



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 82 OF 2013

EWNAPPELLANT

versus

REPUBLICRESPONDENT

(arising from the judgment of Hon. J Wambilyanga, Senior Resident

Magistrate Nyeri in Criminal Case No. 374 of 2013)

JUDGMENT

1. The Appellant EWN was charged with the offence of neglect of a child contrary to section 127(1) (a) of the Children Act No. 8 of 2001 the particulars of which were that between the months of March – June 2013 in Nyeri County within the Republic of Kenya being the mother to E.N.W aged 8 years E.M aged 5 years, J.W.W. aged 3 years and S.W. Aged 8 months abandoned the said children without taking care of them.
2. The Appellant pleaded guilty to the said charges and in mitigation stated that she was trying that one accepts to take care of the older children while she takes care of the younger children so that she assist them.
3. The trial court thereafter called for a verbal report from the Children Officer who reported that the children grandmother and uncle were willing to stay with the older children and the younger one to be taken care of by the Children Officer.
4. In sentencing the Appellant to serve five (5) years jail term the trial court held the Appellant was not willing to take up her parental responsibility and has offended the provision of the Children Act as she has exposed the children to being prone to need of care and protection.
5. Being dissatisfied with the said sentence the Appellant filed the appeal on sentence and in her home made grounds stated that she is a single mother and the only bread winner of her family and when in prison there is no one to take care of them.
6. The Appellant further stated that the sentence was harsh and excessive taking into account the fact that she was a first offender.
7. The Appellant having pleaded guilty the appeal herein is only in respect of the extent or legality of the sentence as provided for under section 348 of CPC. I must however point out that since the Appellant was unrepresented the court would have looked at the Appellant's mitigation carefully as I take the view that the plea of guilt was not unequivocal.
8. The sentence provided for herein is a fine of Ksh. 200,000 or imprisonment for a period not exceeding five years or both such fine and imprisonment of which the Appellant was sentenced to five years on the basis that she was not willing to take up her parental responsibility for the older children.
9. The Appellant being a first offender and taking into account her mitigation and the best interest of the children I would agree with the submission by the Appellant that the maximum sentence was

excessive and would therefore interfere with the sentence imposed upon the Appellant since the fact as stated only indicated that the Appellant left the children for a period of March to June 2013 and there was no report that she had left them before and therefore the sentence was out of proportion.

10. I would therefore allow the appeal herein on sentence and substitute the same with a sentence of ten (10) months from 14th June 2013 already served and order that the Appellant be released from jail forthwith unless she is otherwise lawfully held.

11. Dated, signed and delivered at Nyeri this 4th day of April 2014.

J. WAKIAGA

JUDGE

1. The appellant in person.
2. Mr. Njue for the state.
3. Court: Judgment read in open court in the presence of the above named.

J. WAKIAGA

JUDGE