



Assets Recovery Agency v Wachira (Anti-Corruption and Economic Crimes Civil Suit E007 of 2025) [2025] KEHC 10169 (KLR) (Anti-Corruption and Economic Crimes) (15 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10169 (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 E007 OF 2025**

LM NJUGUNA, J

JULY 15, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

ESTHER WAMBUI WACHIRA RESPONDENT

JUDGMENT

1. The applicant, a statutory body established under Section 53 of the *Proceeds of Crimes and Anti-Money Laundering Act* (hereinafter referred to as POCAMLA) with mandate of identifying, tracing, freezing and recovering proceeds of crimes has brought this matter against the respondent by way of originating motion dated 21-02-2025 praying for the following orders;
 1. That this Honourable Court be pleased to issue orders declaring motor vehicle registration number XXXX XXXXX Chassis Number XXXXXXXXXXXXXXXX Nissan Note registered in the name of Esther Wambui Wachira as proceed of crime.
 2. That the Honourable Court be pleased to issue orders of forfeiture of the motor vehicle registered in the name of the respondent in prayer 1 above, to the Assets Recovery Agency on behalf of the Government.
 3. That this Honourable Court be pleased to issue an order directing the Director National Transport and Safety Authority (NTSA) to transfer ownership of the motor vehicle in prayer 1 above in favour of the applicant.
 4. That this Honourable Court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders.



5. That costs be provided for.
2. The originating motion is supported by affidavit of Martin Samburumo who is an investigator attached to the applicant. The application is based on grounds on the face of it which are basically that the respondent is reasonably believed to be involved in trafficking in narcotic drugs and the income generated from that illicit trade was used in purchasing the motor vehicle the applicant is seeking to forfeit.
3. It is averred that on 19th June 2024, the applicant received information that the respondent was engaged in the aforesaid business upon which it embarked on investigations which revealed that the respondent was arrested at her residential home in Grogon area of Kirinyaga road with Nairobi County by police officers from the Anti-Narcotics Unit who recovered a white powdery substance in a clear polythene. Upon being subjected to tests, the substance which weighed 187.51 kilograms was found to be cocaine, a narcotic drug under *Narcotics Drugs and Psychotropic Substances Control Act*, Chapter 245 of the Laws of Kenya.
4. Following the above, the respondent was arraigned in JKIA law courts where she was charged with the offence of trafficking in narcotics drugs contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances Control Act. The applicant conducted further investigations upon getting warrants from the Chief Magistrate's court vide miscellaneous criminal application numbers E883 of 2024 and E1204 of 2024 and managed to get statements for the respondent's bank account held at Cooperative Bank, Kenya Commercial Bank, Equity Bank and Safaricom line. These were account numbers XXXXXXXXXXXXXXXX (Cooperative Bank), XXXXXXXXXXXXXXXX (Equity Bank), XXXXXXXXXXXXXXXX (Kenya Commercial Bank) and XXXXXXXXXXXXXXXX (Kenya Commercial Bank) and line number XXXXXXXXXXXXXXXX (Safaricom line).
5. The deponent adds that an analysis of the above accounts revealed that the account at the Cooperative Bank did not have any notable credits while the ones at Equity Bank and Kenya Commercial Bank had suspicious deposits where the respondent would withdraw cash in a manner suggestive of illicit transactions. Account number XXXXXXXXXXXXXXXX transacted a sum of Kshs 1,638,388.40 between September 2022 and August 2024 through phone number XXXXXXXXXXXXXXXX. The deposits would be followed by withdraws in cash or purchases through cards. For account number XXXXXXXXXXXXXXXX the respondent deposited a total of Kshs 3,157,330.00 through her mobile phone between January 2022 and August 2024. Between January and August 2024, the respondent received Kshs 3,157,330.00 deposited through KCB agents which did not narrate the sources. She would then withdraw money in tranches of Kshs 2,000.00 and Kshs 20,000.00 and spend others through purchases.
6. It is deponed further that the respondent's mpesa account received a total of Kshs 10,559,024.00 between 12-04-2019 and 9-09-2024 which is a span of five years and between 12-04-2019 and 22-03-2022 the same line received Kshs 2,745,105.00 and Kshs 3,709,410.00 through deposits in mpesa agents. Between 12-04-2019 and 22-03-2022 the respondent did a structured withdrawal of Kshs 943,753.00 which the investigator suspected was used to purchase motor vehicle registration number XXXX XXXXX on 23-03-2022 from Autodirect Limited at Kshs 730,000.00 in cash. The deponed argues that the manner the applicant operated was suspicious of laundering of money earned from trafficking in narcotic drugs.
7. The respondent has opposed the application through her replying affidavit sworn on 13th March 2025 in which she depones that she is a business lady within the Nairobi central business district where she operates a babies' clothes shop at a place, she calls bebabeba trade centre and denies being involved in drugs. She claims that the motor vehicle was bought for her by her former fiance by the name Prince Henry Moleti a Ghanaian who was also a businessman. She claims to have met the fiance in 2016 while



in Hong Kong. She alleges that the fiance registered the motor vehicle in her name allegedly because NTSA system does not allow a foreigner to have account with it. Thereafter, the fiance enrolled her to a driving school and upon completion, she got a driving licence on 13th March 2023. The fiance left the country in February 2024 and left the car in her possession.

8. She adds that her house was searched on 18th March 2024 by people who identified themselves as police officers and who went on to plant the drugs in her bedroom, arrested her and confiscated her car which she has not seen up to date. She denied using her accounts to convey proceeds of crimes and maintained that the monies which passed there were from her business where customers paid through her mpesa account number XXXXXXXXXXXX. She added that Kshs 220,000.00 deposited in her Equity Bank account was from her mother and aunt after they sold their father's land in Murang'a. She insisted that the money in the accounts was not used to buy the motor vehicle.
9. The parties filed their respective submissions which I have gone through. This being a recovery under Sections 90 and 92 of POCAMLA, the applicant is required to establish a prima facie case that the asset it seeks to forfeit is proceeds of crime. The applicant has not sought to forfeit any money in any of the bank accounts but has pursued the motor vehicle which is said to have been purchased using money obtained from the illicit trade. It must therefore establish nexus between the funds and the illicit trade.
10. The test here is on a balance of probabilities and it must be shown that there were reasons to believe that the said funds were from the said trade. Once that is done, the respondent is under an obligation to show that the funds were from legitimate business and that the vehicle was purchased using legitimately acquired money. Honourable Justice Mumbi Ngugi as she then was held in *Assets Recovery agency v Joseph Wanjohi, Jane Wambui Wanjiru, Sidiwe Manufacturers & Suppliers & Marudiano Zone Ltd* (2020) KEHC 10072 (KLR) that;

‘Once the applicant establishes, on a balance of probability, that the assets in questions are suspected to be the proceeds of crime, a duty is cast on the respondent to establish the contrary. Which leads me to a consideration of the question whether the assets at issue in this matter are proceeds of crime as alleged by the applicant.’

11. The POCAMLA defines proceeds of crime in Section 2 as follows;

‘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.’

12. It is common ground that the respondent's house was searched on 18-03-2024 upon which she was arrested and later charged with offence of trafficking in narcotic substances in JKIA law courts vide criminal case number E044 of 2024. The point of departure is whether the cocaine was recovered from the respondent's house or it was planted there by the police officers. This is not a point for this court's consideration. It is an issue which should be left to the court that is trying the criminal case and I do not wish to make any further comments on the same. In any event the finding of this court on forfeiture



would not be affected by the acquittal or conviction in the criminal case. That is the purport of Section 92(4) of POCAMLA which provides that;

‘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.’

13. This is an important Section of the law in preventing money laundering and recovery of proceeds of crime as it ensures that the process is not encumbered by the insufficiency in evidence owing to the intricacies of sustaining criminal convictions. In Assets Recovery Agency v Active Electrons Africa Limited & 3 others (2023) KEHC 1766 (KLR), it was held that;

‘The intention or purpose of Sections 92(4) of the Proceeds of Crime and Anti-Money Laundering Act is to ensure that people do not benefit from illicit wealth; that the Agency is able to deal with the incidence of illicit enrichment whether or not the persons involved have been found guilty of criminal offences.’

14. The applicant has in my view been able to establish that there were reasonable grounds to believe that the respondent was dealing with narcotics drugs. The deposits shown in the bank accounts statements cannot be made by a person who is not earning money from a regular source. The deposits went down after the respondent was arrested and it has not escaped this court’s mind that the deposits preceded the time she claims to have started her clothes business. She did not tell the court when she came back to the country from Hong Kong. Whereas she has explained the Kshs 220,000.00 which was from her mother’s account, I find the explanations for the deposits in the other accounts wanting.
15. The respondent has deponed that she does business of selling babies’ clothes where she gets her legitimate income. She has annexed a lease agreement for the premises in which she claims to be running the business, a single business permit form the City of Nairobi County and receipts for payment of rent. According to the respondent, she made money while living in Hong Kong where she met the purported fiance but she has not produced any travelling documents or anything to show that she was in the business she alleges to have been in before she returned to Kenya.
16. The respondent has submitted that the applicant has not produced immigration records to prove that the said Prince Henry Moleti was not in Kenya at the time the vehicle was purchased. In my view, if that needed to be proved, the burden of doing so was on the respondent. She is the one who wishes the court to believe that the said fiance was in the country and bought the vehicle for her. Again, she is the one in possession of knowledge of her fiance’s presence in the country as the applicant did not have details of the said Prince Moleti as he remained a fictitious person to it. Her general and plain statements that she had a fiance by that time without giving his details such as passport number and other identity documents suggests that she did not want the court or the investigator to interrogate the truthfulness of existence of the person.
17. If the fiance could not register the car in his name as alleged by the respondent, which this court does not believe is true, then one must wonder how he managed to generate Kshs 830,000.00 within the country which he would use to buy the car. A person with such hurdles would not be doing a legitimate business in the country. If indeed the respondent and her fiance acquired the car in a lawful manner, there would have been no reason for them to withhold information about the fiancée.
18. In view of the above, this court must draw a negative inference against the respondent that had she produced such evidence, the same would have been adverse to her case. It is an established position that where a party who has in its control evidence and fails to tender it, the court has the discretion to



make adverse inference that if such evidence was produced, it would be adverse to such a party's case. In *Mwangi v Mambo* (2025) KEHC 8438 (KLR), Honourable Justice Kizito Magare held as follows;

‘The court will make an adverse inference when a party failed to call evidence they have.’

19. The respondent's averments that her money was not used to buy the vehicle and that the same came from her fiancé are an attempt to distance her money from the car. She has not told the court where her alleged fiancé got the money from and what kind of business he was engaged in or from which account was the money withdrawn. The agreement for the purchase of the vehicle shows that the buyer of the motor vehicle was the respondent. It does not mention the alleged Prince Henry Moleti. The applicant has through its investigator's supplementary affidavit dated 9th April 2025 produced a letter from Autodirect Limited which states that the vehicle was purchased by the respondent and not Prince Henry Moleti.
20. The respondent has not explained to this court the purpose of the money she withdrew three days before the motor vehicle was purchased. Noting that the vehicle was purchased in her name and the glaring doubtful story about the fiancé, coupled with the fact that the respondent was arrested with the substance which was found to be cocaine and my finding that the respondent's explanation about her business and source of income is doubtful, this court holds that the respondent has not discharged her evidential burden of proof.
21. The consequence of the above is that the applicant has proved its case to the required standards and I proceed to give the following orders;
 1. A declaration is hereby issued that motor vehicle registration number XXXX XXXXX Chassis Number XXXXXXXXXXXXXXXX Nissan Note registered in the name of Esther Wambui Wachira is proceed of crime.
 2. Motor vehicle registration number XXXX XXXXX Chassis Number XXXXXXXXXXXXXXXX Nissan Note registered in the name of Esther Wambui Wachira is hereby forfeited to the Assets Recovery Agency on behalf of the Government.
 3. The Director, National Transport and Safety Authority (NTSA) is ordered and directed to transfer ownership of motor vehicle motor vehicle registration number XXXX XXXXX Chassis Number XXXXXXXXXXXXXXXX Nissan Note registered in the name of Esther Wambui Wachira to the applicant.
 4. The respondent shall pay the costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Kandie for the applicant and Mr. Khaduli the respondent.

