



**Assets Recovery Agency v Odaye (Anti-Corruption and Economic Crimes Case E001 of 2025) [2025] KEHC 12245 (KLR) (Anti-Corruption and Economic Crimes) (27 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12245 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE E001 OF 2025  
LM NJUGUNA, J  
AUGUST 27, 2025**

**BETWEEN**

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

**AND**

**HESBORN WAFULA ODAYE ..... RESPONDENT**

**JUDGMENT**

1. The applicant has moved this court by way of the Originating Motion dated the 21<sup>st</sup> January, 2025 under Sections 90 and 92 of the Proceeds of Crime and Anti- Money Laundering Act (POCAMLA) and Order 51 Rule 1 of the Civil Procedure Rules, seeking the following Orders: -
  1. That this Honourable Court be pleased to issue orders declaring motor vehicle registration numbers KBZ 514Z Toyota Voxy chassis number AZR60-3105047 and KBQ 864X Toyota Corolla KBQ 864X chassis number NZE121-0281240 registered in the name of Hesborn Wafula Odaye as proceeds and/ or instrument of crime liable for forfeiture to the Government of Kenya.
  2. That this 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 Agency on behalf of the Government of Kenya. \*
  3. That this Honourable Court be pleased to issue an order directing the Director General National Transport and Safety Authority to transfer title/ ownership of said motor vehicles to the Assets Recovery Agency on behalf of the Government of Kenya.



4. That the Honourable Court makes any other ancillary orders it may deem fit for the proper, fair, and effective execution of its orders.
5. That costs be provided for.
2. The Application is premised on the grounds set out on the body of the same, and it is supported by the affidavit sworn by the respondent, on even date. The applicant states that: -
  1. That the Applicant is the Assets Recovery Agency established under Section 53 of the *Proceeds of Crime and Anti-Money Laundering Act* 2009 (POCAML) as a body corporate with the mandate of identifying, tracing, freezing, and recovering proceeds of crime.
  2. That pursuant to Section 53A (5) of POCAML the Assets Recovery Agency's staff have powers, privileges, and immunities of a police officer to enable it to identify, trace, seize, and recover proceeds of crime,
  3. That Part VIII of POCAML, authorizes the Agency to institute Civil Forfeiture proceedings for the recovery of proceeds of crime including seeking orders prohibiting any person, subject to such conditions as the Court may specify, from dealing in any manner with any property if there are reasonable grounds to believe that such property is a proceed of crime and/ or instrumentality of crime.
  4. That under Section 90 of POCAML, where a preservation order is in force, the Agency may apply to the High Court for an order of forfeiture to the Government of all or any of the property that is subject to the preservation orders.
  5. That the Respondent is an adult male, a resident of Funyula, and the registered owner of motor vehicle registration number KBZ 514Z and KBQ 864X.
  6. That on 20<sup>th</sup> March 2024, the Agency received a duplicate police file from the Directorate of Criminal Investigations regarding a case of suspected trafficking in narcotic substances involving the Respondent.
  7. That police officers intercepted the Respondent while driving motor vehicle registration number KBZ 514Z and in the process recovered 268 kilograms of cannabis with a market value of Kshs. 8,040,000.00.
  8. That the Respondent was later charged on 19<sup>th</sup> March 2024 before the Magistrate's Court at Port Victoria (Busia County) with the offence of trafficking in narcotic drugs contrary to Section 4(a)(ii) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 vide Magistrate's Court at Port Victoria Criminal Case No. Ell 6 of 2024 which is pending before the court.
  9. That the Applicant's investigations established that the Respondent has acquired assets / properties using the proceeds obtained from the illegitimate trade of narcotic drugs and channeled the illegitimate funds through identified bank and MPESA accounts belonging to the Respondent to conceal the true source of funds, which are proceeds of crime contrary to the provisions of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994, Proceeds of Crime and Anti-Money Laundering Act 2009 and Prevention of Organized Crimes Act 2010.
  10. That investigations established that motor vehicle registration number KBZ 514Z Toyota voxy and KBQ 864X Toyota Corolla registered in the name of HESBON WAFULA ODAYE are



proceeds of crime purchased using funds acquired directly or indirectly from trafficking in narcotic substances.

11. That investigations further established that motor vehicle registration number KBZ 514Z Toyota Voxy registered in the name of HESBON WAFULA ODAYE is an instrument of crime.
  12. That there is sufficient evidence to support a finding that the subject matter motor vehicles were acquired using proceeds of crime from the illicit trafficking and trading in narcotic drugs in contravention of the *Proceeds of Crime and Anti-Money Laundering Act* 2009.
  13. That there is enough proof that the motor vehicle registration number KBZ 514Z was used to commit the offence of trafficking in narcotic drugs thus an instrument of crime.
  14. That there are Court orders preserving the subject matter of this suit.
  15. That unless this Honourable Court grants the orders, sought, the economic advantage derived from the commission of crimes will continue to benefit the Respondents to the disadvantage of the general public.
  16. That it is in the public interest and the interest of justice that the orders sought are granted and the identified asset be forfeited to the Applicant.
  17. And any other grounds that may be adduced during the hearing of the suit.
3. It is established under Section 53 of the POCAMLA as a body Corporate with the mandate of identifying, tracing, freezing, and recovering proceeds of crime and pursuant to Section 53A (5) of the said Act, the applicant's staff have powers, privileges, and immunities of a police officer to enable it to carry out its mandate aforesaid.
  4. That Police officers intercepted the respondent while driving motor vehicle registration Number KBZ 514Z and in the process recovered 268 Kilograms of cannabis with a market value of Ksh.8,040,000.00. The officers flagged the said motor vehicle along Namboboto- Funyula road, arrested the respondent who was driving the motor vehicle and on searching the vehicle, they recovered the following items:-
    - i. Six sacks wrapped in black polythene containing green dry plant material suspected to be narcotics
    - ii. A driving licence
    - iii. A P3 form in the name of the respondent
    - iv. Insurance stickers.
  5. The samples from the rolls found in the six sacks of dry green plant material were subjected to tests by Government analyst and found to be cannabis. That the applicant obtained warrants to investigate bank accounts belonging to the respondent and associates vide Misc. application number E1074/2024, which established that there were suspicious deposits, withdrawals and transfers to individual accounts. Further, the applicant established that the Mpesa number 0721746669 in the name of the respondent had suspicious cash deposits, transfers and withdrawals and that it received cash deposits amounting to Ksh.18,312,580.00 in 1,678 transactions between the years 2020 and 2024.
  6. That the investigations also revealed that the Co-operative Bank account number 01109237210800 in the name of the respondent had suspicious cash deposits, withdrawals, Mpesa to Bank transfers, bank to Mpesa transfers, and had credits ranging from Ksh.10,000 to Ksh. 500,000 and the amounts were quickly withdrawn in small bits in an attempt to evade reporting requirements by the Central Bank of



- Kenya Prudential Guidelines. That the bulk of credits in the said account consisted predominantly of cash deposits and Mpesa to bank deposits from the respondent Mpesa number 0721746669.
7. That the applicant also established that on the 31<sup>st</sup> January, 2020, the respondent's Co-operative bank account number 01109237210800 received a cash deposit of Ksh 500,000 narrated as "CASH DEPOSIT KEVIN OWINO" and on the same day, the said KEVIN OWINO withdrew Ksh.500,000.00 from his Co-operative bank account number 01108315481600. That the investigations established that the said Kevin Owino was convicted by the JKIA Magistrate's court for the offence of trafficking in narcotics and sentenced to 20 years' imprisonment and a fine of Ksh.20 Million, on the 16<sup>th</sup> August, 2022. That he is currently serving his sentence at Industrial area prison and the motor vehicle he was using to transport the drugs was forfeited to the State.
  8. The applicant avers there is a direct link between the respondent and a convicted drug trafficker as demonstrated by the bank statements of the respondent and those of Kevin Owino. That the modus operandi of the respondent's web of drug trafficking involved using motor vehicles to ferry hundreds of kilograms of cannabis to different parts of the Country before he was finally halted by the state.
  9. That the applicant's investigations established that the respondent subsequently acquired assets/properties using proceeds from the illegitimate trade in narcotics and registered the same under his name so as to conceal and disguise the source of the funds applied to procure the said assets. That additionally, apart from the formal financial system involving financial institutions and Mpesa, the respondent transacted in other ways including cash to receive money and subsequently acquire assets in order to disguise the origin and designation of money from drug trafficking.
  10. The applicant contends that there are reasonable grounds to find that motor vehicles KBZ 514Z and KBQ 864X were purchased using proceeds of crime acquired directly or indirectly, but cumulatively over a long period of time through suspected drug trafficking and that the respondent's explanation on acquisition of the vehicles is inconsistent with the statement that he gave to the police. Further, that he could not substantiate his alleged sources of income from a timber business. That moreover, the respondent is registered for income tax with the Kenya Revenue Authority but he does not file returns or pay taxes for the alleged business of selling timber during the period of interest.
  11. That unless the court grants the orders sought, the economic advantage derived from the commission of crimes will continue to benefit a few to the detriment of the general public.
  12. The respondent did not file any response despite having been served with the application and therefore, the matter proceeded exparte.
  13. The court gave directions on filing of submissions and the applicant complied with the said directions.

#### **APPLICANT'S SUBMISSIONS**

14. The applicant identified only one issue for determination as follows;
  - a. Whether motor vehicle registration Nos. KBZ 514Z and KBQ 864X are proceeds of crime and /or KBZ 514Z is instrument of crime and thus liable for forfeiture to the state.
15. The applicant submitted that the respondent was arrested and thereafter charged with the offence of trafficking in narcotics drugs; that he acquired both motor vehicles between 2019 and 2024 and he operated bank and Mpesa accounts that exhibited suspicious transactions, including deposits, withdraws and transfers below the reporting threshold prescribed by the Central Bank of Kenya Prudential Guidelines.



16. The applicant submitted that it established a relationship between the applicant and one Kevin Owino Odeyo who was convicted of trafficking in narcotics through their bank statements, and that the common link between them was that they both engaged in drug trafficking using private motor vehicles and were both arrested in possession of cannabis sativa. That the money in the respondent's Mpesa and bank accounts are likely proceeds of crime obtained from illicit trade and trafficking of narcotic drugs, contrary to the Provisions of *Narcotic Drugs and Psychotropic Substances (control) Act* No. 2009.
17. It submitted that it has proved its case pursuant to Section 107 of the *Evidence Act* by showing that it is more likely that motor vehicle registration number KBZ 514Z and KBQ 864X are proceeds of crime and/or motor vehicle KBZ 514Z was used in the commission of the said offence and the respondent has not offered any evidence to the contrary. Further, that his explanation in the statement that he gave to the police on sources of income were not satisfactory and that even if there was proof (and there is none), that part of the money used to acquire the two motor vehicles was legitimately acquired, the same would be adjudged proceeds of crime by virtue of being comingled with illicit money.
18. Moreover, the applicant established that the respondent is a registered income tax resident but has never filed tax returns or declared any income to the Kenya Revenue Authority and that the filing of nil returns demonstrates that the respondent had no taxable income, or his businesses were inactive.

### **Analysis and Determination**

19. The court has considered the Originating Motion together with the supporting affidavit and the submissions filed by the applicant. As submitted by the applicant, the only issue for determination is:-
  - a. Whether motor vehicles registration numbers KBZ 514Z and KBQ 864X are proceeds of crime and /or KBZ 514Z is instruments of crime and thus liable for forfeiture to the state?
20. The applicant herein is a body Corporate established under Section 53 of the POCAMLA whose mandate is to identify, trace, freeze and recover proceeds of crime.
21. The Originating Motion herein has been brought under Sections 90 and 92 of the POCAMLA. Section 92 provides: -
  - “ 92. Making of forfeiture order
    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 commission of an offence; or
      - (b) is proceeds of crime.
    - (2) The Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the Government of property forfeited to it under such an order.
    - (3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the Court from making the order.



- (4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
- (5) The Registrar of the High Court making a forfeiture order shall publish a notice thereof in the Gazette as soon as practicable but not more than thirty days after the order is made.
- (6) A forfeiture order shall not take effect—
  - (a) before the period allowed for an application under section 89 or an appeal under section 96 has expired; or
  - (b) before such an application or appeal has been disposed of.”

22. Section 2 of the POCAMLA defines proceeds of crime to mean;

“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 later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property from the time the offence was committed.”

23. Forfeiture proceedings such as this one before the court are civil in nature, and the standard of proof is on a balance of probabilities. In the case of *Assets Recovery Agency vs. Ali Ibrahim* (2022) eKLR, the court cited the case of *Assets Recovery Agency vs. Pamela Aboo; EACC Interested Party* (2018) eKLR stating thus: -

“Forfeiture proceedings are civil in nature and that is why the standard of proof is on a balance of probabilities. See Section 92(1) of proceeds of crime and Anti- Money Laundering Act. In the case of *Director of Asset Recovery and others, Republic vs. Green & others* (2005) EWHC 3168 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.

64. 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. In the case of *ARA & others vs. Audrene Samantha Rowe & others* civil Division Claim No. 2012 HCV 02120 the court of appeal stated:-

“.....that in deciding whether the matters alleged constituted unlawful conduct when a civil recovery order is being made is to be decided on a balance o probability. Civil recovery proceedings are directed at the seizure of property and not the convicting of



any individual and thus there was no reason to apply the criminal standard of proof.....” (Emphasis mine)

24. In the case herein, on the 20<sup>th</sup> March, 2025, the applicant received a police file from the Directorate of Criminal Investigations regarding a case of suspected trafficking in narcotic substances involving the respondent. The contents of the said police file were that, on the 18<sup>th</sup> March 2024, police officers from Sio Port police station received information that motor vehicle registration KBZ 514Z Toyota Voxy was being used to traffic narcotic drugs. On flagging down the said motor vehicle along Namboboto-Funyula road, the officers arrested the respondent with;
- a. Six sacks wrapped in black polythene containing green dry plant material suspected to be narcotic drugs.
  - b. A driving licence.
  - c. A P-3 form in the name of the respondent.
  - d. Insurance stickers.
25. Samples from the rolls found in the six (6) sacks of green plant material were subjected to tests and found to be Cannabis Sativa and the respondent was charged with the offence of trafficking in narcotic drugs in Criminal Case Number E016 of 2024 at the Magistrate’s court at Port Victoria which is still pending.
26. Upon investigating the respondent’s bank and Mpesa accounts, the applicants established that there were suspicious deposits, withdrawals, transfers to individual accounts for which the respondent could not sufficiently explain the sources of the funds for example a cash deposit that was made on the 31<sup>st</sup> January, 2020 to the respondent’s account held at Co-operative bank of Ksh. 500,000.00 by one KEVIN OWINO. Investigations by the applicant revealed that the said Kevin Owino was convicted for the offence of trafficking in narcotic drugs and was sentenced to serve 20 years’ imprisonment or a fine of Ksh.20 Million.
27. The records held at the National Transport and Safety Authority established that the respondent is the registered owner of motor vehicle registration numbers KBQ 864X and KBZ 514Z but he could not sufficiently explain the sources of income from which he acquired the vehicles. Though he did not defend the suit, in the statement that he gave to the police in the criminal case, he stated that he is a timber seller but he did not tender any evidence in this matter to prove that indeed such business existed and how much he was earning from the said business. Further, that though he was registered for income tax, he did not file returns or pay taxes for the alleged business in the period of interest, yet his bank statements show that he was transacting large sums of money allegedly from his said business.
28. In any event, and as rightly submitted by the applicant, even if the respondent had succeeded in explaining the source of part of the funds, the same would be adjudged as proceeds of crime by virtue of being comingled with illicit money. In the case of Assets Recovery Agency Vs. Namunyu & 2 others (2024) KEYHC 7954 (KLR) the court had this to say;

“The definition of proceeds of crime is broadly cast. Making recoverable or realizable assets, to include, the actual illicit property or related property or comingled property. Related property refers to property into which or for which the illicit property was converted or exchanged, respectively. It also includes benefit or gain or income or profit arising from investment of the illicit property or related property. Comingled property refers to the



mixing of illicit property and other property of the defendant or third properties (associated property).”

29. From the evidence available, am satisfied that the respondent used motor vehicle KBZ 514Z to transport narcotic drugs, and thus, the said motor vehicle is an instrument of crime. Further, there are reasonable grounds to find that motor vehicle registration number KBQ 864X was purchased using proceeds of crime acquired directly or indirectly but cumulatively over a long period of time through suspected drug trafficking.
30. In the end, I find that the applicant has proved its case against the respondent on a balance of probability. The Originating Motion dated the 21<sup>st</sup> January, 2025 is hereby allowed in terms of prayers 1, 2 and 3
31. The applicant is awarded the costs of the suit.

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

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of

Mr. Ogonda for the Applicant

No appearance for the Respondent

Court assistant - Adan

