



Assets Recovery Agency v East Africa Group Limited (Anti-Corruption and Economic Crimes Civil Suit E025 of 2024) [2025] KEHC 8618 (KLR) (Anti-Corruption and Economic Crimes) (20 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8618 (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 E025 OF 2024**

BM MUSYOKI, J

JUNE 20, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

EAST AFRICA GROUP LIMITED RESPONDENT

JUDGMENT

1. The applicant is statutory body established under Section 53 of the Proceeds of Crimes and Anti-Money Laundering Act Chapter 59A of the Laws of Kenya (hereinafter referred to as ‘POCAMLA’) with mandate of identifying, tracing, freezing, investigating and recovering assets which were acquired through or by use of proceeds of crime. The law allows the applicant to make application to forfeit any property suspected to be proceeds of crimes.
2. By an originating motion dated 29th June 2024, the applicant has prayed that this court issues orders in the following terms;
 1. That this Honourable Court be pleased to issue an order declaring that the following funds are proceeds of crime and therefore liable for forfeiture to the state:
 - i. USD 274, 369.56 held in account number 030046XXXX1251 at I & M Bank in the name of Eis Afrika Group Limited
 2. That this Honourable Court be pleased to issue orders of forfeiture of the following funds to the applicant:
 - i. USD 274, 369.56 held in account number 030046XXXX1251 at I & M Bank in the name of Eis Afrika Group Limited



3. That this Honourable Court be pleased to issue an order that the above funds be forfeited to the State and transferred to the Assets Recovery Agency.
 4. That this Court do make any other ancillary orders it considers appropriate to facilitate the transfer of the property forfeited to the Government.
 5. That costs be provided for.
2. The grounds upon which the motion is based are on the face of it and basically revolve around claim by the applicant that the funds sought to be forfeited are proceeds of crime in that the respondent was suspected to be involved in money laundering schemes. The applicant alleges that it has conducted investigations and established that there are reasonable grounds to believe that the funds were obtained through illegitimate activities of money laundering.
 3. The application is supported by affidavit of Alfred Musalia who describes himself as an investigator with the applicant. He has deponed that on 1-03-2024, the applicant received information of suspected money laundering schemes and proceeds of crime perpetrated by the respondent upon which he opened an inquiry file and secured orders to investigate the respondent's account through the Chief Magistrate's Court miscellaneous criminal application number E148 of 2024.
 4. He has added that his investigations have revealed that the respondent executed scheme of money laundering designed to conceal, disguise the nature, source, disposition and movement of the illicit funds, suspected to constitute proceeds of crime. According to the deponent, his analysis shows that account number 030046XXXX1251 held by the respondent at I & M Bank Limited received suspicious USD 350,000/= from foreign jurisdiction as part of money laundering scheme. After receipt of the funds, the respondent withdrew in cash and transacted money to multiple destinations in a suspicious manner.
 5. A quite number of paragraphs of the supporting affidavits seem to have been lifted from the affidavit which was filed in support of the application for preservation of the funds because they repeatedly urge the court to consider the need to preserve the funds pending hearing and determination of the application for forfeiture yet we are now dealing with a motion for forfeiture.
 6. The only exhibits produced in the supporting affidavits are; the notice of motion dated 1-03-2024 in miscellaneous criminal application number E148 of 2024, orders in the said application dated 4th April 2024, 18th April 2024 and 2-05-2024, statement for bank account number 030046XXXX1251 for the period from 22-03-2024 to 1-03-2024, order dated 16-05-2024 in this court's miscellaneous civil application number E016 of 2024 and gazette notice number 6706 dated 31-05-2024.
 7. After the applicant was served with replying affidavit, it filed a further affidavit sworn by the same Alfred Musalia dated 27th January 2025. In it, the deponent maintains that the money was from a money laundering schemes. He also challenges the authenticity of the documents produced by the respondent by stating that they are not verifiable because the email address mXX1@worldbank.org which the respondent provided as official address of world bank in Burundi was a hoax as the same was not identified and had digital footprints of being accessed in Kenya specifically parklands and Nairobi river areas. He has annexed a report allegedly from Communications Authority of Kenya which he claims gave him the details of the said investigations on the email.
 8. In its replying affidavit sworn on 11-11-2024 by Nduwimana Aimable who says that he is its sole member and director, respondent denies the claim by the applicant. The deponent avers that the respondent is registered in Kenya and it is an affiliate of EIS Company SPRL, Burundi which was registered in the republic of Burundi on 17-03-2011. He has produced registration documents of these



two companies. EIS Company SPRL, Burundi was registered as a provider of engineering services including road, bridge and construction. He has also indicated that the affiliates of the company in French speaking countries have been operating under the name of Groups EIS while those operating in English speaking countries have been operating under the name EIS Africa Group Limited. All these companies, he says, operate under the same directorship and management.

9. The respondent adds that EIS Company SPRL, Burundi opened and operated two bank accounts in Burundi that is, local currency account number 6690XXX595 held in KCB and USD account number 1003XXXX012 held in FIN bank. The two accounts were opened in 2016 and 2018 respectively.
10. The respondent has further explained that EIS Company SPRL Burundi bid and won tender for construction works and installations of Kavimvira Border Post in the South Kivu province of Burundi that serves the border between Burundi and the Democratic Republic of Congo at a total cost of USD 5,033,576.15. He has annexed documents for award of the tender by the Ministry of Infrastructure and Public Works to the replying affidavit as annexure 'NA3A'. He adds that the project was funded by the World Bank which released USD 1,006,605 to EIS Company SPRL Burundi through its USD bank account at FIN Bank as 20 per cent initial amount for purchase of equipment for use in Uvira site on the side of Democratic Republic of Congo.
11. The respondent adds that it faced challenges in procuring the equipment and vehicles for the project due to international transfers regulations in Burundi that require that, transfer of more than USD 5000 must be justified by an import license confirming that goods imported under the licence are intended for local consumption in Burundi. Due to this challenge, the respondent claims that it was advised by its bank to open an account with I &M Bank in Kenya as they had a working relationship which would enable them transfer funds to Kenya. Based on this advice, the respondent opened the account in question and transferred USD 350,000 for purposes of purchasing the equipment, vehicles and the items it need for the Uvira site.
12. The respondent then transferred USD 43,151 and another USD 26,500 to Emporium Motors and Milele Motors in Dubai for purchase of two motor vehicles for sue in Uvira DRC. The deponent of the replying affidavit produced invoices for the vehicles. He also explained that the respondent made other transactions for purchasing of foodstuff, another motor vehicle, culverts pipes, furniture, office equipment and consultancy fees. However, some two transactions did not go through because of the preservation orders in miscellaneous application number E016 of 2024.
13. The deponent adds that he was summoned by the applicant after the freezing orders which summons he obeyed and recorded a statement and provided supporting documents. He was then asked to wait as the applicants verified the documents. The deponent states further that according to affidavits filed by the applicant in its applications for extension of in the miscellaneous applications, the applicants claimed that it had submitted to Interpol and they were waiting verifications.
14. Since the freezing of the funds have stalled the project, the respondent wrote to authorities in Burundi and Kenya seeking intervention to no avail. The deponent states that the World Bank has confirmed that the funds originated from it and were paid to EIS Company SPRL Burundi and has exhibited copies of what he claims to be the confirmation from the World Bank.
15. This is an application for forfeiture under Section 90 and 92 of the Proceeds of Crimes Act Chapter 59A of the Laws of Kenya (hereinafter referred to as 'POCAMLA'). The application has been grounded on the claim that the money sought to be forfeited are products of money laundering. Money laundering is an offence under Sections 3, 4 and 7 of POCAMLA and involves knowingly receiving, owning, transacting in, possessing, acquiring, transmitting or dealing with any property that forms or



is proceeds of crime whether directly or indirectly. In essence the application herein is precipitated on the position taken by the applicant that the funds are proceeds of crime.

16. For the applicant to succeed in the application, it has to establish a prima facie case that the funds were proceeds of crime. In other words, the applicant should first discharge its legal burden of proof after which the respondent is called upon to discharge its evidential burden which means that the respondent has to explain the sources of the funds and justify the movement of the money into the targeted account and show what it was to be used for. In *Assets Recover Agency v Rainbow Techemploy Africa Limited* (2023) KEHC 25770 (KLR), it was held that;

As in all civil cases, the burden of proof in civil forfeiture, lies with the Applicant while the standard of proof is on a balance of probabilities. The Applicant therefore bears the legal burden to prove that the impugned funds are proceeds of crime. It is only once this legal burden is discharged, that the evidential burden shifts to the Respondent to prove that the funds were lawfully acquired and hence they are not proceeds of crime.’

17. In this matter, the applicant has told the court that it received reports on the suspected transactions and got into investigations. The applicant goes further to state that its investigations revealed that the money was product of money laundering. I have said this in one of my previous judgments in respect of the way the applicant keeps bringing its matters in court in terms of evidence and I repeat it here, the applicant is established by a statute and given mandate to investigate, trace and recover proceeds of crime. This mandate is more than getting information and being suspicious of transactions.
18. The whole of the supporting affidavit of the applicant talks of suspected transactions and transfers of the money and discloses nothing about its investigations and findings save for giving general statements that the transactions were suspicious. I dare say that the applicant seems to have a standard affidavit which they copy, paste and edit and that is why the supporting affidavit in this matter still talks of preservation orders despite us now dealing with the final forfeiture. The affidavit also talks of the respondent having made huge cash withdrawals but going through the bank account statement, I could not trace a single entry showing any cash withdrawal. It has become a custom, at least for the matters I have handled, that the applicant tells the court that it has investigated and investigations reveal that the money or property it seeks to forfeit are proceeds of crime or money laundering without giving details. This matter is no different.
19. In my judgment, the applicant did nothing more than receiving the information, opening an inquiry file, obtaining investigations warrants and freezing orders, getting the bank statements and analysing them, obtaining the preservation orders and finally filing the forfeiture motion. It is my position and I continue to state so that the applicant should do proper investigations and not thrash what it perceives to be suspicious transactions or property and expect the court to sieve through glaring gaps on its behalf.
20. My above statement is founded on my opinion that this matter is wanting in terms of investigations. For instance, the respondent was summoned and went to the office of the applicant and gave details of the contract. The project is said to have been funded by the World Bank which is an institution with presence in this country. The applicant’s investigators did not depone in its supporting affidavit that it made attempt to confirm the genuineness of the contract and the details supplied by the respondent with the World Bank or any of its affiliate institutions.
21. In his replying affidavit, the respondent attached some communication between of Mr. Gitonga Njeru said to be an investigator with the applicant and one Thierry Kayembe and Magueye Dia which he purports to be confirmation of the authenticity of the documents provided by the respondent.



The applicant in its further affidavit did not make any comment on these annexures. Instead, what the investigator claims to have done was to confirm an email address which he alleges was found to be unverifiable by the Communications Authority of Kenya. He in his further affidavit produced a document he stated was a cyber investigation report which to say the least is a joke. It does not have the name of the author but it is signed off by someone identified just as digital 'forensic analyst'.

22. The alleged report is not a document which should have been filed in court by an institution of importance and significance as the applicant. In my view, the applicant just got the bank statements and went through the transactions then decided to investigate an email only and not the source of the money. The transfer of the money in large amount may be a red flag for detection of money laundering but that alone does not make the money illegitimate. Based on this, it is my finding that the applicant has not established a prima facie case that the money was proceeds of crime.
23. Even if the applicant had established a prima facie case, it would not have succeeded. In my judgment, the respondent sufficiently explained the source of the funds and the destination. There are documents showing that the respondent was awarded contract by the government of Burundi. There is no iota of proposal that the documents were not genuine. The Burundi government has diplomatic ties with Kenya with its embassy in Nairobi. A walk in to the embassy would have sought clarification or verification. The applicant has not told the court that it made a request from embassy of the said country for verification and was denied or was unable to get it.
24. It should be detestable for the applicant to conduct what I would call desk investigations and expect to fight the menace of money laundering and prevention of use of proceeds of crimes in the country. It must wake up and do more and help this country enhance the country's capacity and trigger the potential of legitimate commerce. The respondent chose a bank in Kenya for its transaction but its money has unfortunately been held captive for more than a year. Even if the funds were to be proved as proceeds of crimes, the respondent was entitled to be taken through a reasonably justifiable process of genuine investigations but not deprivation use of his property through mere suspicions.
25. Based on the above, I find the origination motion lacking in merits and the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Adow for the applicant and Mr. Omondi holding brief for Mr. Kenyatta the respondent.

