



**Assets Recovery Agency v Kioko (Anti-Corruption and Economic Crimes Case 16 of 2020) [2025] KEHC 13775 (KLR) (Anti-Corruption and Economic Crimes) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13775 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 16 OF 2020**

**NW SIFUNA, J**

**OCTOBER 1, 2025**

**BETWEEN**

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

**AND**

**MIKE SONKO MBUVI GIDION KIOKO ..... RESPONDENT**

**JUDGMENT**

1. The Applicant the Assets Recover Agency (ARA) is a Kenya Government Agency, established under Section 53 of the *Proceeds of Crime and Anti-Money Laundering Act* (also referred to as POCAMLA), with the mandate of identifying, tracing, freezing and recovering proceeds of crime. The Respondent a male adult, is a former Governor of the Nairobi City County.
2. Under Part VIII of POCAMLA, the Agency has authority to institute civil forfeiture proceedings for the recovery of proceeds of crime and seek orders for forfeiture of assets to the Government where there are reasonable grounds to believe that such assets are proceeds of crime. For purposes of executing this mandate, the Agency has policing powers (Under Section 53A of POCAMLA) to enable it investigate, identify, trace, freeze and recover proceeds of crime.
3. The Applicant filed this suit vide its Originating Motion dated 21<sup>st</sup> May 2020. The Motion which was filed under Sections 90 and 92 of POCAMLA, relates to funds that are currently on the Respondent's various bank accounts. The funds are:
  1. Ksh 4, 249, 785/90, on Account No. 0020264xxxxxx at Equity Bank Limited, and which Account is in the name of Mike Sonko Mbuvi Gidion Kioko.



2. Ksh 1,465,576/80 on account No. 1380262xxxxxx at Equity Bank Limited, and which Account is in the name of Mike Sonko Mbuvi Gidion Kioko.
  3. Ksh 2,906,213/90 on Account No. 1580261xxxxxx at Equity Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  4. Ksh 2,692,704/50 on Account No. 0350299xxxxxx at Equity Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  5. Ksh 1,296,033/07 on Account No. 1620262xxxxxx at Equity Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  6. USD 20,906/90 on Account No. 1380262xxxxxx at Equity Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  7. Ksh 2,235,015/27 on Account No. 0816490001 at Diamond Trust Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  8. Ksh 1,161,889/29 on Account No. 01143199xxxxxx at Co-operative Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  9. USD 7,573/03 on Account No. 0816xxxxxx at Diamond Trust Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
  10. USD 39,426/50 on Account No. 5048xxxxxx at Diamond Trust Bank Limited in the name of Mike Sonko Mbuvi Gidion Kioko.
4. Prior to filing this suit, the Applicant had on 6<sup>th</sup> February 2020, obtained from this Court (Kimaru J as he then was), preservation orders preserving those funds.

### **This Suit**

5. The Motion states that there are reasonable grounds to believe that those funds are proceeds of crime. Reason for which the Motion has urged this Court to declare those funds proceeds of crime; and order that they be forfeited to the Kenya Government. In so urging, the Applicant has stated that it is relying on Sections 90 and 92 of POCAMLA. Under which, this Court is empowered to order the forfeiture of assets or funds, where it is established that such assets or funds are either proceeds of crime, or have been used in the commission offences or are intended to be used in the commission of offences.
6. The Motion which is based on the grounds stated in it, is supported by the Supporting Affidavit No. 75821 Corporal Sautet Jeremiah, a Police officer who is attached to the Applicant (the Assets Recovery Agency- ARA) as an Investigator. The Motion has also prayed for its costs.
7. The Motion has listed the following as the grounds on which it is premised:
  1. That the Applicant received information on suspected money laundering and proceeds of crime by the Respondent, private companies, entities and other individuals involving public funds from Nairobi City County Government.
  2. That on 9<sup>th</sup> December 2019 and 27<sup>th</sup> January 2020 the Respondent was charged with others with various offences including conflict of interest contrary to Section 42(3) as read with Section 48 of the *Anti-Corruption and Economic Crimes Act*, money laundering contrary to section 3 of *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA), acquisition of proceeds of crime contrary to Section 4 of POCAMLA among other offences.



3. That on 11<sup>th</sup> December 2019, the Applicant vide Nairobi High Court Miscellaneous Application No. 4477 of 2019 Assets Recovery Agency V. Kenya Commercial Bank & 8 Others, obtained from this Court, orders authorizing it to investigate and restrict debits in respect of the funds in the said bank accounts, held at Equity Bank, Kenya Commercial Bank Limited, Diamond Trust Bank Limited and Co-operative Bank Limited and National Bank of Kenya.
  4. That the Applicant conducted investigations which revealed that the Respondent's accounts had received huge suspicious cash deposits/transfers both in US dollars and Kenya shillings.
  5. That on 6<sup>th</sup> February 2020, the Applicant filed Nairobi High Court Misc. Application No. 5 Of 2020, Assets Recovery Agency v. Mike Sonko Mbuvi Gidion Kioko; and obtained orders preserving funds in the said accounts and orders prohibiting the Respondent and/or his agents, representative from transacting, transferring and /or dealing in any manner with the funds held in the bank accounts.
  6. That on 21<sup>st</sup> February 2020, the Applicant gazetted the Preservation orders pursuant to Section 83(1) of POCAMLA vide Gazette Notice No. 1392.
  7. That further investigations and financial analysis by the Applicant into the Respondent's accounts revealed that between August 2017 and December 2019, the Respondent received huge suspicious cash deposits in different bank accounts depicting a clear case of money laundering designed to conceal, disguise and hide the nature and source of funds and thereby acquire and benefit from proceeds of crime.
  8. That the investigations and financial analysis of various suspicious cash transactions into the Respondent's accounts did not find any justifiable reasons for the said cash deposits.
  9. That there are reasonable grounds to believe that the funds held in the Respondent's bank accounts are proceeds of crime liable for forfeiture to the Applicant under POCAMLA.
  10. That it is in the interest of justice that the orders of forfeiture do issue forfeiting the above funds to Applicant on behalf of the State.
8. Corporal Sautet has in his said Affidavit stated that the Agency (ARA the Applicant) received information on suspected money laundering and proceeds of crime by the Respondent, private companies, entities and other individuals involving public funds from Nairobi City County Government. That he subsequently received instructions from the Agency's Director, to investigate the Respondent's bank accounts.
  9. That upon opening an inquiry file (Inquiry File No. 49 of 2019) and conducting investigations on those bank Accounts, it was revealed that the Accounts had between the month of August 2017 and the month of December 2019, received huge suspicious cash deposits and money transfers in US dollars and Kenya shillings. That which according to him, was a clear case of "splitting, smurfing and placement of funds into the banking system with a clear intention of concealing, disguising and hiding the source of funds and thereby accruing proceeds of crime to the Respondent".
  10. That later, the Respondent together with others, were charged was charged in a Criminal Case before the Magistrates' Court, with various offences. Including conflict of interest contrary to Section 42(3) as read with Section 48 of the *Anti-Corruption and Economic Crimes Act*, money laundering contrary to section 3 of *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA), acquisition of proceeds of crime contrary to Section 4 of POCAMLA, among other offences.



11. To support the averments in the Motion and Replying Affidavit, the Applicant annexed to the Affidavit, Bank Account Statements

### **The Respondent's Response**

12. The Respondent in his Replying Affidavit in a Replying Affidavit sworn on 7<sup>th</sup> November 2023 opposed the Motion. He denied the allegations made in the Motion and urged that it be dismissed. In the Affidavit, he faulted the ex parte manner in which the preservation orders of 6<sup>th</sup> February 2020 were obtained. He also faulted the Applicant's non-disclosure of the alleged complainant (name or description) and failure to interview, record statement, also well as failure to adduce evidence of the alleged complaint.
13. That this ought to have been done as a show of bona fides as well as transparency and accountability required and espoused in Article 10(2)(b) of *the Constitution* of Kenya. That it was imperative that the nature of alleged acts of money laundering, the crime attributed to those funds, and the companies stated to have been in complicity with him be disclosed.
14. Further that although Corporal Sautet has in paragraph 9 of his Supporting Affidavit stated he together with his colleagues (Senior Sergeant Frederick Musyoki, Corporal Isaac Nakitare And Corporal Frederick Muriuki) analyzed financial statements, as well as interviewed and recorded from witnesses witness statements in respect of the alleged suspicious bank transactions, no such Witness Statement was produced, no interview recording was produced, no such witnesses were called.
15. In justifying the impugned bank deposits, the Respondent has in his said Replying Affidavit stated that even before he ventured into elective politics, he had for long had various income generating businesses, and that it was normal and usual for his bank Accounts to receive huge cash deposits. That he through his businesses and companies operated matatus, night clubs, restaurants, bars, barber business, cyber cafes, and real estate- even before the year 2011; and he annexed to the Affidavit, documents of some of those businesses and companies, some of which date as early as the year 2009.
16. He further denied engaging in money laundering, whether before or during his term as Nairobi County Governor. He says it was not true that as at 17<sup>th</sup> August 2017 he was Governor. That he had not been sworn into office yet; and that he was sworn in on 21<sup>st</sup> August 2017.
17. He further contended that the Agency rushed to file these proceedings without giving him ample opportunity to explain. Further that these proceedings were premised on falsehoods, and were without any basis, facts, or legal foundation. He denied being involved in crime, money laundering, or receiving any suspicious amounts.
18. He has further stated that despite paragraph 15 of the Supporting Affidavit flagging the 24 cash deposits to various of his Bank Accounts on 17<sup>th</sup> August 2017 as suspicious, those Bank Accounts are not among the ten Bank Accounts that this Motion in its prayers listed for forfeiture. That the total amount of those 24 cash deposits is Ksh30,700,000=, and which the Agency has described as suspicious. He contends that these allegations are merely intended to embarrass him.
19. He has further stated that the same goes for the eleven deposits listed in Paragraph 16 of the said Supporting Affidavit; which total Ksh 8,800,000=, were stated to have been made on 21<sup>st</sup> August 2017 and have similarly been described by the Applicant and its Investigator the said Corporal SAUTET as suspicious deposits.
20. As to the USD 10,300 deposits impugned in Paragraph 17 of the Supporting Affidavit, the Respondent has in absolving it explained that it was money deposited in Safe Lockers Nos. 24 and 50, Diamond



- Trust Bank; and which Accounts he has stated he opened on 10<sup>th</sup> August in the year 2015 when he was not Nairobi County Governor. He in support, exhibited the Account Opening Statements, as annexure “MSK 3” of his Replying Affidavit.
21. The Respondent has further defended and justified other cash deposits that the Applicant has described as suspicious and condemned. He has stated that they were proceeds from the sale of properties (to one Ann Kagure and others) some of which sales he states were for installment payments. For which sales he provided documents in proof as follows:
1. Sale of Kwale/Shimoni/81, for Ksh 51,000,000=.
  2. Sale of Kajiado/Loodiarak/787, for Ksh 53,000,000=.
  3. Sale of Kajiado/Loodiarak/1018, for Ksh 37,000,000=.
  4. Sale of Kwale/Golini/384, for Ksh 150,000,000=.
  5. Sale of Kwale/Golini/383, for Ksh 36,000,000.
  6. Sale of Kwale/Golini/389, for Ksh 24,000,000.
  7. Sale of Kwale/Mwananyamala/357, for Ksh 46,000,000.
  8. Sale of Kwale/S. N. Kundutsi “A”, for Ksh 175,000,000=.
22. He has further stated that having sold these properties in good faith and innocently without any criminal intent, he never at the time thought that he will be later called upon to explain these proceeds.
23. That after the sales, he just like any investor keen to preserve their wealth, sometimes had the money deposited in Safe Lockers Nos 24 and 50, Diamond Trust Bank, as well in other Banks; all these time unsuspecting and not anticipating that there will be any criminal liability to him. He has exhibited annexure “MSK 5” comprising supporting documents.

### **Analysis and Determination**

24. The Motion was canvassed by way of written submissions. The issues for determination in this suit, are as follows:
- a. Whether the funds on the Respondent’s subject Bank Accounts are proceeds of crime.
  - b. Whether this Court should issue orders forfeiting those funds to the Kenya Government as sought by the Applicant in this suit.
  - c. Who should bear the costs of the suit.
25. In determining these issues, I have considered the Applicant’s Motion, the Respondent’s Response, the parties’ rival written submissions, as well as the relevant law and applicable legal principles. As already stated in this judgment, this suit was filed under the provisions of Section 90 and 92 of POCAMLA.
- Section 90
- (1) If a preservation order is in force, the Agency Director may apply to the High Court for an order forfeiting to the Government all or any of the property that is subject to the preservation order.
  - (2) The Agency Director shall give fourteen days notice of an application under subsection (1) to every person who served notice in terms of section 83(3).



- (3) A notice under subsection (2) shall be served in accordance with the provisions of the *Civil Procedure Act* (Cap. 21).
- (4) A person who served notice under section 83(3) may appear at the hearing of the application under subsection (1) to—
  - (a) oppose the making of the order; or
  - (b) apply for an order—
    - (i) excluding his interest in that property from the operation of the order; or
    - (ii) varying the operation of the order in respect of that property, and may adduce evidence at the hearing of the application.

#### Section 92

- (1) 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.
- (2) The Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the Government of property forfeited to it under such an order.
- (3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the Court from making the order.
- (4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
- (5) The Registrar of the High Court making a forfeiture order shall publish a notice thereof in the Gazette as soon as practicable but not more than thirty days after the order is made.
- (6) A forfeiture order shall not take effect—
  - a. before the period allowed for an application under section 89 or an appeal under section 96 has expired; or
  - b. before such an application or appeal has been disposed of.

26. In *Pamela Aboo v. Assets Recovery Agency & Another* [2018] KEHC 1845 (KLR) the Court of Appeal observed that Section 94 as read together with Section 92 empowers the court to issue an order of forfeiture of proceeds of crime if it is proved on a balance of probability that the property has been used or is intended for use in the commission of an offence, or is proceeds of crime. It thus clarified that the standard of proof is on a balance of probability (also known as the preponderance of doubt). On the burden of proof, it clarified that in these proceedings, the legal burden of proof lies on the Applicant throughout the proceedings, and only the evidential burden will intervalely shift to the Respondent.

27. As I recently stated in Nairobi High Court Anti-corruption Suit No. E011 of 2021 the burden borne by the subject to justify his asset or funds, is only an evidentiary burden, and which like a pendulum will keep swinging between the Agency and the subject on particular assertions and counter-assertions. But it at the onset of the case rests with the Agency, and then shifts to the subject once the Agency has



established a prima facie case. The legal burden of proof for its part lies on the Applicant throughout the proceedings; to demonstrate reasonable grounds to believe that the suit assets are proceeds of crime.

28. As for the threshold for assets to be found to be proceeds of crime was explained in the case of Director of Assets Recovery Agency & Others v. Green & Others [2005] EWHC 3168. Where it was stated as follows:

“In civil proceedings for recovery under Part 5 of the Act, the Director need not allege the commission of a 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 was obtained.”

29. The Respondent has by his Replying Affidavit and filed submissions, endeavoured to discount each allegation and statement of fact made by the Agency in its Motion. He has also endeavoured to explain that the impugned funds are not proceeds of crime as alleged by the Applicant in this suit. He has not only poked holes in the case against him, not only endeavoured to explain the impugned cash deposits, but to also fought off any suggestion that he is involved in crime or money laundering. He has for instance cast doubt on the integrity of the investigations, the credibility of the purported findings of the investigations, as well as the good-faith of the Applicant and its investigator(s).
30. He has through his averments and the exhibits annexed to his Replying Affidavit, largely discounted the Applicant’s story; and one wonders whether the investigator considered the Respondent’s explanations, his version of the facts, and the documents he had in support. Where the suspect has in his defence supplied documents to the investigator or the Court, the investigator and the Anti-Corruption Agency should endeavor to verify not only the authenticity but also the credibility of such documents, as well as their contents.
31. It is reasonably expected that the Agency (ARA) would have verified the titles of the properties the Respondent alleges to have sold; the purchase prices; as well as the identity of the alleged purchasers. The investigator(s) ought to have interviewed such persons and also recorded their statements.
32. I am of the view that suspicion has to be founded and reasonable. Hence it cannot just be from without. Where the Agency’s action arises from a complaint, the complaint should be specified, the complainant or source of the complaint while need not be named, should at least be generally described or explained. This has the effect of lending credibility to the allegation that there was a complaint, and that the complaint was by a complainant. I am not saying that the name of the complainant be disclosed.
33. With Kenya’s population of over 50 million, for a person to be singled out for investigation, it must be that he was either caught in the act, or there was a report or complaint against him. It cannot be that the agency just thinks about every Kenyan, and it was his turn, or that the issue came to an official of the Agency in a dream or prophesy.
34. The Agency cannot wake up one day and start investigating someone or an entity. There must be a finger that has pointed at him or it, or even a document or report e.g. the Auditor General’s report. The most unfortunate extent is when the source of information is gossip, or the Agency is spurred by witch-hunt or some form of vendetta. I am not suggesting that this was the case.
35. Being a public institution, the ARA is under a public duty to provide in the proceedings, not only the evidence that incriminates the suspect, but also that which exculpates him if available (exculpatory evidence). Unfortunately this was not the case here.



36. For instance, in an endeavour to bolster and strengthen its case, the Applicant and its investigator the said Corporal Sautet have in this suit presented Bank Statements for the period beginning 17<sup>th</sup> August 2017. A diligent and fair-minded Investigator would also be expected to present statements for the period before the Respondent became Governor, i.e. the pre-August 2017 period. That would have enabled comparison and appropriate inference.
37. As there are no antecedent Bank Statements for the period prior to that date, that would have enabled this Court and anyone considering this matter, to compare all those Bank Statements, draw an inference, and attribute those deposits to the Respondent's position as Governor.
38. That selective approach is either dishonest or rash, oppressive and skewed to propound the Applicant's narrative. It amounts to cherry-picking of data, as opposed to an objective consumption of the entire available data. This has undermined the integrity of the findings, the credibility of the inferences drawn in the Application, and weakened the Applicant's case.
39. This approach has also compromised the integrity of the investigations, as well as that of the inferences the Applicant has drawn in this Application. Where an investigator chooses to use statistics, he should conduct credible statistical analysis and not just draw lay or wild statistical inferences that are not supported by the entire record/statistics.
40. Such a goof can lend credence to a suspect's/subject's allegation of witch-hunt. Investigations that leave loopholes and portholes, leave room for speculation, guess work and scapegoating. Such lapses and errors often leave to the suspect/subject, room for escape from liability. Investigations have to be thorough, air-tight and water-tight; no matter whether they are for a civil action or a criminal prosecution, and irrespective of the standard of proof. This is because the findings lead to liability, whether civil or criminal.
41. I need to emphasize, as I have done in other cases, that investigation is not a pass time activity to be undertaken lazily, leisurely, lousily and rashly. It is a solemn duty for which the investigator is being paid.
42. Hence investigations ought to be conducted professionally, carefully, thoroughly and exhaustively. In civil forfeiture proceedings, this is even more imperative in cases where the amounts for forfeiture are colossal or where what is at stake is the suspect's/subject's career. For instance where he is a public servant. In so doing, an investigator will not only be fulfilling the demands of his job, but also fulfilling his public duty of conducting investigations in a manner that is professional, objective, transparent and accountable.
43. No statement was produced of any witness. Only the Investigating Officer's Affidavit was filed in support. While the same had several annexed documents, it is baffling why he did not deem it fit to annex any statements from any persons that he interviewed. It is reasonably expected that the Agency's investigators would if competent, diligent and professional, have recorded statements from the persons and entities that the Respondent has in his defence claimed to have sold some properties to. Also from any other persons of interest.
44. The properties having been several, and the supposed proceeds of those transactions having been millions of shillings hence colossal, it was necessary for the said transactions to be verified- including details such as the dates of the Sale Agreements, as well as the mode and evidence of payment of the purchase prices.
45. These are the conventional the investigation protocols. In corruption matters the Investigators should maintain a high bar and quality, no matter whether the investigations are for criminal prosecution, or



civil forfeiture suit. After all in both criminal and civil proceedings, the lack of evidence/proof for a fact, cannot be evidence for the other.

46. On both sides of the coin (Applicant and Respondent or Prosecutor and the Accused), there must be some evidence for each side's claim. Inculpatory evidence on part of the Anti-Corruption Agency, and exculpatory evidence both from the suspect/subject. At all time and in all cases, the integrity and quality of the investigation should not be compromised just because the standard of proof for the likely proceedings will be lower- such as on a balance of probability.
47. Where the Anti-Corruption Agency has initiated both criminal prosecution and civil recovery/ forfeiture proceedings against the same subject and based on the same facts, it is expected that the evidence, witnesses and documents, having emanated from the same investigations, will be the same in both proceedings.
48. Despite this investigator (Corporal Sautet) describing himself as a Certified Fraud Examiner, did not state his experience. This is crucial to lend credibility to the Investigations and the findings. Surprisingly, he only stated that his duties at the Agency include, investigations, collection of evidence; as well as analysis of financial statements and documents for purposes of identifying, tracing, freezing and seizing proceeds of crime.

### **Final Orders**

49. The evidence so far on record, is insufficient to support the assertion that the funds flagged by the Applicant and which are the subject of these proceedings, and are on various of the Respondent's Bank Accounts, are proceeds of crime. There is therefore no legal basis for ordering forfeiture of the said funds to the Kenya Government as proceeds of crime. In consequence, this suit fails and is hereby dismissed with costs.
50. Those funds, and which were preserved by the interlocutory preservation orders issued on 6<sup>th</sup> February 2020, are hereby discharged. Consequently, it is hereby ordered that the said funds be released forthwith to the Respondent, unless otherwise lawfully held for any other lawful purpose.

**DATED AND DELIVERED AT NAIROBI ON THIS 1ST DAY OF OCTOBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

