



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL APPEAL NO. 26 OF 2013**

PAULINE NJERI LUCIA ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

**(APPEAL ARISING FROM THE JUDGMENT OF THE SENIOR RESIDENT MAGISTRATE'S  
COURT AT WANG'URU (B.M. OCHOI – S.R.M) IN CRIMINAL CASE NO. 372 OF 2009  
DELIVERED ON 5<sup>TH</sup> AUGUST 2010)**

**JUDGMENT**

This is a very sad case. The appellant PAULINE NJERI LUCIA was charged and convicted by Mr. B.M. OCHOI Senior Resident Magistrate Wang'uru Court for the offence of infanticide contrary to Section 210 of the Penal Code. It was alleged that the appellant killed her child under the age of 12 months.

When called upon to mitigate, the appellant told the trial magistrate the following:-

***“ I pray for forgiveness. I have two other children at home. I do not know how they are. I am informed that my husband married another woman and chased away my children. I have no father and my mother is crippled and cannot support the children on her own. I pray for forgiveness so that I go and take care of the other children”***

The trial magistrate, no doubt moved by those mitigating words, called for a Probation Officer's report. That was in my view, the right thing to do under the circumstances.

The Probation Officer's report was duly prepared by Margaret Kangi of Mwea Probation office and presented before the trial magistrate on 5<sup>th</sup> August 2010. In the report, the Probation Officer made the following recommendation:-

***“ Your honour, before you is a single mother of two young siblings who is remorseful and repentful. She has stayed in remand for over 1 year which has made her learn a lesson and realize the consequences of the offence she committed. She pleads for leniency and promises to change positively. Considering the aforementioned, I wish to recommend the Honourable Court to place her on PROBATION for a period it deems fit so that our office can facilitate counseling and reconciliation with her children and family members”***

Notwithstanding that report which the magistrate had himself called for, he proceeded to sentence the appellant to seven (7) years imprisonment. The State, and rightly so, concedes the appeal.

Clearly, taking into account all the circumstances of this case, the sentence of seven (7) years was, to say the least, Callous to the extreme. Having called for a Probation Officer's report which gave a very favourable account that warranted the appellant being placed on non-custodial sentence, the magistrate simply ignored it stating that the appellant "**must serve a jail term**". He completely forgot about the two other children that appellant left behind and who need her care. There was nothing to suggest that she was a risk to her other two children. Justice must surely be tampered with mercy.

I accordingly allow the appeal and set aside the sentence of seven (7) years. I order her immediate release and direct her to report to the Probation Officer Mrs. Margaret Kangi on 28<sup>th</sup> October 2013 who will assist her in her rehabilitation

**B.N.OLAO**

**JUDGE**

**18<sup>TH</sup> OCTOBER, 2013**

Judgment delivered this 18<sup>th</sup> day of October 2013 in open Court.

Mr. Omayo State Counsel present

Mr.Muriithi Court clerk present

Appellant present.

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> OCTOBER, 2013**