



**Kelechi v Republic (Criminal Appeal E159 of 2022)
[2024] KEHC 1765 (KLR) (27 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E159 OF 2022
DR KAVEDZA, J
FEBRUARY 27, 2024**

BETWEEN

HAGGAI CHIKA KELECHI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
By Hon. C.M Njagi (SRM) on 27th May 2021 at JKLA Chief Magistrate's
Court Criminal case no. 129 of 2019 Republic vs Haggai Chika Kelechi)*

JUDGMENT

1. The appellant was charged with the offence of trafficking in Narcotic Drugs Contrary to Section 4(a) of the *Narcotic Drugs and Psychotropic Substances (Control) Act*, No. 4 of 1994. He faced a second count of being unlawfully present in Kenya, contrary to Section 53(1)(j) as read with Section 53(2) of the *Kenya Citizenship and Immigration Act* No. 12 of 2011. He pleaded guilty to count II and was sentenced to pay a fine of Kshs. 100,000 and, in default, to serve one year imprisonment. After a full trial, he was convicted on count I and sentenced to serve 10 years imprisonment, in addition to paying a fine of Kshs. 1,052,100/= in default to serve an additional 1-year imprisonment. Being dissatisfied, he filed an appeal challenging his conviction and sentence of count I.
2. In his appeal and amended grounds of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. In addition, the sentence was manifestly harsh and excessive. He urged the court to allow the appeal.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).



4. The prosecution called eight (8) witnesses in support of their case. In the case, Senior Sergeant Daniel Mutuku (PW 1) testified that on July 29, 2019, while on patrol with colleagues, they encountered the appellant, who identified himself as a Nigerian national. Upon requesting his passport, they found it expired. During a search, they found a paper bag containing seven substances in his possession. Additional items recovered included a passport, a white handkerchief, a white carrier bag, a brown khaki bag, and seven pellets. The appellant cooperated with the officers during the random stop, and no spot test was conducted at the scene.
5. PW2, PC Innocent Manzi, corroborated the events, noting his assistance at the Kamukunji Police Station. He identified the appellant and prepared an inventory of additional items recovered from the appellant, suspecting them to be narcotics. However, no spot test was conducted at the station.
6. PW3, Chief Inspector Elizabeth Lumumba, from the Anti-Narcotics Unit at the DCI headquarters, detailed the transfer of the appellant and items to JKIA offices for further investigation. They were suspicious that the appellant had ingested additional. However, an x-ray conducted at the National Spinal Injury Hospital revealed that there were no foreign objects in his body.
7. Inspector Luke Kinoti (PW4) accompanied Lumumba to Kamukunji Police Station and later took the appellant to the government chemist for weighing and sampling of the recovered items. He witnessed the process but informed the court that he was not present during the arrest.
8. Corporal Derrick Kiprono (PW5) documented the weighing and sampling process and presented photographs as evidence. Chief Inspector Phillip Langat (PW6) provided a valuation of the seized substances based on intelligence reports and gazette notices.
9. Government Analyst Dennis Owino Onyango (PW7) confirmed the nature of the substances as heroin through analysis and provided a report on their purity levels. Corporal Sheila Kipsoi (PW8), the investigating officer, oversaw the weighing and sampling process at the government chemist and prepared documentation for the seized items.
10. CPL Sheila Kipsoi (PW 8) transported the samples and ensured their custody until analysis. She coordinated with Inspector Kinoti, PW 4 for the sampling process and organized valuations based on presumptive measures. Ultimately, the government analyst's confirmation determined the substance's nature, validating the valuation process.
11. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on his defence. He gave sworn evidence and did not call any witnesses. He told the court that he is a Nigerian n who arrived in Kenya on April 17, 2019. In July 2019, he encountered 5 police officers who were on patrol. Despite presenting his passport with an expired visa, he claims the officers tried to solicit money from him, which he refused, leading to his arrest and subsequent charge. The appellant claimed that the narcotic substances were planted, refuting any recovery of items from him. He, however, admitted that he signed the inventory of the items recovered without reading its contents.
12. This court has re-evaluated the evidence adduced before the trial court, the appellant's grounds of appeal, as well as the rival parties' submissions. Section 4(a) of the *Narcotic Drugs and Psychotropic Substances Control Act* 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;”

13. The case against the appellant was that on 29th July 2019, police officers on a random stop and search in the Nyamakima area arrested the appellant in possession of 7 pellets concealed in a handkerchief. Subsequent searches revealed suspected narcotic substances. The appellant cooperated during the search and seizure. Officers escorted the appellant to Kamukunji Police Station where an inventory of the recovered items was prepared. The suspects' packages were weighed at 116.9 grams, witnessed by the appellant and PW 6. He also provided a valuation of Kshs. 350,700 for the 116.9 grams of heroin on 9th September 2019, based on the charge sheet, weighing certificate, and government analyst's report.
14. The chain of custody for the substances recovered in the case against the appellant is well documented through the testimonies of various witnesses. The investigating officer detailed the custody of seized substances through the inventory prepared and introduced the Notice of Intention to Tender Records in Evidence, along with several items recovered from the appellant as evidence. This sequence of testimonies establishes a clear and continuous chain of custody for the substances recovered from the appellant. The chain of custody of the exhibits was clearly explained by the prosecution witnesses.
15. On whether the substance recovered was narcotic, the government analyst, PW 7 testified that he conducted a preliminary test of the substance recovered from the appellant's premises. The test confirmed that the substance contained heroin. He conducted a sampling exercise and determined the purity in the brown creamish powder to be 30 percent. The prosecution adduced evidence that established that the substance found in the appellant's possession was a narcotic substance within the meaning ascribed to the term by Section 2(1) of the *Narcotic Drugs and Psychotropic Substances (Control) Act* and the 1st Schedule thereof.
16. In his defence, the appellant claimed that the narcotics were planted on him after the officers tried to solicit money from him for having an expired visa. The court considered his defence and found it to be uncredible. In view of the foregoing, I find that the appellant's defence did not dislodge the cogent evidence adduced by the prosecution. In my view, the appellant's defence was properly dismissed by the trial court as an afterthought aimed at exonerating himself from the offence.
17. From the evidence of the prosecution witnesses, which was well corroborated, there is no doubt that the prosecution proved beyond reasonable doubt the offence charged.
18. On the sentence, the appellant was sentenced to pay a fine of Kshs. 1,052,100, in default to serve 1-year imprisonment. In addition, he was sentenced to eleven (11) years imprisonment. The sentence was however, reduced by one (1) year in consideration of the time spent in pre-trial custody. The appellant argued that his sentence was harsh and excessive.
19. From the record, the said narcotic drugs were duly weighed and found to be the value of a substance (heroin) weighing 116.9 grams with a market value of Ksh 350,700. In sentencing, the trial court considered the market value before imposing the fine in addition to the prison sentence. The trial court also considered his mitigation and that he was a first offender. The sentence meted out was therefore within the law. I find no reason to interfere.
20. The upshot of the above is that the appeal against conviction and sentence is dismissed for lack of merit. Orders accordingly.



JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant present in person

Mr. Mutuma for the Respondent

Omwoyo Court Assistant

