

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

ACEC SUIT NO. E044 OF 2025

ASSETS RECOVERY AGENCY.....APPLICANT

-VERSUS-

HEZRON WAMJOHI NJERI.....RESPONDENT

JUDGMENT

In exercise of its mandate under Section 90 of the Proceeds Of Crime Anti-Money Laundering Act (hereinafter referred to as 'POCAML'), the applicant has brought this suit vide originating motion dated 31st October 2025 praying that;

1. This Honourable Court be pleased to issue orders declaring Kshs 270,131.65 and all interest accrued therefrom held in account number 0110164730244 held in the name of Hezron Wanjohi Njeri at Equity Bank, Nyeri Branch as proceeds of crime.
2. This Honourable Court be pleased to issue an order of forfeiture of the funds held in accounts in prayer 1 above to the Assets Recovery Agency on behalf of the Government and be transferred to the Criminal Asset Recovery Fund Account number 1240221339 domiciled at KCB Bank KICC Branch.
3. This Court do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its orders.

4. Costs be provided for.

The motion is shown to be based on nine listed grounds which are basically that the respondent who was during the period of interest the bursar of a public school known as St. Faustina Mweiga High School embezzled Kshs 34,121,115.00 from the school and the amount traced in the account are part of the embezzled funds. The application is supported by affidavit of Mercy Wanjiru an investigator working with the applicant.

The applicant's case

In the affidavit sworn on 31st October 2025, Mercy avers that the applicant received information that the respondent while employed as the school's accounts clerk occasioned loss of the school's Kshs 34,121,115.00 through inflated salaries, making documents without authority and obtaining money by false pretences which he transferred to his bank accounts domiciled at Equity Bank, New Forties Sacco and Wananchi Sacco and other accounts associated with his wife one Cecilia Nyaguthi, upon which it commenced investigations. These false entries were made between 2021 and 2025 when he paid himself salaries in excess of Kshs 4,894,730.00 in different pay points at Newforties Sacco, Wananchi Sacco and Equity Bank.

The respondent was employed by the school on temporary terms vide letter dated 2nd May 2016 on a salary of Kshs 14,000.00 per month with effect from 1st May 2016. Thereafter, he received progressive salary increment with the final one being Kshs 30,000.00 through letter dated 14th July 2022. The respondent was by letter dated 10-12-2020 introduced as an agent to the school's bank accounts with

authority to transact on behalf of the school. Among his duties was preparation of the payroll and payment schedules for casual staff and processing of payments to goods and services providers.

It was deponed further that the respondent abused his position by signing payment vouchers without narrations of how much was being paid for goods or services and preparing two different payment schedules and authorising them without the involvement of the signatories. He is also said to have mismanaged the school cheque book for account number 110916818 domiciled at Equity Bank and numbers 1124607390 and 1101901357 domiciled at Kenya Commercial Bank.

An audit carried out by the County Director of Education on request from the school revealed that the aforesaid amount of Kshs 34,121,115.00 out of which the respondent's accounts received Kshs 4,894,730.00 was misappropriated and/or stolen. Following this revelation, the respondent was arrested and charged alongside Cecilia Nyaguthi with the offences of conspiracy to defraud contrary to Section 317 of the Penal Code, stealing by clerk contrary to Section 281 of the Penal Code, making a document without authority contrary to Section 357 of the Penal code, false accounting contrary to Section 330 of the Penal Code and obtaining money by false pretenses contrary to Section 313 of the Penal Code vide criminal case number E512 of 2025 in a Chief Magistrate's Court that is not clear to me.

It is also alleged that the respondent used cheques book in his custody to make withdrawals without authority of the bank signatories and without demonstrating how the money was utilised including paying entities that had not supplied anything to the school. Thereafter these funds would be channeled to the

respondent's account. One of the suppliers who was paid for supplying nothing was Brela Enterprises whose director was Cecilia Nyaguthi Wanjiru.

The applicant adds that the respondent would prepare two salary schedules where one would be duly authorized by the bank account signatories while the other would have only him as authorizer. The one authorized by him would have inflated amounts leading to him being paid more than his lawful salary. In 2021 alone, the respondent inflated his salaries by Kshs 523,005.00; in 2022 by Kshs 992,349.00; in 2023 by Kshs 1,254,878.00; in 2024 by Kshs 1,841,332.00 and in 2025 by Kshs 283,176.00. The revelation resulted to suspension of the respondent on 14-02-2025 and summons to appear before the Board of Management of the school which he failed to honour.

The applicant obtained warrants to investigate Brela's, the respondent's and the school's accounts vide Milimani Chief Magistrate's Anti-Corruption miscellaneous applications numbers E829 of 2025 and E1193 of 2025 upon which the investigator analyzed the statements from the said accounts which revealed that;

- a. Between 2021 and 2025, the respondent made unauthorised withdrawal of Kshs 12,550,000.00 from the school's account through cheques.
- b. Between 2024 and 2025, the respondent's account number 0110164730244 received from the school, a sum of Kshs 57,690.00.
- c. Between 9-07-2022 and 17-03-2025, the respondent's bank account received suspicious sums totaling to Kshs 589,878.00 from unknown persons.
- d. Between 14-04-2021 and 6-02-2025, the respondent personally deposited a sum of Kshs 1,035,400.00.
- e. Between 30-12-2024 and 3-02-2025 one Peter Thuita Guandaru deposited suspicious sum of Kshs 480,000.00 into the respondent's account.

- f. Between 2-12-2021 and 5-02-2025, the respondent's account received a total of 3,190,000.00 from Brela Enterprises.
- g. The respondent's account at Wananchi Sacco never received any sums except salaries and between 15-10-2020 and 1-02-2025, it received from the school a total sum of Kshs 2,183.185.10 in varying amounts.
- h. The respondent's account number 1000000741657 received from the school a sum of Kshs 2,080,029.00 between 9-01-2020 and 1-02-2025. This account would receive salaries in different amounts in different months. At one point, the salary was exaggerated to Kshs 146,000.00.

The applicant claims the cash deposits would be made immediately the respondent made the unauthorized withdrawals from the school's bank account an indication that the source of the cash deposits was the same money withdrawn from the school account without authority. The applicant has gone on to give a breakdown of each of the suspected deposits and bank transfers.

The applicant further avers that its analysis shows that the respondent benefited from the funds embezzled or stolen from the school. In proof of the case, the applicant exhibited 21 documents among them, the respondent's bank account statements and account opening documents, the charge sheet in the criminal case number E512 of 2025, investigations and audit reports and salaries schedules.

The respondent's response

In his replying affidavit sworn on 16th December 2025, the respondent confirmed that he was employed as a bursar in the school but denies stealing or embezzling the school funds. He adds that after he prepared payrolls, payment schedules and all documents for financial transactions, the school principal who is the accounting

officer would go through the same for satisfaction and table them before the Board of Management for verification.

He swears that as a bursar, he was not a bank signatory and states that the letter dated 10-12-2020 only introduced him to the bank for purposes of receiving bank statements and cheque books for transmission to the principal. He avers that, the report of document examiner prepared during police investigations clearly showed that he never signed any of the questioned documents including the cheques. And he proceeds to exhibit the report which he claims was deliberately left out by the applicant.

He avers further that, all the payments were made through cheques signed by the principal and two Board members and adds that the payments made to his bank accounts were for salaries, overtime payment, transport allowance, extraneous duties and payment in lieu of public holidays. He claims that he can't be responsible as he did not pay himself and those who paid him were the ones responsible under Section 59(O) of the Basic Education Act. He also alleges that before the cheques were paid and cleared, the bank made calls to the principal to confirm and authorise the bank to clear and pay the cheques.

He has deponed further that all the payments were for services he rendered and were authorised by the Board in minutes the applicant has left out and that at every end of the month, he would prepare the trial balance and the principal would go through the same and verify using bank statements to countercheck all payments.

Analysis and determination

I have considered the evidence of the parties and their submissions dated 2nd February 2026 and 23rd February 2026 respectively. This being a civil forfeiture

matter, the standard of proof is twofold. The applicant has the burden of proof of establishing a *prima facie* case against the respondent by being capable to demonstrate that there are grounds to reasonably suspect that the funds it seeks to have forfeited are proceeds of crime. Once a *prima facie* case is established, the respondent shoulders a duty to adduce evidence enough to discharge what is referred to as evidentiary burden of proof. This entails the responsibility to show legitimate the source of funds which are being suspected to be proceeds of crime and account for the wealth in his hands. The standard of proof is always on a balance of probabilities. In ***Assets Recovery Agency v Bala [2022] KEHC 11829 (KLR)***, it was held as follows;

‘It is clear from the above cases that the onus lies upon the Applicant to prove that there is reasonable suspicion that the funds found in the Respondent’s possession are proceeds of crime. Once that burden is discharged the evidential burden shifts to the Respondent to explain the source of the funds. However, the Agency need not prove the commission of a specific criminal offence. It is sufficient if it proves a particular kind(s) of unlawful conduct by which the finds were acquired.’

It is not disputed that the respondent was an employee of the school which is agreed to be a public school. It is also common ground that the respondent was in charge of processing of the school’s financial transactions. What is disputed in this aspect is the extent of the respondent’s involvement. While the applicant maintains that the respondent was in charge of verification of all transactions, the respondent claims that his duty was to prepare the financial transaction documents with the principal of the school being the accounting officer and the Board of Management bearing the responsibility of the movement of the money and culpable for any improprieties.

The audit report produced as annexure 'MW6' shows that there were financial malpractices involving Kshs 34,121,115.00 which was orchestrated by the respondent between 2021 and 2025. The report places the blame and responsibility on the respondent and I note that the respondent has not in his replying affidavit challenged the report. When he was invited to defend himself before the Board of Management, the respondent failed to honour the summons neither did he challenge his termination which was based on the report. The respondent has not actually denied that there was loss of money as stated in the report. His only defence in this matter is that he was not a signatory to the school's bank accounts and the payments being questioned were legitimately paid as his salaries, allowances and entitlements. He has however not given or told the court when and how these allowances became due and payable.

The respondent and his wife have been charged with several counts related to the loss of the money and he has said nothing about the criminal case. The wife has been linked to the loss based on the fact that a company she is said to be a director was paid for services or goods it did not offer or supply. If indeed the said company was a genuine supplier to the school and indeed supplied, why did the respondent not exhibit any documents showing when and what was supplied for the payments to have been justified. Additionally, there is also money trail showing that the respondent received money from the same company after it was paid by the school. With the respondent having failed to answer these facts, the court is left with no alternative other than to conclude that the transactions were a scheme to steal from the school.

The court is satisfied that during the period of interested, the respondent received a sum of Kshs 4,894,730.00 designated as salaries which was not commensurate with his lawful and contractual salary. Even if one were to assume that the respondent's salary in the five years he worked in the school was a net of Kshs 30,000.00 per month which was his latest and highest gross salary, the total entitlement would not have been more than Kshs 2,000,000.00. The allowances he claims to have been part of the amounts he received have not been substantiated. What kind of allowance for an employee of the respondent's cadre would be more than his gross salary?

The applicant has also been able to demonstrate that the respondent who has admitted to have been in charge of preparing the payrolls, would prepare two payrolls and get paid inflated salaries through different pay points. The respondent has not responded to this part of evidence. Even if the payrolls and payments were a responsibility of the principal and the Board as the respondent claims, the fact would remain that the respondent received payments which he was not entitled to and being the bursar of the school, he was bound to exercise high degree of integrity and alert the principal that he was receiving more than what he was entitled to. The fact that the principal or any other person was culpable does not exonerate the respondent from culpability. This matter is a civil forfeiture and the court should be concerned with following, retrieving and recovering the funds rather than identifying the person bearing criminal responsibility.

In support of my above position, I am guided by the holding of the court in ***Assets Recovery Agency v Escobar Kenya Limited & another; Kenyatta National Hospital (Interested Party) [2024] KEHC 8821 (KLR)*** thus;

‘This because it is now settled that civil forfeiture proceedings are “in rem” (against property) and civil in nature as opposed to criminal proceedings that are against the accused person. While in criminal proceedings the prosecution has to prove the guilt of the accused person beyond reasonable doubt, in these proceedings all that the applicant needs to do is to prove on a balance of probabilities that the property in issue is proceeds of crime. It is instructive that the applicant is not required to prove the commission of a specific offence and proof of a conviction is not mandatory. This is made clear in section 92(4) of the POCAMLA which provides that the validity of forfeiture order is not affected by the outcome of criminal proceedings or investigations instituted for that purpose. It means therefore that even where an accused person is acquitted in a criminal prosecution concerning the property in issue the property can still be forfeited.’

In view of what I have stated above, it is my holding that the applicant has established a *prima facie* case and discharged its burden of proof. It is now for the respondent to discharge his evidentiary burden which can only be achieved by showing the court that he received the funds from the school legitimately.

As I have stated above, the only defence put up by the respondent was that he was not in charge of payments and that the payments were his legitimate allowances and salaries. I have already held that the defence of the funds being his allowances and salaries is not valid and I do not see the need to re-analyse that line of argument.

The respondent places the blame on the school’s principal and the Board of Management. He alleges that what was paid to him was approved by the Board in

some meeting whose minutes the applicant has deliberately left out. He has however not given details of the meeting or the date it was held. He has not produced a single document showing that he was entitled to any payment other than his salary. I refuse to believe that an employee would get allowances outside his ordinary salary without a single document showing that he was entitled to the same.

The respondent has also claimed that the letter introducing him to the bank only authorized him to receive statements and collect cheque books for transmission to the principal. If indeed he had not no authority to withdraw, then the withdrawals make his case worse. It means that he withdrew money by cashing cheques without authority which would also rope in the signatories. As I have stated earlier, the fact that the signatories could have been culpable does not make the respondent less guilty. He remains an accomplice and liable to recompense the school for facilitating or enabling financial improprieties leading to loss of money.

The other area of the respondent's defence is that there was a report by documents examiner to the effect that he did not sign the cheques or the allegedly forged documents. I have read the report annexed to the respondent's replying affidavit and in my view, it does not exonerate the respondent. Without going to much details on this because I am not handling the criminal case, the report for instance shows that, exhibit B10 which was one of the payrolls was signed by the same author of exhibit M1-M3 which was specimen handwriting of the respondent. The rest of the details should be left for the court seized of the criminal trial.

In my view, even if the report of the examiner exonerates him, the respondent had the duty to explain why the monies which did not form part of his salary found

their way to his account and that of his wife which he has not even attempted to do. As stated earlier, this court should be interested in the property wherever it is found and not the conviction of the respondent. That is the basis of civil forfeitures. Honourable Justice EN Maina held in ***Asset Recovery Agency v Ndungi [2024] 2773 (KLR)*** that;

‘This is because in my view civil forfeiture are special proceedings and secondly because these are proceedings in rem against the property and what therefore is deemed to be guilty is the property which is considered to be the offender. Criminal or unlawful conduct must be established albeit on a balance of probabilities before the property can be forfeited. Civil forfeiture is intended to stop those who acquire property by committing criminal acts from enjoying the illicit wealth and because such wealth would be tantamount to that which is unlawfully acquired even article 40 of the Constitution would not protect it. It is therefore my finding that the statute of limitation does not apply to these proceedings.’

As I finish this judgement, I must state that this was an unfortunate case where a public school lost a whopping 34,121,115.00 at a time school principals, teachers, parents, children and stakeholders have been crying out for additional and sufficient funding of education. It is no secret that our education system is underfunded and the school managers are struggling to live with the little they get and it is appalling that those who are entrusted with the financial resources are engaged in malpractices like the one in this matter.

I do not believe that a school bursar can carry out acts disclosed in this matter without knowledge or detection by the principal or another person in a position of responsibility. It is either the respondent was working in collusion with other

managers or his supervisors were reckless or grossly negligent in their duties. I believe the respondent's averments that, before payments of cheques to suppliers, the bank would usually call the signatories or the accounting officer to authorise clearance and most likely this was done in respect of the cheques paid in the transactions in issue in this matter.

Even the paying bank should have alerted the school management of existence of more than one payment schedule and pay points which went on for a period of five years. Banks are not only the custodians of financial affairs of their customers but also hold a fiduciary duty to report any suspicious transactions and should be held liable where a customer loses money through an obviously fraudulent transaction. For avoidance of doubts or speculations, I am not saying or concluding that the school's bankers were negligent or liable.

It is said that the school has been battling creditors some as little as Kshs 441,855.00 while millions were misappropriated by those who bore high responsibilities. I have read the statement of the principal of the school who reported in January 2024 which has been produced as annexure 'MW4' and I get the impression that the school's woes are traceable to her predecessor's regime. I can only hope that the predecessor's statement was also taken and she and the Board of Management were investigated. On analyzing of the evidence herein, all indicators are that the respondent was not acting alone in this. However, all that I can do based on what has been brought before me and the nature of these proceedings is to leave that to the conscience of the persons responsible and the relevant government bodies including the law enforcement agencies the and the ministry in charge of basic education.

Having said the above, it is my conclusion that the originating motion succeeds and I proceed to make the following final orders;

1. A declaration is hereby issued that Kshs 270,131.65 and all interest accrued therefrom held in account number 0110164730244 held in the name of Hezron Wanjohi Njeri at Equity Bank, Nyeri Branch is proceeds of crime.
2. An order is hereby issued forfeiting Kshs 270,131.65 and all interest accrued therefrom held in account number 0110164730244 held in the name of Hezron Wanjohi Njeri at Equity Bank, Nyeri Branch to the Assets Recovery Agency on behalf of the Government.
3. The funds forfeited above shall be transferred to the Criminal Asset Recovery Fund Account number 1240221339 domiciled at KCB Bank KICC Branch.
2. The respondent shall pay the costs of this suit.

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. Kandie for the applicant, Mr. Wahome Gikonyo for the respondent and Mr. Mutuku holding brief for Miss Mumbi for an interested party who did not participate in the proceedings.