



REPUBLIC OF KENYA



KENYA LAW
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**Oduor v Republic (Criminal Appeal E017 of 2025)
[2025] KEHC 11219 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E017 OF 2025**

**DR KAVEDZA, J
JULY 30, 2025**

BETWEEN

CHRISTINE AWINO ODUOR APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 30th January 2025 by Hon. Z. Abdul (PM) at the Chief Magistrate's Court at Kibera Criminal Case no. 2189 of 2015)

JUDGMENT

1. The Appellant, jointly with another, not before this court, was charged and after full trial convicted by the Subordinate Court of the offence of trafficking in psychotropic substances contrary to section 4(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* No. 4 of 1994. The particulars of the offence are that on the 27th of May 2015 at Jomo Kenyatta International Airport within Nairobi County, the appellant, jointly with others not before the court, trafficked a psychotropic substance, namely amphetamine sulphate weighing 1564.2 grams by conveying around her groin with a market value of Kshs. 12,513,600 in contravention of the provisions of the said Act.
2. He was sentenced to pay a fine of Kshs. 37,540,800 in default to serve one-year imprisonment, and in addition to serve twenty (20) years imprisonment.
3. Being aggrieved by the decision of the trial court, the appellant filed an appeal challenging his conviction and sentence. He contended that the learned magistrate erred both in law and fact by admitting into evidence the valuation report produced in court even though the valuation officer relied solely on the weighing certificate, admitting into evidence photographs produced by the investigating officer and not the expert photographer contrary to the provisions in section 33 and section 77, failing to consider the appellant's defence and, by imposing a severe sentence against the appellant.



4. This being the first appellate court, we are guided by the ruling in *Okeno v. R* [1972] EA 32. In this case, the court opined that a court of first appeal ought to re-examine all the evidence afresh and exhaustively, to come up with its conclusions without overlooking the conclusions of the trial court, bearing in mind that it never saw the witnesses testify.
5. The prosecution called six (6) witnesses in support of their case. PW1, PC Michael Asin, testified that on 27 May 2015, while on duty at Jomo Kenyatta International Airport, he received a report from PW5, CIP Martin Ndegwa, that two female passengers, including the appellant, were suspected of carrying narcotics. Acting on the information, he intercepted the two women, who were en route to Indonesia, and confiscated their passports, which were produced in court. They were taken to the Anti-Narcotics office, where a search was conducted by two female officers. The appellant and her co-accused, Peris Anyango, were each found to have a concealed substance on their person. He positively identified both in court.
6. PW3, Sgt Salome Ayuma Olubui, and PW4, CIP Jane Njagi, were the female officers who conducted the physical searches. Both the appellant and Peris were found to have three plastic packets strapped to their groin areas. PW3 issued the seizure notice for the packets recovered from Peris, while PW4 issued the notice for those recovered from the appellant. Inventory forms recording the seizure of their belongings were also produced in court. Both officers identified the accused persons during the trial.
7. PW2, Dennis Owino, a government chemist, testified that on 28th May 2015, he received the substances seized from the two suspects. He prepared two sets of certificates for sampling and weighing. The appellant was found with 1,564.2 grams of a white crystalline substance in three packets labelled CAO I, CAO II, and CAO III. Peris was found with 1,495.2 grams in similar packets. Both samples tested positive for amphetamine sulphate, a substance classified under the *Narcotic Drugs and Psychotropic Substances (Control) Act*. His report and certificates were produced in court.
8. PW7, Assistant Superintendent George Mutiso, testified that he received the weighing certificates from the investigating officer and used them to assess the street value of the narcotics. He valued the drugs found with the appellant at Kshs. 12,513,600, and those found with Peris at Kshs. 11,961,600. He prepared and submitted valuation certificates, which were produced in court.
9. PW6, Cpl Reuben Munialo, the investigating officer, corroborated the testimonies of the previous witnesses. He produced photographs of the suspects and their luggage, taken by an expert on 25 May 2020, together with the certificate of photographic evidence.
10. At the close of the prosecution case, the court was satisfied that a prima facie case had been established and that the appellant and co-accused had a case to answer. Therefore, the two were placed on their defence.
11. The appellant denied committing the offense, stating that if indeed she was in possession of the said drugs, the scanners would have detected them.
12. On the other hand, the co-accused Peris absconded when he was released on bail and was not available to offer a defence.
13. After the trial, the appellant was convicted and sentenced accordingly.
14. In this appeal, the issues for determination are whether the prosecution proved its case beyond a reasonable doubt and, if so, whether the sentence imposed was proper.



15. The appellant was charged with the offence provided under section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act (herein referred to as 'The Act'), which provides as follows;
- “Any person who trafficks in any narcotic drug or psychotropic substance or any substance represented or held out by him 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 to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life;”
16. Further, the Act provides the following definition for the word trafficking;
- “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
17. It was the prosecution’s case that the appellant was apprehended by PW1 at Jomo Kenyatta International Airport following a tip-off from CIP Martin Ndegwa (PW5) regarding two female passengers suspected of trafficking narcotics. She was escorted to the Anti-Narcotics office, where a thorough search was conducted. PW3 and PW4, both female officers, conducted a frisk search and found three packets of a white crystalline substance concealed in the appellant’s groin area, hidden under two biker shorts and a pair of tights. This concealment demonstrates deliberate effort and intent to traffic the substance. The search extended to her luggage, and her passport was seized and adduced in court. She was positively identified during the trial.
18. PW2, the government chemist, received the seized substance the following day. He prepared sampling and weighing certificates, confirming that the packets contained 1,564.2 grams of amphetamine sulphate, a psychotropic substance under the *Narcotic Drugs and Psychotropic Substances (Control) Act*. His expert report was produced in court and corroborated by PW5, who supervised the weighing and sampling process.
19. The appellant’s defence that the drugs could not have gone undetected by airport scanners was unconvincing. As rightly noted by the trial court, airport scanners are not always effective in detecting such substances, especially when skilfully concealed. Her claim did not rebut the prosecution’s consistent and corroborated evidence.
20. The valuation officer, PW7, relied on weighing certificates to assess the street value of the drugs and was not required to physically examine the substance. The court correctly admitted the valuation report. Similarly, the photographs produced by the investigating officer, though not taken by him, were properly admitted and did not prejudice the appellant’s right to a fair trial.
21. Taken together, the prosecution’s evidence was credible, consistent, and sufficient to prove all the elements of trafficking under section 4(a) of the Act. The appellant’s conviction is therefore affirmed.
22. The appellant was sentenced to pay a fine of Kshs. 37,540,800 in default to serve one-year imprisonment, and in addition to serve twenty (20) years imprisonment. During sentencing, the court



considered the appellant's mitigation, that the appellant was out on bond during the length of time that the case was heard, and the fact that the appellant is a first offender.

23. While the sentence imposed is lawful, it is disproportionate and excessive when considered in the context of the appellant's age and the rehabilitative objectives of sentencing. Accordingly, a more balanced approach is warranted in these circumstances.
24. In the premises, I therefore find it appropriate to substitute the sentence imposed by the trial court and order as follows:
 - I. The fine of Kshs. 37,540,800 in default to serve one (1) year imprisonment is maintained.
 - II. The sentence imposed by the trial court of twenty (20) years imprisonment is substituted with a sentence of ten (10) years imprisonment to run from the date of the appellant's conviction before the trial court.

Orders accordingly.

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

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Chebii h/b for Mutuma for the Respondent

Ms. Karimi Court Assistant

