



**Lugogo v Republic (Criminal Appeal E030 of 2022)
[2023] KEHC 22687 (KLR) (26 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E030 OF 2022
SM GITHINJI, J
SEPTEMBER 26, 2023**

BETWEEN

DAVID KOMBO LUGOGO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from the Judgment in Criminal Case No.487 of 2018 delivered on 24th December, 2020 by Hon S.K.Ngii – PM in Mariakani – SRM’s Magistrate’s Court)

JUDGMENT

CORAM: Hon. Justice S. M. Githinji

Appellant in person

Ms Mutua for the State

1. David Kombo Lugogo, the appellant herein, was charged in the lower court with the offence of being in possession of Narcotic drugs, contrary to section 3 (1) (a) as read with section 3 (2) (a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) No.4 of 1994.
2. The particulars of this offence are that on the 16th day of June, 2018 at about 15.30hours at Mariakani Matatu stage, Kaloleni Sub County within Kilifi County, the appellant was found in possession of four sachets of heroin with street value of 2,000/- which was not in any medicinal preparation form.
3. The prosecution case is that Pw-1 and Pw-3 who are both police officers attached to DCI’s office at Mariakani, were on 16/6/2018 at around 1.00Pm on patrol along Nairobi-Mombasa Highway. Some members of the public approached them and disclosed about a suspect who was at Mariakani Matatu Stage, who was peddling Narcotic drugs. The informers accompanied the officers to Mariakani Town, Mombasa stage where they pointed out the said suspect. The officers approached the suspect and introduced themselves to him. They arrested him. They conducted a body search on him. In his pocket



- they recovered a packet of Rooster cigarettes. In it there were four sachets of a brown powder of which they suspected to be heroin. He also had a reddish wallet containing 10,445 kshs of which the officers suspected was proceeds from sale of drugs. He was escorted to Mariakani Police Station.
4. On 4/7/2018 Pw-1 prepared an Exhibit Memo Form and forwarded the four sachets to the Government Chemist in Mombasa. PW-2, the Government analyst examined it. It tested positive for heroine. It was weighing 1.2grams. He made a report to the said effect.
 5. The appellant was then charged.
 6. His defence is that he was a stage attendant. On 16/6/2018 at about 3.30Pm he was at the bus stage. A Toyota vehicle got to the place. The officers got out of it and arrested him. One of the officers dropped something in his pocket. They searched him and removed a packet of Rooster cigarettes of which he did not have. It must be the one the officer placed in his pocket. He was taken to the police station where the packet was opened. It had two sachets of heroin. He never had the heroin and has never dealt with it. He was a lawful worker at the stage and has a family that depend on him. There was another suspect in the matter who was released.
 7. The trial court weighed the evidence and found the appellant guilty of the offence. He was convicted and sentenced to serve 10 years imprisonment.
 8. Dissatisfied with the said conviction and sentence, he appealed to this Court on the grounds that; -
 1. It's the police informer who had possession of the drugs and it was planted on him.
 2. The prosecution case was not proved to the required standard in law.
 3. The quantity of the drug was small and deserved a lesser severe sentence.
 9. The appeal was canvassed by way of written submissions. I have considered the offence preferred in the charge sheet, the evidence adduced by both sides, judgment entered and the sentence meted, grounds of the appeal and submissions by both sides.
 10. I find this an "open and shut case", Though I admitted it to hearing and avoided dismissing it summarily, it's evident that the appellant was just trying his lack in the appeal. He does not deny that the heroin was recovered from his pocket, but alleges it was planted on him by one of the two officers. He does not disclose which officer. He does not also disclose any cause at all as to why the officers would have done that. In his grounds of the appeal he alleges the police informer had the drug; something he never raised in his defence. The evidence is compelling that he had the 1.2grams of heroin which was not in medicinal preparation form. He was rightly convicted of the said offence.
 11. The sentence of 10 years imprisonment was well explained and supported by the trial magistrate. The sentence is lawful and within the court's discretion. I have no cause to disturb the same in favour of the appellant.
 12. The appeal therefore lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF SEPTEMBER, 2023

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S.M.GITHINJI

JUDGE

In the Presence of; -



1. The Appellant in Person
2. Ms Mutua for the Prosecution

