

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

ACEC SUIT NO. E015 OF 2024

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

-VERSUS-

HUSSEIN GUYO HUKA.....1<sup>ST</sup> RESPONDENT  
MOHAMMED GUYO DOKATA.....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

The applicant has approached this court under Sections 90 and 92 of the Proceeds of Crimes and Anti-Money Laundering Act (hereinafter referred to as 'POCAML A') seeking orders to declare the following as proceeds of crime and forfeit the same to the state;

1. Kshs 2,680,779.88 held in account number 0410198584651 operated in the name of 1<sup>st</sup> respondent at Equity Bank Limited.
2. Motor vehicle registration number KDC 011E a land cruiser pick-up registered to the 1<sup>st</sup> respondent.
3. Motor cycle registration number KMFB 091C registered to the 2<sup>nd</sup> respondent.

The applicant avers that the above assets are proceeds of crime as the sources used in acquiring the same are reasonably suspected to be from illegitimate dealing in narcotics drugs. The application is supported by affidavit of Duncan Odhiambo an investigator with

the applicant who depones that on 27<sup>th</sup> September 2023, the applicant received information from the Directorate of Criminal Investigations of a case of trafficking of narcotic drugs by the respondents and acquisition of proceeds believed to be benefits or profits from criminal activities upon which they opened an inquiry file. The Agency proceeded to obtain warrants to investigate and restrict the respondents' accounts in miscellaneous criminal application number E093 of 2024 and subsequently a preservation orders in this court's miscellaneous civil application number E007 of 2024.

In its investigations, the applicant obtained bank account opening forms for the 1<sup>st</sup> respondent, copies of records for the motor vehicle and the motor cycle, the 1<sup>st</sup> respondent's bank account statement and the 1<sup>st</sup> respondent's mpesa statement for line number 07172xxx58. In the bank account opening forms, the 1<sup>st</sup> respondent was shown as a security personnel though it is not indicated in which institution while the occupation of the 2<sup>nd</sup> respondent is unknown.

The deponent of the supporting affidavit adds that on 27<sup>th</sup> December 2022, police officers from Merti police station encountered about 10 armed militia on several motor cycles and three motor vehicles from Yamicha heading to Merti upon which a shoot out ensued with the militia managing to escape but not before the police deflated one of the motor vehicles. The deflated vehicle which was registration number KDC 011E (hereinafter referred to as 'the motor vehicle') was searched and found to be carrying motor cycle registration number KMFB 091C (hereinafter redeemed to as 'the motor cycle') and 11 bales of suspected cannabis. Upon search at the National Transport and Safety Authority records, the motor vehicle was found to be registered to the 1<sup>st</sup> respondent while the motor cycle was registered to the 2<sup>nd</sup> respondent.

The 1<sup>st</sup> respondent was subsequently charged in Isiolo Chief Magistrate's Courts vide criminal case number E075 of 2023 with trafficking in narcotic drugs contrary to Section 4(a)(ii) of the Narcotics Drugs and Psychotropic Substances Control Act. The deponent produced the charge sheet in the case as exhibit DO-7.

It has been deponed further that the bank account which is operated in the name of the 1<sup>st</sup> respondent received total deposits of Kshs 14,100,971.06 between 10-06-2023 and 13-02-2024. It is also deponed that the 1<sup>st</sup> respondent received a total of Kshs 10,299,400.00 through his mpesa account between 1-05-2022 and 9-11-2023 which is suspected to be funds obtained through trafficking in narcotics drugs. The applicant has given a breakdown of the deposits which it deems to be suspicious judging from the amounts and the frequency of the deposits, transfers and withdrawals.

The deponent adds that he summoned the 1<sup>st</sup> respondents for explanation of acquisition of the vehicle but he failed to honour the summons. The summons has been exhibited as annexure DO-8. The 2<sup>nd</sup> respondent was also summoned but failed to appear and explain the presence of his motor cycle in the 1<sup>st</sup> respondent's vehicle. However, unlike the case for the 1<sup>st</sup> respondent, the applicant has not exhibited the summons to the 2<sup>nd</sup> respondent.

The respondents were served with the originating motion and only the 1<sup>st</sup> respondent opposed the same through a replying affidavit sworn on 13<sup>th</sup> June 2025 in which he swears that he is engaged in business of buying and selling of camels and other livestock in Eastern and North Eastern regions of Kenya. He claims that he buys the livestock from remote areas of Isiolo, Masrabit and Wajir Counties at very low prices which he sells in other parts of the country. He adds that he has been running the said business since 2022. He adds that, he used to work as a security guard at Biliyo Bulesa Conservancy before he

left to venture into various business activities that have earned him significant proceeds which saved in the subject bank account.

The 1<sup>st</sup> respondent adds that his business relies on oral agreements and cash and mpesa transactions due to the fact that he runs it in very remote areas which have no facilities where people can execute formal sale agreements or maintain records of their livestock. He alleges that the transactions involve trusted agents who collect the proceeds and deposit them in his bank account and mpesa lines. Among these agents are the individuals flagged by the applicant in its supporting affidavit.

He admits that he was charged in the Isiolo Chief Magistrates Court as stated by the applicant but he quickly adds that he was acquitted by the trial court and therefore the allegations that the money and vehicle sought to be forfeited is linked to the said offence has no foundation to stand on.

In response to the 1<sup>st</sup> respondent's replying affidavit, the applicant filed a further affidavit sworn on 13<sup>th</sup> November 2025. The deponent states that the 1<sup>st</sup> respondent has not produced proof of other employment or engagements which would support his source of the stock for the business. He also claims that the pattern of withdrawals and deposits in the bank and mpesa accounts was not consistent with a business with regular transactions as would be expected. He states further that, the 1<sup>st</sup> respondent's statements recorded during investigations were inconsistent in that he told the DCI that he had left the vehicle at home while he told the applicant that he hired it out to one Abduba Hassan Shunu.

I have gone through the supporting, replying and further affidavits and the exhibits annexed thereto. I have also carefully read and given due consideration to the applicant's submissions dated 13<sup>th</sup> January 2026. I have not seen the 1<sup>st</sup> respondent's submissions

despite Mr. Mwitwi appearing for him having told me on 10-03-2026 that he had filed and served his submissions that morning.

This being an application for civil forfeiture, the applicant is under an obligation to prove on a balance of probabilities that the assets sought to be forfeited are either proceeds of crime or were used or intended to be used in commission of a crime. This position was restated by Honourable Justice J.M. Mativo in ***Aboo v Assets Recovery Agency; Ethics and Anti-Corruption Commission (Interested Party) [2023] KECA 1658 (KLR)*** his dissenting judgment in by stating that;

*'It is correct to state that the "burden of proof" in civil asset recovery claims is unique. The asset recovery agency is only required to demonstrate on a balance of probabilities that the property is proceeds of corruption. It is not essential for the Agency to establish the precise form of unlawful conduct as a result of which the property in question was acquired and the court may be asked to draw appropriate inferences from the unlawful conduct established by the Agency combined with the proved absence of legitimate capital and income.'*

It is not disputed that the motor vehicle is registered and belongs to the 1<sup>st</sup> respondent while the motor cycle belongs to the 2<sup>nd</sup> respondent. It is also common ground that the funds in the bank account in question belong to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has also confirmed that the mpesa lines through which some of the transactions in question were done belongs to him. What is dispute in this matter is whether the motor vehicle, the motor

cycle and the money in the bank account are proceeds of crime and as such liable for forfeiture to the government.

Evidence available shows that the motor vehicle was impounded while transporting substance which was confirmed to be cannabis as per report from the Government Chemist attached to the supporting affidavit as annexure 'DO5'. The respondent was charged in a criminal case in connection with the same substance. In response to the aspect of him being charged, the 1<sup>st</sup> respondent has stated that he was acquitted of the offence and as such the motor vehicle should not be forfeited on that account.

I have gone through the judgment of the Honourable Magistrate in the criminal case which has been exhibited by the 1<sup>st</sup> respondent. I note therefrom that the 1<sup>st</sup> respondent was acquitted principally because he was not placed at the scene of crime and not because the drugs were not found in the motor vehicle. The judgment does not make any finding on the fate of the motor vehicle but there is conclusion that the substance found in the vehicle was cannabis. It follows therefore that the acquittal of the 1<sup>st</sup> respondent does not invalidate the fact that the motor vehicle was found being used to convey narcotic substances.

The target in civil forfeiture proceedings is the property and not the person involved and, in this regard, the court's focus should be on the motor vehicle and not those who were in control of or were using at the time. The acquittal of the 1<sup>st</sup> respondent is therefore not relevant to these proceedings. It was held by Honourable Justice E.N. Maina in ***Assets Recovery Agency v Kigunzi [2024] KEHC 4044 (KLR)*** that;

*'Secondly, the issue raised, has been the subject of several cases and it is now trite that a conviction for an offence is not a pre-requisite to an order for civil forfeiture.'*

There are averments that at the time the vehicle was impounded, there was a shoot-out between the occupants of the motor vehicle and other people and the police. The occupants and their accomplices escaped leaving the vehicle and the motor cycle behind. The fact that there was a shoot-out is a *prima facie* evidence that the occupants were not in a lawful mission and the use of the motor vehicle was most likely as an instrumentality of crime.

In the circumstances of the above, it is my finding that the applicant has successfully shown that there is reasonable grounds to believe that the vehicle was used in committing the offence and to me, that is enough to establish a case for forfeiture even if it were proved that the vehicle was not acquired through proceeds of crime. That is the purport of Section 92(1) of 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.*

The 1<sup>st</sup> respondent's bank account is shown to have received huge amounts of transactions during the period of interest. The applicant has also analysed the flow of income to the bank account and the 1<sup>st</sup> respondent's telephone line which in my view reveal a pattern of someone who was not engaged in regular income generating activities. These patterns create a reasonable suspicion which call for an explanation especially noting that the 1<sup>st</sup> respondent's motor vehicle was impounded while in a mission to commit an offence and the fact that the 1<sup>st</sup> respondent did not give a good account of why the motor vehicle was found at the scene carrying drugs. Similarly, therefore, the applicant has discharged his onus of proving a *prima facie* case in respect of the funds in the bank account.

The 1<sup>st</sup> respondent must then be able to discharge his evidentiary burden of proving that the motor vehicle and the funds in the account were legitimate by showing the source of the funds and how he managed to acquire the said assets. Honourable Justice Prof (Dr) N. Sifuna held in *Ethics and Anti-Corruption Commission v Kanani & 5 others [2024] KEHC 16639 (KLR)* that;

*‘The burden borne by the subject to explain, is only an evidentiary burden, and which like a pendulum will keep swinging between the Commission and the subject on particular assertions and counter-assertions. It will at the onset of the case rest with the Commission, and then shift to the subject once the Commission has established a prima facie case. A prima facie case is one that requires an answer from the other party.’*

The 1<sup>st</sup> respondent claims that he left the work of a security guard but changed and went into business but he has not shown how he raised the capital enough to buy a new vehicle in 2021. Interestingly, he told the court that he began his livestock business in 2022 yet the vehicle is shown to have been acquired in 2021. He has not made any effort to tell the court where he got the funds to buy the vehicle in 2021 from. All that he has stated is that after he left the job of security guard, he got into businesses whose nature and income he has not explained. Although he claims that his business is ran in remote areas where there are no facilities for recording transactions, he himself opened a bank account.

The 1<sup>st</sup> respondent claims that he used brokers who dealt with cash, but the financial transactions produced by the applicant and not controverted by the 1<sup>st</sup> respondent do not show him sending money to these brokers to buy the stock. In his replying affidavit, the 1<sup>st</sup> respondent had indicated that he would secure affidavits from his agents in support of his case which he never did. Even if I were to assume that the livestock may have been bought from the villages without records, at least they must have been disposed at markets which I

believe are controlled by either the relevant County Governments or other relevant authorities which keep records.

The 1<sup>st</sup> respondent has also claimed that he traded across counties and throughout the country. I believe that County governments would issue some kind of receipts for levies or permits for cross-county movement of animals. No single document, not even a receipt for use of any market to proof any such trade. I do not believe that a livestock trading business attracting the kind of figures shown in the 1<sup>st</sup> respondent's accounts would be done as casually as the 1<sup>st</sup> respondent would want the court to believe.

Based on the above, I hold and find that the 1<sup>st</sup> respondent has failed to give a proper and sufficient explanation of his sources of income. He has also failed to explain the sources of funds he used to acquire the motor vehicle. He has also failed to explain the circumstances in which the vehicle was found at the scene with prohibited drugs on it. Where a respondent fails to give sufficient explanation, the court would be justified to find that the applicant has proved on balance of probabilities that the targeted assets were proceeds of crime. I so hold. In ***Assets Recovery Agency v Wanjiru; Kimuri Housing Company Limited (Interested Party) [2023] KEHC 25985 (KLR)***, it was held that;

*‘Without demonstration of the means to acquire an asset, that asset falls within the definition of unexplained assets and where a sufficient nexus connects the asset to crime, it then falls within the definition of “proceeds of crime”.*

*Unlike criminal proceedings that are decided on the standard of proof of “beyond a reasonable doubt”, forfeiture proceedings of assets that are found to be proceeds of crime are decided on the Civil standard of proof of, “a balance of probabilities”.*

As regards the motor cycle, it has been deponed that the same was being carried in the 1<sup>st</sup> respondent's motor vehicle which was being used to commit a crime. There was a shoot-out when the police encountered the vehicle and motor cycles. Although there was no proof that the persons who confronted the police were a militia, it is obvious that the police do not just go encountering and engaging people on the road in a shoot-out. The fact that the civilians ran away after the shoot-out coupled with presence of cannabis in the vehicle raises reasonable suspicion that the owner of the motor cycle had knowledge of the mission of the group which was clearly to commit a criminal offence. That is if he was not part of the group.

With the above state of affairs, the 2<sup>nd</sup> respondent should have honoured the summons by the applicant or appear in court after service of the originating motion and explain why his motor cycle was in the company of people carrying lethal weapons and engaging police in an exchange of fire. The totality of these uncontroverted facts leads me to inevitable conclusion that the motor cycle was being used to commit an offence and in absence of an explanation from the respondent, this court finds that the applicant has proved its case on a balance of probabilities.

Consequently, this court makes the following orders;

1. An order is hereby issued declaring that Kshs 2,680,779.88 and any interest thereon held at Equity Bank Limited in account number 0410198584651 in the name of Hussein Guyo Huka is proceeds of crime liable for forfeiture to the Applicant.

2. An order is hereby issued declaring that motor vehicle registration number KDC 011E, land cruiser pick-up registered to Hussein Guyo Huka is a proceed of crime liable for forfeiture to the Applicant.
3. An order is hereby issued declaring that motor cycle registration number KMFB 091C, Dayun, green, registered to Mohammed Guyo Dokata is a proceed of crime liable for forfeiture to the Applicant.
4. An order is hereby issued forfeiting Kshs 2,680,779.88 and any interest thereon held at Equity Bank Limited in account number 0410198584651 to the Applicant.
5. An order is hereby issued forfeiting motor vehicle registration number KDC 011E, land cruiser pick-up registered to Hussein Guyo Huka to the Applicant.
6. An order is hereby issued forfeiting motor cycle registration number KMFB 091C, Dayun, green, registered to Mohammed Guyo Dokata to the Applicant.
7. The Director General of National Transport and Safety Authority is hereby ordered to transfer and register the motor vehicle and the motor cycle specified in orders 5 and 6 above to Assets Recovery Agency, the applicant.
8. The respondents shall pay the costs of this application.

Dated, signed and delivered at Nairobi this       **30<sup>th</sup>**        day of        **April**  
2025.

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

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

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