



**Jirma v Republic (Criminal Appeal E013 of 2024)
[2025] KEHC 10648 (KLR) (Crim) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL APPEAL E013 OF 2024
SC CHIRCHIR, J
JULY 17, 2025**

BETWEEN

ABDI SHARU JIRMA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Abdi Zharu Jiram (the Appellant) was charged, tried and convicted of the offence of Trafficking in Narcotic Drugs Contrary to Section 4(a) of the [Narcotic Drugs and Psychotropic Substance Control Act](#) number 4 of 1994. The particulars of the offence were that on 30th day of December, 2021 at Merti junction along Isiolo – Moyale Highway within Samburu County, was found trafficking 3.45 kilograms (three point four three five) of Cannabis Sativa (bhang) with a street value of Kshs. 103,050/= (One hundred and three thousand and fifty shillings) in motor vehicle registration number KCS 674K Toyota Vitz which was not medically prepared. He was sentenced to a fine of Kenya shillings one million(ksh. 1,000,000) or seven years imprisonment in default of the fine.
2. He was aggrieved by the outcome and moved to this court on appeal.

Petition of Appeal

3. The appellant was unrepresented at the time of filing the petition of appeal. Consequently, for purposes of clarity, I will summarize and rephrase the grounds as follows:
 1. The trial magistrate erred by convicting the appellant when the case against him was not proved beyond reasonable doubt.
 2. The evidence was not cogent or adequate to form a basis of conviction.



3. The trial magistrate erred in failing to accord the appellant the right to fair trial.
 4. That there were contradiction and inconsistency that affected the prosecution's case.
 5. That the trial magistrate failed to consider the circumstances of the offence and the mitigation of the appellant.
 6. That the fine imposed was excessive and does not don't conform with the provisions of the *Narcotic Drugs and Psychotropic Substance control Act* Number 4 of 1994.
 7. That the trial magistrate ignored his defence.
4. The parties prosecuted the appeal by way of written submissions.

Appellant's submissions

5. The appellant opted to address three issues in his submissions:-
 - a. Whether there was sufficient evidence to prove that the accused was found with cannabis sativa.
 - b. Whether the prosecution prove its case beyond reasonable doubt.
 - c. Whether the appellant's mitigation was consistent and whether the sentence was extreme and excessive.
6. On the 1st issue the Appellant submits that no substance was found in the vehicle or on his person; that he was not the one who drove the vehicle from merit to Isiolo police station , where the drugs was discovered; that the officer who drove the vehicle to Isiolo Police Station was never called as a witness to shed light on where the drugs were found.
7. It is further submitted that, the circumstantially, there was no evidence showing that he was in possession of the drugs as the prosecution failed to prove that the appellant knew of the existence of the drugs in the vehicle, and was not in control of the vehicle when the drugs were discovered. In this regard the appellant has adopted the definition of the term actual and constructive possession as was explained in the case of *Daniel Dena Mwaringa & 3 others v Republic* 9 (citation not provided)
8. It is further submitted that there was inconsistency on where the drugs were located and how much it was ; that while PW1 testified about 6 items, under the dashboard, PW3 talked of Items being on the left and right side of the dashboard. Thus, it is submitted, it is not clear as to where the items were located. It is further submitted that while PW1 testified that the items were wrapped with a yellow cello tape, PW3 stated that there were concealed in black polythene paper and were wrapped in a cello tape.
9. As to whether the case was proved beyond reasonable doubt it was submitted that any evidential gaps such as above must be interpreted in favor of the accused.
10. Other inconsistencies pointed out include the number of persons who were in the vehicle. That whereas PW1 stated the accused was that only one in the vehicle, PW3 stated that the accused was with his son. It is also submitted that there were no photographs produced to show where the drugs were located. The Appellant believes that drugs were planted in his vehicle during the trip between Archers post and isiolo when the vehicle was driven there in his absence.
11. On the sentence, the Appellant argues that in the light of the Appellants mitigation, the sentence was excessive and disproportionate; that the trial court failed to call for a probation report prior to sentencing.



Respondent's submissions

12. It is submitted that the ingredients of the offence of Trafficking in Narcotics as set out in the case of *Timami v Republic* (criminal Appeal No. 002 of 2023) were established. It is further submitted that PW4 and PW2 testified that they stopped motor vehicle registration KCS 674K and the Appellant was the driver; that the officers searched the vehicle and found 6 bundles of green material. That consequently it was proved that the Appellant was in possession of the drugs. On prohibition, it is submitted that the Government Analyst analyzed the green material and found that it was cannabis. On quantity, it is the respondent's submission that that the certificate of weighing was produced and indicate that the substance weighed 3.435 kilograms. On intention to engage in trafficking it is submitted that there was proof that the appellant travelled from Marsabit and was headed to Nairobi.
13. On the contradiction and inconsistencies, the respondent submits that there was no contradiction between the testimony of PW1 and PW3 on the location of the drugs in the car and the wrapping used.
14. On the sentence, it is the respondent's submission that it is an act of discretion by the trial court, and that the fine of ksh. 1 million or 7 years imprisonment in default was lenient in comparison to the sentence prescribed by the Section 4(a) of the *Act*.

Analysis and determination

15. This being a first appeal, this court is mandated to review the evidence, do its own evaluation and arrive at its own findings. (see Ref *Okeno v Republic* (1972) EA 32)
16. I have considered the Lower Court Proceedings, the judgment, the grounds of appeal and parties submissions. In my view the following issues arise for determination.
 - a. Whether there were material contradiction and inconsistencies on the prosecution's case
 - b. Whether the prosecution proved its case.
 - c. Whether the appellant's mitigation was considered and whether the sentence was excessive

whether there were material contradiction and inconsistencies on the prosecution's case.

17. The appellant has made reference to three contradiction, in the evidence of PW1 and PW3; that is the number of people that were in the vehicle, the location of the drugs inside the vehicle and the material that was used to wrap the drugs .
18. On the number of the people that were in the vehicle, PW1 told the court that the appellant was alone, while PW3 stated that the accused was with his son. PW4 too told the court that the Appellant " was with a young boy". The appellant did confirm he was with his 5 year- old son. There is consistency on the evidence of at least two of the prosecution witnesses to the effect that the accused was with his young son. I do not consider the contradiction between the testimony of PW1 and PW3 substantive so as to have any effect of the prosecution's case. PW1 further did not appear like he was out deliberately to mislead the court. In the case of *Philip Nzake Watu v Republic* Court of Appeal the court stated as follows: "In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The Court has to decide whether inconsistencies and contradictions are minor, or whether they go to the root of the matter."
19. On the location of the drugs, there was no contradiction. PW1 and PW3 testified that the drugs were under the dash board. While PW1 added that the some were on the left and some were on the right. In my view, the two witnesses did agree that the drugs were under the dashboard, save that one added that



they were spread between the right and the left. This is a case of inconsistency and not contradiction. The testimony of PW1 was less descriptive compared to that of PW3. This in my view is too minor to affect the prosecution's case. It would have been material for instance, if one had stated that the drugs were in the booth, while the other named the dashboard.

20. Finally on the wrapping, it is again a case of inconsistency as opposed to contradiction. According to PW1, the drugs were "wrapped with yellow cello tape" while according PW3 they were concealed in black polythene and then wrapped with cello tape but whether there was actual form of wrapping underneath the cello tape is what the appellant is questioning. Again, this is a minor contradiction. It does not materially affect the prosecution's case.

whether the prosecution as proved its case

21. The ingredients of the offence of trafficking in narcotics are well settled. In the case of *Timami v Republic* [2024] KEHC 634 (KLR) cited the respondent's the ingredients of the offence are:
- a. The act of knowingly possessing, manufacturing, selling, buying, transporting, or otherwise dealing with narcotic drugs or psychotropic substances.
 - b. The *Act* must prohibit the substance.
 - c. The quantity must be more than for one's consumption.
 - d. The prosecution must establish that the accused intended to engage in trafficking or dealing with narcotics, or an inference of such intention may be discerned from the circumstances".
22. On the first ingredient, the appellant herein was driving motor vehicle registration number KCS 674K. According to PW1 and PW3, the drugs were in his vehicle. The appellant however denies this. I have seen the certificate of sampling (exhibit 8) which is not signed by the appellant. However he signed the inventory (PExb. 2) and the weighing certificate (PExb 7). There was no suggestion or any evidence from him denying that he signed the aforesaid documents. The signing of the documents was tantamount to an admission that he knew he was carrying some substance and the substance was narcotics.
23. On whether the substance was prohibited, the answer is in the affirmative. Under schedule 1 to the *Act*, cannabis is one of the prohibited substances. Further the drugs weighed 3.435 kilograms clearly much more than the limit allowed by section 4(a) of the *Act*.
24. On whether there was an intention to traffic, the appellant told the court that he had come from Marsabit and was headed to Nairobi, and the drugs were sealed with a cello tape and hidden under the dashboard. The circumstances point to the fact that the Appellant's intention was that of trafficking.
25. I have considered the Appellant defence. While admitting he was driving the vehicle before arrest, he denied any drugs were found in the vehicle. He accused the police of planting the drugs as the vehicle was being driven from Merti junction to Isiolo Police Station. However this defence cannot stand on the face of the fact that he signed the inventory and the certificate of sampling. It matters not whether the inventory was done at Merti junction, or at Isiolo Police Station. What is material is that he signed the inventory. If there were no drugs in the vehicle, at the time he was arrested, it is inconceivable why he would sign the inventory. Further, considering that he was a fellow police officer, it cannot be that he felt so threatened by his colleagues to the extent of signing the inventory, if indeed he was innocent.
26. He further told the court that his arrest was about the gun he was carrying. However, he did not explain why that would become an issue yet PW1 and PW3 admitted that the Appellant was a police officer. It is common knowledge that, subject to some exceptions, the police always carry guns and therefore



there was nothing unusual about him carrying a gun. However if the circumstances were different the onus was on him to explain to the court why the carrying of the gun became an issue to the extent that he was being arrested by his own colleagues. The defence is simply, implausible and I dismiss it.

27. In the end, I am satisfied that the Appellant's conviction was safe and consequently the decision of the lower court is upheld.

Sentence

28. The appellant has argued that his mitigation was not considered and the sentence was excessive; that he was a first offender and a police officer. He further faulted the trial court for failing to call for a social inquiry report before sentencing him.
29. The appellant was sentenced to a fine of one million shillings and 7 years imprisonment in default. Section 4(a) of the Act under which he was charged provides: "Any person who traffics 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"
30. Contrary to the Appellant's submissions the court considered his mitigation, including the fact that he was a first offender. The fact that the accused was a police officer is not a relevant factor, but if it were, I would have considered it an aggravating factor, as it was a breach of trust placed on him as a law enforcement officer. The fine of Kshs. 1,000,000/= or default 7 years is founded in law and I have no reason to interfere with it.
31. In the end the entire appeal fails. It is hereby dismissed.

DATED, SIGNED, AND DELIVERED AT ISIOLO THIS 17TH DAY OF JULY, 2025.

S. CHIRCHIR

JUDGE

In the presence of:

Roba Katelo- court Assistant

Abdi Sharu- The Appellant

Mr. Jarso for the Appellant

Mr. Ngetich for the Respondent.

