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Civil Forfeiture in Kenya:
Key Principles on interpretation from Supreme Court

5th August 2026

On 19 June 2026, the Supreme Court of Kenya delivered a judgment in relation to legal processes on civil forfeiture. It held that before property can be frozen by the authorities there must be justification transcending suspicion. The Court dismissed consolidated appeals in *EACC & ARA -versus- Pamela Aboo SC Petition NO. E044 OF 2024* by the Ethics and Anti-Corruption Commission ("the EACC") and the Assets Recovery Agency ("the Agency") against Pamela Aboo, settling with constitutional finality, three questions that had generated conflicting jurisprudence across the courts. These questions were as follows:

The Nexus Question

Forfeiture under the Proceeds of Crime and Anti-Money Laundering Act ("the POCAMLA") can only be ordered against property that is associated with the commission of a crime or constitutes proceeds thereof. In this regard, the Agency must therefore establish, on a balance of probabilities, a nexus between the subject matter of forfeiture and a crime or its intended commission. incidence of crime is central, and it cannot be dispensed with.

However, and this distinction matters enormously in practice, forfeiture under Anti-Corruption and Economic Crimes Act ("ACECA") operates on an entirely different foundation. The EACC is not required to prove a specific crime of corruption. All it must demonstrate is that a person holds assets that are disproportionate to his or her known legitimate sources of income. The nexus requirement does not apply. ACECA's language is, as the Court put it, more elastic.

Practitioners must therefore be clear-eyed about which statute they are proceeding under. The two regimes are not interchangeable. Agencies that treat them as equivalent do so at their, and ultimately the public's peril.

The Burden: Whose Duty?

The Court reaffirmed the fundamental civil law principle: the burden of proof lies on the party making the allegation. Under Section 107 of the Evidence Act, whoever desires the court to find in their favour must first prove the facts they assert. This principle applies fully to forfeiture proceedings under POCAMLA.

Critically, the Court clarified the trigger point for any shift in the evidentiary burden. The burden does not shift merely because an agency has filed papers and expressed suspicion. It shifts when, the agency has adduced evidence credible enough to satisfy the court on a balance of probabilities that the alleged facts exist. Only at that point does the respondent bear the obligation to rebut.

Section 112 of the Evidence Act, which places the burden of proof on a party with special knowledge of a fact, does not alter this sequence. As the Court pointedly observed, Section 112 is not a panacea for poor and disjointed investigations. Agencies cannot skip the hard work of evidence-gathering and lean on Section 112 to fill the gaps.

Reasonable Explanation: What does it entail?

The Court declined to fix a universal standard for what amounts to a reasonable explanation of the source of one's property, and it was right to do so. Such a standard, if rigidly defined, would either set the bar too low to be meaningful or too high to be just.

What the Court did confirm is the operative framework: the guiding standard remains a balance of probabilities; the sufficiency of any explanation depends on the case and the evidence placed before the court by the relevant agency; and if the respondent's explanation is credible enough to raise a doubt in the court's mind, the burden reverts to the agency to disprove it. The inquiry is iterative, not one-directional.

Key Takeaways

1. **The choice of statute is a substantive decision.** POCAMLA and ACECA impose materially different burdens. Under POCAMLA, a nexus between the property and a crime is non-negotiable. Under ACECA, disproportionality between assets and known legitimate income suffices.

2. **Investigations must be complete before proceedings are filed.** The courtroom is not the place to finish investigative work that ought to have been done in the field. Section 112 of the Evidence Act will not rescue an agency that came to court underprepared.

3. **A respondent's explanation must be taken seriously.** If it is specific and capable of verification, the agency bears a duty to verify or disprove it. Dismissing it for want of receipts, without more, does not discharge that duty.

4. **Civil forfeiture strikes at a constitutional right.** The right to property under Article 40 of the Constitution is not suspended merely because an agency suspects wrongdoing. The exacting requirements surrounding forfeiture proceedings are not technicalities, they are safeguards, and they will be enforced.

If you require legal advice on civil forfeiture, asset recovery, anti-corruption proceedings, or any related matter, please reach out to OKC Advocates.

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