



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CIVIL DIVISION

ACEC MISCELLANEOUS APP NO. 3 OF 2016

FORMERLY MISCELLANEOUS APPLICATION NO. 601 OF 2015

BETWEEN

ASSETS RECOVERY AGENCY.....APPLICANT/RESPONDENT

VERSUS

SAMUEL WACHENJE ALIAS SAM MWADIME.....1ST RESPONDENT

SUSAN MKIWA MNDANYI.....2ND RESPONDENT

VANDAMME JOHN.....3RD RESPONDENT

ANTHONY KIHARA GETHI.....4TH RESPONDENT

CHARITY WANGUI GETHI.....5TH RESPONDENT

NDUNGU JOHN.....6TH RESPONDENT

GACHOKA PAUL.....7TH RESPONDENT

JAMES KISINGO.....8TH RESPONDENT

AND

NELSON RIAN TO SAINA.....1ST OBJECTOR/APPLICANT

LABULAX SUPPLIES LIMITED.....2ND OBJECTOR/APPLICANT

R U L I N G

1. This ruling is in respect of two applications. The first application dated 15th March, 2017 was filed by Nelson Rianto Saina, the 1st Objector/Applicant herein. The application accompanied a notice of objection dated 15th March 2017 and was supported by an affidavit sworn by the objector.

2. The second application is dated 16th March, 2017 and was filed by Labulax Supplies Limited who is the 2nd Objector/Applicant herein. They filed a notice of objection dated 16th March, 2017 accompanied by the application which was supported by an affidavit sworn by a Director of the 2nd Objector.

3. In the first application, the 1st Objector sought the following orders:

i.

ii. That the Honourable Court be pleased to order stay of execution of the orders dated 31st December 2015 and any or all consequential orders emanating therefrom relating to the Motor Vehicle Registration Number KCE 852T pending the hearing and determination of this application.

iii. That the Honourable Court be pleased to lift, vacate and or discharge any orders relating to and or affecting ownership, use and possession Motor Vehicle Registration Number KCE 852T.

iv. That the Honourable Court be pleased to declare that the Motor Vehicle Registration Number KCE 852T belongs to the Objector herein and should not be subject of the proceedings and or orders sought by the Assets Recovery Agency.

4. The application is premised on the grounds that the subject motor vehicle is registered in the name of the 1st Objector who has a valid and legal log book and as such the Respondent has no right to seize the same in execution of an order against other Respondents who are strangers to the 1st Objector.

5. The 1st Objector submits that sometime in 2016 he saw an advertisement in the newspapers by Auckland Agencies Auctioneers for sale of Motor Vehicles by public auction. On or about 30th September, 2016, he attended the public auction at Tripple One Motors along Ngong Road since he was interested in one of the motor vehicles advertised, in particular motor vehicle registration number KCE 852T.

6. It is the 1st Objector's submission that he successfully placed a bid of Kshs. 4,000,000/= on the Motor Vehicle Registration Number KCE 852T and this was the highest bid. That he paid the said Kshs. 4,000,000/= in cash and was issued with a receipt dated 30th September, 2016. He then entered into a motor vehicle sales agreement with Auckland Auctioneers who issued him with a certificate of sale certifying that he had bought the car from them for value through a public auction.

7. The 1st Objector submits that he successfully registered the transfer and was issued with a logbook and as such he is the legal and lawfully registered owner of the subject motor vehicle. That sometime in 2017, he was contacted by one Musyoki allegedly from Assets Recovery Agency that he had an order to seize and attach the subject motor vehicle since it was acquired using NYS money.

8. Upon conducting due diligence in Court, the 1st Objector discovered that this Court had on 31st December, 2015 issued an order for the surrender and seizure of his motor vehicle. He submits that the Respondent has no right to seize the subject motor vehicle, to which he has legal title, in execution of an order against other Respondents who are strangers to him. That he will suffer irreparable harm should the Assets Recovery Agency proceed to seize the subject motor vehicle.

9. In the second application, the 2nd Objector sought the following orders:

i. ...

ii. That the Honourable Court be pleased to order the immediate and unconditional release of Motor Vehicle registration number KCD 536P (Chassis number TRJ150-0025707) to the Objector/Applicant herein pending the hearing and determination of this application.

iii. That the Honourable Court be pleased to lift, vacate and or discharge the Orders dated 31st December 2015 and or any other subsequent orders only relating to and or affecting the ownership, use and or possession of Motor Vehicle Registration Number KCD 536P (Chassis number TRJ150-0025707).

iv. That the Honourable Court be pleased to declare that the Motor Vehicle registration number KCD 536P (Chassis number TRJ150-0025707) does not belong to any of the Respondents but belongs to the Objector/Applicant herein and therefore should not be subject of the proceedings and or any orders sought by the Assets Recovery Agency.

10. The application is premised on the grounds that the 2nd Objector is the registered owner of the suit motor vehicle having a valid and legal logbook and as such, the Respondent has no right to seize the motor vehicle in execution of an order against the other Respondents who are strangers to him. It is supported by an affidavit sworn by Khan Mohammed Juma, a director of the 2nd Objector herein.

11. Mr. Juma submits that the 2nd objector purchased the motor vehicle registration number KCD 536P on 21st January, 2017 from Messrs. Valley Road Motors, a company trading in new and used vehicles. That the purchase was made after another Director with the 2nd Objector carried out due diligence by way of obtaining a Motor Vehicle Copy of Records from the National Transport and Safety Authority (NTSA). The records confirmed that there was no caveat against the said vehicle and the transferee Josphat Kasirimo the registered owner of the vehicle.

12. He further submits that the 2nd Objector paid the full purchase price of Kshs. 2,800,000/- and traded in a motor vehicle registration number KBU 937L. Thereafter, he took possession of the suit vehicle and was issued with a Registration Certificate (logbook).

13. Mr. Juma asserts that the 2nd Objector has been using the suit vehicle since 22nd January, 2017. That on or about the 8th March 2017, officers from the Directorate of Criminal Investigations attached to the Assets Recovery Agency, came to the 2nd Objector's premises demanding that they hand over the motor vehicle to them. The officers purported to seize the suit vehicle under the authority of a court order

issued by the High Court at Nairobi, in Miscellaneous Application Number 601 of 2015.

14. Mr. Juma contends that the 2nd Objector asked its advocates to peruse the court file and confirm the existence of the said order. The advocates discovered that the application giving rise to the order was filed by the Assets Recovery Agency against eight (8) Respondents none of whom were the 2nd Objector, Valley Road motors or the transferee. In spite of this discovery, Sgt. Fredrick Musyoki from the Agency seized the suit motor vehicle on 8th March 2017 and claimed that he would escort it to CID headquarters.

15. Mr. Juma submits that the 2nd Objector purchased the motor vehicle for value with no knowledge of the orders and that the vehicle is registered in the name of the 2nd Objector who to date, has a valid and legal log book. That the Assets Recovery Agency therefore has no right to seize and retain the motor vehicle in execution of an order against the other Respondents who are strangers to him.

16. He further submits that it is the 2nd Objector who stands to suffer irreparable loss and damage should the Assets Recovery Agency retain the subject motor vehicle. That it is in the interest of justice that the application be allowed since no prejudice shall be occasioned upon the Agency.

17. The Respondent, hereinafter referred to as the Agency, filed a replying affidavit sworn by Sgt. Fredrick Musyoki and dated 24th April, 2017 in opposition to the two applications.

18. Sgt. Musyoki submits that under **sections 81, 82, 86 and 87** of the **Proceeds of Crime and Anti-Money Laundering Act CAP 59B (POCAMLA)**, the Agency has the mandate to apply ex-parte to the court for orders prohibiting any person from dealing in any manner with any property or assets, provided that there are reasonable grounds to believe that such property is proceeds of crime subject to the conditions specified by the court.

19. Sgt. Musyoki states that the Agency filed an application for preservation and surrender orders through a Notice of Motion dated 30th December 2015, in Miscellaneous Application Number 601 of 2015. That on 31st December 2015, the court granted preservation orders under **section 90** of the **POCAMLA** against several properties and assets pending the hearing and determination of the forfeiture application. The assets listed in the order are:

- a. Maisonette House situate at Kasarani within Nairobi on L.R. No 20857/190.
- b. Plot Number L.R. No. Ruiru, Juja East Block 2/360
- c. Motor vehicle Toyota Prado Registration Number KCE 852T
- d. Motor vehicle Toyota Prado Registration Number KCD 536P.
- e. Motor vehicle Registration Number KCE 874R S. Wagon Toyota Prado.

20. He contends that the motor vehicles registration numbers KCD 536P and KCE 852T are owned by and registered under the names of the 3rd and 7th Respondents. That the court ordered that the motor vehicles be seized and surrendered to the investigation officer No. 75821 Corporal Sautet Jeremiah Matipei and be detained by the Directorate of Criminal Investigations until the court makes further orders. The court further ordered that in the event the vehicles are not surrendered, the National Transport and Safety Authority (NTSA) do cancel the road licenses and insurances of the said motor vehicles.

21. Sgt. Musyoki submits that the Agency gazetted the court order vide Kenya gazette number 325 dated 22nd January, 2016 as required under **section 83 (1) and (2)** of the **POCAMLA**. That on the 15th January 2016, the 3rd and 7th Respondents filed an application seeking that the court do vary or rescind the order authorizing the seizure of the suit motor vehicles but which application was dismissed on the 28th November, 2016.

22. He further submits that the 1st and 2nd Objectors'/ Applicants' averments that they bought the suit motor vehicles on 4th October 2016 and 21st January 2017 respectively, is an affront to the orders of this court dated 31st December 2015. That these motor vehicles were not for sale or transfer as from 31st December 2015, when this court issued preservation and surrender orders for which reason the applicants have no right to remain with the motor vehicles.

23. Sgt. Musyoki asserts that he seized the motor vehicle registration number KCD 536P in accordance with the court order dated 31st December 2015 and took it to the Directorate of Criminal Investigations Headquarters. He is still searching for the whereabouts of motor vehicle KCE 852T which the 1st Objector has refused to surrender and instead hidden it.

24. He contends that the subject motor vehicles are presumed to be proceeds of crime procured using funds stolen from the National Youth Service, a public entity, and cannot constitute genuine properties or assets. That it is fair and just that benefits and assets procured using stolen public funds are recovered and applied for public good.

25. In response to the replying affidavit, the 1st Objector filed a further affidavit dated 23rd August, 2017 in which he reiterated the contents of his supporting affidavit and stated that he has not connived with any of the Respondents and was never aware of the existence of a court order or a case. That when he conducted a search, there was no caveat or order registered against the motor vehicle which he bought following advertisement for sale by public auction.

26. The 2nd Objector also filed a further affidavit dated 30th August, 2017 and sworn by one of its directors Mr. Khan in response to the Respondent's Replying affidavit.

27. Mr. Khan submits that the orders issued on 31st December 2015 prohibited any dealings with various properties including motor vehicle registration number KCD 536P (Chassis Number TRJ150-0025707) for a period of ninety (90) days. That ninety (90) days from the date of issuance of the orders was March 30th 2016 meaning that at the time the 2nd Objector purchased the vehicle, there were no valid orders prohibiting the sale of the motor vehicle. He states that for avoidance of doubt, the vehicle was purchased 297 days after the prohibition orders had lapsed.

28. Mr. Khan contends that the 2nd Objector is an innocent 3rd party who purchased the suit motor vehicle for value after the lapse of the prohibition orders. He states that the fact that the search lists no caveat or encumbrance against the motor vehicle indicates that NTSA had no notice of the Court's order and that the 2nd Objector acted within the law in purchasing the vehicle.

29. Mr. Khan states that under **section 90** as read with **section 83** of the **POCAMLA**, the Agency is required to give notice to all persons with a known interest in the property. He asserts that the Agency should not be allowed to benefit from its own indolence and lethargy in enforcing the court order issued on 31st December before the same lapsed. That had the Agency acted in accordance with the order, no innocent 3rd parties would have innocently paid value for the subject motor vehicles.

30. Mr. Khan submits that the 2nd Objector was not privy to ACEC Miscellaneous Application Number 3 of 2016 and the Applicant therein did not prove any nexus between the 2nd Objector and the Respondents. That the subject motor vehicle does not satisfy the definition of proceeds of crime if the Respondent sold it and received payment from an innocent 3rd party. He states that he has no notice of the forfeiture proceedings yet as the registered owner of the subject motor vehicle, he should have been given notice of the forfeiture application.

31. On 27th June, 2017 this Court directed the parties to file and serve their written submissions. The 1st Objector/ Applicant filed written submissions dated 23rd August, 2017 in which he submitted that he is the registered owner of motor vehicle registration number KCE 852T and that the Respondent has no right to attach or impound the vehicle. He relied on the contents of his supporting affidavit and further affidavit.

32. The 1st Objector submitted that the previous owner of the suit motor vehicle procured a loan from Mwananchi Credit limited, using the motor vehicle as security. Upon failing to pay the loan on the agreed terms, Mwananchi Credit limited in a bid to realize the security advertised a sale by auction of the motor vehicle. The auction was organized and carried out by Auckland Agencies Auctioneers from whom he bought the vehicle having been declared the highest bidder.

33. It is his submission that he is the legal and only registered owner of the motor vehicle registration number KCE 852T. That there is no evidence that his ownership or logbook has been challenged in any proceedings to defeat his ownership claims. That the Respondent cannot therefore allege that the vehicle is owned and registered in the name of either the 3rd or 7th Respondent.

34. Counsel relied on the case of **Michael Kwena vs Raza Properties Limited and Another Civil case No. 1914 of 2000** where Lady Justice Nambuye stated thus:

“A transfer evidenced by a log book can only be upset upon being set aside. Herein the transfer subject of these proceedings has not been upset and therefore it has to be upheld...Since the transfer to the Objector has been effected as demonstrated by the changes evident in the logbook exhibited, as per the persuasive decision in the case of Kenya Oil Company (supra) that transfer is as good as any other until upset or ousted.”

35. The 1st Objector stated that there is no indication that the Respondent is investigating him in the alleged National Youth Service (NYS) scandal, nor is he a party as a respondent in any of the recovery proceedings commenced by the Respondent. He urged the court to protect his title over the subject vehicle and issue an order stopping the Respondent from seeking to attach or impound it.

36. In support of the application, the 2nd Objector filed written submissions dated 18th September 2017 in which they submitted that they are the registered owners of the motor vehicle registration number KCD 536P, having purchased it after conducting their due diligence.

37. The 2nd Objector submitted that it was issued with a Registration Certificate No. K1233868U for the subject motor vehicle on 2nd February 2017. That a registration card is *prima facie* evidence of title to a motor vehicle unless proved otherwise as held by the Court of Appeal in Uganda in **Osapil vs Kaddy [2000] 1 EALA 187**.

38. The 2nd Objector further submitted that the Respondent seized the vehicle from its premises yet they had not adduced a single document disproving the 2nd Objector's ownership of the vehicle. They relied on the case of **Michael Kwena vs Raza Properties Limited and Another, Civil case number 1914 of 2000** where Nambuye J stated:

“A transfer evidenced by a logbook can only be upset upon being set aside. Herein the transfer subject of these proceedings has not been upset and therefore it has to be upheld.”

39. The 2nd Objector argued that at the time of sale and transfer of the suit motor vehicle, the prohibitory orders had lapsed. The Agency sat on the orders from 31st December 2015 and sought to enforce them on 8th March 2017, one year and two months (14 months) after the orders were issued by the court.

40. The 2nd Objector contended that **section 81** of the **POCAMLA** provides that all proceedings with regard to recovery and preservation of property are civil in nature and as such, they are subject to the Civil Procedure Rules. **Order 40 rule 6** of the **Civil Procedure Rules** provides that where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of 12 months from the date of the grant, the injunction shall lapse unless for any reason the court orders otherwise. To buttress this, they relied on the cases of **David Wambua Ngii vs Abed Silas Alembi & 6 Others [2014] eKLR** and **Filista Chamaio Sosten vs Samson Mutai [2012] eKLR**.

41. It is the 2nd Objector's submission that the Agency sat on the court orders from 31st December, 2015 and sought to enforce them on 8th March, 2017 fourteen (14) months after the orders were issued by the court. That the Agency did not make any attempts to seize the subject motor vehicle nor did they serve the court order on NTSA to enable the latter place a caveat on the subject motor vehicle. The 2nd Objector contends that if the Agency had served NTSA, they would not have acquired the car.

42. The 2nd Objector asserted that the Agency's failure to enforce the orders was a mockery of the judicial process and the 2nd Objector who is an innocent purchaser ought not to suffer as a result of the Agency's indolence. They cited the ruling of this court in **Miscellaneous Application No. 3 of 2016** where it held that the court ought not to exercise its discretion in favour of parties who have a history of disobeying the orders of the said court.

43. The 2nd Objector urged the court not to reward the Agency's disobedience and indolence to their detriment and instead allow their application dated 16th March, 2016.

44. In opposition to the two applications, the Agency, the Respondent herein, filed written submissions dated 10th November, 2017 in which they relied on their replying affidavit dated 24th April 2017. They submitted that the suit motor vehicles were not available for sale or transfer at the times the Objectors/Applicants alleged to have bought them.

45. The Agency submitted that the subject motor vehicles are proceeds of crime within the meaning of **section 2** of the **POCAMLA** and the act of alleged sale or transfer of the said motor vehicles by the 3rd and 7th Respondents amounts to money laundering contrary to **sections 3, 4 and 7** of the **Act**.

46. The Agency contended that on 15th January 2016, the 3rd and 7th Respondents filed an application seeking to vary the order authorizing the seizure of the motor vehicles registration numbers KCD 536P and KCE 832T but the application was dismissed by this court on 28th November 2016. That the 1st and 2nd Objectors' averments that they bought the motor vehicles on 4th October 2016 and 21st January 2017 respectively is therefore an affront to the orders of this court dated 31st December 2015.

47. The Agency submitted that the subject motor vehicles were not for sale as from 31st December 2015 when the court issued the preservation and surrender orders. That the 3rd and 7th Respondents were aware of the existence of the court orders and colluded with the objectors/applicants herein to dispose of the motor vehicles to conceal and disguise the fact that they are proceeds of crime.

48. The Agency asserted that this is a classical scheme of money laundering meant to disguise the source of the funds and the subsequent investment out of the stolen funds to make it difficult to trace the properties procured through proceeds of crime. They pointed out that in money laundering schemes, ownership of proceeds of crime may be direct or indirect and relied on the case of **Assets Recovery Agency vs Samuel Wachenje & 7 others [2017] eKLR** to advance this argument.

49. The Agency submitted that the power of the court to vary or rescind its order is provided under **section 89** of the **POCAMLA** and by **Order 45 rule 1** of the **Civil Procedure Rules, 2010**. That to obtain variation or review of an order, the Applicants must prove that as a result of the court order, they have been deprived of reasonable living expenses, or suffered undue hardship which outweighs the risk of preserving the subject property or there is a cognizable mistake or an error apparent on the face of the record.

50. The Agency contended that a party seeking variation or review of a court order must be aggrieved by the order sought to be varied or rescinded as stated by the court in **Gulamhusein Mulla Jivanji & Another vs Ebrahim Mulla Jevanji & Another (1929-30) 12 KLR 41**. That the affidavits filed by the applicants in support of their Notices of Motion did not show any of these ingredients but instead stated mere excuses which cannot warrant the grant of the prayers sought.

51. The Agency submitted that there is a pending forfeiture application, **Miscellaneous Application HCC No. 171 of 2016** in respect of the properties subject to the preservation orders, and as such the preservation orders have not expired. They stated that **section 90** of the **POCAMLA** allows the Agency to apply to the High Court for orders forfeiting to the government all or any of the property that is subject to the preservation order. They further stated that under **section 84** of the **Act**, the preservation orders cannot expire if there is an application for a forfeiture order pending before the court in respect of property subject to the preservation orders.

52. The Agency asserted that the Applicants failed to demonstrate that they will suffer hardship as a result of the preservation orders or that the properties subject to the preservation orders will be destroyed. That the Applicants' arguments that they lawfully purchased the said vehicles have no merit since at the time they allegedly bought them, the vehicles were under a preservation order hence not available for sale.

53. The Agency submitted that to allow the applicants' applications would defeat the purpose of the **Act** and urged the court to dismiss the applications for want of merit.

Determination

54. I have considered the pleadings, the written submissions, and the authorities relied on by the parties herein. The issue emerging for

determination is whether the Applicants have met the threshold needed for this court to vary the preservation orders issued on 31st December, 2015.

55. The threshold required for variation or rescission of preservation orders is set out under **section 89** of the **POCAML**A. The guiding principles for the court to issue preservation orders are provided under **section 82 (1), (2) and (3)** of the **POCAML**A which states thus:

(1) The Agency director may, by way of an *ex parte* application apply to the court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.

(2) The court shall make an order under subsection (1) if there are reasonable grounds to believe 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.

(3) A court making a preservation order shall at the same time make an order authorising the seizure of the property concerned by a police officer, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

56. The Agency in exercise of its mandate conferred by this section applied *ex parte* to the court for orders prohibiting any person from dealing in any manner with the property, or assets listed in their application since they had reasonable grounds to believe that the property and assets were proceeds of crime. It is on these grounds that the court granted the preservation orders on 31st December, 2015 and which orders form the basis of this suit.

57. The duration of preservation orders is provided under **section 84** of the **POCAML**A as follows:

“A preservation order shall expire ninety days after the date on which notice of the making of the order is published in the Gazette unless-

a. there is an application for a forfeiture order pending before the court in respect of the property subject to the preservation order;

b. there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation order; or

c. the order is rescinded before the expiry of that period.”

58. Under **section 90** of the **POCAML**A, if a preservation order is in force, the Agency may apply to the High Court for orders forfeiting to the Government all, or any of the property that is subject to the preservation order. The Agency has filed a forfeiture application **Miscellaneous Application HCC No. 171 of 2016** in respect of the property and assets subject of the preservation orders. Since the forfeiture application is pending before the court, the preservation orders cannot be said to have expired as averred by the Applicants.

59. The Applicants herein seek orders to vary the preservation orders issued on 31st December, 2015. The Applicants should therefore satisfy the threshold stipulated under **section 89(1)** of **POCAML**A which states that:

“A court which makes a preservation order-

a. may, on application by a person affected by that order, vary or rescind the preservation order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied-

i. that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant; and

ii. that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed, or transferred; and

b. shall rescind the preservation order when the proceedings against the defendant concerned are concluded.”

60. It is therefore the Applicants herein who bear the burden of demonstrating that the preservation orders have deprived them of the means to provide for reasonable living expenses. It is also for the Applicants to show that they have suffered hardship as a result of the order, which hardship outweighs the risks of dissipation of the property concerned.

61. From their arguments, the Applicants herein have failed to demonstrate to this court that they rely on the subject motor vehicles for their daily reasonable expenses. All the Applicants have done is to state that they are the legal and registered owners of the motor vehicles and as such the preservation orders over the motor vehicles cannot stand. It is not enough to claim ownership of the subject motor vehicles, the

Applicants must also show that the orders operate to their detriment.

62. On the issue of ownership of the subject motor vehicles, the Applicants stated that at the time they bought the motor vehicles, the preservation orders had lapsed. The preservation orders cannot lapse during the pendency of a forfeiture application by virtue of **section 84** of **POCAMLA** as analyzed above.

63. It is for the Applicants herein to demonstrate that they lawfully acquired the motor vehicles having conducted due diligence. The Applicants' only argument is that they bought the subject motor vehicles when the preservation orders had lapsed after which they were duly registered as the lawful owners. That since they were not the Respondents in any of the Agency's applications, the Agency has no right to seize the motor vehicles. However, the Applicants did not tender evidence before this court to indicate when the forfeiture application was filed, to demonstrate that indeed at the time of purchases there were no preservation orders in force.

64. The subject motor vehicles were seized pursuant to this court's orders issued on 31st December 2015. At the time when the preservation orders were issued, the motor vehicles were owned by the 3rd and 7th Respondents. It is therefore not in dispute that the Applicants herein are the current registered owners of the motor vehicles, what is disputed is whether they lawfully purchased the motor vehicles. The preservation orders issued by the court are still in force and have been since they were issued. The Applicants cannot therefore purport to have purchased the subject vehicles when there were in force orders prohibiting any such dealings with the motor vehicles.

65. It is the Respondent's submission that the act of the alleged sale and transfer of the subject motor vehicles amounts to money laundering. A reading of **section 3** of **POCAMLA** shows that one is guilty of money laundering if they engage in a transaction with property which they know or ought to have reasonably known, is proceeds of crime with the intention of disguising the source and ownership thereof. In these circumstances, the Respondents knew that the subject motor vehicles were believed to be proceeds of crime and they should not have involved the motor vehicles in any business dealings until the determination of the forfeiture application. At no point was ownership transferrable because the subject motor vehicles were already under a caveat.

66. From the foregoing, the Applicants have failed to meet the threshold required under **section 89** of **POCAMLA** for this court to grant the orders sought. It would therefore not be in the interest of justice to grant the orders sought.

67. The 1st Objector also sought orders for stay of execution of the orders of this court issued on 31st December 2015. Circumstances under which a court may grant a stay of execution are provided under **Order 42 rule 6** of the **Civil Procedure Act** which states that:

“No order of stay of execution shall be made under subrule

(1) unless-

a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

b such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

68. The 1st Objector's application for stay was made one year 6 (six) months after the orders of this court were issued. In my view, this is unreasonable delay. The stay has also been overtaken by events by the filing of the forfeiture application and as such cannot be granted.

69. Accordingly, I find that the applications dated 15th March 2017 and 16th March 2017 respectively lack merit and are therefore dismissed with no orders as to costs.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF MAY 2018.

L. A. ACHODE

HIGH COURT JUDGE

DELIVERED, DATED AND SIGNED IN OPEN COURT AT NAIROBI THIS 14th DAY OF MAY, 2018.

HEDWIG I. ONG'UDI

HIGH COURT JUDGE