



REPUBLIC OF KENYA



KENYA LAW
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**Langat v Republic (Criminal Appeal E139 of 2021)
[2023] KEHC 2814 (KLR) (Crim) (31 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E139 OF 2021
PM MULWA, J
MARCH 31, 2023**

BETWEEN

NAHASHON LANGAT APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against both conviction and sentence in
Kibera Criminal Case No. 837 of 2016 – Hon. P. Mutua, SPM)*

JUDGMENT

1. The appellant was jointly charged with another with two counts of trafficking in narcotic drugs contrary to section 4(a) of the [Narcotics and Psychotropic Substances \(Control\) Act](#) No 4 of 1994. The particulars of the charge are as per the charge sheet.
2. At the conclusion of the trial, the 2nd accused was acquitted. The appellant was acquitted on the two counts of trafficking but convicted on two counts of possession. In count no. 1 he was sentenced to pay a fine of Kshs 500,000 and in default to serve 1 year imprisonment. In count no 2 he was sentenced to pay a fine of Kshs 1,000,000 and in default to serve 1 year imprisonment.
3. Aggrieved by his conviction and sentence, the appellant proffered the present appeal.
4. At the hearing, both the appellant and the respondent chose to rely entirely on their written submissions.
5. I have carefully considered the grounds of appeal, the entire evidence presented before the trial court and the written submissions filed by both the appellant and the respondent. I have also read the judgment of the learned trial magistrate.



6. The first duty of the appellate court is to re-evaluate the evidence before the trial court and arrive at its own independent conclusion bearing in mind that the trial court had an opportunity to see the witnesses.
7. In the case of *Okeno vs Republic* [1972] EA 32, the Court of Appeal set out the duties of a first appellate court as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya vs Republic* (1957) EA (336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M Ruwala Vs R* (1957) EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters vs Sunday Post* [1958] EA 424.”
8. The appellant was convicted with two counts of being in possession of narcotics drugs. The ingredients to prove are that the appellant was in possession of narcotics drugs. Possession has been defined by section 4 of the [Penal Code](#) as: -

Being in possession of or have in possession includes not only knowingly having anything in actual possession or custody of any other person or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or any other person”.
9. Further, in [Hussein V R](#) (1980) KLR 139 the Court of Appeal stated that;

“...in this definition on possession. It does not mean that any legal title had to be proved, nor that access to the complete exclusion of all other persons to be shown, but that a possession must have such access to and physical control over the thing that he is in a possession to deal with it as an owner could to the exclusion of strangers”.
10. On whether the prosecution proved its case beyond reasonable doubt. I am satisfied upon my own evaluation of the evidence that the appellant was convicted upon good and sound evidence. Nothing in the evidence placed before the trial court including the appellant’s sworn statement suggested any credible reason why PW1 would want to place the recovered contraband on the appellant’s Head if indeed it belonged to the other person. Though the appellant contended in his defence that the evidence of PW1 was fabricated after he refused to pay his bail, he never raised this issue in cross examination and the same can only be an afterthought. In my view, the evidence of the prosecution’s witnesses remained reliable, credible and consistent throughout the trial and the same was not even challenged in cross examination. Thus, there was no reason at all to doubt the testimonies of the prosecution witnesses. The trial court properly rejected the appellant’s defence since it is unsubstantiated and cannot displace the prosecution’s evidence on record.
11. Similarly, the contention by the appellant that crucial witnesses were not called was without basis since the said witnesses were not even stated.
12. In the premises, I uphold the judgment of the trial court and confirm the appellant’s conviction.



13. With regard to sentence, it is my considered opinion, the sentence meted out on the appellant were lenient thus there is no basis to interfere with the trial court sentence.

Final Orders

The entire appeal is dismissed.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT MILIMANI

THIS 31ST DAY OF MARCH, 2023

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P.M. MULWA

JUDGE

In the presence of:

Ms. Karwitha – Court Assistant

For State: Ms. Akunja

Appellant: Present

