



**Sahil v Republic (Criminal Appeal E002 of 2024)
[2024] KEHC 14323 (KLR) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E002 OF 2024
DR KAVEDZA, J
NOVEMBER 19, 2024**

BETWEEN

GILL SAHIL APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. N Thuku (SPM) on 14th December 2023 at JKIA Chief
Magistrate's Court Criminal case no. E044 of 2022 Republic vs Gill Sahil)*

JUDGMENT

1. The appellant Gill Sahil was charged and convicted for the offence of trafficking in narcotic drugs, contrary to section 4(a)(ii) of the *Narcotic Drugs and Psychotropic Substances Control Act* No 4 of 1994. He was sentenced to serve twenty-three (23) years and six (6) months imprisonment. In addition, he was fined Kshs 50,000,000 in default to serve an additional one (1) year imprisonment. The sentences were to run concurrently.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his appeal, he raised 6 grounds which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He complained that the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.
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's case was as follows: On 3rd August 2022, PW1, Joseph Mrabu, an investigator stationed at JKIA, testified that at approximately 12:20 PM, he and other officers, acting on



intelligence, intercepted the appellant at the Air India ticketing gate. Using Google Translate, they introduced themselves and requested the appellant to accompany them to their offices. They also requested the retrieval of the appellant's already checked-in luggage, which included a red suitcase and a grey suitcase. A search revealed a powdery substance in the suitcases, suspected to be narcotic drugs. An inventory was prepared which was signed by the officer present and the appellant. PW1 produced various exhibits, including the appellant's passport, boarding pass, luggage tags, and the recovered packages.

5. On cross-examination, PW1 explained the reliance on Google Translate for communication and noted that the red suitcase had been checked in and was recalled with airline staff's assistance. He confirmed the search process occurred in the appellant's presence.
6. PW5, PC Hillary Seurey, corroborated the account of PW1 regarding the interception, search, and inventory preparation. He detailed the use of Google Translate for communication with the appellant and confirmed his role in taking the appellant to the government chemist for weighing and sampling. He produced the translation certificate and exhibit memo as evidence.
7. PW2, a taxi driver, recalled picking up the appellant on the morning of 3rd August 2022. He transported the appellant to a location in Thika after collecting luggage from After 40 Hotel, where hotel workers loaded two suitcases, a red and a grey one, into his car. At Thika, the appellant entered a go-down and met someone for about 30 minutes before instructing PW2 to drive him directly to JKIA. PW2 identified the red suitcase and corroborated its presence during the trip.
8. PW3, the government analyst, testified that a creamish powdery substance weighing 8.52 kg was analysed and identified as heroin with a purity of 40%. He produced the weighing certificate, sampling report, and government analyst report as exhibits. On cross-examination, he confirmed the secure storage of samples and explained the differences between narcotic and psychotropic substances.
9. PW4, Inspector Ishmael Oruko, took custody of the red and grey suitcases containing the suspected narcotics on 3rd August 2022. He witnessed the weighing and sampling process, where the appellant was present and signed the relevant documentation. He emphasized his role in ensuring the safekeeping of the exhibits.
10. PW6, a forensic imaging expert, analysed CCTV footage from JKIA showing the appellant's movements with two suitcases. He produced 30 still photographs and a DVD containing the footage, which he confirmed was original and unaltered. The images placed the appellant at the scene with the identified suitcases.
11. PW7, Corporal Kitur, a crime scene officer, assisted in documenting the recovered exhibits and corroborated the inventory and weighing process. PW8, Chief Inspector Elizabeth Lumumba, a valuation expert, assessed the heroin's market value at Kshs 25,356,000 based on a unit price of Kshs 3,000 per gram. She produced a valuation certificate and supporting documents.
12. PW9, Corporal Syombua, the investigating officer, corroborated the testimony of PW1 and PW5 regarding the recovery and inventory of the exhibits. She produced the red and grey suitcases as exhibits and confirmed her presence during the weighing and sampling process.
13. The chain of custody for the substances recovered in the case against the appellant is well documented through the testimonies of various witnesses. 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 luggage. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.

14. On whether the substance recovered was narcotic, the government analyst PW3 testified that she conducted a preliminary test of the substance recovered from the appellant's luggage. The test confirmed that the substance contained heroin with 40 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.
15. In his defence, the appellant denied the charges, stating he only had one bag, not two. He claimed he never went to Thika as alleged by PW2 and did not understand what was happening during the weighing and sampling process, as no one explained it to him. He asserted that he was simply asked to sign documents. The appellant mentioned another Asian man and denied any involvement with narcotics, claiming he had never dealt with such substances. He stated that the items found belonged to him and that he had come to Kenya in search of a job, but was tricked by Mr. Bhechu. He insisted that the officers did not use his phone for communication and maintained that he did not understand Punjabi, and thus was unaware of the situation. He requested the court to send him back to India.
16. The court considered his defence and found it to be incredible. In view of the foregoing, I find that the appellant's defence 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 himself from the offence.
17. 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.
18. On sentence, the appellant was sentenced to serve twenty-three (23) years and six (6) months imprisonment. In addition, he was fined Kshs 50,000,000 in default to serve an additional one (1) year imprisonment. The sentences were to run concurrently. In the sentencing proceedings, the trial court considered that the appellant was a first offender, his mitigation, and the pre-sentence report before imposing the sentence.
19. Upon due consideration of the pre-sentence report on record, it is evident that the appellant is a young individual, only 24 years of age, and possesses the potential for rehabilitation and reintegration into society. While the gravity of the offence cannot be understated, a custodial sentence of 25 years appears disproportionate in light of the appellant's age and the objective of sentencing, which includes deterrence, rehabilitation, and the eventual reintegration of the offender into society.
20. Given the appellant's youth and the prospects for reform, it is imperative that the sentence be one that facilitates his rehabilitation, offers an opportunity for personal growth, and allows for his eventual reintegration into society as a law-abiding citizen. Accordingly, a more balanced approach is warranted in these circumstances.
21. The upshot of the above analysis is that the appeal on sentence partially succeeds. The sentence of twenty-three (23) years and six (6) months imprisonment is hereby substituted with a sentence of fifteen (15) years imprisonment. The additional sentence of payment of a fine of Kshs 50,000,000 in default to serve 12 months imprisonment is upheld. The sentence imposed shall run concurrently from the date of the appellant's arrest 3rd August 2022.

Orders accordingly.



JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 19TH DAY OF NOVEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Ondieki for the Appellant

Mburugu for the Respondent

Achode Court Assistant

