



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL APPEAL NO. 56 OF 2008

JOYCE NASIMIYU APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the Conviction and Sentence of the Hon. Resident Magistrate A. B. Mongare (Mrs) in Eldoret Chief Magistrate's Court Children's Case No. 19 of 2008 passed on 18th April, 2008)

J U D G M E N T

The appellant, a mother of four children had some differences with her husband and she went away from home leaving all four children the youngest of whom was then aged four months, behind. The husband took the youngest child to his first wife and then went to look for the second wife, this appellant in Nairobi. He traced her there brought her back home and reported her to the authorities and she was charged with neglecting a child contrary to section 127(1) (a) of the Children Act of 2001. She pleaded guilty and was sentenced to serve 3 years imprisonment. She was dissatisfied and brought this appeal wherein she raises the grounds that the sentence was harsh in the circumstances of the case and mitigation was not considered.

The State conceded that the sentence was excessive in the circumstances of the case.

Under the Children Act the welfare of the child is the paramount concern. The interests of the child must be jealously guarded at all times. I do not find that sending the mother away to prison for three years would serve the interests of her very young child of four months. Courts are enjoined to always consider the best interests of the child while handling cases of this nature. The trial court failed to do that. I will correct it by quashing the conviction and setting aside the sentence. I set the appellant at liberty forthwith unless she is otherwise lawfully held.

Those are the orders of this court.

DATED SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF OCTOBER, 2010.

P.M. MWILU
JUDGE

In the presence of;

No appearance for the Appellant

No appearance for the Advocate for the Appellant

Kabaka – Counsel for the State

Andrew Omwenga – Court Clerk

P.M. MWILU
JUDGE