



REPUBLIC OF KENYA



**Assets Recovery Agency v Kani (Civil Suit E035 of 2024) [2025] KEHC 8100 (KLR)
(Anti-Corruption and Economic Crimes) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E035 OF 2024
LM NJUGUNA, J
JUNE 11, 2025**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

MOHAMED HASSANI KANI RESPONDENT

JUDGMENT

1. Before this court is the Originating Motion dated the 25th October, 2024 brought by Assets Recovery Agency. The same is brought under Sections 81, 90 and 92 of the Proceeds of Crime and Anti- Money Laundering Act, 2009, Orders 51 Rule 1 of the Civil Procedure Rules and it seeks the following Orders;
 - a. The Honourable court be and is hereby pleased to issue an order in the nature of a declaration to the effect that Ksh. 850,940.40 held in Absa bank account No. 0161186686 in the name of Mohammed Hassan Kini are Proceeds of Crime and thus liable to be forfeited to the Government of the Republic of Kenya.
 - b. This Honourable court be and is hereby pleased to issue an Order forfeiting Ksh. 850,940.40 held in Absa Bank Account No. 0161186686 in the name of Mohammed Hassan Kini to the Applicant.
 - c. This Honourable court be and is hereby pleased to issue an Order directing Absa Bank Limited, being the Respondent’s bankers, to transfer Ksh. 850,940.40 held in the Respondent’s Absa account No. 0161186686 to the Applicant’s bank account that the Applicant’s Agency Director may designate.
 - d. Costs be provided for.



- e. Any other order that this Honourable court may deem fit, appropriate, fair, proper and just to grant.
2. The Originating Motion is premised on the grounds set out on its face and it's supported by the annexed supporting and supplementary affidavits both sworn by No. 62625, CPL Isaac Nakitare.
3. The Applicant is established under Section 53 of the Proceeds of Crime and Anti- Money Laundering Act (herein referred as Pocamla) as a corporate body with the mandate of identifying, tracing, freezing and recovering proceeds of crime.
4. That pursuant to part VIII, and in particular Sections 90 and 92 of the Pocamla, the Applicant is mandated to commence Civil proceedings for the forfeiture to the Government of the Republic of Kenya of all or any of property subject of a preservation order where the property is or has been intended for use in the commission of a crime or is proceeds of crime.
5. The Applicant states that, on or about 18th September, 2021, the Respondent was arrested at Ganjoni Estate within Mombasa Town, Mombasa County, trafficking in narcotic substances and conveying them in a motor vehicle Registration No. KCV 894V Daihatsu, Station Wagon (herein referred to as the Motor Vehicle).
6. That upon conducting a search in the Respondent's house No. 4 (CMM) flat No. 2 within Ganjoni Estate, the police recovered, inter alia, packages containing dry plant material, three rolls of plant material suspected to be narcotic drugs, a digital weighing scale, kitchen weighing scale and assorted clear polythene bags, assorted rizla papers. Further, that in the Respondent's motor vehicle, the police recovered, inter alia, a package of creamish powdery substance wrapped in cell tape in a blue non-woven bag, packages of plant material wrapped in a red -woven bag and twenty -two rolls of plant material suspected to be narcotic substances.
7. That the creamish powdery substance was found to be heroin weighing 531 grams valued at Ksh. 1,593,000 and the dry plant material was found to be Cannabis weighing 678.8 grams and valued at Ksh. 20,364.
8. That subsequently, on the 22nd September, 2021, the Respondent was charged before the Chief Magistrate's court in Mombasa with trafficking in narcotics drugs contrary to Section 4(a) of the Narcotics and Psychotropic Substances Act, 1994 vide Mombasa MCCR/E1928/2021- Republic v Mohammed Hassan Kini which is still pending hearing and determination.
9. The Applicant further states that it's investigations have established that between the years 2018 and 2024, the Respondent made numerous cash deposits and cash withdrawals from his Absa account No. 0161186686 which sums have been suspected to be proceeds of the Respondent's trafficking in narcotics substances. That, further investigations have established that the Respondent does not own or run any businesses and that he does not pay taxes.
10. That on the 2nd February, 2023, the Applicant took the Respondent's statement on the sources of his incomes used to acquire his properties including the motor Vehicle, and he stated that he is a fish vendor and that he rents his boat machine make Yamaha 9CC, but upon undertaking further investigations, the Applicant established that the Respondent is neither registered as a fisherman with, and neither does he hold any license issued by the Kenya Fisheries Service and that no certificate of outstanding service had been issued to him by The Kenya Fisheries Services and that he had not been registered as an owner of a motor boat with the Kenya Maritime Authority.
11. The Applicant further states that the Respondent had been registered with the National Council for Persons with disability under registration number NCPWD/P509145 and that he filed nil returns for



the period between 2016 to 2019 and has not filed returns between 2020 and 2023, and in view of the above, the monies deposited in the Respondent's account No. 0161186686 are most likely than not, proceeds of the Respondent's trafficking in narcotic substances.

12. The Respondent did not file any response to the Originating Summons despite having been served with the summons to enter appearance.
13. The court gave directions on filing of Submissions which the Applicant complied with.

Applicant's Submissions

14. In its submissions, the Applicant identified two issues for determination as follows;
 - i. Whether the monies are proceeds of Crime and liable for forfeiture to the Government of the Republic of Kenya
 - ii. Who should pay the costs of the suit
15. The Applicant submitted that it has established that the monies are proceeds of crime and thus liable to be forfeited to the Government of the Republic of Kenya in terms of Section 90(1) and 92 (1)(b) of the Pocamla, and therefore, it has discharged the burden of proof but the Respondent failed to discharge the evidential burden. Reliance was placed on the case of Pamela Aboo v Assets Recovery Agency and Ethics and Anti- Corruption Commission Nairobi CACA No. 452 Of 2018 (unreported).
16. The Applicant further submitted that it has proved that the monies were earned through illicit activities through the following evidence;
 - a. The Respondent was arrested with narcotic substances and was charged with the offence of trafficking in narcotic drugs in Mombasa MCCR /E1928/2012 which case is still pending hearing and determination
 - b. That the quantity of drugs and the paraphernalia found in the Respondent's vehicle and his residence leaves reasonable inference that he may be dealing in narcotic substances
 - c. An analysis of the Respondent's bank account and Mpesa wallets show that he would ordinarily make unexplained cash deposits and withdrawals. An analysis also shows that the Respondent deposited little sums of money between 2010 and 2018 and an analysis of his Equity bank account No. 01245096121100 shows that the account has remained dormant since 2012 and holds a balance of Ksh 270.40
 - d. That the Respondent's Absa account No. 01245096121100 shows that it remained dormant between January 2000 and July 2010. That he primarily makes unexplained cash withdrawals and deposits which increased gradually with 2019 having the largest cash deposit of Ksh. 200,000 which was made on 1st July, 2019. That the Respondent would commingle those funds earned from his business in narcotics drugs with legitimately earned monies such as monies paid by Messrs. Njoroge & company Advocates for the loss of his leg. That under Section 2 of Pocamla, proceeds of crime include property or economic advantage which was intermingled with property or economic advantage derived, directly or indirectly from illegal or unlawful sources.
 - e. The Applicant established that the Respondent did not have legitimate sources of income
 - f. That the Honourable court in HCACECCS /E008/2024 has made a finding that the Respondent's motor vehicle was acquired using proceeds of illicit trade and therefore, a proceed of crime.



Analysis And Determination

17. The court has considered the Originating summons, the supporting affidavit and the annexures, and the submissions filed herein by the counsel for the Applicant. The only issue for determination is;

Whether the monies constitute Proceeds of Crime and therefore liable for forfeiture to the Government of the Republic of Kenya;

18. What constitutes Proceeds of Crime is defined in Section 2 of Pocamlaas 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 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.”

19. The Applicant herein has moved this court for an order of forfeiture of Ksh. 850,940.40 under Section 90 of the Pocamla. The making of the forfeiture order is provided for under Section 92 and the High court has jurisdiction to make the order subject to Section 94. The order can be made if the court finds on a balance of probabilities that the property concerned: -
- Has been used or is intended for use in the commission of an offence; or
 - Is proceed of crime.
20. From the reading of Section 92, the court can only order forfeiture of property if it is satisfied on a balance of probabilities that the said property is intended for use in commission of offence or it is a proceed of crime.
21. The Applicant herein alleges that Ksh. 850,940.40 held in Absa bank account No. 0161186686 in the name of the Respondent are proceeds of crime and thus liable to be forfeited to the Government of the Republic of Kenya.
22. From the evidence that has been availed to the court by way of affidavits and annexures, the Respondent was arrested on the 18th September, 2021 at Ganjoni Estate, Mombasa County and was arraigned in court and charged with the offence of trafficking in narcotic substances contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Act, 1994 in Mombasa MCCR/E1928/2021, and conveying them in a motor vehicle Registration number KCV 894V –Daihatsu, Station Wagon. During the arrest, the police conducted a search on the motor vehicle and they recovered bhang and heroin according to the Government Analyst report. The investigations by the Applicant established that the Respondent engaged in illegal business of trafficking in narcotics where he received money being proceeds from the illegal trade and laundered the proceeds through his bank account number 0161186686 held at Absa Bank Limited.
23. The Criminal case is still pending before the Chief Magistrate’s court in Mombasa and even if it had been finalized, its outcome would not have any bearing on this matter as civil forfeiture targets the property but not the person, and are proceedings in rem as opposed to in persona. As such, they are not predicated on the guilt or otherwise of a person. See the case of NDPP v Prophet (5928/01 (2003) ZAW CHC 16, South African case.



24. In fact, a claim for civil recovery can be determined on the basis of conduct in relation to property without the identification of any particular unlawful conduct. In the case of Kenya Anti-Corruption Commission v Stanley Mombo Amuti [2017] eKLR, the learned Judge while dealing with forfeiture proceedings under Section 55 of the ACECA which is similar to proceedings under Section 92 of the Pocamla stated:-

“ 92. This is a claim for civil recovery. A claim for civil recovery can be determined on the basis of conduct in relation to the property without the identification of any other particular unlawful conduct. The Plaintiff herein, is therefore, not required to prove that the Defendant actually committed an act of corruption in order to invoke the Provisions of ACECA”.

25. In the case herein, the Applicant upon carrying out investigations and inspecting account No. 01245096121100 held at Equity bank established that it was opened in February, 2007 and the balance held as at 9th March, 2012 was Ksh. 270.00 and the bank account has remained dormant since then.

26. That upon analyzing the Respondent’s account number 0161186686 held at Absa bank limited, the Applicant established that it was opened in January, 2000 and remained dormant until July 2010. It primarily makes cash withdrawals and deposits increased gradually with 2019 having the largest cash deposits of Ksh. 200.000.00 made on 1st July 2019. That from 2021 the Respondent would commingle those funds earned from his illegal business in narcotics with his legitimately earned monies.

27. Further, the Applicant, by way of evidence produced documents that showed that on analyzing the Respondent’s M-pesa wallet, he would ordinarily make unexplained deposits and withdrawals with little deposits of money made between 2010 and 2018 and he could not explain the source of the money. The Applicant took the Respondent’s statement on the 2nd February, on the sources of his income used to acquire his properties and he stated that he is a fist vendor and that he rents boat machine make Yamaha 9CC, but on carrying out investigations, the Applicant established that he is neither registered as a fisherman and neither does he hold any licence by Kenya Fisheries Service and no certificate of outstanding service had been issued to him. That he had not been registered as an owner of a motor boat with the Kenya Maritime Authority. The Applicant also established that the Respondent filed nil returns for the period between 2016 to 2019 and has not filed any tax returns between 2020 and 2023.

28. This court dealt with High Court Anti- Corruption Case number E008/2024 (Assets Recovery Agency v Mohamed Hassan Kini), the Respondent herein, in which the Applicant had sought for forfeiture of the Respondent’s motor Vehicle KCV 894V as the same was acquired through proceeds of illicit trade, and in the court’s judgment delivered on the 27th February, 2025, the court made an order of forfeiture of the aforesaid vehicle after it found that it was acquired through proceeds of illicit trade.

29. It is worth noting that the Respondent did not defend the Originating Motion, and did not bother to explain the source of his income that is reflected in the bank statements of his bank account, or in the M-pesa mobile wallets.

30. In the end, it is the finding by this court that the Applicant has proved its case on a balance of probabilities. The court enters judgment in favour of the Applicant as follows;

A. An order is hereby issued declaring Ksh. 850,940.40 held in Absa bank account number 0161186686 in the name of Mohamed Hassan Kini, the Respondent herein, as proceeds of crime and thus liable to be forfeited to the Government of the Republic of Kenya.



- B. An order is hereby issued forfeiting Ksh. 850,940.00 held in Absa bank account number 01611186686 in the name of Mohamed Hassan Kini, to the Government of the Republic of Kenya.
- C. An order is hereby issued directing Absa bank limited, to transfer Ks. 850,940.40 held in the Respondent's Absa account No. 0161186686 to the Applicant's bank account or such bank account as the Applicant Agency Director may designate.
- D. The Respondent shall meet the costs of the suit.

31. It is hereby ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11TH DAY OF JUNE, 2025.

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L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Wambua for the Applicant

No appearance for the Respondent

Court assistant - Adan

