



REPUBLIC OF KENYA



**Kamuya v Republic (Criminal Appeal E050 of 2023)
[2024] KEHC 8368 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E050 OF 2023**

DK KEMEL, J

JULY 5, 2024

BETWEEN

CHARLES MUTUKU KAMUYA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against sentence by Hon. Munyekenye (SPM) in Webuye Senior
Principal Magistrate's Court Criminal Case No. E201 of 2022 dated 27.7.2023)*

JUDGMENT

1. The Appellant herein was tried and convicted of 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 (hereinafter the Act). The particulars of the charge were that on 13th June 2022 at about 0500hrs at Pan Paper in Webuye Town, Webuye East Sub-County within Bungoma County, the Appellant, trafficked in Narcotic drugs namely Cannabis Sativa (Bhang) to wit 555,700 grams; with street value of Kshs. 16, 671,000/= by conveying in motor vehicle registration number KCV 448T/ZG 1304 make Mercedes Benz Actros in contravention of the said Act.
2. Upon his conviction, the Appellant was sentenced to pay a fine of Kshs. 45,000,000/= in default to serve two years' imprisonment and in addition to the fine the Appellant was sentenced to serve Twenty (20) years imprisonment.
3. Being satisfied with both the conviction and the sentence, the Appellant preferred six mitigation grounds of appeal. In summary, he wished that this Honourable Court reduces his sentence and allow the same to fall under probation terms.
4. At the hearing, the Appellant and the Respondent chose to prosecute the appeal by way of written submissions which they duly filed.



5. This being a first appeal to the High Court, it is an appeal on both facts and the law. I am well aware of the duty of the first appellate court which was succinctly captured by the Court of Appeal in *Kiilu & Another V Republic*, [2005] eKLR, as follows:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion.”

It is not the function of the first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower Court’s findings and conclusion; it must make its own findings and draw its own conclusion. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

6. Guided by the above principles relating to the duty of the first appellate Court, i have considered the grounds of appeal, the evidence on record, the written and oral submissions made on behalf of the parties and all the authorities cited. Having done so, i find that two key issues crystallize for my determination which is whether the trial Court considered all relevant factors in sentencing the Appellant and whether the sentence imposed on him was harsh and excessive in the circumstances of the case.
7. The Court of Appeal in *Robert Mutungi Muumbi V Republic*, [2015] eKLR, cited with approval its decision in *Bernard Kimani Gacheru V Republic*, [2002] eKLR where it held thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

8. Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* prescribes the penalty for the offence of trafficking in narcotic drugs, which is a fine of KShs. 1 million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, imprisonment for life.
9. In sentencing the Appellant to pay a fine of Kshs. 45,000,000/= and in addition to serve 20 years imprisonment, the learned trial magistrate noted the fact that drugs has destroyed the society as those who consume it are predisposed to committing crimes within the society.
10. The trial court’s ruling on sentencing clearly indicates that the learned trial magistrate considered the plea in mitigation advanced by the Appellant particularly the fact that he was a first offender and his personal circumstances as detailed in his plea in mitigation before making her sentencing decision.
11. My reading of the ruling on sentencing reveals that the learned trial magistrate considered all relevant factors including the quantity and value of the drugs the appellant was found trafficking. Taking into account the maximum penalty prescribed by the law for the offence of trafficking in narcotic



drugs which is life imprisonment and the devastating effects the drug menace has had on our society particularly the youth, i am satisfied that the sentence of 20 years imprisonment meted out on the Appellant was not harsh or excessive in the circumstances of this case. That sentence is therefore affirmed.

12. In the end, it is my finding that the Appellant's appeal lacks merit and it is hereby dismissed in its entirety.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 5TH DAY OF JULY 2024.

D. KEMEI

JUDGE

In the presence of:

Charles Mutuku Kamunya Appellant

Miss Kibet for Respondent

Kizito Court Assistant

