



**Assets Recovery Agency v Jetha & another (Anti-Corruption and Economic Crimes Civil Suit E026 of 2025) [2026] KEHC 6155 (KLR) (Anti-Corruption and Economic Crimes) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6155 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E026 OF 2025**

**BM MUSYOKI, J**

**MAY 8, 2026**

**BETWEEN**

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

**AND**

**ASIF AMIRALI ALIBHAI JETHA ..... 1<sup>ST</sup> RESPONDENT**

**LYN HENDERSON ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The applicant's originating motion dated 25-06-2025 which is brought under Sections 81, 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* (hereinafter referred to as 'POCAMLA') prays for the following orders;
  1. That this court be pleased to issue an order declaring that the following assets are proceeds of crime and are liable for forfeiture to the government;
    - a. Apartment No. A1 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64698) registered in the name of the 2<sup>nd</sup> respondent.
    - b. Apartment No. A4 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64699) registered in the name of the 2<sup>nd</sup> respondent.
    - c. Apartment No. A6 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64700) registered in the name of the 2<sup>nd</sup> respondent



2. That this Honourable Court be pleased to issue an order declaring that any rental income, benefit, profit accruing from the following properties are proceeds of crime and therefore liable for forfeiture to the government;
    - a. Apartment No. A1 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64698) registered in the name of the 2<sup>nd</sup> respondent.
    - b. Apartment No. A4 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64699) registered in the name of the 2<sup>nd</sup> respondent.
    - c. Apartment No. A6 in Block A erected on subdivision No. 18915 Section 1 Mainland North (C.R. 64700) registered in the name of the 2<sup>nd</sup> respondent
  3. That this Honourable Court be pleased to issue an order that the assets, rental income, benefit, profit accruing from the assets stated in prayers 1 & 2 be forfeited to the government and transferred to the applicant.
  4. That this Honourable Court be pleased to issue vesting orders transferring the assets stated in prayers number 1 & 2 to the applicant.
  5. That this Honourable Court make any other ancillary orders that it may deem fit and just for proper and effective execution of its orders.
  6. That costs be provided for.
2. The application is supported by affidavits of Chief Inspector Bernard Gitonga an investigator working with the applicant sworn on 25-06-2025 and 20-02-2026. In the affidavit sworn on 25-06-2025, Mr. Gitonga states that the applicant received information that the respondent had acquired the assets through a scheme of laundering money believed to be proceeds of crime upon which they commenced investigations which first established that the 1<sup>st</sup> respondent is not a Kenyan citizen and his presence in the country was not to the best interest of the country and had therefore been deported to Canada/ United Kingdom. It was also established he had been working in the country without a work permit.
  3. After getting warrants to investigate the 1<sup>st</sup> and 2<sup>nd</sup> respondents' bank and Mpesa accounts vide miscellaneous applications numbers E017 of 2023 and E061 of 2022 at the Chief Magistrate's Court at Nairobi, the applicant obtained statements from Diamond Trust Bank and Safaricom for account bank number 5202xxxxxx and the 1<sup>st</sup> respondent's telephone line. The applicant avers further that the investigations revealed that the respondent's bank account received suspicious cheques deposit amounting to Kshs 9,657,241.15 between 2012 and 2014 and cash deposits and transfers amounting to Kshs 3,262,956.00 between 4-04-2008 and 30-08-2015. Between 2010 and 2014, the 1<sup>st</sup> respondent's Mpesa line number 0722412422 received suspicious funds amounting to Kshs 9,150,980.00.
  4. It is deponed further that the 1<sup>st</sup> respondent acquired apartment No. A1 in Block A erected on subdivision No. 18915 Section 1 Mainland North (CR 64698) on 16<sup>th</sup> February 2014 at a cost of Kshs 6,000,000.00 which he subsequently transferred to the 2<sup>nd</sup> respondent on 11-10-2023 in a scheme of money laundering of the aforesaid illegitimate funds. He also acquired apartment No. A4 in Block A erected on subdivision No. 18915 Section 1 Mainland North (CR 64699) on 3<sup>rd</sup> March 2023 at a cost of Kshs 6,000,000.00 which he subsequently transferred to the 2<sup>nd</sup> respondent on 11-10-2023. He also acquired apartment No. A6 in Block A erected on subdivision No. 18915 Section 1 Mainland North (CR 64700) on 16<sup>th</sup> February 2014 at a cost of Kshs 6,000,000.00 which he subsequently transferred to the 2<sup>nd</sup> respondent on 11-10-2023.



5. The deponent added that on 15<sup>th</sup> April 2019, the 1<sup>st</sup> respondent had been charged in Shanzu Chief Magistrate's Court vide criminal case number 598 of 2019 with offences of engaging in business without a work permit contrary to Section 53(1) as read with 53(2) of the Kenya Citizenship Immigration Act; unlawfully employing a foreign national contrary to Section 45(1) as read with Section 60 of the Kenya Citizenship Immigration Act and trafficking in persons contrary to Section 3(1)(d) of the Counter Trafficking in Persons Act among others.
6. The 1<sup>st</sup> respondent was convicted in the said criminal case and appealed vide Mombasa High Court Criminal appeal number E103 of 2021 where the appeal was allowed and conviction and sentence set aside in respect of majority of the counts and dismissed in respect of counts IX and X which were; engaging in business without a work permit contrary to Section 53(1)(m) as read with Section 53(2) of the Kenya Citizenship Immigration Act and unlawfully employing a foreign national contrary to Section 45(1)(a) as read with Section 60 of the Kenya Citizenship Immigration Act.
7. The applicant depones further that based on the above, the 1<sup>st</sup> respondent has been operating in Kenya illegally and in the process accumulated funds which he utilised to purchase the assets in issue. This, according to the applicant raises reasonable grounds to believe that the assets were unlawfully acquired and therefore consists proceeds of crime.
8. In his replying affidavit sworn on 24<sup>th</sup> July 2025 and further affidavit sworn on 19<sup>th</sup> March 2026, the 1<sup>st</sup> respondent avers that the 2<sup>nd</sup> respondent who is his wife was gifted by her father one Ian Leslie Henderson with GBP 60,000 on 23-07-2007 through her bank account held in Llyods Bank and she added GBP 24,000 from her own savings and remitted a total of GBP 84,000 to account owned by a company known as Templar Properties Limited in Imperial Bank Mombasa. The respondents were the only shareholders and directors of the said company.
9. It is deponed further that, the 2<sup>nd</sup> respondent instructed the bank in London to transfer the money to Templar Properties Limited which instructions the bank executed and after the funds were credited, the respondents used it to purchase two plots in Nyalı from Siginon Freight Limited. These two plots were LR No. 5266 Section 1 MN registered as CR No. 18726 in October 2007 and LR No. 5268 Section 1 MN registered as CR No. 18725 in June 2008.
10. The 1<sup>st</sup> respondent added that in April 2011, Templar Properties Limited sold and transferred LR No. 5266 Section 1 MN registered as CR No. 18726 at Kshs 26,500,000.00 which was paid in two installments and used the proceeds to purchase the three plots the subject of these proceedings at Kshs 18,000,000.00 which they registered in their joint names and he later transferred his share to the 2<sup>nd</sup> respondent in October 2023. He denied being requested to record a statement by the applicant on the acquisition of the assets.
11. The 1<sup>st</sup> respondent avers that he held a work permit between 2003 and 2015 during which period he owned and operated as managing director and shareholder a transport company known as New Ocean Transport Company Limited which ceased operation around 2015 when Imperial Bank collapsed. He added that the 2<sup>nd</sup> respondent worked in Kenya as a teacher in Mombasa Academy an international school between 1998 and 2004.
12. The 1<sup>st</sup> respondent depones further that the bank statement from Diamond Trust Bank produced by the applicant is misleading as it shows transactions for the period between 2015 to 2026 whereas the transfer of GBP 84,000 by the 2<sup>nd</sup> respondent was on 23-04-2007. He states that he had no control over the valuation of the plot they sold as indicted in the transfer and insists that the same was sold at Kshs 26,500,000.00 and not Kshs 15,000,000.00 as claimed by the applicant.



13. On the deportation order, the 1<sup>st</sup> respondent swears that he filed a constitutional petition in Milimani High Court a constitutional petition number E819 of 2025 where he managed to get a conservatory order on 18<sup>th</sup> December 2025 staying execution of the deportation order which petition is pending for hearing. He concludes that the transactions reflected in his bank and mpesa statements were done in regular and ordinary course of his transport business.
14. In the supplementary affidavit, the applicant avers that upon conducting further investigations, he established that there were no funds amounting to GBP 84,000 that went to Templar Properties Limited and that the only funds in the said company's account is a mere Kshs 165.00. He adds that analysis of the statement of the 2<sup>nd</sup> respondent's account held in Llyods Bank show that it is not in the name of the 2<sup>nd</sup> respondent and the purported statement does not have a transaction of GBP 24,000 as alleged.
15. He adds that there is no nexus between GBP 60,000 from the 2<sup>nd</sup> respondent's father and the assets in issue. He also alleges to have conducted further investigations which revealed that LR number 5266 was purchased at Kshs 15,000,000.00 which could not have been used to purchase properties worth Kshs 18,000,000.00. According to the applicant, there is also no explanation of where the proceeds were kept or held from the time of the sale to when the assets in this suit were bought which is a period of three years.
16. The applicant has also produced a letter dated 17<sup>th</sup> February 2026 from the Directorate of Immigration which stated that the 1<sup>st</sup> respondent has no valid work permit and is not authorized to engage in any gainful employment or business in Kenya and another one dated 18-12-2024 which stated that the 1<sup>st</sup> respondent has never held a work permit. He has also accused the 1<sup>st</sup> respondent of disobeying preservation orders issued in miscellaneous application number E012 of 2025 by instructing tenants in the properties in issue to pay him in cash and threatening to terminate the existing leases if the tenants fail to comply.

### **Analysis and determination**

17. I have considered the application, the parties' affidavits and submissions dated 19<sup>th</sup> March 2026 by the respondents and 20<sup>th</sup> February 2026 by the applicant. This matter is a civil forfeiture suit brought under Section 81, 90 and 92 of POCAMLA. The applicant bears the burden of proving on a balance of probabilities that there are reasonable grounds to believe that the property in question were proceeds of crime.
18. The properties will be proceeds of crime if it is established that they were acquired using sources which are illegitimate or obtained through unlawful conduct or though legitimate, they were intermingled with others which were acquired through illegitimate means. In *Assets Recovery Agency v Namunyu & 2 others* [2024] KEHC 7954 (KLR), Honourable Justice F. Gokonyo M. held that;

‘The definition of proceeds of crime is broadly cast. Making recoverable or realizable assets, to include, the actual illicit property or related property or comingled property. Related property refers to property into which or for which the illicit property was converted or exchanged, respectively. It also includes benefit or gain or income or profit arising from investment of the illicit property or related property. Comingled property refers to the mixing of illicit property and other property of the defendant or third parties (associated property).

Related property is also referred to as traceable products, restitution of which arises on the basis of the obligation created by law to surrender property that is unlawfully acquired or



is proceed of crime. Related property is established through evidential process of tracing of property.’

19. Once the applicant establishes prima facie case as indicated above, the burden shifts to the respondent to explain how the properties were acquired and show that the source of the funds used to purchase the same are traceable to a lawful conduct or legitimate sources. It was held in *Assets Recovery Agency v Ali Abdi Ibrahim* [2022] KEHC 1906 (KLR) that;

‘It is also trite that in order for the court to make orders of forfeiture under Sections 90 & 91 of the *Proceeds of Crime and Anti-Money Laundering Act*, the applicant need not establish the specific crime committed in relation to the property in issue. Contrary to the respondent’s assertion, the Agency does not have to prove the actual crime committed. All it is required to prove is that there was unlawful conduct. Once the Applicant establishes, on a balance of probabilities as provided in Section 92(1)(b) of the *Proceeds of Crime and Anti-Money Laundering Act* that the assets in question are proceeds of crime, a duty is cast on the respondent to prove that he obtained the funds lawfully. The respondent is required to give a satisfactory explanation that he legitimately acquired the assets in question failing which the said assets shall be declared to have been illegally acquired.’

20. What makes the applicant push for forfeiture are its position that the 1<sup>st</sup> respondent has never possessed a work permit but he has engaged in business within the country which the applicant claims is supported by the undisputed position that the 1<sup>st</sup> respondent was charged and convicted in Shanzu law courts of offences related to his residence status and that the respondents have not sufficiently explained the source of funds used to purchase the properties.
21. It is common ground that the 1<sup>st</sup> respondent was working in the country presumably from 2003 to the date he was arrested. The 1<sup>st</sup> respondent avers that he held a work permit from 2003 which was valid for two years and which he kept renewing until sometime in 2015. The 1<sup>st</sup> respondent has produced an entry permit no 834053 which is marked as his annexure ‘AMAJ-6’. It is clear from the exhibited copy that, the 1<sup>st</sup> respondent was allowed to enter and remain for initial period of two years for employment/business/profession or residence as director with M/s New Ocean Transporters. This permit is shown to have been issued on 5-11-2003 and it bears renewal endorsement stamps until 5-11-2013. I have not seen any renewal stamp for 2015 as alleged by the 1<sup>st</sup> respondent.
22. In arguing that the 1<sup>st</sup> respondent did not have a work permit, the applicant relies on a letter dated 18-12-2024 which states that the 1<sup>st</sup> respondent has never held a work permit issued by the Directorate of Immigration and another one dated 17-02-2026 which states that the 1<sup>st</sup> respondent does not possess a valid work permit. on the other hand, the 1<sup>st</sup> respondent maintains that he had a valid work permit up to 2015. These are two competing positions and the court is called upon to make a decision on which of them is more probable than the other.
23. In my opinion, the first letter is more relevant because the second one only talks of the 1<sup>st</sup> respondent not holding a valid work permit as opposed to the first which claims that the 1<sup>st</sup> respondent has never held one. However, I note that the letter does not mention or make comment on the copy of the permit which has been produced by the 1<sup>st</sup> respondent. I would expect that, after the applicant saw the said permit in the replying affidavit, that is if it had not seen it before, it should have subjected it to investigations by seeking to know from the Directorate of Immigration whether the same is genuine or is a forgery. By producing a letter dated 17-02-2026 which avoids talking of the permit, the applicant in my view was seeking to misrepresent the correct position.



24. Further, I have not seen the charge sheet filed the Shanzu law courts criminal case but I have seen the judgment in criminal appeal number E103 of 2021. It appears that the 1<sup>st</sup> respondent was charged with eleven counts related to trafficking in persons, being in possession of proceeds of crime, failure to pay taxes, exploitation of a child and engaging in business without a permit. The period cited in all the counts ranged between 30-06-2017 and 13-04-2019.
25. As much I get from the judgment, the testimony of one Emmanuel Simiyu (PW14) who was an officer from the Directorate of Immigration, states that the 1<sup>st</sup> respondent came to Kenya first on visitor's visa in 2012 and kept on coming and going out but it is not mentioned that between 2012 and 30-07-2017 being the first date cited in the charges, the 1<sup>st</sup> respondent was engaged in business in the country. Going through the judgment, it is apparent that the issue of the permit which was produced in this matter and which the applicant has failed to specifically address was not discussed. Perhaps it was not relevant to the criminal trial because the period of the offence was way after the period of interest in this matter.
26. In view of the above, it is my finding therefore that the applicant has not sufficiently challenged the 1<sup>st</sup> respondent's evidence that he held a work permit between 2003 and 2013. It is also my finding that the applicant has not sufficiently proved that the 1<sup>st</sup> respondent engaged in gainful business without permit for as in the criminal case, nothing was said about the period before 30-06-2017. It would therefore be safe for one to assume that the 1<sup>st</sup> respondent was not engaged in business without permit between 2013 and 30-06-2017.
27. The other issue I need to handle is whether the applicant has proved that the assets the subject of these proceedings were acquired from proceeds of crime. Evidently the properties herein were acquired in February and March 2014 from Uxbridge Company Limited. The applicant has not linked the acquisition or sources of the funds to any specific offence. Although in civil forfeiture, the applicant need not link the assets to a specific offence, at least there must be grounds enough to demonstrate that the respondents were engaged in unlawful conduct and business. It was so held in *Assets Recovery Agency v Cullinan Private Jets Corp & other & 2 others* [2024] KEHC 17283 (KLR), that;
- ‘The court reads and appreciates Part VIII of the POCAMLA to demand that in order to discharge its burden of proof under section 107 of the *Evidence Act*, what is required of an applicant is to demonstrate that there are reasonable grounds to believe that funds or property held by a respondent are proceeds of crime.’
28. In this matter, the only unlawful conduct the applicant has alluded to against the 1<sup>st</sup> respondent is engaging in business in the country without a permit which I have held it has failed to demonstrate. The applicant has not made any allegations about the 2<sup>nd</sup> respondent. That notwithstanding, the respondents had a duty to explain the source of the funds they used in acquiring the properties which they have done by explaining that the initial capital was a gift of GBP 60,000 from the 2<sup>nd</sup> respondent's father to her and her own saving of GBP 24,000. The respondents' annexure 'AMAJ1' is a letter dated 26<sup>th</sup> April 2007 instructing Llyods Bank to transfer GBP 84,000 to the account of Templar Properties in Mombasa. Next to it is statement of account number 00829059 which shows a transfer of GBP 60,000 on 23-04-2007 from Ian Leslie upon which the account balance became GBP 86,051.08. The statement also shows a transfer of GBP 84,000 to Imperial Bank. It is important to mention at this stage that the applicant has not claimed that the money found in the said 2<sup>nd</sup> respondent's bank account were proceeds of crime.
29. The applicant has refuted the above explanation by submitting that there was no evidence that the account of Templar Properties received the said amount. In its further affidavit, the applicant has annexed a statement for account number 0202803003 held by Templar Properties in Diamond



Trust which had a paltry balance of Kshs 165.00. However, this statement runs from 3-02-2015 to 14-03-2015. The 1<sup>st</sup> respondent had explained in his replying affidavit that the transfer from Llyods Bank was in April 2007 which is so reflected in their annexure 'AMAJA1 aforesaid. It is not clear to me why the applicant chose to leave out that period and concentrate on February 2015 which was long after the transfer from Llyods Bank and a year after the properties in this suit were acquired.

30. The applicant has also submitted that the 1<sup>st</sup> respondent has not explained where the money was kept between 2011 when the respondents disposed one of their plots in Nyali and 2014 when the properties in issue in this suit were acquired. I find this line of submission having no merits. A respondent does not have to explain every iota of details of their financial affairs. All that is required is sufficient explanation of their sources of funds. It should not escape our minds that the case belongs to the applicant regardless of the special nature of civil forfeitures where evidentiary burden of proof is placed on the respondents.
31. The applicant has also claimed that the money raised in the sale of property in Nyali could not have been used in buying the properties in this matter because the same was Kshs 15,000,000.00 and not Kshs 18,000,000.00. To support this position, the applicant has exhibited a statement said to have been recorded by the buyer of the property one Abubakar Salim Mohammed on 22-01-2026. The statement shows that the property was sold at Kshs 15,000,000.00 meaning that there is a difference of about Kshs 3,000,000.00 which has not been explained.
32. The 1<sup>st</sup> respondent produced an agreement marked as annexure 'AMAJ4' showing that he sold the same at Kshs 26,500,000.00. In my view and as I have stated above, this inconsistency is not material as not every fine detail must be disclosed as long as there is a sufficient explanation. Further, I was left wondering why the applicant's investigator did not show the said Abubakar the sale agreement for him to confirm whether it is what he signed. The statement attached to the supplementary affidavit does not expressly deny that Abubakar signed that agreement. All that the statement states is that the copy of the sale agreement Abubakar had is old and tattered and cannot be comprehended. He should have been shown the copy produced by the 1<sup>st</sup> respondent for him to deny or confirm whether it bore his signature.
33. Even if I were to take the position taken by the applicant on the sale price, it must be assumed that the respondents were in business and lawfully working for a considerable period of time in the country. The 2<sup>nd</sup> respondent is said to have been a teacher and the 1<sup>st</sup> respondent was engaged in transport business. In any event, there is no unlawful or criminal conduct that has been attributed to the period before June 2018 except that of doing business without a work permit which I have already held has no merits.
34. The applicant has also cast doubts in the explanation of the sequence of the acquisition of the properties in question by wondering why the property was not first registered to the 2<sup>nd</sup> respondent only. The investigator may have had his personal perspective of how couples should secure registration of their joint and individual properties, but I find nothing wrong with a husband and wife registering any of the properties acquired during the subsistence of marriage to either of them or both.
35. Lastly, the applicant has termed the deposits in the 1<sup>st</sup> respondent's bank and mpesa accounts as suspicious. It has however not told the court what was suspicious about the deposits. Was it that the amounts were too big or the narrations suggested that they came from suspicious sources? It is not enough for the applicant to give a general statement that the deposits were suspicious. It must go further and tell the court what character in the transactions leads to suspicions. In any event, I don't find Kshs 9,657,241.15 transacted in a period of two years and Kshs 3,262,956.00 transacted over a period of five years big enough to raise any suspicions. There should be other reasons leading to suspicion other than the figures.



36. The conclusion of what I have stated above is that, the applicant has failed to prove its case against the respondents to the required standard. The motion is hereby dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Miss Muchiri for the applicant and Miss Karugari for the respondents.

