



**Assets Recovery Agency v Sharif (Anti-Corruption and Economic Crimes Civil Suit E011 of 2021)
[2025] KEHC 10495 (KLR) (Anti-Corruption and Economic Crimes) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10495 (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 E011 OF 2021**

NW SIFUNA, J

JULY 16, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

MOHAMMED HASSAN SHARIF RESPONDENT

JUDGMENT

1. The Applicant in this suit, is the Assets Recovery Agency [ARA, hereinafter referred to as the Agency]. The Agency is a Kenya Government Anti-Corruption Agency, established under PART VI of the Proceeds of Crime and Anti Money Laundering Act [[Act No. 9 of 2009](#)]. The Act is popularly referred to as POCAMLA. The Agency, and which is established as a body corporate, has the mandate of identifying, tracing, and recovering proceeds of crime. With the authority to institute civil proceedings for the recovery of proceeds of crime and seek orders for forfeiture of assets to the government where there are reasonable grounds to believe that such assets are proceeds of crime.
2. Section 2 of POCAMLA states that the term “proceeds of Crime” refers to:

“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.”



3. The agency also has policing powers to enable it not only conduct investigations, but also to identify, trace, freeze and recover such assets and funds as are considered proceeds crime. It is because of these policing powers, that it has police officers seconded to it.

This Suit

4. This suit seeks the forfeiture of the said USD 29,000 to the Kenya Government. The prayers in the Originating Motion are as follows:
 - a. An order declaring that USD 29,000 recovered from the Respondent are proceeds of crime and therefore liable for forfeiture to the Kenya Government.
 - b. An order ordering the forfeiting of the said money to the Kenya Government, and as well as facilitating its transfer.
5. The motion was supported by the Supporting Affidavit of NO. 62047 CPL Fredrick Muriuki an investigator working with the Agency. The same was sworn on 20th May 2021.
6. The facts of this suit, as stated in the Applicant's Originating Motion dated 20th may 2021, are that on or about 13th July 2020, along the Nairobi-Garissa Highway, a multi-agency team manning a road block at Migwani Junction, found the Respondent Mohammed Hassan Sharif in possession of US Dollars 29,000 in denomination of 100 USD bills [almost Ksh 4 Million]. This money was found on him while he was travelling in Motor Vehicle Reg No. KCU 007A as a passenger.
7. That upon being suspected to be proceeds of crime, the money was seized and confiscated from him; and he was prosecuted in Nairobi Magistrate's Court Anti-corruption Criminal Case No. 2221 Of 2021. Which case ended in the Respondent's favour, by being dismissed for no case answer [Section 210 of the *Criminal Procedure Code*, cap 75 Laws of Kenya]. In that case. the Respondent was charged with the Offence of Unlawfully Obtaining Property, contrary to Section 323 as read with Section 36 of the *Penal Code* [Cap 63 Laws of Kenya]. Section 323 provides as follows:

“Any person who has been detained as a result of the exercise of the powers conferred by Section 26 of the *Criminal Procedure Code* [Cap 75] and is charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court of how he came by the same, is guilty of a misdemeanor.”
8. He was at the same time sued in this suit on the same facts. This suit is stated to have been filed pursuant to Section 81, 90 and 91 of POCAMLA, is supported by the Supporting Affidavit of NO. 62047 Corporal Fredrick Muriuki sworn on even date. The deponent is a police officer attached to the Applicant [the Agency ARA] as an investigator. The Agency also subjected the money to a forensic test as to its genuineness. The test revealed that this were genuine currency.
9. From this deponent's explanation, the Agency suspects and holds the said money to be proceeds of crime. For the reason that the explanation the subject gave to the Agency's investigators as to the source of the money, was, in their opinion, not convincing and persuasive enough; and them having not traced the same in the Statements from his Equity Bank Account No. 10300162981460.
10. This investigator has stated in the Supporting Affidavit, that the subject/Respondent failed to explain any legitimate source of the money or tender any documentation to support it.



The Respondent's Response

11. In the Replying Affidavit that the Respondent filed in response to the Agency's claim, he has stated that he is a livestock farmer who is also involved in livestock trade. That he is a trader engaged in livestock trade [purchase and sale] in various markets in Kenya. Including Garissa, Mandera and Nairobi. Further that he is a hard-working polygamous man, whose wives Mariam and Nimo, are industrious.
12. He has further stated that he has been in this trade for many years, and that the mode of payment in livestock trade in this country is cash. That prior to his travel, he had sold a total of 105 head of cattle, at prices of between Ksh 25,000= and Ksh 31,000=. That after selling that cattle, he purchased another 100 head of cattle, which were transported and sold in Nairobi at a total of Ksh 3,250,000=. Which amount he says he converted into US dollars. He has even annexed to his Response, receipts from the County Government, of his livestock sales.
13. Which receipts the Agency has rubbished as non-genuine and unauthenticated by the source. That he has not produced any authentication from the County Government. Further that his alleged income does not match his Tax Returns to the Kenya Revenue Authority [KRA]. For those reasons, the Agency has firmly held that the explanation he has given to its investigators is unconvincing and non-persuasive. Hence unsatisfactory; and that his supporting documents are dubious.

Analysis and Determination

14. This suit proceeded by way of written submissions. With each party filing its submissions. The issues I am supposed to determine in this suit are two-fold:
 - a. Whether the money [USD 29,000] that the Respondent was found with and which is the subject of this suit, is proceeds of crime.
 - b. Whether this Court should order that the said money be forfeited to the Kenya Government, as proceeds of crime.
15. Under Kenya's Anti-Corruption law, civil forfeiture suits can either be brought by the Assets Recovery Agency [ARA] or by the Ethics And Anti-corruption Commission [EACC]. EACC's forfeiture suits are filed under the ACECA, while the ARA's forfeiture suits are filed under the *Proceeds of Crime and Anti-Money Laundering Act [Act No. 9 of 2009]*, popularly referred to as the POCAMLA].
16. Distinguishing forfeiture proceedings under the two legislations, Okwengu JA, in Pamela Aboo v Assets Recovery Agency & Another [Supra], observed as follows:

“ACECA and POCAMLA provide for forfeiture of illegally acquired property and proceeds of crime, respectively. However, there is some distinction in the procedure provided in the two statutes. While in POCAMLA, Section 94 as read together with Section 92 empowers the court to issue an order of forfeiture of proceeds of crime if it is proved on a balance of probability that the property has been used or is intended for use in the commission of an offence or is proceeds of crime, ACECA provides under Section 55 for forfeiture of unexplained assets which is concerned with disproportion between the assets concerned and the known legitimate income of a person found with the assets.”
17. It is a trite principle of law, that he who alleges must prove. This is a general rule, and which like any other general rule in law, has exceptions. To act to the contrary, one has to bring oneself under those exceptions; otherwise ordinarily, it is the allegor that has the burden of proving that which he or she



has alleged. Under Kenyan law, this general rule has been encapsulated in Sections 107 to 109 of the *Evidence Act* [Cap 80 of the Laws of Kenya].

18. In Nairobi Civil Appeal No. 452 Of 2018 Pamela Aboo v Assets Recovery Agency & Another, the Court of Appeal addressed this issue of the legal burden of proof, and contradistinguished it with the evidential/evidentiary burden of proof. In that Appeal, Warsame JA explained as follows:

“The legal burden lies only on one of the parties and does not shift to the other party throughout the length and breadth of the trial. Section 108 explains that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

“On the other hand, evidential burden refers to the obligation on a party to adduce sufficient evidence of a particular contested fact in order to justify a decision on that fact in his favour. It is also elementary that in civil cases, the standard of proof required is on a balance of probabilities or on preponderance of evidence.

“A litigant who fails to discharge the evidential burden in a case carries the risk, he may lose the whole or some part of the case. Furthermore, unlike the legal burden, the evidential burden is not static; it keeps shifting between the parties throughout the trial.”

19. As I stated in Nairobi HC ACEC NO. E022 OF 2023 [O.S], there has been a mistaken position that in forfeiture proceedings, all that the Anti-Corruption Agency needs to do is allege, and the legal burden of proof is then on the subject to explain how the assets were acquired or the source of funds. I can't disagree more. That legal burden of proof remains with the Agency throughout the suit and at no time does it shift to the subject. This is because this burden rests on the party that will lose the case if no evidence is adduced at all on either side. That party in these suits, is the Commission as the instituter of suit.
20. The burden borne by the subject to explain, is only an evidentiary burden, and which like a pendulum will keep swinging between the Agency and the subject on particular assertions and counter-assertions. It will at the onset of the case rest with the Agency, and then shift to the subject once the Agency has established a prima facie case. A prima facie case is one that requires an answer from the other party.
21. This suit being a civil suit and these proceedings being civil proceedings and not criminal proceedings, the required threshold of proof [also called the standard of proof], is that of a balance of probability. This standard and which is also described as preponderance of doubt [or preponderance of evidence as referred to in the Black's Law Dictionary], is of a lesser degree than the criminal law's beyond reasonable doubt; and comparatively easier to achieve than the latter.
22. Applying this to civil forfeiture proceedings, I take the view that the standard of proof on a balance of probability, applies to both parties, and is the same for both of them. For the Agency it has to establish a prima facie case on a balance of probabilities; and so is the case with any explanation offered by the subject on the source of funds or how an asset was acquired. If at the close of the evidence, an objectively-minded person seized of the facts will say this fact is more probable than not, this standard will have been attained.
23. While civil forfeiture suits such as this one, are based on suspicion [and which should be reasonable suspicion], a court of law is a court of proof. It is not a court of mere perceptions, suppositions and presumptions. Therefore, to sustain a suit of any kind, including a civil forfeiture suit such as this one, some form of proof is required. Even from the Anti-Corruption Agency. As a court of law unlike a lynch mob, acts only on evidence and not mere unproved allegations and assertions. Such evidence



being satisfactory and to the required legal threshold of proof. As such, this Court cannot act without evidence, or outside the evidence on record.

24. In this suit, the Agency is invoking this Court's jurisdiction under Sections 81,90 and 92 of POCAMLA; which sections provide as follows:

Section 81

- [1] All proceedings under this Part shall be civil proceedings.
- [2] The rules of evidence applicable in civil proceedings shall apply to proceedings under this Part.

Section 90

- [1] If a preservation order is in force, the Agency Director may apply to the High Court for an order forfeiting to the Government all or any of the property that is subject to the preservation order.
- [2] The Agency Director shall give fourteen days notice of an application under subsection [1] to every person who served notice in terms of section 83[3].
- [3] A notice under subsection [2] shall be served in accordance with the provisions of the *Civil Procedure Act* [Cap. 21].
- [4] A person who served notice under section 83[3] may appear at the hearing of the application under subsection [1] to—
 - [a] oppose the making of the order; or
 - [b] apply for an order—
 - [i] excluding his interest in that property from the operation of the order; or
 - [ii] varying the operation of the order in respect of that property, and may adduce evidence at the hearing of the application.

Section 92

- [1] 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.
- [2] The Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the Government of property forfeited to it under such an order.
- [3] The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the Court from making the order.
- [4] The validity of an order under subsection [1] 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.



- [5] The Registrar of the High Court making a forfeiture order shall publish a notice thereof in the Gazette as soon as practicable but not more than thirty days after the order is made.
- [6] A forfeiture order shall not take effect—
- [a] before the period allowed for an application under section 89 or an appeal under section 96 has expired; or
- [b] before such an application or appeal has been disposed of.
25. The threshold for assets to be found to be proceeds of crime was explained in the case of Director of Assets Recovery Agency & Others v Green & Others [2005] EWHC 3168 where it was stated as follows:
- “In civil proceedings for recovery under Part 5 of the Act, the Director need not allege the commission of 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.”
26. In a forfeiture Application, the burden of legal burden of proof lies on the Applicant, throughout the proceedings, to demonstrate reasonable grounds to believe that the suit assets are proceeds of crime.
27. As already stated in this judgment, the Agency has dismissed as unconvincing, the said explanation by the Respondent as to the source of that money; and as false, the documents supplied by him in support of that explanation. Where the suspect has in his defence supplied documents to the investigator or the Court, the investigator and the Anti-Corruption Authority should endeavor to personally verify not only the authenticity but also the credibility of such documents.
28. The Respondent having given those explanations and supplied those documents to the Agency’s investigators, the investigators were reasonably expected to act diligently, and probe, as well as verify the same from all the possible contacts, and identified persons of interest. That is what is called investigations.
29. They should for instance do some background checks and probing, into the typical local livestock trade. Including the established business practices and business customs- of this largely informal trade. The investigator has a legal duty to interrogate the suspect as well as any contacts; and record their statements.
30. Being a public institution, the ARA is under a public duty to provide in the proceedings, not only the evidence that incriminates the suspect, but also that which exculpates him if available [exculpatory evidence].
31. The investigators to have themselves visited the various County offices stated by the Respondent to have issued the receipts; and confirmed from the records maintained in those offices. They should have conducted field investigations instead of merely arm-chair investigation in the comfort of their offices. On this I am fortified by the holding in the Pamela Abo case, where the Court of Appeal in criticizing this same investigatory approach, observed that the Agency’s investigators should have interviewed all the contacts and persons of interest mentioned by the subject.
32. In so doing, an investigator will not only be fulfilling the demands of his job, but also fulfilling his public duty of conducting investigations in a manner that is professional, objective, transparent and accountable. This to me is a higher calling. In this particular case of Mohammed Hassan Sharif, the



investigators manner of investigations, were opaque, idle, sham, and leisurely. The resorting to Tax Returns for instance, was a far-fetched template, that cannot be the sole consideration in ascertaining income. There are consequences for inaccurate returns and even false returns. For those, recourse lies elsewhere.

33. Those returns are submitted to the Kenya Revenue Authority [KRA], and not the ARA; and are for purposes other than the explanation or justification of one's wealth. They are self-assessment, for purposes of computing the tax payable. In all fairness, such cannot be the basis for rubbishing the Respondent's explanations and documents. Anti-corruption laws were not meant for ensnarement and entrapment, as assumed by many an investigator.
34. It is clear from the events of the recovery, that the Agency's investigators were hell-bent on building a case against the subject, no matter how much explanation he would make, no matter how much documentation he would supply, and no matter how much evidence he would avail to them. No wonder the conclusions they arrived at, were overly subjective [rather than objective] and convoluted.
35. The investigators applied a subjective standard, apparently actuated by a pre-determined mind set; laced with cynicism and improper motive. That is not how this country should drive the war against corruption and economic crime. This is unlike this Court, which must be objective, as well as apply the test of a reasonable man. A reasonable man, is a by-stander of ordinary intelligence, fair judgment; weighing the facts objectively and intelligently without bias, prejudice, intrigue or improper motive. It is only this threshold, that can raise the Agency's suspicion, from reasonable suspicion, into proven fact.
36. It is on the basis of such sham, hurried and perfunctory "investigations", that the Agency is urging this Court to hold that the subject money is proceeds of crime, divest the Respondent of it, and order its forfeiture to the Kenya government. While the Agency's entire approach is speculative and based on suspicion, the Court's approach ought to be factual, A fact has to be one that has been established by some evidence or proof.
37. In order to conclude that an asset is a proceed of crime, Agency ought to go beyond mere suspicion and get into the realm of proof. The assertion has to be a fact, and the idea of crime and criminal conduct has to be demonstrated. It cannot just be left to sheer guess work and speculation. It has to be an act or conduct that the law has declared to be criminal and criminalized. It has to be a crime known to law i.e. a crime in the statute books. It has to be a conduct or act that is by law criminalized. Not just a generally undesirable conduct or act.
38. To totally off-load the burden of proof from the anti-corruption authority and place it entirely on the suspect/subject, not only violates a cardinal legal principle that the burden of proof is on he who alleges. This will make a mockery of justice and the court process.
39. The filing of asset recovery proceedings has to as of necessity be preceded with credible investigations. The investigations should not only be thorough, but should also be conducted in just, transparent, accountable and professionally. The investigators should not ignore or disregard any available evidence or facts or documents supplied by the suspect. They should dexterously and professionally probe, interrogate, analyze such facts and documents. Noting to verify all the available evidence.
40. One wonders whether the junior cadre police officers e.g at Corporal level, that the ARA has as investigators, have the mettle to investigate complex corruption and economic crime cases, or the courage to investigate powerful individuals and government officials. The latter can be so intimidating for them.



Final Finding and Orders

41. The evidence so far on record, is insufficient to support that assertion that the USD 29,000 found on the Respondent during a search on 13th July 2020, the subject of this suit, is proceeds of crime. There is therefore no legal basis for ordering its forfeiture to the Kenya Government as proceeds of crime. In consequence, this suit fails and is hereby dismissed with costs. The money was been preserved by an interlocutory preservation orders issued on 12th March 2021. Those orders are hereby discharged, and it is hereby ordered that the money be released forthwith to the Respondent, unless otherwise lawfully held for any other lawful purpose.

DATED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF JULY 2025.

PROF [DR] NIXON SIFUNA

JUDGE

