

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 94 OF 2014

JUDITH AKOTH OTIENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in the Principal Magistrate's Court at Winam Criminal Case No. 201 of 2014]

J U D G M E N T

1). The appellant was charged with the offence of child stealing contrary to section 174 (1) (b) of the Penal Code.

The particulars were that on the 2nd day of February 2014 at Kibos area in Kisumu East District within Kisumu County stole J A O a child aged 2 weeks knowing it to have been detained away with intent to deprive J A O the parent (mother) who had lawful charge of the possession of the said J A O.

2). The alternative charge was infringing a child's right to parental care contrary to section 6 (1) as read with section 20 of the Children's Act No. 8 of 2001.

The particulars were that on the 2nd day of February 2014 at Kibos area in Kisumu East District within Kisumu County willfully denied JA O child aged two weeks the right to live with and be cared for by the mother (parent) by taking away the said J A O.

3). The appellant on her own plea of guilty was sentenced to seven years imprisonment hence this appeal. The substance of the appeal are basically mitigations.

4). The facts as can be gleaned from the proceedings are that on 2-2-2014 at around 8 am the appellant went to the home of the complainant who was with the new born child. She then requested to change the clothes of the baby as she was already wet. Later she requested the complainant to visit the home of one Michael who was living in the neighbourhood accompanied by the baby. The mother acceded but unfortunately she did not come back with the child.

5). The mother reported the incident at Kondele police station at who traced the appellant through her mobile phone. She was found at Kakamega Shikoli area and arrested. The appellant pleaded to facts after being read to her.

6). It is a trite law that when the plea is clear and unambiguous one cannot be heard to complain later. The language used by the court was kiswahili which she clearly understood.

Further in her mitigation before the trial court and before this court, the appellant did not explain why she disappeared with the child between 2nd February 2014 to 11-2-2014. If she meant well or was acting in good faith what was difficult in bringing back the child to her mother?

7). I do not think the argument raised in the petition regarding the fact that she was held for more than 24 hours at police custody holds water. It is clearly demonstrated that she was arrested at Kakamega on 11-2-2014 and brought to court on 13-2-2014 at Winam in Kisumu. I do not find this period inordinate at all.

The appeal is hereby dismissed.

Dated, signed and delivered at Kisumu this 30 day of March, 2015.

H.K. CHEMITEI

JUDGE