



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 94 OF 2014

**(Being an appeal from the Judgment, Conviction and Sentence in Criminal Case No. 312 of 2013
Principal Magistrate's Court at Mariakani – Hon. S. Wewa – Principal Magistrate).**

LINET MWANJUMA MWAMBEZI..... APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The Appellant was Convicted and Sentenced to three (3) years imprisonment for the offence of infanticide contrary to section 210 of the Penal Code.

The particulars are that:-

“On the 14th day of December, 2013 at Batani Asili village Ruruma Location Kilifi County she willfully caused the death of a child by dumping it at the shamba while under the age of twelve (12) months”.

This appeal is on Sentence. The appellant was charged and Convicted under section 210 of the Penal Code which provides,

“Where a woman by any willful act or omission causes the death of her child being a child under the age of twelve (12) months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, then notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, shall be guilty of a felony, to wit, infanticide, and may for that offence be dealt with and punished as if she had been guilty of manslaughter of the child”.

Under section 210 of the Penal Code infanticide is treated as manslaughter.

Under section 202 of the Penal Code manslaughter is defined thus,

“Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed as manslaughter

2. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending

to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm”.

The facts which were read to the Accused were that she delivered a male child and dumped it in a shamba. The child was heard crying by members of public who washed it and took it to Rabai Health Centre where it died.

Her act of abandoning the child un attended at a shamba amounted to an omission of culpable negligence.

Section 205 of the Penal Code provides the maximum punishment for manslaughter as life imprisonment.

Section 227 of the Penal Code provides for the offence of concealing birth which is a different offence from that of infanticide. The punishment for infanticide is the same as that of manslaughter which is a maximum Sentence of life imprisonment. The appellant was Sentenced to three (3) years imprisonment. The Sentenced is proper. Its not harsh or excessive. I find no good reason to interfere.

The appeal has no merit and its disallowed. Conviction and Sentence upheld.

Judgment delivered, dated and signed this **26th** day of **October, 2015**.

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M. MUYA

JUDGE

26TH OCTOBER, 2015

In the presence of:-

Learned Counsel for the prosecution Miss Ogweno

Learned Counsel for the appellant absent

Courbet Assistant Mr. Musundi

M. MUYA – JUDGE