



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ali (Criminal Case E029 of 2025)
[2025] KEMC 210 (KLR) (7 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 210 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E029 OF 2025
FM MULAMA, RM
AUGUST 7, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

AHMED ALI ACCUSED

JUDGMENT

A. Introduction

1. Initially the accused was charged with 2 counts. Burglary contrary to section 305(2) of the Penal code and being in possession of narcotics drugs contrary to section 3(1) as read with section 3(2)(b) of the Narcotics Drugs and Psychotropics Substance(control) Act No. 4 of 1994 however, on 20/3/2025 the first count was withdrawn by the complainant.
2. The accused is now left to battle with the 2nd count. The particulars of this count are that on 1/3/2025 at around 1500hours at Shella location in Lamu he was found in possession of 20 grams of cocaine which is a narcotics drug that had a street value of Kshs.50,000/= in contravention of the said Act.
3. 3 witnesses were called by the state in support of their case whereas the accused in defence, gave a sworn statement and never called any other witness.

The Prosecution's case.

4. It is the prosecution's case through the evidence of PW 1 that was corroborated by Pw2 and Pw 3 that on 1/3/2025 while in the office with PC Kirui and Mwasahani, Pc Koech came and told them to assist in escorting a suspect to Shella to which they agreed and upon arrival to the scene with the said suspect they informed the suspect's relatives that they intended to conduct a search in the suspect's room since they had information that the stolen items could be in his room.



5. Upon conducting the search, nothing suspected to have been stolen was found in the room however, the officers especially PC Kirui Pw 2 discovered 3 test tubes having some white substance, a black wallet, driving licence and passport. Photos of the scene were taken by PC Mwasahani a scenes of crime expert.
6. Upon cross examination by the accused, it was clear that it was the accused who showed them the room where the said items were recovered and further what further confirmed it was his room was the presence of his personal documents such as the passport, wallet and driving licence.
7. The IO Pw 3 other than corroborating the evidence of Pw 1 and 2 further produced Pexh 1 to 10.

The Defence case

8. In his defence the accused stated on oath that on the material day and time he was at Juakali and that the charges are false as he was not arrested with the cocaine and that the said cocaine was not 20 grams but admitted that the photos taken showed his personal items and that the said photos were taken in his room but the drugs were planted in his room by Pw 2. He was not cross examined.

B. Issue For Determination.

9. The following issues are to be determined by this court.
 - a. Whether the accused person was in possession of the substance suspected to be cocaine.
 - b. That the substance found in possession of the accused is a narcotic drug.

C. Analysis And Determination.

Whether the accused person was in possession of the substance suspected to be cocaine.

10. It is not in doubt that that the accused was arrested and escorted to his room and that it is indeed the accused who directed Pw 1,2 and 3 to his room.
11. That their main intention as per the evidence of Pw 3 was to try to recover items that were the subject of Count 1 which as I have stated was withdrawn under Section 204 of the CPC and that while conducting the search they did not find any of the things the accused was suspected to have stolen but PC Kirui recovered 3 test tubes that had white substances among other personal documents of the accused.
12. It is therefore clear to my mind that those items especially the 3 test tubes were found in the accused's room and his defence that the same were planted by PC Kirui hold no water as no witness was called to corroborate that and further that the accused was being investigated for another offence of burglary and not narcotic related and as such it is not possible that the said officer had intentions of planting them in the accused's room. Furthermore when the said Kirui(Pw 2) testified in court the accused never raised the issue of the cocaine being planted in his room by the said officer and only raised it at defence stage.
13. This is evidently an afterthought and a desperate attempt to avoid criminal liability which this court will not entertain and I proceed to dismiss the defence by the accused.
14. The accused has admitted that the room the items were recovered among them substances suspected to be cocaine in 3 test tubes was his room and even the photos that were taken related to the said room and his items/documents and I am thus satisfied that the 3 test tubes having been found in his room coupled by a signed inventory by the accused, the prosecution proved that they were in his possession.



That the substance found in possession of the accused is a narcotic drug.

15. The said white substances in the three test tubes were forwarded to the government chemist vide an exhibit memo dated 11/03/2025 and after analysis, Maxwell Goe in his report dated 11th March 2025 opined that the whitish powdery substance after being subjected to Scott's test and UV Spectroscopy was found to be cocaine.
16. It is thus confirmed that the whitish powdery was cocaine which is a narcotic drug. I find and hold in similar terms.

D. Conclusion And Disposition.

17. The upshot of the foregoing is that the accused person is guilty of the offence of being in possession of narcotics drugs contrary to section 3(1) as read with section 3(2)(B) of the Narcotics Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 and he is accordingly convicted under section 215 of the Criminal Procedure Code.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 7th DAY OF AUGUST 2025.

F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Peter Birir for DPP.

Ahmed Ali.

Court Assistant:- Fathiya Loo.

