



**Adanna v Republic (Criminal Appeal 26 of 2023)
[2024] KEHC 4712 (KLR) (7 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 26 OF 2023**

DR KAVEDZA, J

MAY 7, 2024

BETWEEN

FABIAN JOY ADANNA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. C.M Njagi (S.R.M) on 13th May 2022 at JKIA Chief Magistrate's Court
Criminal Case No. 5 of 2019 Republic vs Fabian Joy Adanna and 2 others)*

JUDGMENT

1. The appellant with others not before this court was charged and convicted for the offence of trafficking in narcotic drugs contrary to section 4(a) of the [Narcotic Drugs and Psychotropic Substances Control Act](#) No. 4 of 1994. He was sentenced to pay a fine of Kshs. 14,998,680 in default to serve 1-year imprisonment. In addition, he was sentenced to serve twenty (20) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In his appeal, the appellant raised 10 grounds which have been coalized as follows: The appellant challenged the totality of the prosecution's evidence against which he was convicted. She argued that crucial prosecution witnesses were never called to testify. She contended that his defence was not considered by the trial court in reaching a final verdict. She complained that the sentence imposed was harsh and excessive. She urged the court to allow his appeal.
3. 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 vs Republic* [1973] EA 32).



4. The prosecution called twelve (12) witnesses in support of their case. On December 31, 2018, PC Benard Kipkirui (PW1) and his team were dispatched to Obibon Hotel in Umoja Estate. They encountered a woman at the reception, informed her of their purpose, and proceeded to a room where the appellant allowed them to conduct a search. Inside, they found a large blue bag containing eight smaller women's bags, one of which contained a sealed yellow envelope allegedly belonging to Oscar.
5. After failing to locate Oscar in Tena Estate, they returned to the station where two more sealed envelopes were found in other bags belonging to the appellant. PC Mugambi documented the seized items, although no female officer was present, and PC Mugambi wasn't designated as a narcotics officer. PC Kipkirui clarified that he didn't sign the report of seized substances. PW1 emphasized that only a few bags were searched at the hotel.
6. PW2, PC William Adhola Ochieng, accompanied PW1 to a search and seizure operation at a hotel in Umoja Estate. At the premises, the appellant consented to a search where the discovered suspected narcotics concealed in bags, allegedly belonging to Oscar. Despite searching for Oscar in Tena Estate unsuccessfully, more items were recovered at the police station after a thorough search of the items.
7. In his testimony, he clarified that there was no inventory of items seized from the hotel, and the report of seized substances lacked signatures. Furthermore, the record of custody was signed by someone absent from the scene. These discrepancies raised questions about the handling and documentation of evidence.
8. PW3, Mark K. Wera, described the events of December 31, 2018, at Oloiboni Hotel. He mentioned a female client who initially received a room key and later returned with another woman carrying a blue bag. Later, a man arrived, went upstairs, and left, followed by the departure and return of the women. Subsequently, three men claiming to be police officers arrived and requested access to a room. PW3 informed the manager, Pricilla, and two officers entered the room while one remained with the manager. Eventually, they emerged with a bag.
9. PW3 affirmed the absence of a female officer during the search and confirmed the presence of two officers in the room with the appellant, while Pricilla remained with another officer. Notably, he claimed not to have seen the drugs, the case, or the other bags.
10. PW4, Pricilla Wanjiku Kariuki, the manager of Obiboni Hotel, responded to the call from PW3 regarding the three police officers. Upon her return to the hotel, she found the officers already in room B13, where they were conducting a search. Recoveries were made during the search, and the officers subsequently left with the client, the appellant herein. Later, officers returned to retrieve the CCTV footage.
11. PW5, Chief Inspector Agnes Tune, testified that she instructed PC Mugambi to take over the case at Buruburu Police Station. Later, she met with the appellant who had been arrested, and prepared an inventory of the items recovered from her, including drugs. She also conducted the weighing of the drugs and prepared a weighing certificate dated January 4, 2019, indicating a total weight of 1666.52 grams. Additionally, she seized the drugs and prepared various documents such as the record of seized substances, report of seized substances, and notice of intention to render records into evidence. It was her evidence that further investigations led to the tracing of the second and third accused persons.
12. PW6, Catherine Serah, the designated Government Analyst, conducted tests on three packages presented to her regarding the case. The samples tested positive for a narcotic drug. After conducting a comprehensive test, the substance was confirmed to be positive for heroin. PW6 provided the certificate of sampling and the Government Analyst report, documenting her findings.



13. PW7, Inspector Abed Onyapidi, the scene of the Crime Officer, documented the weighing and sampling processes through 60 photographs, which were produced as prosecution exhibits together with his report. He noted that the difference in weights in the photographs included the weight of the powder and the pouches. He clarified that the bags had been torn at the bottom by the time he photographed them, and the bags were brought to him by Agnes Tune, PW5.
14. PW8, Chief Inspector Phillip Langat, served as the officer who valued the seized narcotics. He valued the seized items at Kshs 4,999,560/=, with a value of Kshs. 3,000/- per gram, relying on the information provided to him regarding the weight and identification of the substance as heroin. PW8 prepared the valuation certificate, by relying on the weighing certificate and the government chemist report.
15. PW9, PC Elisha Chirchir from the Cybercrime Forensic Unit, retrieved CCTV footage from Obiboni Hotel spanning from December 27, 2018, to January 01, 2019. This footage, obtained on January 07, 2019, was stored in forensic sterile media. Chirchir retrieved the footage from a digital recorder identified by its IP address, serial number, and model. The footage was sourced from four cameras stationed in various areas of the hotel.
16. PW9 presented a chronological account of events captured in the footage as part of the prosecution's evidence. Additionally, he submitted a cybercrime report and certificate detailing his findings. Notably, the footage lacked information about the hotel's name or location and did not include any footage of the search conducted on the bag implicated in the case.
17. PW10, Paul Maina, testified that in February 2017, Michelle Anyango rented his property, House 501, and filled out a tenant form. She resided there with the second and third accused individuals. He later learned about police officers searching for a man at the property on December 31, 2018, but he had rented the house to Michelle, not the appellant herein.
18. PW11, Corporal Geoffrey Kipkirui, detailed a search conducted in the Ruaka area where they encountered the second and third accused individuals. They recovered three ladies' handbags, among other items, but no drugs were found. They escorted the suspects and recovered items to the police headquarters for further questioning.
19. PW12, PC Patrick Mugambi, received a call on January 01, 2019, and found the appellant at the report office in Buruburu Police Station. He prepared an inventory of items found in the big blue bag, suspecting three bars wrapped in yellowish tape to be narcotic drugs. However, he was not present during the weighing and sampling processes. Interrogating the appellant, she mentioned being asked to call Oscar and went to the Oloiboni Hotel. CCTV footage later showed the second and third accused carrying the blue bag at the hotel. They conducted a search at the Ruaka house after the arrest of the second and third accused. PW12 clarified that the seizure was done at the police station, not the hotel, and noted a typing error on the exhibit memo form.
20. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on her defence. She gave sworn testimony and did not call any witnesses. She told the court that she arrived in the country on December 27, 2018. At the time, she was staying at Leaders Hotel. On December 31, 2018, during New Year's Eve celebrations, she went outside and was approached by individuals claiming to be police officers. They asked about her accommodation and proceeded to search her room, during which she was slapped when she questioned them.
21. She denied staying at the Oloiboni Hotel and asserted that the recovered items were not hers. She also claimed not to know the second and third accused individuals. She emphasized that she didn't know the officers before and stated that they also conducted a body search on her.



22. This court has re-evaluated the evidence adduced before the trial court, the Appellant's grounds of appeal as well as the rival parties' submission. 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;”
23. The case against the appellant was that on December 31, 2018, police responded to a narcotics tip-off at a hotel in Umoja Estate. The suspect was the appellant herein who had rented one of the rooms at the Oloiboni Hotel. Subsequent searches in the premises revealed suspected narcotic substances in 8 small ladies' bags inside a big blue bag. Inside was a small yellow envelope that contained suspected narcotic substances. In her defence, the appellant disputed being a client at the hotel. However, the Receptionist at the hotel who testified as PW3, and the Hotel Manager who gave evidence as PW4 confirmed that the appellant was indeed their client at the hotel.
24. It was the prosecution's evidence that the suspected narcotics substances were only discovered after a thorough search of the seized items and this was done at the police station. The Crime Scene Officer (PW7) documented the weighing and sampling of the suspected narcotic substances with photographs.
25. The suspected packages were weighed at 1666.52 grams, witnessed by the appellant, and PW5. PW8 produced a valuation report giving the market value of Kshs 4,999,560/= at Kshs. 3,000/- per gram of heroin on the suspected narcotic substances based on the charge sheet, weighing certificate, and government analyst's report.
26. 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 from the appellant's hotel room. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.
27. On whether the substance recovered was narcotic, the Government Analyst PW6 testified that she conducted a preliminary test of the substance recovered from the appellant's hotel room. The test confirmed that the substance contained heroin. The prosecution adduced evidence that established that the substance found in the appellant's possession 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.
28. In her defence, the appellant denied knowing the existence of the heroin in her hotel room. She even denied staying in the said hotel where the narcotics were recovered. She argued that she was likely framed by the anti-narcotic unit. The court considered her defence and found it to be incredible. Given the foregoing, I find that the appellant's defence did not dislodge the cogent evidence adduced



by the prosecution. In my view, the appellant's defence was properly dismissed by the trial court as an afterthought aimed at exonerating herself from the offence.

29. The appellant also complained that essential witnesses were not called to testify. However, the same was not canvassed by way of written submissions. In the premises, the ground is dismissed.
30. 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.
31. On the sentence, the appellant was sentenced to pay a fine of Kshs. 14,998,680 in default to serve 1-year imprisonment. In addition, she was sentenced to serve twenty (20) years imprisonment. The appellant argued that the sentence was illegal, harsh, and excessive.
32. From the record, the said narcotic drugs were duly weighed and found to be the value of a substance (heroin) with a market value of Kshs 4,999,560/= In sentencing, the trial court considered the market value before imposing the fine in addition to the prison sentence. The trial court also considered her mitigation and that she was a first offender, that she was remorseful and the period spent in remand custody. The sentence meted out was therefore within the law.
33. The upshot of the above is that the appeal is dismissed for lack of merit. Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 7TH DAY OF MAY 2024

D. KAVEDZA

JUDGE

In the presence of:

Mr. Ogutu for the Appellant

Mr. Mutuma for the Respondent

Joy Court Assistant

