



REPUBLIC OF KENYA



**Stendelis v Republic (Criminal Appeal 15 of 2023)  
[2024] KEHC 5091 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 15 OF 2023  
DR KAVEDZA, J  
MAY 15, 2024**

**BETWEEN**

**ROKAS STENDELIS ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. L.O Onyina (C.M) on 28th September 2022 at JKIA Chief Magistrate's  
Court Criminal Case no. E032 of 2021 Republic vs Rokas Stendelis)*

**JUDGMENT**

1. The applicant was charged and after a full trial convicted for the offence of trafficking in narcotic drugs contrary to section 4 (a) of the *Narcotic Drug and Psychotropic Substances (Control) Act* No. 4 of 1994. He was sentenced to pay a fine of Kshs. 49,680,000 in default to serve 1-year imprisonment. In addition, he was sentenced to serve 30 years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He also argued that the sentence meted out was harsh and excessive.
3. In response, the respondent filed grounds of opposition dated 20<sup>th</sup> November 2023. The grounds raised were that the appeal was misconceived and unsubstantiated. The appellant was properly convicted before the trial court where the prosecution discharged their burden of proof beyond reasonable doubt. The appeal lacks merit and should be dismissed.
4. 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 v Republic* [1973] EA 32).



5. The prosecution called nine (9) witnesses in support of their case. PW1 Frida Waweru, a security officer at Kenya Airports Authority told the court that on 10<sup>th</sup> December 2020, she was performing her normal duties of screening passenger luggage at terminal IB. She was informed by her colleague John Waweru (PW2) at the screening machine to inspect the contents of a grey bag that was suspicious. She identified the owner of the bag, the appellant herein who opened the bag for her. She proceeded to conduct a search of the bag and no illicit contents were discovered.
6. She told the court that the empty bag was still heavy and it was screened again. The appellant herein who was the owner of the bag was adamant that the bag was empty. PW 1 handed over the bag to her supervisor for verification. She identified the grey bag which was produced as an exhibit in court.
7. PW2 John Waweru corroborated the evidence of PW1 on the events of 10<sup>th</sup> December 2020. After a physical search was conducted, only clothes were discovered in the grey bag. He maintained that during the search the appellant was having a conversation with PW1 who was conducting the physical search.
8. PW3 Corporal James Nyamosi of the Anti-Narcotics Unit at JKIA told the court that was on duty when he received a call on 10<sup>th</sup> December 2020. The report was of a passenger who had suspicious luggage. In the company of PC Kibet Korir and PC Jane Nsereka, they found two individuals who had been held. They were the appellant and Bresious Karolis. A primary search of the appellant's grey bag revealed a creamish substance suspected to be narcotics substances. The substance was concealed in a false top and false bottom on the appellant's suitcase. He also recovered the appellant's Lithuanian passport, flight boarding pass from Vilnius to Frankfurt, and another from Frankfurt to Nairobi among other personal belongings. He prepared an inventory of the recovered items witnessed by the appellant, PC Kibet Korir, and PC Jane Musereka.
9. PW4, Inspector Daniel Kamureng, testified that he was part of the anti-narcotics unit at JKIA during the relevant period. He received a call from PW 3, informing him of the arrest of two passengers with suspected narcotics in their luggage. Upon arrival at the office, he found a grey suitcase on the table with a false top and bottom containing a black polythene package. The concealed package was a creamish powdery substance suspected to be narcotic. He escorted the substances to the exhibit store where they were entered into the register.
10. On 11/12/2020, PW4 to proceed to the airport for a weighing exercise. Upon arrival, he was joined by Inspector Layrice Ligaka (Crime Scene Investigation Officer), and Denis Owino (government analyst). PW4 brought the appellant to the JKIA police station, while PW3 retrieved the grey suitcase with the intercepted substance from the store. He then conducted the weighing process, using four empty packages and a scale. The total net weight was 5.52 Kilograms. The process was witnessed by Mary Anyimba and James Kinyua who were police officers. Inspector Layrice Ligaka (PW6) took photographs of the weighing and sampling process, and everyone present, including the appellant, signed the weighing certificate. PW4 produced the Certificate of Weighing and a Notice of Seizure for the creamish substance and grey traveller's bag that was produced in court.
11. PW5, Denis Owino Onyango an analyst with the government chemist, testified that he received four packages of samples of a creamish substance. Under the escort of PW 3, he analysed the samples using the Ultra-Violet visual spectroscopy machine. His findings confirmed the creamish substance contained heroin with a 35 percent purity. On 25<sup>th</sup> January 2021, he signed a report and affixed a government seal, identifying it as a prosecution exhibit.
12. PW7, Inspector Philip Lagat a police officer in the anti-narcotics unit, testified that on 25<sup>th</sup> January 2021, he provided the value of a narcotic substance (heroin) weighing 5.52 Kilograms, as requested



by Corporal George Odhiambo. The market value was Ksh. 16,560,000, calculated at Ksh 3,000 per gram. He presented the Certificate of Valuation as a prosecution exhibit.

13. PW8, Inspector Samson Ogutu from the Forensic Imaging and Acoustic Unit at the DCI headquarters, testified that his role involves processing, analysing, and certifying photographic and electronic recordings in line with the *Evidence Act*. On 14<sup>th</sup> December 2020, he received an exhibit memo from the anti-narcotics unit at JKIA, along with a 32 GB flash drive. Conducting playback tests on nineteen CCTV video footage files, he confirmed their integrity and produced them in court. PW 7 positively placed the appellant at the scene from screening to arrest, describing the video footage of the appellant's arrival, bag placement on the screening machine, and subsequent actions until the arrest. He produced the certificate in court.
14. PW9, Corporal George Odhiambo, the investigating officer, provided a comprehensive account of the events and his investigative procedures, ultimately leading to the charges against the appellant. He presented the inventory, detailing the custody of seized substances, along with the Notice of Intention to Tender Records in Evidence. During his testimony, he introduced the items recovered from the appellant person as evidence.
15. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on his defence. He gave sworn evidence and told the court that on 10/12/2020, before 8:00 pm, he arrived at Jomo Kenyatta International Airport and went through security. He claimed to have been wrongly accused of owning a suitcase containing drugs. Despite his protests, he was detained, and his belongings were confiscated. On 11/12/2020, the police allegedly found drugs in the suitcase and proceeded with legal action. The appellant maintained his innocence.
16. In his appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He argued that the exhibits relied on by the prosecution failed the authenticity test. In addition, the investigating officer's chain of custody log produced was not adequate as the link between the narcotic substances and himself was never established. He maintained that he was not in possession of the grey suitcase where the narcotic drugs were allegedly found.
17. 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 follows;

“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;”

18. The term trafficking is defined in Section 2 of the *Act* as:

“The importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution by any person of a narcotic drug or psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance or making of any offer in respect thereof...”



19. In *Gabriel Ojiambo Nambesi vs Republic*, [2007] eKLR, the Court of Appeal addressed itself to the above definition and what is required to prove the offence of trafficking in narcotic drugs. The court stated thus:
- “It is evident from the definition of trafficking that the word is used as a term of art embracing various dealings with narcotic drugs or psychotropic substances. In our view for the charge sheet to disclose the offence of trafficking the particulars of the charge must specify the conduct of an accused person which constitutes trafficking. In addition and more importantly, the prosecution should at the trial prove by evidence the conduct of an accused person which constitutes trafficking.”
20. In this particular case, the prosecution contended that the appellant was involved in the trafficking of a narcotic substance. PW1 and PW2 who were security guards at the Airport, noticed the anomaly during the screening of the appellant’s luggage. Upon a primary inspection of the luggage, only the appellant’s clothes were in the suitcase. However, the empty bag was still heavy and they referred the matter to their supervisor. Corporal James Nyamosi (PW3) received a call on 10/12/2020 about a suspicious traveller at JKIA. Together with PW4, PW3 conducted a further search on the appellant’s bag which was found to contain a false top and a false bottom. In the concealed sections, a creamish substance was discovered in a black polythene bag. The substance was suspected to be narcotic. The weighing and sampling of the suspected narcotics were conducted in the presence of the appellant, PW3, PW4, and PW6 who took photographs of the process.
21. On whether the substance recovered was narcotic, PW5, a government analyst testified that he conducted a preliminary test of the substance recovered from the appellant. The test confirmed that the creamish substance contained heroin with a 35 percent purity. 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.
22. PW7 provided the valuation of the heroin weighing 5.52 Kilograms. The value was calculated at a market value of Kshs. 3000 per gram. He gave a valuation of Ksh. 16,560,000. PW8, Inspector Ogutu, confirmed the integrity of CCTV footage placing the appellant at the scene. PW9 Investigator Odhiambo detailed the events, presented an inventory, and introduced recovered items as evidence.
23. The chain of custody for the substances recovered in the case against the appellant is well-documented through the testimonies of various witnesses. PW3 took custody of the suspected narcotics for weighing and sampling. PW6, Inspector Ligaka captured photographic evidence, confirming the integrity of the weighing certificate during cross-examination. PW8, Chief Inspector Samson Ogutu, confirmed the integrity of CCTV footage placing the appellant at the scene. Finally, PW9, Corporal George Odhiambo 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 possession.
24. The chain of custody of the exhibits was clearly explained by the prosecution witnesses. It is worth noting that the appellant never raised this issue with the prosecution witnesses as they testified. Given the well-corroborated evidence presented by the prosecution witnesses.
25. In his defence, the appellant maintained his innocence claiming that the luggage did not belong to him. The trial court considered his defence and found it to be baseless. Given the foregoing, I find that the appellant’s statement in defence lacked credibility and 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 him from the offence.

26. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt that the appellant had arrived in Nairobi from Vilnius, Lithuania through Frankfurt. Although his travel documents were not recovered in the luggage, during the initial screening and search, he identified the grey suitcase as his. In addition, he was in possession of his passport, and inside the passport was a luggage tag of the same serial number as that of the suitcase which he picked as his own. He also voluntarily signed the inventory of the recovered items produced as exhibits. Although he disputed the ownership of the luggage, documentary evidence confirmed his ownership.
27. There is no doubt in my mind, as I hereby find, that the appellant was the owner and or the one in control of the suitcase from which the narcotic drugs were recovered. I am further convinced that he intended to convey to his destination the said narcotic substances. The said narcotic drugs were duly weighed and found to be the value of a substance (heroin) weighing 5.52 kilograms, with a market value of Ksh. 16,560,000. All these factors put together convince this court that the prosecution duly discharged its burden and proved beyond any reasonable doubt that the appellant trafficked narcotic drugs. I agree with the trial magistrate on this finding.
28. On the sentence, the appellant was convicted to serve 30 years imprisonment. In addition to pay a fine of Kshs.49,680,000 in default to serve 12 months imprisonment. In the sentencing proceedings, the trial court considered that the appellant was a first offender, he was of youthful age, and the period spent in remand custody since his arrest before imposing the sentence.
29. Section 329 of the *Criminal Procedure Code*, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find that the sentence meted out was lawful and in accordance with trial magistrate discretion. Although the sentence imposed by the trial court was lawful, I find that it was harsh and excessive.
30. Therefore, the appeal on the sentence succeeds. The sentence of 30 years imprisonment is hereby substituted with a sentence of 15 years imprisonment. The additional sentence of payment of a fine of Ksh. 49,680,000 in default to serve 12 months imprisonment is upheld. Consequently, the sentence is as follows:
  - i. The appellant Rokas Stendelis is sentenced to pay a fine of Kshs. 49,680,000 in default to serve 12 months imprisonment in accordance with section 28(2) of the *Penal Code*, Cap 63 Laws of Kenya.
  - ii. In addition to the sentence in (1) above, the appellant Rokas Stendelis is sentenced to serve fifteen (15) years imprisonment with effect from 10<sup>th</sup> December 2020, the date of his arrest.
  - iii. The sentences imposed shall run consecutively.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF MAY 2024**

.....

**D. KAVEDZA**

**JUDGE**

In the presence of:



Ms. Mukundi for the Appellant  
Ms. Tumaini for the Respondent  
Joy Court Assistant

