



**Assets Recovery Agency v Tanui & 2 others; Sugut Also known as Jemwolo  
Kobot Kiplamui & 13 others (Interested Parties) (Civil Suit E009 of 2024)  
[2025] KEHC 1756 (KLR) (Anti-Corruption and Economic Crimes) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1756 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CIVIL SUIT E009 OF 2024  
LM NJUGUNA, J  
FEBRUARY 27, 2025**

**BETWEEN**

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

**AND**

**LIVINGSTONE KIPTOO TANUI ..... 1<sup>ST</sup> RESPONDENT**

**VIOLA JELAGAT BUTIAH (BEING SUED ON BEHALF OF HERSELF AND AS A  
NEXT OF FRIEND OF L.C - MINOR) ..... 2<sup>ND</sup> RESPONDENT**

**DANIEL KIPTANUI CHELULE ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**SALINA SUGUT ALSO KNOWN AS JEMWOLO KOBOT  
KIPLAMUI ..... INTERESTED PARTY**

**PETER KIMUTAI TUWEI & DAVID KIPKOSGEI SOIMO AS  
ADMINISTRATORS OF THE ESTATE OF KIPSOMO ARAP KOECH -  
DECEASED) ..... INTERESTED PARTY**

**CHEMWOK ARAP KIBWOEN ..... INTERESTED PARTY**

**CHEPNGOK KIPROP PATRICK ..... INTERESTED PARTY**

**JEPKEMBOI LETING BEING SUED AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE KIBIENGO ARAP KIPLETING ... INTERESTED PARTY**

**JOHANA KIPLETING KOSGEI ..... INTERESTED PARTY**

**ADMINISTRATOR OF THE ESTATE OF THE LATE KIBIENGO ARAP  
KIPLETING ..... INTERESTED PARTY**



**ADMINISTRATOR OF THE ESTATE OF THE LATE KIMETO ARAP  
TALAM ..... INTERESTED PARTY**

**DAVID KIPCHUMBA KOGO ..... INTERESTED PARTY**

**ADMINISTRATOR OF THE ESTATE OF MAINDI ARAP  
KAIGOI ..... INTERESTED PARTY**

**JOHANA KIPLETING KOSGEI ..... INTERESTED PARTY**

**ADMINISTRATOR OF THE ESTATE OF THE LATE SHEM KIPLAGAT ARAP  
BITTOK ..... INTERESTED PARTY**

**JOSEPH KIPKOECH TANUI ..... INTERESTED PARTY**

**BUSIENEI ARAP MAINA ..... INTERESTED PARTY**

### RULING

1. What is before the court for determination is the Notice of Motion dated the 17<sup>th</sup> December 2024 brought by Assets Recovery Agency (herein referred to as the Applicant). The same has been brought under Order 45 Rule 1, Order 51(1) of the Civil Procedure Rules 2010, Sections 80, 3A of the *Civil Procedure Act* and Sections 81 and 82 of the *Proceeds of Crime and Anti-Money Laundering Act*; seeking the following orders:-
  - “(1) Spent.
  - (2) Spent.
  - (3) ThatT this Honourable Court be pleased to review its judgment rendered on 22<sup>nd</sup> November, 2024 and pronounce itself on the 0.10 HA of the Land Portion Reference Nandi/Ndurio/682 registered in the name of Livingstone Kiptoo Tanui.
  - (4) ThatT this Honourable Court be pleased to review its judgment rendered on 22<sup>nd</sup> November, 2024 and correct the error apparent on the face of the judgment and correct the acreage of the land forfeited in Land Portion Reference Nandi/Ndurio/907.
  - (5) ThatT costs of this application be provided for.”
2. The application is supported by the annexed affidavit sworn by Bernard Gitonga, an investigator attached to the Applicant and it’s based on the grounds set out on the body of the same.
3. The Applicant avers that vide an Originating Motion dated the 17<sup>th</sup> April 2024, under Sections 81, 82 and 87 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) sought for forfeiture of properties that had been identified to have been acquired by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, through proceeds of crime.
4. That the forfeiture application was heard and the court found in favour of the Agency and issued vesting orders against the properties of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, on the 22<sup>nd</sup> November, 2024. That the Honourable Court in its Judgment inadvertently left out the property Land Portion Reference Number Nandi/Ndurio/682, which the Applicant believes is tainted and a proceed of crime.



5. Further, that the Honourable Court in its judgment erred on the face of it by forfeiting 0.10 Ha of Land Reference No. Nandi/Ndurio/907 instead of 1/8 Acre of the said land as pleaded by the Applicant in its forfeiture application dated the 17<sup>th</sup> April, 2024. As such, the Applicant has urged the Court to rectify the error in reference to the acreage forfeited in reference to land portion Nandi/Ndurio 907 to enable the Applicant execute the judgment as prayed in its forfeiture application.
6. The Respondent filed Grounds of Opposition to the application on the grounds that: -
  1. The application is fatally defective, incompetent and an abuse of the court process and it should be dismissed.
  2. The Applicant has not demonstrated any sufficient grounds to warrant the granting of the review orders sought.
  3. The Applicant has not met the requirements of Order 45 Rule 1 of the Civil Procedure Rules.
  4. The Applicants are not deserving of the orders sought.
7. The application was disposed of by way of written submissions which the court has considered alongside the application and the Supporting Affidavit and the Grounds of Opposition.
8. From the application and the Grounds of Opposition, the only issue for determination by this Honourable Court is whether the Applicant has satisfied the grounds for review of the Judgement delivered on 22<sup>nd</sup> November 2024.
9. The application before the court is one for review. The jurisdiction of the court to review a judgment is donated by Section 80 of the [Civil Procedure Act](#) which provides: -

“ Any person who considers himself aggrieved: -

  - a. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
  - b. By a decree or order from which no appeal is allowed by this Act; may apply for a review of judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
10. Order 45 of the Civil Procedure Rules sets out the scope of review and it provides as follows: -

“ 1.

  - (1) Any person considering himself aggrieved:-
    - i. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - ii. By a decree or order from which no appeal is allowed and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made, or on account of some mistake or error



apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

11. The power given to the court under Order 45 of the Civil Procedure Rules is discretionary subject to the Applicant meeting the three conditions set out therein. In the case of *Pancras T. Swai vs Kenya Breweries Limited* (2014) eKLR, the Court of Appeal stated as follows:-

“Order 44 Rule 1 (now Order 45 Rule 1 in the 2010 Civil Procedure Rules) gives the trial court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason” ..... As repeatedly pointed out in various decisions, the words “for any sufficient reason” must be viewed in the context firstly of Section 80 of the *Civil Procedure Act*, Cap 21 which confers unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

12. A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. However, the error or omission must be self-evident and should not require an elaborate argument to be established. See the case of *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* (Civil Appeal No. 142 of 2012) in which the court cited the case of *National Bank of Kenya Vs Ndung’u Njau* (1996) KLR 469.
13. The court has looked at the substantive application dated the 17<sup>th</sup> April 2024 and the impugned judgment which is the subject of the application herein. Among the landed properties that the Applicant had sought for an order of forfeiture in respect of, are 1/8 Acre of Land portion Reference Nandi/Ndurio/907 and 0.10 Ha of Land portion Reference number Nandi/Ndurio/682 registered in the names of Shem Kiplagat Arap Bittok and the 1<sup>st</sup> Respondent, respectively.
14. In the said application, the Applicant has stated that after carrying out investigations, it established that the 1<sup>st</sup> Respondent was employed as a pay roll manager by the Elgeyo Marakwet County Government earning a basic salary of Kshs.77,527 as the entry scale at the time of employment in February, 2014.
15. That, further investigations established that as a pay roll manager, the 1<sup>st</sup> Respondent willfully and knowingly falsified the payroll records, forged the payroll sheet of Elgeyo Marakwet County Government and inflated his salary, thus illegally and fraudulently acquired illegal salary.
16. That the Applicant also established that the 1<sup>st</sup> Respondent in furtherance of his fraudulent activities manipulated the Elgeyo Marakwet County payment roll system and fraudulently paid the 2<sup>nd</sup> Respondent who was also an employee of the County an illegal salary. The 2<sup>nd</sup> Respondent would then withdraw the money and the same is reasonably suspected to have been used to acquire assets/properties that are reasonably believed to be proceeds of crime.
17. Though the 1<sup>st</sup> Respondent explained his source of income and that of the 2<sup>nd</sup> Respondent who is his wife, the learned Judge found that the Applicant had proved on a balance of probabilities that during the period of investigations, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents benefitted unlawfully from monies belonging to the Elgeyo County Government.



18. The Judge further found that the Applicant had proved on a balance of probabilities that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents acquired the impugned landed properties during the period of interest. Further that, the parcels of land are therefore proceeds of crime liable for forfeiture to the Government of Kenya.
19. The learned Judge in her judgment went further and found that the properties that the first and second Respondents acquired from the Interested Parties, not the whole but only the portions that the Respondents acquired shall be liable for forfeiture.
20. According to the judgment of the learned Judge, all the listed landed properties including the two which are the subject of this application, were acquired by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents during the period of interest when they were employed by Elgeyo Marakwet County Government.
21. However, in the learned Judge's judgment even after having made a finding that the landed properties were proceeds of crime and should be forfeited to the Government, the Judge left out 0.10HA of land reference number Nandi/Ndurio/682 among the properties that she ordered forfeiture. Further, though Land Reference Nandi/Ndurio/907 was ordered to be forfeited, the acreage was indicated as 0.10 Ha instead of 1/8 acre as pleaded in the application dated the 17<sup>th</sup> April 2024.
22. I therefore, find that there was an error apparent on the face of the record in the court's judgment.
23. The application dated the 17<sup>th</sup> December, 2024 is hereby allowed in terms of prayers (3) and (4) as follows: -
  - a. 1/8 Acre of Land portion Reference number Nandi/Ndurio/907 registered in the name of Shem Kiplagat Arap Bittok and
  - b. 0.10 Ha of the land portion Reference Nandi/Ndurio/682 registered in the name of Livingstone Kiptoo Tanui are hereby forfeited to the Government and vesting orders to issue accordingly.
24. No orders as to costs.

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Mr. Wambua holding brief for Miss Irari for the Applicant

Miss Langat for the Respondents

No appearance for the Interested Parties

Court Assistant – Adan

