



**Wanjiru alias Johnti & another v Republic (Criminal Appeal
15 of 2024) [2025] KEHC 2699 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 15 OF 2024
DR KAVEDZA, J
MARCH 11, 2025**

BETWEEN

JOHN MUGAI WANJIRU ALIAS JOHNTI 1ST APPELLANT

ANTONY KUNGU MUNGAI ALIAS WARFA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. L.O Onyina (C.M) at JKLA Chief Magistrate's Court Criminal case no.
92 of 2018 Republic vs John Muigai Wanjiru and Antony Kungu Mungai)*

JUDGMENT

1. The appellants herein were jointly charged 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 particulars of the offence allege that the appellant herein, on the 12th day of July 2018, at Kwa Field in House No. 1 in Kirigiti within Kiambu County, jointly with others not before the court, trafficked in a narcotic drug namely diacetylmorphine commonly known as Heroin to wit 115.02 grams with a market value of Ksh. 345,060/- by storing in contravention of the provisions of the said [Act](#).
2. They pleaded not guilty and after a full trial convicted and they were each sentenced to serve ten (10) years imprisonment in addition to payment of a fine of Kshs. 500,000 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. 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;”
5. PW1, Ann Wacera Mugo, testified that on 8 March 2018, the 1st appellant and 2nd appellant (his son) approached her to rent House No. 1. She stipulated a rent of Ksh. 14,000/month plus a Ksh. 28,000 deposit. They occupied the house that day at 15:00. On 12 July 2018, a tenant alerted PW1 to police officers seeking “a person who walks with sticks”. She observed officers entering the 1st appellant’s house. Later, officers escorted her to confirm his tenancy. Inside, she noted: A male on the sitting room floor; Three officers in a bedroom (one recording notes); The 1st appellant on a plastic chair; A blue mattress with a glass, greyish powder, weighing machine, and cut paper.
6. Officer Agnes instructed PW1 to leave. At 19:00, Agnes summoned her to provide a padlock. She observed the 1st appellant handcuffed as officers removed items. In court, PW1 identified the glass, powder, weighing machine, and cut paper. She confirmed the 1st appellant as the tenant and noted the 2nd appellant’s presence on 12 July 2018. Rent was paid in cash, but tenancy records were not produced.
7. On 12th July 2018, at around 6.00 am a coordinated police operation unfolded in Kirigiti, Kiambu, targeting two suspected drug traffickers: Anthony Mungai Kungu and John Muigai Wanjiru. What began as a routine intelligence-led mission would unravel a meticulously documented case, built piece by piece through the testimonies of officers and experts.
8. Police Constable Jonathan Sankale (PW2) stood among a team of officers from the Special Crime Prevention Unit, poised to breach House No. 1. At 12:30 PM, they stormed the residence, apprehending the appellant herein. PW2 recovered two mobile phones and a set of keys from the 2nd appellant, later proven to open a padlock inside the house. Nearby, Corporal Mohamed Buno (PW3) watched as the 2nd appellant shouted warnings to the 1st appellant, who scrambled to discard packages within the house. PW3 confirmed the seizure of a Tecno phone and keys, solidifying the suspects’ ties to the premises.
9. Sergeant Hudson Migiri Tapukai (PW4), a gazetted crime scene officer, arrived two days later to catalog the evidence. His camera captured 545 exhibits—bundles of sachets, weighing scales, and notebooks each tagged for court. His certificates would later authenticate the integrity of the seized items.
10. Chief Inspector Philip Langat (PW5), a narcotics valuer, examined the haul: 115.02 grams of heroin, its purity diluted to 61% by cutting agents. Using a rate of Ksh. 3,000 per gram, he calculated its street value at Kshs. 345,060, a figure anchored in the Government Chemist’s lab results.
11. Leading the search, Chief Inspector Agnes Thungu (PW6) uncovered a drug-trafficking hub. In the sitting room, 98 face masks and exercise books hinted at clandestine packaging. The bedroom revealed 2,154 sachets of heroin, meticulously stored in polythene bundles labelled with dates and quantities. A blue mattress in the inner bedroom bore a tinted glass smeared with heroin residue, flanked by weighing scales and scissors and a makeshift laboratory.



12. Government Analyst Catherine Murambi (PW7) tested the creamish powder with Marquis Reagent, observing the shift to purple. Advanced Gas Chromatography confirmed heroin with 61% purity, its potency masked by dangerous additives. Her certificates sealed the scientific backbone of the prosecution.
13. Derrick Kiprono (PW8) transformed a CD of raw crime scene photos into 30 stark exhibits. The images depicted sachet piles, discarded masks, and the disarray of the raided rooms, a visual testament to the operation's scale.
14. PC Hillary Seurey (PW9) meticulously photographed each discovery: 2,140 heroin sachets in the bedroom, packaging materials under a bed, and four Tanita weighing scales in a mini bedroom. His lens captured knives, scissors, and a glass slab dusted with residue—a snapshot of the trade's tools. Corporal Geoffrey Kipkurui (PW10) mirrored PW9 account, recovering identical items and drafting inventories. Both noted the suspects' refusal to sign documents, a silent protest against the mounting evidence.
15. The case against the appellants was that they had jointly rented House No. 1 from PW1 who was the landlady. PW1 also placed the appellants at the scene during the day of the raid. A police operation, led by PW6, Chief Inspector Agnes Thungu, uncovered a suspected drug packaging and distribution hub within the premises. Officers seized 2,154 sachets of suspected narcotics, weighing scales, packaging materials, and a glass slab with suspected narcotics residue.
16. 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' premises. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.
17. On whether the recovered substances were narcotics, the forensic analysis by PW7, Government Analyst Catherine Murambi, confirmed that the seized substance was heroin with 61% purity, and PW5, Chief Inspector Philip Langat, valued the drugs at Kshs. 345,060. The photographic evidence captured by PW8, Derrick Kiprono, and PW9, PC Hillary Seurey, visually documented the extent of the operation.
18. The prosecution adduced evidence that established that the substance found in the appellants' premises 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.
19. In their respective defences, the 1st appellant denied all charges, claiming he was arrested while resting at Riabai Shopping Centre, Kiambu, and forcibly taken to an unfamiliar house in Kirigiti. He alleged officers coerced him to falsely admit ownership of the property and accept responsibility for the case. He insisted none of the exhibits—including a photo album belonged to him, stating he only possessed a mobile phone at the time of the arrest.
20. He further testified that officers assaulted him and later searched his Riabai residence, where he lived with his ailing mother, but found nothing incriminating. He denied knowing the second appellant, Anthony Kungu Mungai, or landlady Anne Wacera Mugo. During cross-examination, he acknowledged his photo but maintained the album was not his.



21. The 2nd appellant testified that he was unlawfully arrested near Kirigiti Stadium on 12 July 2018 while delivering clothing orders. He claimed plainclothes officers in a Subaru vehicle assaulted him, confiscated his merchandise (boxers, ice-cream sticks, and Kshs. 430 cash), and forced him into a house where the 1st appellant was already detained. Inside, officers pressured him to sign unidentified documents, which he refused. The 2nd appellant denied ownership of keys, padlocks, or narcotics found in the house, alleging evidence was planted. He described being held at Muthaiga Police Station and later coerced to sign paperwork at DCI headquarters, which he again refused. He disputed the heroin's weight (initially 117g, later revised to 115g) and highlighted inconsistencies in charging documents.
22. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt in my mind the prosecution proved beyond reasonable doubt the offence charged. The conviction of the trial court is affirmed.
23. The appellants were each sentenced to serve ten (10) years imprisonment in addition to payment of a fine of Kshs. 500,000 in default to serve 12 months imprisonment. During the sentencing proceedings, the court considered the appellants' mitigation, the pre-sentence report, and the fact that they were first offenders.
24. 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 11TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellants Present

Mutuma for the Respondent

Tonny Court Assistant

