

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT VOI**

**CRIMINAL APPEAL NO. E005 OF 2025**

**ALEX THADEO EDY.....**

**APPELLANT**

**=VERSUS=**

**REPUBLIC.....**

**RESPONDENT**

**(Being an appeal from the conviction and sentence of Hon. D.  
Wangeci (SPM) in Wundanyi Criminal Case No. E355 of 2023  
delivered on 23<sup>rd</sup> January 2025)**

**JUDGMENT**

1. The Appellant **ALEX THADEO EDY** was charged with trafficking narcotic drugs contrary to Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.
2. The particulars were that on 22<sup>nd</sup> July 2023 at 1730hours at Maktau Location, Mwatate Sub County in Taita Taveta County, the Appellant was found trafficking Narcotic Drugs namely cannabis sativa to with 15 kgs with an approximate street value of Kshs. 30,000/=.

3. The prosecution evidence in summary was that the Appellant was arrested aboard motor vehicle registration KCW 686N a Probox by PW1 at the direction the OCS Maktau Police Station CIP Dika Dabasso.
4. The five witnesses who testified included the Government Analyst who analyzed the plant material and found to be cannabis sativa.
5. The witnesses who included the OCS Maktau Police Station CIP Dika Dabasso who testified as PW5 said they were travelling in the motor vehicle as fare paying passengers when they picked the Appellant along the way.
6. The witnesses said the Appellant was carrying a Nigerian bag. They said immediately he entered the vehicle there was a strange smell.
7. When they reached a road block, the OCS Maktau Police Station CIP Dak Dabasso who testified as PW5 alighted and directed PW1 PC Mwenda Ndafutu who was manning the road block together with other officers to arrest the Appellant.
8. PW1 said the Nigerian bag was in the boot of the vehicle and the appellant is the one who took it from the boot when he alighted.

9. Upon searching the Nigerian bag they recovered the plant material and arrested the Appellant and took the plant material for analysis. PW4, the Government Analyst confirmed the same was cannabis sativa.
10. The Appellant said he was travelling to Mwatate on 22<sup>nd</sup> July 2023 carrying his clothes in a bag.
11. He said he entered motor vehicle registration No. KCY 686M. He said the motor vehicle had 2 passengers. He said on the way they encountered a police road block and they were stopped. The driver stopped at the road block and he was ordered to alight and a search was conducted.
12. The Appellant said the bag had his clothes and tools. The officers told him to leave and took it upon themselves to get him another motor vehicle only to be called back and escorted to Mwatate Police Station where he was charged with the current charge which is alien to him.
13. The trial court found the Appellant guilty as charged and sentenced him to serve 20 years imprisonment.

14. The Appellant has appealed against the conviction and sentence on the following grounds:-

- (i) That the learned trial Magistrate erred both in law and fact by charging the Appellant and convicting and sentencing the Appellant to 20 years imprisonment by a defective charge sheet.**
- (ii) That the learned trial Magistrate erred both in law and fact by allegations that the Appellant was trafficking 15kg of cannabis sativa (bhang) Account II which is not in the charge sheet recording.**
- (iii) That the learned trial Magistrate erred both in law and fact by convicting without a record in the judgment the years which the Appellant was to serve in prison which does not appear in the file received from the court.**
- (iv) That the learned trial Magistrate erred both in law and fact by committing the Appellant to prison only by a warrant.**
- (v) That the learned trial Magistrate erred both in law and fact by mere allegations only yet she failed to find that nothing was recovered from the Appellant and also nothing proved that the bag belonged to the**

**Appellant which was found the boo of the motor vehicle.**

- (vi) That the learned trial Magistrate erred both in law and fact by failing to prove that the case had massive contradictions, discrepancies inconsistencies of evidences immaterial to base safe conviction upon the Appellant at all.**
- (vii) That the learned trial Magistrate erred both in law and fact by convicting and sentencing the Appellant to years imprisonment by untruthful evidences having contradictions discrepancies and inconsistencies, immaterial enough to base safe conviction upon the Appellant at all and case proved beyond reasonable doubts or to the required standard.**
- (viii) That the learned trial Magistrate erred both in law and fact by failing to find that the charge sheet it was cancelled some parts.**
- (ix) That the learned trial Magistrate erred both in law and fact by failing to find that the PW3 gave a false evidence alleging that the Appellant was found with the bag where the Appellant was seated at the back seat in the vehicle.**

- (x) **That the learned trial Magistrate erred both in law and fact by convicting and sentencing the Appellant to serve unrecorded years in the judgment dated 23.1.2025 as true certified copy of the original.**

15. The parties filed written submissions as follows;- In his written submissions the appellant, Alex Thadeo Edy, said that he appeals against his conviction and sentence for trafficking narcotic drugs.

16. He contends that his conviction was unsafe and should be quashed, and he should be set at liberty.

17. The core of his argument rests on what he asserts are fatal inconsistencies in the prosecution's evidence, a defective charge sheet, and a framing by police officers.

18. The appellant first challenges the charge sheet as defective, noting it contains cancellations that were not initialed or explained, rendering it informal and invalid. He then systematically disputes the evidence presented against him, highlighting contradictions between the testimonies of the prosecution witnesses.

19. He points to the central discrepancy regarding the location of the bag containing cannabis. While one police witness (PW1) testified the bag was in the boot of the vehicle and that the appellant retrieved it, the driver (PW3) and the OCS (PW5) stated

the appellant boarded the vehicle carrying the bag on his lap and held it throughout the journey.

20. The appellant argues it was impossible for him to have both held the bag and stored it in the locked boot, describing this as a fundamental and irreconcilable contradiction.

21. Further, he questions the plausibility of the prosecution's narrative. He finds it inconceivable that he, as a passenger, could open the boot without the driver's key.

22. He also challenges the driver's claim of a "funny smell" causing a passenger to vomit, arguing it was vague and unsubstantiated. The appellant maintains that the bag recovered was not his, stating his own bag, containing clothes and tools, was left at the police station.

23. He suggests the real drugs belonged to the driver and that he was framed after a disagreement over the fare, a theory he believes is supported by the OCS's (PW5) admission of a prior grudge and an allusion to the appellant's "previous record."

24. The appellant also raises procedural issues, noting the search was not conducted at the scene but at the police station, and that he was never photographed with the contraband to link him to it definitively.

25. He emphasizes that the government chemist (PW4) could not connect him to the drugs. Finally, he observes that the judgment

itself is flawed, as the sentence imposed is not recorded in the written judgment, and he was committed to prison by warrant only.

26. In conclusion, the appellant asserts that the evidence was built on mere allegations, massive contradictions, and fabricated testimony, which cannot form the basis of a safe conviction.

27. He prays that his appeal be allowed, his conviction quashed, his sentence set aside, and that he be released.

28. The respondent, the Republic, submitted that the conviction and sentence of the appellant, Alex Thadeo Edy, by the Trial Court were just and proper.

29. That the appellant was convicted of trafficking narcotic drugs, an offense under Section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances Act, which prescribes a severe penalty of a fine of not less than fifty million shillings or imprisonment for up to fifty years, or both.

30. In imposing the sentence, the Trial Court considered the appellant's mitigation, wherein he stated he was a father of three university students, had been in custody for 16 months, and was a partial orphan with an alcoholic mother, and also noted that he was a first offender.

31. Consequently, the court exercised its discretion by handing down a more lenient sentence of 20 years' imprisonment, which is significantly less than the maximum penalty allowed by law.
32. The respondent therefore contends that the Trial Court acted within its legal discretion and prays that this Honorable Court upholds its judgment.
33. This being the first appellate court, the duty of the first appellate court is to reappraise the entire evidence on record, both oral and documentary, and to arrive at its own independent findings on issues of fact and law, without being unduly influenced by the conclusions of the trial court, while giving cogent reasons for its decision.
34. The issues arising for determination in this appeal are as follows;
- (i) Whether the charge sheet was defective,**
  - (ii) Whether the prosecution proved its case beyond reasonable doubt to sustain a safe conviction, and**
  - (iii) Whether the sentence imposed was lawful and proper.**
35. On the first issue, the appellant contends that the charge sheet was defective due to the presence of cancellations that were not initialed.

36. A charge sheet is the foundation of a criminal case, and any defect in it may be fatal to the prosecution's case if it prejudices the accused or renders the trial a nullity.
37. However, not every irregularity vitiates a trial. The principle was articulated in the case of *Sigilani v Republic* [2004] 2 KLR 480, where the court held that a defect in a charge is not fatal unless it has occasioned a failure of justice.
38. In the present instance, the appellant has not demonstrated how the alleged cancellations prejudiced him in the preparation of his defence.
39. The particulars of the offence were clearly stated, specifying the date, place, nature of the drug, and the law contravened.
40. The appellant was able to plead to the charge and mount a defence. Consequently, this ground of appeal lacks merit.
41. The core of this appeal rests on the second issue: the sufficiency of the evidence.
42. The offence of trafficking under Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act has two key elements: the nature of the substance and the act of trafficking.
43. The evidence of PW4, the Government Analyst, conclusively established that the plant material recovered was *cannabis sativa*, a narcotic drug. This evidence was uncontroverted.

44. The critical question, therefore, is whether the appellant was in possession of this drug for the purpose of trafficking.
45. The prosecution's case on possession was founded on the testimony of PW1, PW3, and PW5.
46. The appellant correctly identifies a significant contradiction in their evidence. PW1 testified that the bag was in the boot and that the appellant retrieved it, whereas PW3 (the driver) and PW5 (the OCS) stated that the appellant boarded with the bag and held it on his lap throughout the journey.
47. These are two mutually exclusive accounts of a fundamental fact. The inconsistency regarding where the bag was located during the journey goes to the very heart of the case, as it directly impacts the proof of possession.
48. If the bag was in the boot, the element of knowledge and control by the appellant becomes more weak without further evidence linking him to it.
49. This contradiction was not resolved by the trial court and creates a reasonable doubt as to the appellant's connection to the bag containing the drugs.
50. Furthermore, the appellant raised the defence that the bag was not his and that he was framed. While the burden of proof always rests on the prosecution, a trial court is obliged to evaluate and give reasons for rejecting a defence raised by an accused.

51. The trial magistrate's judgment does not demonstrate a thorough analysis of this defence in light of the identified contradictions.
52. The chain of custody and the link between the appellant and the contraband were further weakened by the fact that the search was concluded at the police station and not at the scene, and by the lack of photographic evidence placing the appellant with the bag.
53. In light of these discrepancies and the failure to reconcile them, the prosecution's evidence falls short of the standard required for a safe conviction, which is proof beyond reasonable doubt.
54. Regarding the final issue on sentence, the appellant correctly notes that the sentence of 20 years' imprisonment is not recorded in the body of the judgment, though the warrant of commitment reflects it.
55. This is a procedural irregularity. However, given the finding on the second issue that the conviction itself is unsafe, it becomes unnecessary to determine the propriety of the sentence.
56. A sentence cannot stand where the conviction upon which it is founded has been quashed.
57. In the final analysis, the contradictions in the prosecution evidence regarding the location of the bag containing the narcotics are so fundamental that they render the conviction unsafe.

58. The prosecution failed to prove the essential element of possession beyond reasonable doubt.

59. Consequently, the appeal against conviction is allowed.

60. The conviction is hereby quashed and the sentence of 20 years' imprisonment is set aside.

61. The appellant be and is hereby set at liberty unless otherwise lawfully held for any other reason.

62. ORDERS TO ISSUE ACCORDINGLY.

**Dated, signed and delivered this 30<sup>th</sup> day of October 2025 in open court at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

**Court Assistant: Millicent/Mabishi**

.....**for the State**

.....**for the Appellant**