



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO.46 OF 2013

SHAROLYNE MUSUVE Alias CYNTHIA ROSE ...APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from conviction and sentence of the SPM in Mumias SPM's Court Criminal Case No.142 of 2013 delivered on 12/03/2013 by Hon. Lily M. Nafula, SPM)

J U D G M E N T

Introduction

1. The appellant herein pleaded guilty to one count of child stealing contrary to Section 174 (1) (a) of the Penal Code. The particulars of the offence were that on the 22nd February 2012 in Kakamega County forcibly detained S A, a child aged two years with intent to deprive J N S.

Plea

2. On the 11/03/2013 when the appellant appeared for plea she admitted the charge and a plea of guilty was entered pending the facts which were to be given on 12/03/2015. When the appellant appeared before Court on 12/03/2015, the facts were given after the appellant had been reminded of the charge facing her and after admitting in Kiswahili "Ni kweli". The facts were read to the appellant, she admitted that the factors as given were true. The trial Court then proceeded to convict her on her own plea of guilty whereupon the trial Court was informed the appellant was a first offender. The appellant was called upon to mitigate and she did so. Before sentencing the appellant the trial Court noted that the offence of which the appellant had been convicted was serious and that the appellant was a danger to the vulnerable children in the society. Being satisfied that the appellant needed a deterrent sentence, the trial Court sentenced her to seven (7) years imprisonment.

The Appeal

3. The appellant being aggrieved by both conviction and sentence filed this appeal based on the following grounds:-
 1. That I pleaded guilty to the above appended charges due to my own ignorance.
 2. That the trial Magistrate made decision without jurisdiction.
 3. That I am a first offender who has never been either in Police custody or Court before therefore having no knowledge of any Law Act and needed leniency.
 4. That I had no intention of stealing the child since I have my own only that the child cried for me

- and picked her with an intention of returning her back (sic)
5. That I called the parents of the child and informed them of my story.
 6. That I prayed never to be involved in any crime as I have learnt in a hard way.
 7. That my child is still at a very tender age that needs my care and thus imprisonment term may ruin his life and growth.
 8. That I am remorseful for having committed the offence.
 9. That I beg the honourable High Court of Kenya to look into my case and award me a non-custodial sentence.

The Submissions

4. When the appeal came up for hearing before me on 25/06/2015 the appellant told the Court that what she wanted was to have the sentence reduced so that she can go back home to look for her child.
5. The appeal was opposed by Mr. Oroni, Senior Prosecution Counsel. He submitted that the offence of which the appellant was convicted was serious. Further that the appellant admitted the charge and also took the Police to the hide out but the child could not be traced to date, the mother of the child mental anguish and turmoil. Counsel urged the Court to dismiss the appeal on sentence since the sentence meted out was in accordance with the Law.

The facts of the case

6. The facts given to the Court before the appellant was found guilty and convicted were as follows:-

“On 22/02/12 at around 4.00pm in East Wanga division, accused went to the home of one J W A and found one child namely S A A aged two years old and took her to a nearby river, bathed her and returned home and dressed her in clean clothes and went away to her home which neighbours the complaints house. Later when the child’s mother went to collect her daughter, she did not find accused person and the child, she went into hiding since then until 6/03/13 when she resurfaced without the child. Members of the public who were aware of what had happened reported her presence to the child’s mother. The mother raised an alarm and accused was arrested and escorted to Mumias Police station where on being interrogated she volunteered and took the police officers to Bungoma to a place where she stated she had taken the child, but child could not be traced. She was brought back to Mumias Police station and charged as present.”

Analysis and Findings

7. Reading the above facts against the backdrop of the principles for taking of plea as set out in the case of **Adan –vs- Republic [1973] E.A 445**, two issues arise for determination: a) whether the plea was unequivocal and b) whether there is any justification for this Court to interfere with the sentence.
8. As regards the first issue this Court as the first appellate Court has no doubt in its mind that the plea recorded by the trial Court was unequivocal. The allegation that the appellant was ignorant of the law, or that she will never commit another crime are irrelevances as far as the plea herein is concerned. In any event, during the hearing of the appeal the appellant seemed only to have the sentence meted out to her reduced to enable her go back home to her child.
9. So the next issue is whether this Court as an appellate Court should reduce the sentence of 7 years imprisonment meted out to the appellant by the trial Court. It is not in doubt that the gravity of a sentence meted out to an accused is more often than not within the discretion of the sentencing Court save in cases where mandatory sentences are prescribed by law. Child stealing is punishable on conviction by imprisonment for 7 years. The appellant in this case was given the mandatory sentence prescribed by law. The trial Court did not have another option, so I find that the sentence was a lawful sentence. This Court could only interfere with the said sentence if the sentence was unlawful or if the same was too harsh in the circumstances, there is no proof in this case that the

sentence was either unlawful or that it was too harsh in the circumstances.

Conclusion

10. For the reasons given above, I find that the appellant's appeal is lacking in its entirety. The appellant still has a right of appeal to the Court of Appeal within 14 days from the date of this judgment.

Orders accordingly.

Judgment delivered, dated and signed in open Court at Kakamega this 29th day of September 2015.

RUTH N. SITATI

J U D G E

In the presence of:

Present in person for Appellant

Mr. Omwenga (present) for Respondent

Mr. Lagat - Court Assistant