



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL REVISION NO. 155 OF 2016**

**DIANA MURUGI GIKUU.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**RULING**

1. This revision application is brought under Section 362 and 364 of the Criminal Procedure Code. The provisions empower this court to correct any irregularity, illegality or impropriety by a magistrate in any finding, sentence or order.
2. In the event that the application is successful, this court is empowered by Section 364 to rectify the irregularity, illegality or impropriety as provided in the provision.
3. The applicant was charged and convicted on her own pleas of guilty of the offence of child neglect contrary to Section 127(2)(a) of the Children's Act No.8 of 2001 and sentenced to two years imprisonment.
4. In her application, the applicant states that she is aged 26 years old and is a single mother of two children. She is remorseful, she says and has undergone a vocational training in prison where she has learnt crocheting, detergent and shampoo making and has enrolled as a Standard 8 candidate. Having already served seven (7) months of the sentence by 27/09/2016, she urges this court to give her a suspended sentence.
5. The offence of child neglect under Section 127 of the Children's Act carries a penalty of a fine not exceeding Kshs.200,000/=, or to imprisonment for a term not exceeding five (5) years or to both.
6. The trial court had referred the applicant for a probation report which was positive. However, the magistrate decided to put her in prison so that she could benefit from a vocational training for her future support.
7. Annexed to the application is a testimonial from Patmos Trust Fund for a course in the making of detergents, shampoo, bleach, kerol and dettol confirming that the course has been successfully undertaken.
8. In the probation report, it was stated that the applicant's baby was aged 10 months at the time of sentencing. She had dumped the baby in the bush and left it for the dead.
9. This factor may have influenced the trial magistrate to put her in prison for the period of two years. It was also said that the applicant's routine life was that of exposure to bars and night clubs and she therefore had no time for her baby.
10. For the time she has served sentence which is about one year, the applicant must have learnt her lesson. The test is whether she is now ready to look after her children which may be established through a fresh probation report.
11. I find that due to the above circumstances, it is appropriate to evoke the powers of this court donated by Section 362 and 364 of the Criminal Procedure Code and set aside the remaining sentence of imprisonment upon the applicant being found suitable for referral.
12. The application is granted on the foregoing terms and conditions. The applicant is hereby referred for a probation report to be filed within 14 days.
13. Mention on 25/04/2017 and a production order to issue.

14. It is hereby so ordered.

**DATED, AND SIGNED THIS 12TH APRIL, 2017.**

**F. MUCHEMI**

**JUDGE**