Assets Recovery Agency v Medallion Properties Limited & another (Anti-corruption and Economic Crimes Miscellaneous E003 of 2026) [2026] KEHC 5506 (KLR) (Anti-Corruption and Economic Crimes) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5506 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

ANTI-CORRUPTION AND ECONOMIC CRIMES

ANTI-CORRUPTION AND ECONOMIC CRIMES MISCELLANEOUS E003 OF 2026

BM MUSYOKI, J

APRIL 30, 2026

BETWEEN

ASSETS RECOVERY AGENCY ..... APPLICANT

AND

MEDALLION PROPERTIES LIMITED ..... RESPONDENT

AND

HFC LIMITED ..... INTERESTED PARTY

RULING

1. On 8-01-2026, the applicant secured preservation orders against the respondent's bank account number 9783902434 held in the interested party which was to last for ninety days. Ninety days have come and gone and none of the parties has told this court whether the forfeiture application was filed. I will therefore proceed on assumption that the preservation orders are still in force.

2. After becoming aware of the preservation orders, the respondent approached this court vide notice of motion dated 14-01-2026 seeking that the same be discharged or in the alternative varied in order to allow it to partially access the account. The application is shown to be based on 25 grounds which I summarise to four as follows;

    a. The preservation order was not justified as allegations against the respondent were speculative and no proof of the predicate offence was tabled.

    b. The money in the account was legitimately acquired.

    c. The order was obtained through concealment of material facts.

d. The matter was subject of Milimani High Court judicial review application number E141 of 2025 hence this matter was an abuse of the court process.

The respondent's case

3. In support of the application, the respondent filed a supporting affidavit dated 15-01-2026 and further affidavit sworn on 26-01-2026. Michael Gitonga the deponent of the supporting affidavit states that the applicant's affidavit in support of the preservation application did not establish a causal link between the money in the account and any offence and that the application was being used to settle business scores and commercial disputes.

4. He adds that the respondent's income came from its investments in stock indices and global commodities through the deponent's company known as Trade Sense Limited. The respondent added that the suspected Kshs 11,239,102.37 which was frozen was surplus of the proceeds of an auction that took place against its properties charged as securities in the interested party and can therefore not be proceeds of crime.

5. It is argued that the preservation order was issued on concealment of material facts that, another court had in judicial review number E141 of 2025 had restrained any authority from taking actions against the applicant or its directors pending hearing and determination of the main application. In issue in the judicial review application was a letter by Capital Markets Authority (CMA) dated 28th February 2025 which was the basis of the application for preservation herein. He adds that the CMA was found in contempt of court in the said judicial review application and that the issue has also been subject of Milimani Chief Magistrate's Court miscellaneous criminal application number E3972 of 2025 and Ngong Chief Magistrate's miscellaneous criminal application number E064 of 2025.

6. The deponent has complained that with all the above proceedings, the CMA brought in the applicant in the mix hence the orders in this matter dated 8-01-2026 are illegal, malicious, capricious and an abuse of the court process. The respondent argues further that its right to hearing before a decision is made has been violated by grant of the preservation orders. It is averred that the complainants in this application one Miss Anne Munene and Miss Millicent Ogutu were settled by Trade Sense Limited and that there has been no complaint against the respondent as all those raised were against Trade Sense Limited which is a separate entity.

7. In its further affidavit, the respondent avers that the continuation of the preservation orders is hurting its business and operations because it is unable to pay loans and other meet obligations. The deponent has attached to this affidavit letters from Sumac Microfinance Bank and its appointed auctioneers giving the respondent notice to sell its property for failure to pay some loan installments. The respondent also alleges that the deponent of the applicant's replying affidavit is not qualified to do so because, although he claims to be a police officer, he has not revealed his service number or any other identification contrary to *National Police Service Act* as well as the relevant statutes including *Oaths and Statutory Declarations Act* and as such it should be struck out.

Applicant's response

8. The applicant has opposed the application through an affidavit sworn by Martin Samburumo sworn on 28-01-2026 in which he depones that the applicant's investigations on the respondent revealed that it was involved in money laundering, tax evasion and operating investment management entities without statutory trading licences. He adds that the application does not address the two conditions for discharge or variation of preservation orders provided in Section 89(1) of the *Proceeds of Crime and Anti-Money Laundering Act* (hereinafter referred to as 'POCAMLA').

9. He adds that the application has not established enough grounds relevant to determination of whether the court should vary or set aside the preservation orders. According to the applicant, the grounds on which the application is brought are irrelevant to provisions of the said Section 89(1) of the POCAMLA and as such, the application as misplaced, devoid of basis, misconceived and grossly incompetent.

Analysis and determination

10. I have carefully read and considered the application, the affidavits of the parties and exhibits produced therein. I have also considered the submissions of the respondent dated 26-02-2026 and those of the applicant dated 6-03-2026.

11. Section 89(1) of POCAMLA provides grounds upon which a preservation order may be discharged or varied. It provides as follows;

    A court which makes a preservation order—

    a. may, on application by a person affected by that order, vary or rescind the preservation order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied—

        i. that the operation of the order concerned will deprive the applicant of the means to provide for his reasonable living expenses and cause undue hardship for the applicant; and

        ii. that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and

    b. shall rescind the preservation order when the proceedings against the defendant concerned are concluded.

12. For the court to grant preservation orders which are by law supposed to be ex-parte, it needs to be convinced that, by look of the facts and evidence as disclosed in the application, there are reasonable grounds to suspect that the assets sought to be preserved are proceeds of crime. In my view, the court cannot later, after issuing the preservation orders engage itself in interrogating the merits of the application. The merits should be addressed in the prosecution and determination of the application for forfeiture. That is why in my opinion Section 89(1) of POCAMLA restricts revisiting of the order to demonstration of the hardship and provision of daily upkeep of the respondent. The grounds for discharge or variation do not include the question of whether or not the orders should have been issued. In view of this, I will not engage in discussing whether the preservation orders herein were merited or not. Doing so will have the potential of embarrassing the court which will eventually handle the forfeiture application.

13. While avoiding discussing the merits of the grounds for suspecting that the money in question in this matter was proceeds of crime, I must as a matter of duty address the respondent's complaint that there was material non-disclosure ad that his right to fair hearing was violated.

14. The respondent claims that there was a court order in judicial review application number E141of 2025 which restrained any authority from taking actions on the respondent. I have looked at that order which states that prayers B, C, D, E and G were allowed. Although I cannot tell what the granted prayers were asking for, it is apparent from the ruling dated 11-07-2025 exhibited in the supporting affidavit as MG-3 that the court granted leave to file judicial review proceedings and issued stay orders including

lifting of suspension and halting further proceedings against the applicant pending determination of the judicial review application.

15. The respondent has averred that the basis for the judicial review application was a letter by CMA dated 28-01-2025. The applicant in the judicial review application was Trade Sense Limited and what was in issue was suspension of its trading. This in my view, other than being proceedings by an entity different from the respondent in this matter, involved a different cause of action in that the matter before this court is about funds found in the applicant's account which are suspected to have been laundered through its director and has nothing to with licensing or suspension of Trade Sense Limited. These proceedings are predicated on allegations that the respondent's property which was sold by public auction leaving the surplus which the applicant is targeting was acquired using proceeds of crime.

16. It does not matter that the crime or offence was committed by the respondent or Trade Sense Limited. What is relevant to the forfeiture proceedings is whether the money can be trailed to the offence which can only be determined in the forfeiture application. The law on civil forfeiture on the identification of the assets is that the court targets at the property and not the offender. Actually, the applicant does not have to proof commission of the offence but only needs to establish reasonable grounds to suspect that the assets were proceeds of crime, which proof is on a balance of probabilities.

17. In Assets Recovery Agency v Kigunzi [2024] KEHC 4044 (KLR), it was held that;

> 'Civil forfeiture is not tied to the identification, charging, prosecution, conviction or punishment of any offender. Civil forfeiture therefore denotes an action in rem, that is as against the property in contrast with in personam actions which are actions against individuals.'

18. Having said the above, I agree with the applicant that the respondent has not shown the hardship it is going or is likely to go through due to the preservation orders neither has it attempted to show that it needs the money for provision of its reasonable living expences. The letters exhibited in the further affidavit in attempt to show hardship do not meet the threshold contemplated in the Section. It has not been shown that the Kshs 11,239,102.37 is the only money available to the respondent for payments of its loan. There is nothing in the application to demonstrate that the respondent has grounded its operations as a result of the preservation orders.

19. Preservation of the money in the account did not stop the respondent from conducting its business. Going by its own affidavits, the respondent's sister company Trade Sense Limited seems to be trading in hundreds of millions. I do not think that a party who trades in that kind of figures is likely to ground to a halt because of preservation of Kshs 11,239,102.37.

20. The respondent argues that its right to be heard before any decision is made was violated. True, the right to a fair hearing is guaranteed and cannot be limited but I believe that, it is not a violation of that right when circumstances demand an application be heard as a matter of urgency and ex-parte. It is also my opinion that, where the law directs that certain proceedings shall be ex-parte orders can be issued as long as the orders do not permanently deprive the person of the right to be heard before a final decision is made. This is the same scenario in the judicial review application the respondent has sought to leverage his application on.

21. The nature of forfeiture proceedings demands that the assets be preserved before the respondent is made aware of the intended proceedings because if the respondent were to be informed or served before the orders are issued, the possibility of dissipation of the assets in order to defeat the purpose of the application is very high.

22. Ex-parte orders issued under Section 82 of POCAMLA are not final and are just a stop gap measure to maintain the state of affairs. Justification for this cannot be gainsaid. The orders do not mean that the property has been taken from the respondent as that can only be done after a forfeiture suit is filed, heard inter-parte and orders granted in favour of the applicant. It only means that the property or assets remain in the control of the court for a period of ninety days as provided in Section 84 of POCAMLA or the forfeiture application is heard and determined. This is a statutory edict that ensures that status quo is maintained in order not to prejudice any of the parties as held in Republic v National Environment Tribunal & Another [2013] KEHC 3859 (KLR) thus;

> 'Therefore, when a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs.'

23. The conclusion of what I have stated above is that the respondent's application dated 14th January 2025 lacks merits and I proceed to dismiss it. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Ogonda for the applicant