

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
ACEC SUIT NO. E020 OF 2024

ASSETS RECOVERY AGENCY.....APPLICANT

-VERSUS-

JACKSON MBUGUA BURUGU.....
.....RESPONDENT

AND

JOHN WAMBUGU MAINA.....3RD RESPONDENT

JUDGMENT

The applicant, a statutory body established under Section 53 of Proceeds Of Crime Anti-Money Laundering Act (hereinafter referred to as ‘POCAMLA’) has brought amended originating motion dated 10th June 2024 and amended on 27th August 2025 praying for the following orders;

1. THAT this Honourable Court be pleased to issue orders declaring that:
 - i. Plot number 76B Mathare North Commercial Zone registered in the name of Jackson Mbugua Burugu is a proceed of crime and therefore liable for forfeiture to the State.

ii. Plot Number 156B Mathare North Commercial Zone registered in the name of Jackson Mbugua Burugu is a proceed of crime and therefore liable for forfeiture to the State.

(The properties mentioned above shall hereinafter be collectively referred to as ‘the landed properties’).

2. THAT this Honourable Court be pleased to issue an order declaring that motor vehicle registration number KBE 416Y MERCEDES BENZ is an instrumentality of crime and therefore liable for forfeiture to the State.

3. THAT this Honourable Court be pleased to issue orders of forfeiture of the following properties;

i. Plot number 76B Mathare North Commercial Zone registered in the name of Jackson Mbugua Burugu.

ii. Plot Number 156B Mathare North Commercial Zone registered in the name of Jackson Mbugua Burugu.

4. THAT this Honourable Court be pleased to issue an order of forfeiture of the following motor vehicle;

i. KBE 416Y MERCEDES BENZ.

5. THAT this Honourable Court be pleased to issue an order that the above plots and motor vehicle be forfeited to the Government of Kenya and transferred to the Assets Recovery Agency.

6. THAT this Court do make any other ancillary orders it considers appropriate to facilitate the transfer of the property forfeited to the Government.

7. THAT costs be provided for.

The applicant's case

The motion is supported by two affidavits of the applicant's investigator one Fredrick Muriuki. The first affidavit was sworn on 27th August 2025 while the second in form of a further affidavit was sworn on 26th January 2026. The gentleman avers that on or about 5th October 2021, officers from the Kenya Wildlife Service arrested the respondent and three other persons at Enasoit in Olgoji Conservancy within Laikipia County on suspicion of illegal poaching and upon a search on the motor vehicle registration number KBE 416Y (hereinafter referred to as 'the vehicle) which the arrested persons were using, the officers recovered four elephant tusks weighing 69.2 kilograms, two sacks, two Techno phones, one Nokia phone and one Infinix phone.

On 7-10-2021, the respondent and the other arrested persons were charged with the offence of dealing in wildlife trophies of endangered species without a permit contrary to Section 92(2) of the Wildlife Conservation and Management Act vide Nanyuki Chief Magistrate's Court criminal case number E2189 of 2021. The deponent adds that the respondent had previously in 2017 been charged with another offence of illegal transportation of endangered wildlife species of sandalwood contrary to Section 99(2) as read with Section 99(3) of the same Act and being in possession of endangered species without a permit contrary to Section 92(4) of the same Act vide Nyahururu Chief Magistrate's Court criminal case number 1442 of 2017.

The applicant adds that it commenced and carried out investigations to establish the respondent's assets which investigations revealed that the motor vehicle was used as an instrumentality of crime and that the respondent laundered the income he received from the illegitimate trade in wildlife trophies by acquiring the assets in issue.

Mr. Muriuki adds that, his investigations also revealed that the respondent held US dollar account number 1050171817382 at Equity Bank and Kenya shillings account number 1100171864273 also at Equity Bank. Upon obtaining court orders to investigate the bank accounts and getting statements thereof, the applicant analysed the same which analysis revealed that there were several international and domestic transactions of large amounts which were not explained leading it to believe that the same were proceeds from the illegal trade.

The deponent adds that in the course of his investigations, he also established that the proceeds were used to buy the landed properties the subject of these proceedings. In the further affidavit, the applicant confirms that the landed properties were bought by the interested party from the respondent on 15-09-2023 with funds sourced from sale of the interested party's land in Murang'a. The interested party sold his said property at Kshs 48,500,000.00 and bought the properties in this suit at Kshs 21,000,000.00 which transaction was conducted through advocates. The sale was completed with the interested party paying the purchase price. Ten per cent was paid to the respondent's advocates and the balance to the respondent's wife's one Nancy Ndinda Maweu through her bank account. The applicant alleges that it made enquiries from the Nairobi City County

Government who disowned the receipts and allotment letter provided by the interested party.

The applicant has added that, the money paid to Ndinda Maweu was distributed as follows; cash withdrawal of Kshs 11,665,000.00, Kshs 345,700.00 to one Philis Muthoni, Kshs 3,100,000.00 to purchase of a machine from Green Tree Trading Ltd and Kshs 3,200,000.00 towards purchase of a motor vehicle from Windsor Automobile Ltd.

The applicant exhibited the following documents;

- a. Inventory dated 6-10-2021 for the items recovered by the Kenya Wildlife Services officers.
- b. An exhibit weighing certificate dated 6-10-2021.
- c. Charge sheet in Nanyuki Chief Magistrate's Court criminal case number E2189 of 2021.
- d. Charge sheet in Nyahururu Chief Magistrate's Court criminal case number 1442 of 2017.
- e. Applications and orders to investigate the respondent's and his wife's bank accounts.
- f. The respondent's bank accounts statements.
- g. Sale agreement dated 10-01-2014 between the respondent and one Andericus Oduor Odongo for the landed properties.
- h. Certificate of registration of the motor vehicle.
- i. Preservation orders.
- j. Statement recorded from the interested party.
- k. Letter dated 12-09-2025 to the Nairobi City County Government seeking authentication of letter of allotment.

- l. Letter from the Nairobi City County Government dated 11-09-2024 in response to the applicant's letter dated 9-10-2024.
- m. Letter from Granary Capital Limited who is registered as a co-owner of the vehicle.

The respondent's reply

In his replying affidavit dated 21st January 2026, the respondent has averred that he operates a legitimate hardware business from which he got the funds which he used to purchase the landed properties and the vehicle. He avers that the properties were bought by himself and one Nancy Ndinda Nbugua from Andericus Odour Odongo on 10-01-2014 at Kshs 1,125,000/= each. Although he does not expressly deny having been arrested and charged for illegal poaching, the respondent swears that the charges are malicious and false.

He adds that the sequence of events as narrated by the applicant are not logical and adds that there is no plausible or reasonable link between acquisition of the landed properties and the vehicle and the alleged proceeds from the illegal trade. He has deponed further that, he sold the landed properties to the interested party on 15-09-2023 and was fully paid through a smooth process. He also averred that his bank accounts do not hold substantial deposits which could lead one to suspect illegitimate sources. He claims to have acquired the vehicle in 2008.

Interested party's case

On his part, the interested party has sworn affidavits dated 20th December 2024 and 27th January 2026. He swears that the respondent sold the landed properties to him on 10-15-09-2023 at a total cost of Kshs 21,000,000.00 which he paid in full and that the sources of the funds for the transaction was sale of his land parcel number

Nginda/Samar/BLK.1/2727 which he sold at Kshsh 48,500,000.00. At the time of the sale, there were no caveats or encumbrances on the landed properties.

He avers that the advocates who represented him in the transaction did due diligence and found the landed properties clean. He pleads that if the landed properties were tainted, he was an innocent purchaser for value without notice and should not be victimised with orders of forfeiture. He also questions the logic of suspecting the landed properties to be proceeds of crime when the offences the respondent was charged with happened in 2017 while the landed properties were bought in 2014. He exhibited a statement of account from the Nairobi City County Government dated 27th October 2023 showing him as the owner of the properties. He wondered why the applicant had not conducted a search on the landed properties the same was it did for the motor vehicle.

Analysis and determination

The parties herein filed their respective submissions which I have duly considered alongside the evidence produced. This being a civil forfeiture under Sections 90 and 92 of the POCAMLA, the applicant has a duty to establish a *prima facie* case the before the respondent and the interested party are burdened with the duty to discharge their evidentiary burden of proof in respect of the source of their assets. The standard of proof required here is on a balance of probabilities. In ***Assets Recovery Agency v Rainbow Techemploy Africa Limited [2023] KEHC 25770 (KLR)***, it was held that;

‘As in all civil cases, the burden of proof in civil forfeiture, lies with the Applicant while the standard of proof is on a balance of probabilities. The Applicant therefore bears the legal burden to prove that the impugned funds are proceeds of crime. It is only once this legal burden is discharged, that

the evidential burden shifts to the Respondent to prove that the funds were lawfully acquired and hence they are not proceeds of crime.'

I will start with the claim against the landed proprietries. It is common ground that the respondent acquired the landed properties from one Andericus Odour Odongo on 10-01-2014. The applicant has confirmed as much and indeed produced the agreement itself. The applicant has not shown this court that as at that time of the said purchase, the respondent was involved in any illegitimate business neither has it demonstrated a reason to suspect that. I am alive to the fact that a person may be involved in illegitimate trade and escape detection and there is a remote possibility that the respondent may have been involved in the illegitimate trade before 2017 but that alone cannot form a basis for forfeiture especially when one considers that the time difference is more than three years.

It is indisputable that the applicant restricted its investigations from February 2017. It has not given reasons for choosing 2017 as the start of its period of interest. It was possible for the applicant to extend the period before 2014. I have said before in similar matters and wish to repeat it here that, as much as someone is required to account for their wealth or assets when confronted with matters of this nature, the law did not in my view anticipate a situation where a mere suspicion would call upon an individual to account for their financial affairs without there being a valid basis for the same. If that were the case, the law would not have used the words 'reasonable grounds' in Section 82(2) of the POCAMLA. The starting point for requiring a person to account for their financial affairs or assets is reasonable grounds and the applicant must lay basis of their suspicion. The said Section states that;

‘The court shall make an order under subsection (1) if there are reasonable grounds to believe 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.’

In addition to what I have stated above, there is no averments in the applicant’s affidavits to the effect that in 2014 when the landed properties were purchased from Andericus, the respondent was involved in the illegal trade. The charge sheet for Nyahururu criminal case number 1442 of 2017, discloses that the offence was committed on 23rd August 2017. Needless to repeat, this was more than three years after the respondent had purchased the landed properties.

It is notable that the landed properties have now changed hands to the interested party. At the time the interested party bought them, they were not encumbered. There is exhibited clear sale agreements which bears stamp duty impressions and are shown to have been duly registered and there is no evidence that the interested party was aware of any encumbrances or the dealings or character of the respondent.

The applicant has submitted that the respondent rushed to sell the landed properties after he became aware that the applicant was after them. Although it appears that the applicant started investigating the matter in July 2022 going by the timing of the application for warrant to investigate vide miscellaneous application number E083 of 2022, there is no evidence of when the respondent became aware of the investigations. The investigations covered the bank accounts and there is no indication of when the applicant showed interest in the landed properties. What is

clear is that the application for preservation was made in February 2024 after the interested party had bought the landed properties.

I do agree and acknowledge that proceedings in civil forfeiture are *in rem* and go after the property and not the person. In this regard, I must emphasize that the character of the landed properties changed from land to liquid cash which was paid. The interested party was not part of neither was he aware of any scheme related to the commission of the offence for which the respondent was arrested and charged.

The applicant's chart at paragraph 12 of its further affidavit shows that, of the 48,500,000.00 paid to the interested party after he sold his land, the respondent and his wife received Kshs 21,000,000.00 only. The interested party has explained with satisfaction and the applicant has confirmed the source of the funds he used in acquiring the landed properties. The applicant has not claimed that the interested party's money was proceeds of crime. In fact, it is not interested in the sums left after payment of the purchase price of Kshs 21,000,000.00.

One of the reasons that makes me believe that the interested party was not part of the web is that the landed properties were bought through the help of a land broker who was paid Kshs 500,000.00 meaning that the respondent and the interested party were not known to each other before the transaction, otherwise they would not have needed services of a broker. Further, the chart shows that the money was distributed to several people and in my view, if there was proof that the landed properties were proceeds of crime, the applicant should also be going for those recipients including the machine allegedly bought from Green Tree Trading Limited.

Seizing the properties from the interested party and leaving the respondent to enjoy the purchase price or assets bought using the same will work against the purpose of civil forfeiture which is to constrict the criminal enterprise and deprive them from enjoying or benefiting from their criminal activities. The person who will be punished in that scenario would be the interested party who will lose the landed properties despite his money being clean and accounted for.

While addressing an issue of an interested party who had no notice of the circumstances under which the property in question was acquired, Honourable Justice Mumbi Ngugi (as she then was) held in ***Assets Recovery Agency v Phylis Njeri Ngirita & 2 others; Platinum Credit Limited (Interested Party) & another [2020] KEHC 3214 (KLR)*** that;

‘Section 93 of POCAMLA is intended to protect third parties in the circumstances set out under its provisions. The Agency did not place any material before the court on the basis of which the court could conclude that the Interested Parties were involved in the offences out of which the property the subject of forfeiture was acquired, or that they knew that the motor vehicles were tainted properties at the time they acquired such interests. There is a danger that a party who acquires property in circumstances similar to what is presently before me may obtain financing on the security of such properties with a view to concealing the source of the properties or defeating forfeiture proceedings, and those who acquire such interests may be complicit. However, no such evidence in this case has been placed before me by the Agency. That being the case, the interests of the Interested Parties merit the protection of the court under section 93 of POCAMLA.’

The applicant has in its further affidavit and in order to discredit the transaction between the respondent and the interested party exhibited some documents denying authenticity of a letter of allotment and statement of account exhibited by the interested party. The letter allegedly from the Nairobi City County Government dated 9-10-2024 states that there was no Part Development Plan representing the plots and denies that the documents originated from the County Government. It goes on to say that the payments if any were irregular as they were not supported by any authority. To me, this is to say that the plots do not exist in the County Government's records and that means that they plots do not exist. The big question here would then be, if the plots do not exist, then what is the applicant seeking to forfeit and how will the final vesting orders be executed?

Based on the above, it is my finding that the applicant has failed to establish that the landed properties are proceeds of crime as it has failed to connect the interested party to the activities of the respondent or that the interested party was privy to the illegal trade associated with the respondent. The suspicion in my view was not reasonable and any iota of reason to believe that they were proceeds of crime has been rebutted by the evidence produced by the interested party. I decline to declare the landed properties as proceeds of crime.

Turning to the vehicle, I find that there is a reasonable suspicion that the respondent was during the period of interest involved in criminal and illegitimate business. He has been charged twice in courts of law and although I have not been told the outcome of the two criminal cases, that position is not relevant to the outcome of this matter. The standard of proof in criminal cases is not the same as in civil forfeiture cases. All the applicant is required to do is to establish that there

is a probability that the respondent was involved in criminal activities which were likely source of the assets sought to be forfeited upon which the respondent is called upon to account for his source of income with which he acquired the vehicle.

I note that in his replying affidavit, the respondent has failed to account for his business and source of income during the period of interest. He has given a general statement that he is involved in hardware business. In ordinary circumstances a business that would generate sources enough to buy a motor vehicle and attract the kind of deposit shown in the respondent's bank statement must have an address and documentation or records.

The bank accounts exhibited by the applicants and which the respondent has not disputed gives an impression of a person involved in international trade. The respondent even operated a dollar account for which substantial sums were being transferred to his Kenya shillings account. Some transactions were done in different towns across the country some of them being Kenya's border towns while the respondent was arrested in Laikipia which in my view depicts a person who operates a robust trade. This cannot be a small hardware business with no address.

Having said the above, I note that although the chart given by the applicant to demonstrate the movement of the money paid to the respondent by the interested party shows part of it was used to buy a car, it is clear that the same was not the vehicle subject of these proceedings. The transaction with the interested party was in 2023 while the vehicle was arrested in 2021. The vehicle is shown to have been acquired in 2008 through a loan facility from Granary Capital Limited.

The above notwithstanding, the motor vehicle would still be liable for forfeiture under Section 92(1)(b) of POCAMLA. In any event, the applicant has sought to forfeit it for being an instrumentality of crime and not proceeds of crime. The said Section 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 has been used or is intended for use in the commission of an offence.’

There is evidence that the vehicle was seized on 6-10-2021 while transporting elephant tusks. The inventory exhibited by the applicant as annexure ‘FM1’ shows that the vehicle was part of what the Kenya Wildlife Services officers recovered. It cannot be a coincidence that the respondent was arrested in Laikipia County in both occasions trading in endangered species and their trophies. The respondent has not in his response denied that the vehicle was impounded while carrying the elephant tusks.

An instrumentality of crime is any property or medium used as conveyor belt or enabler of commission of an offence. The motor vehicle was arrested while being used to commit an offence and as such, I find no difficulty in holding that it was an instrumentality of crime and therefore liable to forfeiture.

The conclusion of the above is that the originating motion succeeds in part in respect of the motor vehicle. Consequently, the final orders of this court are that;

1. The applicant’s claim in respect of plot number 76B Mathare North Commercial Zone and plot Number 156B Mathare North Commercial Zone is dismissed.

2. A declaration is hereby issued that motor vehicle registration number KBE 416Y MERCEDES BENZ is an instrumentality of crime and therefore liable to forfeiture to the government.
3. An order is hereby issued forfeiting motor vehicle registration number KBE 416Y MERCEDES BENZ to the government.
4. An order is hereby issued directing the Director General of the National Transport and Safety Authority to transfer and vest motor vehicle registration number KBE 416Y MERCEDES BENZ to the applicant on behalf of the government of Kenya.
5. There shall be no orders as to costs.

Dated, signed and delivered at Nairobi this 17th day of April 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in presence of;

Mr. Adow for the applicant;

Miss Mutheu holding brief for Mr. Kirimi for the respondent; and

Mr. Odongo Nicholas for the interested party.