



**Assets Recovery Agency v DIM (Being Sued on Behalf of Himself and as a  
Next of Friend of CK, WN and JW (Minors) (Civil Application E038 of 2024)  
[2025] KEHC 8986 (KLR) (Anti-Corruption and Economic Crimes) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8986 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CIVIL APPLICATION E038 OF 2024**

**LM NJUGUNA, J**

**JUNE 25, 2025**

**BETWEEN**

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

**AND**

**DIM (BEING SUED ON BEHALF OF HIMSELF AND AS A NEXT OF FRIEND  
OF CK, WN AND JW (MINORS) ..... RESPONDENT**

**JUDGMENT**

1. The applicant herein (Assets Recovery Agency) has moved this court by way of the Originating Motion dated the 6<sup>th</sup> November, 2024 in which it has sought the following Orders;
  1. That the Honourable court be pleased to issue an Order declaring that the following motor vehicles are proceeds of crime and are liable for forfeiture to the Government;
    - a. Motor vehicle registration Number KBH XXXC, land Rover, Station Wagon in the name of DIM
    - b. Motor vehicle number KCP XXXG, Isuzu, lorry/Truck in the name of DIM
  - 2) That the Honourable court be pleased to issue Orders of forfeiture of the motor vehicles registered in the name of the respondent in prayer 1 above, to the Assets Recovery on behalf of the Government
  - 3) That the Honourable court be pleased to issue an Order directing the Director General of the National Transport and Safety Authority to register the motor vehicles specified in prayer 1 above in the name of the applicant, Asset Recovery Agency.



- 4) That the Honourable court be pleased to issue an Order declaring that the following funds are proceeds of crime and liable for forfeiture to the Government;
    1. Ksh. 427,185.90 held in Account Number 011XXXXXXX85101 at Cooperative bank in the name of DIM
    2. Ksh. 3,232.50 held in Account Number 011XXXXXXX85100 at Cooperative bank in the name of DIM
    3. Ksh. 11,162.00 held in Account Number 033XXXXXXX841 at Family bank in the name of DIM
    4. Ksh. 11,347.00 held in Account Number 03XXXXXXX43 at Family bank in the name of DIM
    5. Ksh, 20,923.03 held in Account Number 03XXXXXXX44 at Family bank in the name of C.K (minor)
    6. Ksh 15,950.03 held in Account Number 033000014991 at Family bank in the name of W.N (minor)
    7. Ksh 22, 026.23 held in Account Number 03XXXXXXX826 at Family bank in the name of J.W (minor)
  - 5) That this Honourable court be pleased to issue an Order that the above stated funds, benefit, profit generated from the funds stated in prayer 4 above be forfeited to the Government and transferred to the applicant
  - 6) That this Honourable court be pleased to issue an Order that the said funds be transferred to the applicant's Deposit Account for recovered Criminal Assets, Account Number 12XXXXXXX39 at Kenya Commercial Bank.
  - 7) That the Honourable do make any other ancillary orders it may deem fit and necessary for the proper and effective execution of its Orders.
  - 8) That costs be provided for.
2. The application is brought under Sections 81, 84, 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* and Order 51 of the Civil Procedure Rules. It is premised on the grounds set out on the body of the same and supported by the annexed supporting affidavit sworn by Hussein Mohamed, on the 6<sup>th</sup> November, 2024, in which he avers that on or about the 11<sup>th</sup> March, 2024 the applicant received information that motor vehicle registration number KBH 571C had been intercepted and impounded on the 10<sup>th</sup> March, 2023 whilst escorting motor vehicle registration number KDE 027P which was in possession of sandalwood. That it is reasonably believed that the respondent had acquired the said assets using proceeds obtained from the illegitimate dealing in possession of wildlife trophy.
  3. That when the motor vehicle was impounded on the material date, it was in the custody and control of the respondent, James Odhiambo and James Ngugi Thagishu and the respondent had full knowledge of the activities the vehicle was being used for. That a multi-agency team undertaking investigations recorded the statement of Joseph Onyango at DCI Headquarters and established that; he is a driver by profession; he was at the scene and that he was in control of the motor vehicle at the time the predicate offence took place.



4. That further investigations established that there exists a relationship between the respondent and the said Thomas Thagishu beyond that of an ordinary car hire agreement, and that the respondent had accrued a benefit from the engagement of the said Thomas in the illicit trade of illegal dealings with endangered wildlife species and further, he is a beneficiary of the trade. The Agency conducted investigations into the activities of the respondent, his personal accounts and those that are in control of the respondent on behalf of minors for purposes of ascertaining whether they hold/transacted any funds that are proceeds of crime.
5. Upon analysis of the different bank accounts, the applicant found that the respondent received funds as follows;
  1. Account number 011XXXXXXX85101 held at cooperative bank in the name of the respondent received Ksh, 6,826,772.00 the period between 15<sup>th</sup> March, 2017 and 14<sup>th</sup> April, 2023 and at the time of analysis it had a balance of Ksh 427,185.90
  2. Account number 011XXXXXXX85100 held at Cooperative bank was analyzed for the period between 20<sup>th</sup> July 2015 and 30<sup>th</sup> March, 2023 and during that period he received funds amounting to Ksh, 41,222,518.47 and debits totaling to Ksh. 41,219,285.95. During that period he made multiple cash deposits amounting to a total of Ksh 23,660,848.00 whose source could not be established. At the time of the analysis the Account had a balance of Ksh. 3,232.52
  3. Account number 03XXXXXXX41 held at Family bank was analyzed for the period between 20<sup>th</sup> November, 2010 and 18<sup>th</sup> December, 2020 and during that time, it received credits amounting to Ksh. 359,906.00 with account deposits were ranging between Ksh. 200 and Ksh. 100,000 and debits totaling to Ksh. 348,742.00 with individual amounts varying from Ksh. 5,000 and Ksh 100,000. At the time of analysis the account had a balance of Ksh. 11,164.00
  4. Account number 03XXXXXXX43 held at Family bank in the name of Minor C.K but which was controlled by the respondent was analyzed for the period between 29<sup>th</sup> November, 2010 and 1<sup>st</sup> April,2021 and during that period it received funds amounting to Ksh. 149,370.00 and debits totaling to Ksh. 128,447. At the time of the analysis it had a balance of Ksh. 20,123.00
  5. Account number 0330XXXXXXX at Family bank in the name of W.N (minor) was being controlled by the respondent and was analyzed for the period between 15<sup>th</sup> January, 2013 and 1<sup>st</sup> April, 2012 and during that period it had received Ksh. 90,134.00 and a debit of Ksh. 74,184.00. The analysis noted that the account received 12 cash deposits amounting to Ksh. 90,134 and it received interest from the amounts totaling to Ksh.11,334 and withdrawals amounting to Ksh. 72,000 was made. At the time of analysis the account had a balance of Ksh. 15,590.00
  6. Account number 03XXXXXXX826 held at Family bank in the name J.W (minor) and which is controlled by the respondent was analyzed between 3<sup>rd</sup> January,2017 and 1<sup>st</sup> April, 2021 and during this period, it received credit totaling Ksh. 84,009.80 and a debit of Ksh 61,983.57. Over the period under analysis, it was characterized by a single deposit of Ksh. 72,400 which was made on 3<sup>rd</sup> January, 2017 and by the time of analysis it had a balance of Ksh. 22,026.23.
6. That further analysis of the respondent's accounts and those of the minors revealed suspicious transaction patterns indicative of potential money laundering activities where significant cash deposits



- were followed by near immediate withdrawals of nearly the same amount and that this repeated activity suggests an attempt to obscure the money trail a common indicator of money laundering.
7. The applicant also contended that it is reasonably believed that the funds in the respondent's accounts are proceeds of crime liable for forfeiture to the applicant. That the applicant's analysis revealed that Thomas Ngugi Thagishu is a conduit for money laundering in a scheme that was set up in order to avoid tracing of the source of the illicit funds dealing in wildlife trophies, created and registered in the name of the respondent.
  8. Further, the respondent was able to establish that the said Thomas Ngugi Thagishu was arrested on the 10<sup>th</sup> March, 2023 by D.C.I officers for dealing in endangered wildlife species and at the scene of crime, the motor vehicle registration number KBH XXXC was used to facilitate the illegal dealing by escorting the motor vehicle registration number KDE 027P. That the said Thomas Ngugi and James Odhiambo were subsequently charged on the 13<sup>th</sup> March, 2023 with the offence of dealing in endangered wildlife contrary to Section 92(2) of the *Wildlife Conservation and Management Act* in the Chief Magistrate's court at Kahawa vide criminal case number E033 of 2023 and the motor vehicle KBH XXXC was impounded by D.C.I officers while in the custody of Thomas Ngugi in full knowledge and authority of the respondent.
  9. The applicant states that upon searching motor vehicle KBH XXXC, National Identity card number 237XXXXXXX bearing the name of Thomas Ngugi was recovered, 3 East Africa Community interstate pass bearing the name of the respondent and Covid -19 vaccination Certificate bearing the name of the respondent were also recovered from the motor vehicle.
  10. That the applicant established that in the account opening forms for account number 01109XXXXXXXXX00 held at Cooperative bank in the name of Thomas Ngugi, the respondent was listed as the contact person and that they were business partners. That the applicant was able to establish that mobile account number 0724XXXXXX9b sent funds amounting to Ksh 158,000 to the respondent's Mpesa number 254XXXXXX2240 on diverse dates thus establishing a financial relationship between them.
  11. The applicant's further investigations established that the respondent acquired the two motor vehicles using the proceeds of crime from the illegitimate dealing with endangered wildlife species and that motor vehicle KBH XXXC is an instrumentality that was at the scene of crime with full knowledge of the respondent. The applicant avers that he has been using it to enhance his criminal activity and enrich himself to the detriment of the environment and the country at large.
  12. That under Schedule 6 of the *Wildlife Conservation and Management Act*, 2023 (sandal wood) is listed as a critical endangered, vulnerable, nearly threatened and protected species and under Article 2 of *the Constitution* of Kenya is required to enforce international obligations.
  13. The respondent did not file any response to the Originating Summons and the same proceeded Exparte.
  14. The application was disposed of by way of written submissions.

### **Applicant's Submissions**

15. The court has considered the Originating Motion together with the supporting affidavit, and the submissions filed by the applicant. The applicant has identified one issue for determination: -
  - a. Whether the motor Vehicles identified in prayer 1 and the funds identified in prayer 4 in the originating Motion constitute Proceeds of crime and thus liable to be forfeited to the applicant.



16. The applicant has submitted that the case before the court is a case where the Respondent has accrued a benefit from the illicit dealing in endangered wildlife species, sandalwood. Under the 6<sup>th</sup> schedule of the *Wildlife Conservation and Management Act*, 2013 *Osyris lanceolata* (sandal wood) is listed as a critical endangered, vulnerable, nearly threatened and protected species. That the East Africa's endangered Sandalwood is being illegally harvested at a rate that could see it becoming extinct.
17. The respondent's motor vehicle registration number KBH 571C was intercepted escorting the endangered species of sandal wood and the respondent was put at the scene of crime as the person who was in control of the said motor vehicle, and had no reasonable explanation where he acquired the funds from.
18. The applicant further submitted that through its investigations, it was able to establish a relationship between the respondent and Thomas Ngugi Thagishu that existed beyond that of an ordinary car hire agreement and that investigations of their Mpesa accounts revealed that the respondent had credited Ksh.717,500 in 27 transactions from his mobile number 0724XXXXX9 to mobile wallet of Thomas Thagishu.
19. The applicant averred that the respondent has not rebutted the evidence of the applicant and has relied on the case of *Nguku Vs. Republic* in which, the court held that where a party fails to produce certain evidence, a presumption arises that the evidence if it had been produced would be unfavorable to that party.
20. On whether the preserved funds and assets should be forfeited to the Government, the applicant submitted that the funds and the motor vehicles are proceeds of crime and thus liable for forfeiture to the Government. That the respondent failed to discharge the burden of proof bestowed on him to explain how he acquired the funds and the motor vehicles in question.

### **Analysis And Determination**

21. As rightly submitted by the applicant, there is only one issue for determination as identified by the applicant. This suit has been brought under Section 92 of the POCAMLA which donates jurisdiction to this court to make an Order for forfeiture, if it finds on a balance of probabilities that the property in issue;
  - a. Has been used or is intended for use in the commission of an offence or;
  - b. Is a proceed of crime.
22. Section 2 of the POCAMLA defines Proceeds of Crime as follows;

“proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, Property into which any property derived or realized directly from the offence was latter successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed.”
23. Forfeiture proceedings are civil in nature and the standard of proof is on a balance of probabilities. This was the holding in the case of *Director of Assets Recovery and Others vs. Green and Others*



(2005) EWHC 3168 cited in the case of Assets Recovery Agency vs. Pamela Ambos; Ethics & Anti-Corruption Commission (interested Party) (2018) eKLR where the court stated as follows;

“In civil proceedings for recovery under part 5 of the Act, the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained. The proceedings before this court are to determine the criminal origins of the property in issue and are not a criminal prosecution against the Respondent where presumption of innocence is applicable.”

24. The court in the case of Schabir Shaikh & Others vs. State Case CCT 86/06/ (2008) ZACC 7 as cited in the case of Assets Recovery vs. Quoradum Limited 7 others (2018) eKLR at paragraph 54 stated;

“.....the primary object of a confiscation Order is not to enrich the state but rather to deprive the convicted Person of ill-gotten gains. From this primary purpose, there are two secondary purposes. The first is general Deterrence: to ensure that people are deterred in general from joining the ranks of criminals by the realization that they will be prevented from enjoying the proceeds of the crimes they may commit.

And the second is prevention: the scheme seeks to remove from the hands of criminals the financial wherewithal to Commit further crimes. These purposes are entirely legitimate in our Constitutional Order.....”

25. The applicant herein, received information that motor vehicle registration number KBH XXXC had been intercepted while dealing with endangered wildlife species and in line with its mandate, it conducted investigations to identify, trace and recover proceeds of crime accrued to the respondent through the illegitimate dealing in endangered wildlife species. The respondent’s investigations established that at the time of interception of the motor vehicle KBH XXXC, it was carrying approximately 13.6 Tons of Sandal wood with street value of Ksh 55,200,000.

26. The Directorate of criminal investigations upon completion of investigations charged individuals who were arrested during the interception of the aforesaid motor vehicle namely Thomas Ngugi Thagishu and James Odhiambo, with the offence of dealing in endangered wildlife contrary to Section 92(2) of the *Wildlife Conservation and Management Act* in the Chief Magistrate’s court at Kahawa Nairobi vide Criminal Case No. E033 of 2023. The investigations that were conducted by the applicant established that motor vehicle KBL XXXC was being used in the commission of the crime and was in control of the respondent and constitute not only a proceed of crime but also an instrumentality that has been used in the commission of an offence. Further that the respondent has been accruing a benefit from the illegal trade which he has invested in the purchase of motor vehicle registration number KCP XXXG and the funds are subject of this application.

27. The analysis of the accounts established that all the accounts were opened and operated by the respondent and all the accounts inclusive those of the minors revealed movements of funds and suspicious transactions indicative of potential money laundering activities where significant cash deposits were followed by near-immediate withdraws of nearly the same amount and this repeated activity suggests an attempt to obscure the money trail, a common indicator of money laundering.

28. The applicant was also able to establish a relationship between the respondent and Thomas Ngugi Thagishu and the relationship went beyond that of a car hire agreement and that the respondent has accrued a benefit from the engagement with the said Thomas Ngugi Thagishu.



29. From analysis of the bank statements in the name of Thomas Ngugi Thagishu, the applicant was able to establish that the respondent had credited a total of Ksh. 717,500 in 27 transactions from his mobile wallet to the mobile wallet of Thomas Ngugi Thagishu. Further, the applicant established that the respondent was involved in dealing with Sandalwood and subsequently used the illegitimate acquired funds to purchase the assets that have been identified by the applicant to facilitate his illegal trade.
30. From the evidence on record, the court finds that the applicant has been able to show that there are reasonable grounds to believe that the respondent bank accounts and mobile wallet were used as conduits of money laundering and in an effort to conceal and disguise the nature, source, disposition or movement of the illicit funds the same were subsequently converted and transformed as proceeds of crime.
31. It is worth noting that the respondent did not defend the suit despite having been served with the Originating Motion. By failing to defend the suit, the respondent failed to demonstrate any legitimate source of the funds in those accounts and those in the names of the minors.
32. In view of the fore going, this court finds that the applicant has proved its case on a balance of probabilities against the respondent and makes the following Orders;
1. That an order be and is hereby issued declaring that the following motor vehicles are proceeds of crime and are liable for forfeiture to the Government;
    - a. Motor vehicle registration number KBH XXX C, Land Rover, Station Wagon in the name of Denis Irungu Mbatia;
    - b. Motor vehicle registration number KCPXXXG, Isuzu, Lorry/Truck in the name of Denis Irungu Mbatia.
  2. That orders of forfeiture be and are hereby issued for the motor vehicles registered in the name of the Respondent in Order 1 above, to the Assets Recovery Agency on behalf of the Government.
  3. That an order be and is hereby issued directing the Director General of the National Transport and Safety Authority to register the motor vehicles specified in prayer 1 above in the name of the Applicant, Assets Recovery Agency.
  4. That an order be and is hereby issued declaring that the following funds are proceeds of crime and are liable for forfeiture to the Government:
    - i. Kshs. 427, 185.90 held in Account Number 011XXXXXXXX85101 at Cooperative Bank in the name of Denis Irungu Mbatia
    - ii. Kshs. 3, 232.50 held in Account Number 011XXXXXXXX85100 at Cooperative Bank in the name of Denis Irungu Mbatia
    - iii. Kshs. 11, 162.00 held in Account Number 033XXXXXXXX841 at Family Bank in the name of Denis Irungu Mbatia
    - iv. Kshs. 11, 347.00 held in Account Number 03XXXXXXXX43 at Family Bank in the name of DIM
    - v. Kshs. 20, 923.03 held in Account Number 03XXXXXXXX44 at Family Bank in the name of C. K (Minor)



- vi. Kshs. 15,950.03 held in Account Number 03XXXXXXXX4991 a Family Bank in the name of W.N (Minor)
- vii. Kshs. 22, 026.23 held in Account Number 03XXXXXXXX826 at Family Bank in the name of J.W (Minor)
5. That an order be and is hereby issued that the above stated funds, benefit, profit generated from the funds stated in Order 4 above be forfeited to the Government and transferred to the Applicant.
6. That Order be and is hereby issued that the said funds be transferred to the Applicant's Deposit Account for recovered criminal assets funds, Account No. 12XXXXXXXX39 at Kenya Commercial Bank.
7. That the costs are awarded to the Plaintiff.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 25<sup>TH</sup> DAY OF JUNE, 2025**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Miss Irari for the applicant

Mr. Ayuo for the Defendant

Court Assistant – Dyphna/Adan

