



**Assets Recovery Agency v Mohammed & another; Premier Bank Kenya Limited
(Interested Party) (Civil Application E003 of 2025) [2025] KEHC 14057 (KLR)
(Anti-Corruption and Economic Crimes) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL APPLICATION E003 OF 2025
LM NJUGUNA, J
OCTOBER 8, 2025**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

ADAN BISHAR MOHAMMED 1ST RESPONDENT

AL-SIDDIQUE MOTORS LIMITED 2ND RESPONDENT

AND

PREMIER BANK KENYA LIMITED INTERESTED PARTY

RULING

1. The applicant herein filed the Originating Motion dated the 30th January, 2025 under Sections 90, & 92 of the *Proceeds of Crime and Anti- Money Laundering Act* (POCAMLA) as read with Order 51 Rule 1 of the *Civil Procedure Rules*, seeking the following Orders;
 1. That this Honourable Court do issue orders declaring the motor vehicle registration numbers KDB 296Q, Mitsubishi FUSO, White and KDN 851P, Toyota Noah, Wine in the names of Adan Bishar Mohammed and Al-Siddique Motors Limited respectively, as proceeds of crime liable for forfeiture to the applicant.
 2. That this Honourable court be pleased to issued orders of forfeiture of the motor vehicles in prayer 1 above to the Assets Recovery Agency on behalf of the Government.



3. That this Honourable court be pleased to issue an order directing the Director General of the National Transport and Safety Authority to register the motor vehicles specified in order 2 above in the name of the Applicant, Assets Recovery Agency.
 4. That this honorable court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders.
 5. That costs be provided for.”
2. The application is premised on the grounds set out on the body of the same, and it is supported by the annexed affidavit sworn by Zacharia Lekishon, on 30th January, 2025.
 3. The matter came up on the 1st October, 2025 for mention to confirm filing of submissions for the Originating Summons and on the said date, counsel for the applicant informed the court that the applicant had filed a notice of withdrawal of the application dated the 30th January, 2025, in its entirety.
 4. Counsel for the applicant further informed the court that, the reason why the applicant wishes to withdraw the application is because the preservation Orders that had been issued in respect of the two subject motor vehicles namely KDB 296Q, Mitsubishi Fuso, White and KDN 851P, Toyota Noah, Wine in the names of the 1st and 2nd respondents herein, by inadvertence, were not gazzetted and for that reason the applicant did not wish to have the applicant’s suit thrown out on a technicality.
 5. Counsel for the interested party opposed the withdrawal. He stated that the applicant obtained preservation Orders on the 27th August, 2024 and on obtaining the said orders, the applicant proceeded to attach all the motor vehicles of the interested party and the 2nd respondent, and took them to save custody at the 3rd interested Party’s premises.
 6. That early this year, the applicant proceeded to file forfeiture proceedings against the respondents and their application to set aside preservation Orders was dismissed by the court. Counsel stated that he was surprised to learn that other Orders had been granted in respect to the same motor vehicles, but the Orders had not been served on them; meaning, there exists two different Orders granted by Justice Kavedza and by this court over the same parties and the same subject matter.
 7. Counsel submitted that withdrawal of the application herein is an abuse of court process and its prejudicial to his client since the motor vehicles have been in the custody of the applicant since August 2024 to date.
 8. In response, counsel for the applicant admitted to having filed a fresh preservation Order but the Order not having been gazzetted, the applicant cannot move. She avers that the respondent will not suffer any prejudice if the applicant is allowed to withdraw the application.
 9. It was the submission by the counsel for the respondent that he filed an application to have the Orders that were issued by Judge Kavedza to be declared as having lapsed, and to vary the preservation Orders, but the application was dismissed by the court. That the aforesaid motor vehicles have been used as security for a loan, yet, they have been in the custody of the applicant since they were seized in August last year. He took issue with the long period of time that it took the applicant to realize that the preservation Orders were not gazzetted.

Analysis and Determination

10. The court has considered the arguments in support of, and against the withdrawal of the Originating Motion dated the 30th January, 2025. The only issue for determination is whether the applicant should be allowed to withdraw the said application.



11. As stated by the counsel for the respondent, the same was filed pursuant to the Orders that were issued by Judge Kavedza in August 2024 in Misc. application No. E042 of 2024, a fact not denied by the counsel for the applicant. The applicant admits that the said Orders were not gazetted within the statutory period and thus the reason why the applicant wishes to withdraw the application herein.
12. It is also not denied that the applicant obtained another preservation order in ACEC Misc. E041 of 2025 involving the same parties and the same motor vehicles as the ones in the application herein. Those Orders were issued by this court on the 16th September, 2025.
13. The reason that has been given by the applicant for the withdrawal is that the preservation Orders that were issued by Judge Kavedza were not gazetted as required under Section 83 (1) of the *Proceeds of Crime and Anti-Money Laundering Act*, and the applicant only realized the same when it was too late in the day and would thus wish to withdraw the application to beat that legal technicality.
14. As earlier stated, the present application was filed pursuant to the preservation Orders that were issued by Kavedza J, on the 28th August, 2024, and it was filed on 30th January, 2025. Parties have already filed their responses to the application and the court has given directions on filing of submissions meaning that we are at the tail end of hearing the application. It is more than one year since the preservation Orders were issued by Kavedza J and there is no good reason that has been given by the applicant why they did not follow up with the Government Printers for the Orders to be gazetted within the Statutory period.
15. If the applicant was diligent in following up the same, it could not have taken them a whole year to realize that the Orders were not gazetted. That is unreasonable period of time considering that they are having possession of the respondents' motor vehicles which they seized in August, 2024. This is extremely prejudicial to the respondents and the interested parties.
16. Considering the foregoing and for the reasons that the court has stated herein above, it is my finding that the applicant's application to withdraw the application dated the 30th January, 2025 has not been made in good faith, it is an abuse of the court process and the same is hereby disallowed.
17. It is so Ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 8TH DAY OF OCTOBER 2025

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L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Githinji holding brief for Ms. Amadi for the Applicant

Mr. Muyove for the respondent

Court assistant – Adan

