



**Mwangi v Republic (Criminal Appeal 61 of 2023)  
[2024] KEHC 11354 (KLR) (Crim) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11354 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL APPEAL 61 OF 2023**

**DR KAVEDZA, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**FAITH WANGARI MWANGI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. C.M Njagi (P.M) on 31st March 2023 at JKIA Chief Magistrates Court  
Criminal Case No. 117 of 2019 Republic vs Faith Wangari Mwangi and another)*

**JUDGMENT**

1. Faith Wangari Mwangi the appellant herein was jointly charged with another not before this court for the offence of trafficking in Narcotic drugs contrary to Section 4 (a) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#), Act No. 4 of 1994. The facts are that on the 8th July, 2019 at Githurai Kimbo area within Nairobi County, jointly with others not before the Court, trafficked by storing in a rented house a narcotic drug namely heroin to wit 472.842 grams with a market value of Kshs. 1,418,526/= concealed in a clear polythene bag wrapped in masking tape, put in a green polythene bag inside a khaki bag in contravention of the said [Act](#). She pleaded not guilty and after a full trial convicted and sentenced to serve ten (10) years imprisonment in addition to payment of a fine of Kshs. 4,255,578 in default to serve 12 months imprisonment.
2. Being aggrieved, the appellant challenged her conviction and sentence on appeal. In the appeal dated 18<sup>th</sup> April 2023, she challenged the totality of the prosecution's evidence against which she was conviction. The appellant argued that the offence was not proved beyond reasonable doubt. She urged the court to quash her conviction and set aside the sentence imposed.



3. In rebuttal, the respondent contended that the prosecution proved their case beyond reasonable doubt, and as such, the conviction and sentence were proper.
4. The appeal was canvassed by way of written submissions, with both parties making their respective arguments. These submissions have been duly considered and there is no need to rehash them herein.
5. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno vs Republic* [1973] EA 32).
6. Section 4(a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) provides as following;

“Any person who trafficks in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable:-

  - (a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life;”
7. The case against the appellant was that on 8th July 2019, acting on intelligence, PC Robert Mwaria (PW1) and his team set an ambush at Ciku Apartments. They observed the 1st accused, Samuel Kivoi Nyambura, descending the stairs with a green bag, later found to contain sachets of suspected drugs. The officers proceeded to apartment T2, where the appellant was found sitting on a bed, partially covered by a Maasai shuka. A search of the premises uncovered brown powdery substances, cash, and other suspicious items.
8. Sergeant Wesley Kimutai (PW4) and his team, guided by an informant’s description of the suspect, secured the scene and alerted the Anti-Narcotics Unit (ANU). Shortly after, Sergeant Wycliffe Otando (PW7), Chief Inspector Elizabeth Lumumba (PW8), and Corporal Roy Opiyo arrived. They conducted a thorough search and recovered several items, including four national identity cards—two of which belonged to the appellant and the 1st accused. The substances were documented and weighed.
9. Dennis Owino Onyango (PW5), a government analyst, confirmed his participation in the weighing process, which took place on 13th July 2019. The total weight of the suspected drugs was recorded at 472.842 grams. PW5 sampled 11.45 grams and confirmed that the powder was heroin, with a purity of 26%. His findings were submitted as evidence.
10. Chief Inspector Lumumba (PW8), the officer overseeing the search, confirmed the weight and the documentation of various exhibits related to the seized substances. Although she noted an error in the inventory, she affirmed that the total weight was accurate, with the heroin valued at Kshs. 1,418,526.
11. The chain of custody for the substances recovered in the case against the appellant is well documented through the testimonies of various witnesses. The investigating officer detailed the custody of seized substances through the inventory prepared and introduced the Notice of Intention to Tender Records in Evidence, along with several items recovered from the appellant as evidence. This sequence of testimonies establishes a clear and continuous chain of custody for the substances recovered. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.



12. On whether the substance recovered was narcotic, the government analyst PW5 testified that she conducted a preliminary test of the substance recovered. The test confirmed that the substance contained heroin. He conducted a sampling exercise and determined the creamish substance to be heroin with 26 percent purity. The prosecution adduced evidence that established that the substance recovered was a narcotic substance within the meaning ascribed to the term by Section 2(1) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* and the 1st Schedule thereof.
13. In her defence, the appellant testified that on the material day, she visited Ciku Apartments to view house T2 where she was looking for premises to move to. After viewing, she asked the caretaker to use the toilet and was granted access. It was then that she was confronted by individuals who ordered her back into the house, leading to her arrest. She claimed the items presented in court were from the house but not hers. In addition, she denied knowing the 1st accused maintaining her innocence.
14. The trial court considered her evidence coupled with the evidence of Paul Ngugi Ngwenyi (PW2) who told the court that the appellant and the 1<sup>st</sup> accused rented an apartment at Ciku Apartments from him. He recounted that the two paid a deposit and received a receipt a copy of which was produced as a prosecution exhibit.
15. After my own independent appraisal of the evidence on record, I find that PW1, PW4, PW6, and PW7 were consistent in their evidence regarding how they recovered the narcotics at the appellant's apartment. In addition, the evidence of PW2 confirmed that the apartment was rented by the appellant and the 1<sup>st</sup> accused. There was no evidence that any other person had access or control over the premises other than themselves. In my view, the appellant's defence was properly dismissed by the trial court as an afterthought aimed at exonerating herself from the offence.
16. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt in my mind that the prosecution proved beyond reasonable doubt the offence charged. The conviction is therefore affirmed.
17. On sentence, the appellant was sentenced to serve ten (10) years imprisonment in addition to the payment of a fine of Kshs. 4,255,578 in default to serve 12 months imprisonment. During sentencing, the trial court considered the pre-sentence report on record, appellant's mitigation, the fact that the appellant was a first offender and the sentencing policy guidelines. The sentence meted was therefore legal and I see no reason to interfere.
18. The upshot of the above analysis is that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024.**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Ogutu for the Appellant

Maroro for the Respondent

Achode Court Assistant.

