



**Assets Recovery Agency v Sidik & another (Civil Suit E039 of 2024) [2025] KEHC 16036 (KLR)
(Anti-Corruption and Economic Crimes) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E039 OF 2024
BM MUSYOKI, J
NOVEMBER 7, 2025**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

SAKINA NAUSHAD SIDIK 1ST RESPONDENT

WESLY SYLVANUS ADWENYA 2ND RESPONDENT

JUDGMENT

1. The applicant has brought this matter seeking forfeiture to the government of motor vehicles registration numbers KDE 868N belonging to the 1st respondent and KDG 654W belonging to the 2nd respondent. The grounds upon which the application is based are indicated on the face of the originating motion dated 7th November 2024 which are in summary to the effect that the said vehicles are proceeds of crime and liable for forfeiture under Sections 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* Chapter 59A of the Laws of Kenya (hereinafter referred to as 'POCAMLA').
2. The application is supported by affidavit of the applicant's investigator one Zachariah Lekishon dated 7th November 2024. In this affidavit, the deponent avers that on 4-08-2023, the applicant received a duplicate file from the Anti-Narcotics Unit of the Directorate of Criminal Investigations on a suspected case of trafficking in narcotics following which it opened an enquiry file. He discloses that DCI officers acting on intelligence reports intercepted the two motor vehicles along Thika super highway near pangani shopping centre upon which a search on the said vehicles revealed that motor vehicle registration number KDE 868N which had two occupants was transporting 69 cartons containing avocados fruits and that 63 of the carton boxes had a whitish powdery substance concealed



- therein. The applicant has averred further that motor vehicle registration number KDG 654W which also had two occupants was being driven by the 2nd respondent.
3. The substance recovered from motor vehicle registration number KDE 868N was tested and found to be 24,076 grams of cocaine with market value of Kshs 96,304,000.00 and 1,270,410 grams of ketamine valued at Kshs 25,133,600.00. Subsequently, the 2nd respondent and 6 others were charged in JKIA law courts with the offence of trafficking in narcotics drugs and psychotropic substances vide criminal case number E045 of 2023.
 4. The deponent of the supporting affidavit adds that upon search, motor vehicle registration number KDE 868N was found to be registered to the 1st respondent while the 2nd respondent was the registered owner of KDG 654W. It is alleged that the respondents were subsequently summoned by the applicant to explain the circumstances surrounding the motor vehicles in vain as they have refused to appear or record statements.
 5. The applicant adds that upon analysis of the respondent's bank account, it revealed that it had received a total of Kshs 10,423,341.00 between 29th January 2021 and 6th May 2023. Out of this, Kshs 7,263,729.00 was received through Mpesa on 186 transactions. Further, a transfer of a sum of Kshs 1,930,000.00 was received from one Dominic Mburu Kangethe which was said to be for purchase of a motor vehicle and cash deposits of Kshs 981,000.00 on three occasions. It is averred that the respondents do not have any known legitimate sources of income.
 6. The 1st respondent has not entered appearance or filed a response to the originating motion. On his part, the 2nd respondent has filed a replying affidavit sworn on 26th May 2025 in which he depones that there is no firm or cogent evidence which warrants forfeiture as the applicant's case is based on mere suspicions. The 2nd respondent adds that there is no evidence that his vehicle is proceeds of crime. According to the 2nd respondent, the burden of proving that the vehicle was proceeds of crime lied with the applicant which burden it has failed to discharge.
 7. The 2nd respondent has averred further that motor vehicle registration number KDG 654W belonged to him and that he acquired the same through legitimate means and further denies being in possession of, trafficking, handling or being in association with any narcotics substances as claimed. He adds that there is no nexus between him and the 1st respondent or his co-accused persons in the criminal case. He also denies having failed to honour summons by the applicant and maintains that he has never been given any formal opportunity to explain himself.
 8. I have read the applications, supporting affidavit and its annexures, the 2nd respondent's replying affidavit and submissions of the parties. Proceeds of crime is defined under Section 2 of POCAMLA as follows;

'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 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.'
 9. From the above definition, it is clear to this court that proceeds of crime do not only include properties acquired using illegitimate sources of funds but also any property used in commission of a crime. The 1st defendant's motor vehicle was impounded while carrying substances which after tests were found to be narcotics drugs.



10. The 1st respondent was served with court papers herein but chose to stay away from these proceedings. The 1st respondent has not responded to the averments leveled against him which in my view remain uncontroverted. Whereas the 1st respondent was not in possession or control of motor vehicle registration number KDE 868N or what was recovered therein, the fact remains that the vehicle was used in conveying narcotics drugs and undoubtedly, it was used for commission of an offence.
11. There being no rebuttal of the above position, the court is convinced that the applicant has proved on a balance of probabilities that the 1st respondent's motor vehicle registration number KDE 868N was used in commission of an offence. The 1st respondent has not been charged in the criminal case but that does not mean that this court cannot forfeit the motor vehicle. In *Assets Recovery Agency v Phylis Njeri Ngirita & 2 others; Platinum Credit Limited (Interested Party) & another* (2020) KEHC 3214 (KLR), Honourable Lady Justice Mumbi Ngugi (as she then was) held as follows;

‘My reading of these two sections is that a conviction is not necessary, for the purposes of Part VIII of POCAMLA, in order for the Court to make an order of forfeiture with respect to property shown to be proceeds of crime. Once it is established, on a balance of probabilities, that the property in question has been obtained from proceeds of crime, then an order for forfeiture may be made. It does not matter, to my understanding, in whose hands the property in question is found. Nor does it matter that no one is ever convicted in respect of any crime in connection with the property.’
12. As regards the 2nd applicant's motor vehicle, it is submitted that there is no nexus between the vehicle and the commission of the disclosed offence. The applicant in its submissions and the supporting affidavits has not made any nexus between the vehicle and the narcotics drugs. The only connection the applicant has shown is that the 2nd respondent was charged in criminal case number E045 of 2024 at the JKIA law courts.
13. In cases of recovery of proceeds of crime under POCAMLA, the applicant has a duty to discharge the legal burden of proof while the respondent must discharge the evidential burden. The legal burden of proof expected from the applicant must be discharged before the respondent is called upon to shoulder of the evidential burden. The applicant must establish a prima facie case that the assets sought to be recovered are proceeds of crime.
14. The law requires that there should be a reasonable suspicion that the assets are proceeds of crime. It therefore means that where the applicant fails to establish a reasonable suspicion that the assets are proceeds of crime, the respondent does not bear the evidential burden of proof. A reasonable suspicion in my views connotes presence of facts which would need an explanation as to commission of a crime and in absence of which a conclusion must be made that the assets are connected to or were most likely acquired by use of proceeds of crime.
15. At paragraph 6, 7, 8, 9, and 10 of the supporting affidavit, the applicant states that the substance which tested positive for cocaine and ketamine were recovered from motor vehicle registration number KDE 868N. The said paragraphs simply states that the 2nd respondent's motor vehicle had two occupants who were arrested and was detained at the DCI headquarters. It is not stated how the said motor vehicle was connected to motor vehicle registration number KDE 868N or its occupants. The 2nd respondent is said to have been driving his motor vehicle but there is no averment how he or his motor vehicle was connected to the drugs which was found in the other motor vehicle. The applicant has not told this court that the 2nd respondent was related or connected to the 1st respondent or motor vehicle registration number KDE 868N. Exhibits ZL-2a and ZL-2b which are the certificate of weighing and certificate of sampling do not indicate that the drugs were recovered from the vehicles or the suspects.



16. The charge sheet exhibited by the applicant as annexure ZL-3 shows the charges the 2nd respondent has been charged with are as follows;

Count I

Trafficking in narcotic drugs contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances (Control Act) No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control)(Amendment) Act, 2022.

Particulars

On the 17th day of June 2023 along Thika highway near Pangani shopping center within Nairobi County, jointly with others not before court trafficked in narcotic drug namely cocaine to wit 24,076 grams with a market value of Kshs 96,304,000/= by conveying in a motor vehicle registration number KDE 868N make Nissan X-trail in contravention of the provisions of the said Act.

Count II

Trafficking in narcotic substance contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances (Control Act) No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control)(Amendment) Act, 2022.

Particulars

On the 17th day of June 2023 along Thika highway near Pangani shopping center within Nairobi County, jointly with others not before court trafficked in psychotropic substance namely ketamine to wit 40,006 grams with a market value of Ksh. 24,608,080.00 by conveying in a motor vehicle registration number KDE 868N make Nissan X-trail in contravention of the provisions of the said Act.

Count III

Trafficking in narcotic substance contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances (Control Act) No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control)(Amendment) Act, 2022.

Particulars

On the 17th day of June 2023 Platinum Estate House Number 2 at Ngara area within Nairobi County, jointly with others not before court trafficked in psychotropic substance namely ketamine to wit 1,216,674 grams with a market value of Kshs 24,333,480.00/= by storing concealed in blue drums in contravention of the provisions of the said Act.

Count IV

Trafficking in narcotic substance contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances (Control Act) No. 4 of 1994 as amended by Narcotic Drugs and Psychotropic Substances (Control)(Amendment) Act, 2022.

Particulars

On the 17th day of June 2023 Platinum Estate House Number 2 at Ngara area within Nairobi County, jointly with others not before court trafficked in psychotropic substance namely ketamine to wit 13,730 grams with a market value of Ksh. 274,600/= by storing concealed in two grey suit cases in contravention of the provisions of the said Act



17. There is a 5th count which does not include the 2nd respondent. None of the above counts has mentioned motor vehicle registration number KDE 868N neither has there been any statement of witnesses produced indicating any connection between the 2nd respondent's motor vehicle to the charge sheet. Count 3 and 4 do not relate to the incidence at pangani area where the 2nd respondent was arrested as averred in the supporting affidavit and there is no explanation of how whoever was investigating the case connected the 2nd respondent to the two counts.
18. I am aware and alive to the position of the law that proceedings of this nature are in rem and seek to go after the property rather than the owner or perpetrators of the offences. In that case, the applicant has a duty to on a balance of probabilities connect the assets to a criminal conduct which does not have to be a specific offence. In my view and I have stated it before, it would be a dangerous trend if the applicant was allowed to pick on charge sheets filed in courts and rely on them to forfeit assets of individuals without there being basis connecting the assets sought to be forfeited with or to an offence.
19. Having said the above and upon review of the evidence produced by the applicant, this court is unable to connect the vehicle to any of the circumstances claimed to give rise to proceeds of crime. It is not obvious or automatic that once a person has been accused of an offence, he must account for his income. There must be a prima facie case or reasonable suspicion justifying call for the respondent to discharge the evidential burden.
20. If the legal burden has not been discharged, the court must find against the applicant. In my analysis, the applicant has not established a reasonable suspicion that the 2nd respondent's motor vehicle is proceeds of crime. The fact that the 2nd respondent's bank account has substantial deposits does not in itself entitle the applicant to impute suspicion and call upon the 2nd respondent to explain his income or wealth. The pre-requisite for the call to explain source of income under POCAMLA is reasonable suspicion.
21. In view of the above, this court makes the following final orders;
 1. A declaration is hereby made that motor vehicle registration number KDE 868N, Nissan Xtrail registered to Naushad Sakina Sidik is proceeds of crime.
 2. The above stated motor vehicle registration number KDE 868N is hereby forfeited to the Assets Recovery Agency on behalf of the government.
 3. The Director General of the National Transport and Safety Authority is directed to register motor vehicle registration number KDE 868N in the name of the Assets Recovery Agency.
 4. The 1st respondent shall pay the applicant's costs of this matter.
 5. The case against the 2nd respondent is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Amadi for the applicant and in absence of the respondent.

