



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

HIGH COURT CRIMINAL APPEAL NO. 119 OF 2016

CONSOLIDATED WITH

HIGH COURT CRIMINAL APPEAL NO. 116 OF 2016

GLORIA FAITH AMOIT.....1ST APPELLANT

GODFREY GITAU NJERI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the Judgment delivered on 14th April, 2015 by Hon. S.N. Mbungi (Ag. Principal Magistrate) Chief Magistrate's Courts at Thika in Criminal Case No. 900 of 2013).

JUDGMENT

1. The 1st Appellant, Gloria Faith Amoit and 2nd Appellant, Godfrey Gitau Njeri were charged as follows:

Count I

Kidnapping contrary to Section 259 of the Penal Code.

The particulars of the offence being that the 1st Appellant and the 2nd Appellant on the 21st day of March 2013 in Ruiru District within Kiambu County, jointly with others not before court kidnapped F W aged 16 months with intent to cause F W to be secretly and wrongfully confined.

2. **Count II**

Kidnapping contrary to Section 259 of the Penal Code.

The particulars of the offence were that on the 21st day of March 2013 at Membley Estate in Ruiru District within Kiambu County, the 1st Appellant and 2nd Appellant jointly with others not before court kidnapped E W aged 16 months with intent to cause E W to be secretly and wrongfully confined.

3. **Count III**

Being unlawfully present in Kenya contrary to Section 53(1)(5)(2) of the Kenya Citizenship and Immigration Act 2011.

The particulars of the offence being that 1st Appellant on the 25th day of March 2013 at Kahawa West in Ruiru District within Kiambu County being a Ugandan was found being unlawfully present in Kenya in that you had no valid documents authorizing you to remain in Kenya in contravention of the Kenya Citizenship and Immigration Act 2011

4. The prosecution case was that on the material date at about 11.00 a.m., the mother of the two children named in the charge sheet who were twins aged about one year eight months went to work. The children were left home with the househelp who had been working for the family for about two months. At about 4.00 p.m. the mother repeatedly called the househelp but there was no answer.

5. The mother informed the husband of the matter then proceeded home. When she reached home the househelp and the children were nowhere to be seen. A search for the twins was mounted and the matter reported to the police. While the mother was recording a statement with the police telephone calls started coming in demanding Ksh.20,000,000/= ransom for the release of the children. The mother bargained and the amount was later reduced to Ksh.2,000,000/= with a threat that the children would be killed if she involved the police in the matter.

6. Using the telephone lines that the kidnappers were using to communicate with the children's mother the police officers traced the home in Naivasha where the telephone calls were being made from. This led to the arrest of the 2nd Appellant, Godfrey Gitau Njeri and another (already before court) in Naivasha. Upon interrogations the police officers were led to Kahawa West area in Nairobi where the househelp (1st Appellant) and another (already before court) and the children were found.

7. During the investigations it turned out that the 1st Appellant was a Ugandan national who was in Kenya illegally. The Appellants were later arraigned in court with the offences herein.

8. In her defence case the 1st Appellant gave sworn evidence. She stated that she is a Ugandan national who was employed in Ruiru area of Kenya as a househelp. That her employer telephoned her and sent her to go with the twins to buy bananas and potatoes. That while they were on the way a saloon car stopped and forced her inside. Two men forced her to consume some drink. She then fell unconscious and when she came to, she found herself in a police cell. Her phone was missing and the children were nowhere to be seen. She denied the offence.

9. The 2nd Appellant Godfrey Gitau Njeri opted to give unsworn evidence in his defence case. He stated that he sells vegetables. That on 20th March, 2013 he went to buy avocados. At about 10.15p.m. while on his way home he was arrested by police officers who took away his wallet. They accused him of motor vehicle theft then escorted him to Ruiru police station. That his finger prints were taken and same reflected that he was Godfrey Gitau although his real name is Joseph Njuguna. He denied the offence and stated that he did not know the other people he was charged with.

10. In his judgment, the trial magistrate found the Appellants guilty as charged and convicted them accordingly. The Appellants were sentenced to five years imprisonment each in both Counts I and II. The 1st Appellant was sentenced to one year imprisonment in count III. The sentences run concurrently.

11. The Appellants were dissatisfied with the conviction and sentence and appealed to this court. Their separate appeals were consolidated and heard together. The grounds of appeal can be summarized as follows:

- (a) That evidence adduced was as variance with the charge sheet.
- (b) That the prosecution evidence was uncorroborative and inconsistent.
- (c) That the prosecution failed to call crucial witnesses.
- (d) That the trial magistrate failed to consider the defence case.
- (e) That the prosecution case was not proved beyond reasonable doubt.

12. During the hearing of the appeal 1st Appellant relied on her written submissions. She further stated that she has learnt a lot while in prison and is now reformed and a born again Christian. That she is a mother of two children who need her. She blamed her being behind bars on bad influence.

13. The 2nd Appellant relied on his written submissions. He also submitted orally. The submissions essentially expound on the grounds of appeal.

14. The learned counsel for the state opposed the appeal. He submitted that the appeals have no merits as all the ingredients of the offences were proved. On sentence, he stated the same was lenient considering the aggravated circumstances and the prevalence of the offence.

15. This being a first appeal, this court is duty bound to re-evaluate the evidence and the record afresh and come to its own conclusions and inferences – See **Okeno v Republic (1972) EA 32**.

16. W and S K the parents to the two children testified as PW1 & PW2 respectively. They narrated to the court how the children and the househelp went missing from their home. They gave corroborative evidence that the 1st Appellant was their househelp who they had left with the children. The two parents described their journey to Naivasha in the company of their brother PW3 J N and police officers in a desperate search for the children. PW1, PW2, PW3, and the police officers, PW4 PC F O & PW6 PC D O identified the 1st and 2nd Appellants as the culprits.

17. PW1 the children's mother further stated during the cross examination that she tried calling the 1st Appellant who disconnected her calls. Indeed the evidence of the father (PW2) and the police officers (PW4 & PW6) is that the 2nd Appellant and an accomplice led them to Kahawa West to the house where the 1st Appellant and the children were found.

18. The evidence of the police officers (PW4 & PW6) points at the 2nd Appellant as the one who was communicating with the children's mother through the line used to demand for ransom from the mother. The evidence of the police officers was that it was through the tracking

of the said number and the mobile telephone set used to demand for ransom that lead them to the arrest of the 2nd Appellant in Naivasha then the 2nd Appellant lead them to Kahawa West area of Nairobi where the children were found.

19. The 1st Appellant in her defence case admitted that she is a Ugandan national. Nothing was said about her status in Kenya. The defence by the 1st Appellant that she was drugged when the children disappeared is not convincing. Although the 1st Appellant stated that she found herself in hospital when she regained consciousness, no medical documents were produced.

20. The evidence by the 2nd Appellant that he was arrested and brought to court for an offence he had not committed is also not convincing. There is no reason why police officers who did not know him before would frame him up with this case. Nothing turns on the issue of the correct names of the 2nd Appellant as he was positively identified. It is noteworthy that the police officers (PW4 & 6) who arrested the 2nd Appellant were not cross-examined on the issue of frame up. The same is an afterthought. The said police officers were categorical in their evidence that they did not know the 2nd Appellant before.

21. Having re-evaluated the evidence from the prosecution and the defence, I am satisfied that the Appellants were convicted on sound evidence. The defence case raised by each of the Appellants did not cast any reasonable doubts on the prosecution case.

22. Taking into account the circumstances of this case, the sentence meted out is lenient. This shows that the trial magistrate considered the mitigation raised.

23. In the upshot, I find no merits in the appeal by both the 1st and 2nd appellant. The appeal is hereby dismissed.

Dated, signed and delivered at Kiambu this 22nd day of June, 2018

B. THURANIRA JADEN

JUDGE