



REPUBLIC OF KENYA



**Assets Recovery Agency v Villy Garas Limited & 2 others (Civil Application E028 of 2023)  
[2025] KEHC 8105 (KLR) (Anti-Corruption and Economic Crimes) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8105 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CIVIL APPLICATION E028 OF 2023**

**LM NJUGUNA, J**

**JUNE 11, 2025**

**BETWEEN**

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

**AND**

**VILLY GARAS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**HUKURUTE AGENCY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**EQUITY BANK LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant herein filed the application dated the 20<sup>th</sup> November, 2024 under Section 5(1) of the [Judicature Act](#), Part 81 of the Civil Procedure Rules, (Amendment No. 3) 2020 of the English Civil Procedure Rules (England), Section 14 as read with Section 16(4), Sections 82 and 84 of the [Proceeds of Crime and Anti-Money Laundering Act](#) (No. 9 of 2009); Sections 3, 3A of the [Civil Procedure Act](#) and all enabling provisions of the law. The Applicant has sought the following Orders:-
  1. That the Honourable court be pleased to order that Mr. Gerera Komora Abaganda, Mr. Mohammed Buya Yusa, the directors of Villy Garas Limited and Hakurute Agency Limited and Dr. James Mwangi , the Chief Executive Officer of Equity Bank Limited be personally present on all dates appointed for the hearing and delivery of the ruling of the instant application.
  2. That the Honourable court be pleased to cite for contempt the following;
    - a. Gerera Komora Abaganda the 1<sup>st</sup> Respondent's director
    - b. Mohammed Buya Yusa the 2<sup>nd</sup> Respondent's director



- c. Dr. James Mwangi, the Chief Executive Officer of Equity Bank Limited
    - d. Equity Bank limited the interested party.
  3. That the Honourable court be pleased to issue an order compelling Mr. Gerera Komora Abaganda and Mr. Mohammed Buya Yusa the directors of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein and James Mwangi , the Chief Executive Officer of Equity Bank Limited and the interested party herein to jointly / severally deposit the forfeited funds of Ksh 2,573, 185.04 to the Applicant's Criminal Assets Recovery Fund Account No. 1240221339 held at Kenya Commercial Bank
  4. That the Honourable court be pleased to convict the contemnors pursuant to Sections 16(4) of the proceeds of Crime and Anti- Money Laundering sAct;
    - a. Gerera Komora Abaganda the 1<sup>st</sup> Respondent's director
    - b. Mohammed Buya Yusa the 2<sup>nd</sup> Respondent's director
    - c. Dr. James Mwangi, the Chief Executive Officer of Equity Bank Limited
    - d. Equity Bank Limited the interested party
  5. That the Honourable Court makes any other ancillary order it may deem fit for the proper, effective execution of its orders
  6. That costs be provided for.
2. The application is premised on the grounds set out on its body and it's supported by the annexed affidavit sworn by Mohammed Hussein, on the 20<sup>th</sup> November, 2024, in which he avers that he is part of the team of investigators who investigated the Respondent's properties with a view of identifying, tracing, seizure and recovery of the proceeds of crime on behalf of the Applicant.
  3. He depones that, on the 8<sup>th</sup> May, 2023, the Applicant received information of suspected conflict of interest, abuse of office, procurement fraud, tax evasion and money laundering involving the Respondents herein, and the County Government of Tana River, following which, they opened inquiry file number 43 of 2023 to investigate into the allegations and thereafter, sought warrants to investigate and restrict debits for a period of 21 days vide Milimani Chief Magistrates Anti-Corruption court Misc. E 053 of 2023 .
  4. That the orders were served upon the Interested Party on the 16<sup>th</sup> May, 2023 directing it to restrict debits against the above accounts registered in the name of the Respondents. That upon the expiry of the 21 days, the Applicant was granted an extension of the order for a further 14 days on 8<sup>th</sup> June ,2023 and the orders were served on the interested party on the same day.
  5. That following completion of investigations, the Applicant filed Misc. application E016 of 2023 for preservation of the balances of Ksh 1,671,309.19 and Ksh. 901,845,85 which were in account Nos. 1210279554145 and 1210277349550 in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, respectively and obtained orders which were served upon the Respondents on the 10<sup>th</sup> July, 2023. The said orders were subsisting for a period of 90 days from 28<sup>th</sup> July, 2023 when they were gazetted.
  6. That the Applicant thereafter filed and served forfeiture application in the High court Anti-Corruption court No. E028 of 2023 and vide a consent dated the 20<sup>th</sup> June, 2024, the preserved funds were forfeited and a Decree issued in favour of the Applicant. The Decree was served upon the interested party requesting it to transfer the preserved funds to the Applicant's accounts and the



- interested party confirmed having received the orders and stated that it had restricted the accounts for a period of 90 days from the 10<sup>th</sup> October 2024 when the orders were served on them.
7. That contrary to the averments by the interested party, it never restricted debits or preserved the funds in the accounts as the Respondents accounts continued to receive and withdraw funds despite existence of the court order. That the conduct of the interested party in failing to place a restriction on the said accounts despite having been served with the court orders is contemptuous of the Orders and this constitutes an offence under Section 14 as read with Section 16(4) of the POCAMLA.
  8. The 1<sup>st</sup> Respondent filed a replying affidavit sworn by Gerera Komora Abaganda, on 3<sup>rd</sup> April, 2025 in which he has stated that he is the Director of the 1<sup>st</sup> Respondent. He has averred that preservation orders were lifted vide Misc. Criminal application No. E053 of 2023 and the 1<sup>st</sup> Respondent was authorized to access its account. That the Applicant was instrumental in lifting the said orders, and therefore, the application herein is a non-starter, an abuse of the court process and the same has been brought in bad faith.
  9. The interested party and Dr. James Mwangi filed a joint replying affidavit which was sworn by Roy Akubu on the 5<sup>th</sup> February, 2025. He avers that Dr. James Mwangi is not a Director of the interested party and that his involvement is in his capacity as the Group Managing Director and Chief Executive Officer of Equity Group Holdings Limited which is the Group Holding Company where Equity Bank (Kenya) limited is a Subsidiary company among other companies and which is a non-operating entity. That the current Managing Director for Equity Bank Limited (Kenya) is Mr. Moses Okoth Nyabanda and he is the one who is involved in the day to day running of the interested party.
  10. He further avers that on the 16<sup>th</sup> May 2023, the interested party received a 21 days' time bound freezing order over the Respondents' accounts which was issued in Chief Milimani Cri. Application No.E053 of 2023 and the order lapsed on the 6<sup>th</sup> June, 2023.
  11. That on the 9<sup>th</sup> June, 2023, the interested party received an order dated the 8<sup>th</sup> June, 2023 extending the orders issued on the 16<sup>th</sup> May, 2023 for a further period of 14 days which it complied with accordingly. Further, on the 10<sup>th</sup> July,2023, the interested party received a ninety (90) days' time bound court order over the same accounts which was issued vide High court Misc. App No. E016 of 2023 and the interested party continued to free the said accounts accordingly.
  12. That as at the time of receipt of the order on the 10<sup>th</sup> July 2023, the maximum amounts held in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents accounts was Ksh. 450, 87 and 265,525.85 respectively. That on the 26<sup>th</sup> July,2023, the Bank received a rescission order over the Respondents accounts, and it allowed them to access their accounts and by the time it received the consent judgment dated the 20<sup>th</sup> June,2024 forfeiting the sums of Ksh. 1,671,309.19 and Ksh. 901,845.85 held in the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent's accounts, it was unable to comply with the demand following the events that preceded the service of the order, and indicated that there were insufficient funds in the subject accounts.
  13. He contends that the interested party has fully complied with the orders of the court, stating that Section 84 (a) of the POCAMLA, requires the Applicant to issue a notice of forfeiture proceedings to the Bank before the lapse of 90 days' time-bound court order to enable the Bank to comply and preserve the funds in abeyance of the outcome of the proceedings.
  14. The Applicant filed a supplementary affidavit sworn by Mohammed Hussein in which he has deponed that the order dated the 26<sup>th</sup> July 2023, sought to be relied on by the 1<sup>st</sup> Respondent, was extracted and served upon the interested party after the Applicant had already obtained preservation orders and served them upon the interested party on the 10<sup>th</sup> July, 2023. That, therefore, the interested party



cannot purport to rely on a Magistrate's order dated the 26<sup>th</sup> July 2023 to vacate preservation orders dated 7<sup>th</sup> July, 2023 which were issued by a superior court and which orders were never vacated, set aside, varied and/or appealed against and as such, they remained in force until fully executed.

15. That at the time of instituting forfeiture proceedings, and service of the orders, restricting debits and the preservation orders, Moses Okoth Nyabanda had not yet been appointed as the Managing Director of the interested party. Further, that vide a letter dated 1<sup>st</sup> August, 2024 the interested party confirmed that it was served with the orders dated the 16<sup>th</sup> May, 2023 and 9<sup>th</sup> June 2023 to restrict debit and preservation order dated the 7<sup>th</sup> July, 2023. He reiterated that the Respondents' accounts continued to operate even after the interested party was served with the preservation orders, and as such, the Respondents and interested parties ought to be reprimanded as their conduct undermines the efforts in fighting money laundering and erodes the public confidence in the rule of law.
16. The application was disposed of by way of written submissions.

### **Applicant's Submissions**

16. The Applicant identified one issue for determination;
  - a. Whether the 1<sup>st</sup> Respondent, interested party, Mr. Gerera Komora Abaganda and Dr. James Mwangi are in contempt of the court.
17. The applicant has submitted that it has demonstrated that it served the orders restricting debits and the preservation orders upon the interested party, a fact admitted by the interested party in its letter dated the 1<sup>st</sup> August, 2024. That the applicant has further demonstrated that the orders dated 7<sup>th</sup> July, 2023 were served upon the respondent on the 10<sup>th</sup> July 2023, but the interested party alleges that the order was supposed to be served upon the Managers of the Bank as that is what the order had stated, and as such, the Applicant had failed to comply with service of the said orders. In this regard, the Applicant relied on the cases of Kenya Tea Growers Association Vs Francis Atwoli & 5 others (2012) eKLR, Shimmers Plaza Limited Vs National Bank of Kenya Limited (2015) KLR and that of Republic Vs Ahmed Abolfathi Mohammed & Another (2018) eKLR.
18. On the Respondent's and the interested party's position that the Magistrate order issued on the 24<sup>th</sup> July 2024 which was served 14 days after the preservation order had been served upon the interested party was used to vacate the High court preservation order, and allowed the Respondents to access their accounts, the Applicant relied on the case of Fred Matiang'i (The Cabinet Secretary Ministry of interior and Co- ordination of National Government Vs Miguna Miguna & others) (2018) eKLR. The Applicant avers that the preservation order issued on the 7<sup>th</sup> June, 2023 was an order emanating from a Superior court and as such, the Magistrate's court order dated the 23<sup>rd</sup> July, 2023 could not supersede that of the High court. Reliance was placed on the case of Republic Vs Feisal Mohammed & others (2015) eKLR on the system of courts and the hierarchical order.
19. On the part of the interested party and Dr. James Mwangi, it was submitted that, Dr. Mwangi is not a Director of Equity Bank and he is not involved in the day to day operations of the interested party and that the day to day affairs of the interested party are run by Mr. Moses Okoth Nyabanda who is the current Managing Director. That the court orders that are the subject of these contempt proceedings were to be served upon the Managers of the Bank and the Applicant has not adduced evidence to show that the orders were served upon the Managers. As such, the Applicant has not discharged its burden of proof as required under Section 107(1) of the *Evidence Act*. Reliance was placed on the case of Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro (2015) eKLR and that of Sheila Cassatt Isenberg & Watoto World Centre Vs Antony Macatha Kinyanjui (2021) KEHC 5692( KLR).



20. The interested party and Dr. Mwangi further submitted that, be that as it may, it complied with the court orders that were served upon the Bank to wit; the order dated 16<sup>th</sup> May,2023 which was to last for 21 days and which lapsed on the 6<sup>th</sup> June 2023, the order dated 8<sup>th</sup> June 2023, extending the orders issued on 16<sup>th</sup> May,2023 for 14 days and that on the 10<sup>th</sup> July 2023, the bank received a ninety (90) days' time bound order and it proceeded to freeze the respondents accounts accordingly.
21. That the interested party was unable to comply with the demand that was issued to it vide a letter dated 15<sup>th</sup> July 2024, for it to forfeit Ksh. 1,671,309.19 and Ksh. 901,845.85 held in the Respondent's accounts as the Respondents had continually utilized the funds in their respective accounts, noting that the Applicant had failed to serve the bank with a notice of forfeiture proceedings.

### **Analysis and Determination**

22. This court has considered the application and the respective affidavits that have been filed herein by the parties. In my view the only issue for determination is;
  - a. Whether Gerera Komora Abaganda, Mohammed Buya Yusa, Dr. James Mwangi and Equity Bank limited are guilty for contempt of court.
23. The application before the court is one for contempt of court. What is contempt of court?
 

“Contempt of court is that conduct or action that defies or disrespects authority of court. Black’s law Dictionary 9<sup>th</sup> Edition, defines contempt as;

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
24. Dealing with the question of contempt in Econet Wireless Kenya Vs Minister for information & communication of Kenya & another (2005) KLR 828, the court underscored the importance of obeying court orders, stating:
 

“It is essential for the maintenance of the rule of law and order, that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of it’s orders and will not shy away from it’s responsibility to deal firmly with proved contemnors. It is the plain and the unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (Emphasis).
25. Again, in the case of Teachers Service Commission Vs Kenya National Union of Teachers & 2 others (2013) eKLR, the court observed;
 

“The reasons why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the Presiding Judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”.



The judge went further to state;

“I am of the same persuasion that the reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for the law and the respect for law and order. As it was in the time of Chief Justice McKean in 1786 so it is today that courts have a duty to ensure that citizens bend to the law and not vice versa. Indeed, if respect for the law and order never existed, life in society would be but short, brutish and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because, a party who obtains an order from court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally, without exception. An order is meant to be obeyed and not otherwise”.

26. The statutory basis of contempt of court in so far as the High court is concerned is Section 5 of the *Judicature Act*. Section 63 (c) of the *Civil Procedure Act* provides that a disobedience of an order of a temporary injunction will attract punishment in the form of imprisonment or attachment and sale of the contemnor’s property.

27. Section 5(1) of the *Judicature Act* provides as follows;

“The High court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High court of justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”

28. Contempt of court is in the nature of criminal proceedings and, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the Applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in the case of *Gatharia K. Mutikika Vs Baharini Farm Limited (1985) KLR*

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi- criminal in nature.

However, the guilt has to be proved with such strictness of proof as is the gravity of the charge... Re course ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited , should be jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject....applying the test that the standard of proof should be consistent with the gravity of the alleged contempt...it is competent for the court where contempt is alleged to or has been committed , and or an application to commit, to take the lenient course of granting an injunction instead of



making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

29. In the application before the court, the Applicant has urged the court to cite the Respondents and the interested party for contempt of court for failing to comply with court orders that were issued by the court.
30. The sequence of events in this case is as follows; on the 16<sup>th</sup> May, 2023, the applicant sought warrants to investigate the Respondents accounts and on the same day, it obtained orders restricting debits of the Respondents’ accounts for a period of 21 days vide Milimani Chief Magistrate’s court Misc. Application No. E 053 Of 2023. The Applicant was on, the 8<sup>th</sup> June, 2023 granted an extension of the said orders for a period of 14 days and at as that date, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents accounts had balances of Ksh. 1,671,309.19 and Ksh. 901,845.85 respectively.
31. The Applicant filed an application for preservation of the funds held in the Respondents’ accounts and the High court issued preservation orders on the 10<sup>th</sup> July 2023 which were gazetted on 28<sup>th</sup> July, 2023, and on the 14<sup>th</sup> June, 2023 parties recorded a consent for forfeiture of the funds.
32. However, when the Applicant wrote to the interested party to transfer the funds into it’s account at the Kenya Commercial Bank, the interested party wrote back stating that it could not comply with the demand by the Applicant as the Respondents’ accounts held insufficient balances to satisfy the forfeiture amount. In other words, the interested party stated that it was unable to comply with the court order as it had proceeded to lift the preservation order on the account as the interested party had not been served with an extension of the preservation order. Further, that on the 26<sup>th</sup> July, 2024 it was served with a lifting order issued in CMCC Milimani Criminal App. E053 of 2023 over the subject accounts.
33. The court has perused all the documents and the orders that were issued in this matter. The order issued on the 16<sup>th</sup> May, 2023 restricting the Respondents’ accounts was issued for a period of 21 days and it lapsed on the 5<sup>th</sup> June, 2023 and therefore, by the time the orders were extended on the 8<sup>th</sup> June,2023, they had already lapsed and not capable of being extended. However, the court has noted that for that period the order was in force and even within the extended period, there were no transactions that took place in the Respondents accounts.
34. The issue then revolves around the High court Orders that were issued on the 10<sup>th</sup> July 2023 preserving the funds, and the subsequent orders forfeiting the funds in the Respondents’ accounts. The said preservation orders were to last for a period of 90 days which means that the orders lapsed on the 10<sup>th</sup> October, 2023. The record shows that the Applicant filed an application for forfeiture on the 24<sup>th</sup> October, 2023, but the preservation orders were never extended which means by the time the parties entered a consent to have the funds in the Respondents’ accounts forfeited, there were no orders in place preserving the funds.
35. However, looking at the 1<sup>st</sup> Respondent’s account for the period between 10<sup>th</sup> July,2023 and 10<sup>th</sup> October,2023 there were activities that took place in those accounts in terms of debits and credits including a sum of Ksh, 992,380 that was credited into the account on the 11<sup>th</sup> September,2023. Similarly, a number of transactions were done in the 2<sup>nd</sup> Respondents account including a credit of Ksh 1,862,239.15 from Tana River County which was credited on 27<sup>th</sup> March, 2023 and was withdrawn the following day. This, therefore, means that despite the preservation order having been in place, the Respondents continued to operate their accounts which included withdraw of the funds that the order was meant to preserve.



36. The Respondents and the interested party have relied on the order that was issued in E053 of 2023 in the Chief Magistrates court lifting the earlier order that had been issued. The said order was issued on 24<sup>th</sup> July 2023 when the High court order preserving the funds was still in force. I wish to note that the Chief Magistrate's order could not supersede the order issued by the High court as the latter is a higher court and therefore, the orders by the High court were binding on the Respondents, interested party and on the Chief Magistrate's court. The Respondents and the interested party thus acted contrary to the court order issued by the High court in E016 of 2023.
37. As for Dr. James Mwangi, it has been deponed that he is not a Director of the interested party and his involvement with the affairs of the interested party is in his capacity as the Group Managing Director and the Chief Executive officer of Equity Group Holdings Limited which is the group holding company where the interested party is a subsidiary among other companies, and which is a non-operating entity. Annexed to the interested party and Dr. Mwangi's replying affidavit to the application which is the subject matter of this ruling, is CR 12 which shows who the Directors of the interested party are, and Dr. James Mwangi is not one of them. This court cannot, therefore, cite him for contempt of court and since there is no evidence of service of the application upon any of the Directors of the interested party, this court is unable to make any adverse orders against them.
38. For the foregoing reasons, this court finds that the application has merits and make the following orders;
- a. Gerera Komora Abaganda, Mohammed Buya Yusa are both found to be in contempt of the court.
  - b. The two individuals named in (a) above are hereby ordered to deposit Ksh. 1,671,309.19 and Ksh 901,845.85 respectively, to the Applicant's Criminal Assets Recovery Fund account No. 1240221339 held at Kenya Commercial Bank in order for them to purge the contempt.
  - c. The matter shall be mentioned on a date convenient to the parties when the Directors of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents above named, shall physically attend court for mitigation and sentencing.
  - d. The Applicant is awarded the costs of the application to be paid by the directors of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - e. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Mr. Kandie for the Applicant

Mr. Munje for the Respondents

Mr. Mbanji holding brief for Ngugi for the Interested Party and Dr. James Mwangi

Court assistant - Adan

