



Zeinab Tawbe
Solicitor for the Appellant

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UCPR 51.16, 51.18, 51.20

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acceptance has been
given.

R.H Kenna (L.S.)
Principal Registrar &
Chief Executive Officer



AMENDED NOTICE OF APPEAL

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00205659

TITLE OF PROCEEDINGS

Appellant	Kaldon Karout
Respondent	New South Wales Crime Commission

PROCEEDINGS IN THE COURT BELOW

Title below	New South Wales Crime Commission v Kaldon Karout
Court below	Supreme Court of New South Wales
Case number below	2015/00316308
Dates of hearing	15 & 16 April 2025
Material date	27 May 2025
Decision of	Fagan J

FILING DETAILS

Filed for	Kaldon Karout , Applicant
Filed in relation to	Whole decision below
Legal representative	Michael Ayache, One Group Legal
Legal representative reference	MA:ZT:15901
Contact name and telephone	Zeinab Tawbe, 02 8566 2000
Contact email	info@onegrouplegal.com.au

HEARING DETAILS

This notice of appeal is listed for directions at

TYPE OF APPEAL

Applications Under Specific New South Wales Acts — *Criminal Assets Recovery Act 1990*

DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1)(a) of the *Supreme Court Act* 1970 (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondent on 29 May 2025.
- 4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

- 1 His Honour erred in concluding (at [22]) that the total value of the prohibited drugs in the appellant's possession at the time of his arrest was \$546,095 as proceeds derived by the appellant from his illegal activities, in circumstances where that amount, as quantified by Mr. Bull, was the value of the prohibited drugs rather than the value of the appellant's "interest" in his possession of the prohibited drugs or the "benefit" of that possession.
- 2 In calculating, as part of the appellant's expenditure, the maintenance payments to Ms. Taylor, his Honour erred (at [26]) in taking into account the evidence given by the appellant during his compulsory examination held in accordance with s. 12(1) *Criminal Assets Recovery Act 1990*, even though such statements were not admissible for their truth.
- 3 His Honour erred in assessing the appellant's expenditure during the relevant period by finding (at [39]), in the absence of evidence and notwithstanding the fact that the burden of proof to establish the appellant's expenditure fell upon the respondent, that the amounts paid to Ms. Taylor by the appellant by way of maintenance payments would have equated to \$23,000 per month, because this was consistent with the appellant's evidence that there would have been large and small payments from time to time and that these, therefore, would have equated to the monthly amount of \$23,000 on average.
- 4 His Honour erred in failing to be satisfied that the following amounts were monies from other sources, unrelated to an illegal activity or activities, in circumstances where those monies were transferred to the appellant as loans by the witnesses, and, despite the rule in *Browne v. Dunn* (1893) 6 R 67, it was not suggested to the witnesses by the respondent that they had been involved in any illegal activity:
 - a. Loan of \$1,070,000 from Ms. Hannan Elgammal (at [50]);
 - b. Payment of \$17,000 from Mr Faraj Issa (at [60]);
 - c. Payments totalling \$250,000 from Mr Joseph Samia (at [67]);
 - d. Payments of \$123,000 from Mr Barton/Ms Sin and other transactions (at [86]).
- 5 His Honour erred (at [48]) in failing to be satisfied that the monies directed to be transferred to the appellant were monies from other sources, unrelated to an illegal activity or activities, in circumstances where those monies were lawfully transferred at the direction of Ms. Elgammal and it was not suggested in evidence that the appellant was the beneficial owner of the property, this despite the rule in *Browne v. Dunn* (1893) 6 R 67 and in the absence of any evidence that the property had been beneficially owned by the appellant, and in the absence of such a submission by the respondent.

- 6 In rejecting the evidence of the witnesses Elgammal (at [45]-[47]), Issa (at [58]), Samia (at [66]) and Barton (at [83]), his Honour erred by having regard to supposed practices concerning *inter alia* loans, their documentation and their repayment, in circumstances where, in accordance with s. 144 *Evidence Act 1995* and the principles explained in *Holland v. Jones* (1917) 23 CLR 149, it was not open to his Honour to take judicial notice of such supposed practices.
- 7 His Honour mistook the onus, which rested upon the appellant in accordance with s. 28(3) *Criminal Assets Recovery Act 1990*, as clarified in *Vu v. New South Wales Crime Commission* [2013] NSWCA 282, as the basis for rejecting the case for the appellant.
- 8 His Honour erred in failing to accept the evidence of the witnesses Elgammal, Issa, Samia and Barton, and in using the evidence given by the appellant during his compulsory examination held in accordance with s. 12(1) *Criminal Assets Recovery Act 1990* only adversely to his case.
- 9 His Honour erred in concluding that the assertions made by the appellant during his compulsory examination under s. 12 *Criminal Assets Recovery Act 1990* were admissible, since they did not amount to “previous representations”, as that expression is defined by the *Evidence Act 1995*.
- 10 If the transcript of the appellant’s compulsory examination was admissible, then his Honour erred in directing himself in accordance with the principles expressed in *Jones v. Dunkel*.
- 11 His Honour misused his advantage by taking into account, when assessing the credit of the appellant’s witnesses, the appellant’s asserted failure to give evidence.
- 12 His Honour erred in failing to give adequate reasons for doing so.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Judgment of the court below be set aside.
- 3 The orders and assessments made by his Honour Justice Fagan of the court below be set aside and in lieu thereof, an order pursuant to section 27 of the *Criminal Assets Recovery Act 1990* that Kaldon Karout pay to the Treasurer the amount of \$1,968,911.91 assessed by the Court as the value of the proceeds derived from the illegal activities of Kaldon Karout or another person that took place not more than six (6) years before the making of the respondent’s application on 27 October 2015.
- 4 The respondent pay the appellant’s costs of this Appeal and of the costs of the proceedings in the Court below.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor

Date of signature

26/11/2025

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address

Supreme Court of New South Wales, Court of Appeal
Law Courts Building
Queen's Square
Level 5, 184 Phillip Street
Sydney NSW 2000

Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPLICANT

Applicant

Name	Kaldon Karout
Address	57 Yathong Road Caringbah NSW 2229
Frequent user identifier	Not Applicable

Legal representative for applicant

Name	Michael Ayache
Practising certificate number	34211
Firm	One Group Legal
Contact solicitor	Zeinab Tawbe
Address	1/22-24 Regent Street Kogarah NSW 2217
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DETAILS ABOUT RESPONDENT

Respondent

Name	New South Wales Crime Commission
Address	453 – 463 Kent Street Sydney NSW 2000