



REPUBLIC OF KENYA



KENYA LAW
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**Assets Recovery Agency v Kala & another (Civil Suit E018 of 2023) [2024] KEHC 2996 (KLR)
(Anti-Corruption and Economic Crimes) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2996 (KLR)

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

CIVIL SUIT E018 OF 2023

EN MAINA, J

MARCH 20, 2024

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

LULE ABDI KALA 1ST RESPONDENT

LULU PEARL LOGISTICS LIMITED 2ND RESPONDENT

JUDGMENT

Introduction

1. This application seeks the forfeiture of a sum of Kshs. 1,317,032.00 in a bank Account Number 1080279804812 domiciled in Equity Bank in the name of the 2nd Respondent. The application is premised on the ground that the said monies are suspected to be proceeds of crime.
2. The Applicant herein obtained a preservation order for the said money order which was gazetted on 19th May 2023 vide Gazette Notice No. 6479 of CXXV-No. 116 and hence subsisting at the time of filing this application.

The Applicant's case

The application which is brought by way of an Originating Motion dated 14th August 2023 under Sections 90 & 92 of the *Proceeds of Crime and Anti-Money Laundering Act* (the POCAMLA) and Order 51 Rule 1 of the Civil Procedure Rules, is premised on grounds that the 1st Respondent is a Kenyan Citizen and the sole Director and Shareholder of Lulu Pearl Logistics Limited, the 2nd Defendant herein; that the 2nd Respondent is A limited company registered on 4th May 2020, registration number PVT-DLURYMV and holds account number 1080279804812 (KSHS) at Equity bank Limited; that the Applicant received information that there were suspicious funds transferred



into the Respondent's account, which funds were suspected to be proceeds of crime; that the investigations have revealed that this is a scheme of money laundering aimed at disguising the source and destination of the funds hence proceeds of crime pursuant to the provisions of *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) liable to be forfeited to the Government; that the 1st Respondent could not give a clear description on the source of funds as there is no evidence of her conducting any logistic business and further could not account as to the source of the funds; that investigations revealed that between 6th May, 2020 to 18th April, 2023 the account number 1080279804812 in the name of Lulu Pearl Logistics Limited had transacted about 11M; that investigations established that the account number 1080279804812 in the name of Lulu Pearl Logistics Limited had mass deposits and withdrawals below the mandatory reporting threshold; that there are reasonable grounds to believe that the funds held in the Respondents' bank account are conduits of money laundering contrary to Section 3, 4 and 7 as read together with Section 16 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA); that it is in the public interest that the orders sought are granted and the suspected funds be forfeited to the Government.

3. The application is supported by the affidavit sworn on 13th April 2023 by MOHAMED HUSSEIN, an investigator attached to the Applicant, which reiterates the grounds on the face of the application and deposes further that on 12th April 2023, the Agency received information of suspected human trafficking and money laundering involving the Respondents; that investigations established that the 2nd Respondent was registered on 4th May 2020 with the 1st Respondent as its sole director; that the Agency obtained orders via Criminal Application No. E028 OF 2023 to search and inspect the 2nd Respondent's account whereupon it inspected the account and discovered that the account opening documents indicated that the 2nd Respondent dealt with general supplies, that the account was operated by the 1st Respondent and that during the period 1st January 2020 and 18th April 2023 the account received suspicious cash deposits inconsistent with the indicated nature of business; that there were notable frequent and suspicious cash deposits and withdrawals below the reporting threshold of the Kshs. 1 million and that the account had transacted over 21 million in deposits and further that the balance in the account was only Kshs. 1,317,032.00. It was also deposed that a statement recorded with the Applicant on 4th May 2023 the 1st Respondent stated that she did not know where the money had come from and that there were reasonable grounds to believe that the suspicious funds are proceeds of crime and that the account was being used as a conduit for money laundering, and thus the sum in the account was liable for forfeiture to the Government. That it is in the Public interest that an order for forfeiture be made.
4. The Respondent did not enter appearance. Counsel for the Agency informed the court that when the Respondents were served with the Originating Motion physically they declined to accept service. They were thereafter served by way of the email using the email address which is indicated on the statement recorded by the 1st Respondent. According to the Affidavit of service dated 16th October 2023, the Respondents were also served with the mention notice via email but there has not been an appearance or response from them.
5. On 17th January 2024, Counsel for the Applicant filed an Affidavit of service indicating that the Respondents had been served with the Applicant's submissions and a mention notice. The Affidavit of Service dated 16th January 2024 reveals that the 1st Respondent was served with the submissions and mention notice via WhatsApp number 0726801121.
6. There being no appearance or response from the Respondents the Application is unopposed.



The Applicant's submissions

7. Miss Irari, Learned Counsel for the Applicant submitted that the 1st Respondent had, in her statement recorded with the Applicant admitted that she registered the 2nd Respondent as a logistics company. However, she offered no evidence of a logistics business and could not explain the source of funds that had passed through the Company's bank account; further that the Respondents had not discharged their burden of proof as required under the law as they had not given any reasonable explanation as to the sources of the income.
8. Counsel contended that by issuing the orders sought, this court will be depriving criminals of ill-gotten gains and deter and prevent crime; that where an allegation has not been rebutted by any documentary evidence, then the Applicant has proved its case on a balance of probabilities. She asserted that the Applicant had discharged its burden of proof to demonstrate that the funds in the impugned account and of which the 1st Respondent is a beneficial owner, constitute proceeds of crime and ought to be forfeited to the Government. She urged this Court to allow the forfeiture application and hence uphold the spirit, purpose and gravamen of the POCAMLA. To support her submissions Counsel placed reliance on the following cases: ARA V Joseph Wanjohi & Others ARA V Pamela Aboo, EACC (Interested Party) (2018) EklrNguku V Republic (1985) KLR 412 Schabir Shaik & Others v State Case CCT 86/06(2008) ZACC 7 Prosecutor General V New Africa Dimensions & Others, HC Namibia Case No. POCA 10/2012 ARA V Fisher, Rohan and Miller, Delores, Supreme Court of Jamaica, Claim No. 2007 HCV003259

Issues for determination

- i. Whether the funds in the 2nd Respondent's impugned account are proceeds of Crime liable for forfeiture to the Government of Kenya.

Analysis and determination

Issue No (i): Whether the funds in the 2nd Respondent's impugned account are proceeds of Crime liable for forfeiture to the Government of Kenya.

9. The Applicant submitted that it had discharged its burden of proof by demonstrating, on a balance of probabilities, that the funds in the impugned account are from illegitimate and unexplained sources hence proceeds of crime which ought to be forfeited. The Applicant explained that the suit account transacted huge suspicious amounts of money that were just below the reporting threshold yet the 2nd Respondent had no business to show for it. The attached accounts reflected suspicious amounts deposited and withdrawn into the account. In her statement the 1st Respondent admitted that the funds were not transacted by herself but by a third party, named Haider Rahaman who she alleged lured her into opening the account and into traveling with him to Pakistan, confiscated her passport and forced her to grant him access to her phone, with which he used to operate the account.
10. Section 2 of the POCAMLA defines further proceeds of crime as:

“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 or benefits derived or realized from such property from the time the offence was committed.”



11. The Agency's evidence that the 2nd Respondent's account was being used for laundering the proceeds was not controverted or rebutted as there is no response or evidence by the Respondents. Neither is the allegation that no legitimate logistics business was transacted by the 2nd Respondent despite it being registered as a logistics company. It is my finding that the account had transacted a sum of Kshs. 11 million whose source the 1st Respondent did not know as she was not the one who deposited the monies; and that she was not the one who was operating the account; added to her statement that that she was forced/coerced into giving up her phone only goes to add credence to the Applicant's case.
12. The 1st Respondent could have appeared so as to controvert or deny that she recorded the statement, but despite this court's concerted efforts to have her to appear and attend court she refused and or neglected to do so. I therefore find it a fact from the evidence that the monies found in the 2nd Respondent's impugned account and that whatever other monies had been transacted through that account was unlawfully acquired and that the account was merely opened and was being used as a conduct to conceal and disguise the real source of the money whatever that source was.
13. The Agency having proved its case on a balance of probabilities and the Respondents having failed to appear so as to rebut that case, this court hereby makes a declaration that the funds are proceeds of crime and the same shall be forfeited to the Government of Kenya as prayed.
14. As costs follow the event the costs of these proceedings shall be borne by the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF MARCH 2024.

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E. N. MAINA

JUDGE

