



**Wekesa & 2 others v Republic (Criminal Appeal E031 & E032 of 2025  
(Consolidated)) [2026] KEHC 3944 (KLR) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3944 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKADARA  
CRIMINAL APPEAL E031 & E032 OF 2025 (CONSOLIDATED)**

**J WAKIAGA, J  
MARCH 18, 2026**

**BETWEEN**

**STEPHEN SIFUNA WEKESA ..... 1<sup>ST</sup> APPELLANT**

**REUBEN KIOKO KIMANTHI ..... 2<sup>ND</sup> APPELLANT**

**ELIZABETH WANJIKU ..... 3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(being an appeal arising from the conviction and judgement of the senior  
Principal Magistrates Court at JKLA delivered on 23rd October 2024)*

**JUDGMENT**

1. The appellants were charged with the offence of trafficking in narcotic drugs contrary to section 4(a) (ii) of the narcotic drugs and psychotropic substance control Act, the particulars of which was that on the 26<sup>th</sup> day of April 2023 at around 12.00 noon at Mihango in Embakasi within Nairobi County jointly with other not before the court trafficked in narcotic drugs namely cannabis to wit 303. 2 kgs with a market value of Kshs. 9,096,000 by conveying in motor vehicle registration number KDC 641 A make Probox white in colour in contravention of the Act.
2. The 2<sup>nd</sup> and 3<sup>rd</sup> appellant faced a charge of trafficking in narcotic drugs, the particulars of which were that on the 26<sup>th</sup> April 2023 at around 12.00 noon at Mihango SDA area in Embakasi jointly with others not before the court trafficked in narcotic drugs namely cannabis to wit 268.9 kgs with a market value of Kshs 8,067,000 by storing in a store in contravention of the Act.
3. They pleaded not guilty, were tried , convicted and sentence as follows:



- a. The first appellant on count one, to twenty-five years in prison and to pay a fine of Kenya shillings fifty million in default one year in prison to run concurrently.
  - b. The second appellant to serve twenty three and half years in prison and pay a fine of fifty million in default one year in prison with the default sentence running concurrently.
  - c. The second appellant on count two to serve twenty-three and half years in prison and to pay a fine of fifty million in default one year in prison to run concurrently
  - d. The third appellant to serve thirteen and half years in prison and to pay Kenya shillings fifty million in default one year in prison to run concurrently.
4. Being aggrieved by the said conviction and sentences, they filed these appeals initially at the High Court Criminal registry at Kibera as criminal appeals numbers E128 of 2024 for the first appellant, E 129 of 2024 for the second appellant and E 127 of 2024 for the third appellant , before being transferred to this criminal registry.
5. The appellants raised the following grounds of appeal ;
- A. The first appellant: The learned magistrate failed to properly re-evaluate the evidence adduced leading to an erroneous decision The court erred in law and fact in finding that the prosecution had proved its case beyond reasonable doubt
  - B. The second and third appellants: That the court erred in finding that possession was proved beyond reasonable doubt thereby convicting the appellant The court erred in finding that there was sufficient evidence that could lead to a finding of guilty of the appellants The court erred in finding that the appellant had an extra set of number plates which he switched out with the correct one with out supporting evidence The court erred in finding that there was a joint enterprise by the appellant and the co -accused in the trafficking without evidence in support thereof thereby arriving at a wrong decision .The court erred in dismissing the appellants defence asserting it to be a barefaced lie whereas evidence adduced and properly evaluated would have led to a different finding. The court erred in making a finding that the 2<sup>nd</sup> appellant was known to the first appellant and that they had communicated with no evidence adduced to as to the registered owner of the various mobile phone numbers The court misapplied and misapprehended the law on the chain of custody of the recovered narcotic drugs and made an erroneous finding on the same. The court misapplied and misapprehended the place in law of an inventory, how it was to be recorded and its probative value The sentence mated out was excessive punitive harsh and inappropriate to the appellants alleged involvement with the narcotic drugs .

## Submissions

6. Directions on the disposal of the appeal were issued. On behalf of the first appellant it was contended that the question for determination is whether the same had knowledge of the existence of drugs in the motor vehicle. It was submitted that the prosecution failed to prover trafficking as defined in the case of Gabriel Odhiambo Nambesi v Republic [2007] e KLR as there was no direct evidence to show that it was it was the appellant who was in possession of the said drugs and that the case was based on purely circumstantial evidence which did not meet the test set in Abanga alias Onyango versus Republic.
7. It was submitted that PW1 testified that she received information from unnamed informer about suspicious two pro-boxes parked within the area and that the appellant introduced himself to her as



- Wekesa and admitted having been offered a lift and that his mere presence in the said motor vehicle as a passenger did not prove control and did not establish any criminal liability.
8. It was submitted that there was no direct evidence to establish that the appellant conspired with others to trafficking the drugs and that no evidence was tendered of any agreement between the appellant and PW4 the owner of the said motor vehicle. It was contended that no nexus was established between the appellant and the second motor vehicle introduced to the proceedings by the prosecution.
  9. It was contended that the case was not proved as PW9 the digital forensic expert admitted he was not instructed to extract Mpesa messages and or call data to link the appellant to the offence and that the appellants phone was not tendered in evidence. It was contended that the appellant was convicted based purely on suspicion.
  10. It was submitted further that the appellants defence was not considered and the court failed to give cogent reason as to why it disagreed with the defence.
  11. On behalf of the second and third appellants, it was submitted that the evidence of PW1, PW2 and PW9 were marred by material inconsistencies and uncorroborated inferences. PW1 conceded that did not record the recovery of the motor vehicle keys nor did he state whether the second appellant was the driver thereof save that he swapped sitting position with the first appellant. It was stated that the inventory was not recorded or prepared by PW1 and did not include the car keys and therefore the evidence was not credible to sustain a conviction. It was contended that the identification of and linkage of the appellants with the crime was not clear and free from error.
  12. It was submitted that the third appellants possession of the store keys was unsupported by inventory or photographic documentation and that her landlady's testimony did not establish control of the specific store where the cannabis was recovered and therefore the prosecution failed to prove the element of storage of the narcotic drugs and that the court placed great evidential weight on the sampling certificates , valuation reports and weight certificate but with no evidence linking the appellants to the crime thereby failing to discharge the burden under section 107 of the Evidence Act.
  13. It was contended that the court relied on circumstantial evidence on the alleged handing over of the car keys and the 3<sup>rd</sup> appellants possession of the storage keys which did not irresistibly and exclusively point to the guilt of the appellants as stated in the case of Republic v Kipkering Arap Koske & Another and that the prosecution failed to establish an unbroken chain of inculpatory facts that irresistibly pointed to the guilt of the appellants to the exclusion of any other reasonable hypothesis..
  14. On the proof of the offence , it was contended that the element of movement or conveyance was not proved. The prosecution case was that the 1<sup>st</sup> and 2<sup>nd</sup> appellants exchanged vehicle keys and sitting positions and that the police switched off the vehicle before any movement could occur while the trial court held that 1<sup>st</sup> appellant handed over the car keys to the 2<sup>nd</sup> appellant with no photographic evidence of the alleged scene and that the court failed to address the issue of whether the said motor vehicle was used to transport bhang as a joint enterprise between the two appellants or whether either of the appellants was directly involved in its use for that purpose .
  15. It was contended that the trial court failed to analyse the nexus between ownership of the motor vehicle and the offence charged and whether the motor vehicle had been borrowed by the first appellant and thereafter used jointly by the first and second appellants to transport the alleged narcotic substances and therefore the courts find on the same was wholly speculative and unsupported by the evidence making the conviction unsafe .



16. In respect of the 3<sup>rd</sup> appellant , it was contended that her alleged possession of the store keys was unsupported by inventory and photographic documents and that the evidence of the payment of rent to the same was contradictory and that the omission to produce the car keys photographic evidence or inventory linking the 3<sup>rd</sup> appellant to the Probox fatally weakened the prosecution case .
17. It was submitted that the trial court misapplied the doctrine of joint enterprise as provided for under section 21 of the Penal Code as the evidence tendered did not demonstrate sufficiently at intent to traffic in drugs jointly and that the contemplated crime preparation and commencement of execution was accompanied with a common intention by the appellants and on sup[port of the submissions reference was made to the cases of Republic versus Moses Jumaa Kitsao &2 others [2020] eKLR and Tabulayenka s/o Kirya & others v R [1943] 10 EACA 51 where the court stated that the mere fact that the accused were together is not sufficient to prove common intention in the absence of evidence that they had pre-arranged plan and that their conduct showed a meeting of minds to commit the offence.
18. On the 3<sup>rd</sup> appellant it was contended that the prosecution failed to establish the nexus between her and the 2<sup>nd</sup> appellant that they jointly stored narcotic drugs and further that there was no direct evidential linkage between the communication extracted from the recovered phones and any act of the drug trafficking. It was submitted that the court erred in finding that there existed a joint enterprise between the appellants .
19. It was submitted that the court failed to properly evaluate the defence evidence which if it was done , would have raised a reasonable doubt as to their guilt. It was contended further that there was breach of the chain of custody and procedural lapses including the unsealed exhibits which rendered the conviction unsafe.
20. On sentence, it was submitted that section 4(a) of the act grants the court discretion in imposing both the fine and custodial sentence and that in the case of Caroline Auma Majabu v republic[2014] eKLR the court of appeal held that the a sentencing court must only consider not only the value of the drugs involved but also the offenders role and personal circumstances before imposing the maximum penalty and that the maximum sentences was intended for the drug barons and serous drug dealers and not small timers whose sentences should be aimed at rehabilitation rather than incarnation and completely destroying them.
21. It was contended that the sentence imposed by the court was harsh excessive and punitive on the account of disproportionality and therefore violated Article 50 (2)(p) of *the Constitution* which guarantees an accused the benefit of the least severe punishment prescribed by law. It was contended that the trial court failed to individualize the sentences in accordance with established sentencing principles and constitutional dictates .
22. On behalf of the respondent it was submitted that the prosecution was able tp prove that the 1<sup>st</sup> and 2<sup>nd</sup> appellants were arrested conveying the narcotic in motor vehicle KDC 641 A and that the 2<sup>nd</sup> and 3<sup>rd</sup> appellants were storing the narcotics in a store within Mihango area. On the chain of custody , it was submitted that the PW1 PW3 and PW8prepared the inventory, search certificates , notice of seizer and that the scene was documented before transporting the seized item to the DCI headquarters from where weighing and samplings were done and that the items were found to be cannabis. It was contended that the chain of custody was well established .
23. On the appellant's defence it was submitted that the same was considered by the court and dismissed as it did not displace the prosecution case. On sentence, it was conceded that though the fines were on higher side , the sentence was lenient and therefore the appeals should be dismissed .



## Proceedings.

24. This being a first appeal, the court is under a duty to re-evaluate the evidence tendered and to come to its own conclusion thereon while giving an allowance to the fact that unlike the trial court, it did not have the advantage of seeing and hearing the witnesses as was stated in the case of *Abanga v Republic*.
25. The prosecution case was that PW1 PC Lawrence Kiniti had received information that there were two Probox vehicles parked at Utawala and suspected to be involved in drug trafficking and was therefore instructed to verify the information and upon reaching the scene, he found that one vehicle had been seized and the suspects arrested. He was informed by an informer that there was a young man who was to take the drugs to the store and he followed the said young man who was given the key to the car and as he puns on the car he effected an arrest. They were then given the information on the third suspect who confirmed that she knew the 2<sup>nd</sup> appellant as her boss and confirmed that the drugs were stored in a store at the plot and that she was an employee hired by the 2<sup>nd</sup> appellant and that her role was to hold the key and to pack the drugs when received.
26. He stated further that the items recovered were confirmed to be cannabis, of which six sacks were in the store and nine full sacks were in the Probox. He witnessed the search and signed the certificate, he identified the 1<sup>st</sup> appellant as the one who handed over the key to the 2<sup>nd</sup> appellant and the 3<sup>rd</sup> appellant as the one who was in charge of the store. In cross examination he stated that he had been given the photo of the 1<sup>st</sup> appellant by his informer and that there were other houses in the compound where the store was and that the third appellant stated that the items in the store belonged to the 2<sup>nd</sup> appellant.
27. PW2 Annetta Gichuhu Nyaga the land lady of the 3<sup>rd</sup> appellant stated that she identified her house to the police and that she had rented the store where she kept chicken. She did not know the 1<sup>st</sup> and 2<sup>nd</sup> appellants.
28. PW3 CI Philip Langat was requested to value the 303.2 kgs of cannabis and 268.9 kgs of cannabis which he did and issued a certificate thereon. PW5 Emmy Akhaeli Otieno a government analyst examined the samples and prepared certificate thereon in the presence of the appellants who signed the same and that the drugs were found to be cannabis as listed under the act.
29. PW4 Julius Marwa stated that he used to driver motor vehicle registration no KDJ649 M a Probox which he owned and that on 25<sup>th</sup> April 2023 the 1<sup>st</sup> appellant went to his home and borrowed the said motor vehicle for a church event at a sum of kshs 2000 per day and that on 2<sup>nd</sup> may 2023 he received a call from the person who had sold him the motor vehicle who told him that the car was with the police. He later recorded his statement and identified the 1<sup>st</sup> appellant as the one he had given the motor vehicle and that the registration number thereof had been changed.
30. PW6 SGT John Wambua documented the recovered drugs and took photographs thereof, he witnessed the weighing of the same and prepared a certificates of the same. PW7 CPL Consolata Kendi corroborated the prosecution case on the arrest of the appellants and stated that the first motor vehicle was intercepted by IP Gladys Mbula and her team who arrested the driver and after ten minutes they intercepted the second motor vehicle and arrested the 1<sup>st</sup> and 2<sup>nd</sup> appellants before the third appellant was arrested who confirmed that she was an employee of the 1<sup>st</sup> appellant, who led them to the store where sacks of cannabis were recovered and in her house a book was recovered containing names of homes where delivery were made, two digital weighing machines and a small black digital weighing machine were also recovered.
31. PW8 SGT Francis Mjomba assisted in weighing and sampling of the drugs in the presence of the appellants and issued a seizure notice which he handed over to the investigating officer. PW9 CPL



Lilian Munyinyi examined the mobile phones recovered from the appellants and that only one phone contained file of interest .PW10 CPL Grace Njoroge corroborated the prosecution evidence on the arrest of the appellants and how they searched the motor vehicles herein and recovered the drugs both in the motor vehicles and in the store operated by the 3<sup>rd</sup> appellant, she later on wrote to NTSA on the particulars of the motor vehicles and traced the owner thereof.

32. When put on their defence the 1<sup>st</sup> appellant stated that he was a business man in Migori selling rice from Tanzania and that on the 25<sup>th</sup> April 2023 he left Sirare for Nakuru on his way to Nairobi to buy spare parts for a car which was involved in an accident and that the following day he got into a Probox which had two people and a lighted at Utawala total petrol station where he was grabbed by someone he did not know who pointed a gun at him and asked him to lie down, another man whom he did not know was brought to where he was and they were later on taken to a place where there was a store for bhang. They were later on joined by a woman and the sacks put into the two Probox. They were taken to Nairobi area where he was interrogated by PW1 before being charged .
33. In cross examination he stated that he travelled in the motor vehicle which had cannabis but he did not have knowledge thereof. He denied having been given the motor vehicle by Julius.
34. The second appellant stated that he was a hawker at Ruai and that on the material day he took his shoes to Astrol Petrol Station at Utawala when a crowd moved towards him and two men moved towards him and handcuffed him before taking his mobile phone. He was put in a motor vehicle and taken to Mihango where sacks were removed from a Probox and their photographs taken next to them before they were taken to Nairobi area police station for weighing and sampling before being produced in court the following day. He denied knowing the 1<sup>st</sup> appellant .
35. The 3<sup>rd</sup> appellant stated that she was a ‘mama fua’ and that on the material day she was at home since she was not feeling well so she went to buy medicine and on the way she was arrested and was asked to take the people who arrested her to her house which they searched and she took them to the store, she was later on asked to stand next to three men and their photographs taken before they were taken to Nairobi area. It was her evidence that her land lady owned the store

### **Determination**

36. From the proceedings herein and the submissions which I have considered, the following issues have been identified for determination
  - a. Whether the prosecution case against the appellants was proved
  - b. Whether the appellant’s defences were considered by the court
  - c. Whether the sentence was harsh and excessive
37. On the proof of the prosecution case, the appellants were charged with the offence of jointly trafficking in cannabis by conveyance and storage. As is the norm in most of the drug related prosecution the appellants herein were arrested as a result of a tip off given to the police by an informer who was present with the police during the arrest. The first appellant had been given the motor vehicle which he used in conveying the drugs herein by Julius Marwa and the 1<sup>st</sup> and 2<sup>nd</sup> appellant were arrested in the said motor vehicle whose registration particulars had been changed. upon their arrest the informer led them to the 3<sup>rd</sup> appellant who was in charge of the store where additional sacks of the drugs were recovered .
38. According to the prosecution evidence which was not challenged by the appellants, the 3<sup>rd</sup> appellant stated that she was an employee of the first appellant which evidence was confirmed through the extract from her mobile phone in which he was saved as Wafula while she on the other hand was saved



by the 1<sup>st</sup> appellant as Shiku and her land lady confirmed that she had rented the store whose keys she had and which she used to open the store where additional bags of the drugs were found. All the appellants placed themselves at the place of arrest in their defences and therefore their identification was positive and free from error.

39. Whereas it was submitted by the appellants that the circumstantial evidence herein as regards the 3<sup>rd</sup> appellant was not properly applied, the prosecution evidence as per PW3, the landlady was that the appellant had leased the store where the additional drugs were found, she had the key to the store which she used to open the store in the presence of the police officers and one of the items recovered from her was a list of the homes and quantity of delivery, there were also weighing scales found thereat and therefore find no fault with the trial courts finding that her defence was a mere denial.
40. It is clear that the appellant herein had a joint enterprise and common purpose in the commission of the crime herein as can be seen from the evidence tendered, the 1<sup>st</sup> appellant secured the motor vehicle which was used in the conveying of part of the drugs and at the tail end of the journey handed the control thereof to the 2<sup>nd</sup> appellant who was in touch with the 3<sup>rd</sup> appellant who was in control of the store where the drugs were being stored before being distributed.
41. I therefore find no fault with the trial courts finding that the prosecution proved the two counts against the appellants beyond reasonable doubt and that the appellants submission on the defect on the chain of custody holds no water against the evidence on record.
42. It therefore follows that the appellants appeal on conviction lacks merit and is therefore dismissed and the trial court finding thereon affirmed.
43. On sentence, the same remains at the sole discretion of the trial court and will only be interfered with if the court did not consider material the appellants herein, the court considered the provision of section 4(a) (ii) of the Act, the mitigation by the appellants and the pre-sentencing report and noted that as per the Act the penalty is liable to life imprisonment but ended up not making out the said sentence.
44. It can therefore not be said that the sentences herein were harsh and excessive, the court having exercised its discretion in favour of the appellants herein I shall not interfere with the same.
45. I therefore find no merit in the appeals herein both on conviction and sentence which I hereby dismiss and affirm the trial courts finding thereon. And it is ordered.

**DATED SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF MARCH 2026**

**J. WAKIAGA**

**JUDGE**

In the presence of: -

Court assistant –

Counsel for the state –

Applicant -

