



REPUBLIC OF KENYA



KENYA LAW
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**Ochieng v Republic (Criminal Appeal E018 of 2024)
[2024] KEHC 11667 (KLR) (1 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E018 OF 2024
KW KIARIE, J
OCTOBER 1, 2024**

BETWEEN

KEPHER NYAMWANGA OCHIENG APPELLANT

AND

REPUBLIC RESPONDENT

((From the original conviction and sentence in Criminal Case No. E039 of 2022 of the Chief Magistrate's Court at Homa Bay by Hon. J.M Nang'ea– Chief Magistrate))

JUDGMENT

1. Kephher Nyamwanga Ochieng, the appellant herein, was convicted of trafficking narcotic drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances(Control) Act, 1994.
2. The particulars of the offence were that on the 19th day of May 2021, along Homa Bay-Kendu Bay road at Olare within Homa Bay County, he abandoned a motor vehicle registration number KBC 497F which was trafficking 50kgs of bhang with an estimated value of Kshs.200, 000 which was not in medicinal preparation form.
3. The appellant was sentenced to pay a fine of Kshs.500,000 or serve three years imprisonment and to serve a further three years imprisonment. He appealed against the sentence, which he described as harsh.
4. The appellant represented himself and raised the following grounds of appeal:
 - a) The trial court imposed a harsh sentence given the circumstances.
 - b) The trial magistrate did not consider concurrent sentences for the two charges.
 - c) The trial court did not take his mitigation into account.



5. The state opposed the appeal for lack of merits.
6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs. Republic* [1972] EA 32.
7. Section 4 of the Narcotic Drugs and Psychotropic Substances(Control) Act, 1994 provides:

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; or
 - (b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.
8. The narcotic drugs the appellant was arrested with were estimated to be valued at Kshs.200, 000. The penalty should have been a one million shillings or Kshs fine.600,000/= whichever is the greater, and, in addition, to imprisonment for life.
9. One million shillings was the greater, and he was to be imprisoned for life. The fine of Kshs.500,000, or serving three years imprisonment and a further three years imprisonment, was a very lenient sentence.
10. The section under which he was convicted does not envisage a concurrent sentence.
11. The appeal has no merit, and the same is dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 1ST DAY OF OCTOBER 2024

KIARIE WAWERU KIARIE

JUDGE

