

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKADARA
CRIMINAL DIVISION
APPELLATE SECTION
CRIMINAL APPEAL NO E 046 OF 2025

RAMAT BIN MOHO NOOR APPELLANT

VERSUS

REPUBLIC RESPONDENT

**(Being an appeal from original conviction and sentence
in Criminal Case No 47 of 2022 of the Chief Magistrates
Court at JKIA)**

JUDGEMENT

1. The appellant was convicted and sentenced to serve a jail term of fifteen years with effect from 26th September 2022 in addition to a fine of Kenya shilling fifty-three million nine hundred and eleven thousand four hundred and forty (kshs 53,911,440) and upon serving the sentence, the appellant to be repatriated to his county of origin for the offence of trafficking in narcotic drugs contrary to section 4(a) of the Act .
2. Being dissatisfied with the said conviction and sentence, he filed this appeal initially at the High Court Criminal registry at Kibera being Criminal appeal No e103 of 2024 and raised the following grounds of appeal ;
 - a) The court erred by construing the appellant's possession of the narcotic to mean intention to traffic narcotic.

- b) The court failed to consider the appellants defence and dismissing the same as unbelievable thus shifting the burden of proof to the same.
 - c) The court failed to consider the authorities submitted by the appellant in his submissions.
 - d) The prosecution case was not proved to the required degree.
3. By the direction issued thereon dated 10th February 2025, the cause was transferred to this court's registry for trial and determination and on the 4th day of June 2025 the appeal was admitted for hearing by way of written submissions which were duly filed.

SUBMISSIONS

4. On behalf of the appellant it was submitted that the prosecution failed to prove what the appellant was doing to traffic narcotic as was stated in the cases of ***Madline Akoth Barasa and another versus Republic [2007] eKLR, Wanjiku vs Republic [2002] eKLR*** and ***Peter Mwangi Kariuki versus Republic [2025] eKLR***. It was contended that the doctrine of innocent carrier is to the effect that a person who is found to have been in possession of a dangerous thing or prohibited substances can still be found to be innocent if the circumstances of the case reveal that he the person was unaware of the nature of the item found in the persons possession and if no evidence is adduced to rebut the innocence as was stated in the Malaysian Supreme Court case of ***Maria Elvira pinto Exposito***

versus PP [2020] 2 MLRA where it was held that the defence of innocent carrier was available to an accused person based on the fact of the case if not rebutted by the prosecution.

5. It was submitted that a person who is in possession of drugs without knowledge was entitled to acquittal if he proves that he neither believed or suspected or had knowledge to suspect that it was controlled as was stated in the case of **Regina versus Lambert [2001] UKHL 37** and that the court can only find wilful blindness where it can almost be said that the defendant actually knew as was stated in **Sansregret versus The Queen [1985] 1 SCR 570** .

6. It was contended that the only evidence led in this case was a suit case allegedly seized from the appellant in which the drugs were found and that the prosecution failed to trafficking as the appellants defence was that he was duped to travel to Kenya by some fraudsters to pick an inheritance certificate to deliver to the beneficiaries at a fee and that the appellant was an innocent victim of fraud and drug cartels without a guilty mind as he was un aware that the suitcase contained drugs.

7. It was submitted that the trial court erred in placing the burden of proof upon the appellant by holding that his story was unbelievable as the prosecution did not adduce any evidence to prove that the appellant had knowledge that he was carrying narcotics. On sentence

it was submitted that the court erred in not considering the sentencing guidelines on the elderly and sick .

8. On behalf of the respondent it was submitted that the prosecution proved that on the 20th September 2022 the appellants bags were screened and found to have narcotic concealed in the false parts of the suit case and bags and that the appellant was conveying the drugs which were in his custody a fist that the appellant did not deny. The chain of custody was well documented and explained by the prosecution .
9. On the appellants defence it was submitted that the appellant did not explained why he came to Kenya if he had been duped to collect inheritance from Nigeria and was therefore dismissed as untruthful.
10. On sentence it was submitted that the same was in line with the law and the court took into account the time spent in remand custody.

PROCEEDINGS

11. This being a first appeal, the court is under a duty to re-evaluate the evidence tendered before the trial court to come to its own decision thereon while giving the allowance that unlike the trial court it did not have the advantage of seeing and hearing the witnesses, see *Okeno v Republic*.
12. The prosecution case was that while PW1 Mildred Achipa a security warden at JKIA was screening bags the appellant bag was selected for physical search. It had the appellants name tag. PW2 Benjamin Kiptech

corroborated the said evidence and stated that he sought the owner of the bag and the appellant identified himself. He opened the bag which had two red ladies' bags and that after emptying the content of the bag, the same was still heavy so he handed over the bag and the owner to his supervisor. In cross examination he stated that the bag did not have the appellant identification documents but the appellant said it was his and he readily opened the same.

13. PW3 Pamela Munangwi stated that she was alerted by PW2 that they were unable to ascertain the appellants bag so she took it over and unzipped it and removed all the items but the same was still heavy, she therefore handed over the appellant who had identified the bag as his to the CID officers together with the bag. PW4 PC Paul Mulei attached to the ANU at JKIA met the appellant at the search table where there were two suitcases and a back pack , they took the appellant to the Investigation officer where they carried a search and he prepared the inventory thereof together with a notice of seizer and a presumptive test thereof conducted. This evidence was corroborated by PW7 SP Margret Abae who took custody of the items before handing him over to PW5.

14. PW5 Sargent Violet Alai attached to ANU at JKIA stated that she proceeded with the appellant together with the other officers to the Government Chemist for the exercise which included labelling and sampling

which was done in the presence of the appellant. The substance was then weighed and was 5990.16 grams and the value thereof given by PW6 Chief Inspector Philip Langat to be kshs 17,970,480. PW 8 Lucy Rukia Waruki a Government Analyst confirmed that the substance was heroin while PW9 Inspector Hari Kamau a scene of crime officer processed , documented and took photographs of the items.

15. PW 10 Corporal Joseph Mutie retrieved the CCTV footage sat JKIA terminal 1A of the material day and at upper Capital Heights Hotel of 20th September 2022 which showed a woman bringing a luggage to the room the appellant was staying in and later the appellant leaving the room with the same wearing a mask who was later seen carrying the two suit cases on board motor vehicle registration number KDE 952E and at the screening area of JKIA. PW11PC Timothy Maiyo was assigned the investigation of the matter and arraigned the appellant in court.

16. When put on his defence ,the appellant stated that he was Singapore where he was working as a sea man and that in 2019 he received an email from a man who claimed to be working in the Ministry of finance and had his name to certain inheritance worth \$ 10500 and asked him to travel but he declined due to covid. He was later asked to send \$ 500 to process the certificate which he did but did not get the certificate which allegedly was being held by the custom department

and that he eventually travelled on 15th September 2022 to Nairobi where he was met by a lady who claimed to be a staff of the persons he was dealing with at his hotel room with a luggage and a certificate inside it and left. When he opened the luggage, he saw that everything was fine and proceeded with them to the airport where his bags were screened and found to contain drugs. It was his evidence that the owners of the bags were Guinherme Franco Hetto and Dennis Hallman, and that all he knew was that he had come to get inheritance certificate.

17. In cross examination he stated that he did not have any inheritance in India and that he did not know the person he was to get the inheritances from but was told that he would get the certificate from Kenya though the same was being processed in Nigeria and was to travel to India. He confirmed that the substance was recovered in his presence and that he had the bags throughout .

18. DW 2 Horuzline Munap stated that the appellant was her uncle who was a sea man. He had told her that he was traveling to Kenya to deliver something he did not disclose and that she produced the emails communications from his address which he authorized her to access.

DETERMINATION

19. In this appeal, the fact that the appellant was found in possession of the drugs at the Airport is not disputed.

The only issue raised by the appellant which the court is called upon to determine is whether the defence of the doctrine of innocent carrier was available to the appellant and if so whether the same was considered by the court and properly dismissed .

20. As submitted by the respondent the appellant was charged with trafficking in narcotic drugs contrary to section 4(a) of the Act and in this case by conveying and the evidence produced by the prosecution proved that the appellant was found in possession of the said drugs on his way to Mumbai. That the same were confirmed to be heroin upon being analysed. Once it was proved that the appellant had in his possession the drugs, the offence of trafficking was proved by the prosecution.

21. On the defence of innocent carrier in dismissing the same the court had this to say “ ***I fail to fathom his story that he was following up his inheritance and also that he was called by certain people from Nigeria and had to go to India then also to come to Kenya to get a certificate and proceed to Mumbai for further transaction with regard to the so-called inheritance. The whole story to me is totally unbelievable. It is common knowledge that inheritance takes a legal process. It is done within jurisdiction of the country where the process is taking place. Now in this case I fail to***

understand the web of this whole thing that the accused has tried to place before this court “

22. For this defence to succeed based on the authorities submitted by the appellant, which I find very persuasive the accused must show that he did not know the content of what he was carrying and that there was no reasonable suspicion which would have made the appellant to make an inquiry see the case of **PP v Fatemi & another [2015]**.

23. In the Malaysian case of **Public Prosecutor v Herlina Purnama Sari [2017] 1 MLRA 499**, in which the court, described the situation as follows:

“Wilful blindness necessarily entails an element of deliberate action. If the person concerned has a clear reason to be suspicious that something is amiss but then embarks on a deliberate decision not to make further inquiries in order to avoid confirming what the actual situation is, then such a decision is necessarily a deliberate one. The key threshold element in the doctrine of wilful blindness itself is that of suspicion followed by (and coupled with) a deliberate decision not to make further investigations.”

24. In this matter the appellant defence was that he had been following a certificate of inheritance which he was to collect and therefore there was no why the same would have turned out to be suit cases. The appellant would have upon being given the suit cases made an inquiry. The evidence on record from the CCTV footages

shows that when the appellant left the hotel room with the bags his face was concealed showing that the same did not want to be detected .

25. The defence is not available to a defendant who wilfully turn a blind eye to the obvious circumstances which raised suspicion as in this case where the appellant stated that he opened the bag and saw women clothing purse, hand bag and portrait which were according to his evidence gifts but in the absence of the certificate of inheritance which had allegedly brought him to collect.

26. The fact of the innocent carries are special facts with the knowledge of the appellant which as per the provision of section 111 of the Evidence Act shifted the burden of proof upon the appellant and from the analysis of the evidence tendered before the trial court find and hold that the appellant failed to prove.

27. The circumstantial evidence herein which included the fact that the appellant was in the country for five days and did not meet the person who had the certificate and only received the bags on the last day of his stay and on his way to the airport clearly point to a person who knew his mission. As stated by the trial court the appellant was initially in communication with the people who were supposed to give him inheritance certificate from Nigeria, he did not explain how he ended up in Kenya and what he was doing in Kenya for

the five days he was around, the same shut his eyes to the obvious.

28. It was his duty to make inquiry as to the content of the bags if his evidence to the effect that the lady who brought them to him came to his room and immediately left and that he opened the bag and saw women clothing the purposes of which he did not tell the court and therefore find that the defence of innocent carrier was not established.

29. The appellant conviction was therefore safe. The appeal against conviction is therefore dismissed.

30. Sentence is the preserve of the trial court and in this appeal the appellant has not alleged that the sentence herein was illegal and unlawful. The appeal against sentence is dismissed for lacking merit.

31. Flowing from the matters raised herein above , the appeal against both conviction and sentence is dismissed and the trial court finding thereon affirmed. The appellant has a right of appeal. And it is ordered.

SIGNED DATED AND DELIVERED THIS 28th DAY OF APRIL 2026

**J WAKIAGA
JUDGE**

In the presence of: -

Court assistant - Gitonga

State Counsel -

Counsel for the applicant

MAKADARA CRIMINAL APPEAL NO E046 OF 2025 JUDGEMENT ORIGINAL COPY