



**Republic v Eshiwani & another (Case E173 of 2024)
[2025] KEMC 327 (KLR) (16 September 2025) (Sentence)**

Neutral citation: [2025] KEMC 327 (KLR)

**REPUBLIC OF KENYA
IN THE JKIA LAW COURTS
CASE E173 OF 2024
AN THUKU, SPM
SEPTEMBER 16, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CAROLYNE ELUKASIRE ESHIWANI 1ST ACCUSED

CALEB MUHANDO JAIRO 2ND ACCUSED

SENTENCE

1. “The imposition of a fit sentence can be as difficult a task as any faced by a trial judge. That task is particularly difficult where otherwise decent, law-abiding persons commit very serious crimes in circumstances that justifiably attract understanding and empathy...” These are the words of (Rtd) Justice David Doherty, a retired justice of the Ontario Court of Appeal. I associate myself entirely with these views as the trial and sentencing court in this case. He made these opening remarks in a case between Her Majesty the Queen and Marsha Alisjje Hamilton and Donna Rosemarie Mason.¹ The trial court and the appellate court recognized both respondent as mules or drug couriers. Both Marsh and Donna pleaded guilty and their cases did not go to trial.
2. There are two accused persons in this case and they are Carolyn Elukasire Eshiwani (“Carolyn”) and Caleb Muhando Jairo. Both were arraigned before this court on December 2, 2024 when the charges were read to them. Three witnesses testified before Carolyn informed the court on August 19, 2025 that she wanted to change her plea. Before reaching this stage, Carolyn attempted to enter a plea bargain agreement.

¹ Available at <https://www.ontariocourts.ca/decisions/2004/august/C39716.htm>



The Charges

3. Carolyne and her co-accused face three charges. In count 1, Carolyne is charged with trafficking in narcotic drugs contrary to section 4(a)(ii) of the Narcotic Drugs and Psychotropic Substances Control Act (NPSA).
4. The particulars of the offence are that on November 23, 2024 at Kenol along Nyeri-Nairobi Highway in Murang'a County with others not before court Carolyne and Caleb jointly trafficked in narcotic drugs namely cocaine to wit 294.23 grams with a market value of Kshs 1,176,920/- by conveying in a motor vehicle registration KDQ 045M Scania Bus, concealed in a black polyethene bag in the undergarments in contravention of the provisions of the said Act.
5. In Count 2, Carolyne and Caleb are charged with trafficking in narcotic drugs contrary to section 4(a)(ii) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#).
6. The particulars of the offence are that on November 23, 2024 at Kenol along the Nyeri-Nairobi Highway in Murang'a County with others note before court, jointly trafficked in narcotic drugs namely cocaine to with 615.47 grams with a market value of Kshs 2,461,880/- by conveying in a motor vehicle registration number KDQ 045M Scania Bus concealed in the body cavity in contravention of the provisions of the said Act.
7. In Count 3, Carolyne and Caleb are charged with conspiracy to traffick in narcotic drugs contrary to section 4(B)(4) as read with section 4(B)(5) of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#).
8. The particulars of the offence are that on an unknown date at an unknown place within the Republic of Kenya, being in Kenya conspired with one another to traffic in narcotic drugs namely cocaine in Kenya in contravention of the provisions of the said Act.
9. Carolyne represented herself in the plea bargain and in the change of plea. When the charge was read afresh to her on August 26, 2025 she pleaded guilty. On August 28, 2025 after all the facts were presented and when asked by the court if the facts were correct, Carolyne confirmed the facts were correct.
10. The rest of the sentencing proceeds as follows – a look at the law, views from the prosecution on previous records and mitigation, a summary of the Pre-Sentence Report, considerations in the Sentencing Guidelines, 2023, critical factors and finally the Sentencing.

The Law

11. Section 4(a)(ii) of the NSPA states:
 4. 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 –
 - (i) ...
 - (ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shilling or three times the market value of the narcotic psychotropic drug or substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment.



12. Sections 4(B)4 and 4(B)(5) of the Narcotics and Psychotropic Substances (Control) Act states:
- (4) A person who being in Kenya, conspires with another person who is also in Kenya to commit an offence under this Act in Kenya or outside Kenya commits an offence.
 - (5) A person who conspires to commit an offence under this section commits an offence and is liable, on conviction, to a fine of not less than one hundred million shillings and to imprisonment for life.
13. A reading of the act in totality reveals the legislative intent in this particular section on conspiracy. The legislators considered conspiracy to traffic drugs such as serious offence that they gave it the stiffest penalty of all in the act. The punishment for this offence is a fine of not less than Kshs 100 million and a possibility of life of imprisonment. It is a possibility because of the use of the word “liable”. But the payment of the fine has attached to it a mandatory minimum sentence because of the phrase “not less than” .

Mitigation

14. The Prosecution led by Mr. Mulama and Ms. Rono informed the court that they did not have any previous records for Carolyne. Mr. Mulama however, asked the court to consider the manner in which the conveyance took place.
15. In mitigation Carolyne stated her commission of the offences was borne from poverty. She informed the court that her father and children depend on her. She went on to explain that she had no other way to earn a living and so she took up a job that led to this case. Carolyne she did not have a passport but had only a national identity card and a voters card. She asked the court for forgiveness and mercy stating she is a single mother of two children aged 6 years old (daughter) and 12 years old (son). She said she has learned the consequences of her action and will not repeat the offence. She pleaded with the court that if she is sentenced to prison then it is to be for two years and not a prison term that will finish her.

Pre-Sentence Report

16. The court requested the Probation Office for a Pre-Sentence Report and I thank the officer who prepared it. The report confirms some aspects of what Caroline told the court which is that her mother is deceased and that she lives with her father. It however states that Carolyne is married and that she has three children aged 15 years (son), 11 years (daughter) and 6 years (son). Her relatives expressed shock at learning of this case and ask for a non-custodial sentence. Carolyne also asks for a non-custodial sentence.
17. I wish to reproduce in full two sections of the Pre-Sentence Report as they are relevant in Sentencing. These are the “Circumstances of the Offence” and “Attitude towards the Offence”

Circumstances of the Offence

The offender admits having committed the offence. She is remorseful and regrets, noting that she was naïve. She states that on the day of her arrest, she was with her co-accused from Moyale to Eastleigh who had promised her a job. Instead, she was given some greyish substances by her co-accused to swallow using juice and she swallowed. Having swallowed some of the substances, she claims that she started vomiting and that this prompted her to hide the remaining ones under her garments. On her way to Eastleigh – Nairobi County – she was arrested at Kenol along the Nyeri-Nairobi Highway in Murang’a County, brought to Muthaiga Police Station and later JKIA Police Station and arraigned in court for this current offence.



Attitude towards the offence

The offender regrets having committed the offence. She is aware of the gravity of the offence and prays for leniency of the court saying that was desperately looking for employment in order to take care of her family. She prays for non-custodial sentence to take care of her children who entirely depend on her. She noted that was lured into this by her co-accused who had promised her employment. She prays for the court to consider the time she spent in remand prison.

Critical Factors

18. The opening paragraph of these sentencing remarks refers to a decision from the Ontario Court of Appeal. The decision concerns two ladies namely, Marsha Alisjje Hamilton and Donna Rosemarie Mason. Below is a summary of their case and as can be seen, their circumstances are very similar to Carolyne's circumstances.
19. Ms. Hamilton and Ms. Mason, both single mothers living in Toronto, were convicted of importing cocaine into Canada after returning from separate trips to Jamaica in 2000 and 2001, respectively. Ms. Hamilton, a 26-year-old Canadian citizen, ingested 93 pellets containing 349 grams of cocaine and became critically ill when some of the drug leaked into her system. Ms. Mason, a 31-year-old Jamaican national, swallowed 83 pellets containing 489 grams of cocaine and was caught due to suspicious travel patterns. Both women were arrested at Pearson International Airport, released on bail, and eventually pled guilty before trial. They were found to be drug couriers acting for compensation, with no involvement in the distribution of the drugs. Each expressed remorse, had no prior criminal record, and were described as responsible mothers whose actions were out of character. Financial hardship played a significant role in their decisions, as both struggled with poverty, limited education, and a lack of support from their children's fathers.
20. There are similarities between these two ladies and Carolyne. They are single mothers. All three were involved in trafficking the same substance, cocaine and they used they ingested the substances. The ladies in the Canadian case fully ingested the pellets while Carolyne swallowed some of the pellets while others were stuffed into her panty and hidden in her abdomen. All three are single mothers. The ladies in the Canadian case expressed remorse just like Carolyne did in the matter before me. The two ladies also stated that financial hardship played a part in driving them to their involvement in this crime.
21. Select sections of the Pre-Sentence Report are reproduced to demonstrate what Carolyne informed the court in her mitigation. She was a what is known as a mule or drug courier. She put her life in danger by ingesting the drugs; indeed it was an act of God's mercy that her body rejected her swallowing any more pellets by vomiting. She could have died.
22. The Sentencing Guidelines, 2023 and the Narcotic Drugs and Substances (Control) Act, 1994 does not distinguish between a mule, a middle level trafficker and a drug baron in sentencing. Neither has there been any distinction in the decisions from the superior courts in Kenya on how courts are to make a determination where a person pleads guilty and on sentencing by considering their role in drug trafficking.
23. However, there is persuasive reasoning from other jurisdictions. More specifically, in the case concerning the two ladies – Ms. Hamilton and Ms. Mason – the court of appeal explained how it arrives at decisions in these particular circumstances – pleading guilty thereby not going to trial and being a drug mule/courier.
24. (Rtd) Justice Doherty delivering a unanimous decision from a three-judge bench said (at paragraph 104 to 107):



- [104] The importation of dangerous drugs like cocaine and others found in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 has always been considered among the most serious crimes known to Canadian law: *Sentencing Reform: A Canadian Approach*. Report of the Canadian Sentencing Commission, Ottawa Ministry of Supply and Services (1987), p. 205. The immense direct and indirect social and economic harm done throughout the Canadian community by cocaine is well known: *Pushpanathan v. Canada (Minister of Citizenship and Immigration)* (1998), 160 D.L.R. (4th) 193 at 235-37 (S.C.C.), per Cory J., in dissent on another issue; *R. v. Smith* (1987), 34 C.C.C. (3d) 97 at 123-24 (S.C.C.). The use and sale of cocaine kills and harms both directly and indirectly. The direct adverse health effects on those who use the drug are enormous and disastrous. Cocaine sale and use is closely and strongly associated with violent crime. Cocaine importation begets a multiplicity of violent acts. Viewed in isolation from the conduct which inevitably follows the importation of cocaine, the act itself is not a violent one in the strict sense. It cannot, however, be disassociated from its inevitable consequences. Unlike the trial judge (para. 224), I characterize cocaine importation as both a violent and serious offence: see *R. v. Pearson* (1992), 77 C.C.C. (3d) 124 at 143-44 (S.C.C.).
- [105] Cocaine is not indigenous to Canada. Without the cocaine importer, whatever his or her motive or involvement, there would be no cocaine problem. Both before and after the amendments to the sentencing provisions in Part XXIII of the Criminal Code and the introduction of the sentencing provision (s. 10) into the Controlled Drugs and Substances Act, S.C. 1996, c. 19, this court has emphasized the gravity of the crime and, therefore, the need to stress denunciation and deterrence in sentencing all drug importers, even vulnerable first offenders. In *Cunningham*, supra, at pp. 546-47, the court, in fixing a range of six to eight years for couriers who smuggle large amounts of cocaine into Canada, said:
- We recognize as well that the suggested range will often require the imposition of a severe penalty for first offenders. We are not insensitive to this concern, mindful as we must be that in many instances, couriers tend to be weak and vulnerable, thereby becoming easy prey for those who engage in drug trafficking on a commercial basis.
- Sympathetic though we are to the plight of many couriers, such concerns must give way to the need to protect society from the untold grief and misery occasioned by the illicit use of hard drugs [emphasis added].
- [106] This court has repeatedly reiterated the approach set out in *Cunningham*, e.g. see *R. v. H.* (C.N.) (2002), 170 C.C.C. (3d) 253 (Ont. C.A.); *R. v. Wilson*, [2003] O.J. No. 144 (C.A.).
- [107] Because the sentencing of drug couriers presents one of the more difficult, and unfortunately more common, situations in which the gravity of the offence and the personal responsibility of the offender suggest different dispositions, this court has set out different ranges of sentences to assist trial judges in fixing appropriate sentences in individual cases. The ranges established by this court in *Madden* and *Cunningham* do not have direct application to this case. However, the factors justifying the fixing of those ranges have equal application here. I think it would be helpful to set a sentencing range for the importation of amounts of cocaine below “the one kilogram more or less” range identified in *Madden*.
- [108] *Madden* suggests a range of three to five years for the importation of one kilogram of cocaine “more or less”. Where the amount of cocaine imported is approximately half of that amount, the bottom end of the range should be adjusted downward. I do not suggest that the adjustment should follow any mathematical formula, but rather that it should recognize that



the importation of lesser amounts of cocaine renders the crime somewhat less serious. In my view, where the amount of cocaine imported falls below the amounts described in Madden, the bottom end of the appropriate range of sentences should be at or near two years. I see no reason to vary the upper end of the appropriate range.

25. Applying the reasoning above to the circumstances before me, leads these deductions. Carlyne was trafficking a total of 909.7grams of cocaine; 90.3 grams shy of a kilogram of cocaine. The total value of the cocaine she had was Kshs 3,638,800/-. Just like Canada, cocaine is not indigenous to Kenya. It has to be imported. This court takes the same view as the Ontario Court of Appeal that there is need to denounce and issue deterrent sentences to those bringing in drugs, which harm our communities and lead to the disintegration of society. The overriding and paramount consideration to keep Kenya safe and this take precedence over the plight of mules/drug couriers. This court will continue to play its role as a gate keeper for the community and a duty bearer of the nation. Had the enterprise succeeded and the cocaine found its ways to the streets, the lives of many families and possibly children either as users or as children of users would have come to much harm.
26. The Canadian courts have adopted a range of three to five years where the importation of the drug is less than one kilogram. I find this is a fair guideline to adopt in the circumstances concerning Carlyne where she finds herself as a mule/drug courier.
27. With reference to Count 3 which is on conspiracy to traffick, the court finds that Carlyne benefits from a plea of guilt and is sentenced to a fine as explained in the provisions below.

Sentencing Guidelines, 2023

28. The guidelines provide what steps the court should take where an accused person pleads guilty at paragraph 4.3 which provides:
 - 4.3 ACCUSED PERSONS PLEADING GUILTY
 - 4.3.1 Although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt, reflected in a guilty plea—
 - i. normally reduces the impact of the crime upon the victims;
 - ii. saves victims and witnesses from having to testify; and
 - iii. is in the public interest in that it saves public time and money on investigations and trial.
29. With regard to fines, this is covered in paragraph 2.7 of the Sentencing Guidelines, 2023. The wording of statute is for a mandatory minimum sentence. Paragraph 2.7.2 gives the following rationale, In some cases, minimum fines are prescribed but, in most cases, the relevant provisions provide the maximum amount payable in fines, leaving the court to determine the level of fine that is appropriate.
30. There is further direction given in paragraph 2.7.5 which states, Where the option of a fine is provided in the law, the court must first consider it before proceeding to impose a custodial sentence. If in the circumstances a fine is not a suitable sentence, then the court should expressly indicate the reasons why it is not appropriate to impose a fine.
31. The principle in this section is that the court is called upon to take into account the benefits that accrue to the court when an accused person pleads guilty.



Sentencing

32. In light of all the factors above, Carolyne is sentenced as follows:

In Count 1

She is sentenced to pay a fine of fifty million and in default one year in prison AND to serve a sentence of two years in prison. The default sentence is to be served concurrently with the prison term. In reaching this decision on the prison term, the court has considered the time she has spent in pre-trial detention under the provisions of section 333 of the Criminal Procedure Code.

In Count 2

She is sentenced to pay a fine of fifty million and in default one year in prison AND to serve a sentence of two years in prison. The default sentence is to be served concurrently with the prison term. In reaching this decision on the prison term, the court has considered the time she has spent in pre-trial detention under the provisions of section 333 of the Criminal Procedure Code.

In Count 3

She is sentenced to pay a fine of Kshs 100 million in default one year in prison.

The sentences in Counts 1, 2 and 3 are to run concurrently.

Carolyne has 14 days right of appeal.

Return of Exhibits

33. The exhibits produced during the plea taking for Carolyne are to be returned to the Investigating Officer because the trial is still taking place for the 2nd accused person

Return of Prisoner Property

34. The investigating officer is to ensure that all the personal property that is not being used as exhibits in this case is available to be returned to Carolyne at a date that the court will fix specifically for this purpose.

It is so ordered.

DATED, SIGNED AND DELIVERED AT JKIA LAW COURTS THIS 16TH DAY OF SEPTEMBER 2025.

NJERI THUKU

SENIOR PRINCIPAL MAGISTRATE

In the presence of: -

.....Court Assistant

.....State Counsel

.....Defence Counsel

..... 1st Accused

..... Language

