



**Kawira v Republic (Criminal Appeal E029 of 2024)
[2025] KEHC 12931 (KLR) (Crim) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL APPEAL E029 OF 2024
SC CHIRCHIR, J
SEPTEMBER 18, 2025**

BETWEEN

JANE KAWIRA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from the conviction and sentence in Criminal Case No. E087 of 2024 of the Chief Magistrate's Court at Isiolo delivered by Hon. L.Mutai on 14th November 2024)

JUDGMENT

1. The Appellant was charged with two counts of trafficking in Narcotic drugs contrary to Section 4(a) of the Narcotic and Psychotropic Substances (Control) (Amendment) Act No.4 of 2022. The particulars of the charge were that on the 6th day of February 2024 at Soko-Mjinga area in Isiolo Township in Isiolo within Isiolo County was found trafficking in Narcotic drugs, namely cocaine to wit one(1) gram with street value of Ksh.4,000/= (four thousand shillings) which was not medically prepared and cash Ksh. 1,500(one thousand five hundred) believed to be proceeds of crime.
2. On the second count, the particulars were that on 6th February 2024 at Soko-Mjinga area in Isiolo Township in Isiolo within Isiolo county, was found, trafficking in narcotic drugs namely ten rolls of bang to wit thirty (30) grams with street value of Ksh. 900 (nine hundred shillings) which was not medically prepared and cash Ksh. 1,500. She was acquitted of the first count. The 2nd count was reduced to the offence of being in possession of drugs, and sentenced to 15 years.

Petition of Appeal

3. The Appellant was aggrieved by both the conviction and sentence and moved to this court on Appeal. The Appeal is premised on grounds that : the charge was defective; that the ingredients of the offence



were not proved; that the charge was not proved beyond reasonable doubt; that the trial Court fell into error by applying section 179 of the Criminal Procedure Code ;that her mitigation was not considered, and finally that, the sentence was excessive in the circumstances.

4. Parties filed written submissions in respect of the Appeal.

Appellant's Submissions

5. It is the Appellant's submission that the charge sheet was defective in that Section 4 of the 1994 (Amended) Narcotic drugs and Psychotropic substances Act (The Act),does not define the offence of trafficking but only prescribes the sentence; that such error offends section 134 of the Criminal Procedure Code (CPC) as it only prescribes the penalty but not the offence for which one is charged.
6. It is further submitted that the trial court violated Section 179 of the CPC, in that while the Appellant was convicted of a lesser offence, the Appellant was not put on notice, to enable her defend herself against the lesser offence; That Application of Section 179 of the CPC violated the Principle of legality. While relying on the case of Peter Gichangi vs. Republic (2005) eKLR on the proper application of Section 179, the Appellant submits that to the extent that the original charge sheet was defective, then the Appellant should have been acquitted as opposed to being convicted of a lesser charge. It is argued that conviction for unrelated offence is impermissible.
7. On the sentence, it is submitted that it was excessive and was against the sentencing guidelines and policy.
8. It is finally submitted that the Court failed to consider the Appellant's defence and mitigation, prior to sentencing her to the 15-year prison term.

Respondent's Submissions

9. It is the Respondent's submission that the charge sheet complied with Section 134 on the ingredients of a charge and Section 137 on the essentials in framing a charge sheet; that the Appellant's allegation that she was charged with the penalty Section of the Act, is a wrong interpretation of the law.
10. On the application of Section 179 of the CPC, the Respondent points out that the Appellant was convicted of the lesser offence of being in possession of drugs and that the court's decision was in consonance with the provisions of Section 179 of CPC.
11. It is finally submitted that the sentence of 15 years meted out against the Appellant was lenient when considered against the prescribed sentence under Section 4(a)(ii) of the Act.

Summary of the Evidence

12. According to PW1, acting on information that the Appellant was selling drugs at soko car wash area, he went there, arrested her and took her to Isiolo Police Station. At the Station, PW2 searched her and recovered 10 rolls of suspected "bang", 6 sachets of suspected cocaine and Ksh. 1500. PW3 presented a report on the analysis of the substances recovered, in which the result of the analysis established that the substances were heroin and cannabis both of which fall under the classification of Narcotics. PW4 weighed the substances and prepared the certificate of weighing. He told the court that the Appellant signed the Certificate of weighing.



Analysis and Determination

13. This being a first Appeal, this Court’s mandate is to review the evidence, analyze it and arrive at its own independent findings. However, allowance must be made for the fact that the trial Court had the advantage of hearing the witnesses first hand and observing their demeanour.
14. I have considered the grounds of Appeal, the evidence tendered at trial and parties’ submission, and I have identified the following issues for determination:
 - a. Whether the charge sheet was defective.
 - b. Whether Section 179 ought to have been applied.
 - c. Whether the sentence was excessive.

Whether the charge sheet was defective

15. Count II of the charge sheet read: “Trafficking in Narcotic Drugs contrary to Section 4(a) of the Narcotic and Psychotropic Substances Control Act No. 4 of 1994 as Amended by Narcotic and Psychotropic Substance (Control)(Amendment) Act No.4 of 2022”. The Appellant’s argument is that Section 4(a) simply prescribes the penalty, but does not describe the offence.
16. The Section under which the Appellant is charged prescribes both the offence and the penalty. The entire Section 4 reads as follows: Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her 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—
 - (i) where the person is in possession of between 1—100 grams, to a fine of not less than thirty million shillings or to imprisonment for a term of thirty years, or to both such fine and imprisonment;
 - (ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shilling or three times the market value of the narcotic psychotropic substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment;
 - (b) in respect of precursor chemicals or any substance, other than a narcotic drug or psychotropic substance, which he or she represents or holds out to be a narcotic or psychotropic substance—
 - (i) where the person is in possession of 50 mg or more, to a fine of not less than twenty million shillings or imprisonment for life; and
 - (ii) where a person is in possession of 50 mg or less, to a fine of not less than ten million shillings, or to imprisonment to a term of not less than ten years, or to both such fine and imprisonment.
17. I agree with the Respondent that it is the reading of the law by the Appellant that is erroneous. In any event such defect , if any, was never raised during trial. Further again pursuant to Section 382, such a defect, if any, donot warrant an alteration or reversal of the trial Court’s judgement.



Application of Section 179 of CPC

18. The Appellant's argument in this regard is that to the extent that there was a defect on the original charge sheet, then it should not have formed a basis of conviction on the lesser charge. Section 179 of the CPC empowers the Court to reduce and convict an accused on a lower charge, where the facts do prove the minor offence, and as long as the minor offence is cognate to the original charge.
19. The Court has already arrived at the conclusion that there was no defect on original charge and therefore Section 179 of the CPC was correctly applied.
20. The Appellant's further argues that she was convicted of an offence for which she never got a chance to plead. The Appellant argument shows that she is under the misconception that the lesser charge must have been based on separate facts. To the contrary, when the court convicts on a minor offence, the conviction is based on the same set of facts that would have already been presented to the court. In my view this argument reflects the Appellant's misconception of the provisions of section 179 of the CPC. This ground of Appeal is therefore without merit.

Whether the Sentence was excessive

21. The Appellant was convicted under Section 4(a)(i), which prescribes a sentence of up to 30 years or fine of not less than 30 million or to both fine and imprisonment. Considered against the maximum sentence prescribed by the Act, and the fact that she was still liable to a fine in addition to the prison sentence, do not consider the prison term of 15 years, excessive.
22. In the end I do not find any merit in the entire Appeal. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT ISIOLO ON 18TH SEPTEMBER 2025.

S.CHIRCHIR

JUDGE.

In the presence of:

Roba Katelo- Court Assistant

Jane Kawira – The Appellant

Mr. B. Ngetich for the Respondent.

