



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL APPEAL 13 OF 2011**

*(From original conviction and sentence in Criminal Case No. 2977 of 2010 of the Principal Magistrate's Court at Nyahururu, A. B. Mongare, SRM)*

**BEATRICE WANGUI WAITHERA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant was charged with the offence neglect of a child contrary to Section 127(1)(b) of the Children Act, 2001 (*No. 8 of 2001*), and was on her own plea of guilty convicted and sentenced to 5 years imprisonment.

Section 348 of the Criminal Procedure Code (*Cap. 75, Laws of Kenya*) prohibits this court from entertaining any appeal where an appellant has been convicted and sentenced on an own plea of guilty. The only grounds for interference by an appellate court are the extent or legality of sentence.

The punishment for the offence of willful neglect, ill-treatment or abandonment of a child is a fine of Ksh 200,000/= or imprisonment for a period of not exceeding five years or both such fine and imprisonment. The Appellant was sentenced to five years imprisonment, the maximum term permissible under that provision.

The Appellant urged the court to look at her appeal with mercy. She had no parent to guide her in her youth, and that the court should give a non-custodial sentence so that she could go and look after her one year or so baby.

Her appeal was however strongly opposed by Miss Idagwa learned State Counsel. The Appellant needs to serve her term and be rehabilitated. The child is under the care of the Appellant's sister, a better guardian than the appellant and that the Appellant had no sign of remorsefulness. Counsel therefore urged the court not to interfere with the sentence imposed upon the Appellant.

I have considered the Appellant's and the State Counsel's arguments. The facts which the Appellant admitted when read to her clearly showed that she had failed in her parental duties, even if she was a single mother. She had habitually left and locked the 9 month old baby in her house without any care by any one else. Some good Samaritans in Ol Kalou Town heard a child crying in the house, alerted the Police who along with the OCS, went and broke into the house and removed the child to the Police Station.

Thereafter they went into Ol Kalou Town to look for the Appellant and found her in a local pub, arrested and later charged her. The child was "given" to a good Samaritan – and later to the Appellant's sister. The Appellant's 1st born was treated the same way, until the mother-in-law took away the child. The 2<sup>nd</sup> child is the subject of these proceedings, and she formed the same habit so that a child of nine months could not even crawl. The Appellant went out drinking, rioting and going home drunk and disorderly. The child may well have died of parental neglect if neighbours were not concerned and heeded the child's cries, and called for Police assistance.

I would therefore decline the appellant's appeal for leniency not only because of the provisions of Section

348 of the Criminal Procedure Code, but also from the point of view of the purpose of punishment, not merely, deterrence, but more importantly the rehabilitation of the offender.

The Appellant told the court that she grew up without parental care. That probably informs her riotous and carefree behaviour. In prison the Appellant will learn a trade, such as tailoring. The period of five years with remission, is not too long. It will keep her away from drink, and afford the appellant an opportunity to reflect, learn a trade, and upon completion of her term, will be released to society, hopefully a reformed and skilled person, ready to fend for herself and her children on her own and not revert to previous bad habits that landed her into prison.

For those reasons, I decline to interfere with the sentence imposed upon the Appellant. It was a lawful sentence. I dismiss the appeal.

It is so ordered.

**Dated, signed and delivered at Nakuru this 12<sup>th</sup> day of October, 2012**

**M. J. ANYARA EMUKULE**

**JUDGE**