



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MIGORI**  
**CRIMINAL APPEAL NO. E071 OF 2024**

**LAWRENCE OTIENO AKUMU.....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. E017 of 2023 of the Chief Magistrate's Court at Migori by Hon. A.C. Munyuny– Chief Magistrate)*

**JUDGMENT**

1. Lawrence Otieno Akumu, the appellant herein, was convicted of trafficking narcotic drugs contrary to section 4(a) (ii) of the Narcotic Drugs and Psychotropic Substances (Control) Act.
2. The particulars of the offence were that on the 27th day of January 2023, in Luanda township, Nyatike sub-county of Migori County, he was found trafficking in narcotic drugs, namely cannabis sativa (bhang), to wit 1920 rolls weighing 106 kgs, valued at Kshs. 120,000.00, in a motor vehicle bearing registration number KAG 985M.
3. The appellant was sentenced to 15 years' imprisonment and, in addition, ordered to pay a fine of Kshs. 500,000 or serve one year's imprisonment in default. He was aggrieved and filed this appeal against the conviction. He raised the following grounds of appeal:
  - a) The trial court erred in law and in fact in not proving beyond a reasonable doubt that the appellant was trafficking or had in his possession the narcotic drugs or psychotropic substance in relying on circumstantial evidence that had a co-existing circumstance that destroyed its interference of guilt due to poor analysis of the prosecution's evidence.
  - b) The trial court erred in law and in fact in not appreciating the appellant's alibi defence and by shifting the burden of proof to the appellant, and further filing gaps in the prosecution's evidence.

- c) The trial court erred in law in not weighing and reconciling the contradictions, inconsistencies and discrepancies in the prosecution's case that were inconsequential to the conviction.
4. The respondent did not file any grounds of opposition or submission.
  5. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence before the lower court afresh and drawn my conclusions, bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs Republic [1972] EA 32**.
  6. Section 4 (a) (ii) of the Narcotic Drugs and Psychotropic Substances (Control) Act provides:  
*Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her 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—*  
*ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shillings or three times the market value of the narcotic psychotropic substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment;*
  7. PC Stephen Madana Ongwena (PW1) testified that on 27 January 2023, around midnight, they were on duty at a scene where a person had been mob-lynched over suspicions of stealing a motorcycle. While waiting for an ambulance, a vehicle sped toward the scene, nearly hitting the mob victim. When flagged to stop, the driver ignored the request. Suspicious, the officers pursued the vehicle, which stopped near Sori. Two occupants fled into nearby bushes. The vehicle was subsequently towed to Karungu Police Station after it was found to contain bhang. The pickup vehicle was owned by a church organization. This was corroborated by the evidence of Sergeant Zablon Ogutu (PW5).
  8. Fredrick Otieno (PW2) is a member of the Soon Light of Jesus Christ Church and owns a hardware store at Linda Centre. Additionally, he was responsible for reconciling the vehicle accounts each evening.
  9. On the material day, he was with the appellant at Oyugis, where he had gone to collect some tiles. Upon their return, the appellant asked him to offload quickly, as he had another assignment. After offloading, they parted company. Later, at approximately 6 p.m., he

repeatedly called him, but his calls were not answered. He needed him to reconcile the accounts. He later learned that the motor vehicle had been impounded by the police. When he reported to the police, he provided the appellant's details, who was arrested.

10. When the plant material transported in the motor vehicle driven by the appellant was analyzed, the government analyst verified that it was cannabis.
11. Lawrence Otieno Akumu, the appellant, argued in his defence that he was implicated by Fredrick Otieno (PW2) after the latter claimed that fewer tiles were offloaded. This appeared to be an afterthought, as he did not question the witness about this allegation. The learned trial magistrate was justified in rejecting it.
12. After reviewing the evidence presented, I conclude that the appeal lacks merit and is therefore dismissed.

**Delivered and signed at Migori, this 26<sup>th</sup> day of February 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**