THE SUPREME COURT OF KENYA

ETHICS & ANTI-CORRUPTION COMMISSION & ASSETS RECOVERY AGENCY Vs PAMELA ABOO
SC PETITION NO. E044 OF 2024

(Consolidated with Petition No. E046 of 2024)

DATE OF JUDGMENT: 19th June 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court dismisses the appeal.

Background

Pamela Aboo (the respondent) held three accounts at Equity Bank that had a total of Kshs. 19,688,152.35. The Assets Recovery Agency (ARA) received information that the funds in the said accounts were suspected to be proceeds of crime and were being used for laundering money acquired from illegal sources. In its investigations, ARA called Pamela Aboo to explain the sources of the funds in the accounts. She explained that her sources of income were businesses in transportation, bananas, sugarcane, perfumes and cereal sales in Mombasa and Busia, and the funds in the accounts were cash deposits from the said businesses. Her husband, Alex Mukhwana Khisa, was also interviewed. He stated that he was aware the accounts belonged to his wife; however, he was not aware of the source of the funds. At the same time, the Ethics & Anti-Corruption Commission (EACC) was investigating allegations of corruption and abuse of office against Khisa. He was under investigation for soliciting and receiving bribes to undervalue taxes payable, and depositing funds paid as bribes into Pamela Aboo's accounts. Afterwards, EACC closed its investigations and did not institute any proceedings against Khisa or Pamela Aboo.

ARA, on the other hand, filed forfeiture proceedings under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) before the High Court. The suit was filed on grounds that Pamela Aboo had failed to produce evidence that the source of the money in her accounts was the alleged businesses. ARA argued that the funds in the accounts were deposited by or for Khisa, from criminal and unlawful activities. ARA claimed it had proved that the money in the accounts was proceeds of crime and therefore met the threshold for forfeiture under POCAMLA. *EACC was joined to the proceedings as an interested party* and argued that the funds in the said accounts were unexplained assets derived from improper benefits, subject to recovery under the Anti-Corruption & Economic Crimes Act (ACECA). Pamela Aboo opposed the claims and argued that she had provided evidence of her sources of income and that ARA had failed to controvert her evidence, or to prove that the funds had either been used or were intended for use in the commission of an offence, or were proceeds of crime.

In its Judgment, the High Court allowed ARA's case and granted forfeiture orders against Pamela Aboo. It found that forfeiture proceedings under POCAMLA are civil in nature, the standard of proof is on the balance of probabilities, and ARA had established that there were unexplained funds in the accounts. It also found that Pamela Aboo had failed to explain the source of the funds or provide evidence of her alleged businesses.

On appeal, the Court of Appeal, by a majority, overturned the High Court. It found that ARA has a duty to prove a *prima facie* case on a balance of probabilities that either Pamela Aboo had assets that had been used or intended for use in the commission of an offence, or the assets were proceeds of crime. Further, a link must be established that certain benefits flowed either indirectly or directly from the offence.

Dissatisfied, ARA & EACC appealed to the Supreme Court, and the Court framed four issues:

a) ***Whether it is incumbent upon EACC or ARA to prove/establish a connection between the crime and money/property sought to be forfeited under civil forfeiture proceedings;***

b) ***Whether the evidentiary burden shifts to a person in possession of property suspected to be proceeds of crime or unlawfully acquired to explain the source/origin of the property; and if so, at what point in time;***

c) ***Under what circumstances is a person considered to have provided a reasonable explanation for the origin/source of his/her property; and***

d) ***What reliefs should issue.***

Upon consideration, the Supreme Court has dismissed the appeal for the following reasons:

Issue 1: The Court finds that forfeiture under POCAMLA can only be made against property which is associated with the commission of a crime or is a proceed of crime. Therefore, ARA must establish, on a balance of probabilities, a nexus between the subject matter of forfeiture and a crime or its intended commission. However, in forfeiture under ACECA, a nexus is not a requirement. EACC only needs to show that a person is in possession of assets that are disproportionate to his/her known legitimate sources of income.

Issue 2: The Court finds that the general principle, whoever asserts must prove, applies to forfeiture proceedings. If ARA adduces evidence to the satisfaction of a court, on a balance of probabilities that the alleged facts exist, the burden of proving otherwise shifts to the person against whom the allegation is made. For the burden to shift, the court must be satisfied that the agency has adduced credible evidence to warrant a rebuttal.

Issue 3: The Court finds that there is no uniform or set standard as to when a person can be said to have provided a reasonable explanation regarding the source of his/her property. A reasonable explanation depends on the case and evidence presented to the court by the relevant agency seeking the forfeiture of a person's property.

Issue 4: The Court finds that ARA did not prove a nexus between Pamela Aboo and a crime in the entire chain of events that triggered the forfeiture proceedings, and therefore has failed to establish a credible case of forfeiture under POCAMLA.

The Judgment of the Court of Appeal is therefore affirmed, and the appellants shall bear the costs.

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