

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO.104 OF 2014

P O TAPPELLANT

VERSUS

REPUBLICRESPONDENT

[Appeal from Original Conviction and Sentence from Maseno PM's Court: M. C. NYIGEI - RM

in Criminal Case No.1296 of 2014.]

J U D G M E N T

This appellant was charged with the Offence of Child Neglect contrary to Section 127 (1)(a) of the Children Act No.8/2007. The particulars were that on diverse dates between the month of December 2013 and 14th day of October 2014 at about 11.00 hours at [particulars withheld] Sub_Location in Kisumu West District of the Kisumu County, being a guardian of G O T a child aged 15 years willfully neglected the said child an act that caused suffering to his health.

The appellant was convicted on his own plea of guilty and sentenced to 40 months imprisonment. The appellant has filed this appeal which to say the least is purely mitigated. According to Mr. Oguso learned counsel for the appellant his client is remorseful and that he never meant to neglect the child.

The facts on record showed that the child was suffering from some tumour on his face and the appellant, his father instead of taking him for conventional treatment took him to some herbalist and when it failed he resorted to prayers.

Mr. Oguso urged this court to be compassionate as the 6 months his client has served have taught him a lesson and that the child currently is undergoing treatment.

The state opposed the appeal on the ground that the plea was unequivocal and that the facts on record speak for itself. In any event the 40 months meted against him were not excessive.

I have perused the appeal together with the proceedings, the sentiments by the appellant and the respondent's replies. I have equally perused the

probation reports on the file as well as the reports from the Childrens' Department. This court shall only interfere with the question of sentencing if its unlawful or the court considered or did not consider relevant issues.

As conceded by the appellant the facts and issues surrounding this matter are not disputed. Out of his "ignorance" the appellant did not take his child to hospital forcing other well wishers to do so. Taking into consideration the history behind it and the fact that the child is now undergoing specialist treatment at Moi Teaching and Referral hospital, I shall allow the appeal by setting aside the 40 months custodial sentence against the appellant. I do order him released forthwith unless lawfully held. I do reckon that the 6 months period he has served in jail has taught him a lesson and to be responsible parent.

Dated, delivered this 25th day of May, 2015

H. K. CHEMITEI

J U D G E