



**Haroona v Republic (Criminal Appeal 18A of 2023)
[2024] KEHC 6892 (KLR) (11 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 18A OF 2023
DR KAVEDZA, J
JUNE 11, 2024**

BETWEEN

MAYANJA HAROONA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. N Thuku (SPM) on 13th April 2023 at JKIA Chief Magistrate's
Court Criminal Case No. E001 of 2022 Republic vs Mayanja Haroona)*

JUDGMENT

1. The appellant 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. 26,872,560 in default to serve 1-year imprisonment. In addition, he was sentenced to serve 25 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 contended that the trial court failed to He urged the court to quash his conviction and set aside the sentence.
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 v Republic* [1973] EA 32).
4. The prosecution called eleven (11) witnesses in support of their case. On 31st December 2021, at Terminal 1A of Jomo Kenyatta International Airport (JKIA), both PW1, Rachael Chebet, a security warden with the Kenya Airports Authority, and PW2, Justine Kipkoech Kaino also security supervisor, testified about an incident involving suspicious luggage. PW1 noticed a suitcase on the X-ray monitor



- displaying a dense organic substance. Despite emptying the bags, they remained heavy. PW1 and PW2 confirmed the appellant as the owner of the suspicious luggage. PW2 recounted that the bags were found with false bottoms and informed his supervisor Peter Oronje (PW5) who arrived later on. PW5 ordered the suitcase to be rescreened and it was still heavy. He asked the appellant to hand over his travel documents. He then escalated the issue a multi-agency team, leading to the police taking the suspect, identified as the appellant, and the bags for further investigation. The suspect was escorted to the anti-narcotics office for further processing.
5. PW3, CIP Kariuki Kangondu told the court that he is a police officer with the anti-narcotics unit at Jomo Kenyatta International Airport (JKIA). On 31st December 2021, while on duty with his colleagues Corporal Nyamosi (PW6) they were alerted by Kenya Airports Authority (KAA) security staff about a suspicious passenger at the Terminal 1A departures screening point. The passenger, Mayanja Haroona Harrison, a Ugandan national with passport number 1557128, had a suspicious black suitcase. Upon search, it was discovered to have a false bottom where 8 parcels were retrieved. The search was conducted in the appellant's presence. He handed over the parcels to her supervisor Margaret Abai for weighing and sampling. Corporal James Nyamosi prepared an inventory of the recovered items.
 6. PW4, Charles Kitur a scene of crime officer, documented the process of weighing suspected substances recovered from the suitcase. He told the court that those present were Margaret Abai, Violet Khalai and Peter Ogutu and the appellant. He took numerous photographs of the sampling and weighing process and produced them as prosecution exhibits, along with a certificate of documentation presented as a prosecution exhibit.
 7. PW7 Margaret Abai conducted the weighing and sampling of the suspected narcotic substances. The weighing and sampling was done in the presence of the appellant, Dennis Owino the government analyst, the investigating officer and officer Paul Ogutu. She told the court that the suspected narcotic weighed a total of 2985.84 grams. She produced the certificate of weighing.
 8. PW8, Denis Owino Onyango, a government chemist analyst, witnessed the weighing of a creamish granular substance on 4th January 2022. Samples were taken for analysis after preliminary tests indicated narcotics. Analysis using an ultra-violet visual spectroscopy machine confirmed the substance as heroin with 35% purity by weight. Onyango signed and sealed the Report of Government Analyst, presented as a prosecution exhibit.
 9. PW9, Chief Inspector Samson Ogutu, from the DCI's forensic unit, analysed CCTV footage retrieved from six cameras at JKIA, producing thirty still photographs and presenting them as prosecution exhibits. He supervised the process and provided a report and certificate, detailing his findings. This evidence was crucial in the case, offering visual documentation of the events under scrutiny.
 10. PW10, Chief Inspector Philip Langat, attached to the anti-narcotics unit in the Nairobi Area, he was tasked with valuing the narcotics recovered. She valued the 2985.84 grams by multiplying the weight by Ksh. 3000 per gram, the market value at the time. He valued the narcotic at Kshs. 8,957,520. PW10 prepared a Certificate of Valuation, produced as a prosecution exhibit.
 11. PW11, Sergeant Violet Khalayi, the investigation officer, provided testimony consistent with other prosecution witnesses. She detailed his investigative role, including the collection of items from the appellant and the preparation of relevant documents. Her testimony provided critical insight into the investigation process and formed an integral part of the prosecution's case.
 12. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on his defence. In his defence, he gave sworn testimony and did not call any witnesses. In his testimony,



the appellant stated that the bag in issue did not belong to him. In addition, prosecution had not proved their case beyond reasonable doubt as the case against him was riddled with inconsistencies on the dates, weight of the recovered narcotic and the value. He maintained his innocence.

13. 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.

14. 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;”

15. 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...”

16. In *Gabriel Ojiambo Nambesi v 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.”

17. 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 an anomaly during the screening of the appellant's luggage. Upon a primary inspection of the two bags, nothing illicit was discovered. However, the empty bag was still heavy and it was noted that they had false bottom. Consequently, they referred the matter to their supervisor (PW5) who escalated the matter to police officers for further action. PW3 in the company of PW6 received a call about suspicious luggage at JKIA. Nyamosi (PW6) conducted a further search on the appellant's bags which were found to contain false bottoms. In the concealed sections, a creamish substance in 8 sachets was discovered. The substance was suspected to be narcotic. The search was witnessed by the appellant, PW3, PW6, and PW11.



18. The weighing and sampling of the suspected narcotics were conducted by Margaret Abae PW7 in the presence of the appellant, the government analyst, and the crime scene officer who took photographs documenting the process.
19. On whether the substance recovered was narcotic the 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.
20. PW10, Chief Inspector Philip Langat, provided a valuation of the heroin weighing 2985.84 grams. He gave a valuation of Kshs. 8,957,520 and produced the valuation certificate. PW9, Inspector Ogutu, confirmed the integrity of CCTV footage placing the appellant at the scene. PW11 the Investigator detailed the events, presented an inventory, and introduced recovered items as evidence.
21. The chain of custody for the substances recovered in the case against the appellant is well-documented through the testimonies of various witnesses. PW6 prepared an inventory of the recovered items. PW3 took custody of the suspected narcotics and handed them over to PW7 for weighing and sampling. PW4 the crime scene officer captured photographic evidence, confirming the integrity of the weighing certificate during cross-examination. Chief Inspector Samson Ogutu, confirmed the integrity of CCTV footage placing the appellant at the scene. Finally, PW11, 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.
22. 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.
23. In his defence, the appellant maintained his innocence and disputed the ownership of the luggage. but did not dispute ownership of the luggage. 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.
24. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt that the appellant was travelling from Nairobi to India. During the screening of his luggage, suspected narcotic substances were recovered. In addition, he was in possession of his passport, yellow fever card, and other travel documents. He also voluntarily signed the inventory of the recovered items produced as exhibits. Documentary evidence on record proved without a doubt that he was the owner of the luggage where narcotic substances were recovered.
25. 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 2985.84 grams with a market value of Ksh. 8,957,520. 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.



26. On the sentence, the appellant was sentenced to serve 25 years imprisonment. In addition to pay a fine of Kshs. 26,872,560 in default to serve 12 months imprisonment. In the sentencing proceedings, the trial court considered that the appellant was a first offender, his mitigation, and the period spent in remand custody since his arrest before imposing the sentence.
27. 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 the trial magistrate's discretion. Although the sentence imposed by the trial court was lawful, I find that it was harsh and excessive.
28. The appeal on the sentence therefore succeeds. The sentence of 25 years imprisonment is hereby set aside and substituted with a sentence of fifteen (15) years imprisonment. The additional sentence of payment of a fine of Ksh.26,872,560 in default to serve 12 months imprisonment is upheld. Consequently, the sentence is as follows:
- I. The appellant Mayanja Haroona is sentenced to pay a fine of Kshs. 26,872,560 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 (I) above, the appellant Mayanja Haroona is sentenced to serve fifteen (15) years imprisonment with effect from 31st December 2021, the date of his arrest
 - III. The sentences imposed shall run consecutively.
- Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF JUNE 2024

D. KAVEDZA

JUDGE

In the presence of:

Ms. Mukundi for the Appellant

Ms. Wafula Tumaini for the Respondent

Joy Court Assistant

