



REPUBLIC OF KENYA



**Assets Recovery Agency v Mwakileo (Civil Suit E021 of 2025) [2025] KEHC 14606 (KLR)  
(Anti-Corruption and Economic Crimes) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CIVIL SUIT E021 OF 2025  
LM NJUGUNA, J  
OCTOBER 15, 2025**

**BETWEEN**

**ASSETS RECOVERY AGENCY ..... APPLICANT**

**AND**

**ALI SAID MWAKILEO ..... RESPONDENT**

**JUDGMENT**

1. This judgement relates to the Originating Motion dated the 29<sup>th</sup> April, 2025 brought under Sections 81, 90 and 92 of the Proceeds of Crime and Anti- Money Laundering Act as read together with Order 51 of the Civil Procedure Rules. The application is premised on the grounds set out on the body of the same, and its supported by the affidavit sworn by Martin Samburumo, on even date. Through the application, the applicant has sought the following Orders;
  1. That this Honourable Court be pleased to issue an order declaring motor vehicle registration number KCZ 723D, Nissan Note, Chassis Number Ell-631838 registered in the name of Ali Said Mwakileo as proceed of crime.
  2. That this Honourable Court be pleased to issue an order declaring the developed and unregistered parcel of land which falls within the Mainland South registration Block Parcel no. MS/ 111/203 identifiable by the geographical coordinates 4.1059696, 39.6461961 and all the developments thereon beneficially owned by Ali Said Mwakileo as proceed of crime.
  3. That this Honourable court be pleased to issue an order forfeiting the motor vehicle in paragraph 1 to the Applicant on behalf of the state.



4. That this Honourable Court be pleased to issue an order directing the Director National Transport and Safety Authority to effect transfer of motor vehicle registration number KCZ 7231), NISSAN NOTE to the applicant (Assets Recovery Agency).
  5. That this Honourable Court be pleased to issue a Vesting Order directing the Chief Land Registrar/Land Registrar Mombasa to effect transfer of land parcel in prayer 2 above to the applicant (Assets Recovery Agency).
  6. That costs of the suit be provided.
2. The applicant is established under Section 53 of the Proceeds of Crime and Anti- Money Laundering (POCAMLA) as a body Corporate and pursuant to Part VIII of the POCAMLA, it is authorized to institute forfeiture proceedings and seek orders prohibiting any person, subject to such conditions as the court may specify, from dealing in any manner with any property if there are reasonable grounds to believe that such property is a proceed of crime.
  3. The respondent is a Kenyan Citizen and registered owner of motor vehicle registration Number KCZ 723D and is said to be the beneficial owner of the developed but unregistered parcel of land No. MS/ III/203 and identifiable by geographical coordinates 4.1059696, 39.6461961, and there are reasonable grounds to believe that the said properties are proceeds of Crime obtained from illegitimate business of trafficking in narcotic drugs.
  4. The applicant avers that it received a duplicate police file from the Anti-Narcotics Unit of the Director of Criminal Investigations Headquarters concerning a case of trafficking in narcotic drugs, money Laundering and acquisition of proceeds of crime involving the respondent herein. That the applicant opened inquiry file Number 42 of 2022 to investigate the respondent on the allegations of money laundering activities and acquisition of proceeds of crime from the illegitimate narcotic drugs.
  5. The applicant states that its investigations have established that on the 13<sup>th</sup> April 2022, police officers from Anti- Narcotics Unit (ANU) and Transnational Organized Crimes Unit (TOCU) while acting on information, intercepted a motor vehicle registration No. KCZ 732D Nissan Note white in colour at Mombasa Likoni Ferry and upon conducting a search, recovered the following items;
    - i. Motor Vehicle Registration No. KCZ 723D make Nissan Note white in colour.
    - ii. Ignition keys for motor Vehicle Registration No. KCZ 723D.
    - iii. Red shopping bag containing cellotaped red shopping bag suspected to contain narcotic drugs.
    - iv. Passport No. A1107954 for Ali Said Mwakileo.
    - v. Brownish wallet containing Identity serial number 701156539 ID number 34250449 for Zakaria Hassan Mwakisuwa, resignation from political parties letter for Zakaria Hassan Mwakisuwa dated the 12/10/2021
    - vi. Driving licence of Mwakileo Ali Said.
    - vii. Identity card serialized 245612111 ID No. 26071821 for Ali Said Mwakileo.
    - viii. Whitish spotted hat.
  6. The applicant avers that the occupants of the said motor vehicle namely Swalehe Mgoshi, Ali Said Mwakileo, Zakaria Hassan Mwakisuwa and Juma Masoud Mgoshi were arrested and charged vide Mombasa Criminal Case NO. E498 of 2022 with the offence of trafficking in narcotic drugs valued at Ksh. 6,156,000 contrary to Section 4 (a) (iii) of the Narcotic Drugs and Psychotropic Substances



Control Act No. 4 of 1994. The brownish granular substances were submitted to government chemist for analysis and were found to be heroin, a narcotic drug.

7. That the applicant conducted investigations and it emerged that the respondent acquired assets/properties using the proceeds obtained from the illegitimate trade in narcotics, whereby, the proceeds were received through the respondent's bank accounts and M-pesa accounts. That the funds transacted therein are suspected to be proceeds of crime contrary to the Provisions of the *Narcotic Drugs and Psychotropic Substances (control) Act* No. 4 of 1994, POCAMLA and Prevention of Organized Crimes Act 2010.
8. The applicant states that its investigations have established that motor Vehicle KCZ 723D was acquired in 2020 which falls within the period of investigations. Further, that the respondent is the beneficial owner of the developed but unregistered parcel of land (aforesaid land). That the applicant obtained warrants to investigate the respondent's bank accounts Nos 1284356280, 0015251128001 and 0950003301 and Safaricom M-pesa Numbers XXXXXXXXX, 0790211888, 0703240575, 0725062444, 0757300185, 0796593172, 0707420285 and 0703152755.
9. The applicant's analysis of the bank accounts opening statements for account No. 1284356280 in the name of the respondent shows that it was opened and operated by the respondent herein together with Chiku Hamisi Mohammed who is the respondent's wife on the 23<sup>rd</sup> March, 2021. That in the account opening documents, the said Chiku Hamisi Mohammed indicated her occupation as a housewife and the source of funds into the said accounts to be salary from employment by the County Government of Mombasa, while the respondent indicated his source of funds to proceeds from a retail shop.
10. The applicant states that on the same day the account was opened, it received structured deposits from agents totaling to Ksh. 430,000, and between 19/04/2021 and 31/12/2021 the account received further deposits to the tune of Ksh. 493, 611.05. That it emerged that once the respondent had made the deposits into the said accounts he would withdraw in cash while in other instances the said Chiku Hamisi Mohammed made cash withdrawals amounting to Ksh. 750,000 which was described as purchase of land.
11. The applicant avers that despite the respondent indicating in the account opening documents that the source of funds into the said account will come from proceeds from a retail shop, investigations indicated that the respondent does not own any shop while the said Chiku Hamisi did not make any deposit or receive any salary payment into the account from the County Government of Mombasa.
12. Further, it emerged that the respondent's Mpesa account number XXXXXXXXX for the period between 1/01/2018 to 13/05/2023 received large suspicious deposits amounting to a total of Ksh.10, 754, 852 while the respondent himself deposited in his Mpesa account funds to the tune of Ksh.1,862,412. That between 30/01/2021 and 24/12/2021 he received a total of Ksh.2,076,300 from unknown individual known as Suleiman Mohammed Lidago. The account also received a total of Ksh.1,085,980 from the respondent's co-accused namely Swale Time Mgoshi the period between 11/07/2020 and 8/04/2022.
13. The investigations also established that the respondent received a total of Ksh.779,710.00 from his co-accused, one Juma Masoud Mgoshi the period between 21/07/2019 to 20/06/2021. The applicant states that its investigations established that the respondent is linked to Swale Yusuf Ahmed who is facing a charge of trafficking in narcotic drugs vide Shanzu Law Courts Criminal Case No. 988 of 2017 and E763 of 2022 and whose properties have been forfeited to the State vide HCACECS/E031/2023, on the 28<sup>th</sup> March, 2025.



14. That the applicant's investigations also revealed that both the respondent and the said Swale Yusuf Ahmed were receiving funds from common individuals with some of them charged alongside the respondent with the offence of trafficking in narcotic drugs.
15. That despite the respondent declaring in the account opening documents that the source of funds in his accounts was proceeds from a retail shop and the huge transactions in his bank and M-pesa accounts, investigations have established that he does not file any tax returns with Kenya Revenue Authority. That despite being summoned to explain the numerous and suspicious deposits into his accounts, he has failed to honour the said summons and has never given any explanation as to the source of the funds.
16. In response to the Originating Motion, the respondent filed a replying affidavit in which he has denied being either the legal or beneficial owner of the aforesaid land. He admitted being the registered owner of motor vehicle KCZ 723D but avers that the same was purchased by his wife Chiku Hamisi Mohammed for a total of Ksh. 550,00 out of a loan amount of Ksh. 712, 064.81 which she borrowed from Co-operative bank and the vehicle was purchased from SNY MOTORS LIMITED.
17. That he has been using the said vehicle for hire and sometimes as a taxi to earn a living and to take care of his family, and the wife is still servicing the loan to date, and, the allegations that the same was procured through money laundering and proceeds of crime is not only unfair but hurtful to his young family.
18. That the transactions from different people were either from hiring of the vehicle or taxi services that he was conducting. He states that the ongoing criminal case is still pending and the only thing at hand is that the aforesaid motor vehicle was found with substance suspected to be drugs from passengers who were on board.
19. In the Supplementary affidavit, the applicant avers that its investigations established that the respondent through his alleged wife purchased an unregistered parcel of land for Ksh.750,000 which was withdrawn from account number 1284356280.
20. That the respondent has failed to explain his source of the funds and instead has chosen to explain that of his wife and that his averments contained in his affidavit are mere denials which do not offer sustainable or serious grounds to dispute the issues before this Honourable court. That he has not demonstrated evidence of any legitimate source of income including the alleged taxi business which the respondent claims to be engaged in.
21. The applicant further states that the respondent's driving licence is not Class B3 which authorizes one to engage in the business of driving public Service vehicles/taxi and that the aforesaid vehicle is a private vehicle and it is not a passenger carrying motor vehicle, an indication that the same is not authorized to engage in taxi business.
22. That at the time the respondent and his co-accused were arrested and a search conducted in the motor vehicle the officers recovered substance that was found to be heroin upon analysis by the Government chemist and it follows that the respondent had knowledge that the drugs were hidden in the bonnet of the vehicle and on the top part of the engine which is evidence that he is engaging in reverse money laundering where the funds for the purchase of the vehicle even though acquired legitimately, the Asset was used to promote trafficking in narcotic drugs and as such, it is liable to forfeiture.
23. That the respondent's co-accused, Swalehe Time Mgoshi and Juma Masoud Mgoshi were jointly sending money to the respondent while within the same period, the said persons were also sending money to one Swalehe Yussuf Ahmed who is a known drug baron.



24. The respondent filed a further affidavit in which he has denied the contents of the supplementary affidavit and in particular that he is the beneficial or registered owner of land parcel number MS/III/203 identifiable by the Geographical Coordinates -4.1059696, 39.646196IV and all the developments thereon,
25. He avers that the applicant has already prosecuted, condemned and convicted him despite the fact that the criminal case is still active in court at the prosecution stage and the court has not even determined whether he has a case to answer or not.
26. The application was disposed of by way of written Submissions.

### **Applicant's submissions**

27. The applicant filed the initial submissions before the respondent filed his response and later filed supplementary submissions. It identified three issues for determination as follows;
  - a. Whether the applicant has discharged its burden of proof.
  - b. Whether on a balance of probability the motor vehicle registration number KCZ 723D and the unregistered parcel of land are proceeds of crime.
  - c. Whether the said properties should be forfeited to the state.
28. On the 1<sup>st</sup> issue, the applicant submitted on the burden of proof under Section 107 of the Evidence Act and the threshold provided for under Section 92(1) of the POCAMLA. It relied on the following cases in that regard;
  - a. Assets Recovery Agency vs Samantha Rowe & 3 others SC Judicature Jamaica Civil Division Claim No. 2012 HCV 02120 cited in the case of Assets Recovery Agency Vs Kigunzi (Civil Suit E034 of 2023) ( 2024) KEHC 4044 (KLR) ( Anti-Corruption and Economic Crimes Division)
  - b. Miller Vs Minister of Pensions (1947) 2ALL ER 372 cited in the case of Assets Recovery Agency Vs Virtual Financials International Limited (Civil Suit No. E001 of 2024 (2024) KEHC 9225 (KLR).
  - c. Director of Assets Recovery and others, Republic Vs Green & others (2005) EWHC cited in the case of Assets Recovery Agency Vs Pamela Aboo; Ethics & Anti-Corruption Commission (interested party) (2018) eKLR.
  - d. William Kabogo Gitau Vs George Thuo & 2 others (2010) 1 KLR 526.
29. The applicant submitted that it has sufficiently demonstrated that the respondent was arrested and charged with the offence of trafficking in narcotic drugs and that out of the said illegitimate business the respondent acquired an economic advantage in the form of money and thereafter the funds were used to purchase the assets in issue. That the applicant has further demonstrated that there is an established link between the respondent and other persons who have been arrested and charged with the offence of trafficking in narcotics, and whose properties have been forfeited to the State by the Honourable court.
30. On the 2<sup>nd</sup> issue, it was submitted that having established that the said assets are proceeds of crime, then it follows that the said assets should be forfeited to the applicant on behalf of the State as this will ensure that the respondent does not benefit from his unlawful conduct. The cases of NDPP Vs Rebuzzi (94/2000) which was quoted in the case of Schabir Shaik & Others Vs State Cae CCt 86/06



(2008) ZACC7; Assets Recovery Agency Vs Ahmed & 2 others (2025) KEHC 4704 (KLR) and that of Assets Recovery Agency Vs Joseph Wanjohi & 3 others (2020) eKLR among others were relied on.

31. The respondent filed his submissions and identified two issues for determination as follows;
  - a. Whether the applicant has discharged its burden of proof as required by the law.
  - b. Whether the respondent has discharged his evidential burden.
32. The respondent submitted on both the legal and evidential burden of proof and submitted that the legal burden lay with the applicant and it is not enough for the Agency to only allege and thereafter shift the burden of proof to the respondent. That the applicant has not provided any iota of evidence to sustain its allegations that the subject properties were acquired through proceeds of crime and/or money laundering.
33. That the respondent has explained in details how the properties were acquired and has provided documentary evidence on the same which can be verified and confirmed, and therefore, he has discharged his evidential burden.
34. In its supplementary submissions, the applicant has submitted that the respondent's affidavit contains mere denials and does not offer any probative value for the court to determine the issues before the court. That the source of funds used in the purchase of the unregistered land can be traced to account No. 1284356280 domiciled at K.C.B and which the respondent was the only one who was depositing cash and his wife never made any deposit, but it is his wife who withdrew the funds to facilitate the purchase of the unregistered land.
35. The applicant made reference to several cases in his submissions as hereunder;
  - a. Assets Recovery Agency Vs Jonam (2025) KEHC 5551 (KLR).
  - b. Letiyia Ole Maina Vs Republic (2021) eKLR.
  - c. National Director of Public Prosecution Vs RO Cook Properties (Pty) Limited.
  - d. Peter Igeria Nyambura Vs Director of Public Prosecution (2018) eKLR.

#### **ANALYSIS AND DETERMINATION**

36. The court has considered the Originating Motion and all the material that were place before the court and in my view, there are only two issues for determination by this Honourable court:
  - a. Whether the motor Vehicle Registration Number KCZ 723D and the developed and the unregistered parcel of land are proceeds of crime.
  - b. If the answer to the issue (a) above is in the affirmative, whether the said properties should be forfeited to the State.
37. The applicant herein is established under Section 53 of the POCAMLA and pursuant to Part VIII of the said Act, the Agency is authorized to institute Civil forfeiture proceedings and in this case, it has sought for Orders declaring motor vehicle registration Number KCZ 723D and parcel No. MS/III/203 identifiable by geographical coordinates 4.1059696, 39.6461961 and all the developments therein, as proceeds of crime.



38. Section 2 of the POCAMLA defines proceeds of crime;

“Proceeds of crime” means 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 it includes , on a proportional basis , property into which any property derived or realized directly from the offence was later successfully 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.”

39. The court in the case of Schabir Shaik & others Vs State Case CCT 86/06 (2008) ZACC7 cited in the case of Assets Recovery Agency Vs James Thuita Nderitu & 6 others (2020) eKLR explained the reasons for the wide ambit of the definition as follows;

“.....one of the reasons for the wide ambit of the definition of “proceeds of crime” is, as the Supreme Court of appeal noted, that sophisticated criminals will seek to avoid proceeds being confiscated by creating complex systems of camouflage”

The Supreme Court of Appeal held that a person who has benefited through the enrichment of a company as a result of a crime in which that person has an interest will have indirectly benefited from that crime.”

40. In the case of NDPP Rebuszi (supra), the court emphasized the objective of forfeiture orders as follows;

“ ... the primary object of a confiscation order is not to enrich the State but rather to deprive the convicted person of ill-gotten gains. From this primary purpose, two secondary purposes flow. The first is general deterrence: to ensure that people are deterred in general from joining the ranks of criminals by the realization that they will be prevented from enjoying the proceeds of crimes they may commit. And the second is prevention: the scheme seeks to remove from the hands of criminals the financial wherewithal to commit further crimes. These purposes are entirely legitimate in our constitutional order.....”

41. Similarly, in the case of Assets Recovery Agency Vs Ahmed & 2 others (2025) KEHC the Judge in obiter stated as follows;

“Having found that the said assets are proceeds of crime, the spirit and object of the law in the POCAMLA is that none should be allowed to keep, enjoy and benefit from proceeds of crime. The rationale is that crime hurts the society especially those who are law abiding. In this matter where it is demonstrated that the assets here are proceeds from trafficking in narcotics, with known devastating effect on the society, especially youth who get rendered Zombies, the dictate is even more compelling.”

42. The proceedings herein being of Civil nature, the threshold is on a balance of probabilities and the applicant bears the burden of proof under Section 107 of the *Evidence Act*. The court in the case of Miller Vs Minister of Pensions (1947) cited in the case of Assets Recovery Agency Vs Virtual Financials International Limited (supra) addressed what constitute balance of probabilities and stated;

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; “We think it more probable than not” the burden is discharged, but, if the probabilities are equal, it is not. thus, proof on a balance or preponderance of probabilities means a win, however



narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un)convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."

43. In the case herein, the applicant contends that it has sufficiently demonstrated with evidence that the respondent was arrested and charged with the offence of trafficking in narcotic drugs which were conveyed using the subject motor vehicle, and that, out of the said illegitimate business he acquired economic advantage in the form of money and thereafter the funds were used to purchase the subject assets.
44. According to the evidence availed by the applicant, on the 13<sup>th</sup> April, 2022, police Officers from Anti-Narcotics Unit and Transnational Organized Crimes Unit while acting on information, intercepted the subject Motor Vehicle at Mombasa Likoni ferry area and upon conducting a search, they recovered among other things, Red Shopping bag containing cellotaped red shopping bag suspected to contain narcotic drugs. The substance was submitted to the Government Chemist for analysis and it was found to be heroin.
45. At the material time when the vehicle was intercepted and a search was carried out, the respondent was in the vehicle and was in the company of Swalehe Time Mgoshi, Ali Said Mwakisua, Zakaria Hassan Mwakisua and Juma Masoud Mgoshi who were all arrested and charged with the same offence as the respondent herein.
46. The applicant has annexed the respondent's bank and M-pesa accounts to its supporting affidavit and the same shows that on the same day when the respondent opened account No. 1284356280 which he opened and he was operating it together with his wife, a total of Ksh. 430,000 was received in that account from different agents. Further, from 19<sup>th</sup> April, 2012 to 31<sup>st</sup> December, 2021 a total of Ksh.493,611.05 was received in that account.
47. There is also evidence that the respondent's M-pesa account XXXXXXXXX received a total of Ksh.10,754,852 within the period between 1/01/2018 and 13<sup>th</sup> May, 2023; between 30/01/2021 and 24/12/2021, the respondent received a total of Ksh.2,076, 300; between 11/07/2020 and 8/04/2022 he received a total of Ksh.1,085, 980 and between 21/07/2019 and 20/06/2022 he received a total of Ksh.779,710.
48. It is also in evidence that the respondent was linked to other drug traffickers some of whom had been charged with offences of trafficking in narcotic drugs and whose properties had been forfeited by the Court. This is an indication that the respondent and the people that he was charged with, are part of a wide syndicate of drug trafficking.
49. In explaining his sources of the funds, the respondent indicated that the money is from his retail shop and that some of the money are from his wife's salary and a loan of Ksh.712, 064.81 that she took from the Co-operative Society on the 10/07/2020 out of which she utilized a total of Ksh.550,000 to purchase the subject motor vehicle and the vehicle was registered in his name.
50. According to him, he uses the subject Vehicle for hire and sometimes as a taxi to earn a living and to take care of the family, and that the monies that he received in his accounts were from different people either for hiring or taxi services that he was engaged in. In response to this explanation, the applicant in the supplementary affidavit stated that the respondent's driving licence is not Class B3 which allows one to engage in the business of driving public service vehicle/taxi and that the subject motor vehicle is a private car thus not authorized to engage in a taxi business. This assertion was not denied by the respondent and this court takes it that indeed the subject Vehicle is not used for commercial purposes



as alleged. The vehicle was intercepted ferrying narcotic drugs and was being used in the commission of an offence.

51. With regard to the land parcel, the applicant annexed a withdrawal slip for K.C.B for Ksh.750,000 from account No. 1284356280 which is a joint account with his wife, and as per the narration on the slip, it was to be used for buying unregistered land. The wife of the respondent was an employee of Mombasa County which fact is not denied by the applicant. She took a loan to purchase this property. This court will give the respondent the benefit of doubt and find that the land was not a proceed of crime.
52. In the end, and for reasons that the court has stated herein above, the application partially succeeds. Prayers (1,) (3), and (4) are allowed.
53. The applicant is awarded the costs of the suit
54. It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence: -

Mr. Kandie for the Applicant

No appearance for the Respondent

Court assistant - Adan

