

vehicles specified in prayer 1 above in the name of the applicant, Assets Recovery Agency.

- d. **THAT** the Honourable Court be pleased to issue an order declaring that the following funds are proceeds of crime and are liable for forfeiture to the Government;
- i. Kshs 4,043,375.00 and accrued interest held in fixed deposit account No. 1004639981 at Kenya Women Microfinance (KWFT) Bank in the name of Faith Kananu.
 - ii. Kshs 238,324.70 held in account number 1004639981 at Kenya Women Microfinance (KWFT) Bank in the name of Faith Kananu.
 - iii. Kshs 13,532.65 held in account no. 0012020013820 at Rafiki Microfinance Bank in the name of Faith Kananu.
- e. **THAT** this Honourable Court be pleased to issue an order that the above stated funds, benefit, profit generated from the funds stated in prayer 4 above be forfeited to the Government and transferred to the applicant.
- f. **THAT** the Honourable Court do issue an order that the said funds be transferred to the applicant's deposit account for recovered criminal assets funds account number 1240221339 at Kenya Commercial Bank.
- g. **THAT** the Honourable court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders.

h. **THAT** costs be provided for.

The motion is supported by affidavit of C.I. Benard Gitonga sworn on 19th December 2024. Benard deponed that on 24-04-2024, the applicant received information from the Directorate of Criminal Investigations in respect to ongoing investigations involving one Joseph Nisa Ouma (hereinafter referred to as 'Joseph') and the respondent for the offence of trafficking narcotic drugs. Joseph was arrested on 23-04-2024 and charged at Kahawa law courts vide criminal case number E057 of 2024 with four counts of trafficking in narcotics drugs with total market value of Kshs 48,729,000.00 which were conveyed using motor vehicles registration numbers KBM 645S, KCQ 081R and KCR 176C.

It is deponed further that, Joseph laundered the profits from his illicit trade through the respondent's accounts who then acquired the assets which are subject of these proceedings. It is alleged that upon investigations which were carried out pursuant to court warrants issued in miscellaneous criminal application number E635 of 2024, the applicant discovered the following;

- a. The respondent's mobile Mpesa wallet number 070xxxxx79 transacted Kshs 20,187,280.80 between 2020 and 2024. Some of the transactions totaling to Kshs 4,523,930.00 came from Joseph.
- b. The account had debit of Kshs 19,683,413.64 between 2-01-2020 and 7-07-2024. Of this amount, Kshs 6,951,387.00 was sent to different individuals with the respondent and Joseph being the top beneficiaries.
- c. Sums of Kshs 28,668,591.75 and Kshs 216,717,343.41 were transacted through mobile money number 070xxxxx51 and 072xxxxx03 belonging to Joseph through

the accounts which are subject of these proceedings between 1-01-2020 and 8-07-2024. These wallets transacted with the respondent for a substantial sum.

Many more huge transactions between the respondent and Joseph have been enumerated in the supporting affidavit. In addition, it is deponed that one Pepriter Kadenyi Oduory one of the persons who transacted with Joseph was charged at JKIA law courts vide criminal case number E013 of 2023 for trafficking in narcotics drugs and that the applicant successfully applied for forfeiture of her property in this court's case number E025 of 2023.

The deponent avers further that Joseph is husband to the respondent and they have been transacting through Mpesa agents in a bid to disguise their illegal activities and launder the illicit funds. The applicant avers that the deposits to the aforesaid mobile wallets were made within a corridor known to be drug trafficking routes which is Nairobi, Migori and Nakuru. It has also been deponed that the records of the respondent's account number 001xxxxxxx820 held at Rafiki Micro Finance indicated that Joseph was her husband.

All the while, despite Joseph handling huge transactions, his bank accounts remained dormant. His financial activity was heavily with the respondent through his mobile wallets where the money would go to the respondent's bank account, a process the applicant believes was a money laundering scheme.

It is also stated that Joseph was on 8-09-2020 charged with trafficking narcotics drugs in JKIA law courts criminal case number E006 of 2020 but the applicant has not given this court the outcome, status or progress of that case.

The respondent was served with papers in this suit but failed to file a response resulting to interlocutory judgement being entered against her on 9-06-2025. Although the respondent did not file any response, the applicant still remains under obligation to prove the case against her on a balance of probabilities. Entry of interlocutory judgement does not discharge the applicant from that burden of proving its case to the required standard. Honourable Justice Edward Muriithi held in ***Josphat Muthuri Kinyua & 5 others v Fabiano Kamanga M'etirikia (2021) KEHC 3531 (KLR)*** that;

'The Court does not therefore find that the entry of interlocutory judgement absolved the Appellants from proving liability by way of hearing in Court. This Court thus finds that despite omission by the Respondent to file a defence in the matter, the Court was still required to have the matter heard with respect to liability, in addition to the question of assessment of damages.'

I have read the motion, the supporting affidavit and submissions of the applicant dated 4th July 2025. Section 92(1) of the Proceeds Of Crime and Anti-Money Laundering Act (hereinafter referred to as 'POCAML') provides that the court shall upon being satisfied on a balance of probabilities that the assets in question are proceeds of crimes issue an order forfeiting the suspected assets to the government. Proceeds of crime is defined in Section 2 of POCAML as;

'Proceeds or 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 includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively 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'

The said Joseph has been seen doing transactions and business with people whose assets have also been forfeited for being proceeds of crime. He has been charged before in two criminal cases with offences related to trafficking narcotic drugs.

Having analyzed the transactions and considering that Joseph has been charged twice with offence of trafficking narcotic drugs and considering that he transacted with people who have also been charged with trafficking narcotics drugs and taking into account the fact that huge sums of money moved through his accounts, I am convinced that there is established a reasonable suspicion that the said Joseph is involved in illicit trade and the monies generated therefrom are proceeds of crime.

The facts which have been laid before this court show that the respondent is a close associate, actually wife to one Joseph Nisa Ouma. Even if she were not the spouse to Joseph, the heavy transactions between the two suggest that they are engaged in a business venture.

The applicant has in my view been able to establish that there is a suspicious link between Joseph's illegal business and the respondent's accounts. In that regard, a *prima facie* case has by extension been established and it was incumbent upon the respondent to appear and either explain her sources of assets which are sought to be forfeited or disassociate herself from the illegal activities of Joseph who is said to be her husband.

It is trite that where the applicant has established a *prima facie* on a balance of probabilities by demonstrating reasons to believe that the assets it seeks to be forfeited are

proceeds of crime, the respondent must give an explanation of the sources of the assets failure to which the assets will be presumed to be proceeds of crime. In ***Assets Recovery Agency v Namunyu & 2 others (2024) KEHC 7954 (KLR)***, Honourable Justice F. Gikonyo held that;

‘Where evidential burden has shifted to the defendant, he must discharge it lest he should fail. This is what is commonly known as rebuttal. Of importance, evidential burden is only discharged through evidence (s. 90(4), POCAMLA, s. 55(5), ACECA) and not through mere statements or allegations of the source or legitimacy of the money. The thread running through statutes on civil forfeiture require such testimony and other evidence as the court deems sufficient, to satisfy the court that the property is not proceeds of crime or unexplained assets.’

The aim of civil forfeiture proceedings is to go for the property and not the criminals. The respondent may be innocent but the point of consideration is that, the money from Joseph’s illegal business ended up in the accounts of the respondent or controlled by her in one way or the other. Without an explanation from the respondent on how and for what purpose the transactions between her and Joseph were being done, this court is inclined to accept the narrative of the applicant that the assets she holds are tainted with illegality by virtue of their connection with proceeds of crime.

There are indicators of a criminal network and enterprise which should not be allowed to thrive by letting beneficiaries therefrom enjoy the fruits of the business. It is notable that the motor vehicles being forfeited were purchased during the period of interest.

In view of what I have discussed above, this court finds the application merited and makes the following orders;

- a. Motor vehicles registration numbers KCG 993M, a lorry/truck and KBS 904X, a station wagon registered to Faith Kananu are hereby declared proceeds of crime.
 - b. An order is hereby issued forfeiting motor vehicles registration numbers KCG 993M, a lorry/truck and KBS 904X, a station wagon registered to Faith Kananu to Assets Recovery Agency on behalf of the Government.
 - c. The Director General of the National Transport and Safety Authority is ordered to transfer and register motor vehicles registration numbers KCG 993M a lorry/truck and KBS 904X, a station wagon registered to Faith Kananu to Assets Recovery Agency.
 - d. Kshs 4,043,375.00 in fixed deposit account No. 1004639981 at Kenya Women Microfinance (KWFT) Bank in the name of Faith Kananu, Kshs 238,324.70 held in account number 1004639981 at Kenya Women Microfinance (KWFT) Bank in the name of Faith Kananu and Kshs 13,532.65 held in account no. 0012020013820 at Rafiki Microfinance Bank in the name of Faith Kananu are hereby declared proceeds of crime.
- a. An order is hereby issued directing Kenya Women Microfinance (KWFT) Bank and Rafiki Microfinance Bank Limited to transfer all the money, interest and accrued benefits in fixed deposit account number 1004639981, account number 1004639981 and account no. 0012020013820 all held in the name of Faith Kananu to the applicant's account number 1240221339 held at Kenya Commercial Bank.
 - b. The respondent shall pay the costs of these proceedings.

Dated, signed and delivered at Nairobi this 14th day of November 2025.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Amadi holding brief Miss Irari for the applicant and in absence of the respondent