



REPUBLIC OF KENYA



**Bidhu v Republic (Criminal Appeal E008 of 2024)
[2025] KEHC 11265 (KLR) (Crim) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL APPEAL E008 OF 2024
SC CHIRCHIR, J
JULY 30, 2025**

BETWEEN

QANCHORA BIDHU APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of Hon. L.Mutai (CM) delivered on 17th January 2024 in Isiolo Chief Magistrates Court criminal case number E628 of 2021)

JUDGMENT

1. The Appellant was convicted of the offence of Trafficking in Narcotic Drugs Contrary to Section 4 (a) (ii) of the Narcotic Drugs and Psychotropic Substances Control (Amendment) Act No.4 of 2022.The particulars of the offence are that on the 27th day of July, 2021 at Wamba Junction along Marsabit-Isiolo highway within Samburu County, was found trafficking 18.105 kilograms of cannabis sativa (bhang) with a street value of Kshs. 543,150/= in a motor vehicle registration number KCK 5X9V make Toyota Succeed which was not medically prepared.
2. The prosecution case was supported by the evidence of 5 witnesses. On the part of the defence , the Appellant testified on oath, and called two witnesses.
3. On conclusion of the trial, the Appellant was convicted and fined of Kshs.1,620,000/= or a prison term of six (6) years imprisonment , in default.

Petition of Appeal.

4. The Appellant was aggrieved by the decision and proffered this appeal. He has presented the following grounds:



1. That the learned trial magistrate erred in matters of law and fact by convicting the appellant on shoddy, contradictory and inconsistent evidence tendered by the prosecution witnesses.
 2. That the learned trial magistrate did not in his judgment state why he believed such evidence where different vehicles were named .
 3. That the learned trial magistrate flouted matters of law and fact when he did not consider the Appellant’s defence.
 4. That the appellants right to a fair trial was infringed by the court.
 5. That the learned trial magistrate erred in accepting an incomplete and biased evidence that failed to take into account for procedural discrepancies.
5. The appeal was canvassed by way of written submissions.

Appellant’s Submissions.

6. It is the appellant’s submission that the alleged substance was never found in his vehicle at the scene when a search was done by a sniffer dog; that the trial magistrate erred in upholding charges of trafficking in narcotic drugs without compelling evidence linking the accused to the alleged wrongdoing; that the prosecution did not prove the particulars of the vehicle in which the drugs were allegedly found, as the prosecution kept citing different registration numbers of the alleged vehicle.
7. The Appellant further submits that the alleged drugs were never produced ; that producing photographs of the same was not sufficient; that the makers of the reports were not called to testify, and therefore there was no compliance with section 77 of the *Evidence Act*.
8. It is the Appellant’s final submission that crucial witnesses were left out.

Respondent’s submissions.

9. Through the prosecution counsel, the respondent submits that the contradictions referred to by the appellant were minor discrepancies in the evidence of the witnesses. That the discrepancies do not have the effect of discrediting the evidence on record and that minor discrepancies should be overlooked. It has relied on the case of Njuki v Rep (2002) 1KLR ,77 in this regard.
10. On whether the respondent proved its case beyond reasonable doubt, it is submitted that all the ingredients of the offence as set out in the case of Timami vs Republic(Criminal Appeal No. E002/2023 were proved. On whether the Appellant was in possession of ,or transporting drugs , it is submitted that the evidence on record proved that police officers stopped the vehicle at Merti junction , and the Appellant was the driver ; that a search was conducted and 14 bales of green material was found hidden at the dashboard and this fact were corroborated by the evidence of PW5 who took photographs of the said substances ;that the substance was weighed and was ascertained that it weighed 18.105 kilograms and a certificate of weighing was issued. Finally on the intention to traffick it is stated that the appellant travelled from Marsabit, that he was in control of the vehicle and he was alone .
11. On the witnesses it is submitted that all the witnesses who had recorded the statements were called, and the evidence of those witnesses was sufficient to prove the charge.
12. The respondent also submitted that the defense by the accused person was a mere denial and could not dispel the overwhelming evidence tendered by the prosecution.



Analysis and determination.

13. This being a first appeal, the duty of this court as the first Appellate court is well settled. In the case of *Kiilu & Another v. Republic* (2005) 1 KLR 174 as follows:-

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court’s own decision on the evidence. The first appellate court must weigh conflicting evidence and draw its conclusion. It is not the function of the first appellate court merely to scrutinize the evidence to see if there is some evidence to support the lower court’s findings and conclusion; it must make its findings and draw its conclusion. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.”

14. On the Evidence it was stated that, on 27th July, 2021 at about 1:00 p.m, PC Shadrack Cheruiyot (PW4) was at Wamba Junction with other officers when they intercepted a motor vehicle Reg. No. KCK 8X9V which was from Marsabit direction towards Wamba general direction and searched the vehicle. They recovered 19 bales of green material which was hidden in the right and left side of the Dash Board. The same was corroborated by PW4 and PW5 who searched the vehicle and retrieved the green material. The material was analyzed by PW1, who opined that the green substance was cannabis. PW2 produced the prepared photos of the scene and certificate on behalf of Inspector Ngeno. No objection was raised by the appellant or his counsel when he produced the photo documenting a vehicle found to be ferrying suspected cannabis
15. The appellant was put in his defense and stated that he was hired to drive the Motor vehicle 5X9V to Isiolo in order to pick spare wheel from Isiolo. He stated that at Archers post h,e was stopped by police officers, whilst being searched, the sniffer dogs raised the trail to indicate there was something unusual. At cross- examination he stated that he was driving the vehicle from Marsabit to Archer’s post and admitted that cannabis were recovered from his vehicle.
16. Issues for determination:
- a). Whether the prosecution proved its case
 - b). whether the prosecution’s case was marred by contradictions
 - c). Whether the Appellant’s defence was ignored
 - d). whether the sentence was excessive.

Whether the prosecution’s case was proved

17. Section 2 of the Narcotic and Psychotropic Substance (Control) Act (The Act)defines trafficking as follows:

“trafficking” means the importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution by any person of a narcotic drug or psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance or making of any offer in respect thereof”,



18. In the case of *Timami v Republic* [2024] KEHC 634 (KLR), cited by the Respondent, K.W Kiarie, J expounded on the above ingredients in the following terms:
- a). The act of knowingly possessing, manufacturing, selling, buying, transporting, or otherwise dealing with narcotic drugs or psychotropic substances.
 - b. The Act must prohibit the substance.
 - c. The quantity must be more than for one's consumption.
 - d. The prosecution must establish that the accused intended to engage in trafficking or dealing with narcotics, or an inference of such intention may be discerned from the circumstances.
19. On transportation, which bears the same meaning as "conveyance", which is the term used under section 2 of the Act, PW2 and PW3 testimony plus that of the Appellant testified to the fact that the Appellant was stopped at waba junction, he had some substances on both sides of the vehicle's dashboard, which later turn out to be drugs. He was alone, and was the driver of the subject vehicle. He stated that he had driven from Marsabit and was headed to Archer's post. He signed the certificate of weighing which was tantamount to an acknowledgment that he was the custodian of the drugs. His denial that the drugs were not his is not tenable therefore. Am satisfied that this first ingredient was proved.
20. On whether the substance the Appellant was transporting was a prohibited substance, PW 1 did analyze the substance and established that it was cannabis. Pw1 was an expert witness and his evidence was not challenged in any way.
21. The drugs weighed 18.105 kilograms. That amount could not have been for consumption. On whether the Appellant's intention was that of trafficking, it was established as aforesaid that the drugs were in a vehicle, which was under his control at the time, the drugs were inside the vehicle hidden under both sides of the dashboard and by his own admission he had drove from marsabit headed to Archer's post. His conduct point to a person whose intention was trafficking.
22. Taking into account the foregoing, am satisfied that the prosecution met the standard of proof.

Whether the prosecution's case was marred with contradictions and inconsistencies

23. The Appellant's submissions on this issue are rather jumbled up, but what I decipher to be the contradiction he is referring to question is on the registration number of the vehicle he is alleged to have been driving. PW2 gave the registration number as KCK 6X9V, PW3 talked of KCK 8X9V, while PW4 referred to KCK 5X9V. The Appellant also told the court that he was driving KCK 5X9V.
24. In my view, this was a case of recording error. I have come to this conclusion based on the fact that the contradictions is only on the numerical as there is consistency on the letters. Further the contradictions did not go into the core of the prosecution's case, because the identity of the vehicle, as stated correctly by at least one of the prosecution witnesses (PW4), was confirmed by the Appellant.
25. Further, the photographs of the subject Motor vehicle were produced in Evidence and the registration number is clearly visible from the registration plate. The number is also indicated in the inventory of drugs (PExb. 7). Finally, the record shows that on 16/11/2023, the subject vehicle was viewed by the trial magistrate at isiolo police station parking yard. Thus despite the minor variations on the registration particulars, there was no confusion on the vehicle that was being referred to by the witnesses. The contradictions did not go into the core of the prosecution's case.



Whether the Appellant's defence was ignored

26. I have perused the Judgment of the trial court and find that contrary to the Appellant's assertion, the trial Magistrate gave an extensive analysis to the Appellant's defence . On the said defence the Appellant stated that the drugs were not his and that he was not the only one in the vehicle. However , no questions were posed to the prosecution witnesses about the presence of the alleged passengers; the Appellant admitted in cross- examination that the dog showed signs that it had detected drugs , evidenced by the lifting of its tail . Further he signed the inventory and weighing certificate. Why would he sign the said documents , if the drugs were not his. There was no evidence or even suggestion that he signed the two documents under duress or threats to violence. I too find the defence quite implausible and I hereby dismiss it.

The sentence

27. It is trite law that sentence is a matter of discretion by the trial court and that the appellate court can only interfere if satisfied that the same is excessive or was arrived at after considering irrelevant factors or upon applying wrong principles of the law.
28. Section 4(a)(ii) of the Act provides for a fine of not less than fifty million shilling or three times the market value of the drug , whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment. The appellant was sentenced to a fine of Kshs. 1,620,000/= and in default 6 years imprisonment. In the face of the prescribed sentence , the above fine or sentence is far from being excessive.
29. In conclusion, the decision of the trial court on both the conviction and sentence is upheld, and the Appeal herein is dismissed.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 30TH DAY OF JULY 2025.

S. CHIRCHIR

JUDGE.

In the presence of :

Roba Katelo- Court Assistant

Quanchora Bidhu- Appellant

Mr. Ngetich for the state.

