



**Assets Recovery Agency v Muturi t/a Antoren Investments & another
(Civil Application E041 of 2024) [2025] KEHC 12247 (KLR) (Anti-
Corruption and Economic Crimes) (27 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL APPLICATION E041 OF 2024**

**LM NJUGUNA, J
AUGUST 27, 2025**

BETWEEN

ASSETS RECOVERY AGENCY RESPONDENT

AND

**ANTONY MWENDA MUTURI T/A ANTOREN
INVESTMENTS RESPONDENT**

AND

EZIRA MWENDE NYAMU T/A LAURYKA ENTERPRISES APPLICANT

RULING

1. The applicant herein, Ezira Mwendu Nyamu, has moved this court by way of the Notice of Motion dated the 27th, June 2025 under Article 40 of *the Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40, rule 1(a) and Order 51 rule 1 of the Civil Procedure Rules, Cap 21 Laws of Kenya. The application is premised on the grounds set out on the body of the application and it is supported by the annexed affidavit sworn by the applicant, on even date. The applicant has sought for the following Orders;
 - a. Spent.
 - b. That this Honourable Court be pleased to issue an order directing the release of the excess undisputed monies in the amount of Kshs.4,082,236.65 held in the Co-operative Bank of Kenya account No.xxxxxx in the name of Lauryka Enterprises, to the Applicant.
 - c. That such further or other consequential orders as the Honourable court may deem just.



- d. That costs of this application be in the cause.
2. The applicant avers that, the respondent, Assets Recovery Agency, filed a forfeiture application dated the 10th December, 2024 seeking to forfeit Ksh.2, 199, 142, 70 held in his business account No. xxxxxx at Co-operative Bank of Kenya.
3. That following the application, his bank account which has a balance of Ksh. 6,281,379.35 was frozen which has affected his ability to operate and meet his financial obligations yet the frozen amount is more than the targeted amount of Ksh. 2,199,142.70.
4. That the applicant believes that the Ksh 4,082, 236.65 being the excess amount over and above the amount that Asset Recovery is claiming, is not in dispute and it is not the subject of the ongoing forfeiture application.
5. He avers that the freezing of the entire account without distinguishing between the targeted and non-targeted funds is not only disproportionate but also an infringement of his right to property guaranteed under Article 40 of *the Constitution*.
6. The Respondent/Asset Recovery filed Grounds of Opposition dated the 23rd July, 2025 in which it has relied on the following Grounds;
 - a. The application discloses no cause of action against it.
 - b. The application involves a dispute between the applicant and his bank
 - c. The application has been filed in the wrong forum.
 - d. The application is vexatious, frivolous and an abuse of the court process.
7. The 1st Respondent on his part indicated that he is not opposing the application.
8. The application was disposed of by way of written submissions and both parties complied with directions on filing of submissions.

Applicant's Submissions

9. The Applicant has submitted on three issues as follows;
 - a. Whether the application discloses a reasonable cause of action.
 - b. Whether freezing the applicant's entire account is unconstitutional and disproportionate.
 - c. Whether the 2nd Respondent assertion that this dispute lies with the applicant's bank has merit.
10. He has submitted that the Proceeds of Crime and Anti- Money Laundering Act (POCAMLA) allows a party to seek review of an Exparte Order when it causes undue hardship and hence this application. It is her case that the order has crippled her business, resulting in financial distress and loss of income. That her application discloses the fact that there exists an unauthorized freeze of legitimate funds held in her bank account, and this constitute a breach of her rights under *the Constitution*.
11. That the excess amount of Ksh. 4,082,236.65 comprises of undisputed monies and is not part of subject matter herein and that the 2nd respondent has not presented any evidence to the contrary. She submitted that the hardship outweighs the risk as she has no other funds or income to run her business and the excess amount covers her living and business expenses.



12. It is her contention that, the conflict herein is between the 2nd Respondent and herself as the Bank cannot ignore the order nor can it distinguish between the disputed and undisputed funds. Reliance was placed on the case of Ethics and Anti-Corruption Commission vs Catherine Nkirote Maingi & 2 others (2017) eKLR in which the court held that preservation order should be limited to funds linked to investigations.

2ND Respondent's Submissions

13. The 2nd Respondent identified only one issue for determination to wit;
- a. Whether the application discloses any cause of action
14. It has submitted that the application does not disclose any cause of action because the preservation order was limited to Ksh. 2,199,142.70 held in the applicant's account at Co-operative bank account No. xxxxxx. Reliance was placed on the case of DT Dobie & Company (Kenya) vs Joseph Mbaria Muchina & another (1980) KECA 3 (KLR) and that of Republic of Peru vs Peruvian Guano Co. (1886) 36Ch D 489.
15. The 2nd Respondent avers that any other sum the applicant may hold in the bank account (over and above the monies) are not subject to these proceedings and therefore, this court does not have jurisdiction over such sum.
16. It was further submitted that the preservation order issued in respect of the monies does operate as a general order to restrict debits from the bank account issued under Sections 118 and 118 A of the Criminal Procedure Code and Section 180 of the *Evidence Act*. That the preservation order only restricts the respondent from transacting, withdrawing or dealing with the monies and that any sum above the monies, if any, would not be affected by the preservation order.

Analysis And Determination

17. The court has considered the application and the supporting affidavit, Grounds of opposition and the submissions filed herein and in my considered view, the only issue for determination is whether the application has merits.
18. The applicant is seeking an order for release of Ksh.4,082,236.65 being undisputed amounts held in her Co-operative bank account number 01100016637001 after the 2nd respondent applied and successfully obtained preservation order in that account.
19. The 2nd respondent by his own admission has stated that the preservation order was limited to Ksh.2,199,142.70. It is its further submission that any other sum that the applicant may hold in that account (over and above the monies) are not subject of these proceedings. The applicant went on to submit that the preservation order issued in respect of the monies does not operate as a general order to restrict debits from the bank account.
20. In my considered view, and going by the submissions made by the 2nd respondent, it does not have any objection to the application despite filing the Grounds of Opposition.
21. I find that the application has merits and I do allow the same.
22. I make no order as to costs
23. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF AUGUST 2025.



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L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Kamanja holding brief for Mr. Abdullahi for the Applicant

Mr. Wambua for the 1st Respondent

Mr. Wanda for the 2nd Respondent

Court Assistant - Adan

