

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 252 OF 2012

ROSE NAMATSI APPELLANT

V E R S U S

REPUBLIC RESPONDENT

(Appeal against conviction and sentence arising from the

Judgment of [L. N. KINIALE, RM] in the Senior Resident Magistrate's

Court Butere in Criminal Case No. 181 of 2012

J U D G M E N T

The appellant was charged with the offence of cruelty to a child contrary to **section 127(1) (a)** of the Children Act No. 8 2001. The particulars of the offence are that the appellant on the 8.6.2011at [particulars withheld] in Butere District within Kakamega County being a mother of Y a child aged 3 years willfully abandoned the said child by dumping her at a garbage pit an act that caused suffering to her health. The appellant was also charged with a count of neglect of a child contrary to **section 127(1) (b)** of the Children Act No. 8 of 2001.

The appellant pleaded guilty to the charge and was sentenced to serve 5 years imprisonment for the first count and 4 years imprisonment for the second count. The sentence is to run consecutively. The grounds of appeal are that she pleaded guilty to the charge, she is a first offender, the sentence is harsh, her mitigation was not considered, she is a widow with two children and she is remorseful. During the hearing of the appeal the appellant informed the court that she agrees that she made a mistake and she is remorseful. Her parents are deceased.

Mr. Okoth, State Counsel, opposed the appeal and submitted that the appellant pleaded guilty. She was allowed to mitigate. The punishment is for the best interest of the child. The sentence is proper as the law provides for 5 years imprisonment or a fine of KShs.250,000/=.

The record of the trial court shows that the plea was properly taken and the facts were read over to the appellant. The appellant pleaded guilty and was convicted. The appellant does not contest the conviction but is of the view that the sentence is harsh. The appellant was convicted on the 25.4.2012. She has been in custody for almost 2 years now. I do find that that is enough punishment. The maximum sentence is 5 years imprisonment. The 5 year sentence is hereby set aside and replaced with the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 18th day of February 2014

SAID J. CHITEMBWE

J U D G E