

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION  
CIVIL SUIT NO. E030 OF 2024

ASSETS RECOVERY AGENCY.....APPLICANT

-VERSUS-

HARRISON MWAURA NJOROGE.....RESPONDENT

**JUDGMENT**

The applicant has in exercise of powers donated to it under Section 54 as read with Section 90 of Proceeds of Crime and Anti-Money Laundering Act (hereinafter referred to as ‘POCAMLA’) brought this matter vide originating motion dated 12<sup>th</sup> September 2024 praying for the following orders;

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) KBZ 537B
  - ii) KBX 241J
  - iii) KBB 787M
  - iv) KCX 967Y
  
2. THAT this Honourable Court be pleased to issue an order of forfeiture of the following motor vehicle.
  - v) KBZ 537B
  - vi) KBX 241J

- vii) KBB 787M
- viii) KCX 967Y

3. THAT this Honourable Court be pleased to issue an order directing the Director General National Transport and Safety Authority to transfer title/ ownership in favour of the applicant in respect to the following motor vehicles;

- ix) KBZ 537B
- x) KBX 241J
- xi) KBB 787M
- xii) KCX 967Y

4. THAT this Honourable Court makes any other ancillary order it may deem fit for the proper, fair, effective execution of its orders.

***The applicant's case***

The application has been supported by supporting affidavit of Mr. Jackson Kimani sworn on 12<sup>th</sup> September 2024 and a further affidavit by the same deponent sworn on 12<sup>th</sup> March 2024. The grounds upon which the application is brought are listed on the face of it and are to the effect that the motor vehicles are proceeds of crime as the respondent is engaged in a syndicate of defrauding dormant bank accounts by impersonation and for that reason, the applicant suspects that the respondent acquired the motor vehicles through illegitimate sources.

It is averred that the respondent is the registered owner of motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y and the beneficial owner of motor vehicle registration number KBX 241J. The latter is registered to Humphrey Mwaura

Kagoko who is said to be the respondent's father but now deceased but the applicant alleges that the respondent admitted being the beneficial owner of the same through an application dated 3<sup>rd</sup> January 2024 in Milimani Chief Magistrate's Court criminal case number E968 of 2023 (hereinafter referred to as 'the criminal case').

The deponent has averred further that the respondent was arrested and charged with others in aforementioned criminal case with among others engaging in organized criminal activity contrary to section 3(c) as read together with Section 4(1) of the Prevention of Organised Crimes Act and stealing contrary to Section 268(1) of as read with Section 275 of the Penal Code. It is alleged that the respondent is the mastermind and a member of the organised criminal syndicate which targets dormant bank accounts on various commercial banks where they obtain personal data of account holders and their bank balances, impersonate them and illegally withdraw moneys from the said accounts.

The applicant adds that the respondent operates mobile/wallets numbers +254721xxx860, +254708xxx430 and +254740xxx280 while his co-accused persons in the criminal case operate accounts numbers +254759xxx055 (Mr. Simon Sirere Seno), +254745xxx070 (John Kariuki, +254728xxx521 (Barack Ochieng Aluoch) and +254722xxx818 (Moses Honge).

It is claimed that analysis of the above lines has established the following;

- i. Account number +254708xxx430;
  - It received a total of Kshs 43,472,238.54 between 6<sup>th</sup> October 2020 and 24<sup>th</sup> May 2024 and debited a sum of Kshs 43,471,686.54 during the same period.
  - Of the above, there were cash deposits totaling to Kshs 24,307,910.00.
  - The deposits to this account were made from agent tills, Equity Bank, Barack Ochieng Aluoch, Faulu Microfinance Bank, KCB Bank and Simon Seno.

- The withdraws from this account was to Equity account number 0740179xxxx8, DTB account number 053017xxxx01, agent tills, Moses Honge, Mogo Auto Limited account of KCX 967Y, John Kariuki, Barack Ochieng Aluoch. Equity account number +254740xxx280, and Faulu Microfinance Bank account number 1013xxxx72.
- ii. Account number +254721xxx860.
- The wallet received Kshs 7,002,800.00 and debited Kshs 6,998,307.68 between 4<sup>th</sup> March 2023 and 1<sup>st</sup> July 2024.
  - There were notable withdrawals from this wallet to Equity Bank account number 025027xxxx32, John Kariuki, DTB Bank account number 053017xxxx01, Mogo Auto Limited account of KCX 967Y and Moses Honge.
- iii. Account number +254759xxx055
- It received a total sum of Kshs 16,976,798.22 and debits of Kshs 16,976,618.22 between 27<sup>th</sup> May 2021 and 1<sup>st</sup> July 2024.
  - The deposits were from an overdraft facility, Mozzarbet, Cooperative Bank, Equity Bank, his number +254726xxx135 and the respondent.
  - There were notable withdrawals to Mpesa overdraws, Terry Mathai and the respondent.
- iv. Account number +254728xxx521
- For the period between 1<sup>st</sup> January 2020 and 1<sup>st</sup> July 2024, it received credits of Kshs 42,901,587.12 and debited Kshs 42,901,103.40.
  - There were flagged deposits of Kshs 825,800.00 to the respondent and Kshhs 63,200.00 to one Kenneth Kipkoech, who was said to be another accomplice of the respondent.

- It had 138 debits to the respondent amounting to Kshs 500,020.00.

Another alleged accomplice Mr. Joseph Njeru Gichoni who was an employee of Safaricom Limited operated account number +254722xxx164 which after analysis showed that it received Kshs 19,839,933.98 and debited Kshs 19,837,384.64 between 1<sup>st</sup> January 2020 and 1<sup>st</sup> July 2024. The withdrawals from this account show that one transaction was with Simon Seno.

The applicant avers further that another accomplice of the respondent by the name Nicholas Mwangi Karagu who operated mobile wallet number +254115xxx105 had received a sum of Kshs 2,974,927.62 and debited Kshs 2,960,003.14. One of the deposits was Kshs 160,000.00 by the respondent while there was a debit of Kshs 1,232,500.00 to the respondent too.

It is averred further that another accomplice by the name Kenneth Kipkoech had an account number +254726xxx185 which received Kshs 2,934,130.24 and debited Kshs 2,929,016.04 between 3<sup>rd</sup> July 2021 and 9<sup>th</sup> June 2024. Some of the flagged deposits in this account were Kshs 81,000.00 from Barack Aluoch and Kshs 28,000.00 from the respondent while there was a notable withdrawal of Kshs 63,200.00 to Barack Aluoch.

The last listed accomplice is one Esther Murugi Murakaru who is said to have been arrested and charged in Naivasha Chief Magistrates Court criminal case number E1524 of 2022 with attempted stealing contrary to Section 389 and impersonation contrary to Section 382(1) as read with Section 36 of the Penal Code. It is alleged that at the time the said Esther impersonated and attempted to steal funds in HFC Bank, Simon Sirere Seno was an employee of the said bank.

The aforesaid Esther is said to have recorded a statement in which she implicated the respondent and explained her role in the syndicate which was being ran by the respondent and his accomplices. In the said statement, Esther is alleged to have stated that the respondent had participated and accompanied her in withdrawing money from HFC Bank in Naivasha on 22-09-2022 where she withdrew Kshsh 850,000.00 which she handed over to the respondent who in turn rewarded her with Kshs 100,000.00. On another occasion on 11-10-2022, the respondent again accompanied her to the same bank where she withdrew Kshs 200,000.00 which she gave to the respondent and got rewarded Kshs 40,000.00. She was arrested on the 3<sup>rd</sup> attempt of stealing in the same method on 14-10-2022.

The applicant adds that the respondent consented to digital media search which was conducted on his Samsung Galaxy A12. The search generated a report showing that the respondent and others had a conspiracy to execute a syndicate which involved errant bank employees who provided details of the dormant accounts and the banks' customers' data, leading to the fraudulent activities.

### ***Respondent's reply***

Through his affidavit dated 3<sup>rd</sup> February 2025, the respondent denies that he is engaged in the syndicate as alleged by the applicant. He avers that the application is an abuse of the court process and the applicant has committed perjury. He contends that the application is meant to deny him the benefits of rulings of the lower court in the criminal case.

The respondent has admitted that he is the owner of motor vehicles registration numbers KBB 787M, KCX 967Y and KBZ 537B which he states were not proceeds of crime as they were all procured prior to the date of the alleged offences. He adds that motor vehicle registration number KBX 241J was registered to his late father in 2013.

According to the respondent, the documents exhibited by the applicant as having been originated from the NTSA are forgeries meant to show that the motor vehicles were registered on 30<sup>th</sup> and 31<sup>st</sup> December 2023 whereas they were registered long before then.

The respondent states that the criminal case consisted of mere allegations and since the same was dismissed, it cannot be used as a basis for forfeiture of the motor vehicles. He adds that the current application is an afterthought which was meant to defeat the proceedings in the criminal case. He depones that he filed an application for release of the motor vehicles during the proceedings in the criminal case which application was allowed but the police refused to obey the court order and instead colluded with the applicant herein to file this application. He claims that the investigations officer in the criminal case arrested him after he was released and demanded a bribe which he declined to give. Finally, the respondent denies having any relationship or involvement with Esther Murugi Murakaru.

### ***Analysis and determination***

The application was argued by way of written submissions. The applicant filed its submissions dated 15<sup>th</sup> April 2025 while the respondent filed his submission dated 20<sup>th</sup> June 2025. I have read the submissions of both parties which other than citing decided authorities are exposition of the contents of the parties' affidavits. Having gone through the documents filed and submissions of the parties, I discern that the only issues for determination in this matter are whether the applicant has established a case against the respondent and whether the motor vehicles in question are liable to forfeiture.

This is a civil recovery case under Section 90 and 92 of POCAMLA and being so the applicant is called upon to discharge the legal burden of proof upon which the burden shifts to the respondent to discharge the evidential burden of proof. Honourable Lady Justice E.N. Maina held in ***Assets Recovery Agency v Omar (2024) 13496 (KLR)***, that

*‘The burden to prove that the impugned asset is a proceed of crime lies with the Applicant. That legal burden of proof does not shift. Only once the Applicant has discharged the legal burden on a balance of probabilities, does the evidential burden shift to the Respondent.’*

In order to discharge the legal burden of proof, the applicant must establish that there is reasonable suspicion that the assets it seeks to forfeit are proceeds of crime. The evidence produced by the applicant should be able to lay basis that the respondent was involved in unlawful or illegal activities which generated income for him which income is suspected to be the source of acquisition of the assets. Once the applicant’s evidence lays the said basis, the respondent should in order to avoid forfeiture, demonstrate to the court the source of the funds he used to acquire the motor vehicles. The standard of proof in these cases is on a balance of probabilities which position is pursuant to Section 92(1) of the POCAMLA which provides that;

*‘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.’*

It is not disputed that the respondent was charged in the criminal case with the stated offence. What is in dispute is whether the charging of the respondent is in itself enough to establish a prima facie case. Section 92(4) of POCAMLA provides that;

*‘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.'*

The established jurisprudence in respect of the above Section is that the orders in a criminal trial whether conviction or acquittal does not affect the validity of orders in the civil recovery proceedings. In my understanding, whereas the facts in the criminal case may be relevant in establishing that the assets in civil recovery proceedings are proceeds of crime, the decision of the court in the criminal trial does not affect or influence how the court in forfeiture proceedings decides. The reason behind this position is that the standard of proof in criminal matters is different from that in the civil forfeiture. In ***Assets Recovery Agency v Active Electrons Africa Limited & 3 others (2023) KEHC 1766 (KLR)***, it was held that;

*'The intention or purpose of Sections 92(4) of the Proceeds of Crime and Anti-Money Laundering Act is to ensure that people do not benefit from illicit wealth; that the Agency is able to deal with the incidence of illicit enrichment whether or not the persons involved have been found guilty of criminal offences. Part VII of the Proceeds of Crime and Anti-Money Laundering Act provides for the alternative avenue of criminal forfeiture (forfeiture upon conviction of a criminal offence) and it is therefore clear that the legislature was aware that there are instances where the Agency could move to recover illicit wealth without having to await the outcome of a criminal prosecution. It is left to the Assets Recovery Agency to determine the manner in which to institute recovery proceedings. It then behoves it to prove on a balance of probabilities that the Respondents are in possession of property or cash whose source is not legitimate. The evidential burden then shifts to the Respondents to prove the source of the funds or property.'*

The respondent has argued that since he was acquitted in the criminal case, this matter does not have legs to stand on. That position deviates from the position established by many judicial pronouncements as cited above. The argument by the respondent on this issue does not therefore hold any water. This court is not guided and does not give any weight to the order of acquittal by the court in criminal case. This however does not mean that this court is precluded from considering the facts and the evidence relied on and collected in the process of the investigations leading to institution of the criminal case. The same remains relevant evidence of consideration in this matter.

The supporting affidavit has indicated that the respondent has been transacting with the other five accused persons in the criminal case. It is averred that Simon Sone was an employee of the HFC bank which Esther stole money from. The respondent has been shown to have moved substantial amounts of money from 2021 to 2023 which transactions are not ordinary and could not have been done by a person who was not making regular income. The trail of transaction with persons who are suspected to be engaged in a criminal enterprise must raise a reasonable suspicion that the person subject of the proceedings is also engaged in the unlawful activities.

The respondent has denied knowing the person named as Esther Murugi Murakaru who recorded statement implicating him in the syndicate but reading through the statement gives an impression that the said Esther was known to the respondent. She gave details of his movements and his telephone number which number moved moneys to the other persons named in the syndicate. The line also received money from some of the named persons which is a clear indication of an organised group involved in some trade. In my view, a reasonable person would be justified to suspect that the respondent was party to the scheme with the said Esther Murugi Murakaru was arrested while executing one of their plans.

I have seen the forensic report of the respondent's line which has been produced as annexure 'JK13' in the applicant's supporting affidavit. In the report, the respondent is shown to have engaged one Reuben Ngash of telephone number +254790xxx325 in conversations which in my view point to the respondent as person involved in illegal business of defrauding bank customers. The respondent has not made any response or comments on this report neither has he attempted to rebut the impression that he is involved in such syndicates. Silence on such serious allegations leaves the respondent exposed to suspicions of engaging in criminal activities and in such circumstances the court must make an inference that the respondent derives his income from illegitimate activities.

In view of the connection established above, I hold that the applicant has established a case against the respondent on a balance of probabilities. The burden now shifts to the respondent to explain his source of income and how he acquired the motor vehicles. The respondent has taken strategy of defending the matter on technical and legal issues rather than evidential. He has not explained the source of the funds used in purchasing the motor vehicles registered to him or telling the court the legitimate business he carries out.

The respondent has argued that the application does not merit the prayers sought because the vehicles were acquired before the alleged criminal activities arose. In my view, the fact that the period of investigations is outside the time of acquisition of the assets does not in itself exonerate the respondent from giving an account of his wealth or assets. If the respondent had shown the kind of business he was doing before the incident in question, that argument would perhaps hold water.

It is not a requirement that the applicant's investigations should cover the period from the time or before the acquisition of the assets in question. The respondent may have gone undetected for a long period but that does not cushion his assets from the scrutiny of the law once it is established that he had engaged in criminal or unlawful activities. This position is important noting that criminal enterprises are known to be complex webs which may even avoid detection for a lifetime and the law should not be restricted in a manner that would give criminals an advantage of avoiding forfeiture. The purpose and aim of laws on forfeiture is to constrict the complex web and prevent the enterprises from enjoying the fruits of their illegal acts as a matter of deterrence.

In his replying affidavit, the respondent has concentrated on the acquittal in the criminal case and the fact that the vehicles were acquired before the alleged incidents arose. He has not even explained where the money seen in the transactions in his account during the period under investigations came from and the purpose for which it was being paid out. In any event, some of the transactions during the period are shown to have been for payments to Mogo Auto Limited account for payment of motor vehicle registration KCX 967Y.

The only attempt to explain his income is in a supplementary affidavit sworn on 28<sup>th</sup> July 2025 in which the respondent claims that he had a farming business which could afford him the motor vehicles. He does not state where the business is carried out or situated and how much it generates. In the attempt, he has produced a statement for bank account number 074179xxxx78 which shows some deposits from Leah Mwendu Mutisya, Hannah Kanyi Mwaura, Winnie's Pure Health Products Limited, Astermills & Commodities Company Limited, George Ngugi Muturi all totaling to Kshs 4,1544,523.12. In my view, the statement which runs from 1-03-2020 to 1-09-2020 does not give an explanation of the source of funds. There is no evidence of how the funds from these accounts went into purchasing the motor vehicles neither is there any evidence of existence of such a business.

Existence of a business or enterprise cannot be explained or established by mere production of a bank statement.

In the above circumstances, this court is convinced that acquisition of motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y which are registered to the respondent has not been sufficiently explained. Consequently, since the respondent was involved in the stated illegal activities and having failed to explain his source of income used in purchasing the said motor vehicles, the same are liable for forfeiture as proceeds of crime. In finding so, I am persuaded by the holding of Honourable Lady Justice Hedwig I. Ong'undi in ***Assets Recovery Agency v Pamela Aboo; Ethics & Anti-Corruption Commission (Interested Party) (2018) KEHC 1845 (KLR)*** thus;

*'Where the person against whom allegations have been made does not give a satisfactory explanation to rebut the allegations, it means what has been presented is not challenged. In this case there is no explanation of the source of the huge deposits into the Respondent's accounts.'*

On motor vehicle registration number KBX 241J which is registered to the late Humphrey Mwaura Kagoko, this court finds that the same is not liable to forfeiture. It is common ground that the vehicle is registered to the deceased who was the respondent's father. There is indication that there is a succession cause in respect of the estate of the deceased in the Chief Magistrate's Court at Nakuru the same being cause number 74 of 2017. The estate has an administrator albeit for limited purposes. Even if there was no such succession cause, the vehicle remains the property of the estate. There is no evidence that the estate was involved in the criminal or unlawful activities. It is not automatic that the vehicle would be distributed to the respondent and even if he were to inherit it, I find it hard to mix the estate with the assets of the respondent or any proceeds of crime.

In view of the above, this court finds that the applicant has proved its case in respect of motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y and proceeds to make the following orders;

1. Motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y are hereby declared proceeds of crime and liable for forfeiture to the Government of Kenya.
2. Motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y are hereby forfeited to the Assets Recovery Agency on behalf of the Government of Kenya.
3. The Director General of National Transport and Safety Authority is directed to transfer title and ownership of motor vehicles registration numbers KBZ 537B, KBB 787M and KCX 967Y to the Assets Recovery Agency.
4. The applicant's claim in respect of motor vehicle registration number KBX 241J is hereby dismissed.
5. There shall be no orders as to costs.

Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of **November** 2025.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Githinji for the applicant and Mr. Mukungu for

the respondent.

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