



**Mohamed v Republic (Criminal Appeal 14 of 2023)  
[2024] KEHC 14361 (KLR) (Crim) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14361 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL APPEAL 14 OF 2023**

**DR KAVEDZA, J**

**NOVEMBER 19, 2024**

**BETWEEN**

**AHMED MNYAMANZI MOHAMED ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. C.M Njagi (P.M) on 31st March 2023 at JKIA Chief Magistrates Court  
Criminal Case No. E071 of 2021 Republic vs Ahmed Mnyamanzi Mohamed)*

**JUDGMENT**

1. The appellant Ahmed Mnyamanzi Mohamed with the offence of trafficking in Narcotic drugs contrary to Section 4 (a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, Act No. 4 of 1994. The particulars as per the charge sheet are that on 30<sup>th</sup> September 2021 at Terminal 1A in Jomo Kenyatta International Airport within Nairobi County jointly with others before court unlawfully trafficked by conveying in rectum 100 pellets each concealed in a clear polythene bag, a narcotic drug named heroin to wit 1462.23 grams with market value of Kshs. 4,386,690. He was sentenced to twenty-five (25) years imprisonment and to pay a fine of Kshs. 13,160,070, in default to serve 12 months imprisonment.
2. Aggrieved, he filed an appeal challenging the conviction and sentence imposed. In the petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He argued that the prosecution failed to discharge their burden beyond reasonable doubt. He urged the court to quash his conviction and set aside the sentence imposed.
3. The matter was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



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 vs Republic* [1973] EA 32).
5. On 30th September 2021, PW1, Corporal Njeru Michuki, intercepted the appellant at Terminal 1A of Jomo Kenyatta International while working with PW2, PC Nicholas Mwangi Njenga, and PW4, Chief Inspector Kariuki Kigondu. They took the appellant to the anti-narcotics unit office, where PW2 searched his luggage and performed a urine test, which tested positive for narcotics. The appellant later emitted 14 pellets suspected to contain narcotics. PW1 prepared an inventory, PW2 documented the emissions, while PW4 took custody of the pellets.
6. PW3, PC Austine Omondi, continued observing the appellant, recording further emissions, and preparing observation sheets. PW5, PC Paul Ogutu, and Corporal Mary Ayimba took over on 3rd October 2021, documenting additional emissions on signed sheets. PW6, Corporal James Nyamosi, took custody on 10th October, preparing similar documents and transferring the pellets to PW4.
7. PW7, Constable James Wafula Kinyua, and Sergeant Francis Owoko also documented emissions during their shifts. PW9, PC Bernard Waswa, observed and recorded further emissions. PW11, Corporal Joseph Mrabu, and PC Nyaga monitored the appellant on other days, producing evidence of emitted pellets.
8. On 10th October, PW8, Dennis Owino Onyango, a government analyst, confirmed the pellets contained heroin with 30% purity. He signed weighing and sampling certificates for the 31 pellets weighing 1462.23 grams. PW10, Chief Inspector Phillip Langat, valued the narcotics at Kshs. 4,386,690, preparing a valuation certificate. PW12, Corporal Charles Kitur, documented the weighing process with photographs.
9. PW13, PC Mishek Nyaga, the investigating officer, confirmed the seizure of 100 pellets in total. He documented the emissions in observation sheets and worked with the government analyst for further analysis, submitting a report confirming the presence of heroin. Radiological evidence from Kenyatta National Hospital corroborated the findings.
10. In his defence, the appellant a Tanzanian citizen, testified that on 30th September 2021, while traveling to India, he was stopped by a police officer and detained on suspicion of possessing narcotic drugs. He admitted to emitting three pellets on the day of his detention. The appellant stated that he was brought to court four times after 1st October, including on 13th October. He disputed the charge sheet, which claimed he had emitted 100 pellets weighing 1462.23 grams, asserting that he was only aware of emitting three pellets.
11. 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;”

20. 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...”

21. 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.”

12. The case against the appellant was that on 30th September 2021, while transiting to India, the appellant was stopped by police officers at the international departures terminal, suspected of possessing narcotic drugs. Under detention, he began emitting pellets containing a creamish-white substance. The substance, weighing 1462.23 grams, was later analysed by PW8, the government analyst, who confirmed it was heroin with a 30% purity. PW10, Chief Inspector Philip Langat, valued the heroin at Kshs. 4,386,690.

13. The findings were documented in a weighing certificate, sampling and testing report, and valuation certificate. The appellant was charged with trafficking narcotic drugs contrary to section 4(a) of the Narcotics Drugs and Psychotropic Substances (Control) Act. The chain of custody for the recovered substances was established through the testimony of multiple witnesses, supported by inventories and other evidence.

14. In his defence, the appellant acknowledged emitting three pellets on the day of his detention but disputed the charge of possessing 100 pellets, calling it a surprise. The trial court found his defence incredible, viewing it as an afterthought. The prosecution's case, corroborated by multiple witnesses, proved the offence beyond reasonable doubt. The court rejected the appellant's defence and upheld the prosecution's evidence.

15. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt in my mind that the prosecution proved beyond reasonable doubt the offence charged. The conviction is therefore affirmed.

16. On sentence, the appellant was sentenced to serve twenty-five (25) years imprisonment and pay a fine of Kshs. 13,160,070, in default to serve an additional year in prison. In the sentencing proceedings, the trial court considered that the appellant was a first offender, the pre-sentence report, and the appellant's mitigation before imposing the sentence.

17. 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. I am guided by the decision in *Wagude v R* (1983) KLR 569 where Kneller, Hancox JJA. & Chesoni, Ag. JA. held that:

“The Court may interfere with the sentence only if it is shown that it was manifestly excessive....”

18. While the offence of trafficking in narcotics is grave and warrants a stringent and deterrent sentence to safeguard public health and the rule of law, the court must also consider the appellant's age of 51 years. A custodial sentence of 25 years risks being tantamount to a life sentence, foreclosing opportunities for rehabilitation and reintegration into society.
19. It is therefore imperative to strike a balance between deterrence and the appellant's potential for reform and rehabilitation. A tailored sentence reflecting both the seriousness of the offence and the appellant's prospects for rehabilitation may serve justice, enabling his eventual reintegration into the community as a reformed individual while preserving the integrity of the law.
20. The upshot of the above analysis is that the appeal on sentence partially succeeds. The sentence of twenty (20) years imprisonment is hereby substituted with a sentence of twelve (12) years imprisonment. The additional sentence of payment of a fine of Kshs.13,160,070 in default to serve 12 months imprisonment is upheld. The sentence imposed shall run from the date of arrest 1<sup>st</sup> October 2021 in accordance with section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF NOVEMBER 2024.**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant present

Mburugu for the Respondent

Achode Court Assistant.

