



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL APPEAL NO. 56 OF 2016

HADIJA NIGHT..... APPELLANT

VERSUS

REPUBLIC..... REPUBLIC

(From the original conviction and sentence in Criminal case No.1644 of 2015 of the Chief Magistrate's Court at Busia by Hon. J.N Maragia– Resident Magistrate)

JUDGMENT

HADIJA NIGHT, the appellant herein, was convicted for the offence of child stealing contrary to section 174 (1) (b) of the Penal Code, the offence of infringing a child's right to parental care contrary to section 20 of the Children Act, for the offence of personating a person named in a certificate contrary to section 384 of the Penal Code and for the offence of conspiracy to effect unlawful purpose contrary to section 395 (f) of the Penal Code.

The particulars of the offence were that between 9th June 2015 and 23rd July 2015 the appellant committed the offences complained of in Nairobi and Busia Counties.

She was sentenced as follows:

- (a) In count one to imprisonment for 3 years,
- (b) In count two to imprisonment for 6 months,
- (c) In count three to imprisonment for 1 year; and
- (d) In count four to imprisonment for 6 months.

She has appealed against the sentence.

The appellant was in person. She contended that the sentence was harsh.

The state opposed the appeal through Mr. Owiti, the learned counsel.

The facts of the prosecution case were briefly as follows:

The appellant stole the child in issue in Nairobi. When she went to a medical facility in Funyula, it was suspected that the child were not hers for she presented documents that had erasures. Police officers were

alerted and she was arrested and charged. She pleaded guilty to the offences and sentenced. She has moved to this court on grounds that the sentence is harsh.

Section 174(1) (b) of the penal code provides as follows:

(1) Any person who, with intent to deprive any parent, guardian or other person who has the lawful care or charge of a child under the age of fourteen years of the possession of the child—

(b) receives or harbours the child, knowing it to have been so taken or enticed away or detained, is guilty of a felony and is liable to imprisonment for seven years.

Whereas section 20 of the children Act provides as follows:

Notwithstanding penalties contained in any other law, where any person wilfully 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.

The punishment provided for under section 384 of the Penal Code is up to seven years imprisonment while the penalty under section 395(f) of the Penal Code is imprisonment for two years.

The learned trial magistrate was very lenient to the appellant in spite of heinous offence that has ended up in separating the child from its parents.

As a saving grace I had asked her to give us leads that can help us reunite the child to its mother. She gave us mobile No. 0755 236 917. True caller identified the owner as Dina Cuzo but unfortunately the number was said to be out of service. I am making an order to the Deputy Registrar to provide this information to the police to see if it can be of any help in tracing the parents of the child.

From the foregoing analysis of the evidence on record I find no basis to interfere with the sentence. The appeal is accordingly dismissed.

DELIVERED and SIGNED at BUSIA this 29th day of November, 2017

KIARIE WAWERU KIARIE

JUDGE