

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Revision 387 of 2007

NAOMI MWIKALI KIOKO.....ACCUSED

-VERSUS-

REPUBLICPROSECUTOR

(From the original proceedings in Criminal Case No. 2073 of 2007 in the Chief Magistrate's Court Makadara).

J U D G M E N T

This matter was brought to this court under its revision jurisdiction in terms of section 362 of the Criminal Procedure Code (Cap.75). The accused was charged before the subordinate court with two offences of assault contrary to section 251 of the Penal Code. She pleaded guilty and was on 30.4.2007 sentenced to serve two (2) years imprisonment on each count, sentences to run concurrently. She apparently filed an appeal No. 274 of 2007 on 10/5/2007, but filed this request for revision on 15/5/2007 before her appeal was admitted for hearing. Therefore the matter proceeded as a revision matter. The Probation Officer (Community Service Officer) filed a report which recommended as follows ?

“--- before you is an 18 years old girl. She is a first offender and the complainant is her mother. The mother is willing to accept her back and the family is ready to forgive her. She has realized the seriousness of the offence and pleads for mercy. She is willing to go back to school and be rehabilitated and counseled. Your Lordship, I recommend a community service sentence. A work place is available at Huruma Health Centre”.

Learned State Counsel, Mrs. Gateru, submitted that the State did not oppose a non-custodial sentence as recommended by the Probation Officer.

Having considered all the circumstances of this case and the report of the Community Service Officer (Probation Officer), I am of the view that though the sentence was legal, this is a proper case for me to exercise this court's revision powers under section 364 of the Criminal Procedure Code (Cap.75). This is firstly, on the basis that the accused, as a first offender, is aged just 18 years. Secondly, the offences appears to be a domestic issue and the mother of the accused has forgiven the accused and is willing to assist in rehabilitating her.

Do I order community service sentence. I will not do that. The accused was sentenced in April 2007. She has been in prison for more than six months. In my view, that is adequate punishment for her. I hope that she has learnt a lesson, just as she has shown remorsefulness to this court and to the Community Service Officer. I will reduce the sentence to that already served.

Consequently, in exercise of this court's revision powers, I set aside the sentences imposed by the subordinate court and substitute therefore that the sentence be that already served by the accused. In consequence she will be released forthwith. I order that the accused be set at liberty, unless otherwise lawfully held. Her appeal No. 275/07 is marked as abandoned.

Dated and delivered at Nairobi this 7th day of November, 2007.

George Dulu

Judge

In the presence of ?

Accused in person

Ms. Gateru for State

Eric – court clerk