



**Asset Recovery Agency v Mwinyi; Director of Criminal Investigations
(Interested Party) (Civil Application E010 of 2025) [2025] KEHC 11209 (KLR)
(Anti-Corruption and Economic Crimes) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL APPLICATION E010 OF 2025**

**LM NJUGUNA, J
JULY 30, 2025**

BETWEEN

ASSET RECOVERY AGENCY APPLICANT

AND

SALIM KILANGA MWINYI RESPONDENT

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS INTERESTED PARTY

JUDGMENT

1. What is before the court for determination is the Originating Motion dated the 3rd day of March, 2025 brought under Sections 81, 90 and 92 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAML), and Order 51 rule 1 of the Civil Procedure Rules. The application is premised on the grounds set out on the face of the same, and it's supported by the annexed affidavit sworn by Nicholas Sune, on even date. The applicant has sought the following Orders;
 1. That the Honourable Court be pleased to issue an order declaring that the following funds are proceeds of crime and/or instrument of crime and, therefore liable for forfeiture to the Government of Kenya:
 - i. Ksh. 1,327,000.00 and USD 3,610.00 held by the Directorate of Criminal Investigations Anti-Narcotics Unit Moi International Airport seized from Salim Kilanga Mwinyi alias Mwinyi Seif Salim.
 2. That this Honourable Court be pleased to issue orders of seizure and forfeiture of the following funds to the Assets Recovery Agency on behalf of the Government of Kenya:



- i. Ksh. 1,327,000.00 and USD 3,610.00 held by the Directorate of Criminal Investigations Anti-Narcotics Unit Moi International Airport seized from Salim Kilanga Mwinyi alias Mwinyi Seif Salim.
 3. That this Honourable Court be pleased to issue an order directing the Interested Party to surrender the above funds under prayer 2 to the Applicant and the same be deposited into the Criminal Assets Recovery Fund.
 4. That the Honourable Court makes any other ancillary order it may deem fit for the proper, fair, effective execution of its orders.
 5. That costs be provided for.
2. The applicant is the Assets Recovery established under Section 53 of the POCAMLA, a body Corporate with the mandate of identifying, tracing, freezing and recovering proceeds of Crime.
 3. The applicant avers that on the 23rd April, 2024, it received a duplicate file from the Directorate of Criminal Investigations regarding a case of suspected trafficking in narcotic substances involving the respondent herein, the contents of the said file, being that on the 13th April, 2024, police officers arrested the respondent and conducted a search at his residence at Magogono, Kisauni in Mombasa County, from where they recovered: -
 - a. Three white clear nylon packages in brownish powdery substance
 - b. Weighing machine.
 - c. Khaki envelopes
 - d. White clear nylon papers
 - e. Slab (transparent/ tinted glass)
 - f. Passport Number XXXXXXXXX
 - g. Five mobile phones
 - h. Cash amounting to Ksh. 1, 327,000
 4. Amongst the items that were recovered, were three white bags containing a substance suspected to be narcotic drugs weighing 170 grams with a market value of Ksh. 510,000 which the DCI officers sent to the Government Chemist on the 15th April, 2024 and were found to be Diacetylmorphine (heroin) vide a report marked Q35/2024 dated the 19th April, 2024. The officers also recovered Ksh. 1,327, 000 and USD 3, 610 believed to be proceeds of crime or instrumentality of crime.
 5. That the respondent was thereafter charged in April 2024 before the Chief Magistrate's court at Mombasa with the offence of trafficking in narcotic drugs contrary to Section 4(a) of the *narcotic Drugs and Psychotropic Substances (control) Act* No.4 of 1994 vide CMCC Criminal Case No. E790 of 2024 which is still pending before the court.
 6. The applicant opened inquiry file No. 34 of 2024 to investigate and inquire into the legitimacy, source and the destination of the funds for purposes of ascertaining whether the same is acquired from or is proceeds of crime or intended for use in commission of a crime. That after conducting investigations, into the respondent's involvement in drug trafficking and money Laundering, the investigations reveals that the subject funds are likely to be proceeds of crime obtained from the illicit trade and trafficking of narcotic drugs and, thus, proceeds of crime and Money Laundering.



7. That the applicant's investigations have established that the funds were disguised and concealed, raising reasonable belief of a money laundering scheme executed in an effort to conceal the nature, source, destination, disposition, and movement of the illicit funds contrary to the POCAMLA. Further, that the respondent avoided the formal financial system in Kenya and preferred cash transactions, a trend associated with drug traffickers avoiding financial scrutiny.
8. That there are reasonable grounds to believe that the funds in issue are a direct or indirect benefit, profits and/or proceeds of crime obtained from a complex money laundering syndicate contrary to POCAMLA provisions, and that the funds were used or intended for use in the commission of the offence of drug trafficking. It follows, therefore, that the funds are proceeds of crime and/or instruments of crime and should therefore be forfeited to the state through the applicant.
9. The respondent opposed the application vide a replying affidavit which he swore on the 15th May, 2025, in which he has averred that the application is bad in law, defective, offends the principle of fair hearing thus, an abuse of the process of court. He states that he does not engage in any illicit/illegal business of drugs as alleged by the applicant herein.
10. He avers that he is a money changer (hawking in US Dollars in Mombasa County) which he has done for close to five (5) years and he does not have a bank account because the money that comes in his possession does not stay for long since he is on exchange business and the rest is for running his family business which include chicken rearing and a vegetable stall owned by his wife. That in addition, he is a land broker and he is paid a commission of 10% for every land that he helps a client in selling.
11. He states that he is a family man, married with two (2) wives and the Ksh. 1, 327, 000 that was found in his house belongs to himself and his family being the monies collected from various sources of income and contributions for various projects. That he was in the process of buying a parcel of land and some of the confiscated money was contribution from his family for that purpose, and up to the point when this application was filed, he owed the vendor Ksh. 700,000.
12. He contends that although he has a pending criminal case, he is presumed innocent and the orders sought by the applicant at this stage are pre mature, and that he has never been convicted of any offence known within the Kenyan justice system or elsewhere in the world.
13. The applicant filed a supplementary affidavit sworn by Peter Mutisya, in which he avers that forfeiture proceedings are independent of the criminal trial at Mombasa Chief Magistrate's court. That the respondent's assertions of land brokerage, travel Agency, Foreign exchange hawking, vegetable and chicken rearing businesses are baseless, an afterthought and the fruits of creative imagination for the following reasons;
 - a. He has not presented any semblance of evidence to prove the existence of those businesses.
 - b. He has not shown any form of business records such as a foreign exchange license in line with Section 5(1) of the Foreign Exchange Act and Section 33B of the *Central Bank of Kenya Act*.
 - c. He has not produced any books of accounts, business records, trade permits, tax returns, tax compliance certificate, or electronic tax register (ETR) evidence, vendor/purchaser invoices, or anything to show businesses with legitimate source of funds.
14. Further, that the applicant investigated whether the respondent has any declared income to the Government and established that though he is registered for income tax and has a PIN Certificate, he has never filed tax returns.



15. The applicant maintains that the confiscated sums of money are proceeds of crime and that there are reasonable grounds to believe that the funds in issue were used or intended for use in the commission of the offence of drug trafficking and that the said funds are a direct and indirect benefit, profit and/or proceeds of crime.
16. The application was disposed of by way of written submissions and both parties complied with the directions on filing of the same.

Applicant's Submissions

17. The applicant identified only one issue for determination to wit;
 - a. Whether the funds the subject of the application herein are proceeds of crime and thus liable for forfeiture to the state.
18. The applicant submitted that, the respondent was arrested and charged with trafficking in narcotic drugs and upon investigations by the applicant, he had no bank accounts with any of the registered financial institutions. That for this reason when he was arrested, some of the recoveries made in his house were cash, drugs and a weighing machine.
19. The applicant contended that the subject funds are likely to be proceeds of crime from the illicit trade of narcotic Drugs and that there are reasonable grounds to believe that the funds were obtained through illicit trade. That the money that was recovered from his house was to facilitate his illicit business in narcotics and that the circumstances and the context of the seizure of the funds present a suspicious and questionable state of affairs, considering the presence of narcotic Drugs and related paraphernalia.
20. The applicant submitted that it has discharged its burden of proof and it fell upon the respondent to challenge the evidence presented. That the respondent has claimed that he is a jack of all trades engaging in various businesses but he has not presented any evidence to substantiate these wild allegations instead, he asked the court to take a leap of faith and believe him.
21. It was also submitted that the filing of nil returns by the respondent demonstrates that he had no taxable income or his businesses were inactive and therefore, the money that was recovered from his house was obtained from the illicit trade in narcotics.
22. The applicant relied on a number of authorities as hereunder;
 1. Mozartbet Kenya Limited vs. Assets Recovery Agency & 2 others KECA 897 (KLR)
 2. Assets Recovery Agency vs. ALI Abdi Ibrahim (2022) eKLR cited in the case of Assets Recovery Agency vs. Pamela Aboo: EACC interested party (2018) eKLR
 3. William Kabogo Gitau vs. George Thuo & 2 others (2010) 1 KLR 526
 4. Assets Recovery Agency vs. Namunyu & 2 others (2024)HC 7954 (KLR)
 5. Assets Recovery Agency vs. Lilian Wanja Muthoni t/a Sahara Consultants & 5 others (2020)eKLR
 6. National Director of Public Prosecutions vs. Rabuzzi Chatlotte Elizabeth (94/2000) (2001)ZASCA 12
 7. Assets Recovery Agency vs. Ahmed & 2 others (2025) KEHC 4704 (KLR)



Respondent's Submissions

23. The respondent submitted that the orders sought herein are based on suspicion. That under Section 92 of the POCAMLA the burden lies with the applicant to establish a prima facie case on a balance of probabilities that the money in the respondent's possession were proceeds of crime. That the applicant was under a duty to establish that the sources of the funds were unlawful and/or illegal and this cannot be discharged by mere suspicion nor can the legal burden be shifted to the respondent requiring him to prove that the funds were not proceeds of crime. The respondent contended that the applicant has not discharged the burden of proof under Section 107 and 108 of the *Evidence Act*, and that by the fact that the respondent is facing criminal charges cannot be proof enough to buttress the applicant's allegations of criminal activities.
24. That the applicant was required to demonstrate a causal connection between the said money and the offence and/suspicion of criminal activities. The case of *Aboo vs. Asset Recovery & another* (court of appeal No. 452 of 2018) was relied on, in which the court held that the burden of proof cannot be shifted.

Analysis And Determination

25. The court has considered the application, the affidavits and the submissions by the parties herein. As submitted by the applicant, the only issue for determination is;

Whether the funds the subject of the application herein are proceeds of crime and thus liable for forfeiture to the State
26. The applicant has moved the court mainly under Sections 81,90 and 92 of the POCAMLA. Section 92 donates the jurisdiction to this court to make an order for forfeiture. It provides;
 1. The High court shall, subject to Section 94, make an Order applied for under Section 90(1) if it finds on a balance of probabilities that the property concerned-
 - a. Has been used or is intended for use in the omission of an offence; or
 - b. Is a proceed of crime.
27. Section 2 of the POCAMLA defines Proceeds of crime as follows;

“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 proportionate basis, property into which any property derived or realized directly from the offence was later successfully 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.”
28. The definition of Proceeds of Crime is broadly cast, even if a respondent were to prove that some part of the money seized by the police was legitimately acquired, the same would still be adjudged proceeds of crime by virtue of being comingled with illicit money. This was the holding in the case of *Assets Recovery Agency vs. Namunyu & 2 others* (2024) in which the court stated;

“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. 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).”

29. 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 & others vs. Green and others (2005) EWHC 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”.

30. The court in the case of Schabir Shaikh & others vs. State Case CCT 86/06/ (2008) zacc7 as cited in the case of Assets Recovery vs. Quaradum 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 second is prevention: the scheme seeks to remove from the hands of criminals the financial wherewithal to commit further crimes. These purpose are entirely legitimate in our Constitutional order.....”

31. Further in the case of Assets Recovery Agency vs. Ahmed & 2 others (2025) KEHC 4704 (KLR) the court stated;

“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 the youth who get rendered zombies, the dictate is even more compelling.”

32. The respondent herein has contended that though he is facing criminal charges in Criminal Case No. E790/2024 he is still innocent and that the application and the orders sought are based on suspicion. In this regard it is worth noting that forfeiture proceedings are civil in nature and the degree of proof is on a balance of probabilities. Civil recovery proceedings are directed at the seizure of the property and not convicting of any individual and thus, there is no reason to apply the criminal standard of proof. See the case of Asset Recovery Agency & others vs. Audrene Samantha Rowe & others (Civil Division Claim No. 2012 HCV 02120 and that of Abdi Ibrahim (supra)

33. In the matter herein, police officers arrested the respondent on the 13th April, 2024 and in the process, they recovered substances suspected to be narcotic Drugs. The samples were subjected to tests by the Government analyst and found to be Diacetylmorphine (heroin). The officers also recovered Ksh. 1, 327,000 and USD 3, 610 which were believed to be proceeds of crime. The respondent was charged



with the offence of trafficking in narcotic drugs in Mombasa Criminal case No. E790 of 2024 which is still pending in court.

34. The applicant's investigations have established that there are reasonable grounds to believe that the funds were obtained through illicit trade in narcotics Drugs and thus proceeds of crime.
35. On his part, the respondent has denied engaging in any illicit/illegal business of Drugs as alleged by the applicant. According to him, the Ksh. 1,327,000 and USD 3,610 that was collected from his house belongs to his family and which was collected from various sources of income and contributions for various projects. In explaining the sources, he stated that he is a money changer hawking Dollars in Mombasa County, a business he has done for the last five years.
36. In addition to the above business, it was his case that he is a land broker and earns commissions upon selling a parcels of land for his clients at the rate of 10%. He stated that the funds that were recovered include money from family businesses by his two wives and his own vegetable and chicken business.
37. It is his contention that he does not own a bank account since the money that comes to his possession does not stay for long as he is always on exchange business and the rest for running the family businesses.
38. Though the respondent has denied involvement in drug trafficking and would like the court to believe his evidence, he has not produced any iota of evidence before this court by way of documents or any other form of evidence to convince the court that he is indeed engaged in any of the businesses as he alleges.
39. Further, his explanation as to why he does not operate a bank account is not convincing at all. The reason why the sum of Ksh. 1,327,000 and USD3, 610 was found in the house is not convincing at all. This was not little money to be found in the house without a plausible explanation as to the source and the reason for the money. This is not to say that there is anything wrong with it, but the reasons advanced by the respondent are not plausible.
40. To the contrary, the applicant's hypothesis is more believable that the respondent avoided formal financial system in Kenya and preferred cash transactions with the intention of avoiding financial scrutiny. It was also meant to conceal the nature, source, destination, disposition and movement of the illicit funds.
41. The court is persuaded by the evidence by the applicant that the funds in issue are proceeds of crime and that the same should be forfeited to the state.
42. In the end, the court finds that the applicant has proved its case on a balance of probability and grants the following orders:-
 1. That an order is hereby issued declaring that the following funds are proceeds of crime and/or instrument of crime and, therefore liable for forfeiture to the Government of Kenya:
 - i.) Ksh. 1,327,000.00 and USD 3,610.00 held by the Directorate of Criminal Investigations Anti-Narcotics Unit Moi International Airport seized from Salim Kilanga Mwinyi alias Mwinyi Seif Salim.
 2. That orders of seizure and forfeiture are hereby issued for the following funds to the Assets Recovery Agency on behalf of the Government of Kenya:
 - i. Ksh. 1,327,000.00 and USD 3,610.00 held by the Directorate of Criminal Investigations Anti-Narcotics Unit Moi International Airport seized from Salim Kilanga Mwinyi alias Mwinyi Seif Salim.



3. That an order is hereby issued directing the Interested Party to surrender the above funds under prayer 2 to the Applicant and the same be deposited into the Criminal Assets Recovery Fund.

43. The applicant is awarded costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF JULY, 2025.

.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Mr. Oganda for the Applicant

No appearance for the Respondent

No appearance for the Interested Party

Court Assistant – Wilson

