



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyaguthie & another v Republic (Criminal Appeal E014 of 2024)  
[2025] KEHC 3268 (KLR) (Crim) (18 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3268 (KLR)

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

**CRIMINAL**

**CRIMINAL APPEAL E014 OF 2024**

**DR KAVEDZA, J**

**MARCH 18, 2025**

**BETWEEN**

**MARY MUITA NYAGUTHIE ..... 1<sup>ST</sup> APPELLANT**

**BENARD OTIENO ODUOR ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against conviction and sentence delivered by Hon. C.M Njagi on 16th February 2021 at JKIA Chief Magistrate's Court criminal case no. 114 of 2018 Republic vs Mary Muita Nyaguthie, Benard Otieno Oduor & 2 others)*

**JUDGMENT**

1. The 1st and 2<sup>nd</sup> appellants were jointly charged with others 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* No. 4 of 1994. The 1<sup>st</sup> appellant was convicted and sentenced to serve fifteen (15) years imprisonment. In addition, she was fined Kshs. 5,189,490 in default to serve 1-year imprisonment. The 2<sup>nd</sup> appellant was also convicted and sentenced to serve fifteen (15) years imprisonment in addition to payment of a fine of Kshs. 7,179,300 in default to serve one (1) year imprisonment. The sentences were to run consecutively.
2. Being dissatisfied, the appellant filed their respective appeals challenging their conviction and sentence. In their petitions of appeal, they challenged the totality of the prosecution's evidence against which they were convicted. They complained that the sentence imposed was harsh and excessive and did not consider time spent in remand custody. They urged the court to quash their conviction and set aside the sentence imposed.



3. 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 v Republic* [1973] EA 32).
4. The prosecution called sixteen (16) witnesses in support of their case. Corporal Mary Ayimba Agono an officer based at the Anti-Narcotic Drug Unit at JKIA testified that she was on duty at JKIA together with PC Waki (PW 7) and Cpl Murunga (PW 2) of the Transnational Organised Crimes Unit when they received information that there were two individuals at the airport suspected of trafficking in narcotic substances. They intercepted the appellants Mary Muita Nyaguthie and Bernard Otieno Oduor. They confiscated their passport and arrested them.
5. The 1<sup>st</sup> appellant complained of stomach pains and vomited 4 pallets of suspected narcotic substances. 9 other pallets were emitted anally. PC Winfred Kariuki (PW 3) escorted the 1<sup>st</sup> appellant to the toilet where she emitted the pellets. This was also witnessed by CPL Munialo (PW 5) and CPL Opiyo (PW 6).
6. PW5 and PW6 also witnessed the 2<sup>nd</sup> appellant emit a total of 18 pellets suspected to be narcotic substances. PW6 produced the seizure forms. He affirmed that the 1<sup>st</sup> appellant was observed by female officers and the 2<sup>nd</sup> appellant was observed by male officers during the process of emissions.
7. The two had arrived in motor vehicle registration number KCQ 357W. They were escorted to the said motor vehicle where the appellant was found in the company of Boaz Ouma who was the driver. The said motor vehicle was searched by CPL Norah Ekodir (PW4). This was done in the presence of PC Munyao (PW 8). PW 4 told the court that photocopies of the passports of the appellant.
8. The process of searching the suspects was documented by the scene of crime officer who took photographs. Weighing of the recovered substance was conducted by CI Irungu Ndegwa (PW 9) in the presence of the appellants. An observation sheet and seizure notice were also done. Inspector Ligaka (PW 14), the scene of crime officer photographed the weighing and sampling processes. This was done in the presence of the suspects including the appellants herein.
9. PW 12, the government analyst did a sampling of the 49 pellets and 59 pellets recovered. The sampling was done in the presence of the appellants. The preliminary tests conducted indicated that the substance recovered from the Appellant contained heroin with a 40 percent purity, a narcotic substance.
10. Assistant Superintendent of Police George Mutiso (PW 13) a duly gazetted officer requested to value the narcotic substances that had been seized. He relied on the government analyst report and the weighing certificates. He prepared two valuation certificates which were produced into evidence. He valued the narcotic substances at Kshs. 1,729,830 and Kshs. 2,393,100 respectively.
11. Silvia Atieno Alang'o (PW 10) testified that she was the registered owner of motor vehicle KCQ 357W. It was her evidence that she had sold the car to Judith Atieno Odote a co-accused at a cost of Kshs. 1,400,000. A sale agreement was produced to that effect.
12. Sergeant Dickson Omumia (PW 15), the lead investigator, provided a synopsis of the testimony presented by the prosecution witnesses.
13. CI Samson Ogutu (PW 16) a gazetted officer of the DCI Forensic Imaging and Acoustics Unit told the court that he was requested to assist in retrieval of CCTV footage. He retrieved CCTV footage



from JKIA terminal IA. The footage captured the appellants arriving at the terminal in a white motor vehicle.

14. After the close of the prosecution's case, the appellants were put on their respective defences. Bernard Otieno (DW 1) denied knowing his co-accused or emitting pellets of heroin. He maintained that he was innocent and it was a case of mistaken identity.
15. Mary Nyagithi (DW 2) told the court that on the material day, she was heading to Mauritius when she was arrested at the airport. She denied any knowledge of the drug trafficking.
16. Judith Odote, (DW 3) told the court that on the material date, she was escorting her cousin to the airport when she was arrested at the parking lot. The arresting officers later escorted her to her home in Denholm but nothing was recovered. She maintained her innocence.
17. Boaz Ouma (DW 4) testified that he was arrested at the airport on drug-related charges which he was not aware of. He only met the other accused persons at the station upon his arrest.
18. The trial court acquitted Boaz Ouma and convicted the other accused persons. After mitigation, they were sentenced accordingly.
19. This court has re-evaluated the evidence adduced before the trial court, the Appellant's grounds of appeal as well as the rival parties' submission. Section 4(a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) provides as follows;

“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;”

20. The term trafficking is defined in Section 2 of the [Act](#) as:

“The importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, 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 or making of any offer in respect thereof..”

21. In [Gabriel Ojiambo Nambesi v Republic](#), [2007] eKLR, the Court of Appeal addressed itself to the above definition and what is required to prove the offence of trafficking in narcotic drugs. The court stated thus:

“It is evident from the definition of trafficking that the word is used as a term of art embracing various dealings with narcotic drugs or psychotropic substances. In our view for the charge sheet to disclose the offence of trafficking the particulars of the charge must specify clearly the conduct of an accused person which constitutes trafficking. In addition and more importantly, the prosecution should at the trial prove by evidence the conduct of an accused person which constitutes trafficking.”

22. In this particular case, the prosecution contended that the appellants were involved in the trafficking of a narcotic substance. According to the evidence presented, the appellants were apprehended at Jomo



Kenyatta International Airport as part of an operation guided by intelligence. Witnesses PW 1, PW 2, and PW 3 informed the court that they had received intelligence indicating that two passengers at the airport, namely Bernard Otieno and Mary Nyaguthie, were suspected of being involved in narcotic substance trafficking. Both suspects were taken into custody, and a search was conducted. Later, Mary Nyaguthie was found to have expelled 13 pellets containing a substance suspected to be narcotic in nature.

23. The prosecution adduced evidence that established that the substance found in the 1<sup>st</sup> and 2<sup>nd</sup> appellants' possession 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 1<sup>st</sup> Schedule thereof. PW 12, the Government Analyst, testified that he conducted a preliminary test of the substance recovered from the appellants.
24. The test confirmed that the substance contained heroin. He also conducted a further elaborative test at the Government Chemist and after his analysis, he confirmed that the substance found was heroin.
25. The chain of custody for the substances recovered in the case against the appellants 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 appellants as evidence. This sequence of testimonies establishes a clear and continuous chain of custody for the substances recovered from the appellants' possession. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.
26. In their respective defences, the appellants refuted any involvement in the trafficking of narcotic drugs. The trial court found the defence incredible, viewing it as an afterthought. The prosecution's case, corroborated by multiple witnesses, proved the offence beyond reasonable doubt. The court rejected the appellants' respective defences and upheld the prosecution's evidence.
27. 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 of the 1<sup>st</sup> and 2<sup>nd</sup> appellants therefore affirmed.
28. On sentence, the appellants were each sentenced to serve 15 years imprisonment. In addition, the 1<sup>st</sup> appellant was fined Kshs. 5,189,490 in default to serve (1) year imprisonment while the 2<sup>nd</sup> appellant was fined Kshs. 7,179,300 in default to serve one (1) year imprisonment.
29. During the sentencing proceedings, the court considered the appellants' mitigation, the pre-sentence report, and the fact that they were first offenders.
30. The sentence meted was therefore legal and I see no reason to interfere. 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 18<sup>TH</sup> DAY OF MARCH 2025**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present



Mutuma for the Respondent

Tonny Court Assistant

