



**Bizu v Republic (Criminal Appeal E041 of 2025)
[2025] KEHC 11366 (KLR) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 11366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL APPEAL E041 OF 2025**

J WAKIAGA, J

JUNE 18, 2025

BETWEEN

HALIMA RUBI BIZU APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in criminal case no E074 of 2021 of the SPM Magistrate's Court at JKIA Hon. Njeri Thuku)

JUDGMENT

1. The appellant was charged with two counts of A) trafficking in narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances (control) [Act No 4 of 1994](#) the particulars of which were that on 31st October 2023 at Oryx Hotel along Jogoo Road jointly with others not before court trafficked in narcotic drugs namely cocaine to wit 189 pellets weighing 2,329.30 grams with the market value of kshs 9,317,200 by storing in contravention of the Act B) being unlawfully in Kenya contrary to section 53(1) (j) of the Kenya Citizen and Immigration Act 2011.
2. She was tried convicted on the first count and sentenced to fifteen (15) years imprisonment and to pay a fine of kshs 27,951,600 in default one year in prison which default sentence was to run concurrently.
3. Being aggrieved by the said conviction and sentence, the appellant vide an application filed on 19th July 2024 at the High Court Criminal registry at Kibera sought leave to appeal out of time which application was on 19th July 2024 allowed and the appellant granted leave to file appeal out of time within 21 days.
4. This file was thereafter transferred to this Criminal registry and from the record it is not clear whether a formal appeal was ever filed in as much this court admitted the same for hearing by way of submissions on 27th February 2025 as there is no petition of appeal available on record.



Submissions

5. On behalf of their appellant the following grounds of appeal were stated in the written submission:
 - a. That the trial court erred by not appreciating that the evidence tendered by the prosecution was not concrete enough to mete out the sentence herein
 - b. That the court erred by failing to appreciate that prosecution failed to prove case beyond reasonable doubt
 - c. The appellant was not placed at the scene of crime
 - d. The prosecution failed to prove that the prohibited substance sampled and analysed and devices bearing incriminating information against the appellant were seized from her
 - e. The court erred in considering lack of signed sampling certificate, inconsistencies in the prosecution's evidence and on the cyber report inter alia as immaterial
 - f. The appellant's mitigation was not considered contrary to Article 25 of *the Constitution*
 - g. Vital prosecution witnesses were not produced
6. It was submitted that the appellant was not placed at the scene as the prosecution case was that the appellant was found at Oryx Hotel., while the alleged audio tabled by the prosecution referred to Grand Pa and that while the charge sheet talks of 30th as the date of the offence all the witnesses gave 31st as the date. It was contended that one of the ingredients of the offence to be proved was that the seized substances belonged to the appellant and that there was no opportunity of tempering with the same , which is safe guarded by signing of sampling certificates by the government analyst .
7. It was contended that the appellant was convicted on the basis of unsigned sampling certificates which raised doubt as to the nature of the substances seized and actually analysed. It was stated that the mobile phone examined had a different IMEI number from the one seized from the appellant as confirmed through the inventory .
8. It was contended that the cyber evidence did not comply with the provisions of section 106A of the *Evidence Act* asPW6 did not ascertain the integrity of and the condition of the phone thereby creating a doubt as to whether it had been tempered with. It was submitted that PW8 and PW7 gave contradictory statements for the purposes of patching up evidence and incriminating the appellant. In support of the submission the case of Republic v Hassan Subira [2017] eKLR was tendered.
9. It was submitted that the appellant denied the charges and, in her defence, informed the court that she was framed up by the police for declining to offer a bribe to them and that the bag with the substance did not bear any of her identification and that the failure to place her in Kenya at the alleged date was fatal to the prosecution case which was therefore not proved beyond reasonable doubt.
10. On behalf of the respondent, it was submitted that the prosecution proved that the appellant was storing the narcotic drugs for conveying to unknown destination within the meaning of the definition of trafficking as per the Court of Appeal decision in Gabriel Ojiambo Nambesi v r [2007] eKLR. It was contended that the appellant was the only occupant of room no 1 Oryx hotel where the bags was found and which never denied by signing the inventory having travelled from Uganda to Kenya which information was corroborated by information obtained from her hand set.
11. It was submitted that the appellant merely denied knowledge of the images on her phone. That the chain of custody of the exhibits was clearly explained by the prosecution. Reference was made to



the case of Hassan v Rep[2024]KEHC 4331KLR where the court held that the electronic evidence recovered from the appellants phone corroborated the physical or tangible evidence which the appellant failed to rebut.

12. It was contended that PW2 produced the certificate of sampling witnessed by the appellant and that it was found to be cocaine. The appellant in her defence raised an alibi defence which the court held to be an afterthought.
13. On sentence it was submitted that the section 4(a) provides for fine of one million or three times the market value whichever is great and in addition imprisonment for life and therefore the appellant was sentenced as per the law. The court considered her mitigation and the time spent in remand custody. The court was urged to dismiss the appeal.
14. These submissions were highlighted by Mr Chege for the appellant and Ms Kariuki for the respondent.

Proceedings

15. This being a first appeal, the appellant is entitled to re-evaluation of the evidence tendered before the trial court by this court so as to arrived at its own determination thereon while giving allowance to the fact that unlike the trial court did not have the advantage of seeing and hearing witnesses as was stated in Pandya v Republic [1957] EA 336 submitted by the appellant and I shall proceed with this task as herein under.
16. PW1 CPL Richard Mwadime stated that on the material day received information that there was a person suspected to be involved in drug trafficking at Oryx hotel. He proceeded to the appellant room and introduced themselves as police officers and the purpose of their visit , the appellant then introduced herself as Halima Bizu from Uganda. They conducted a search at the said room and in the wardrobe recovered a creamish bag in which the pallets were recovered together with sums of monies in different denominations. They prepared inventory which the appellant signed.
17. It was his evidence that on 3rd November 2021 they escorted the appellant to the government chemist for weighing and sampling exercise. In cross examination he stated that the presumptive test was positive for cocaine.
18. PW2 Denis Owino Onyango produced the certificate of sampling and of weighing which was witnessed by the appellant and the police officers. PW3 SS Livingstone Lihanda was requested to document the processing and weighing and testing the substances suspected to be narcotic drugs which he did and issued the certificate thereon.
19. PW4 Inspector Alibashir olow stated that he received information on the involvement of the appellant in trafficking of narcotic drugs and therefore mobilized officers to the scene at Oryx Hotel along Jogoo Road where the appellant opened for them her room to conduct a search led by Judy Nyaguthi and in which recovery was made and documented. It was his evidence that they counted a total of one hundred and eighty-nine (189) pellets which they marked and packed into evidence bags and sealed so as to preserve their integrity.
20. PW 5 Chief Inspector Philip Langat gave the value of the recovered cocaine at the request of Corporal Odhiambo to be kshs 9,317,200.and at the hearing produced the valuation report, he stated he based his valuation at kshs 4000 for one gram based on black market.
21. PW6 Corporal Lilian Munyinyi as forensic examiner received on 11th November 2021 a TECNO mobile phone for examination with an IMEI n 35675310427245 paired with an Airtell and MTN card belonging to the appellant in which he recovered images and documents including letter of invitation



- and tickets and voice notes over what sup and that the name market was used as a slang name for dope or drugs and that she was not in Hotel Grand pa which she had found fully booked so she moved to the next hotel.
22. PW 7 CPL Judy Nyaguthie searched the appellant hotel room where the narcotic drugs were recovered. She further recovered the TECHNO phone with IMEI number 3567531042145 with a twin sim the second IMEI number being 35675310427213, several currencies in different denominations and that she prepared a search certificate which was signed by the appellant. In cross examination she confirmed that the search was conducted on 30.11.2021 and that there was no other person in the room with the appellant .
 23. PW8 Corporal George Odhiambo the investigating officer in this matter stated that following an information on the appellants activities , they proceeded to Oryx Hotel room 1 where they found the appellant and arrested the same and that the whole process was recorded. He prepared the record of custody of the seized material and notice to tender evidence. In cross examination he stated that the date of arrest was 31st October 2021 sand that they did not ascertain who owned the sim cards recovered. He stated that the appellant was a Ugandan at the time of her arrest .
 24. PW9 Emmanuel Raham Simiyu a Principal Immigration Officer was requested to provide details of entry and exit of the appellant passport holder A 00325460 and that the passport number was not captured in the system and notified the DCI that they did not have any record.
 25. When put on her defence, the appellant stated that on 30th October 2021 she was in Uganda she dropped her child to a friend's place as she was planning to travel and that she entered Kenya using her identity and not passport. That since that washer first time to travel to Kenya she asked some two ladies to help her find her way around Nairobi and recommend an hotel but they told her to ask someone else. She then met two men who agreed to help her and told her to follow them to a hotel and when they got to their car one man removed a pistol and gestured to her to enter and they told her that they were police men, and that she was under arrest for being in the country illegally .
 26. They asked for her passport to see the stamp, to which she responded that she had used her ID card to gain entry. They advised her to cooperate with them if she wanted to be released and if not, she would never go back to Uganda. They then drove her to a place she did not know, which she realized was an hotel and in the room they instructed her to sit on the bed and one guy went into the wardrobe, which he opened and placed a bag in front of her and took photos and thereafter another man entered the room with papers which he asked her to sign.
 27. It was her further evidence that they told her to cooperate with them , so she signed the papers and she was served with search certificate thereafter. They then took her to the police station where she stayed for two days before being brought to court. She was later taken to Kenyatta hospital where they bound a lady who had claimed to had searched her , yet she had never seen her before that date. She was given some documents to sign and that she did not witness the sampling being done. She denied being the owner of the bag from which the drugs were found and that the bus ticket and itinerary of her movement were not hers as she was still in Uganda on 30.10.2021 and neither did she book any hotel .
 28. She produced a copy of her identity card which she used to travel to Kenya as her original identity card got lost and that the audio record produced in court did not come from her phone which had a different serial number from the one produced in court.
 29. DW2 Juliet Risper Auma stated that she had been the appellant's friend since 2015 and that she saw her on 30.10.2021 when she brought her child , who used to call her " Mummy No 2 " to her place because she was going somewhere.



Determination

30. In as much as this is a first appeal, which is on both law and fact, from the proceedings herein and the submissions, it is clear that this appeal is only challenging the trial courts finding on facts and will be determined on the following three broad issues :
 - a. Whether the appellant was placed at the scene
 - b. Whether the prosecution case was proved beyond reasonable doubt
 - c. Whether the sentence was harsh.
31. It is the appellant's contention that she was in Uganda on the date it was alleged that she was found in possession of the Drugs which was on 31st October 2021. To fortify her contention the appellant called DW2 whose testimony was that she was with the appellant in Uganda on 30th .
32. In answer to this contention, the trial court relied on the search certificate produced by Judy Nyaguthi which confirmed that the search started on 30th from 2330 hours to 0135 hours on 31st October 2021. The court further found as a fact that four witnesses were present during the search and that they could have all sat down to hatch a plot against the appellant whom they did not know before the date of arrest and that he alibi defence was raised much late in the trial and that when looked at against the evidence on record it did not displace the prosecution case.
33. On this issue I have looked at the evidence on record, all the prosecution witnesses placed the appellant at Oryx Hotel, she was alone in the room wherein the drugs were found , she signed the search certificates and the dates thereof confirmed by the witnesses. The appellant in her defence did not deny the fact that she was in Kenya, notwithstanding the fact that she was in Uganda on 30th as she together with her witness did not indicate the time she allegedly took her child to DW 2. I therefore agree with the trial court that the same was placed at the scene and therefore dismiss this ground of appeal.
34. The other issue raised by the appellant in her submissions is that the sampling certificates were not signed , however this is contrary to the evidence on record. PW1 witnessed both the weighing and sampling exercise which was done by PW2 Denis Owino Onyango and PW4 Alibashir Olow and therefore find no merit on this ground of appeal which I hereby dismiss.
35. The issue of the two IMEI numbers was answered by the trial court in her judgement as follows “ 48. The prosecution produced as evidence, a phone inventory prepared by Richard Mwadime on October 30, 2021. The phone was seized from Halima on October 30, 2021 at 2358 hours and Halima signed the phone inventory on October 31, 2021 The IMEI number is this information captured in the inventory produced as captured:IMEI No (1) 356853104272145 (2) 356753104272152
36. The phone was twin sim with two EMEI numbers and as correctly captured by the trial court, there was no discrepancy as it referred to the same phone. I therefore find no merit on this ground of appeal which I hereby dismiss .
37. It therefore follows that the prosecution case against the appellant was proved beyond reasonable doubt the drugs having been found stored in the wardrobe and as pointed by the court the weight thereof confirmed that they were not for personal use and that the substance tested positive for cocaine.
38. The appellant's conviction was therefore safe and free from error and therefore the appeal on conviction lacks merit and is dismissed.



39. On sentence the sentence provided for under Section 4(a) of the Act is a fine of one million or three times the market value of the narcotic drug or substances whichever is great and in addition to imprisonment for life. In sentencing the appellant, the trial court relied on the Court of Appeal decision in *Caroline Auma Majabu v Republic* [2014] eKLR where the court held the view that the sentence for trafficking was maximum sentence intended for drug barons and serious drug dealers dealing with drugs worth thousands if not millions of shillings and not small timers.
40. This might have been the position then but being by the current jurisprudence for the Supreme Court on maximum and minimum sentences which they have held to be constitutional, the sentence mated herein is illegal and unlawful.
41. I have however noted that the appellant was not warned of the danger of the sentence being enhanced and further the appellant right to fair administration of action is likely to be breached should the court interfere with the sentence herein without the same being heard thereon. I shall therefore not interfere with the sentence herein which the respondent has stated was lawful , the benefit of which the appellant is entitled to.
42. In the final analysis I dismiss the appeal herein on both conviction and sentence and affirm the trial court finding thereon. The appellant has a right of appeal.

DATED SIGNED AND DELIVERED AT MAKADARA THIS 18th DAY OF JUNE 2025

J. WAKIAGA

JUDGE

In the presence of

