



Assets Recovery Agency v Ahmed & 2 others (Anti-Corruption and Economic Crimes Civil Suit E031 of 2023) [2025] KEHC 4704 (KLR) (Anti-Corruption and Economic Crimes) (28 March 2025) (Judgment)

Neutral citation: [2025] KEHC 4704 (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 E031 OF 2023
PJO OTIENO, J
MARCH 28, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPELLANT

AND

SWALEH YUSUF AHMED 1ST RESPONDENT

ASMAR ABDALLA MOHAMED 2ND RESPONDENT

MBARAK ABDALLAH YUSUF & OTHERS 3RD RESPONDENT

JUDGMENT

1. Pursuant to sections 81,90 and 92 of the proceeds of crime and Anti- Money Laundering Act, the Asset recovery Agency brought an Origination Motion and prayed that the court grants to it orders that that all the money held in commercial bank and all the parcels of land listed in prayers 1 and 2 of the motion, are proceeds of crime and be ordered forfeited to the applicant on behalf of the state with a consequential order that the parcels of land be directed vested and transferred to the state. The applicant also prayed for the costs of the suit.
2. The application was supported by the Affidavit of No.90903 C.P.C Kipkurui Serem. That affidavit reiterates the averments and grounds set out on the face of the application. The summary of the grounds are that by virtue of its mandate to initiate and pursue Civil forfeiture of proceeds of crime; it sought and obtained a preservation against the targeted assets and the order remains in force to date.
3. It is asserted that the interest on the Respondents was triggered by the arrest of the 1st and 2nd Respondents and subsequent arraignment before the court at Shanzu in criminal case No. 54 of



2017. The applicant conducted investigations to trace and recover proceeds of crime acquired by the Respondents through the illegitimate trafficking and trading in narcotic drugs.
4. At the time the two were arrested, a search was conducted inside the motor vehicle Reg. No. KCH 429W, Subaru Saloon, and their residence, and a total of 201.10 grams of Heroin valued at Kshs.603,300 was recovered. Subsequent investigations then revealed that the income from the illegitimate trade in narcotics were then disguised and bank into the accounts of the 2nd and 4th Respondents contrary to the Provisions of Narcotics Drugs and Psychotropic Substances (control) Act, proceeds of crime and Anti money Laundering Act as well as the Prevention of Organised Crime Act. The agency through the investigator thus maintain an opinion to have a reasonable ground to believe that the traced property were unlawfully acquired from the illegitimate trade in Narcotic Drugs substances and that the bank accounts for the Respondents were used as conduits of Money Laundering.
 5. It was underscored that it attaches an international obligation on every state to combat illegitimate trade in narcotics and laundering the proceeds of crime hence it is in the interests of justice that orders sought be granted.
 6. The details and evidence of the assertions by the applicant were provided in the annexures marked KS 1 – 13 which included a search certificate to show what was recovered, the certificates of sampling, weighing, valuation and notices of seizure as well as the government analysts report. Also exhibited were the charge sheets before the criminal court, a witness statement by one of the accused's in the criminal case explaining his dealings with Swaleh Yusuf, an inventory of recovery from the house of one Nara Murshid as well as the certificate of sampling, weighing, valuation and notices of seizure of the recovered items as well as the government analysts report.
 7. The applicant thus sought to search, inspect, freeze and preserve funds held in the bank and Mpesa accounts held in the names of the Respondents and obtained a court order to that effect in Misc. Criminal Application No. E069 of 2023 and E0570 of 2023. The resultant orders were then served upon the banks and Safaricom PLC.
 8. When served the banks and Safaricom availed statements of accounts as well as account opening forms to show when and by whom the accounts were opened and operated. The bank and Mpesa documents and statements were also exhibited and said to have been analysed and the analysis revealed that suspicious and huge credited and debts were transacted in the accounts most of which concerned 100 individuals and various Mpesa agents. The use of cash withdrawal and transfers from and into the accounts were discerned as a method of concealing the sources and destinations of funds made in sums less than 1,000,000 in order to evade the legal and financial guidelines in place.
 9. The investigations further revealed that the 1st and 2nd Respondents then acquired four massive assets and properties from the illegitimate trade in narcotics and had the same registered in the names of the 3rd and 4th Respondents as proxies as part of the scheme to conceal and disguise the sources of funds used to acquire the properties.
 10. In the course of investigation the Respondents were summoned and given a chance to explain the sources of their property but they all declined to record statements.
 11. The investigations however established that all the Respondents have no known means of income in that none had ever filed any tax returns hence the identified assets are deemed proceeds of crime.
 12. Based on such facts, the Applicant approached the court and obtained a preservative order which was gazetted on 4/8/2023 before these proceedings were instituted on 3/11/2024. From the fact that the



- assets have been preserved in accordance with the provisions of the Act, the applicant asserts that the identified assets ought to be forfeited to deprive the Respondents of the benefit acquired from criminal enterprise. The Applicant thus prays that the originating motion be allowed as prayed and with costs.
13. During the pendency of this matter, the 1st Respondent is reported to have died and was never substituted. When asked by the court what it sought to do with that development, the counsel for the applicant chose to and was allowed to withdraw the claim against the deceased.
 14. The claim thus remained pending only against the 2nd, 3rd and 4th Respondents who are the only parties in whose behalf the Replying Affidavit was sworn and filed by the 4th Respondent. It is however of note that two other developments occurred. The first was the death of the 4th Respondent followed by the appointment of M.r Bryant Advocate to appear for the 3rd Respondent. The records however show that even with such developments, the 3rd respondent did file applications and other documents but none was a response to the application for forfeiture. Consequently, the originating motion was only resisted by the 2nd and 4th Respondents on the strength of the Replying Affidavit sworn by the 4th Respondent. The court says only the two resisted the application because, once Mr. Bryant Advocate came on record, the 3rd respondent denounced and denied ever instructing Mr. Magolo to appear for him.
 15. In the affidavit sworn by the 4th respondent, the deponent posits that the 1st Respondent is her son and that she had always been a business lady selling water and chicken. She identifies the property known as Mombasa/Likoni/2028 to have been her inheritance which she sold at price of Kshs.1,809,000/= and the purchase price was paid in two instalments of Kshs.780,000. On that basis she asserts that the money preserved in her account is not a proceed of crime but legitimately earned from the sale of her inheritance. To prove sale she has exhibited a sale agreement dated 5/9/2022 at a price and consideration of Kshs.1,809,000/=.
 16. Even though Mr. Magolo consistently told the court that the replying affidavit was for both the 2nd and 4th Respondents there is no material in it that makes representation on behalf of the 2nd Respondent. The court will however take from the affidavit every material that will assist it reach a just and informed decision on the dispute.
 17. Despite the court directive given on the 16/11/2024 for the 3rd Respondent to file and serve a response to the originating motion within set timelines, by the time of preparing this decision, no response had been posted on the CTS and no physical copy was in the file. The court, through the court assistant, contacted Mr. Bryant's office and, the contact person who identified herself as Dorah, as well as the Counsel himself, confirmed that no replying affidavit nor submissions to the forfeiture application had been filed. In addition, by its submissions dated 15/11/2024, the 3rd Respondent confirms having declined to file submissions to the originating motion, therefore, as said before, the only response to the summons is the Replying Affidavit sworn and filed by the 4th Respondent.
 18. The 3rd Respondent explicitly declined to file submissions on the originating motion opting instead and unilaterally, to submit on decision of the court to issue the preservation orders. That departure notwithstanding, the court has read all the submissions filed and drawn valuable assistance.

Applicant's submissions

19. The submissions sets off with a description of the parties and the relationship between the Respondents as a family comprising the 4th Respondent as mother to the 1st Respondent, mother in law to the 2nd Respondent and grandmother for the 3rd Respondent. Other than the history of receipt of a complaint regarding an alleged drug trafficking syndicate by the Respondents and ensuing



- investigations leading to preservation orders, the applicant contends that its investigations established that the Respondents ran a syndicate by which mules were assigned to transport and deliver drugs. The 1st and 2nd Respondents were charged together with two others for trafficking in drugs worth 110,292,000 recovered from the house of one of the mules, called Nuru Murshid Mahfudh.
20. Preservation orders were obtained against the subject accounts and assets and were subsequently gazetted and are thus in force as at the date the originating motion was filed, hence providing a pedestal for the grant of forfeiture orders.
 21. The appellant identifies only two issues for determination by the court, whether the funds and properties are proceeds of crime and, if answered in the affirmative, the same ought to be forfeited to the state.
 22. On whether the assets are proceeds of crime, the applicant relies on section 2 and 92(1) on the definition of a proceed of crime and the standard of proof in an application for forfeiture. The decision in *Schabir Shaik & others – vs – State Case CCT 86/06(2008) ZACC 7* is also cited for the definition of proceeds of crime to have been made wide and all encompassing due to the known tendency of sophisticated criminals to seek to evade confiscation of proceeds by creating a complex system of camouflage.
 23. The decision in *Asset Recovery Agency – vs – Ali Abdi Ibrahim [2022] eKLR* was cited for standard of proof to be on a balance of probability, without the proof of commission of any specific offence, by setting out the matters alleged to constitute a particular kind or kinds of unlawful conduct by or in return for which the property was obtained. The purpose is to determine the criminal origin or source of the property in issue and never a criminal prosecution. The decision in *Abdulrahman Mahmoud Sheikh – vs – Asset Recovery Urgency (2016) eKLR* was cited for the objects and purposes of the Act and Civil forfeiture proceedings.
 24. It was then underscored that the 1st and 2nd Respondents were arrested and charged with trafficking in drugs and investigations established there were related Mpesa and bank accounts which received suspicious cash deposits indicative of money laundering intended to conceal their true sources. In particular it was pointed out that cash deposits below the reporting thresholds were deployed as a tactic to avoid suspicion in accounts operated in the names of the Respondents and a strategy to launder the proceeds of crime. It was then asserted that the 1st Respondent being a well-established drug trafficker in Mombasa devised the use of Mpesa and bank accounts in the name of relatives and associates to launder his illegitimate money and channeled the same into financial system by breaking up large sums into smaller bits by deposits into Mpesa and Bank accounts.
 25. Having earned the illegitimate money and laundering the same, the Respondents then used the same proceeds to acquire four parcels of land identified and targeted by prayer 2 of the originating motion during the period between 2014 and 2016. At that time, the 1st Respondent was aged between 20 and 23 years old yet his accounts transacted sums of money reasonably believed to be proceeds of heroin trafficking.
 26. It was equally pointed out that the 3rd Respondent opened his account at DTB Bank at the age of 19 years and declared himself as a car dealer. Thereafter, the account received suspicious deposits aggregating Kshs.3,015,000 during the month of January 2014 alone. It is then observed that despite being in the alleged business and transacting over 3,000,000/- within one month and having registered as a tax payer, the 3rd Respondent never filed any returns between 2015 and 2022. It is thus argued that the trend is consistent with a proxy used by a King pin to receive illicit earning, launder same and use the money to acquire the kindred Property.



27. Against the 4th Respondent it is asserted that there was no proof by any business registration, invoices, books of accounts or records nor a declaration of income from the alleged business. On the allegation of sale of an inheritance, it is pointed out that no proof of existence or evidence of ownership of the property was exhibited and that even if there had been such sale, the proceeds had been commingled with proceeds of crime and thus subject to forfeiture.
28. In totality, it is stressed that there is no evidence of legitimate business by the Respondents that would justify the several and substantial cash deposits, withdrawal and transfers and subsequently acquisition of assets in their names. The decision in *ARA vs Kibirige* [2023] KEHC 20480 KLR was cited to show that as far back as 2017 the court forfeited a motor vehicle used by the 1st and 2nd Respondents to traffic heroin valued at Kshs.503,000. The court was then implored to appreciate that Kenya has an obligation to international Community under treaties and conventions, to combat drug trafficking, illicit flows and money laundering. Based on the matters availed in the Affidavits, the applicant contends that it has discharged its burden on a balance of probabilities to merit a declaration that the assets are proceed of crime and subject to forfeiture.
29. On the issue whether the assets ought to be forfeited, it is submitted and asserted that by dint of section 107 of the *Evidence Act* and what in law amounts to proof on a balance of probabilities, the threshold had been surmounted. The decision in *William Kabogo Gitau – vs – George Thuo and 2 others* [2010] KLR 516 was cited for the proposition that it is sufficient when the court is satisfied that what is asserted is more probable than not and that in percentage terms, one who attains 51% against the opponents 49% is said to have discharged the burden of on a balance of probabilities.
30. Once that threshold is achieved, it is submitted, then there is a shift in evidential burden upon the Respondents to rebut the prima facie case by production of evidence to show that the proceeds were legitimate and not proceeds of crime.
31. The fact that when asked to explain their sources of money, all Respondents declined and the fact that no replying affidavit were filed by the 2nd and 3rd Respondent, was stressed for the court to find that no rebuttal to the applicant’s position had been made.
32. On the 4th Respondents Replying Affidavit it was submitted that it was not a rebuttal to the evidence by the Applicant that her accounts were used to launder proceeds of drug trafficking.
33. In conclusion, the application cited the South African decision in *National Director of Public Prosecutions – vs – Rabuzzi Charlotte Elizabeth* (94/2000)[201] ZASCA 12 on the concept of asset recovery and its importance to fighting organised crime.
34. For the 2nd and 4th Respondents the submissions filed are very brief and specific to the point on what is a proceed of crime and the object of confiscation order. The South African decision in *Schebir Shauk – vs – state* case CCT 86/06 [2008] ZACC T was cited for the proposition of the law that the subject of confiscation is never to enrich the state but to deprive the convicted person of ill given gains, to achieve the objects of criminal law of deterrence and prevention of crime. Kenyan own domestic decision in *Abdulrahman Mohamed Sheikh* (Supra) was cited to have confirmed that as the established position of the law in Kenya.
35. Relating the law to the facts of this case, the 2nd Respondent contends that she is merely being blamed for having been charged together with the 1st Respondent who was her spouse and that the 4th Respondent is being blamed for being the mother to the 1st Respondent. On the basis of the Affidavit filed, the 2nd and 4th Respondents contend that they have rebutted the position of the applicant and efficiently surmounted the shifted evidential burden. The decision in *EACC – VS – Ministry of*



- Medical Services [2012]eKLR was then cited for the proposition of the law that for the court to grant orders pursuant to section 56 (1) of ACECA, the applicant must establish a prima facie case that the subject property has been the subject of some corrupt dealings.
36. The right of every citizen to own property was underscored and stressed as being constitutionally enshrined together with the fact that the 4th Respondent had demonstrated sale of a property whose proceeds went in to the targeted account. It was thus the plea by the 2nd and 4th Respondent that the originating motion was a candidate for dismissal and preservation order lifted.
 37. As said before, the 3rd Respondent was given every opportunity to file a response to the originating motion but did not do so. He equally failed to file any submissions in opposition to the summons opting instead to file submissions towards the discharge/lifting of the preservation orders issued in Misc E020/2023. In doing so, I have not been directed to any application seeking to set aside, rescind or lift the said preservation orders. While the 3rd Respondent cites section 89 (5) of POCAMLA as the basis of the request in the submissions, it fails to address the requirement of the said law that a formal application be made under the file in which the orders were issued.
 38. The basis disclosed in the submissions for seeking revision is that the said orders were issued ex parte without according to the 3rd Respondent the right to be heard and that the said order was never served upon the 3rd Respondent as directed and in accordance with section 83 (1) of POCAMLA.
 39. To buttress its position on unconstitutionality of the said order, the 3rd Respondent cites the decision by the US Supreme Court in US – vs – Daniel Good (92 – 1180), 510, US 43 (1993) for the finding that no state shall deprive any person of life, liberty, property or equal protection of the law without due process. That decision is said to have the same spirit and in parimateria with article 40(2) of *the Constitution* of Kenya 2010. Several other decision have been cited with great and admirable industry and eloquence. The baseline is however that the said submissions are of little relevance to the decision on the originating motion and runs counter the last of the directions given by the court on the 27/11/2014 that the court would rely on the documents filed and render a decision on the originating motion.

Analysis and Determination

40. In the course of dealing with the matter, there have been numerous back and forth applications to transfer the matter and the question of the 1st and the 4th respondent having died. The applicant opted to withdraw the application against the 1st respondent because none of the assets that it seeks forfeited was registered in his name but maintained the forfeiture proceedings against the 4th respondent because some of the assets that the applicant seeks to be forfeited are registered in the name of that 4th respondent. Despite the fact of death, the applicant submitted that the proceedings were in rem and therefore the claim against the property of the 4th respondent could proceed, his death notwithstanding. This then becomes a threshold issue which this court must address before going into the merits of the case.
41. One of the provisions of the law under which the applicant's application is brought pursuant to is section 81 of the POCAMLA. That mean the proceedings are civil in nature and the provisions of the Civil Procedure Rules are to apply in these proceedings. Being that the cause of action relates the property of the 4th respondent alleged to have been acquired through the proceeds of crime, there is no



doubt from the reading of Order 24 rule 1 that the cause of action survives the death of the deceased respondent. Where a party dies during the pendency of litigation, the law provides as follows;

“...the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.”

42. Despite the fact that all the respondents are close relatives, none has stepped forth to represent the estate and substitute the the 4th respondent. The respondents have also on numerous occasions been asked by the court to substitute the 4th respondent but have adamantly declined and squandered that opportunity. The court appreciates the right to a fair hearing to be beyond limitation just as it appreciates that the right belongs to the individual who may choose to insist on it or just abandon it. It does not follow that if a party for own reasons chose to abandon his right to be heard the court becomes helpless and must remain held at ransom whichever the level the case has progressed. The court still has the duty to handle the case with the required timeliness.
43. The court have just faced instances where parties fail to utilize their right to be heard by either absconding court proceedings or behaving in a manner as to scuttle the proceedings. The issue arose before the Court of Appeal in the case of Union Insurance Co. of Kenya Ltd. vs. Ramzan Abdul Dhanji Civil Application No. Nai. 179 of 1998 and the court said: -

“Whereas the right to be heard is a basic natural-justice concept and ought not to be taken away lightly, looking at the record before the court, the court is not impressed by the point that the applicant was denied the right to defend itself...Clearly the applicant was given a chance to be heard and the court is not convinced that the issue of failure by the High Court to hear the applicant will be such an arguable point in the appeal. The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilised, then the only point on which the party not utilising the opportunity can be heard is why he did not utilise it.”

44. In this matter the court is fully satisfied that it gave to the 4th respondents known relatives, being the 2nd and 3rd respondents, to have the estate be joined to the proceedings for purposes of being heard but the chance and opportunity was never seized and utilized. The court had the duty to give the chance to be heard but no right to coerce the estate to be heard.
45. That notwithstanding, the 4th respondent had participated in these proceedings by filing a response to the originating motion in the form of a replying affidavit sworn on 13th March, 2024 and submissions dated 9th October, 2024. In proceedings such as this, where the dispute is capable of resolution by affidavit evidence only, the participation of a respondent is to the extent of filing a replying affidavit and where need be, to cross examine the applicant’s witness and filing of submissions. The court is assured that the 4th respondent fully participated in the in the proceeding by availing to court the material it desired the court to access. By the time his death was brought to the attention of the court, the only remaining task was upon the court to prepare and pronounce a judgment.
46. That was the observation of the Court of Appeal in the case of John Omondi Nallo (the administrator of the Estate of the late Jared Nallo Otieno) v Francis Aliaro Mapesa [2018] eKLR where it was held;
47. “There is no doubt that the cause of action survived the death of the deceased defendant as it related to title to land. The judgment delivered determined title to property and thus it was a judgment in rem. Moreover, the deceased had no further role to play after the conclusion of the trial. What remained was a judicial function of pronouncing the judgment. The estate of the deceased could be represented



at the delivery of the judgment by a legal representative of the deceased or by a counsel instructed by the estate.”

48. The court thus finds that the death of the 4th respondent coming as it did at the stage the matter had reached does not forestall the matter from being progressed towards conclusion. The matter shall thus be progressed with the court delving into the merits of the claim.
49. On the merits, and after the court has resolved the preliminary issue raised by the Respondents, and there being no outstanding question on the propriety of the proceedings or jurisdiction of the court, the court is of the learning that every suit seeking forfeiture orders attracts only two issues for determination; whether the subject asset is a proceed of crime, which if answered in this affirmative, then invites the question whether or not the same is subject to forfeiture.
50. In this matter the applicant has established that the 1st and 2nd Respondents being spouses, were jointly with others not parties to these proceedings, charged with the offence of trafficking in cocaine. It was also demonstrated that investigation raised reasonable suspicion that the transactions revealed in the Respondents bank and Mpesa accounts were not supported with any disclosed legitimate earnings or sources of income. It was highlighted that there were consistent structured deposits and withdrawals from their accounts which are viewed to be consistent with camouflage of a complex dealing in illicit income. That raises reasonable suspicion on a prima-facie basis which then shifted the evidential burden to the Respondents.
51. As designed, POCAMLA must be seen to protect the right of reply upon the Respondents before and even after the institution of the proceedings. Before the proceedings, the applicant has a duty to call upon the Respondents, then just targets of investigation, to record a statement and explain the sources of income suspected to be illicit income.
52. In this matter, when that chance was availed to the Respondent, all declined and exercised their undoubted rights to remain silent. The assertion by the applicant that it invited the Respondents to record statements but the invitation was snubbed has not been denied by any of the Respondents. The court thus finds that the right to answer was duly availed but the Respondents chose not to seize the same.
53. Even after these proceedings were instituted and the summons duly served upon the deponents, only the 4th Respondent filed a replying affidavit and offered an explanation that she engaged in the legitimate business of selling water and chicken and that the notable substantial two deposits of Kshs.780,000/= were the proceeds of a land sale. She in fact exhibited a sale agreement to that effect.
54. To the contrary, the 3rd Respondent despite being given a chance to respond to the originating motion squandered the chance to counter the accusation of reasonable suspicion of that income. He not only failed to file a response but equally declined to file submissions even on points of law only.
55. It is thus plain to the court that the 2nd and 3rd Respondents have not offered any material to controvert the prima facie demonstration by the applicant that there is no legitimate source of income to have derived the deposits and withdrawals made on their respective accounts which were then equally employed to acquire the real property registered in the 3rd Respondents name. In particular, the 3rd Respondent left unanswered the assertion that his account opened upon a declaration that he operated a tuk tuk, received sums in excess of Kshs.3,000,000 within one month yet he made no payment as returns for tax obligations in such income. In addition, the assertion by the applicant that the 3rd Respondents account held at cooperative Bank transacted sums of Kshs.3,085,000 between 30/6/2013 and 16/4/2014 remain uncontroverted.



56. Being so uncontroverted, the court finds and holds that the evidence availed by the applicant establishes on a balance of probabilities that the 2nd and 4th Respondent's accounts received unexplained source of money in a style and fashion that raises the reasonable suspicion that the same were proceeds of crime. The prima facie proof was due for rebuttal but the Respondents failed to do so.
57. Accordingly all the sums identified to be held on the bank accounts operated by the 2nd and 4th Respondents which were preserved by the preservation orders issued by the court in Misc Cr. Application No.E020/2023 are adjudged to be proceeds of crime.
58. On the same note and basis, the 3rd Respondent's landed property known as LR NO. Kilifi/Mtwapa/2598, 2599 and 2600 as well as Kilifi/Kikambala Block 285/3/Parcel No.45 have been demonstrated to have been purchased from unexplained sources of funds. Unexplained because the 3rd Respondent had the opportunity and chance to explain how he earned the sums of money deposited into his two accounts in amounting disproportionate to his disclosed legitimate engagement but he failed to do so.
59. Being unexplained the money and the acquired asset from such unexplained money pass as illicit earnings and thus proceeds of crime.
60. As said before, only the 4th Respondent offered an explanation about her sources of income to be business of selling chicken and water and also sale of an inheritance. The court has taken its time to study the documents filed by the said Respondent in line with those by the applicant. In particular, the court has analysed the bank statements exhibited in the Replying Affidavit sworn by the 4th Respondent. From the analysis, it is noted that the transfers of the purchase price for the alleged sale having were effected on the 5th and 6th of September, 2022, a total of about 2,560,000 had been withdrawn by the 17/3/2023. That's a period of just six months. It is the opinion of the court that if indeed, the sum of Kshs.1,560,000 deposited on 5th and 6th September, 2022, were indeed proceeds of sale of the inherited land, then that sum had been withdrawn from the account as at 17/3/2023 and was not part of the sum preserved in the account by orders of the court.
61. To this court, however, when a grave order like forfeiture is sought against a citizen who has legitimately acquired a valuable property like land in the prime area like Likoni, Mombasa, by inheritance faces the orders of losing same, the right to own property of any kind enshrined in *the Constitution* imports upon such a citizen proportionate duty to demonstrate the legitimacy of acquisition of the asset. The court takes the view that a document like search, a copy of title or even certificate of confirmation of grant would not have been very difficult to exhibit.
62. For her case, the 4th Respondent was content with a bare agreement for sale with nothing else to show that she had a disposable inheritance in the cited parcel of land.
63. The court finds that the 4th Respondent failed to demonstrate that she in fact had a disposable interest in parcel of land No. Mombasa/Likoni/2028 which she sold and legitimately earned the sum of Kshs.1,560,000 transferred to her account on the 5th and 6th September, 2024.
64. In any event, even if there had been a demonstration of title to the land there has not been an explanation of sources of the structured and consistent deposits of Kshs.100,000, effected 14 times between July 2022 and June 2023. The consistency, uniformity and structured deposits, without disclosure of legitimate sources, does not escape the reasonable suspicion that there was a deliberate and deceitful camouflage of illicit flow for purpose of laundering by injunction into the financial systems. That goes for the 4th Respondents accountant ABSA Bank, Nyali Branch.



65. It is therefore the ultimate finding by the court that the sum held in the 4th Respondents two accounts at KCB Nyali and ABSA Bank Nyali Branch are proceeds of crime and were property preserved by the court order exhibited in these proceedings.
66. On the first of the issues isolated for determination, the court finds that the sums of money held in Account No.01109XXXXXX800 at Cooperative Bank in the name of the 2nd Respondent and in accounts No.127XXXX473, at KCB Bank Nyali Branch and Account No.016XXXX831 at ABSA Bank, Nyali Branch, both in the names of the 4th Respondent are proceeds of crime. On the same vain, the immovable property known as Kilifi/Mtwapa/2598, 2599 and 2600 and Kilifi/Kikambala/Block 285/3 parcel No.45 are also proceeds of crime.
67. Having found that the said assets are proceeds of crime, the spirit and object of the law in [Proceeds of Crime and Anti-Money Laundering Act](#) is that none should be allowed to keep, enjoy and benefit from proceeds of crime. The rationale is that crime hurts the society especially those who are law abiding. In this matter where it is demonstrated that the assets here are proceeds from trafficking in narcotics, with known devastating effect on society, especially youth who get rendered zombies, the dictate is even more compelling.
68. To the court once a property is adjudged and declared a proceed of crime, the spirit of the statute anchored on the international statutes and other legal instruments, give no liberty to court to render otherwise, but that it becomes axiomatic, that such property be forfeited to the state on behalf of the injured and those other citizens threatened with injury by the crime, trafficking in narcotic. It follows thus, every property identified by the application in this matter as unexplained and adjudged by court as a proceed of crime is subject to and ordered forfeited.
69. The court thus considers the following as the appropriate orders to make:-
1. An order is hereby issued declaring that all the money held in Commercial Banks and listed as follows are proceeds of crime: -
 - a. Kshs.739,234.00 held at KCB Bank Account No.127XXXX473 in the name of Jauria Yusuf Ahmed.
 - b. Kshs.875,484.69 held at Cooperative Bank Account No.01109XXXXXX800 in the name of Asma Abdalla Mohamed.
 - c. Kshs.424,824.95 held at ABSA Bank Account No.016XXXX831 in the name of Jauria Yusuf Ahmed.
 2. An order declaring that all the land parcels listed below and all developments thereon are proceeds of crime. That is to say
 - a. L/R No. Kilifi/Mtwapa/2598
 - b. L.R No. Kilifi/Mtwapa/2599
 - c. L.R No. Kilifi/Mtwapa/2600
 - d. L.R No. Kilifi/Kikambala Block 285/3 are all proceeds of crime.
 3. An order that all the money held in Commercial Banks listed in Prayer 1 (a), (b) and(c) and declared proceeds of crime are hereby ordered forfeited to the Applicant on the behalf of the state.



4. An order that the properties, developments and income therefrom listed in rendition 2(a), (b), (c) and (d), having declared proceeds of crime, are ordered forfeited to the Assets Recovery Agency (the applicant herein) on behalf of the state.
5. Thus, a consequential vesting order is hereby issued directing the Chief Land Registrar/Land Registrar Mombasa, to effect transfer of Land Parcels in Prayer 2 above to the applicant (Assets Recovery Agency) on behalf of the state.
6. As the applicant has succeeded, the costs of the originating motion is awarded to it.

DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 28TH DAY OF MARCH, 2025.

PATRICK J O OTIENO

JUDGE

