



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 50 OF 2016

TABITHA NYAGUTHIE..... APPELLANT

versus

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 128 of 2015

by Hon. T. MATHEKA Chief Magistrate on 4th August 2015).

JUDGMENT

1. Appellant **TABITHA NYAGUTHIE** was convicted before the Nanyuki Chief Magistrate's Court with the **offence of neglecting a child contrary to section 127(1)(a) of the Children's Act**. She was sentence to serve 3 years imprisonment. By this appeal she seeks that this court does reduce that sentence.
2. In her oral submissions before court she admitted that she had done wrong in neglecting her child but sought mercy. She submitted she had **"changed her ways."** She stated that the court should release her because her children were suffering.
3. The learned Senior Principal Prosecution Counsel opposed the appeal because of the aggravating circumstances that led to appellant's sentence. He submitted that she had left the child in such deplorable condition in a locked house for one week that when the door was broken down by social workers with the assistance of the police the child, who suffered from cerebral palsy, was found eating his own faeces. Counsel also submitted that appellant's other child had been taken into a children's home due to similar neglect by appellant.
4. The eloquent judgment of the trial magistrate well sums up the facts of the case and the responsibilities of parent which the appellant failed to exercise. She stated thus in the judgement:-

" It is not in dispute that the accused person is the mother of (name withheld). It is also not in dispute that (name withheld) is a child with disability. He was confined by the mother in a manner that amount to ill treatment as is clear from the testimony of PW 1, PW 2 and PW 3, where the child was left to stay hungry and in his own faeces.

The accused did not do it once, but several times. Even after a good Samaritan took her youngest child leaving her with (name withheld), she still found it difficult to parent this one child.

She did not tell the court what efforts if any she made to get help or treatment for her child. The accused was quick to simply state that she would not do it again but clearly she is not fit to parent and has not internalised the seriousness of what she did.

A mother of a special child in this day and age is expected to take special care of her child. Help is available only if she seeks it as the child cannot speak for himself. The accused knowing that her child could not do anything for himself let alone locked up in the house for such long periods that he soiled himself and in some instance fed on his own faeces. How more cruel could she get. This is unacceptable and cannot be tolerated. A child with disability calls for special sacrifice by the society but especially on the part of the parent.

In my view the charge against the accused is not only proved but also admitted. I find her guilty as charged of the offence of child neglect contrary to s. 127(1) of the Children Act and convict her under s. 215 of the CPC.”

5. The sentence meted out by the trial court was in this court’s view commensurative to the offence. **For that reason appeal against sentence is dismissed. The lower court’s sentence is upheld.**

DATED AND DELIVERED THIS 19TH DAY OF DECEMBER 2016.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant

Appellant: Tabitha Nyaguthie

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE