



REPUBLIC OF KENYA



**Mwangi & another v Republic (Criminal Appeal E003 of 2025)
[2025] KEHC 9280 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E003 OF 2025**

DR KAVEDZA, J

JUNE 30, 2025

BETWEEN

JOSEPH MAINA MWANGI 1ST APPELLANT

JOSEPH NJOROGE KINYANJUI 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. M. Murage (PM) on 25th November 2024 at Kibera Chief Magistrate's Court Case No. E1361 of 2024 Republic vs Joseph Maina Mwangi & Joseph Njoroge Kinyanjui)

JUDGMENT

1. The appellants were charged and on their own plea of guilty convicted for the offence of being in possession of Narcotics Drugs contrary to section 3(1) as read with section 3(2)(i) of the Narcotics Drugs and Psychotropic Substances (Control) Amendment Act, 2022. They were each sentenced to serve five (5) years imprisonment.
2. Aggrieved, they filed an appeal challenging their conviction and sentence. They challenged the totality of the prosecution's evidence against which they were convicted. They urged the court to quash their conviction and set aside the sentence imposed.
3. In their written submissions, they contended that their plea was not unequivocal. This is because, the facts they pleaded to were different from the charge sheet.
4. From the record, the facts of the case were that on 26th June 2024 at 1.30 pm, PC Mohamed Bashir and PC Michuki were on patrol around fig tree. They entered a mabati video shop where the people inside immediately fled. They were however able to arrest the appellants. After a search, they found cannabis.



Joseph said he was the shop owner while Kinyanjui was the customer. The two had four gunny bags with a value of KSh.1500. he produced the bhang in court as Exhibit 1a and 1b.

5. From the record, I note that the plea was read to the appellant in a language that they indicated they understood (Kiswahili). They admitted to the charge and later on, the particulars and facts thereof were read to them. They admitted to the facts and were convicted accordingly.
6. However, the typed proceedings reflect the value of the narcotics as Kshs. 15,000, while the original handwritten record and charge sheet indicate Kshs. 1,500. This discrepancy arose from a clerical error during typing after the trial concluded. It had no bearing on the proceedings or the outcome and did not amount to a miscarriage of justice. Having come to the above conclusion that the plea was unequivocal, I find that the conviction was well founded and I find no reason to interfere with it. The appellants' conviction was therefore proper.
7. By dint of section 348 of the Criminal Procedure Code, no appeal lies against conviction where an accused has been convicted upon his own plea of guilty. However, it is trite law that in every appeal a point of law as to the propriety of the conviction is always alive and which an appellate court must address its collective mind.
8. The appellants by virtue of the above section are barred from challenging the conviction except that he can challenge the extent and legality of the sentence meted on him by the trial court. The court in *Olal v Republic* (1989) KLR 444 emphasized the above position when the court said;

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the CPC (Cap75) does not merely limit the right of appeal in such cases but bars it completely.”
9. Guided by the said Provision (348 CPC) and the above decision, this court can only consider whether the plea that was recorded by the lower court was equivocal which would therefore render the conviction unlawful.
10. Upon conviction, the appellants were found to be first offenders. They were afforded the opportunity to mitigate and prayed for a non-custodial sentence. However, the trial court did not call for a pre-sentence report to guide its sentencing decision. It thereafter proceeded to sentence each appellant to five (5) years' imprisonment.
11. The record further indicates that the appellants were convicted and sentenced on the basis of their own guilty pleas. In so doing, they saved judicial time and were, accordingly, entitled to an incentive during sentencing.
12. In view of the foregoing, it is my finding that the appellants would benefit from a non-custodial sentence to undergo rehabilitation and counselling.
13. I hereby substitute the sentence of five (5) years imprisonment with an order of Probation for three (3) years under the supervision of the Kibera Probation Office.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellants Present



Mogere for the Respondent

Tony Court Assistant

