



REPUBLIC OF KENYA



KENYA LAW
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**Ruto v Republic (Criminal Appeal E008 of 2021)
[2022] KEHC 10191 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL APPEAL E008 OF 2021
F GIKONYO, J
JUNE 30, 2022**

BETWEEN

IVONE RUTO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence of Hon. A.N. Sisenda
(R.M) in Narok Cr Case no. E133 of 2020 delivered on 9/6/2021)*

JUDGMENT

- [1] The Appellant herein along with another was charged with four counts. Count III and IV relates to the appellant herein.
- [2] Count III: procuring female genital mutilation contrary to Section 24 as read with Section 29 of the [Prohibition of Female Genital Mutilation Act](#) no. 32 of 2011.
- [3] The particulars of the offence were that on 3/10/2020 at Ririk Village in Narok West Sub county within Narok County, being an adult and of sound mind procured or caused an act of female genital mutilation to be performed on her person.
- [4] Count IV: Failing to report the commission of female genital mutilation contrary to Section 24 as read with Section 29 of the [Prohibition of Female Genital Mutilation Act](#) no. 32 of 2011.
- [5] The particulars of the offence were that on 3/10/2020 at Ririk Village in Narok West Sub- County, within Narok County, being aware that an offence of female genital mutilation had been committed, failed to report to a law enforcement officer.
- [6] The Appellant was convicted on her own plea of guilt. In mitigation, she asked for forgiveness. The court considered their mitigation and the pre-sentence reports but the offence is of public notoriety. Therefore, a deterrence sentence was needed to do away with the practice. She was sentenced to serve



2 years' imprisonment in count III and 1-year imprisonment in count IV. The sentences were to run concurrently from the date of the sentence.

- [7] The appellant vide memorandum of appeal filed on 23/06/2021 has set out 6 grounds of appeal as follows;
- i. That she pleaded guilty to the charge.
 - ii. That she is a first offender.
 - iii. That she has never been to any court of law or being arrested before and thus not aware of the court procedures.
 - iv. That she is pleading to the honourable court for non-custodial sentence.
 - v. That she is a mother of two children aged 7 years and 4 years on her arrest she was looking for their school fees and she is also a single mother.
 - vi. That she is extremely remorseful and a law abiding citizen and have strong community ties and her continued stay in prison will lead to the suffering of her children and loss of family.

Evidence

- [8] The facts of the case was that on 3/10/2020 at Ririk Village in Narok West Sub- County, within Narok County the 2nd accused procured the act of female genital mutilation. The area chief Ngeno received this information from members of the public and commenced investigations. On 10/11/2020 he led a group of village elders to the place where the two accused were staying. They found the two accused and interrogated them. They were escorted to Muot police station then to Narok Referral Hospital. P3 form and Treatment note, P Exh 3 and 4 confirmed that the appellant herein had procured female genital mutilation.
- [9] The appeal was canvassed by way of written submissions.

Appellant's Submissions.

- [10] The appellant urged this court to review the sentence to award her non-custodial sentence to enable her take care of her children. That she developed a medical condition which forced Narok prison to transfer her to Langata women to be taken Kenyatta National Hospital for specialized treatment.
- [11] The appellant submitted that time spent in custody was not considered.
- [12] The appellant has relied on the following authorities;
- i. *Alister Anthony Pereira V State Of Maharashtra* [2012] 2 SC 648
 - ii. *State Of M.P. Vs Bablu Natt* [2009] 2 SC 272
 - iii. Section 333(2) of the [Criminal Procedure Code](#).
 - iv. Johana Nyagaka Vs Republic Criminal Appeal No. 40 of 2018.

Respondent's Submissions

- [13] The prosecution submitted that proper procedure was followed by the trial court in recording the plea of the appellant.



- [14] The prosecution submitted that the sentence passed was well within the limits set out under the Section 29 of the prohibition of female genital mutilation.
- [15] The prosecution submitted that time spent in custody was not considered.
- [16] The prosecution relied on the following authorities;
- i. *Adan V Republic* [1973] EA 445 at Pg 446.
 - ii. Judicial sentencing policy guidelines in paragraph 4.1.
 - iii. Section 29 of the [*prohibition of female genital mutilation act*](#).
 - iv. Section 333(2) of the Criminal Procedure Code.

Analysis and Determination

Court's duty

- [17] As first appellate court; I should re-evaluate the evidence afresh and arrive at own independent conclusions. I am however reminded to bear in mind that I neither saw nor heard the witnesses and give due regard for that. See [*Njoroge v Republic*](#) (1987) KLR, 19 & [*Okeno v Republic*](#) (1972) E.A, 32.
- [18] The appellant having pleaded guilty, it is not open to her to raise grounds that touch on facts. She is estopped by Section 348 of the [*Criminal Procedure Act*](#) from doing so. It provides:
- No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.
- [19] In the instant case, I will endeavor to establish the following:
- i. Whether the plea was unequivocal,
 - ii. Whether the procedure for taking plea was adhered to; and
 - iii. Whether the appellant should be released on probation
- [20] I have perused the original record and the typed copy of proceedings. I have noted that after the appellant pleaded guilty to the two offences, the facts were read and she confirmed that they were correct. The procedure in plea taking was adhered to and the learned trial magistrate cannot be faulted. The plea was unequivocal
- [21] The penalty for the offence is provided for under Section 29 of the Act. It states:
- “A person who commits an offence under this Act is liable on conviction to imprisonment for a term of not less than three years or to a fine of not less than two hundred thousand shillings or both.”
- [22] I find that the trial court imposed a sentence prescribed in law.
- [23] When I consider the mitigation as well as aggravating factors I find that Female Genital Mutilation as a cultural practice is a harmful practice to a person's mental and physical integrity. Despite the prohibition by the law, this practice is deeply ingrained in the minds of many in our society.



[24] Notably, the *Prohibition of Female Genital Mutilation Act* states: -

“An Act of Parliament to prohibit the practice of female genital mutilation, to safeguard against violation of a person’s mental or physical integrity through the practice of female genital mutilation...”

[25] I do note she voluntarily submitted herself to this harmful and unlawful practice. And, prevalence of the offence may call for a deterrent sentence. However, the appellant is a first offender and she has children to take care of.

[26] For those reasons, I order that the appellant shall serve a probation sentence for the period of the remainder of the prison term.

[27] Sentence accordingly reviewed.

[28] I should also state that the District Probation Officer, who shall supervise the probation order should advise the appellant on the dangers of this practice and encourage her to attend seminars organized for eradication of female genital mutilation and education on the alternative rite of passage to adult hood for young girls. Such interventions will help.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 30TH DAY OF JUNE 2022

F. GIKONYO M.

JUDGE

In the Presence of:

The Appellant

Ms. Torosi for DPP

CA – Mr. Kasaso

