



REPUBLIC OF KENYA



KENYA LAW
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**Ibrahim v Republic (Criminal Appeal E090 of 2022)
[2023] KEHC 24627 (KLR) (13 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E090 OF 2022
A. ONG'INJO, J
OCTOBER 13, 2023**

BETWEEN

HAMDI YUSUF MAALIM IBRAHIM APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the decision of Hon. R. M. Amwayi (SRM) delivered on 29th July 2022 in Mombasa Chief Magistrates Court Criminal Case No. 1481 of 2019, Republic v Said Mohamed Abdalla & Hamdi Yusuf Maalim Ibrahim)

JUDGMENT

Background

1. The Appellant, Hamdi Yusuf Maalim Ibrahim was charged alongside the 1st Accused Said Mohamed Abdalla with 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.
2. Particulars were that Hamdi Yusuf Maalim Ibrahim on the 23rd day of August 2019 at Diani Township in Diani sub-county within Kwale County jointly with others not before court were found trafficking in narcotic drugs namely Heroin to wit 268.5 grams with a market value of Kshs. 805,500 by storing in contravention of the said Act.
3. Based on the evidence by the prosecution and the appellant's sworn statement, the trial magistrate found the appellant guilty and she was convicted and fined Kshs. 2,416,500 in default to serve 2 years imprisonment.
4. The appellant was aggrieved by the decision of the trial court and he preferred the appeal herein on the following grounds: -



1. That the Learned Trial Magistrate erred in law and fact in upholding and convicting on a charge that was defective.
2. That the Learned Trial Magistrate erred in law and fact in making a finding that the appellant had been in possession of narcotic drugs, yet the facts clearly showed that the appellant could not have been in exclusive possession and control of the items said to be narcotic and the appellant may not have been even aware of the existence of such narcotics.
3. That the Learned Trial Magistrate erred in law and fact in failing to discuss and analyse the evidence, especially evidence with regard to recovery, handling and storage of the exhibits at the police station up to the Government Chemist laboratories and thereby denying the appellant the benefit of such analysis.
4. That the Learned Trial Magistrate erred in law and fact in failing to note that considering the number of police officers who raided the house, the manner in which the search was conducted, it was possible to plant an item.
5. That the Learned Trial Magistrate erred in law and fact in failing to note that nothing personal to the appellant was found in the bag which had narcotics and that the bag had some men clothing which meant a man, possibly the appellant's lost husband could very well have been the culprit.
6. That the Learned Trial Magistrate erred in law and fact in making a finding that drugs were stored in the house 'with full knowledge of the appellant' without evidence to support this.
7. That having found that the appellant deserved to be considered for probation, it was unlawful to deny her that on the face of a positive report.
8. That the sentence was manifestly excessive in the circumstance.

Prosecution Case

5. PW1, No. 235123, CIP Elizabeth Lumumba attached at Anti-Narcotics Unit DCI Headquarters testified that her duties were investigation in anti-narcotics among other administrative duties concerning the police work. That she was also a police officer under gazette notice number 9805/20/09/2017. She testified that her duty was to give the value of drug substance seized according to the value at the time of seizure. That PW1 gives market value through their intelligence outlet and using analysis by drug enforcement agents and from United Nations Office of Drug and Crime. That they also get the value through national trend and seizure as well as frequent interviews from the accused persons that are arrested.
6. PW1 said that she had the weighing certificate with a total weight of 268.5 grammes of the seized substance and which was confirmed by the government analyst to be heroin. That the weighing certificate was prepared on 24.08.2019 and that she also had a charge sheet dated August 26, 2019, government analyst report dated 16.102019, and a valuation report dated October 23, 2019. That after being called by the investigating officer CPL Wycliffe Orlando, PW1 gave the correct value of 268.5 grammes of Heroin as Kshs. 805,500. PW1 produced the gazette notice 9805/20/09/2017 as PExh 1 and the valuation report as PExh 4.
7. PW2, No. 79063 CPI Derrick Kiprono, Gazette No. 407/18/01/2010 said that he works with the crime scene investigations DCI Headquarters Nairobi. That on 26.8.2019 at 1230 hrs while on crime scene investigations duty at the government chemist Mombasa County testified that he was requested by CPI Wycliffe Orlando of Anti-Narcotics Unit DCI HDQ to assist him in carrying out



documentation during the process of weighing and sampling of the received suspected narcotics. That he took photographs during the exercise which he serialized and made note of appearance of the substance.

8. PW2 produced the certificate of weighing as PExh 2, the certificate of sampling as PExh 13, photo of black ruck sack with brown handbag containing blue shopping bag with suspected narcotic drugs as PExh 4 (a) to (c), two photographs of a clear heavy device serial number 5001176508 as PExh 5 (a) and (b), photos of brown granular substance and clear substance of 49.8 grams, 0.7 grams and sample weight of 15 grams as PExh 7 (a) to (c), photos of brown substance placed in 22 sachets which appeared as brown granula substance with weight of 23.2 gram, 0.6 grams and sample weight of 16 grams as PExh 8 (a) to (d), photo showing weighing scale used to weigh the substance as PExh 9, photos showing sample test of brown substance both before and after being put to reagent as PExh 10 (a) and (b), and a photo showing the suspect witnessing the whole process of sampling, weighing and testing as PExh 11.
9. PW3, No. 231824 superintendent of police Paul Gachora, in-charge organized crime unit coast region said that on 23.8.2019 at around 3.00 pm, he received information that the two accused persons were dealing in narcotic drugs within Diani area. That PW3 mobilized his officers for anti-narcotic unit and proceeded to the accused persons' house in an estate within Diani town where they found the two accused persons relaxing in the sitting room. That they introduced themselves and requested to be allowed to conduct a search which the accused persons agreed to. PW3 said that they searched the sitting room and a bedroom but did not find anything. That in the master bedroom, they found several bags and PW3 with sergeant Munyao and CPL Orlando conducted the search and recovered a black bag written Kings Collection which they opened and found another small bag inside which was brown in colour. That the brown bag had a blue shopping bag which had brown powdery substance in colourless clear polythene. That the colourless clear polythene bag had 22 pellets and that he also recovered several clear paper bags from the same bag. PW3 said that an inventory was prepared by CPL Orlando in his presence. That PW3 arrested the two accused persons and took them to Port Police Station. That PW3 prepared a search certificate on August 23, 2021 and signed it. That the inventory of drugs was prepared by CPL Orlando on August 23, 2021 and the drugs taken to the government chemist.
10. PW4, No. 65883, Sergeant Joseph Munyua attached to the DCI Headquarters Transnational Organised Crime Unit, Mombasa testified that on 23.8.2019, he was informed by the in-charge inspector Githora that there was intelligence information that there were people in Diani dealing with narcotic drugs. That they proceeded to Diani in Ukunda and arrived in a certain estate where they went to a house on the 1st floor and the house was labelled 2A on the door. That they knocked and the occupants, a lady and a man, opened the door for them. That they introduced themselves as police officers and their purpose of visit. That they started the search and nothing was recovered in the sitting room and the first bedroom. That they proceeded to the master bedroom where they conducted a search and recovered a black bag labelled Kings Collection. That inside the bag, there was a brown small bag which had blue paper bag and inside the paper bag there was a brown powdery substance in clear bags and they were 22 pellets. That there were two t-shirts, red and black, in the bag.
11. PW4 said that on interrogation, the lady suspect turned out to be a police officer stationed at Likoni Police Station and that she was called Hamdi Yusuf. That she claimed to be the owner of the house which she had rented for 2 weeks. PW4 informed court that they spoke with the landlord who confirmed that the accused had rented the house and signed a tenancy agreement. That the accused persons were arrested after preparation of an inventory which was signed by PW4 and the accused persons. That PW4 also signed the search certificate. That they escorted the accused persons to Port Police Station and handed them over to the Anti-Narcotics Unit together with the exhibits. PW4 positively identified the persons as the accused in court.



12. PW5, Yahya Hamisi Maingu, testified that he works at the Government Chemist Mombasa as Gazette No. 6934/27/07/2007 testified that he had four documents which included certificate of weighing done on August 26, 2019 at the government chemist. That IP Ismael Onuku from Port Police Mombasa and PW5 witnessed that there were three packages of brownish powdery substance suspected to be narcotics. That the first one was labelled SHI (i) (a) weighing 195.5 grams, the second was labelled SHI (i) (b) weighing 49.8 grams and the third one was labelled SHI (i) (c) (1) and (2) weighing 23.2 grams, and that the total weight was 268.5 grams. PW5 said that he had certificate of sampling and that he picked and prepared three samples with a total weight of 40 grams. PW5 produced the certificate of sampling as PExh 13.
13. PW5 further said that on August 26, 2019, police officer Wycliffe Olando brought the samples and exhibit memo form dated August 26, 2019 with the recovered exhibits. That as per the exhibit memo form, PW5 analysed the substance in relation to narcotics and applied two techniques. That the brownish substance tested positive for heroin. That PW5 later marked the exhibits as GCK 525/2019 WHM and prepared the report on 16.10.2019 which he produced as PExh 3.
14. PW6, No. 236988 Inspector Ismael Onuku attached to Directorate of Criminal Investigations in Nairobi area. That on August 26, 2019, he was called by the director of anti-narcotics to accompany CPL Olando and two suspects among other officers to the Government Chemist Mombasa for weighing and sampling of a substance suspected to be narcotic drugs. That they met the government analyst Mr. Yahya Maingu and that there were packages of powdery substance inside a clear polythene bag, inside a blue shopping bag, in a brown handbag inside a black bag and that they were all in court. That the 1st package was found to be 195.5 grams, the second package was 49.8 grams and the third package was 23.2 grams. That PW6 prepared a weighing certificate which was signed by the suspects and witnessed by the government analyst, CPL Kiprono and CPL Denis. He produced the weighing certificate as PExh 2.
15. PW7, No. 83720 Sargeant Sheila Kipsoi from Anti-Narcotics Unit DCI Headquarters testified that she deals with narcotic drugs investigations. That on August 23, 2019, she was in Mombasa on operation duties when she accompanied Mr. Gathara, Sergeant Yahya, CPL Olando among others for special service unit as an assignment in Diani. That upon arrival in Diani, they went to an apartment on the 1st Floor, Door No. 2 where Mr. Gathara knocked on the door and it was opened. That they introduced themselves and explained the purpose for their visit. That inside the house there were two people, Hamed Yusuf and Said Mohamed.
16. PW7 said that Mr. Gathara led the search and inside the master bedroom and in the closet, they recovered a black bag and upon opening it, there was a brown bag which had a blue shopping bag with three packages of brown powdery substance in a clear polythene bag. That after completion of the search, CPL Olando prepared a search certificate which was signed by officers together with accused persons. That an inventory of the recovered items was prepared and signed by officers and accused persons, and CPL Olando took over all the recoveries and the accused were escorted to the police station and charged.
17. PW8, Sargeant Wycliffe Olando, the investigating officer with ANU Headquarters said that on August 23, 2019 at around 1440 hrs, he was in the company of Mr. Paul Gathara SSP, Sergeant Joseph Munya, and Sergeant Sheila among other officers from the special unit. PW8 testified that they had information of the person trafficking in narcotics within Diani area. That they went to an apartment and on the first floor door number 2, Mr. Gathara knocked on the door and it was opened. That they introduced themselves as police officers and found two suspects who also identified themselves as per their identification cards.



18. PW8 said that in the master bedroom, they recovered a black bag – PExh 12 which had a brown bag – PExh 13 that contained a blue bag PExh 14a. That inside the blue bag, there were packages – PExh 14c with brown powdery substance PExh 14b and that there were several clear bags – PExh 15. That PW8 prepared an inventory – PExh 16 of what was recovered on 23.8.2019, which was signed by the two suspects, PW8 and Mr. Munyau.

Defence Case

19. DW1, the 2nd accused, Hamdi Yusuf, gave sworn statement that she was a police officer as at the time of the offence and that she was attached at Likoni Police Station. She said that Saidi Mohamed was her husband and that on 23.08.2019, they were at their house in Diani, and that they were new tenants and had just moved in a day before on August 22, 2019. That at around 12.00 noon, they heard a knock on the door and that the husband who was in the sitting room went and opened the door. That the people introduced themselves as police officers and that they wanted to conduct a search. That her husband called her from the kitchen and that they showed them a search warrant and started to search. That they started with the sitting room, went to the visitor’s bedroom, then kitchen and then went to the master bedroom. That they then went to the children’s bedroom but they did not say what they were searching.
20. DW1 said she accompanied them while they were doing the search and that they went back to the master bedroom. That there were 7 officers during the search and that some were in the sitting room while others were in the balcony. That when they went to the bedroom, they got a bag from under the bed and DW1 told them she had never seen the bag as during the first round of the search, there was no such bag under the bed. That they went with the bag to the sitting room and that there was a small blue bag in it which she had not seen before and clothes which were not familiar to her. That they told her to sign the search certificate and accompanied them. DW1 said she had never seen heroin and only saw it for the first time when they opened the bag.
21. This appeal herein was canvassed by way of written submissions.

Appellant’s Submissions

22. The appellant submitted that what needed to be resolved was the allegation in the charge of storage which had to be proved that the appellant or with her co-accused who went missing did keep the bag in the house and the bag had narcotic drugs in it and they knew it.
23. The appellant argued that reasons why the prosecution case had not been proved was because the accused had just moved into the house, that the bag did not contain anything personal which can be connected to the appellant, that it was possible for the husband to have something in his bag and yet the wife was not aware of it, that so many police officers were in the house and their recovery could not be controlled, that there was undisclosed informer whose source of knowledge and information is not revealed and could very well be the planter, and that the police did not bother to get a search warrant which is highly possible and even likely that the appellant is innocent which creates reasonable doubt. The appellant therefore prayed for her acquittal.

Respondent’s Submissions

24. The Respondent submitted on whether the prosecution proved its case beyond reasonable doubt by citing Section 2 (1) of the [*Narcotic Drugs and Psychotropic Substances Control Act*](#) No. 4 of 1994 which



defines trafficking as well as the definition of trafficking in the case of *Gabriel Ojiambo Nambesi v Republic* (2007) eKLR where the court of appeal held as follows: -

It is evident from the definition of the “trafficking” that the word is used as a term of art embracing various dealings with narcotic drugs or psychotropic substance. In our view, for the charge sheet to disclose the offence of trafficking the particulars of the charge must specify clearly 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. In this case, neither the charge sheet nor the evidence disclosed the dealing with the bhang which constituted trafficking.

25. The Respondent further relied on Section 4 of the *Penal Code* which defines possession as follows: -
- a. be in possession of” or “have in possession” includes not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;
 - b. if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;
26. The Respondent also relied on the Court of Appeal decision in the case of *Hussein v R* (1980) KLR 139 as follows: -

We take this definition to mean, not that any legal title has to be proved, nor that access to the complete exclusion of all other persons has to be shown, but that a possessor must have such access to and physical control over the thing that he is in a position to deal with it as an owner could to the exclusion of strangers.

27. The Respondent submitted that the case herein was established in evidence that the house where recovery was made belonged to the appellant and that the narcotic drugs were found in a black bag inside the appellant’s bedroom. That therefore, the element of possession was sufficiently proved by the prosecution. That further, the issue that some men clothing was found in the bag belonged to her lost husband was not raised during the hearing of the case and is an afterthought. That moreover, from the definition of possession under Section 4 (b) of the *Penal Code*, it is immaterial whether the clothes belonged to the husband or not.
28. On the sentence, the Respondent cited Section 4 of the *Narcotic Drugs and Psychotropic Substances Control Act* and that the appellant was sentenced to a fine of Kshs. 2,416,500 or serve 2 years imprisonment and that in comparison to Section 4, the sentence meted was not excessive and that the same should be upheld.

Analysis and Determination

29. This being the first appellate court, it is guided by the principles in *David Njuguna Wairimu v Republic* [2010] eKLR where the court of appeal held: -

“The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same



conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.”

30. After considering the grounds of appeal, records of the trial court and submissions, the issues for determination are: -
- i. Whether conviction was on a charge that was defective.
 - ii. Whether the appellant was in exclusive possession of the narcotic drugs and whether it was established that the bag in which the alleged narcotic drug was recovered and the two red t-shirts and the black shirt belonged to the appellant or her husband, the 1st Accused in Criminal Case No. 1481 of 2019.
 - iii. Whether the sentence was harsh and excessive and whether the appellant deserved to be considered for probation

Whether conviction was on a charge that was defective

31. The appellant was charged with the offence of trafficking in narcotic drugs contrary to Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances* No. 4 of 1994. The particulars being that on 23rd day of August 2019 at Diani Township jointly with others not before court were found trafficking in narcotic drugs namely heroin to wit 268.5 grams with a market value of Kshs. 805,500/= by storing in contravention of the said act. The appellant’s advocate argued that the prosecution had to prove storage by the appellant.

32. Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994 provides: -

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;

33. Section 2 (1) of the *Narcotic Drugs and Psychotropic Substances Control Act* No. 4 of 1994 provides: -

“trafficking” means 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



34. The appellant paid for a new house on August 20, 2019 according to the receipt for rent and deposit of Kshs. 25,000/= each and the tenancy agreement dated August 20, 2019. On August 23, 2019, police officers raided her house and allegedly recovered a black bag containing a substance which was later analysed and established to be heroin. The appellant and her husband were arrested and subsequently charged. Unfortunately, after the prosecution closed their case, the appellant's husband failed to attend on November 16, 2021 and a warrant of arrest was issued. Since the trial magistrate was proceeding on transfer, the evidence of the trial magistrate was taken and judgment delivered where she was convicted.
35. According to PW3, PW4 and PW7, they accompanied PW3 and one CPL Olando in search of the appellant's house, PW3 said they searched the sitting room and did not find anything. They searched the next bedroom and also did not recover anything. That in the master bedroom, they found several bags and PW3, PW4 and CPL Olando conducted the search and recovered a black bag written Kings Collection. That when they opened it, there was another brown bag inside and inside it there was a blue shopping bag containing brown powdery substance in colourless clear polythene. They also recovered colourless clear polythene bags which had 22 pellets of brown powdery substance and brown granules.
36. According to PW4, it is PW3 who searched while he and his colleagues witnessed and nothing was recovered in the sitting room and the next bedroom. PW4 said that when PW3 conducted the search in the master bedroom, he recovered a black bag labelled Kings Collection. That inside the bag was a small brown bag that contained a blue paper bag in which they recovered brown powdery substance in clear bag and 22 pellets. He said that there were also clear paper bags, two red t-shirts and a black shirt. PW3 and PW4 did not say where in the bedroom the black bag labelled Kings Collection was recovered.
37. PW7 Sgt Sheila Kipsoi who was in the company of PW3 and PW4 as well as CPL Olando said that after introduction, PW3 led a search in the master bedroom where a black bag was recovered in the closet.
38. According to the appellant, the search started in the sitting room then to the visitor's bedroom followed by the kitchen then the master bedroom. That it was after the master bedroom that the officers went to the children's bedroom. She said that up to that point, nothing had been recovered until they went up to the master bedroom and got a bag from under the bed. She said the bag and the clothes in it were not familiar to her and that it had another blue bag inside it. That nothing in the bag belonged to her. The appellant said there were 7 police officers searching the house while there were over 20, she could not tell what each one of them was carrying as she was never told what they had come to search in her new rental premises.
39. From the evidence of PW3, PW4, PW7 and the appellant, it is not clear where in the bedroom the black bag containing the narcotic drugs was recovered as PW3 and PW4 did not identify the location and PW7 said that it was in the closet which evidence was contradicted by that of the appellant that a bag was removed from under the bed the second time when the officers went to the master bedroom. Whereas the appellant gave the sequence of the search to include a visitor's room and the kitchen, the evidence of PW7 contradicted that of PW3 and PW4 and there was no evidence to establish how many rooms were in the appellant's house whether by an independent witness or by way of photography of the house for the court to have a clear picture of the scene.

Whether the appellant was in exclusive possession of the narcotic drugs and whether it was established that the bag in which the alleged narcotic drug was recovered and the two red t-shirts and the black shirt belonged to the appellant or her husband, the 1st Accused in Criminal Case No. 1481 of 2019.

40. According to the respondent, the fact that the house belonged to the appellant as per Exhibit 20 (a) and (b) tenancy agreement and receipt, the fact that the black bag was recovered from her bedroom and the



fact that she was a police officer and signed the inventory and search warrant willingly was proof she was very well aware of the black bag and its contents and was therefore guilty of trafficking by storing. There was evidence that the black bag contained two red t-shirts and a black shirt which ownership the prosecution did not attempt to prove.

41. Although the prosecution claimed that the appellant had been in the house for 2 weeks, Exh P - 20 (a) and (b) show that she had paid on August 20, 2019 and she was arrested on 23.8.2019 and there are therefore possibilities that the bag was either planted on her or she was not aware that it was in the house.
42. The fact that the ownership of the bag and the clothes in the bag was not established and the fact that the appellant had just recently occupied the house makes this court believe that there is a possibility that the bag and the narcotic contained in it belonged to a third party or that the many officers who raided her home may have planted the said bag with the narcotics on her.

Whether the sentence was harsh and excessive and whether the appellant deserved to be considered for probation

43. Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 provides: -

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 –

- b. in respect of any narcotic drug or psychotropic substance-
 - iii. 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;
 - iv. 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;

44. The appellant was fined Kshs. 2,416,500/= in default to serve 2 years imprisonment. This in my view would have been very lenient considering the penalty provided in the Act.
45. In conclusion, this court finds that doubt was raised in the prosecution's case as to the exact location where the black bag labelled Kings Collection was allegedly recovered in the appellant's master bedroom as PW7's evidence that it was recovered in the closet was not corroborated by PW3 and PW4. Secondly, the evidence of the appellant contradicted the evidence of PW7 that the recovery was in the closet. She said a bag was removed from under the bed when the officers went back to her bedroom the second time. Further, PW3, PW4 and PW7 did not investigate and establish the ownership of the t-shirts and shirt in the bag and it would be unfair and unjust to conclude that the bag and the narcotic drugs therein belonged to the appellant without identifying the owners of the t-shirts and shirts therein. The doubts raised in those circumstances ought therefore to have been resolved in favour of the appellant. The appeal is therefore meritorious, the same is allowed, conviction quashed and sentence set aside. The appellant will therefore be set at liberty unless otherwise lawfully held. 14 days right of appeal.



**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 13TH DAY OF OCTOBER 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Appellant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

Mr. Ngiri: I pray for a copy of the judgment

Order: Copy of the judgment to be supplied to prosecution and defence

HON. LADY JUSTICE A. ONG'INJO

JUDGE

18.10.2023

