



Assets Recovery Agency v Jibca Services Limited & another; Siana Properties Limited (Interested Party) (Civil Suit E027 of 2024) [2025] KEHC 4814 (KLR) (Anti-Corruption and Economic Crimes) (24 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4814 (KLR)

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

CIVIL SUIT E027 OF 2024

BM MUSYOKI, J

APRIL 24, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

JIBCA SERVICES LIMITED 1ST RESPONDENT

GIBRIEL CUSMAN MOXAMED 2ND RESPONDENT

AND

SIANA PROPERTIES LIMITED INTERESTED PARTY

JUDGMENT

1. The applicant has brought the originating motion dated 16th August 2024 asking this court to declare the respondents’ properties to be terrorists owned and forfeit and transfer them to it under Sections 81, 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* (hereinafter referred to as POCAMLA). The applicant seeks these orders in its capacity as the statutory body mandated to identify, trace, freeze and recover proceeds of crime. The properties the applicant seeks to be forfeited are the following;
 - a. Kshs 1,884,980.00 held at I & M Bank Limited account number 019046xxxx6250 in the name of the 1st respondent.
 - b. Kshs 6,677,260.00 held at I & M Bank Limited account number 019045xxxx6050 in the name of the 2nd respondent.



- c. USD 293 held in account number 019045XXXX1250 at I & M Bank Limited in the name of the 2nd respondent.
 - d. Unit number 1 Green Peaks erected on Land Reference number 1870/183 located along Eldama Ravine road and registered to the 2nd respondent.
2. The grounds upon which the forfeiture is sought are that the funds in the bank accounts and the purchase price for the landed property were proceeds of crimes by virtue of being owned by a known terrorist. The basis of the allegations is that the funds, part of which bought the landed property were transferred to the 2nd respondent by a person who is a listed terrorist and that the investigations conducted by the applicant have shown that the funds and the property were meant for furtherance of terrorist activities within the country. The way the prayers have been coached denote that the funds and the property are still in control of the said terrorist despite the process of transfers to the respondents and the interested party or the respondents are part of the scheme and chain of the terrorists' activities associated with the source of the funds.
3. The application has been supported by two affidavits of the applicant's investigator one Bernard Gitonga sworn on 16th August 2024 and 24th January 2025. It is the applicant's case that it received information about the respondents' acts of terrorism financing and acquisition of terrorist assets and money laundering upon which it initiated investigations which established that the respondents operated the aforementioned bank accounts and had bought the landed property from the interested party using money transferred to them by one Abdi Nasir Ali Mahamud (hereinafter referred to as 'Mr. Ali'). According to the applicant, Mr. Ali is a terrorist listed on OFAC-Treasury Sanctions Network Financing Houthi Aggression and Instability in Yemen and he is in Kenya's security watch list. It is averred further that, the 2nd respondent is part of the network and agent of Mr. Ali and his criminal activities.
4. The genesis of the matter was transfer of sum of USD 560,000.00 to the 1st respondent's account in I & M Bank Riverside branch which is said to be part of funds paid by one Dahir Mahamoud which the applicant alleges was paid on behalf of Mr. Ali and therefore should be treated as terrorist funds. The 1st respondent is a limited liability company incorporated on 9th February 2024 with the 1st respondent as one of its two shareholders and the only authorized signatory.
5. The applicant has averred that the 1st respondent received the USD 560,000.00 between 29th February 2024 and 1st March 2024 which was traceable to Mr. Ali as proceeds of sale of a house in Somalia. After the deposits, the money was rapidly transferred to the 1st respondent's accounts leaving the receiving account with a zero balance. The deponent states further that, upon receipt of the suspected funds, the respondents withdrew substantial amount in cash and transferred others to multi-destinations in a suspicious manner. It is these rapid transactions that the applicant says were indicative of money laundering and concealing of the true source and purpose of the funds.
6. The applicant has averred that the 1st respondent purchased the landed property from the interested party for Kshs 110,500,000/=. The applicant's more suspicion was raised by the fact that when the investigator approached the 2nd respondent for a statement, he told him that he sold his property in Mogadishu to Mr. Ali but denied knowing him which led the applicant to conclude that the explanation of the source, destination and usage of the funds was not satisfactory.
7. The respondents and the interested party have opposed the application through replying affidavit of the 2nd respondent dated 6th September 2024, his further affidavit sworn on 24th February 2025 and replying affidavit of one Niraj Shah, a director of the interested party sworn on 9th September 2024.



8. The respondent has deponed that he is a shareholder and director of the 2nd respondent and confirms that he is a Somali national holding a diplomatic passport number D00xxxx30. He also holds a Great Britain and Ireland passport number 133xxxx91. He has exhibited his curriculum vitae and narrated his career history as a former Ambassador for the Federal Republic of Somalia between 2016 and 2017; first Counselor and Deputy Head of Mission to Malaysia for the Federal Republic of Somalia between 2013 and 2016; Counselor and Deputy Head of the Diplomatic Mission of the Somali Republic in Ethiopia and Africa Union between 2007 and 2013; Chief of Staff of the Ministry of Foreign Affairs and International Cooperation in the Government of Somalia between 2005 and 2007; Special Envoy to IGAD during the Transitional Federal Government of Somalia between 2004 and 2006 and a Delegate/General Secretary to the Committee No. 6 of the Conflict Resolution and Reconciliation Committee Somali National Reconciliation Conference at Eldoret Kenya between 2002 and 2004. He also depones that his father was a well know person in Somalia who served as Supreme Court Judge in Somalia and later appointed as a Minister for Industries and Public Works and Minister for Finance, a career which spanned 21 years.
9. He explains further that he inherited various properties from his late mother one Maymuna Culusow Xirsi among them the property he is said to have sold to Mr. Ali which he identifies as land reference number Tix/SCD/Sa/069/2010 and commonly known as Sudan House. He has exhibited his mother's Will as annexure GCM-3 which he says is documented at the Somali consulate in the United Arabs Emirates. He states that he sold this house on 22nd November 2023 which sale he says was legally done through Osman Law Office for Public Notary and Legal Services between him and Dahir Mohamoud Mohamed for USD 2,200,000. He has exhibited the sale agreement as his annexure GCM-4. He adds that such sales are thoroughly scrutinised by Financial, Economic and Cyber Crimes Unit and has produced a letter dated 12-08-2024 shown to have been written by the office of the Attorney General of Federal Republic of Somalia which explains that the sale was verified as proper and done through a legal process. He further states that the property exists and was confirmed and therefore the sale was real and legitimate.
10. The 2nd respondent has averred that his intention of buying the property was to retire and settled in Kenya with his family. He confirms that he transferred 560,000/= to USD account number 0190460xxxx250 held by the first respondent from which he only spent 30% before the account was frozen. He also explained that he transferred USD 50,000.00 from the 1st respondent's account to his account number 01904583xxxx650 for family upkeep on 11-03-2024 and on the same date USD 10,000.00 to the 2nd respondent's Kshs account as the company's startup capital. He also transferred USD 500,000 from the 2nd respondent's USD account to the 2nd respondent's Kshs account for purposes of acquiring the unit at Green Peaks. He added that on 15-03-2023, he paid Kshs 66,000,000.00 to the interested party for purchase of the unit.
11. According to the 2nd respondent, the mere mention of Mr. Ali in the transaction did not mean that he interacted with him at all and listing of Mr. Ali does not mean that the respondents are culpable. He denied ever interacting with Mr. Ali physically or through phone or otherwise. The 2nd respondent insists that during the transaction on the house in Mogadishu, he only met the Notary Public and Dahir Mohamoud Mohammed who he understood to be representing the purchaser's interest and as respective witnesses to the transaction. He confirms that the purchase price was deposited to his account in Mogadishu by Dahir's family on 22-11-2023 and denies ever receiving money from Mr. Ali.
12. The 2nd respondent has denied ever making multiple transfers in the account safe to his own accounts and those of the 1st respondent who was incorporated for purposes of investing in real estate. He also states that he never withdrew any money over the bank counter. He adds that the property in



Somalia had been occupied by reputable tenants such as by German Embassy, Sudanese Embassy and the Campus of the Somalia University.

13. The interested party's director has deponed that it entered into an agreement with the 2nd respondent for purchase of the property at a price of Ksh 110,500,000.00 following which the 2nd respondent paid initial deposit of 11,060,000.00 and on 15-03-2024 made a further payment of Kshs 66,000,000.00 leaving a balance of Kshs 33,250,000.00. It pleads that the court does not make a forfeiture order because that would mean that it would lose the unpaid balance of the purchase price.
14. The application was argued through written submissions which I have carefully gone through together with the cited authorities. From the above reproduced evidence and submissions of the parties, it is clear to me that there is no dispute that the 2nd respondent was the owner of the property in Mogadishu. It is also not in dispute that the purchase price of the said property was transferred to the 2nd respondent's account number 370xxxx3 held in Salaam Somali Bank- Airport Branch which he proceeded to distribute in different amounts on different dates to other accounts held by himself and the 1st respondent as shown in the application. The only dispute herein is whether the sale was a scheme to launder money by passing it off as purchase price and whether the funds were proceeds of crime and therefore liable to forfeiture.

Section 92(1) of the POCAMLA provides that;

‘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.

15. My understanding of the applicant's case vis a vis the above Section is that the properties in question are intended for use in a commission of an offence of terrorism. I say so because the applicant has leveraged its case on the averments that Mr. Ali is listed as a member of a terrorists group or network. Unfortunately, the applicant has not exhibited evidence to that effect. Perhaps the applicant may have thought that the court knows or should be aware that such a group exists and has been designated as a terrorist group and network. Even if the court takes judicial notice of existence of the said group or network, it is not able to ascertain whether Mr. Ali is listed as a member or financier of the same. The applicant should understand that as much as the court should be alive to the matters which are in public domain, it should not be assumed that the court should be turned into an investigator and researcher in terms of evidential matters especially where the same cut across territorial boundaries. The applicant should at least have demonstrated to the court the character, presence and existence and reasons for it to believe that the said Mr. Ali was a member of or is associated with the said group.
16. The applicant has stated that the Kenya government has placed Mr. Ali in its watch list. To that end, the applicant has exhibited a printed catalogue of Mr. Ali's movement in and out of the country. According to the annexure 'BG4', Mr. Ali had between June 2013 and October 2018 entered Kenya 8 times and departed 7 times. He has not been said to have met, spoke, communicated or talked to the 2nd respondent in all these instances. Dahir Mohamoud who paid the purchase price to the 2nd respondent's account has not been captured as having entered Kenya. This court can only make a positive finding on the 2nd respondent's association with Mr. Ali if there is a clear nexus between the operations of the two or it is shown that they have made interactions which reasonably suggest that they belong to a common venture with an objective of committing or furthering commission of crimes.



17. The 2nd respondent has in my view given a credible chronology and explanation of how he bought the property in Kenya and how the funds found their way to his account. The only basis for forfeiture of the funds and the property would be if the funds are connected with criminal activities. The applicant claims that the funds are actually property of a terrorists. The 2nd respondent has not been branded as a terrorist but the claim is that he is an associate of a terrorist in the name of Mr. Ali. Annexure 5a of the 2nd respondent's replying affidavit is a certification of sale by the Notary Public which shows that the persons who appeared in his office for the sale of the house in Mogadishu were Gibriel Cusman Moxamed of passport number 510xxxx97 (UK), Dahir Mohamoud Mohamed holding passport number 124xxxx28 (UK) described as the beholder of the buyer's signature, a witness one Khalid Abukar Amin of Somali passport number P01xxxx62, a second witness one Yusuf Hassan Mohamud of Somali passport number P010xxx45, a third witness one Omar Abdi Yusuf of Somali passport number P00xxxx990 and a fourth witnesses Ahmed Dair Mohamed of Somali passport number P0124845981.
18. The property in Mogadishu is easily traceable from the 2nd respondent's family's inheritance which has not been challenged. The applicant filed a further affidavit dated 24th January 2025 which was in response to the 2nd respondent's explanation of the source of his funds. One would have expected that the applicant with its investigative mandate, capacity and resources, would counter what the 2nd respondent had stated. The applicant has not attacked or challenged that the property was inherited from the 2nd respondent's mother through a written Will nor has it denied that the Mogadishu property was sold to Mr. Ali. In that case the focus in this case can only be the funds having originated from Mr. Ali
19. The applicant's suspicion is said to have been raised by the rapid movements of the funds from the respondent's accounts. The evidence produced to that effect in form of bank account statements which have been confirmed by the respondents show that Kshs 66,500,000.00 was moved from the 2nd respondent's dollar account to the 1st respondent's Kshs account on 14-03-2024 and the following day a sum of Kshs 66,000,000.00 left the account to the interested party. This movement has been explained and was not, in my view a hidden transaction. The transfer has been explained as a further deposit for the purchase price. The applicant has also alleged that the 2nd respondent withdrew large sums of money in cash but a look at the three statements of the three bank accounts shows that all the transactions were in form of either bank transfers or Mpsesa transactions. All the transactions remain within the same person and his related company save those that went to the interested party. These transactions are easily traceable with a clear trail which in my view is inconsistent with character of a person with intent to launder dirty money or commit a serious offence like terrorism.
20. The 2nd respondent had also produced a letter from the office of the Attorney General of the Federal Republic of Somalia dated 12th August 2024 which office this court believes to be a high government office which gave the sale of the house in Mogadishu a clean bill of health. A simple act of putting in motion a mutual legal assistance process or an enquiry would have established whether this letter truly emanated from the office it purported to have. That does not seem to have been done and this court has no reasons to doubt the contents of the letter. Even if there was no mutual legal assistance agreement or arrangements between Kenya and Somalia which are friendly countries, there should at least have been a demonstration that the applicant made attempts to establish the authenticity of the letter.
21. True, the respondents have the burden of proving that the funds were not associated with proceeds of crimes but the applicant remains with the burden to establishing a prima facie case that is not rebuttable by the explanation or evidence produced by the respondent. In other words, the applicant



remained with the legal burden of proof. In *Assets Recovery Agency v Makara & another; National Bank Limited (Interested Part)* (2023) KEHC 1643 (KLR), it was held that;

‘It is trite that forfeiture proceedings being civil in nature the onus of proof lies upon the Applicant. The standard of proof is on a balance of probabilities. However it is also trite that once the Applicant has discharged the legal burden of proof, the evidentiary burden shifts to the Respondent to prove that the funds were acquired lawfully. It is also trite that the Applicant is not required to prove the commission of a specific crime in relation to the acquisition of the property (See Section 92(4) of the *Proceeds of Crime and Anti-Money Laundering Act*). The Applicant is required to only set out the matters that are alleged to constitute unlawful conduct by or in return for which the property was obtained. (See the cases of *Director Asses Recovery Agency & Others v Green and others (Supra)*.’

22. In this matter, all that the applicant has done is to tell the court that it has done investigations which discloses reasons to believe that the respondents are part of the scheme and chain of the terrorist group but it does not give details, explanations and evidence to that effect. If indeed the investigations showed that the 2nd respondent was linked to Mr. Ali, then the applicant must be blamed for withholding that evidence from the court.
23. According to the applicant, the discrepancy in the 2nd respondent’s statement made it to believe that he was part of Mr. Ali’s network. The only discrepancy I have seen in the statements recorded by the 2nd respondent is that the agreement is said to have been between him and Mr. Ali with Dahir Mohamoud being a witness and his statement that he sold the house to Dahir Mahamoud and that he did not know or interact with Mr. Ali. This may be a discrepancy and a reasonable source of suspicion but once the 2nd respondent produced documents showing that he received money from Dahir and did not know or interact with Mr. Ali, the applicant had a duty to do more investigations and connect the applicant to Mr. Ali or terrorism. In *Assets Recovery Agency v Namunyu & 2 Others* (2024) KEHC 7954 (KLR), the court held that;

‘Where evidential burden has shifted to the defendant, he must discharge it lest he should fail. This is what is commonly known as rebuttal. Of importance, evidential burden is only discharged through evidence (s. 90(4), POCAMLA, s. 55(5), ACECA) and not through mere statements or allegations of the source or legitimacy of the money. The thread running through statutes on civil forfeiture require such testimony and other evidence as the court deems sufficient, to satisfy the court that the property is not proceeds of crime or unexplained assets.

Except, however, failure to offer rebuttal evidence does not necessarily mean forfeiture order will be issued as a matter of course. Forfeiture order is made because the applicant has proved its case to the required standard; after consideration of the evidence tendered by the applicant and any rebuttal evidence offered. Forfeiture order will be declined where the applicant has not proved the case on a balance of probabilities.

See *Kanyungu Njogu v Daniel Kimani Maingi* [2000] eKLR , where the Court found that where both parties’ explanations are equally (un)convincing, the party bearing the burden of proof (the applicant) will lose, because the requisite standard will not have been attained.’

24. The 2nd applicant has narrated his engagements in many international arenas. He still holds a diplomatic passport of the Federal Republic of Somalia and a Great Britain and Ireland passport both of which are friendly to this country. These positions are confirmed by his annexures GCM-2. He has held and served in high offices of his country and is indeed a person who can be said to have drawn international



attention due to his rank and standing in the society yet nothing untoward has been traced against him. His only crime in this matter if the applicant were to be believed is selling his family inheritance to Mr. Ali. In my view, forfeiting the proceeds from the sale would be taking his legitimate inheritance from him yet it has not been traced to any criminal activity. The applicant should have done more in terms of investigations for this court to be justified in taking such a drastic measure against the 2nd respondent.

25. In view of the above analysis, I hold that the applicant has failed to prove its case to the required standards and the same is hereby dismissed with costs to the respondents. No costs are awarded to the interested party.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Mohammed Adow for the applicant, Mr. Oundo holding brief for Mr. Wandabwa for the interested party and in absence of the respondents.

