



**Asset Recovery Agency v Ngatia & another (Civil Application E005 of 2025)
[2025] KEHC 8827 (KLR) (Anti-Corruption and Economic Crimes) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL APPLICATION E005 OF 2025**

LM NJUGUNA, J

JUNE 18, 2025

BETWEEN

ASSET RECOVERY AGENCY APPLICANT

AND

JAMES MAINA NGATIA 1ST RESPONDENT

MARGARET AGOLA OYOO 2ND RESPONDENT

JUDGMENT

1. The applicant herein has moved this court by way of the Originating Summons dated the 12th February, 2025 under Sections 81, 82, 84, 90 and 92 of the Proceeds of Crime and Anti- Money Laundering Act and Order 51 Rule 1 of the Civil Procedure Rules seeking the following Orders;
 1. That this Honourable court be pleased to declare funds held in the following bank accounts proceeds of crime and therefore liable for forfeiture to the Government of Kenya;
 - a. Account Number 031036XXXX6150 held at I & M Bank in the name of James Maina Ngatia
 - b. Account Number 0150XXXX0518 held at Family Bank in the name of Margaret Agola Oyoo.
 2. That this Honourable court be pleased to issue an Order of forfeiture to the Applicant on behalf of the Government in respect to the following funds held in;
 - a. Account number 031036XXXX6150 at I & M Bank in the name of James Maina Ngatia



- b. Account number 0150XXXX0518 at Family Bank in the name of Margaret Agola Oyoo.
3. That the Honourable court makes any other ancillary order it may deem fit for the proper, fair, effective execution of its Orders.
2. The application is based on the grounds that are set out on its face and supported by the annexed affidavit sworn by Mr. Isaac Nakitare, on the 12th February, 2025, in which he avers that he is part of a team of investigators under the Multi- Agency Team investigating the Respondents' properties with a view of identification, seizure and recovery of proceeds of crime on behalf of the applicant.
3. That the 1st and the 2nd respondents are Kenyan citizens holders of National Identity cards nos. 043XX79 and 21XXX752 respectively and the account signatories of their respective accounts, and the ultimate beneficiaries of bank account number 031036XXXX6150 held at I &M bank and account number 0150XXXX0518 held at Family Bank, respectively.
4. That the investigations have established that the respondents executed a money laundering scheme which involved identity theft, impersonation and fraud, in which, they fraudulently obtained public funds from the National Treasury in the approximate sum of Ksh. 12,403,783 intended for public/ Civil servants under the pension scheme administered by the National Treasury.
5. That the investigations also established that the documents relied upon by the National Police Service, and the National Treasury to process and remit the lump sum and monthly pension payments in the respondents' bank accounts between 30th July,2022 and 26th July,2024 in the approximate sum of Ksh.12,403,783 were falsified, a case of identity theft.
6. That pursuant to that information, the applicant applied, and was issued with warrants to investigate the respondents' aforesaid accounts and upon analysis of the bank accounts it established the following in respect to the 1st respondent's account;
 - a. The account was opened on the 27th July 2022 and that it received Ksh. 6,330,077.90 for the period between 30th July, 2022 – 4th July, 2024 and withdrawals of Ksh. 1,900,000 during the same period.
7. That the applicant further established that the 1st respondent purportedly joined the National Police Service on 14th February, 1981 and retired on 30th June, 2022 having served for accumulative period of 41 years, 4 months and 17 days, exiting at the rank of Senior Superintendent of police and that he received a lump sum payment and a monthly pension of Ksh. 73,785.00 from the National Treasury.
8. That the applicant, was able to establish from the National Police Service that the two respondents were not employees of National Police Service after it forwarded the duplicate file from the National Treasury to the Inspector General of Police to confirm the employment status and the authenticity of the documents from the National Treasury.
9. That the applicant traced Mr. James Ngatia who recorded his statement on the 10th January, 2025 and distanced himself from the documents that were purportedly his, and denied having ever worked with the National Police Service. He further stated that he has never opened an account with I & M Bank and that though the identity card has his image and correct names, the place of birth and place of issue are incorrect compared to his original identity card.
10. In respect to the 2nd respondent, the applicant established that;



- a. Her account was opened on the 27th September, 2022 and that the account received Ksh. 5,701,102.10 for the period between 5th December, 2022 – 26th July,2022.
 - b. The account received funds from the 1st respondent bank account totaling to Ksh. 1,600,000 during the same period.
11. That upon further analysis, the applicant established that on various dates, the 1st and 2nd Respondents aforesaid accounts made payment of Ksh.1,900,000 and Ksh.500,000, respectively, in favour of bank account number 125XXXX194 held in the name of Acme Wanji Investments Limited, both transactions, making a total of Ksh. 2,500,000.
 12. That Acme Wanji Investments Limited was an interested party in the preservation application in ACEC Misc. No. E054 of 2024 in which an Order was issued preserving funds of Ksh. 2,500,000, and vide a court Order issued on the 3rd January, 2025, it was ordered to transfer the money to the applicant and vide a consent Order issued on the 24th January, 2025, the preservation orders were lifted in respect to its account aforesaid, and the funds are currently held in applicant's account.
 13. That there are reasonable grounds and evidence demonstrating that the funds held in the name of the respondents as proprietors and/or beneficial owners are tainted property, 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.
 14. The respondents did not file any responses despite having been served with the Originating Summons.
 15. The court gave directions on filing of Submissions and the applicant complied with the said directions.

Applicant's Submissions

16. In its submissions the applicant identified only one issue for determination;
 - a. Whether the funds identified in prayers 1 and 2 of the Originating Motion dated the 12th February, 2025 constitute proceeds of Crime and thus liable to be forfeited to the applicant.
17. The applicant submitted that the funds identified in Prayers 1 and 2 in the Originating Summons are proceeds of crime constituting an economic advantage, derived and realized as a result of, or in connection with an offence or unlawful conduct, being that of obtaining by false pretences contrary to Section 313 of the *Penal Code*, in which the respondents under false pretence and with intent to defraud, obtained public funds from the National Treasury in the approximate sum of Ksh. 12,403,783 intended for public servants and which is administered under the Pension Scheme by the National Treasury, on pretext that they were retired Public Servants.
18. That the false pretence attributed to the respondents was that they were never employed by the National Police Service and were thus not entitled to the Public funds under the pension scheme administered by the National Police Service, and that the identity cards and documents that were used to open bank accounts were forgeries.
19. It was further submitted that there is no trace of the respondents having received their monthly salary in the period that they were allegedly in active employment at the National Police Service and the confirmation by the National Police Service affirms the applicant's position that the funds received by the respondents from the National Treasury constitute Proceeds of Crime.



20. Further, that the applicant has established a link of the respondents through the deposits made to the bank account number 125XXXX194 in the name of Acme Wanji Investments Limited which was an attempt to launder the money by disguising, concealing the source of the Ksh, 2,500,000 which had been transferred into its account.

Analysis and Determination

21. The court has considered the Originating Summons and the supporting affidavit and the submissions filed herein by the applicant. The only issue for determination is;

Whether the funds identified in prayers 1 and 2 in the Originating Summons constitute proceeds of crime and thus liable to be forfeited to the applicant.

22. The suit has been brought under Section 92 of the POCAMLA which donates jurisdiction to this court to make an Order for forfeiture, if it finds on a balance of probabilities that the property in issue;

- a. Has been used or is intended for use in the commission of an offence or;
- b. Is a proceed of crime.

23. Section 2 of the POCAMLA defines Proceeds of crime as follows;

“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 latter 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.”

24. Forfeiture proceedings are civil in nature and the standard of proof is on a balance of probabilities. This was the holding in the case of Director of Assets Recovery and Others Vs Green and Others (2005) EWHC 3168 cited in the case of Assets Recovery Agency Vs Pamela Aboo; Ethics & Anti- Corruption Commission (Interested party) (2018) eKLR at par 63 where 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 matters 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”.

25. The court went on to say that, the validity of an Order of forfeiture 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.

26. The court in the case of Abdurrahman Mahmoud Sheikh & 6 Others Vs Republic & Others (2016) eKLR stated as follows;

“The letter, spirit, purpose, and gravamen of the Proceeds of Crime and Anti- Money Laundering Act is to ensure that one does not benefit from criminal conduct and that should any proceeds of criminal conduct be traced, then it ought to be forfeited, after due



process, to the state, on behalf of the public which is deemed to have suffered some injury by the criminal conduct.”

27. The court in the case of *Schabir Shaikh & Others Vs State Case CCT 86/06/(2008) ZACC 7* as cited in the case of *Assets Recovery Vs Quorandum Limited & 2 others (2018) eKLR* at paragraph 54 stated;

“.....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.....”

28. In the case of *Schabir Shaikh & Others Vs State (supra)* as cited in the case of *Assets Recovery Agency Vs Ouarandrum Limited*, the court in defining “proceeds of crime” 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 systems of “camouflage”. The Supreme court of Appeal held that a person who has benefitted through the enrichment of a company as a result of a crime in which that person has an interest will have indirectly benefitted from that crime.”

29. In the case herein, the respondents are alleged to have executed a money laundering scheme which involved identity theft, impersonation and fraud, in which they fraudulently obtained public funds from National Treasury in approximately Ksh. 12,403,783 intended for Public/Civil servants under the pension scheme administered by the National Treasury. The applicant was able to proof that the documents relied upon by the National Police Service and the National Treasury to process and remit the lump sum and monthly pension payments in the respondents’ bank accounts were falsified and it was a clear case of identity theft.

30. The applicant’s investigations established that though the 1st respondent’s duplicate file indicates that he purportedly joined the National Police Service on 14th February, 1981 and retired on the 30th June, 2022, that information was false according to the letter dated the 11th November, 2024 from the National Police Service that stated that the 1st respondent was not an employee of National Police Service. Further, the applicant was able to trace the real Mr. James Maina Ngatia and in his statement that he recorded with the applicant, he has stated that he has never worked with the National Police Service but he was employed by the then Thika Municipality where he started as an office messenger and rose to the rank of clerical officer till his retirement in the year 2018.

31. Regarding the Identity card, the copy of it has his image and correct names, but the place of birth and place of issue are incorrect compared to his original identity card. Besides, he has never reported loss of his identity card since he got it. As per the account opening documents and bank statements of I & M bank, the documents are in his correct names, but the picture of the person who opened account number 031036XXXX6151 does not belong to him.

32. Similarly, the 2nd respondent’s duplicate file from the National Treasury purportedly indicates that she joined the National Police Service on 4th February, 1983, and retired on 30th June, 2022 but the applicant’s investigations revealed that she had two national identity cards that were different. That



in her documents submitted to the Pension department of the National Treasury, the ID number is indicated as 75XXX52, serial number 212XXX028 with her year of birth as 1962 whereas in her account opening documents, the identity card number is indicated as 21XXX752 , serial number 212XXX028 with the year of birth indicated as 1975.

33. The applicant's further investigations established that the 2nd respondent's date of birth in her National Identity card as declared in her account opening documents is 14th February, 1975 and she was purportedly employed in the Civil Service on the 28th April, 1982, when she was only 8 years old which is not possible. However, a report from National Registration Bureau confirmed that the 2nd respondent was born on 1st January, 1975, her identity card number is 21XXX752, serial number 253XXX071, though the applicant's attempt to trace her were futile.
34. The applicant was also able to establish that the 2nd respondent's bank account number 0150XXXX0518 made payments of Ksh. 500,000 on 29th June, 2023 in favour of bank account number 125XXXX194 held in the name of Acme Wanji Investments Limited whereas the 1st respondent made a total of Ksh. 1,900,000 vide his bank account No. 03X03 686XXX150 held at I&M bank making the total amount remitted by the two respondents to Ksh. 2,500,000. The said Wanji Investments Limited was an interested party in the preservation application in ACEC Misc. No.E054 of 2024 in which an Order was issued preserving the funds and it was ordered to transfer the money to the applicant.
35. From the above evidence, there is no trace of the respondents having received their monthly salary in the period they were allegedly in active employment at the National Police Service. In the case of Assets Recovery Agency Vs Lilian Wanja Muthoni & others (2020) eKLR the Honourable court observed;

“money and assets are not plucked from the air or, like fruits from the trees. They can be traced to specific sources- salaries, businesses in which one sells specific items or goods, or provides professional services. There must be books of accounts, stock, registers, local purchase orders and delivery notes showing to whom goods are sold, deliveries made, and payment receipts showing from whom payment has been made”.
36. It is worth noting that the respondents did not defend the suits despite having been served with the Originating Motion.
37. In the case of Assets Recovery Agency Vs Pamela Aboo (supra) the court held;

“61. Where the person against whom all allegations have been made does not give satisfaction explanation to rebut the allegations, it means what has been presented is not challenged.....

62. The moment the Applicant established through bank statements that there were huge cash deposits, the burden shifted to the respondent to explain the source.”
38. In the circumstances, the respondents having failed to defend the suits meant that the evidence by the applicant was not challenged and from the evidence on record, the applicant has proved its case on a balance of probabilities.
39. In the end, the court makes the following Orders;
 - 1) An Order is hereby issued declaring funds held in the following accounts as proceeds of crime and consequently, the funds are forfeited to the applicant on behalf of the Government of Kenya;



- i) Account Number 031036XXXX6150 held at I & M Bank in the name of James Maina Ngatia
 - ii) Account Number 0150XXXX0518 held at Family Bank in the name of Margaret Agola Oyoo
 - iii) KSH. 2,500,000
- 2) The applicant is awarded the costs of the suit to be paid by the respondents jointly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF JUNE 2025

.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Mohamed Adow holding brief for Mr. Githinji for the Applicant

No appearance for the Respondent

Court assistant – Adan

