



REPUBLIC OF KENYA

IN THE HIGH COURT OF KNEYA

AT MERU

CRIMINAL APPEAL CASE NO. 16 OF 2019

TABITHA KATHURE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

Tabitha Kathure preferred this appeal arising out of Githongo SRMC CR.C.No. 62 of 2019 where she was charged with the offence of allowing FHM to be performed contrary to section 20(b) as S.29 of FGM Act No. 32 of 2011.

Particulars were that the appellant on the 21st day of December 2018 at around 3.00 pm at Kauthene Sub-location Kiagu Location in Imenti contrary Sub county within Meru County being the mother of MG did allow FGM on the MG a child aged 12 years.

Appellant pleaded guilty to the charge and was fined Ksh 200,000/= in default to serve 3 years imprisonment. She appealed on the ground that the plea was not unequivocal and that the sentence meted out was excessive in the circumstances.

The appeal was canvassed by way of written submissions. The appellants counsel submitted that appellant was not asked which language she understood before the plea could be read to her in the Kiswahili language. It was submitted that the appellant was an illiterate woman from rural Tharaka and therefore the plea was not unequivocal as it was not read in the language the appellant understood.

The appellants counsel also argued that the court failed to temper justice with mercy even after appellant in mitigation prayed for leniency. According to appellants counsel the complainant was the appellant's child and this being a family issue a fine of Ksh. 10,000 would have been sufficient.

The appellant was arraigned in court on 14.1.2019 and the charge read to her in Kiswahili and she replied that it was true. Matter was deferred to 15.1.2019 for facts and when the facts were read to her in Kiswahili language she again said it is true and a plea of guilty was entered and she was convicted.

The fact that appellant sought for leniency in her mitigation after she had been convicted is a sign she understood the proceedings that were going on in court against her. I do find that the plea was unequivocal and that appellant was properly convicted on her own plea of guilty.

Concerning the sentence Section 29 of the FGM Act No. 32 of 2011 provides for a term not less than 3 years or a fine of not lesser than Ksh. 200,000/= or both. The sentence meted out was therefore legal. The appeal is dismissed as it doesn't have merits.

HON A. ONG'INJO

JUDGE

JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 27TH DAY OF JUNE 2019.

In the presence of :

C/A: Kinoti

State : Ms Mbithe for state

Mr Kimathi Kiara Advocate for Appellant –N/A

Appellant present in person

Court: Right of Appeal in 14 days.

HON A. ONG'INJO

JUDGE