



REPUBLIC OF KENYA



KENYA LAW
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**Nyambura v Republic (Criminal Appeal 8 of 2023)
[2025] KEHC 2919 (KLR) (Crim) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2919 (KLR)

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

**CRIMINAL
CRIMINAL APPEAL 8 OF 2023**

DR KAVEDZA, J

MARCH 11, 2025

BETWEEN

SAMUEL KIVOI NYAMBURA 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 Samuel Kivoi Nyambura and another)*

JUDGMENT

1. Samuel Kivoi Nyambura 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.
2. He 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.
3. Being aggrieved, the appellant challenged her conviction and sentence on appeal. In the appeal dated 17th April 2023, he challenged the totality of the prosecution's evidence against which he was conviction. The appellant argued that the offence was not proved beyond reasonable doubt. He complained that the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.



4. In rebuttal, the respondent contended that the prosecution proved their case beyond reasonable doubt, and as such, the conviction and sentence were proper.
5. 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.
6. 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).
7. 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;”
8. 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 appellant descending the stairs with a green bag, later found to contain sachets of suspected drugs. The officers proceeded to apartment T2, where the 2nd accused Faith Wangari Mwangi 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.
9. 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 2nd accused. The substances were documented and weighed.
10. 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.
11. 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.
12. 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.



13. 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.
14. In his defence, the appellant testified that on the material day, he was looking for a house to rent and had therefore visited Ciku Apartments for viewing. As he was leaving the said premises, police officers arrived, conducted a body search on his person and arrested him and took him to a vacant house from where other items were recovered and photographs of the scene taken. It was his evidence that the items presented in court were recovered from that house but not his house. In addition, he maintained his innocence and denied knowing the 2nd accused person.
15. However, the trial court considered his evidence and found it to be at variance with the evidence of the prosecution witnesses. Paul Ngungi Ngwenyi PW2 told the court that the appellant and the 2nd accused rented the apartment at Ciku Apartments from him recounted that the two paid a deposit and received a receipt which was produced as a prosecution exhibit.
16. Having appraised myself of the evidence on record, I find that PW1, PW4, PW6, and PW7 were consistent in their evidence regarding how they recovered the narcotics from the appellant at the apartment. In addition, the evidence of PW2 confirmed that the apartment was rented by the appellant and the 2nd accused before the trial court. 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 himself from the offence.
17. 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.
18. 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.
19. 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 11TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Njeri Kariuki for the Appellant

Mutuma for the Respondent

Tonny Court Assistant

