

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 220 OF 2018

JAM.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being revision of the original sentence in Machakos Chief Magistrate's Criminal Case No.771 of 2018)

RULING

1. The Applicant was charged and convicted of the offence of subjecting a child to cruel treatment contrary to section 18 (1) as read with section 20 of the Children Act No. 8 of 2001. She was subsequently sentenced to two (2) years imprisonment. The applicant has filed a chamber summons dated 23rd July, 2018 seeking review of the two (2) years sentence imposed on her. The grounds upon which the said application has been made is that the said sentence is excessive and harsh. She sought a non-custodial sentence to enable her take care of her entire family.

2. This court derives its supervisory powers over subordinate courts under Article 165 (6) and (7) of the Constitution and revision powers under section 362 of the Criminal Procedure Code. Section 362 of the latter Act provides as follows:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

3. The probation officer's report dated 17th January, 2019 was presented to this court. Upon interviewing the applicant's members of the family including her children, particularly the victims and the applicant's brother and neighbours, it emerged that the applicant was brought up in a dysfunctional family. That she conceived her first child at an early age of twelve years and is a victim of an abusive marriage. That she exhibits emotional imbalance traits and admitted to smoking 'bhang'. That her children claim that she beats them up whenever they failed to perform household chores and when they consume sugar but that they want the applicant to join them since they have suffered after her imprisonment. The applicant was said to be remorseful and willing to be involved in any programme that can assist her to be more tolerant and accommodative. It was the probation officer's recommendation that she needs trauma counselling and emotional therapy and that the same is workable in a community setting. Section 20 of the Children Act provide that ***“notwithstanding penalties in any other law, where any person willfully or as a consequence of culpable negligence infringes any of the rights of a child as specified in sections 5 to 19 such person shall be liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine.”***

4. Bearing in mind the above quoted provision, the trial court did not err in its sentencing since the applicant admitted to committing the offence to three (3) children. However, considering the probation officer's sentiments in the report, it is in the interest of justice and welfare of the victims that the applicant be given a non-custodial sentence to allow for her rehabilitation.

5. In the circumstances, the application is allowed in the following terms:

a) The trial court's sentence of two years imprisonment is hereby set aside and substituted with an order that the Applicant is placed under Probation period for a period of eighteen (18) months from the date hereof.

b) The Applicant is hereby ordered released from prison custody unless otherwise lawfully held.

Dated and delivered at Machakos this 29th day of January, 2019.

D. K. KEMEI

JUDGE