



**Assets Recovery Agency v Jillo (Civil Suit E024 of 2024) [2025] KEHC 12862 (KLR)
(Anti-Corruption and Economic Crimes) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12862 (KLR)

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

CIVIL SUIT E024 OF 2024

BM MUSYOKI, J

SEPTEMBER 19, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

HASSAN DALACHA JILLO RESPONDENT

JUDGMENT

1. The applicant has brought the originating motion dated 31st July 2024 praying that this court declares motor vehicle registration number KCG 271K (hereinafter referred to as ‘the vehicle’) as proceeds of crime and forfeits the same to the government. The motion is brought under Sections 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* (hereinafter referred to as ‘POCAMLA’). The respondent did not file any papers in response to the application despite several services including one done through an advertisement in the MyGov newspaper of 20-05-2025 following this court’s orders dated 7-05-2025. Following failure to respond, interlocutory judgment was entered against the respondent on 28-11-2024.
2. The motion is supported by an affidavit of the applicant’s investigator one Nicholas Sune sworn on 31st July 2025. The deponent avers that the applicant received a duplicate file from the Directorate of Criminal Investigations on 15-02-2022 which contained information on suspected case of trafficking in narcotic drugs by the respondent and acquisition of proceeds of crime pursuant to which information, the applicant opened an inquiry file and commenced investigations.
3. According to the applicant’s supporting affidavit, the vehicle was intercepted on 10-11-2020 along Baragoi-Maralal road with four occupants and upon conducting a search on it, the officers from a multi-agency team recovered 122 packages of cannabis which weighed 400 kilograms whose market value was Kshs 12,000,000.00. The cannabis is alleged to have been concealed in false welded compartments in the body of the lorry. The affidavits states further that two of the occupants were



arrested and charged at the Chief Magistrate’s Court at JKIA for trafficking in narcotics drugs contrary to Section 4(a) of the Narcotics and Psychotropic Substances (Control) Act vide criminal case number 235 of 2020.

4. It is also stated that a search on the vehicle revealed that it was registered under the name of the respondent upon which the applicant obtained preservation orders vide this court’s miscellaneous civil application number E012 of 2024. These orders were gazetted and the respondent summoned by the applicant to appear and explain the circumstances surrounding the vehicle but he failed to appear hence this application.

5. The applicant filed its submissions dated 4th February 2025. Interlocutory judgement having been entered against the respondent, this court is only called upon to determine whether the applicant has established a prima facie case which can lead one to reasonably suspect that the vehicle sought to be forfeited is liable for forfeiture. Section 92(1) of the POCAMLA provides as follows;

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.

6. My interpretation of the above provision in the context of this matter is that where it is shown that the property in question has been or is intended to be used to commit an offence, it is liable for forfeiture. In the supporting affidavit, it is shown that the vehicle was intercepted while ferrying cannabis which is a prohibited drug. Section 4 (a) of the Narcotic and Psychotropic Substances Act Chapter 245 of the Laws of Kenya provides that;

“ Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her to be a narcotic drug or psychotropic substance, shall be guilty of an offence and liable—.....’

7. It follows therefore that if indeed the vehicle was intercepted with the drugs as pleaded, it was used to commit an offence and therefore liable for forfeiture. Although the respondent has not filed response to the application, the applicant still bears the burden of convincing the court on a balance of probabilities that the vehicle was intercepted while transporting cannabis. Entry of interlocutory judgement does not discharge the plaintiff, claimant or applicant from the burden of proving their case to the standard required in law. In Catherine Wambui Njogu v Jacob Mash Shake & another [2019] KEHC 181 (KLR), the court held that;

“ Courts have taken the position that even where no appearance or no defence is filed leading to the entry of interlocutory judgment, the plaintiff is still under an obligation to prove his case on a balance of probabilities.’

8. I am also persuaded by the holding of Honorable Justice R.P.V. Wendoh in Ogada v G4S Security Company & another [2023] KEHC 20983 (KLR), where she held that;

“ Therefore, even in the absence of evidence controverting the appellant’s case, the appellant needed to prove her case against the respondents on a balance of probabilities.’



9. I have carefully gone through the supporting affidavit and the annexures thereto and it is my finding that the evidence produced by the applicant is insufficient to justify forfeiture for the following reasons and inconsistencies;
- a. Paragraph 7 of the supporting affidavit states that the vehicle was seized carrying 122 packages of cannabis weighing 400 kilograms with a value of Kshs 12,000,000.00. However, a look at the inventory exhibited as annexure 'NS-1', it talks of motor vehicle registration number KCA 292P.
 - b. Paragraph 8 of the supporting affidavit indicates that two occupants of the vehicle were arrested and charged although in the earlier paragraph 6 it states that the vehicle had four occupants. The charge sheet which has been exhibited as the applicant's annexure 'NS-3' has the accused person as Adan Diba Ramata and Guyo Siko Ogosu while the suspects indicated in the inventory are Mohamood Chute Wote, Hussein Abdikadir Said and Qare Ali Saya.
 - c. In the affidavit, the date of seizure is 10-11-2020 while the one in the charge sheet is 11-11-2020 and that in the inventory is 14-11-2020.
 - d. The applicant claims to have conducted a search and ascertained that the motor vehicle was registered to the respondent. However, what has been exhibited as proof of ownership is an alleged agreement dated 31-08-2020 between one Marsh Woche Imula and the respondent.
 - e. While the inventory talks of 400 kilograms of narcotics drugs the charge sheet talks of 697 kilograms with market value of Kshs 20,910,000.00.
10. The above inconsistencies glaringly pose a serious challenge to the authenticity of investigations done by the applicant if any. I have stated before in other matters and I will not tire repeating that the applicant has a consistent tendency of receiving files from the police and other public enforcement entities and rushing to court for preservation and forfeiture without tying up the loose ends or conducting any investigations. The above inconsistencies should catch the eye and attention of the least inexperienced investigator who pays attention to details.
11. Seizure and forfeiture of property belonging to individuals is not a matter to be taken lightly or treated casually as the applicant seems to have done in this matter. For instance, in this matter, the applicant wants the court to forfeit the vehicle without first ascertaining the true ownership of the same and without giving the registered owner of the motor vehicle a chance and opportunity to be heard. This court has the duty to respect and uphold the rights of the owners of properties and should only issue orders of forfeiture where the registered owners or any other person who seems to have interest in the property are given proper notices to give their side of the story.
12. In view of what I have stated above the originating motion dated 31st July 2024 is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Mr. Kandie holding brief for Miss Amadi for the applicant and in absence of the respondent.

