



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wambi v Republic (Criminal Appeal E045 of 2020)  
[2022] KEHC 11342 (KLR) (11 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 11342 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E045 OF 2020  
GMA DULU, J  
AUGUST 11, 2022**

**BETWEEN**

**NATHANIEL ODHIAMBO WAMBI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. C.A Mayamba in Kilungu  
Principal Magistrate's Court (CR) Case No.530 of 2020 pronounced on 21st April, 2021)*

**JUDGMENT**

1. The appellant was charged in the magistrates' court with another Thomas Omondi Owino, with trafficking narcotic drugs contrary to section 4(a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) No 4 of 1994.
2. The particulars of the offence were that on the night of August 13, 2020 along Nairobi – Mombasa highway within Malili sublocation Mukaa subcounty Makeni county, jointly with others not before the court, trafficked in narcotic drugs namely cannabis sativa weighing 2,456kg with a market value of Kshs 73,680,000/= (Seventy three million six hundred and eighty thousand shillings) by conveying it in a motor vehicle registration KCM 974Z, Isuzu FFR in contravention of the provision of the said act.
3. Both denied the charge. After a full trial, his co-accused was found not guilty and acquitted. The appellant was however found guilty of the offence, convicted, and sentenced to pay a fine of Kshs 5,000,000/= and in default to serve ten (10) years imprisonment.
4. Dissatisfied with the conviction and sentence, the appellant has come to this court on appeal on the following grounds;
  - i. The learned magistrate misdirected himself in law and in fact in finding as he did, a conviction against the weight of the evidence on record.



- ii. The learned magistrate erred in law in failing to find that the prosecution did not prove its case beyond reasonable doubt as he was enjoined by law so to do, and further erred in law in finding and holding that the appellant was guilty of trafficking narcotic drugs.
  - iii. The evidence was self-contradictory and (case) was not proved
5. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the submission filed by the appellant, and those filed by the Director of Public Prosecutions. I note that both sides relied on decided court cases.
  6. This being a first appeal, I am duty bound to evaluate all the evidence on record a fresh, and come to my own independent conclusion and inferences, but bear in mind that I did not have the opportunity to see witnesses testify to determine their demeanor – see *Okeno Vs Republic (1972) EA 32*.
  7. I have reviewed the evidence on record. In proving their case the prosecution called 9 witnesses. The appellant on his part, tendered sworn defence testimony, and did not call any additional witness.
  8. Section 4(a) of the *Narcotics Drugs and Psychotropic Substances Control Act*, under which the appellant was charged provides, as follows:-
    - 4(a) 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 a narcotic drug or psychotropic substance to a fine of one million shillings(s) or three times the market values of the narcotic drugs or psychotropic substance whichever is the greater, and in addition, to imprisonment for life.
  9. Trafficking of narcotic drugs, is defined under section 2(1) of the act as follows:-
 

“The importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveying, delivery or distribution by any person of a narcotic drug or psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance...”
  10. The substance in question herein, was established through the evidence of PW7 Geoffrey Nyagaka Anyona, a government chemist, after analysis and confirmation through scientific testing of samples, to be bhang or cannabis sativa. The quantity was clearly stated in the charge sheet, and its value was established through the evidence of PW5 CI Philip Langat a police officer who had undergone several local and international trainings on assessing the value such substances, to be more than Kshs 70 million. The witness testified on the method used to determine the market value of the cannabis sativa recovered.
  11. In my view therefore, the prosecution proved beyond any reasonable doubt that the 52½bags found to be part of the cargo in motor vehicle KCM974Z Isuzu FFR on August 13, 2020 along Nairobi – Mombasa highway, which had overturned, contained cannabis sativa, a narcotic drug, not in medical preparation.
  12. In my view also, from the evidence on record, the prosecution proved beyond reasonable doubt, that the said cannabis sativa was being conveyed in the motor vehicle towards Mombasa, from Nairobi direction, that night. The prosecution also proved the value of the cannabis sativa to be Kshs 73,680,000/=.



13. Was the appellant involved in the conveyance of the cannabis sativa? The appellant said in his defence that he was arrested for violating covid 19 curfew hours. However, the evidence from the prosecution witnesses on record, including that of his co-accused, Thomas Omondi Owino(DW2), was that he was driving the subject lorry .
14. It is instructive to note that the appellant was the only person found near the overturned lorry that night by the police. He had in his possession the insurance certificate for the motor vehicle, motor vehicle keys, and his own identity card. His possession of the subject items was clearly explained in evidence by PW3 CPL Josephine Gitainga. Later, the investigating officer PW5 CPL Evans Sabisa, found the appellant's driving licence in the vehicle cabin. This evidence connecting the appellant to the Isuzu Lorry and its driving was not controverted.
15. In my view, the circumstantial evidence on record, points irresistibly to the guilt of the appellant, and excludes my other reasonable hypothesis. It established that the appellant was the driver of the lorry and conveyed the narcotic drugs herein. I thus find that the prosecution proved beyond any reasonable doubt that the appellant was the trafficker of the cannabis sativa, either alone or with others.
16. Therefore, in my view, the trial magistrate cannot be faulted for convicting the appellant for the offence. I will uphold conviction.
17. I note that the appellant has not appealed against sentence. He is a layman and I thus have a duty to consider the sentence. In my view the sentence imposed was a lawful sentence, in fact lenient. I will thus not interfere with the sentence.
18. Consequently, and for the above reasons, I find no merits in the appeal. I dismiss the appeal and uphold the conviction.

Right of appeal explained.

**DATED, SIGNED, AND DELIVERED THIS 11<sup>TH</sup> AUGUST, 2022 IN OPEN COURT AT MAKUENI.**

**GEORGE DULU**

**JUDGE**

