



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

**Criminal Appeal 86 of 2006**

**LYDIA MWENDWA KITHEKA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... PROSECUTOR**

**JUDGEMENT**

The appellant relies on her grounds of appeal. She argues that the sentence is harsh and excessive and totally unsuitable in the circumstances of the case as it does not protect the children whose interest should have guided the court in sentencing. Mr O'Mirera, for the Attorney General fully agrees. The court has considered the circumstances of the case and agrees with both. The charge against the accused was neglect of children Contrary to Section 127 (1) of the children's Act, Cap 586 of the Laws of Kenya. Facts show that although accused pleaded guilty to the charge, she also raised the fact that she used to leave the children sometimes alone because she went to look for money to feed them. This should have been taken into account but was not.

Further, it is difficult to understand how sending the accused to jail for along period (3) years was going to assist the children who would now be left without a parent. There is no information presently where the children are and probably, they must be suffering.

I have considered the circumstances of this case. The appellant has served jail sentence for 6 months. In my view it is sufficient punishment. She promises to go back and look after her children. I wish to agree with her. And since the state counsel is in agreement the appellant's sentence ill be reduced.

**Order:**

The jail sentence of 3 years is hereby reduced to the period she has so far served and appellant is hereby ordered released forthwith. It is so ordered.

Dated and delivered at Machakos on 19<sup>th</sup> day of September, 2006.

**D.A. ONYANCHA**

**JUDGE**