



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 121 OF 2019

CMAPPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the sentence of the Senior Resident Magistrate Hon. P. Wambugu dated 31/08/2015 in Kilungu SRMCR No. 475 of 2015.)

JUDGMENT

- 1. Christine Mbithe** the Appellant was charged and convicted of the offence of infanticide contrary to section 210 of the Penal Code. The particulars were that the Appellant on the 2nd day of August, 2015 within Makueni county, by willfully act or omission caused the death of her child namely **MK** a child aged six months by intentionally suffocating the child by lying on her.
2. She was first arraigned in court on 13th August, 2015 when the charge was read to her in Kiswahili language which she understood and admitted the charge. The facts were read to her and she admitted them. The postmortem report (EXB1) was produced. She was convicted. The court after hearing from the prosecution and the Appellant, called for a probation officer's report which was availed on 31st August, 2015.
3. The report was not favourable and the court sent the Appellant to prison for ten (10) years.
4. First of all, I am satisfied that the plea was unequivocal. My only concern is that before the court called for a probation report, the prosecution informed the court that though the Appellant was a first offender, there were reports of her having killed two of her children previously.
5. I have read through the undated probation report before the trial court by the county probation officer Mr. Munyasya. It clearly indicates that the Appellant was having a mental illness. That the family had not supported her in that case.
6. The Appellant has been in prison since her conviction. She informed this court that during her stay in prison she has been on treatment.
7. This court ordered that her mental status be re-assessed to confirm that indeed she had recovered. It is true that she committed the offence she is accused of. She was never charged with the other deaths and that's why the prosecution asked the court to treat her as a first offender.
8. She was finally examined on 3rd February, 2020 at Makueni referral hospital and a report filed on the same day. The report confirms that she is on medication and she has greatly improved. Considering all the circumstances under which the offence was committed and the period served, I find this to be a special case where the sentence should be reduced.
9. However, before doing so this court will want to be certain as to where the Appellant will stay or be accommodated to ensure that she continues with her medication and is closely monitored. For that reason, I hereby call for a detailed social inquiry report by the county probation officer which should address the issues I have raised above.
10. The report should be filed within 14 days. Mention on 10th March, 2020 for further orders.

Orders accordingly.

Delivered, signed & dated this 20th day of February 2020, in open court at Makueni.

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Hon. H. I. Ong'udi

Judge