



**Assets Recovery Agency & another v Munyota & another; Ncba Bank & 7 others
 (Interested Parties) (Anti-Corruption and Economic Crimes Civil Suit E004 of 2025)
 [2025] KEHC 9890 (KLR) (Anti-Corruption and Economic Crimes) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9890 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
 ANTI-CORRUPTION AND ECONOMIC CRIMES
 ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E004 OF 2025**

**LM NJUGUNA, J
 JULY 9, 2025**

BETWEEN

ASSETS RECOVERY AGENCY 1ST PLAINTIFF

ASSETS RECOVERY AGENCY 2ND PLAINTIFF

AND

NANCY WANJIKU MUNYOTA 1ST RESPONDENT

NANCY WANJIKU MUNYOTA 2ND RESPONDENT

AND

NCBA BANK INTERESTED PARTY

NCBA BANK INTERESTED PARTY

MAHIGA HOMES LIMITED INTERESTED PARTY

MAHIGA HOMES LIMITED INTERESTED PARTY

ANDREW MBAKA OMWEGA INTERESTED PARTY

ANDREW MBAKA OMWEGA INTERESTED PARTY

LUCKYSTAR ENTERPRISES LIMITED INTERESTED PARTY

LUCKYSTAR ENTERPRISES LIMITED INTERESTED PARTY

JUDGMENT

1. The applicant herein is the Assets Recovery Agency, established under Section 53 of the Proceeds of Crime and Anti- Money Laundering Act, 2009 (POCAMLA), as a body Corporate with the mandate



of identifying, tracing, freezing and recovering proceeds of crime. The applicant has moved the court vide the Amended Originating Motion amended on the 4th day of June, 2025 seeking the following Orders: -

1. That this Honourable Court be pleased to issue orders declaring motor vehicle registration number KCZ 742J Toyota Rav 4 Chassis Number ACA31-5055274 registered in the name of Nancy Wanjiku Munyota and NCBA Bank as proceeds of crime liable for forfeiture to the Government of Kenya.
 2. That this Honourable Court be pleased to issue orders declaring the following properties/parcels of land/units as proceeds of crime and liable for forfeiture to the Government of Kenya.
 - a. Apartment No. A23 Block A 5th Floor erected on IR 122581, LR 27253/105, with one (1) Parking Bay.
 - b. Longonot/Kijabe Block 1/603 (ERERI) Plot No. 36
 - c. House No. 50 Rock Gardens 2 Estate erected on IR 208830, L.R.28318/2244.
 3. That this Honourable Court be pleased to issue orders of forfeiture of the motor vehicle registration number KCZ 742J Toyota Rav 4 Chassis Number ACA31-5055274 registered in the name of Nancy Wanjiku Munyota and NCBA Bank to the Assets Recovery Agency on behalf of the Government of Kenya.
 4. That this Honourable court be pleased to issue orders of forfeiture in respect of the following properties/parcels of land/units to the Assets Recovery Agency on behalf of the Government of Kenya.
 - a. Apartment No. A23 Block A 5th Floor erected on IR 122581, LR 27253/105, with one (1) Parking Bay.
 - b. Longonot/Kijabe Block 1/603 (ERERI) Plot No. 36
 - c. House No. 50 rock Gardens 2 Estate erected on IR 208830, LR 28318/2244.
 5. That this Honourable court be pleased to issue an order directing the Director General National Transport and Safety Authority to transfer title/ownership of said motor vehicle in Prayer 1 above to the applicant on behalf of the Government of Kenya.
 6. That this Honourable court be pleased to issue vesting orders transferring the following properties/parcels of land/units listed in Prayer 2 above to the Applicant on behalf of the Government of Kenya.
 7. That this Honourable court be pleased to issue an order that the above-stated assets properties, profits, and benefits accruing from the same in prayer 1 and 2 above be forfeited to the Government of Kenya and transferred to the Applicant.
 8. That the Honourable Court makes any other ancillary order it may deem fit for the proper, fair, and effective execution of its orders.
 9. That costs be provided for.
2. The Originating Motion is brought under Sections 81, 90, and 91 of the POCAMLA and Order 51 of the Civil Procedure Rules. The Originating Summons is based on the grounds set out on the body of the same and it is supported by the affidavit sworn by Martin Samburumo, on the 4th June, 2025. He has deponed that on the 14th November, 2025, the applicant received a duplicate police file from the



Directorate of Criminal Investigations concerning a suspected case of trafficking in narcotic substances involving the respondent and other associates, following which, the applicant opened an inquiry file No. 109 of 2023 to investigate the activities of the respondent and identify and trace any assets or proceeds of crime acquired from illicit funds from suspected trafficking in narcotic substances.

3. That on the 29th August, 2023, police officers received information that two houses, Beckville House Number 0402 and Sara Villa House Number 104 at Kitengela within Kajiado County, were being used to traffic narcotic drugs. That the officers conducted a search on the first property, Beckville House Number 0402, and recovered 148 pellets and 51 packages of substances suspected to be narcotic drugs and upon weighing the substances, they were found to be 3277.43 and 989.65 grammes of cocaine respectively, with a market value of Ksh. 13,109,720.00 and they arrested three occupants of the said house.
4. The Officers of the applicant also conducted a search on Sara Villa Estate House Number 104 rented by the respondent and recovered four (4) pellets and ten (10) packages of substances suspected to be narcotic drugs and they found it to be weighing 989.65 grams with a market value of Ksh. 3,958,600.00.
5. That the respondent, Kheri Kassim Mohamed, Saad Slum Mnyuss, and Ali Somoebwana Abubakar alis Abdallah Salum were thereafter charged on the 5th September, 2023 before the Chief Magistrates' court at JKIA with the offence of trafficking with narcotic drugs vide Criminal case number E086 of 2023 which is pending before court.
6. That the samples from the pellets and packages of the recovered substances were subjected to tests by the Government Analyst and found to be cocaine. Further, the investigations established that the respondent run a complex drug trafficking syndicate with connections in and outside Kenya as some of her co-accused are Tanzanian Nationals and in the course of their investigations the police recovered documents, including passports and yellow fever certificates belonging to individuals who had travelled to Tanzania, Uganda, Brazil and India, some of which are destinations infamous for trafficking cocaine and other narcotic drugs as per the Global Organized Crime Index Report of 2023. In addition, the police recovered different currencies, including Indian Rupee, Ethiopian birr, Ugandan Shillings, Tanzanian Shillings, with investigations revealing a cross-border drug trafficking network involving the respondent and associates from other countries.
7. That further investigations revealed that;
 - a. The respondent is the registered owner of motor vehicle KCZ 742J which was financed by NCBA Bank and the respondent has unpaid balance owed to the financier
 - b. The respondent bought and sold Maisonette No. 13 on LR No. 209/ 12768
 - c. The respondent is the beneficial owner of Apartment No. A23 Block A 5th Floor which is constructed on IRF 122581, LR 27253/105 and the same is registered in the name of Lucky Star Enterprises limited as the developer. She has paid approximately Ksh 7,000,000.00 for the property.
 - d. The respondent is the registered owner of Longonot/ Kijabe Block 1/603 (ERERI) Plot No. 36
 - e. The respondent is the beneficial owner of House No. 50 Rock Gardens 2 Estate erected on IR 208830, L.R 28318/2244 for which she has paid approximately Ksh. 3,950, 000 out of the purchase price of Ksh.5, 750,000.00 and is still in the name of the registered owner subject to the Developer's rights.



8. That the applicant obtained warrants to investigate the MPESA accounts of the respondent and associates held at Safaricom Kenya Limited and also the Bank accounts, after which, the applicant established that there were suspicious deposits, withdrawals, and transfers to individual accounts as well as flow of suspicious transactions between the respondent and the other individuals. The Mpesa account number 0722111448 in the name of the respondent had credits amounting to Ksh. 16,337,892.00 and debits totaling to Ksh. 16,568,622.26 between 9th April, 2021 and 7th October, 2022.
9. That the Mpesa account number 0799891442 in the name of the respondent was found to have received credits amounting to Ksh. 846,584.00 and debits of Ksh. 630,568.00 between 26th January, 2023 and 14th November, 2023. Further, that the Equity Bank account number 0260192000378 in the name of the respondent had USD 58,898.00 credits and USD 58,954.51.00 debits between 8th January, 2018 and 29th August, 2023. The account received suspicious cash deposits and withdrawals, which were structured, round figures and below the reporting threshold, indicating the placement and layering stages of money laundering.
10. The family Bank account number 102000033654 in the name of the respondent had credits amounting to Ksh. 47, 324,834.76 and debits totaling to Ksh. 47,324,834.76 between 9th November, 2019 and 21st September, 2023. The investigations also established that the same account received multiple cash deposits amounting to Ksh. 23,593,737.00 in 163 transactions out of which Ksh. 13, 249,600.00 in 57 transactions were cash deposits narrated as emanating from Super Fashion Clothes but no such business name or a company existed at the record at the Business Registration Service.
11. That the applicant further established that the respondent subsequently purchased and sold assets/ properties using proceeds from the illegitimate trade in narcotic drugs and registered the same under her name so as to conceal and disguise the source of funds applied to procure the said assets. The respondent also used suspected proceeds of drug trafficking to obtain asset financing for motor vehicle registration number KCZ 742J which was jointly registered in her name and that of NCBA Bank. Account number 8621450017 held by the respondent in the said Bank shows suspicious, large and structured cash deposits with round figures consistent with a person attempting to launder proceeds of crime.
12. The applicant's investigations further established that the respondent laundered the suspected proceeds of crime and used the suspected funds to purchase properties listed in the Originating Motion. That there are reasonable grounds to believe that motor Vehicle registration number KCZ 742J Toyota Rav 4 and the other properties were purchased using proceeds of crime acquired directly or indirectly cumulatively over a long period of time through suspected drug trafficking and thus, the subject properties and assets are tainted properties.
13. The applicant averred that the respondent filed nil income tax returns from 2013 to 2023 implying that she had no taxable income or her business was inactive, yet, Mpesa and Bank accounts indicated that she transacted millions and purchased and sold properties.
14. That the respondent could not explain the sources of her income or produce any books of accounts, business records, trade permits, tax returns, tax compliance certificate or electronic (ETR) evidence, vendor/purchase invoice, or anything to show businesses with legitimate sources of income.
15. In her replying affidavit, the respondent depones that the matters raised herein are the subject of Nairobi Criminal Case No. E086 of 2023 currently pending at JKIA law courts and asserted her constitutional right to be presumed innocent in accordance with Article 50 of the Constitution. That she has never been involved in drug trafficking and money laundering as alleged, and that she was not



in any way connected to the currency or items allegedly recovered from Beckville House, and in any case, possession of regional currency is not unlawful. That she has never resided there and she does not have any interest in that property. That her travel to various countries does not amount to evidence of involvement in narcotic drugs and there is no law in Kenya that prohibits lawful travel.

16. In regards to the subject properties, she has averred that Motor Vehicle KCZ 742J was financed by NCBA and it is still subject to an active loan. That she purchased Maisonette No. 13 on L.R No. 209/12768 from Cape Holdings limited which she later sold to Anne Wanjiku Njoroge for Ksh. 18,500,000 and used the proceeds derived therefrom to acquire Apartment No. A23, Block A constructed on L.R 24253/23 which she acquired from the 4th interested party for Ksh. 7,500,000.
17. That in addition, and from the balance of the same proceeds, she acquired Land Parcel No. Longonot/ Kijabe Block 1/603 for a consideration of Ksh. 450,000 and House No. 50, Rock Gardens, located in Ruiru, which she acquired from the 2nd interested party at Ksh. 5,750,000 out of which she has so far paid a sum of Ksh. 3,950,000. She urged the court to decline the Orders sought as they are not founded on any credible evidence.
18. The 1st interested party filed a replying affidavit sworn by Christine Wahome in which she has deponed that the respondent applied for asset finance/Hire purchase finance to acquire motor vehicle registration No. KCZ 742J and her application was considered and approved for Ksh. 1, 617, 059. That the vehicle was registered in the joint names of the respondent and the bank and it was also registered under the movable properties Securities as required under the law.
19. That the respondent is indebted to the bank to the tune of Ksh. 663,207.96 as at March, 2025 and the respondent being in arrears, the Bank is entitled to realize the motor vehicle being the security for the amount advanced and auction the same to recover the arrears. That as such, the vehicle should be excluded from an Order of forfeiture that may be issued by this Honourable court.
20. The second interested Party filed a replying affidavit sworn by James Ruhui Thuo, one of its Directors, in which he avers that the applicant's application for forfeiture of House No. 50 Rock Garden Estate, Ruiru is not sustainable as the same does not form part of the respondent's schedule of Assets. That the respondent and the applicant entered into an agreement for the sale of the aforesaid House at an all-inclusive consideration of Ksh. 5,750,000.00 and as at 23rd September, 2023 the outstanding balance was Ksh. 1,800,000 and this prompted the 2nd interested party to file 21 days' default notice pursuant to clause 6.1.1 of the sale agreement.
21. That further, pursuant to the Agreement and outright default by the respondent, it gave the 2nd interested party power to exercise its right of rescinding the agreement as per clause 6.1.2 of the same. That the aforesaid property does not belong to the 3rd interested party as the same has already been transferred to the management Company known as Rock Gardens 2 Estate Management Company Limited vide a deed of novation and therefore, the 3rd interested party's name should be struck out from the proceedings. That 2nd Interested Party herein is only willing to forfeit what was initially paid by the respondent after reselling the House.
22. The 3rd interested party filed a replying affidavit sworn on the 28th April, 2025. He avers that House No. 50 Rock Garden Estate, Title No. 283181/2244 no longer belongs to him as the same has already been transferred to the management company known as Rock Gardens 2 Estate Management Company Limited vide a deed of novation and thus, his name should be struck out from the proceedings.
23. The 4th interested party filed a replying affidavit sworn by Jeremiah Masikolo Imbwaga, one of its Directors. He states that the Apartment No. A23 Block A, 5th Floor on IR27253/23, LR No. 27253/23 has since changed from 27253/23 to L.R No. 27253/105 and so is the IR which has changed to IR



- 24740/11. That he does not know the activities alleged to be conducted by the respondent herein and their relationship was purely business related.
24. Further, that the 4th interested party entered into an agreement with the respondent for sale of the aforesaid Apartment at Ksh. 7,500, 000 and the property is charged by Equity Bank which is yet to recoup its investment to the tune of Ksh. 195,000,000 as the 4th interested party had funded the project through a Bank loan and the same continues to accrue interest for failure to make sales and repayment of the loan.
 25. He contends that the land on which the Apartments stands is in the name of Alice Mwikali Mutisya and what the 4th interested party sold to the respondent is a lease hood interest which the respondent has defaulted in making payments as she only paid a sum of Ksh. 7,500,000 leaving a balance of Ksh. 3,100,000 outstanding and therefore, the property has not changed hands and cannot form part of the respondent's schedule of Assets. The property belongs to 4th interested party and cannot therefore be forfeited.
 26. That the applicant has not demonstrated the ownership rights of the respondent over the said unit, and therefore, the prayer to forfeit the Apartment is not only untenable but will perpetuate denial of rights to ownership of property under Article 40 of the Constitution.
 27. The applicant filed a Supplementary affidavit sworn on 12th May, 2025, by Martin Samburumo, in which he depones that forfeiture proceedings are independent of the criminal trial pending before the JKIA law court. He has maintained that the recovery of foreign currencies and evidence of travels outside the country in the context of a charge of drug trafficking and unexplained cash transactions are relevant to the question of whether such properties are proceeds of crime. That the respondent used proceeds of crime to purchase Maisonette No. 13 on L.R 209/12768 and thereafter sold it to acquire the suit properties.
 28. That the evidence presented in the applicant's supporting affidavit remains uncontroverted except by mere denials without providing substantive explanation of the sources of the funds, business records and evidence of declaration of income or payment of tax on income, and there is no explanation on the source of funds used to acquire the Maisonette. Further, that the proceeds of the sale of the Maisonette were comingled with other illicit funds to facilitate the purchase of the suit properties thereby making all the properties tainted properties liable for forfeiture.
 29. The applicant contends that the Bank's entitlement to recovery of the arrears is precluded by the fact that the respondent leveraged on funds obtained through illegitimate trade of narcotics to obtain the loan and thereafter used the loan to acquire the motor vehicle and therefore, the same is a proceed of crime.
 30. That the 2nd interested party only issued the default notice and cancellation of notice to the respondent on the 13th March, 2025 as an afterthought after this suit was filed in court. He further avers that the 2nd and 3rd interested parties and/or their agents/servants are in contempt of court for transferring, selling and interfering with the ownership House No. 50 when they were aware of the subsistence of the preservation Orders.
 31. The applicant maintains that the respondent has acquired a significant interest in the properties namely House No. 50 Rock Gardens 2 Estate and in Apartment No. 23, Block A which are now tainted properties and both should be forfeited and be transferred to the applicant based on the evidence of the properties being proceeds of crime.
 32. The matter was disposed of by way of written submissions.



Applicant's Submissions

33. The applicant submitted that it has discharged its burden of proof to establish that the suit properties are proceeds of crime. That the respondent was arrested and charged with trafficking in narcotic drugs (heroin) on the 5th September, 2023 at the Chief Magistrate's court at JKIA. That an analysis of the respondent's bank and Mpesa statements established that the accounts received and transacted suspicious cash deposits and withdrawals that indicate activities of money Laundering intended to conceal the true source of funds.
34. That between the 18th March, 2006 and 31st December, 2013 the respondent acquired Maisonette No.13 which she sold in 2018 and used part of the proceeds to buy Apartment A 23 block A 5th Floor, Bungalow No.50 and Longonot/Kijabe 1/603. That the respondent used her bank and Mpesa Accounts as conduits to receive, transfer, disguise, and conceal the origin of the funds acquired through proceeds of crime.
35. That in explaining the source of the funds, the respondent in her statement stated that she was a business lady in Kitengela selling cereals and supplying clothes on order before she was arrested. That in her hey days she was a call girl when she met an Italian man between 2003 and 2007 from whom she saved Ksh. 5,000,000 and used the said savings to import a container, sold the items and used the proceeds to purchase Maisonette No.13 and it is from the proceeds of the sale of the said Maisonette that she allegedly bought the suit properties.
36. That though the respondent stated that she was a business person, she presented no evidence to the court by way of books of accounts, business records, trade permits, tax returns or tax compliance certificate or anything to show businesses with legitimate sources of income. That the respondent had filed nil income tax returns from 2013 to 2019 and has not filed returns for the years 2020 to 2023 which implies that she had no taxable income or her business was inactive. Reliance was placed on the case of Assets Recovery Agency Vs Lilian Wanja Muthoni t/a Sahara Consultants & 5 others (2020) eKLR and that of William Kabogo Gitau Vs George Thuo & others (2010) 1KLR.
37. On whether the interested parties' interests in the properties outweigh the applicant's mandate to recover proceeds of crime, it was submitted that the 1st interested party as a financial institution is obligated to conduct due diligence including requirements set by the Central Bank of Kenya and it also has an obligation to prevent money laundering and financing of terrorism in line with POCAMLA. That the applicant having proven that the motor vehicle is a proceed of crime, public interest in the property overrides the financier's need to recover the outstanding funds. The applicant relied on the case of Assets Recovery Agency Vs Waithira; Co-operative Bank of Kenya Limited (interested party) (Civil Suit E006 of 2022) (2023) KEHC 22509 (KLR) (Anti-corruption and Economic Crimes) (21 September 2023) (judgment) and submitted that the 1st interested party is not precluded from bringing a claim against the respondent to recover the facility arrears.
38. In respect to the claim by the 2nd interested party, the applicant submitted that House No. 50 is a proceed of crime and should be forfeited in line with the Waithira case (supra) as in any case, the respondent had used money obtained from illicit activities to pay more than three-quarters of the purchase price.
39. In respect to the 3rd interested party, and on his claim that he is a wrong party in the case, having transferred the property to another developer company, it was submitted that he is in violation of the court Orders that prohibited him from interfering with the ownership of the property.



40. In respect to the 4th interested party who claims to be the registered owner of Apartment No.23, it was submitted that the property is liable for forfeiture and the 4th interested party's alleged changes in the purchase price does not make the property any less proceeds of crime, and that public interest overrides the 4th interested party's interest in the property. The applicant has relied on the cases of National Director of public prosecutions Vs R.O Cook Properties (pty) Limited; National Director of public prosecutions Vs 37 Gillespie Street Durban (pty) Limited; National Director of Public Prosecutions Vs Seevnarayan (111/03/(2004) ZASCA 38 in which the court stated that any persons opposing a forfeiture Order or applying for exclusion of a property from a forfeiture Order under Section 52 (2A) of the South African Proceeds of Crime Act, 1998 had to prove certain facts on a balance of probability before the court can make the exclusion Order and that innocence is not enough and a person would have to prove absence of knowledge or reasonable grounds of suspicion.

Respondent's Submissions

41. The respondent submitted that she has been accused but not convicted of a criminal offence of trafficking in narcotics and has pleaded presumption of innocence which is a sacrosanct principle of law that precludes any inference of guilt from the mere fact of arrest or the institution of criminal proceedings. She has averred that by alleging that she has acquired her property through the proceeds of crime, the applicant effectively presumes her guilty, thereby subverting the Constitutional safeguard under Article 50(2) of the Constitution of Kenya. She made reference Supreme Petition No. E15 of 2022 Charles Muturi Macharia (suing as the next friend of and on behalf of Christine Wangari Muturi) & Others Vs The Standard Group and 5 others in which the court stated that presumption of innocence is a fundamental principle behind the right to a fair trial
42. That the respondent lawfully purchased Maisonate No. 13 from Cape Holdings Limited which she later sold and used the proceeds to acquire Apartment No. A23, Block A, 5th floor while motor vehicle registration No. KCZ 742J was acquired through financing by the 1st interested party in the sum of Ksh. 1, 617,059. That the respondent purchased the aforesaid motor vehicle prior to the coming into force of the POCAMLA and any attempt to impugn the legitimacy of that transaction under the said statute is legally unsustainable. Reliance was placed on the case of Samuel Kamau Macharia & another Vs Kenya Commercial Bank Limited & 2 Others, and on Francis Bennion's Statutory interpretation, 2nd Edition, (Butter works, 1984) in which the writer observed thus; "the essential idea of the legal system is that current law should govern current activities".
43. It was the respondent's further submission that she has sufficiently explained the sources of her wealth, and the contention by the applicant that the respondent's funds were co-mingled with illicit proceeds is wholly unsubstantiated as no evidence has been adduced to demonstrate that her financial dealings were ever the subject of criminal investigations or prosecution.

Interested Parties' Submissions

44. The 1st interested party based its submissions on whether motor vehicle registration Number KCZ 742J is a proceed of crime and whether it should be excluded from any forfeiture order that may be issued in this matter. It submitted that the motor vehicle was financed by the Bank resulting to a Hire Purchase agreement between the respondent and the 1st interested party. That the applicant has not laid before the court any iota of evidence to show that the vehicle was purchased using money or funds acquired through money laundering or that the vehicle is a proceed of crime. Further, that the applicant has not linked the sums of monies/transactions during the investigations period to the purchase of the motor vehicle in question. Reliance was placed on the case of Assets Recovery Agency Vs Charity



- Wangui Gethi (2018) KEHC (KLR) in which the court stated that the applicant had a duty to prove that indeed the vehicle in issue was procured by use of money fraudulently acquired from the NYS.
45. The 2nd and 3rd Interested parties submitted that the respondent has not completed the requisite obligations related to the contractual agreement with regards to House No. 50 and as such, had not attained the threshold for a transferrable interest. They averred that a default notice was issued to the respondent by the 2nd interested party but the respondent failed to comply with the same, within the prescribed timelines pursuant to the sale agreement. Reliance was placed on the case of Njamunyu Vs. Nyaga (1983) eKLR in which the Court of appeal stated that in a sale transaction, once a notice of default has been given, failure to rectify will result in rescission of the contract, and to the case of Housing Company of East Africa Ltd Vs Board of Trustees, National Social Security Fund & 2 Others (2018) eKLR.
 46. It was the 2nd and 3rd interested parties further submission that there was a legally binding contractual obligation that was entered into between the respondent and the 2nd interested party which was lawfully rescinded and thus, it was rendered otiose due to the fact that the payment was not completed and therefore, the same cannot be subjected to forfeiture as it reverted back to the original owner who is the 2nd interested party.
 47. The 4th interested party submitted that the respondent has not acquired a legal and enforceable interest in Apartment Number A23, Block A, 5th floor. That following a sale agreement dated the 10th August, 2020 between the respondent and the 4th interested party, for the purchase of the Apartment, the respondent defaulted in paying the 2nd installment which was due on the, 23rd October, 2020 and as a result, the purchase price was revised from the initial Ksh. 7,500, 000 to Ksh. 10, 600,000 out of which, the respondent has paid Ksh 7,500,000 leaving a balance of Ksh. 3,100,000 unpaid. That as such, the respondent has not acquired an enforceable proprietary interest in the Apartment as she has not fulfilled the conditions precedent to the passing of title or completion of the sale. Reliance was placed on the cases of Regnoil Kenya Limited Vs Karanja (Civil Appeal 534 of 2019) (2023) KECA and that of Givan Okallo Ingari & another Vs Housing Finance Cooperation of Kenya (2007) eKLR, in which the court held that a title does not pass unless conditions including payment are satisfied.
 48. On whether the subject property forms part of the respondent's assets liable to forfeiture, it was submitted that the respondent herein has not fulfilled her part of bargain and therefore, the Apartment No. A23 belongs to the 4th interested party and cannot be forfeited. Reliance was placed on the Provision of Section 25(1) of the Land Registration Act, No. 3 of 2012 and on the case of Republic Vs Director of Public Prosecutions & 2 Others Exparte Patrick Ogola Onyango & 8 Others (2016) eKLR in which the court held that forfeiture proceedings must relate to property lawfully owned or beneficially controlled by the person subject to the proceedings.
 49. As to whether the 4th interested party holds valid proprietary rights over the suit property, it was submitted that the 4th interested party is the registered proprietor of Apartment No. A 23 which property is charged by Equity Bank which is yet to recoup its investment which is up to the tune of Ksh. 195,000,000 which continues to accrue interest for failure to make sales and repayment of the loans. That the 4th interested party has not in any way been involved in the Commission of any offence neither was it aware that the amount paid so far for the purchase of the Apartment being Ksh. 7,500,000 were proceeds of crime.
 50. The 4th interested party relied on Provision of Section 93 of the POCAMLA and on the case of Assets Recovery Agency Vs Escobar Limited & another, Kenyatta National Hospital (Interested Party) (Civil Suit No. E 002 of 2024) (2024) HEHC 8821 (KLR) in which the court stated that Section 93 above enjoins the court to protect Third party interests in forfeiture proceedings as long as he/she proves



that they did not take part in the commission of the offence. That the prayer of forfeiture is not only untenable but will perpetuate a clear denial of right to own property which runs afoul to Article 40 of the Constitution.

Analysis And Determination

51. The court has considered the Amended Originating Motion and the supporting affidavit, supplementary affidavit, the responses by the respondent and the interested parties, and the submissions filed herein by the respective parties. In my considered view, the following are the two issue for determination;
 1. Whether the properties subject of the forfeiture application are proceeds of crime and thus liable for forfeiture to the state.
 2. Whether the interested parties' interests, if any, in the suit properties outweigh the applicant's mandate to recover the said properties.
52. The applicant, the Asset recovery Agency, is established under Section 53 of the POCAMLA as a body corporate with the mandate of identifying, tracing, freezing and recovering proceeds of crime. The Agency filed the proceedings herein pursuant to the Provisions of Part VIII of the POCAMLA allegedly after its investigations established that the respondent has acquired assets/properties using proceeds obtained from illegitimate trade of narcotic drugs and channeled the illegitimate funds through identified bank and Mpesa accounts belonging to the respondent with the intention to conceal the true source of funds which are suspected to be proceeds of crime.
53. With the help of the duplicate file that the applicant received from the Directorate of Criminal Investigations concerning a suspected case of trafficking in narcotic substances involving the respondent and other associates, the applicant opened an inquiry file to investigate the activities of the respondent and to identify and trace any assets or proceeds of crime acquired from illicit funds from suspected trafficking in narcotic substances.
54. The officers of the applicant conducted a search on Beckville House No. 0402 and Sara Villa Estate House No. 104 which the Officers believed were being used to traffic narcotic drugs and they recovered from the two houses, 148 pellets and 51 packages, and 4 pellets and 10 packages, of substances suspected to be narcotic drugs with a market value of Ksh. 13,109,720 and 3, 958,600 respectively. The said samples upon being subjected to tests by the Government analyst were found to be cocaine.
55. The respondent and her accomplices namely Kheri Kassim Mohammed, Saad Salum Mnyuss and Ali Somoebwana alias Abdalla Salum were on, 5th September, 2023 charged with the offence of trafficking with narcotic drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Act No. 4 of 1994, in Criminal case No. E 086/2023 before the Chief Magistrate's at JKIA.
56. The applicant carried out investigations and an analysis of the respondent's bank and Mpesa accounts statements established that the accounts transacted the following sums of money during the period of investigations;
 - a. Ksh. 16,337,892.00 through MPESA account number 0722111448 between 9th April, 2021 and 9th October 2022.
 - b. Ksh. 846, 584.00 through MPESA account Number 0799891442 between 26th January, 2023 and 14th November, 2023



- c. USD 58, 898.00 through Equity Bank account number 0260192000378 between 8th January, 2018 and 29th August, 2023
 - d. Ksh. 47, 324, 834.76 through Family Bank account number 102000033654 between 9th November, 2019 and 21st September, 2023
 - e. Ksh. 38, 067, 663.97 through Equity account number 0020190142982 between 8th January and 14th July, 2022.
59. A simple addition of the figures above translates to a total of more than Ksh. 100 Million for the transactions that were carried out in the respondent's accounts for the period between January, 2018 to November, 2023. In her replying affidavit, the respondent has not mentioned anything to do with her sources of income during the period of interest. However, in the statement that she gave to the officers of the applicant, she stated that she was a business lady in Kitengela selling cereals and supplying clothes on order before she was arrested. Further, that she was, in her hey days, a call girl during which time she met an Italian man between 2003 and 2007 from whom she saved Ksh. 5,000,000.00 which she used to import a container and sold the items and used the proceeds to purchase Maisonette 12. The alleged items are not disclosed, their source or value.
60. This court has keenly gone through the documents that have been filed herein by way of Bank and MPESA statements for the respondent. This court has noted that though the respondent alleges that she saved Ksh. 5,000,000.00 from her Italian man, no evidence was tabled before the court to prove that allegation. Similarly, she did not place any evidence before the court to show that she was engaged in the businesses of selling cereals and clothes as alleged. Further, she filed nil returns from 2013 – 2023 implying that she had no taxable income or that her businesses, if any, were inactive.
61. The court takes judicial notice of the fact that the respondent's businesses may not have been big businesses so as to expect audited accounts by an Auditor, but at least she should have produced a business permit or some form of records to prove that the businesses existed. This court is fully aware that under Section 109 of the Evidence Act, the applicant bears the legal burden of proof, but the evidential burden of proof keep shifting unlike the legal burden.
62. In my considered view, the moment the applicant was able to show that there were suspicious deposits and withdrawal of funds from the respondent's account, and the fact that she was charged with an offence of dealing with narcotics drugs, the evidential burden shifted to the respondent to prove that the sources of the funds that were being transacted through her Bank and Mpesa accounts were legitimate. A cursory perusal of her Bank and MPESA statements shows that her accounts were fairly active and a plausible explanation was necessary if the court were to find in her favour.
63. Going by the evidence that the respondent has tendered before this court, a big chunk of her wealth originated from the Ksh. 5,000,000.00 allegedly saved from the Italian boyfriend which she used to import a container of unidentified goods which, after she sold, she used the proceeds to purchase Maisonette No.13 from Cape Holdings Limited which she later sold to Anne Wanjiku Njoroge at Ksh. 18,500,000. That she used the proceeds derived from the sale of the aforesaid Maisonette to purchase Apartment No. A23, Parcel No. Longonot/ Kijabe/ Block 1 /603 and House No. 50 Rock Gardens 2 Estate. She therefore claims that the said properties were acquired through legitimate income.
64. As the court has observed herein above, the assertions on the respondent's sources of income are not on oath. In fact, she has said nothing about acquisition of her wealth in her replying affidavit. The most she has done is to annex copies of sale agreements and ownership documents of the impugned properties to her submissions, some of which, are in her name whereas the others are in the names of



the interested parties but has done little or nothing at all to explain the sources of the funds that she used to acquire those properties including those that she has partially paid the purchase price for.

65. Upon carrying out a search at the respondent's house, the applicant's officers recovered substances which upon being subjected to analysis were found to be cocaine and different currencies including Ethiopian birr, Ugandan and Tanzanian Shillings, Indian Rupees and United States dollars and consequently, she was charged with the offence of trafficking in Narcotic Drugs. It is her contention that she has a right to be presumed innocent until proven guilty since her case is still pending in court and has relied on the case of Charles Muturi (supra).
66. In the case of Kenya Anti-Corruption Commission Vs Stanley Mombo Amuti (2017) eKLR the court had this to say about a claim for civil recovery;

“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. The Plaintiff is therefore not required to prove that the Defendant actually committed an act of corruption in order to invoke the provisions of ACECA.”

59. Similarly, in the case of Assets Recovery Vs Pamela Aboo (2018) eKLR the court considered the issue in relation to Civil Proceedings for forfeiture and it observed 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 is obtained”.

59. In the Namibian case of Teckla Nandjila Lameck Vs President of Namibia the court stated;

“.....Asset forfeiture is, as stated in Section 50 of POCA, a civil remedy directed at confiscation of the proceeds of crime and not at punishing an accused. Chapter 6 proceedings are furthermore not necessarily related to a prosecution of an accused. Those proceedings are open to the state to invoke whether or not there is a criminal prosecution”

.....even if there is a prosecution, the remedy is not affected by the outcome of the criminal proceedings. The remedy is thus directed at the proceeds and instrumentalities of crime and not the person having possession of them. This is in furtherance of the fundamental purpose of these procedures referred to the above”

As to whether the interested parties have any interest capable of legal protection;

59. The 1st interested Party's claim in respect to motor vehicle registration number KCZ 742J is that of a financier. It avers that the said vehicle is security for the amount advanced to the respondent and that the respondent is indebted to the Bank to the tune of Ksh.663, 207.96 as at 14th March, 2025. From the analysis above, the applicant has proved that the vehicle is a proceed of crime as the respondent did not tender any concrete evidence to prove that the sources of the funds that she used to pay for the deposit of the vehicle and the monthly instalments was from a lawful source. In the case of Assets Recovery Agency Vs Waithira (supra) the court held:-

“The interested party herein had alleged that it had acquired a proprietary interest in the motor vehicle reg. No. KCT 654R when it advanced a loan of Ksh. 250,000 to the respondent herein. The court found, at paragraph 30, that the interested party's interest



could not outweigh the public interest notwithstanding that it had found that the bank was not involved in the offence nor aware that the motor vehicle would be used in the commission of the offence. The court further held that the respondent therein would lose the motor vehicle and pay the loan outstanding”

59. The court has perused the documents that have been annexed to the 1st interested party’s replying affidavit. Among them is a copy of the logbook for the subject motor vehicle showing the respondent as the registered owner of the vehicle as at 17th September, 2020 which means by the said date, she had completed the payment for the same, otherwise, there would be no other explanation as to why the same was transferred into her name. In this regard, any other logbook showing otherwise would not be a genuine one. In any event, from the material before the court, it’s clear that the respondent leveraged funds obtained through illegitimate trade in narcotics to obtain the loan and thereafter used the loan not only to acquire the suit motor vehicle but also the other properties set out in the Amended Originating Motion.
60. The 2nd interested party has claimed interest in House No. 50. It avers that it sold the property to the respondent but it rescinded the agreement due to the apparent breach on the part of the respondent after she failed to comply with the timelines prescribed in the agreement. The respondent claims that she has so far paid a total of Ksh. 3,950,000 out of the total purchase consideration of Ksh. 5,750,000. It is worth noting that the 2nd interested party only issued a default notice to the respondent on the 13th March, 2025 after this suit was filed in court and it had been served with the Originating Motion raising doubt as to whether the notice was indeed genuine. Moreover, the 2nd interested party proceeded to transfer or assign its rights in the subject property to Rock Gardens 2 Estate Management Company Limited in open violation of the preservation Orders of the High court and therefore, the same has no legal force. In regard to this property, the court having made a finding that it was proceed of crime, and in line with the holding of the Waithira case (supra), the same should also be forfeited to the Government of Kenya as it was acquired through illicit funds.
61. In regards to the 4th interested party, it has claimed that Apartment A23 is its property as the respondent did not complete the sale and a balance of Ksh. 3,100,000 remains outstanding to date. From her own admission, the respondent has stated that she acquired this, among the other properties claimed herein from the sale of Maisonette No. 13. She has not discharged her evidential burden of prove to show where she got the funds from, which she used to purchase the Maisonette. As such, the applicant having established on a balance of probability that the same was purchased through funds from an illegimate trade in narcotics, I find that the Maisonette was a proceed of crime and it should be forfeited to the Government of Kenya in line with the finding of the court in the Waithira case.
62. The interested parties herein have a recourse in that they can pursue the respondent for the balances of the purchase price for their respective properties as the public interest supersedes that of their own.
63. In the end, I do hereby allow prayers (1) (2) (3) (4) (5) (6) and (7) of the Amended Originating Motion.
64. The applicant is awarded costs of the suit to be paid by the respondents jointly and severally.
65. It is so ordered.

SIGNED, DATED AND DELIVERED ON THIS 9TH DAY OF JULY, 2025.

CORRECTED ON THIS 15TH DAY OF JULY, 2025.

.....

L.M. NJUGUNA



JUDGE

In the presence of:-

Miss Njeri Kariuki holding brief for Mr. Githinji for the Respondent

Mr. Muhisi for the 1st Interested Party

Mr. Ogonda for the Applicant

No appearance for the 2nd, 3rd and 4th Interested Parties

Court Assistant – Adan

