



**Republic v Koome (Criminal Case E007 of 2022)
[2024] KEMC 114 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 114 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CRIMINAL CASE E007 OF 2022
AT SITATI, SPM
JUNE 7, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NEWTON KOOME ACCUSED

JUDGMENT

1. The accused person was charged with the offence of trafficking in narcotic drugs contrary to section 4(2)(ii) of the Narcotic Drugs and Psychotropic Substances (Control) *Act No. 4 of 1994*. The particulars were that on 19th November, 2023 at 2210hours at Kithirune market within Imenti Central Sub-County of Meru County, he was found trafficking narcotic drugs namely cannabis sativa to wit 20rolls valued at Kshs 1,000/= by using motorcycle registration number KMCN 855H Captain make black in colour. He denied the charges in this trial conducted by Prosecution Counsel Kimathi Kibiti.

The Dpp’s Case

2. PW1S/NO. 12400 PC Sylvester Maithya of Githongo Police Station told the court that on 19th November, 2023 at 2210hours he and other officers raided Kithirune market in response to a tip-off that there was drug peddling going on in the market. He added that on arrival, they found 3 young men who identified themselves as follows:Frederick Muriuki.Kenneth Mutuma.Newton Koome.
3. No sooner had the Newton Koome seen the officers than he broke into a run before jumping on a motorcycle to flee but the officers gave chase and arrested the suspect. Upon searching his pockets, the officers recovered 20 rolls of dry plant material which they suspected was narcotic drugs. They thus arrested the suspect and brought him to court together with the seized rolls of suspected drugs. The drugs were dispatched to the government chemist for analysis which ascertained that they were cannabis sativa.



4. In cross-examination, PC Maithya explained that they caught up with the accused person after his motorcycle wheel slipped causing him to fall.
5. PW2 S/no. 117460 Pckiplangat Too gave an account similar to that of PW1. He produced the following as exhibits: Inventory Exhibit memo form dated 20/11/2023 Analyst report dated 20/11/2023 20 rolls of cannabis sativa.
6. In cross-examination, the officer affirmed that the accused person was arrested on the night of 19/11/2023 heading to 20/11/2023.
7. At the end of his case, the DPP closed their case whereupon the court ruled that the accused person had a case to answer. He was put to his defence.

The Defence Case

8. DW1 Newton Koome gave sworn defence denying the charges. He told the court that he was a bodaboda operator from Kithirune market and that on that date he had a client whom he transported to Githongo Sub-County Hospital at 7pm. That when he got to the hospital he was waiting for his client to be treated when the police conducted a swoop and arrested him. He said that the bhang was planted on him.
9. In cross-examination, he stated that the arresting officers had no prior grudges against him. He then closed his defence at that stage.

Issue For Determination

10. From the DPP's tested evidence, the court is satisfied that the accused person was standing in the company of 2 other young men while keeping 20 rolls of narcotics in his pockets and this amounted to actual possession within the meaning of section 2 of the [Penal Code](#) which provides 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;
11. The only reason that he jumped on the motorcycle was to avoid arrest but up to that point the offence was possession. The predominant reason for using the motorcycle was not to traffick the drugs by transportation but to escape immediate arrest by the police. Therefore, the lesser charge of possession has been clearly proved as opposed to trafficking as is provided for in section 179 of the [Criminal Procedure Code](#) which states:
 - (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.
 - (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.



12. In the result, the court satisfied that the evidence is clear and only proved the charge of possession as opposed to trafficking. He is convicted of the lesser charge of possession of narcotic drugs contrary to section 3(2) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994 and this conviction is made under section 215 of the *Criminal Procedure Code* as read with section 179 of the *Criminal Procedure Code*. Right of Appeal is 14 days.

DATED, READ AND SIGNED AT GITHONGO THIS 7TH DAY OF JUNE, 2024

HON. T.A SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Convicted Person

Dpp Kibiti

Ronny And Joan Court Assistants

