

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
CIVIL APPLICATION NO. E003 OF 2025**

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

VERSUS

**ADAN BISHAR MOHAMMED.....1ST
RESPONDENT
AL-SIDDIQUE MOTORS LIMITED.....2ND
RESPONDENT**

AND

**PREMIER BANK KENYA LIMITED.....1ST INTERESTED
PARTY
(Formerly First Community Bank Limited)
NATIONAL TRANSPORT AND
SAFETY AUTHORITY.....2ND INTERESTED
PARTY
DIRECTOR OF CRIMINAL
INVESTIGATIONS.....3RD INTERESTED
PARTY**

JUDGMENT

1. The applicant has moved this court by way of the Originating Summons dated the 30th January, 2025, Under **Sections 90 & 92 of the Proceeds of Crime and Anti-Money Laundering Act** as read with **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following Orders;

- 1) THAT this Honourable court do issue an order declaring motor vehicle registration numbers KDB 296Q, MITSUBISHI FUSO, WHITE and KDN 851P, TOYOTA NOAH, WINE in the names of ADAN BISHAR MOHAMMED and AL-SIDDIQUE MOTORS LIMITED respectively as proceeds of crime liable for forfeiture to the Applicant.**
- 2) THAT this Honourable court be pleased to issue orders of forfeiture of the motor vehicles in prayer 1 above to the Assets Recovery Agency on behalf of the Government.**
- 3) THAT this Honourable Court be pleased to issue an order directing the Director General of the National Transport and Safety Authority to register the motor vehicles specified in order 2 above in the name of the Applicant, Assets Recovery Agency.**
- 4) THAT this Honourable Court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders.**
- 5) THAT costs be provided for.**

- 2.** The application is based on the grounds that are set out on its face, and its supported by the annexed affidavit sworn by ZACHARIA LEKISHON, on the 30th January, 2025 in which, he has averred that he is part of a team of police officers investigating the respondents herein for suspected case of trafficking of narcotics.
- 3.** He states that on the 19th July, 2024, the Agency received a duplicate file from the Directorate of Criminal Investigations,

Transnational Organized Crime Unit, about a suspected case of smuggling of human beings by the Respondents. That, pursuant to that information, the Agency opened an inquiry file No. 64 of 2024 to investigate the suspects' activities and identify the assets that are believed to be proceeds of crime.

- 4.** He averred that on the 7th February, 2024, at Malgis road block at Laisamus Sub - County, a multi- agency team manning Isiolo -Moyale highway intercepted two motor vehicles belonging to the respondents being Mitsubishi Fuso Lorry registration number KDB 296Q and Toyota Noah registration number KDN 851P. That upon conducting a search, on both motor vehicles, eighteen (18) Eritrean nationals, male and female were found in a modified compartment inside the lorry while seven (7) others were found in the Toyota Noah.
- 5.** That both vehicles were booked at Laisamis Police Station and the drivers and co-drivers identified as Mahat Ali Ibrahim, Diid Bagaja and Ahmed Ibrahim Mohammed were arrested and charged at Kahawa Law Courts on the 19th February, 2024.
- 6.** He further averred that the preliminary investigations revealed that the two motor vehicles were purchased with funds derived

from smuggling of human beings contrary to **Section 53 (1) (P)** as read with **Section 53 (2)** of the **Kenya Citizenship and Immigration Act**.

7. That upon conducting a search on the ownership of the vehicles, it was established that motor vehicle registration numbers KDB 296Q and KDN 851 P are registered in the names of the 1st and the 2nd respondents respectively, and that, on summoning the respondents, the 1st respondent failed to honour the summons, but on questioning the 2nd respondent, it was revealed that the Toyota Noah had been sold to the 1st respondent by the 2nd respondent though the transfer had not been done, but partial payment had been made.
8. He avers that there are reasonable grounds to believe that the motor vehicles are conduits of money laundering through drug trafficking contrary to **Sections 3, 4, and 7** as read together with **Section 16** of the **POCAMLA**.
9. The applicant filed a supplementary affidavit sworn on the 18th July, 2025 by ZACHARIA LEKISHON. He averred that on the 24th November, 2024, another motor vehicle registration number KCG 650T, Toyota Vanguard belonging to the 1st respondent

was also seized at Kamaki's area, along Eastern Bypass while ferrying cocaine worth Ksh. 421, 720 and the suspects were charged at JKIA Law Courts.

- 10.** He has stated that on the 15th January, 2025, the 1st respondent wrote a statement with the applicant explaining the source of funds used to purchase the motor vehicles, wherein he explained that motor vehicle registration number KDB 296Q was purchased from proceeds of sale of motor vehicle KAH 268 P which he claims to have inherited from his father. That upon conducting a search of the motor vehicle records, his father has never been the registered owner of the said motor vehicle.
- 11.** That though the 1st respondent states that he bought motor vehicle KDN 851P from the 2nd respondent through hire purchase, he has however been paying for the installments from funds believed to be proceeds from illegal businesses of drugs and human trafficking and that he purchased the vehicles using loans and hire purchase in order to disguise the sources of the funds. Further, that an analysis of the 1st respondent's bank account shows numerous cash deposits of

huge amounts whose sources cannot be ascertained as the 1st respondent does not have any known legitimate business to warrant such cash flows.

12. The 1st interested party filed a replying affidavit sworn by CLARIS OGOMBO, on the 5th September, 2025. He has averred that the proceedings herein are defective and incompetent as the same were filed when there was no preservation Order in place and therefore, this court has no jurisdiction to entertain the same. He states that the preservation order which was issued by Justice D. Kavedza on the 27th August, 2024 lapsed on the 27th November, 2024 meaning that there was no preservation Order in place to form a basis for mounting the current forfeiture application.

13. Without prejudice to the above preliminary point, the interested party contends that, at all times, the 1st respondent was its customer where he maintained various Bank accounts including 0011111302 at Moyale Branch. That, it granted the 1st respondent a financial facility to the tune of Ksh.8,320,000 for a duration of 48 months for purchasing of motor vehicle registration number KDB 296Q and the vehicle was registered

jointly in the names of the 1st respondent and the 1st interested party.

- 14.** That the 1st respondent has defaulted in the repayment of the facility leading to accrual of penalties and other contemplated charges, with his current financial obligations to the interested party standing at Ksh. 3, 145, 583. 46 exclusive of penalties despite the facility having attained its maturity date. That following the recurrent default, by the 1st respondent to service and pay his facility as contracted, the 1st interested party has on several occasions issued formal notices of default to the 1st respondent to remedy the default to no avail.
- 15.** That the 1st interested party has not been involved in the commission of any offence similar or related to the offence alleged to have been committed by the 1st respondent. Further, that the 1st interested party acquired its financial interest in motor vehicle KDB 296Q for sufficient consideration as the same was used as security for the sums of Ksh.8,320,000 advanced to the 1st respondent, and which funds are traceable back to the 1st interested party, a credible

bank, thereby debunking the allegations of it having been purchased by proceeds of crime.

16. The 1st interested party further avers that motor vehicle registration number KDB 296Q was seized and is currently detained at Muthaiga Police Station on the instructions of the applicant and the 2nd and 3rd interested parties, thereby, rendering it impossible for the 1st interested party to exercise its statutory power of sale over it unless the said motor vehicle is excluded from the preservation order and/or forfeiture proceedings.

17. Further, that the 1st interested party has sufficiently established that it acquired an interest in the said motor vehicle for sufficient consideration as collateral for the facility advanced and which interest as a financier is capable of protection by the court pursuant to **Section 94(1) (b)** of the **POCAMLA**.

18. The 1st interested party contends that there is no direct evidence that has been adduced by the applicant to demonstrate that the acquisition of the motor vehicle or the repayment thereof is tied to an illegal activity and, as such,

the 1st interested party should not be deprived of its collateral on the basis of unsubstantiated allegations, when there are clear documents evidencing the chain of funds from the 1st interested party's to the 1st respondent's bank account and thereafter, to Crater Automobiles Limited.

19. The applicant filed a further affidavit sworn by BEDFORD MURIUKI, on the 13th October, 2025 in which he has stated that he wrote to the Government printers to have the preservation order gazetted on the 28th August, 2024 which was within 21 days after the preservation orders were issued, followed up on the same, but its efforts bore no fruits. That as a result, the preservation orders lapsed and the same could not be extended after they had lapsed.

20. That the copy of records from the 2nd interested party does not show the ownership of the motor vehicle as co-owned by the 1st interested party and the 1st respondent, but it shows the 1st respondent as the sole owner. Further, that the chattel mortgage was not registered and therefore, the Agency is unaware of the 1st interested party's interest in the motor vehicle and the same does not fall under chattel mortgage.

- 21.** That, according to the payment schedule, the 1st respondent defaulted since June 2024 and there is no evidence on record of efforts to repossess the motor vehicle until December 2024 when the applicant wrote to the 3rd interested party demanding for release of the same. Further, that the 1st interested party holds the bank accounts of the 1st respondent in which there are shares amounting to more than Ksh.2,000,000 in which the interested party can forfeit to recover the defaulted amounts and will suffer no loss.
- 22.** The Motion was disposed of by way of written submissions.

Applicant's Submissions

- 23.** The applicant identified three issues for determination to wit;
- i) Whether the motor vehicles in issue are proceeds of crime***
 - ii) Whether the motor vehicles should be forfeited to the State***
 - iii) Whether a criminal conviction is a necessary precondition for making a forfeiture order.***
- 24.** On the 1st issue, the applicant submitted that though the 1st respondent was served with the Originating Motion, he did not file appearance or any response to the same. That the motor

vehicles were seized after they were found trafficking Eritrean Nationals and that the applicant's investigations established that the 1st respondent is the kingpin behind the human trafficking of narcotics despite having never been arrested and charged.

- 25.** Further, that the 1st respondent's bank accounts shows that the benefits derived from human trafficking are delivered to him by way of physical cash, and deposits into his bank account and he thereafter launders the benefits by investing them in motor vehicles with the intent of concealing the source of the funds used to acquire the assets.
- 26.** That, the motor vehicles are purchased with proceeds of crime and later used as instrumentalities of crime to convey the drugs and for human trafficking, and in a scheme to disrupt the chain of investigations, source of funds and connections between the assets and the illicit trades, the 1st respondent took mortgage facilities and had the motor vehicles registered jointly with other parties to frustrate the seizure.

27. The applicant submitted that it has proved that the motor vehicles are proceeds of crime from illegitimate human trafficking, and that the 1st respondent has not logically explained the source of the motor vehicles in issue. The applicant relied on the cases of :

- a) *Assets Recovery Agency vs Pamela Aboo; Ethics & Anti-Corruption Commission (interested party) (2018) eKLR***
- b) *KACC vs James Mwathethe Mulewa & Another (2017) eKLR***
- c) *Abdulrahman Mahmoud Sheikh & 6 others vs Republic & others (2016) eKLR.***

28. On the 2nd issue, it was submitted that under **Section 92** of the **POCAMLA**, the court has powers to issue orders of forfeiture if it has been proved on a balance of probabilities that the motor vehicles are proceeds of crime. Further, that the issuance of the orders is an effective and justifiable way of depriving criminals of the proceeds of crime. Reliance was placed on the case of **Prosecutor General Vs New Africa Dimensions & others, High Court of Namibia case No. POCA 10/2012** and that of **Assets Recovery Agency vs Rohan Anthony Fisher & Others, Supreme Court of Jamaica, Claim No. 2007 HCV003259.**

- 29.** The applicant submitted that Article 40 of the Constitution does not protect the right to property which has been unlawfully acquired. Reliance was made on the case of **Tecla Nandjila Lameck vs President of Namibia 2012(1) NR 255 (HC)** and **Martin Shalli vs Attorney General of Namibia (supra)** and **Assets Recovery Agency vs Joseph Wanjohi & others.**
- 30.** On the third issue, it was submitted that conviction is not a condition precedent for Civil forfeiture proceedings under part VIII of POCAMLA as such proceedings are in Rem. That forfeiture proceedings are Civil in nature and the standard of proof is on a balance of probabilities. The case of **Director of Assets Recovery & Others, Republic Vs Green & others (2005) EWHC 3168** cited in the case of **Assets Recovery Agency Vs Pamela Aboo (supra)** was relied on.
- 31.** The applicant also relied on **Section 92 (4)** of the **POCAMLA** which provides that the validity of the forfeiture order is not in any way affected by the outcome of criminal proceedings.

2nd Respondent's Submissions

- 32.** The 2nd respondent filed its submissions dated the 17th December, 2025, in which it has submitted that, there is no evidence that has been adduced to demonstrate that either respondent has committed, been charged with, or convicted of any criminal offence. That from **Section 2** of the **POCAMLA**, the applicant bears the burden of demonstrating a direct and demonstrable nexus between the property sought to be forfeited and a specific criminal offence.
- 33.** The respondent submitted that it has demonstrated that it is a legitimate motor vehicle dealer conducting lawful business; the subject motor vehicle was sold to the 1st respondent pursuant to a valid sale agreement dated the 10th November, 2023 and that neither the 1st respondent nor the 2nd respondent is the subject of any ongoing investigations by the applicant or National Police Service. That, there is complete absence of inculpatory evidence linking the subject motor vehicle to criminal activity. Reliance was placed on the case of **Assets Recovery Agency Vs Kioko (ACECA No. 16 of 2020) (2025) KEHC 13775.**

- 34.** The respondent contended that the application is fatally defective for the reason that it is founded on a preservation Order which had lapsed before the application was filed. That, upon the lapse of the preservation order, there was no subsisting legal foundation upon which the applicant could anchor the forfeiture proceedings, and therefore, the application ought to fail on this ground.
- 35.** It was the respondent's further submission that the preservation order is in breach of **Article 40** of the **Constitution** which guarantees the right to property and protects persons from arbitrary deprivation thereof. That, the applicant's continued pursuit of the forfeiture proceedings herein is arbitrary, disproportionate, unconstitutional and it amounts to an abuse of the court process.
- 36.** That the 2nd respondent had already sought the release of the same motor vehicle in Kahawa MCCRmisc. NO. E294 of 2024, yet, the applicant continues to litigate over the same subject matter across multiple fora, notwithstanding the absence of investigations or criminal culpability on the part of the registered owner. It avers that the applicant has failed to

meet the statutory and constitutional threshold required to justify the preservation or forfeiture of the subject motor vehicles.

Applicant's further submissions

- 37.** The applicant submitted that the interested party did not register the chattel mortgage at the Movable Property Securities register which is a legal requirement and therefore, loses a right to exercise its right under **Section 94** of the **POCAMLA** and cannot demand first priority as the financier.
- 38.** Further, that though the 1st interested party purports to have sent notices of demand and repossession letters, there is no proof of such letters having been sent to the 1st respondent as alleged, and payment schedules provided by the interested party shows that the 1st respondent had been paying the installments religiously until the 21st May, 2024 when he paid the last instalment and defaulted thereafter.
- 39.** That the interested party has never tried to repossess the motor vehicle to recover the alleged default amount by the 1st respondent, but only got interested in the same after the Agency obtained preservation orders against it.

40. The applicant contended that the motor vehicle has a modified compartment in which the trafficked human beings were found to be kept which is a clear indication that the 1st respondent purchased the vehicle for purposes of conducting that illicit business. That, apart from the motor vehicles that are part of these proceedings, another motor vehicle belonging to the 1st respondent has been seized in other criminal offences within the same investigation period which is between 2011 and 2024.

41. The applicant avers that the 1st respondent is actively engaged in illicit trade of drugs and human trafficking and has been purchasing the motor vehicles using proceeds of the criminal activities and disguising the source of funds by purchasing the motor vehicles on loan and hire purchase terms. That, the applicant's investigations have established that the 1st respondent is the kingpin behind the human trafficking and trafficking of narcotics despite never being arrested and charged.

42. That, if the motor vehicles are found to be proceeds of crime, they should be forfeited to the state pursuant to the powers

given to the court under **Section 92** of the **POCAMLA**, and by issuing the orders, the court will be depriving criminals of ill-gotten gains and deter and prevent crime. Further, that the issuance of such orders is an effective and justifiable way of depriving them of the proceeds of crime obtained from human trafficking.

Analysis and Determination

43. The court has considered the Originating Motion and the supporting affidavit, the replying affidavit and the submissions filed by the parties. The only issue for determination is;

whether the motor vehicles in issue constitute proceeds of crime and thus liable to be forfeited to the state.

44. The suit herein has been brought under **Section 92** of the **POCAMLA** which donates jurisdiction to this court to make an Order for forfeiture, if it finds on a balance of probabilities that the property in issue;

a) Has been used or is intended for use in the commission of an offence or;

b) Is a proceed of crime.

45. Section 2 of the **POCAMLA** defines Proceeds of crime 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 successfully 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.”

46. Forfeiture proceedings are civil in nature and the standard of proof is on a balance of probabilities. This was the holding in the case of **Director of Assets Recovery and Others Vs Green and Others (2005) EWHC 3168** cited in the case of **Assets Recovery Agency Vs Pamela Aboo; Ethics & Anti-Corruption Commission (interested party) (2018) eKLR** at par 63 where the court stated as follows;

“In civil proceedings for recovery under part 5 of the Act, the Director need not allege the commission of any 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. The proceedings before this court are to determine the criminal origins of the property in issue

and are not a criminal prosecution against the respondent where presumption of innocence is applicable.”

47. The court went on to say that, the validity of an order of forfeiture 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.

48. The court in the case of **Abdurrahman Mahmoud Sheikh & 6 others Vs Republic & Others (2016) eKLR** stated as follows;

“The letter, spirit, purpose, and gravamen of the proceeds of Crime and Anti-Money laundering Act is to ensure that one does not benefit from criminal conduct and that should any proceeds of criminal conduct be traced, then it ought to be forfeited, after due process, to the state, on behalf of the public which is deemed to have suffered some injury by the criminal conduct.”

49. In the case herein, the respondents’ subject motor vehicles were on 7th February, 2024 intercepted at Malgis road block at Laisamis Sub- county within Marsabit County, by a multi-agency team that was manning Isiolo-Moyale highway. Upon conducting a search, twenty-five foreign nationals of Eritrean

origin who were being smuggled into the country were found inside the two vehicles.

- 50.** The multi-agency team managed to arrest three suspects, drivers and co-drivers and were charged before Kahawa Law Court on the 19th February, 2024. The preliminary investigations revealed that the motor vehicles were purchased with funds derived from smuggling of human beings contrary to **Section 53(1) (P)** as read with **Section 53(2)** of the **Kenya Citizenship and Immigration Act**.
- 51.** The respondents were summoned by the applicant to explain the sources of funds used to purchase the motor vehicles, but the 1st respondent failed to honour the summons but upon questioning the 2nd respondent, it was revealed that motor vehicle KDN 851P, Toyota Noah was sold to the 1st respondent by the 2nd respondent.
- 52.** It is worth noting that the respondents did not defend the suit despite having been served with the Originating Summons, but the 2nd respondent filed submissions. The 1st interested party did file a replying affidavit claiming a legal interest in motor vehicle registration number KDB 296Q as a financier.

53. In the case of **Assets Recovery Agency Vs Pamela Aboo (supra)** the court held:

“61. Where the person against whom all allegations have been made does not give a satisfactory explanation to rebut the allegations, it means what has been presented is not challenged.....”

54. In the Originating Motion, the applicant has set out the matters that are alleged to constitute an offence under Section 53(1)(P) as read with **Section 53(2)** of the **Kenya Citizenship and Immigration Act**. See the case of **Director of Assets Recovery and others Vs Green and others (2005) EWHC 3168 (supra)**.

55. The applicant has averred that, according to its investigations, the motor vehicles were purchased with funds derived from smuggling of human beings. The respondents did not explain the source of the funds that they used to purchase the subject motor vehicles despite having been given an opportunity by the applicant to do so.

56. In the circumstances, it is the finding by this honourable court that motor vehicles registration Nos. KDB 296Q and KDN 851P are proceeds of crime. However, the 2nd respondent in its submissions raised a fundamental legal issue on the

competence of the suit for the reason that it is founded on a preservation order that had already lapsed by the time the suit was filed.

57. The court has confirmed that the preservation order was issued on the 27th August, 2024 and the same lapsed on the 27th November, 2024. The suit herein was filed on the 31st January, 2025 by which time the order had lapsed. There is nothing on record to indicate that the order was extended. These facts have not been denied by the applicant but instead it has given reasons for the delay in having the preservation orders gazzeted, which in my view, does not cure the defect.

58. Section 90(1) of the **POCAMLA** provides as follows;

“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.”

59. In view of the foregoing, and for the reasons that the court has given herein above, I find that the suit is fatally defective and I hereby dismiss the same, but with no orders as to costs.

60. It is so ordered.

Dated and signed at Nairobi this.....day of2026

.....
L.M. NJUGUNA
JUDGE

Delivered and countersigned this 27th day of February 2026

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B.M. MUSYOKI
JUDGE

ORIGINAL