powers, privileges and immunities of a police officer under section 53 A [5] of POCAMLA to investigate, identify, trace, freeze and recover proceeds of crime.

4. **THAT** 1<sup>st</sup> Respondent is a registered company at the Business Registration Service duly incorporated under company number C.168659.

5. **THAT** the 2<sup>nd</sup> Respondent, Peter Kiilu Makau is an Adult trading under same name and style of Pescom Kenya which is a registered business name registered as BN/XXXX/XXXXXXat the Business Registration Service.

6. **THAT** Peter Kiilu Makau and Consulate Mwenda Kiilu are the account signatories of the 1<sup>st</sup> Respondent; while Mr. Peter Kiilu Makau is the account signatory of the account held in the name of Perscom Kenya, the 2<sup>nd</sup> Respondent.

7. **THAT** Peter Kiilu Makau and Consolate Mwende Kiilu are the ultimate beneficiaries of the account held in the name Kimaco Connection Limited and Pescom Kenya.

8. **THAT** investigations have established that the legal entities associated with Peter Kiilu Makau and Consolata Mwende namely Kimaco Connections Limited Pescon Kenya and Power Energy International Limited executed a complex scheme of money laundering designed to conceal, disguise the nature, source, disposition and movement of the illicit funds, which constitute proceeds of crime and which are the subject of this forfeiture application.

9. **THAT** there are reasonably and evidence demonstrating that the funds held by the Respondents in the specified bank accounts are direct or indirect benefits, profits and/or proceeds of crime obtained from a complex money laundering scheme and are liable to be forfeited to the Government of Kenya under the Proceeds of Crime and Anti-Money Laundering Act, 2009.

10. **THAT** on 8<sup>th</sup> December,2020, the Applicant filed HCACEC Misc. No. E034/2020 Assets Recovery Agency vs – Kimaco Connections Limited & Another and obtained Court Orders preserving funds in the said account and orders prohibiting the Respondent and/or his agents, representative from transacting, transferring and/or dealing in any manner with the funds held in the bank accounts.

11. **THAT** on 18<sup>th</sup> December, 2020 the Applicant gazette the Preservation orders pursuant to section 83 [1] of POCAMLA vide Gazette Notice No.01849 of Vol. CXXII –No.226.

12. **THAT** there are reasonable grounds to believe that the funds held in the Respondent's bank accounts are proceeds of crime liable for forfeiture to the Applicant under POCAMLA.

13. **THAT** it is in the interest of justice that the orders of forfeiture do issue forfeiting the above funds to the Applicant on behalf of the Government of Kenya

14. **THAT** there is an application dated 21<sup>st</sup> December 2020 by the Respondents which seeks to vary/rescind the preservation orders issued on 8<sup>th</sup> December, 2020 that is pending inter-parties hearing before the Honourable Court on 17<sup>th</sup> March, 2021.

15. **THAT** Section 90 of the POCAMLA provides that where a preservation order is in force, the Agency may apply to the High Court for an order of forfeiture to the Government all or any of the property that is subject to the preservation order.
16. **THAT** it is in the Public interest that the orders sought are granted and the suspect assets be forfeited to the Applicant.
17. **THAT** there is justifiable reasons and grounds to warrant the issuing of the orders sought.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' case**

9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent aver that the 2<sup>nd</sup> Respondent is a director of the 1<sup>st</sup> Respondent and a sole proprietor of Pescom Kenya, a business name registered under number BN/2011/xxxxxx. They deny that the Respondents or their associated businesses are involved in money laundering and aver that the 1<sup>st</sup> Respondent is in the business of sourcing, developing and supplying software products. That the 1<sup>st</sup> Respondent was contracted by the betting company, Mozzartbet Kenya Limited (the Interested Party herein) to supply it with software system solutions and ICT products sometimes in February, 2021. They produced a copy of a contract dated 20<sup>th</sup> February 2021 between them and the Interested Party, as proof of that contract and stated that the transactions between them are genuine, and that the source of funds is the payments made by the Interested Party in respect of the contract. They further contented that the 1<sup>st</sup> Respondent engaged a company known as M/s Open Skies Services to develop and supply a wide range of software solutions and to provide technical support for the products to be supplied to the Interested Party. To prove the foregoing the 1<sup>st</sup> Respondent annexed a contract dated 11 December, 2020 between them and Open Skies Management Services. The 1<sup>st</sup> Respondent contented that it received funds in its Safaricom Pay bill No. 311372 from the Interested Party's Safaricom Paybill No. xxxxxx as part payment for the outstanding invoices for the period 1<sup>st</sup> February 2021 to 26<sup>th</sup> August 2021. These funds were then downloaded from the 1<sup>st</sup> Respondent's Mpesa paybill into its bank account xxxxxxxxxxxx held at Co-operative bank of Kenya Kimathi Street Branch. the 1<sup>st</sup> Respondent further stated that from July 2020, the 1<sup>st</sup> Respondent changed the recipient bank account to A/c no. xxxxxxxxxxxx held at Diamond Trust Bank Kenya Nation Centre Branch and that it also opened a US dollar Account No. xxxxxxxxxxxx in the same bank for purposes of payment of invoices denominated in dollars.

10. Further that the 2<sup>nd</sup> Respondent opened account no. xxxxxxxxxxxx in the name of Pescom Kenya at NCBA Bank Bunyala Branch from which he transacted his other business and paid Hon. Musa Cherutich Sirma and Melentijevi Branimir for a contract for supply of cereals and that the Respondents though they were pre-qualified to supply maize to the National Cereals and Produce Board never supplied cereals instead deciding to engage Hon, Musa Sirma to do the business on their behalf. It is the Respondents case that the payment made to Melentijevic Branimir

was for supply of software materials and software training modules as evidenced by contracts and invoices in that regard. It was also their case that the payments from the US Dollar account were made to Open Skies Management Services, Melentijevic Branimir, Mozzartbet Africa and EMC Software – [Emmanuel Charumbira] in respect of the supply of software and that the Respondents have never received any payments from the Government of Kenya or any agencies and neither have they been charged with any criminal offences. The Respondents contend that since betting software is licensed and confidential in nature, they could not disclose the software codes for the safety of the users and their clients but they were willing to do a demonstration in court by availing their software engineer.

11. On the allegations of non-payment of taxes, it is the Respondents' case that the 1<sup>st</sup> Respondent overpaid taxes to the Kenya Revenue Authority and that the tax matters were the subject of separate legal proceedings. They produced a certificate of withholding tax as proof of payment and stated that due to the freezing orders issued by this court, the 1<sup>st</sup> Respondent was unable to perform its obligations in the contract for the supply of software resulting in the Interested Party filing a claim against it for breach of contract in **Milimani H.C Commercial Division Case No. E123 of 2021** where the Interested Party claim specific performance or a refund of the Kshs. 256,051,910/= paid. The Respondents produced a copy of an order of that court. Finally, the Respondents averred that all the transactions were legal and that the bank accounts operated by the Respondents were not used in any way for money laundering but only for lawful transactions arising from the Respondent's business. They prayed that the Application for forfeiture be dismissed with costs.

### **The Interested Party's case**

12. The Interested Party relied on the affidavit sworn by Rolex Sirmah on 26<sup>th</sup> May 2021. the Interested Party averred that they are a licensed betting company with legitimate funds sourced from selling bets and are not connected to any crime. They contended that on December, 2020 they entered into a contract with the 1<sup>st</sup> Respondent for the supply of software for a period of 24 months in compliance with the directions of the Betting Licensing Board and that they paid the 1<sup>st</sup> Respondent an advance amount of Kshs. 256,051,910 via pay bill no. xxxxxx in accordance with the contract. They produced a copy of the contract and an extract statement of the payment. They stated that the 1<sup>st</sup> Respondent failed to supply the software due to the preservation order obtained by the Applicant, in regard to the funds paid by them to the 1<sup>st</sup> Respondent which funds the Applicant now seeks to forfeit to the Government. They contended that the sum of Kshs. 256,051,910 held in the accounts of the 1<sup>st</sup> Respondent belong to the Interested Party and that it is their prayer that these funds be excluded from the forfeiture order as provided in **Section 93 of the Proceeds of Crime and Anti-Money Laundering Act**. It is their contention that these funds were paid by the Interested Party from their betting business and from contributions of their shareholders and that they were paid to the 1<sup>st</sup> Respondent in the ordinary course of business. It is also their contention that since inception, they have declared and paid all taxes; that the Applicant has never questioned or laid any evidence to prove that the Interested Party has committed any offence or was involved in money laundering and further, that they are apprehensive that should the aforesaid sum of Kshs. 256,051,910 be forfeited to the state, the Interested Party, stands to suffer irreparable harm to its business and capacity to continue trading and therefore this court should exclude the sum of Kshs. 256,051,910/= from the forfeiture order. **Analysis and determination:**

Having considered the Originating Motion, the grounds thereof, the affidavits filed in support of the Motion, the responses thereto and the rival submissions of learned counsel for the parties, I find that the following issues arise for determination: -

1) *Whether the funds held by Respondents are proceeds of crime and hence liable to forfeiture*

2) *Whether the Interested Party has met the threshold for third party protection under Section 93(1) of Proceeds of Crime & Money Laundering Act.*

3) *What are the appropriate reliefs?*

13. In forfeiture proceedings, the legal burden lies with the Applicant and remains with the Applicant constant throughout the proceedings. On the other hand, while the legal burden rests entirely with the Applicant to prove that the funds in question are proceeds of crime, the evidential burden shifts to the Respondent to prove how they came into possession of the funds in question. In the case of **Asset Recovery Agency V. Fisher, Rohan and Miller Delores Claim No. 2007 HCV003259** cited with approval in the case of **Assets Recovery Agency versus Rose Monyani Musanda & 2 Others [2020] e KLR** the court explained the burden of proof as follows:

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

14. It is also settled law that it is not necessary to first obtain a conviction in a criminal trial before filing a suit for recovery of funds or other assets reasonably believed to be proceeds of crime. The courts have held this position in a long line of cases. In the case of **Ethics & Anti-Corruption Commission v Evans Kidero & 13 others [2021] eKLR** the court affirmed the holding in the Jamaican case between **The Assets Recovery Agency and Andrene Samantha Rowe and three others SC Judicature Jamaica Civil Division claim No 2012 HCV 02120**, where the court stated:

*“.... There is no need for Assets Recovery Agency to prove the particulars as would be required in a criminal prosecution. It was held by Sullivan J in Director of the Assets Recovery Agency Vs Green [2005] EWHC 3168 (ADMIN), under similar legislation in England, that the director need not prove or allege the commission of any specific criminal offence. This position applies equally to the legislation in Jamaica. In addition there is the case of Serious Organized Crime Agency Gale [2009] EWHC 1015; [2010] Lloyd’s Rep FC 39 where Griffith Williams J held that notwithstanding the discontinuance of criminal proceedings in Spain and the defendant’s acquittal in Portugal, it was permissible to proceed with the civil recovery application in the United Kingdom. Griffith Williams J granted the order. It was upheld by the Court of Appeal [2010] 1WLR 2881 and the House of Lords [2011] 1 WLR 2760; [2012] 2 ALL ERI. The Court of Appeal expressly 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.*

*.....It was also pointed out that the civil recovery proceeding is directed at the seizure of property and not the conviction of any individual and thus there was no reason to apply the criminal standard of proof.....Assets Recovery Agency need not prove a criminal conviction of anyone. All Assets Recovery Agency has to do is to establish on a balance of probabilities that unlawful conduct occurred and that the property targeted was property obtained through unlawful conduct.”*

15. In the case of **Assets Recovery Agency v Pamela Aboo; Ethics and Anti-Corruption Commission (Interested Party) [2018] eKLR**. It was held that:

*63 “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.”*

16. It is upon the foregoing principles that this court will determine this Originating Motion.

#### Issue No. 1

*Whether the funds held by the Respondents are proceeds of crime and hence liable to forfeiture*

17. The Applicant has brought these proceedings under the provisions of **Sections 81, 90 and 92** of the **Proceeds of Crime and Anti-Money Laundering Act**. The prerequisite for issuance of a forfeiture order are the satisfaction by the Applicant on a balance of probabilities of either **Section 92 (1) (a) or (b)**, of **POCAMLA** that the funds have been used or are intended for use in the commission of an offence or are proceeds of crime. As already stated the Applicant need not prove that there is a conviction or a criminal charge or investigations in respect of a criminal offence.

18. The relevant parts of **Section 92** of the **Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA)** state as follows:

#### **Section 92 Making of forfeiture order**

**(1) The High Court shall, subject to section 94, make an order applied for under section 90(1) if it finds on a balance of probabilities that the property concerned—**

**(a) has been used or is intended for use in the commission of an offence; or**

**(b) is proceeds of crime.**

**(3) The absence of a person whose interest in property may be affected by a**

**forfeiture order does not prevent the Court from making the order.**

**[4] The validity of an order under subsection [1] is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated ...**

19. Section 2 of the **Proceeds of Crime and Anti-Money Laundering Act** defines proceeds of crime as;

**“Proceed 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. The above definition is very wide and it is so for a reason. As was explained in the case of Schabir Shaik & others versus state case CCT 86/06 (2008) ZACC7 :- one of the reasons for the wide ambit of the definitions 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...”**

20. In this case it contended by Assets Recovery Agency position is that the 1<sup>st</sup> Respondent is a shell company set up as a special purpose vehicle to launder the funds of the Interested Party. The Assets Recovery Agency argument is that the contract between the 1<sup>st</sup> Respondent and the Interested Party is an afterthought, and was drawn after the 2<sup>nd</sup> Respondent was summoned to record a statement with the Applicant. The contract is dated 20<sup>th</sup> February 2021. The Respondents have also filed a contract for supplies of software between the Respondent and Open Skies Management dated 11<sup>th</sup> December 2020 which the Applicant also raises issues with.

21. The objective of forfeiture proceedings include inter alia criminal deterrence and recovery of embezzled public funds. In the case of **Assets Recovery Agency v Quorum Limited & 2 others [2018] eKLR**. the court observed that: -

**102. The Applicant has also correctly submitted that the effect of grant of forfeiture order is not meant to enrich the State but to deprive criminals of the ill-gotten wealth and to act as a deterrence and prevention to crime. Therefore, recovered proceeds are intended to be used for sustainable development of the country. See United Nations SDGs, and the case of NDPP -Vs- Rebuzzi quoted in the case of Schabir Shaik & Others –vs- State Case CCT 86/06(2008) ZACC 7 where the court stated that;**

**“... the primary object of a confiscation order is not to enrich the State but rather to deprive the convicted person of ill-gotten gains. From this primary purpose, two secondary purposes flow. The first is general deterrence: to ensure that people are deterred in general from joining the ranks of criminals by the realization that they will be prevented from enjoying the proceeds of the crimes they may commit. And the second is prevention: the scheme seeks to remove from the hands of criminals the financial wherewithal to commit further crimes. These purposes are entirely legitimate in our constitutional order...”**

22. I have carefully considered the material placed before me by the parties and it is my finding that the Applicant has proved on a balance of probabilities that the funds in the bank accounts of the Respondents are proceeds of crime. The Applicant has adduced evidence that proves that the 1<sup>st</sup> respondent was a shell company incapable of even paying rent for the premises it occupied. Whereas the 1<sup>st</sup> Respondent claimed it was in the business of supplying software and that it was awarded a contract by the Interested Party because of its experience it did not prove this. On the contrary, there is evidence that it could not even pay rent and the balances in its accounts as at that time do not support the allegation that it was engaged in a business of that magnitude. The Respondent did not provide a convincing explanation as to why it received such colossal amounts of money. It is also unclear as to how the Interested Party would pay money to a third party in this case the respondent to procure goods in this case software, from its own sister company, in this case Open Skies Management Systems which has a common directorship with Mozart bet unless the intention was to launder the funds. An analysis of the bank statements of the 1<sup>st</sup> Respondent clearly indicates that the 1<sup>st</sup> Respondent did not have the financial capacity to undertake a contract of such a huge amount rendering its explanation that it was picked by Mozart bet because of its past experience unbelievable. There is also evidence that once the 1<sup>st</sup> Respondent received the money from Mozartbet it sent that money to Pescom the which it alleges had a contract with National Cereals Board to supply maize a contract which the 1<sup>st</sup> Respondent admitted was never performed. It was the 1<sup>st</sup> Respondent's case that the money that was intended for Pescom to trade with the National Cereals & Produce Board was instead sent to Hon. Musa Sirma to supply the maize on its behalf. This court finds the explanation given by the 2<sup>nd</sup> Respondent for this not convincing at all. It is also instructive that some of the funds also ended up in the pockets of another of Mozartbet's Directors ostensibly for supply of software yet there was already a contract with open skies. This court also finds that the dates of the contracts between the 1<sup>st</sup> Respondent and Mozartbet and also between the 1<sup>st</sup> Respondent and Open Skies Management Systems raise reasonable suspicion that all was not above board as the money was paid by Mozartbet long before the contract with the Respondent. Further some of the money ended up in the pocket of one Musa Sirma a director of Mozartbet. It is my finding that it is immaterial that Mozartbet was itself investigated by the Directorate of Criminal Investigations and given a clean bill of Health. The letter by the Directorate of Criminal Investigations stated that Mozartbet made a sum of Kshs. 17,057,136.032/= during the period in issue. The letter also states that the 1<sup>ST</sup> Respondent paid a sum of Kshs. 636,007,793/= to other foreign companies for the supply of software. this was not however reflected in the 1<sup>st</sup> Respondent's bank statements. It is also telling that the 1<sup>st</sup> Respondent never supplied the software Mozartbet. This was many months later. It is also telling that although the 1<sup>st</sup> Respondent claimed to have been in that software business it did not have any money of its own and Mozartbet had to prepay for it to obtain the software from Open Skies. Clearly the fact that the 1<sup>st</sup> Respondent filed a nil return to the Kenya Revenue Authority during the period in issue is sufficient proof that it was not engaged in any business. The fact that it paid the Kenya Revenue Authority upon a demand being made is immaterial to these proceedings as such a payment would not in my view legitimize money whose source was illicit.

23. I am satisfied that the Applicant has proved its case against the Respondents on a balance of probabilities. In my mind the letter concerning Mozzarbet from the Directorate of Criminal Investigations and the Civil case filed by Mozzarbet against the 2<sup>nd</sup> Respondents in the Commercial & Tax Division are all but decoys. The 2<sup>nd</sup> Respondent has not demonstrated that it had any past experience in software business when it was allegedly contracted by Mozzarbet Kenya Limited. It is instructive that prior to entering into the alleged contract with Mozzarbet the 2<sup>nd</sup> Respondent had entered into a contract with Open Skies Management Services for supply of software. What is telling is that it is Mozzarbet which prepaid the 1<sup>st</sup> Respondent in order for it to be supplied with the software if the contracts annexed as exhibits are to be believed. As I have also stated it is telling that the money paid by Mozzarbet was to be paid to Open Skies a company it shared directorship with meaning that Mozzarbet did not need a middleman to procure software from a company which so to speak was its sister company as they shared Directorship. The money paid by Mozzarbet to the 1<sup>st</sup> Respondent also ended up with one Hon. Musa Sirma a director of Mozzarbet ostensibly to execute a contract that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had with the National Cereals & Produce Board and the Pescom Kenya but which contract was never performed. It is my finding that Kimaco was just a shell company which could not even pay its rent as evidenced by a letter exhibited as 000625 at Page 87 of the Applicant's supporting affidavit. As for the issue of the payment to the Kenya Revenue Authority it is evident that the tax was paid in the course of the investigations by the Applicant. Proof of this is that the letter from the Kenya Revenue Authority is dated 28<sup>th</sup> October 2020 and it makes reference to a Notice of Investigations dated 5<sup>th</sup> October, 2020 and another dated 28<sup>th</sup> September, 2020 which is around the time the investigations commenced (See paragraph 2 and 3 of SSgt Fredrick Musyoka Musyoki's affidavit dated 12<sup>th</sup> March, 2021. It is my finding that the depositions the Respondents were involved in a money laundering scheme have not been rebutted.

24. Accordingly, the Originating Motion is allowed and Orders are granted as follows: -

1) *That a declaration be and is hereby issued that the following funds are proceeds of crime: -*

a. *Kshs. 251,154,214.00 held in account number xxxxxxxxxx at Diamond Trust Bank, Nation Centre Branch in the name of Kimaco Connections Limited.*

b. *Kshs. 50,269,766.33 held in account number xxxxxxxxxx at Cooperative Bank in the name of Kimaco Connections Limited.*

c. *Kshs. 2,496,670.75 held in the account number xxxxxxxxxx at NCBA Bank in the name of Pescom Kenya*

2) *That an order of forfeiture to the Government of Kenya be and is hereby issued in respect to the following funds:-*

a. *Kshs. 251,154,214.00 held in account number xxxxxxxxxx at Diamond Trust Bank, Nation Centre Branch in the name of Kimaco Connections Limited.*

b. *Kshs. 50,269,766.33 held in account number xxxxxxxxxx at Cooperative Bank in the name of Kimaco Connections Limited.*

c. *Kshs. 2,496,670.75 held in the account number xxxxxxxxxx at NCBA Bank in the name of Pescom Kenya.*

3) *That the funds forfeited in prayer 2 above be deposited in A/C No xxxxxxxxxx held at the Kenya Commercial Bank KICC branch in the name of Assets Recovery Agency.*

4) *The costs of the motion shall be borne by the Respondent.*

5) *Orders accordingly.*

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 1ST DAY OF APRIL, 2022.**

E.N. MAINA

JUDGE

*In the Presence of:*

*Mr. Githinji for the Applicant*

*Mr. Lutta for the Respondent*

*Court Assistant – Potishoi*