



**Assets Recovery Agency v Oduury & another; Family Bank Limited
(Interested Party) (Civil Application E025 of 2023) [2025] KEHC 16315 (KLR)
(Anti-Corruption and Economic Crimes) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL APPLICATION E025 OF 2023
LM NJUGUNA, J
NOVEMBER 12, 2025**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

PEPRITER KADENYI OUDUORY 1ST RESPONDENT

ALEX GATHEGU MURIMA 2ND RESPONDENT

AND

FAMILY BANK LIMITED INTERESTED PARTY

RULING

1. What is before the court for determination is the Notice of Motion dated the 13th August, 2025, brought under Sections 1A, 1B, 3, 3A, 80, 95, 99, 100 of the *Civil Procedure Act*, Order 45 Rules 1 & 2, Order 50 Rule 6 of the Civil Procedure Rules, 2024, and all other enabling provisions. It is premised on the grounds on its face and on the annexed affidavit sworn by Bedford Muriuki.
2. Through the application, the applicant has sought the following Orders;
 1. That this application be deemed fit for admission for hearing on a priority basis.
 2. That the Honourable Court be pleased to review its judgment dated 16th October 2024 particularly at paragraph 115 and its decree issued on 7th November 2024 in the following terms: -

That this court enters judgment for the applicant against the Respondents as follows: -



- i. That an order be and is hereby issued declaring the following motor vehicle as proceeds of crime and therefore liable for forfeiture to the Government of Kenya.
 1. KBR 343V Mitsubishi Fuso.
- ii. That a forfeiture order be and is hereby issued for the following motor vehicle.
 1. KBR 343V Mitsubishi Fuso.
- iii. That an order be and is hereby issued directing the Director General National Transport and Safety authority to transfer the title/ownership in favour of the applicant in respect to the following motor vehicle.
 1. KBR 343V Mitsubishi Fuso.
- iv. That an order be and is hereby issued declaring land parcel registration number Nandi/Kapkangani/3624 as proceeds of crime and therefore liable for forfeiture to the Government of Kenya.
- v. That forfeiture order be and is hereby issued in respect to land parcel registration number Nandi/Kapkangani/3624 to the Government of Kenya.
- vi. That a vesting order be and is hereby issued in respect to land parcel registration number Nandi/Kapkangani/3624 in favour of the Applicant on behalf of the Government of Kenya.
- vii. That an order be and is hereby issued to the Chief Land Registrar to register the forfeiture/vesting order issued in order number v and vi above in respect of land parcel registration number Nandi/Kapkangani/3624 in favour of the Applicant.
- viii. That the balance of the funds realized from the sale of motor vehicle registration No. KDH 211F in the sum of Kshs.311,000 plus accrued interest thereon be remitted to the Applicant's bank account.
- ix. That the Respondents shall bear the costs of this Originating Motion.
 3. That there be no order as to costs.

3. The applicant avers that vide an Originating Motion dated the 29th September, 2023, the applicant sought for inter alia;

1. That this Honourable court be pleased to declare the following motor vehicles proceeds of crime and therefore liable for forfeiture to the Government of Kenya.
 - i. KDH 211F Isuzu NQR
 - ii. KBR 343V Mitsubishi Fuso.
2. That this Honourable Court be pleased to issue an order of forfeiture of the following motor vehicles.
 - i. 1 KDH 211F Isuzu NQR
 - ii. KBR 343V Mitsubishi Fuso.



3. That this Honourable court be pleased to issue an order directing the Director General National Transport and Safety Authority to transfer the title/ownership in favour of the applicant in respect to the following motor vehicles.
 - i. KDH 211F Isuzu NQR
 - ii. KBR 343V Mitsubishi Fuso.
 4. That this Honourable Court be pleased to declare land parcel registration number Nandi/Kap Kangani/3624 as proceeds of crime and therefore liable for forfeiture to the Government of Kenya.
 5. That this Honourable Court be pleased to issue an order of forfeiture in respect to land parcel registration number Nandi/Kap Kangani/3624 to the Government of Kenya.
 6. That this Honourable Court be pleased to issue a vesting order in respect to land parcel registration number Nandi/Kap Kangani/3624 in favour of the Applicant on behalf of the Government of Kenya.
 7. That the Honourable Court be pleased to issue an order to the Chief Land Registrar to register the forfeiture/vesting order issued in order number 5 and 6 above in respect of land parcel No. Nandi/Kap Kangani/3624 in favour of the Applicant.
 8. That the Honourable Court makes any other ancillary order it may deem fit for the proper, fair, effective execution of its orders.
 9. That the Respondents shall bear the costs of this Originating Motion.
4. The applicant avers that, in a judgement delivered on the 16th October, 2024, the court partially allowed the application and proceeded to enter judgement for the applicant against the respondent in paragraph 115 of the said judgement as follows;
- “(115) Accordingly, the application dated 29/9/2023 succeeds in part, and this court enters judgement for the applicant against the Respondent as follows: -
- i. That the motor vehicle registration No. KBR 343V Mitsubishi Fuso and land parcel No. Nandi/Kap Kangani/3624 are proceeds of crime and are hereby forfeited to the State.
 - ii. That the balance of the funds realized from the sale of motor vehicle registration No. KDH 211F in the sum of KShs.311,000 plus accrued interest thereon be remitted to the applicant’s bank account.
 - iii. That the Respondents shall bear the costs of this Originating Motion.
5. That consequent to the judgement delivered on the 16th October, 2024, a decree was issued on the 7th November, 2024 in the following terms;
- i. That the motor vehicle registration No. KBR 343 Mitsubishi Fuso and Land Parcel No. Nandi/Kap Kangani/3624 are proceeds of crime and are hereby forfeited to the State.



- ii. That the balance of the fund realized from the sale of motor vehicle registration No. KDH 211F in the sum of KSh.311,000 plus accrued interest thereon be remitted to the applicant's bank account.
- iii. That the Respondents shall bear the costs of this Originating Motion.
6. That the applicant has endeavored to execute the decree by seeking transfer and registration of motor vehicle registration Number KBR 343V Mitsubishi Fuso and of land parcel No. Nandi/Kapkangani/3624 in its favour to no avail.
7. That the National transport and Safety Authority, and the Chief Land Registrar have declined to receive and effect transfer in favour of the applicant as the decree as issued on the 7th November, 2024 neither addresses the two institutions nor obligate them to transfer ownership in favour of the applicant.
8. That the decree is incapable of execution by the applicant to the extent of seeking transfer and registration of motor vehicle KBR 343V Mitsubishi Fuso and land parcel No. Nandi/Kapkangani/3624 in its name despite judgement having been entered successfully in its favour. That the incapability of execution of the decree and judgement as issued by the court constitute an error apparent on the face of the record which the applicant prays the court to review.
9. That the respondent has never entered appearance and the 3rd party informed this court that it did not wish to participate in the application as it had already complied with its part of the decree.
10. The applicant filed brief submissions to the application;

Applicant's submissions

11. In its submissions, the applicant invited the Court to exercise its discretion and allow the application. That the application is not opposed by the respondent despite having been served with the same and mention notices being issued as evidenced by the affidavit of service.
12. The applicant contends that there is an error apparent on the face of the record particularly at paragraph 115 of the judgement delivered on the 16th October, 2024 and the decree issued on 7th November, 2024. That the error has occasioned hardship on the applicant as the orders are incapable of execution by the applicant against the 1st respondent in reference to the Director General National Transport and Safety Authority in respect to the transfer of the said motor vehicle and in respect to the registration and issuance of a vesting order on the subject land parcel.
13. The applicant has relied on the case of *Zablon Mokuva vs Solomon M. Choti & 3 others* (2016) KEHC 683 (KLR) and that of *Muyodi vs Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243 on what constitutes an error apparent on the face of the record.

Analysis and Determination

14. The applicant's application is substantively anchored under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. Section 80 provides;

“ Any person who consider himself aggrieved-

- a. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of the judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

15. Order 45, Rule 1 provides as follows;

1.

(1) Any person considering himself aggrieved –

- a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence, after the exercise of due diligence, was not within his knowledge or could not be produced by him and the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of the judgement to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

16. In the case of *Zablon* (supra), the court held as follows with regard to the two provisions;

“It is clear that while Section 80 of the *Civil Procedure Act* grants the court powers to make orders of review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.”

17. The court went on to state that;

“A review may be granted whenever the court considers that it is necessary to correct an error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground or review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a Statute or other provision of the law cannot be a ground for review”.

To the Statutory grounds, may also be added instances where the applicant was wrongly deprived of an opportunity to be heard or where the impugned decision or order was procured illegally or by fraud or perjury: See *Serengeti Road Services vs CRBD Bank Limited* (2011) 2 EA 395. Also to be included as part of sufficient reason is where the impugned order if reviewed, would lead the court in promoting public interest and enhancing public confidence in the rule of law and the system of justice.



18. The court of appeal in the case of Nyamogo & Nyamogo Vs Kogo (2001) EA174 stated that;

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. Where an error on a substantial point of law stares one on the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may be conceivably two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

19. This court has perused the Originating Motion dated the 13th August, 2024 and the Prayers that had been prayed for. I have also read the impugned judgement of Gikonyo J delivered on the 16th October, 2024. At paragraph 111 the Judge stated;

“(111) Whereas the interested party has explained its interest in KDH 211F ISUZU NQR, the balance of the funds arising out of the sale of the lorry have been proved to be proceeds of crime.”

20. The Judge then made the following Orders;

1. That the motor vehicle registration number KBR 343V Mitubishi Fuso and land parcel No. Nandi/Kapkangani 3624 are proceeds of crime and are hereby forfeited to the state.
2. That the balance of the funds realized from the sale of motor vehicle registration number KDH 211F in the sum of Ksh. 311,000 plus accrued interest thereon be remitted to the applicant’s account.

21. From the judgement, it is clear that though the court made an Order forfeiting the subject motor vehicle and the land, the court failed to grant prayers (3) but in respect to motor Vehicle KBR 343V Mitsubishi Fuso, (6) and (7), as a consequence of which it has become difficult for the applicant to execute the decree that was issued following the judgement of the court.

22. The court having made an order forfeiting the motor vehicle registration No. KBR 343V Mitsubishi Fuso, it ought to have made an order to facilitate the transfer of both the motor vehicle and the subject land. In failing to do so and to that extent, I find that there was an error apparent on the record to warrant review of the judgement dated the 16th October, 2024.

23. In view of the foregoing and for the reasons that I have given hereinabove, I find that the application has merit and I allow the same in terms of prayers (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii).

24. The court makes no orders on costs.

25. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 12TH DAY OF NOVEMBER 2025.

.....
L.M. NJUGUNA
JUDGE

