



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**CORAM: CHUNGA, C.J., SHAH & O'KUBASU, J.J.A.**  
**CRIMINAL APPEAL NO. 177 OF 2000**  
BETWEEN

DAVID KIPKORIR RONO .....APPELLANT  
AND  
REPUBLIC .....RESPONDENT

(Appeal from a conviction of the High Court of Kenya at  
Kericho (Hon. Mr. Justice D.M. Rimita) dated 25th July,  
2000  
in  
H.C.CR.A NO. 45 OF 1999)

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**JUDGMENT OF THE COURT**

This is a second appeal against the appellant's conviction for trafficking in drug (Cannabis) contrary to **section 4(a)** of the *Narcotic Drugs & Psychotropic Substances Control Act* which is Act No.4 of 1994 (The Act). The appellant David Kipkorir Rono , was convicted of the said offence by Senior Principal Magistrate G. Aburilli Esq., at Kericho on 23rd November, 1999. The appellant was charged with, firstly the offence of trafficking 5161 stones weighing 873 kilogrammes of Cannabis and secondly the offence of being in possession of the said quantity of Cannabis. The particulars of the offences were:-

**"Count 1**

**David Kipkorir Rono**

On the 10th day of July, 1999 along Kipchimchim/Brooke Bond road in Kericho District within the Rift Valley Province while jointly with others already in court found trafficking 5161 stones weighing 873 kilogrammes Cannabis in a motor vehicle registration number KAE 969G make Toyota Hiace Matatu in contravention of the said Act.

**Count 2**

**DAVID KIPKORIR RONO**

On the 10th day of July, 1999 along Kipchimchim/Brooke Bond road within Kericho District of the Rift Valley province while jointly with others already in court found in possession of 5161 stones weighing 873 kilogrammes of Cannabis in a motor vehicle registration number KAE 969G Toyota Hiace in contravention of the said Act."

The second count was brought contrary to **section 3(2)(b)** of the Act. He was convicted of the offence relating to trafficking of the drug- Count 1. The record is silent as regards Count 2 above-mentioned and it can therefore be assumed that it was an alternative charge. The appellant's first appeal to the High Court

was dismissed on the 25th day of July, 2000. The learned Judge (Rimita, J) concluded that the conviction was safe. The appellant in his appeal to this Court has canvassed three grounds of appeal which put in proper form would read:-

**1. That the learned Judge erred in law in failing to observe that the appellant's nexus with the Cannabis in question was not established.**

**2. That the learned Judge erred in not appreciating that the learned Magistrate had convicted the appellant on identification of the appellant by a single witness without warning himself of the dangers of such identification. 3. That the learned Judge did not consider the defence case in the face of a weak prosecution case.**

The facts which led to the conviction in the first instance are that on the material date three persons (one woman and 2 men) alighted from the Toyota Hiace 'Matatu' near Kipchimchim Secondary School. Thomas Bor - PW1 -(Bor) was employed as a watchman at the said school. The woman and one of the men walked to a nearby kiosk. One of the men stopped another vehicle which followed the 'Matatu'. He boarded it and returned later in yet another vehicle. Bor noticed that it was the appellant who alighted and returned in another vehicle.

The men were attempting to repair the Matatu. It is then that Bor became curious about the goings on. Members of the public started gathering there. The occupants scattered as a result of all this. One of the men who tried to run away was arrested in a maize plantation by Bor. Bor also managed to arrest the woman but the appellant escaped. The appellant was later arrested and on 13th September, 1999 he was identified by Bor at an identification parade held at Kericho Police Station which parade was held without any objection from the appellant. The identification was positive. The learned Magistrate accepted the evidence of Bor. So did the first appellate court and we see no reason or cause to differ with the concurrent findings of two courts below.

The appellant's complaint is that the learned Magistrate did not warn himself of the dangers of identification of an accused person by a single witness before concluding that the appellant was properly identified. Whilst it is unsafe to convict an accused person on the uncorroborated evidence of single identifying witness it must be observed that in this case the appellant was observed by Bor for some time in broad day light who later identified him at an identification parade properly held. But there is more. Joseph Kirui (PW2) also observed the appellant with two other men attempting to repair the Matatu.

He identified the appellant in the dock at the trial but it must be remembered that he observed the appellant at a close range on the material date. The appellant's second ground of appeal therefore fails, and by the same token of reasoning the appellant's first ground of appeal must also fail. He was observed alighting from the Matatu loaded with Cannabis. He returned to the Matatu and he ran away when things became hot. The appellant's nexus to the Cannabis was proved properly.

In the third ground of appeal the appellant complains that his defence was not considered. In his defence the appellant simply said that he had nothing to do with the trafficking of Cannabis and that he sells second-hand clothes and does nothing else. This defence does not stand to scrutiny when the two courts below believed that he was very much involved in the trafficking of Cannabis. The learned Magistrate pointed out that the appellant's challenge to the prosecution evidence was not strong enough. That amounts to shifting of burden of proof of innocence on the appellant. By itself such finding ought not to be allowed to stand but looking at the prosecution evidence in its totality we have no doubt that the appellant was properly convicted.

This second appeal fails and is dismissed.

**Dated and delivered at Nakuru this 21st day of February, 2001.**

**B. CHUNGA**

**CHIEF JUSTICE**

**A. B. SHAH**

**JUDGE OF APPEAL**

**E. O'KUBASU**

**JUDGE OF APPEAL**

**I certify that this is a a true copy of the original.**

**DEPUTY REGISTRAR**